

Official Journal

of the European Communities

ISSN 0378-6978

L 110

Volume 40

26 April 1997

English edition

Legislation

Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 739/97 of 25 April 1997 amending Regulation (EEC) No 391/92 setting the amounts of aid for the supply of cereals products from the Community to the French overseas departments	1
Commission Regulation (EC) No 740/97 of 25 April 1997 amending Regulation (EEC) No 1832/92 setting the amounts of aid for the supply of cereals products from the Community to the Canary Islands	3
Commission Regulation (EC) No 741/97 of 25 April 1997 amending Regulation (EEC) No 1833/92 setting the amounts of aid for the supply of cereals products from the Community to the Azores and Madeira	5
Commission Regulation (EC) No 742/97 of 25 April 1997 setting the amounts of aid for the supply of rice products from the Community to the Canary Islands	7
Commission Regulation (EC) No 743/97 of 25 April 1997 setting the amounts of aid for the supply of rice products from the Community to the Azores and Madeira	9
Commission Regulation (EC) No 744/97 of 25 April 1997 fixing the export refunds on rice and broken rice	11
Commission Regulation (EC) No 745/97 of 25 April 1997 on the supply of white sugar as food aid	13
Commission Regulation (EC) No 746/97 of 25 April 1997 on the supply of milk products as food aid	16
Commission Regulation (EC) No 747/97 of 25 April 1997 fixing the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex II to the Treaty	19

Price: ECU 19,50

(Continued overleaf)

EN

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

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

★ Commission Regulation (EC) No 748/97 of 25 April 1997 amending Annex I and II of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin	21
★ Commission Regulation (EC) No 749/97 of 25 April 1997 amending Annexes I, II and III of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin	24
★ Commission Regulation (EC) No 750/97 of 25 April 1997 amending Regulation (EC) No 3582/93 on detailed rules for the application of Council Regulation (EEC) No 2073/92 on promoting consumption in the Community and expanding the markets for milk and milk products	28
Commission Regulation (EC) No 751/97 of 25 April 1997 fixing the maximum buying-in price and the quantities of beef to be bought in under the 180th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89	29
Commission Regulation (EC) No 752/97 of 25 April 1997 determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic and the Slovak Republic can be accepted	31
Commission Regulation (EC) No 753/97 of 25 April 1997 determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with Bulgaria and Romania can be accepted	33
Commission Regulation (EC) No 754/97 of 25 April 1997 determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted	35
Commission Regulation (EC) No 755/97 of 25 April 1997 determining the extent to which applications lodged in April 1997 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 July 1996 to 30 June 1997	37
Commission Regulation (EC) No 756/97 of 25 April 1997 determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat products under the regime provided for by the Agreement concluded by the Community with Slovenia can be accepted	39
Commission Regulation (EC) No 757/97 of 25 April 1997 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid	41
Commission Regulation (EC) No 758/97 of 25 April 1997 determining the extent to which applications lodged in April 1997 for licences for certain eggs and poultrymeat products under the regime provided for by the Interim Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, the Slovak Republic, Romania and Bulgaria can be accepted	43

Commission Regulation (EC) No 759/97 of 25 April 1997 fixing the agricultural conversion rates	46
Commission Regulation (EC) No 760/97 of 25 April 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables	48
Commission Regulation (EC) No 761/97 of 25 April 1997 providing for the rejection of applications for export licences in relation to products falling within CN code 1101 00 15	50
Commission Regulation (EC) No 762/97 of 25 April 1997 amending representative prices and additional duties for the import of certain products in the sugar sector	51

II *Acts whose publication is not obligatory*

Commission

97/277/EC:

- ★ **Commission Decision of 20 November 1996 declaring a concentration to be incompatible with the common market (Case No IV/M.784 — Kesko/Tuko) — Council Regulation (EEC) No 4064/89 ⁽¹⁾.....** 53

97/278/EC:

- ★ **Commission Decision of 11 April 1997 amending Decisions 95/160/EC, 95/161/EC and 95/168/EC concerning the methods to be used for microbiological testing ⁽¹⁾** 77

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 739/97
of 25 April 1997
amending Regulation (EEC) No 391/92 setting the amounts of aid for the supply
of cereals products from the Community to the French overseas departments

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

Having regard to Council Regulation (EEC) No 3763/91 of 16 December 1991 introducing specific measures in respect of certain agricultural products for the benefit of the French overseas departments⁽¹⁾, as last amended by Regulation (EC) No 2598/95⁽²⁾, and in particular Article 2 (6) thereof,

Whereas the amounts of aid for the supply of cereals products to the French overseas departments (FOD) has been settled by Commission Regulation (EEC) No 391/92⁽³⁾, as last amended by Regulation (EC) No 518/97⁽⁴⁾; whereas, as a consequence of the changes of the rates and prices for cereals products in the European part of the Community and on the world market, the aid

for supply to the FOD should be set at the amounts given in the Annex;

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 of amended Regulation (EEC) No 391/92 is replaced by the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on 1 May 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 356, 24. 12. 1991, p. 1.

⁽²⁾ OJ No L 267, 9. 11. 1995, p. 1.

⁽³⁾ OJ No L 43, 19. 2. 1992, p. 23.

⁽⁴⁾ OJ No L 82, 22. 3. 1997, p. 23.

ANNEX

to the Commission Regulation of 25 April 1997 amending Regulation (EEC) No 391/92 setting the amounts of aid for the supply of cereals products from the Community to the French overseas departments

(Ecu/tonnes)

Product (CN code)	Amount of aid			
	Destination			
	Guadeloupe	Martinique	French Guiana	Réunion
Common wheat (1001 90 99)	12,00	12,00	12,00	16,00
Barley (1003 00 90)	30,00	30,00	30,00	33,00
Maize (1005 90 00)	28,00	28,00	28,00	31,00
Durum wheat (1001 10 00)	12,00	12,00	12,00	16,00

COMMISSION REGULATION (EC) No 740/97**of 25 April 1997****amending Regulation (EEC) No 1832/92 setting the amounts of aid for the supply of cereals products from the Community to the Canary Islands**

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 introducing specific measures in respect of certain agricultural products for the benefit of the Canary Islands⁽¹⁾, as last amended by Regulation (EC) No 2348/96⁽²⁾, and in particular Article 3 (4) thereof,

Whereas the amounts of aid for the supply of cereals products to the Canary Islands has been settled by Commission Regulation (EEC) No 1832/92⁽³⁾, as last amended by Regulation (EC) No 520/97⁽⁴⁾; whereas, as a consequence of the changes of the rates and prices for cereals products in the European part of the Community and on the world market, the aid for supply to the Canary Islands should be set at the amounts given in the Annex;

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 of amended Regulation (EEC) No 1832/92 is replaced by the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on 1 May 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ No L 320, 11. 12. 1996, p. 1.

⁽³⁾ OJ No L 185, 4. 7. 1992, p. 26.

⁽⁴⁾ OJ No L 82, 22. 3. 1997, p. 27.

ANNEX

to the Commission Regulation of 25 April 1997 amending Regulation (EEC) No 1832/92 setting the amounts of aid for the supply of cereals products from the Community to the Canary Islands

(Ecu/tonne)

Product (CN code)		Amount of aid
Common wheat	(1001 90 99)	8,00
Barley	(1003 00 90)	27,00
Maize	(1005 90 00)	25,00
Durum wheat	(1001 10 00)	8,00
Oats	(1004 00 00)	27,00

COMMISSION REGULATION (EC) No 741/97
of 25 April 1997
amending Regulation (EEC) No 1833/92 setting the amounts of aid for the supply
of cereals products from the Community to the Azores and Madeira

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 introducing specific measures in respect of certain agricultural products for the benefit of the Azores and Madeira ⁽¹⁾, as last amended by Regulation (EC) No 2348/96 ⁽²⁾, and in particular Article 10 thereof,

Whereas the amounts of aid for the supply of cereals products to the Azores and Madeira has been settled by Commission Regulation (EEC) No 1833/92 ⁽³⁾, as last amended by Regulation (EC) No 519/97 ⁽⁴⁾, whereas, as a consequence of the changes of the rates and prices for cereals products in the European part of the Community and on the world market, the aid for supply to the Azores and Madeira should be set at the amounts given in the Annex;

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 of amended Regulation (EEC) No 1833/92 is replaced by the Annex to the present Regulation.

Article 2

This Regulation shall enter into force on 1 May 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ No L 320, 11. 12. 1996, p. 1.

⁽³⁾ OJ No L 185, 4. 7. 1992, p. 28.

⁽⁴⁾ OJ No L 82, 22. 3. 1997, p. 25.

ANNEX

to the Commission Regulation of 25 April 1997 amending Regulation (EEC) No 1833/92 setting the amounts of aid for the supply of cereals products from the Community to the Azores and Madeira

(Ecu/tonne)

Product (CN code)	Amount of aid	
	Destination	
	Azores	Madeira
Common wheat (1001 90 99)	8	8
Barley (1003 00 90)	27	27
Maize (1005 90 00)	25	25
Durum wheat (1001 10 00)	8	8

COMMISSION REGULATION (EC) No 742/97
of 25 April 1997
setting the amounts of aid for the supply of rice products from the Community
to the Canary Islands

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 introducing specific measures in respect of certain agricultural products for the benefit of the Canary Islands⁽¹⁾, as last amended by Regulation (EC) No 2348/96⁽²⁾, and in particular Article 3 thereof,

Whereas, pursuant to Article 3 of Regulation (EEC) No 1601/92, the requirements of the Canary Islands for rice are to be covered in terms of quantity, price and quality by the mobilization, on disposal terms equivalent to exemption from the levy, of Community rice, which involves the grant of an aid for supplies of Community origin; whereas this aid is to be fixed with particular reference to the costs of the various sources of supply and in particular is to be based on the prices applied to exports to third countries;

Whereas Commission Regulation (EC) No 2790/94⁽³⁾, as amended by Regulation (EC) No 2883/94⁽⁴⁾, lays down common detailed rules for implementation of the specific arrangements for the supply of certain agricultural products, including rice, to the Canary Islands;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁵⁾, as last amended by Regulation (EC) No 150/95⁽⁶⁾, 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⁽⁷⁾, as last amended by Regulation (EC) No 1482/96⁽⁸⁾;

Whereas, as a result of the application of these detailed rules to the current market situation in the rice sector, and in particular to the rates of prices for these products in the European part of the Community and on the world market, the aid for supply to the Canary Islands should be set at the amounts given in the Annex;

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

Pursuant to Article 3 of Regulation (EEC) No 1601/92, the amount of aid for the supply of rice of Community origin under the specific arrangements for the supply of the Canary Islands shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 13.

⁽²⁾ OJ No L 320, 11. 12. 1996, p. 1.

⁽³⁾ OJ No L 296, 17. 11. 1994, p. 23.

⁽⁴⁾ OJ No L 304, 29. 11. 1994, p. 18.

⁽⁵⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁶⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽⁷⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁸⁾ OJ No L 188, 27. 7. 1996, p. 22.

ANNEX

to the Commission Regulation of 25 April 1997 setting the amounts of aid for the supply of rice products from the Community to the Canary Islands

Product (CN code)	<i>(ECU/tonne)</i>	
	Amount of aid	
	Canary Islands	
Milled rice (1006 30)	297,00	
Broken rice (1006 40)	65,00	

COMMISSION REGULATION (EC) No 743/97

of 25 April 1997

setting the amounts of aid for the supply of rice products from the Community
to the Azores and Madeira

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 introducing specific measures in respect of certain agricultural products for the benefit of the Azores and Madeira⁽¹⁾, as last amended by Regulation (EC) No 2348/96⁽²⁾, and in particular Article 10 thereof,

Whereas, pursuant to Article 10 of Regulation (EEC) No 1600/92, the requirements of the Azores and Madeira for rice are to be covered in terms of quantity, price and quality by the mobilization, on disposal terms equivalent to exemption from the levy, of Community rice, which involves the grant of an aid for supplies of Community origin; whereas this aid is to be fixed with particular reference to the costs of the various sources of supply and in particular is to be based on the prices applied to exports to third countries;

Whereas Commission Regulation (EEC) No 1696/92⁽³⁾, as last amended by Regulation (EEC) No 2596/93⁽⁴⁾, lays down common detailed rules for implementation of the specific arrangements for the supply of certain agricultural products, including rice, to the Azores and Madeira; whereas Commission Regulation (EEC) No 1983/92 of 16 July 1992 laying down detailed rules for implementation of the specific arrangements for the supply of rice products to the Azores and Madeira and establishing the forecast supply balance for these products⁽⁵⁾, as last amended by Regulation (EC) No 1683/94⁽⁶⁾, lays down detailed rules which complement or derogate from the provisions of the aforementioned Regulation;

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

Done at Brussels, 25 April 1997.

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁷⁾, as last amended by Regulation (EC) No 150/95⁽⁸⁾, 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⁽⁹⁾, as last amended by Regulation (EC) No 1482/96⁽¹⁰⁾;

Whereas, as a result of the application of these detailed rules to the current market situation in the rice sector, and in particular to the rates of prices for these products in the European part of the Community and on the world market the aid for supply to the Azores and Madeira should be set at the amounts given in the Annex;

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

Pursuant to Article 10 of Regulation (EEC) No 1600/92, the amount of aid for the supply of rice of Community origin under the specific arrangements for the supply of the Azores and Madeira shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 173, 27. 6. 1992, p. 1.

⁽²⁾ OJ No L 320, 11. 12. 1996, p. 1.

⁽³⁾ OJ No L 179, 1. 7. 1992, p. 6.

⁽⁴⁾ OJ No L 238, 23. 9. 1993, p. 24.

⁽⁵⁾ OJ No L 198, 17. 7. 1992, p. 37.

⁽⁶⁾ OJ No L 178, 12. 7. 1994, p. 53.

⁽⁷⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁸⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽⁹⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽¹⁰⁾ OJ No L 188, 27. 7. 1996, p. 22.

ANNEX

to the Commission Regulation of 25 April 1997 setting the amounts of aid for the supply of rice products from the Community to the Azores and Madeira

(ECU/tonne)

Product (CN code)	Amount of aid	
	Destination	
	Azores	Madeira
Milled rice (1006 30)	297,00	297,00

COMMISSION REGULATION (EC) No 744/97
of 25 April 1997
fixing the export refunds on rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, and in particular the second subparagraph of Article 13 (3) thereof,

Whereas Article 13 of Regulation (EC) No 3072/95 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Article 13 (4) of Regulation (EC) No 3072/95, provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of rice and broken rice on the Community market on the one hand and prices for rice and broken rice on the world market on the other; whereas the same Article provides that it is also important to ensure equilibrium and the natural development of prices and trade on the rice market and, furthermore, to take into account the economic aspect of the proposed exports and the need to avoid disturbances of the Community market with limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas Commission Regulation (EEC) No 1361/76 ⁽²⁾ lays down the maximum percentage of broken rice allowed in rice for which an export refund is fixed and specifies the percentage by which that refund is to be reduced where the proportion of broken rice in the rice exported exceeds that maximum;

Whereas Article 13 (5) of Regulation (EC) No 3072/95 defines the specific criteria to be taken into account when

the export refund on rice and broken rice is being calculated;

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

Whereas a separate refund should be fixed for packaged long grain rice to accommodate current demand for the product on certain markets;

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

Whereas it follows from applying these rules and criteria to the present situation on the market in rice and in particular to quotations or prices for rice and broken rice within the Community and on the world market, that the refund should be fixed 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 Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 of Regulation (EC) No 3072/95 with the exception of those listed in paragraph 1 (c) of that Article, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 May 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ No L 154, 15. 6. 1976, p. 11.

ANNEX

to the Commission Regulation of 25 April 1997 fixing the export refunds on rice and broken rice

(ECU/tonne)			(ECU/tonne)		
Product code	Destination (¹)	Amount of refunds	Product code	Destination (¹)	Amount of refunds
1006 20 11 9000	01	226,00	1006 30 65 9900	01	283,00
1006 20 13 9000	01	226,00		04	283,00
1006 20 15 9000	01	226,00	1006 30 67 9100	—	—
1006 20 17 9000	—	—	1006 30 67 9900	—	—
1006 20 92 9000	01	226,00	1006 30 92 9100	01	283,00
1006 20 94 9000	01	226,00		02	289,00
1006 20 96 9000	01	226,00		03	294,00
1006 20 98 9000	—	—		04	283,00
1006 30 21 9000	01	226,00	1006 30 92 9900	01	283,00
1006 30 23 9000	01	226,00		04	283,00
1006 30 25 9000	01	226,00		—	—
1006 30 27 9000	—	—	1006 30 94 9100	01	283,00
1006 30 42 9000	01	226,00		02	289,00
1006 30 44 9000	01	226,00		03	294,00
1006 30 46 9000	01	226,00		04	283,00
1006 30 48 9000	—	—	1006 30 94 9900	01	283,00
1006 30 61 9100	01	283,00		04	283,00
	02	289,00		—	—
	03	294,00	1006 30 96 9100	01	283,00
	04	283,00		02	289,00
1006 30 61 9900	01	283,00		03	294,00
	04	283,00		04	283,00
1006 30 63 9100	01	283,00	1006 30 96 9900	01	283,00
	02	289,00		04	283,00
	03	294,00		—	—
	04	283,00	1006 30 98 9100	—	—
1006 30 63 9900	01	283,00	1006 30 98 9900	—	—
	04	283,00	1006 40 00 9000	—	—
1006 30 65 9100	01	283,00			
	02	289,00			
	03	294,00			
	04	283,00			

(¹) The destinations are identified as follows:

01 Liechtenstein, Switzerland, the communes of Livigno and Campione d'Italia,

02 Zones I, II, III, VI, Ceuta and Melilla,

03 Zones IV, V, VII (c), Canada and Zone VIII excluding Surinam, Guyana and Madagascar,

04 Destinations mentioned in Article 34 of amended Commission Regulation (EEC) No 3665/87.

NB: The zones are those defined in the Annex to amended Commission Regulation (EEC) No 2145/92.

COMMISSION REGULATION (EC) No 745/97
of 25 April 1997
on the supply of white sugar as food aid

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

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated sugar to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, for a given lot, given the small quantities to be supplied, the packaging methods and the large number of destinations of the supplies, provision should be made for

the possibility for tenderers to indicate two ports of loading, where necessary not belonging to the same port area,

HAS ADOPTED THIS REGULATION:

Article 1

White sugar shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

For lot A, notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

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, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation Nos** ⁽¹⁾: 205/96 (A1); 206/96 (A2)
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: Euronaid, PO Box 12, NL-2501 CA Den Haag, (tel.: (3170) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: A1: Peru; A2: Madagascar
6. **Product to be mobilized**: white sugar
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾ ⁽⁷⁾: see OJ No C 114, 29. 4. 1991, p. 1 (V.A(1))
8. **Total quantity (tonnes)**: 90
9. **Number of lots**: one in two parts (A1: 54 tonnes; A2: 36 tonnes)
10. **Packaging and marking** ⁽⁶⁾ ⁽⁹⁾ ⁽¹⁰⁾: see OJ No C 267, 13. 9. 1996, p. 1 (11.2, A (1) (b), (2) (b) and B (4))
see OJ No C 114, 29. 4. 1991, p. 1 (V.A (3))
Language to be used for the marking: A1: Spanish; A2: French
11. **Method of mobilization**: sugar produced in the Community in accordance with the sixth subparagraph of Article 24 (1a) of Council Regulation (EEC) No 1785/81 as follows:
A or B sugar (points (a) and (b))
12. **Stage of supply**: free at port of shipment ⁽⁸⁾
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 2 — 22. 6. 1997
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12. 5. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 26. 5. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment: 16. 6 — 6. 7. 1997
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 15 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Brussels
Telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** ⁽⁴⁾: periodic refund applicable to white sugar on 15. 4. 1997, fixed by Commission Regulation (EC) No 621/97 (OJ No L 95, 10. 4. 1997, p. 3)

Notes:

- (¹) The operation number should be mentioned in all correspondence.
- (²) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (³) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the abovementioned Regulation is that referred to in point 25 of this Annex.
- The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22), shall not apply to this amount.
- (⁵) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following document:
- health certificate (A 1: + expiry date)
- (⁶) Since the goods may be rebagged, the successful tenderer must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁷) The rule provided at the second indent of Article 18 (2) (a) of Commission Regulation (EEC) No 2103/77 (OJ No L 246, 27. 9. 1977, p. 12) is binding for determination of the sugar category.
- (⁸) Notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.
- (⁹) Notwithstanding OJ No C 114, point V.A(3)(c) is replaced by the following: 'the words "European Community"'.
- (¹⁰) Shipment to take place in 20-foot containers, condition FCL/FCL, each containing 18 tonnes net.

The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal. The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.

The supplier has to submit to the recipient's agent a complete packing list of each container, specifying number of bags belonging to each shipping number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Sysko locktainer 180 seal), the number of which to be provided to the beneficiary's forwarder.

COMMISSION REGULATION (EC) No 746/97
of 25 April 1997
on the supply of milk products as food aid

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

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security⁽¹⁾, and in particular Article 24 (1) (b) thereof,

Whereas the abovementioned Regulation lays down the list of countries and organizations eligible for food-aid operations and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated milk powder to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid⁽²⁾, as amended by Regulation (EEC) No 790/91⁽³⁾; whereas it is necessary to specify the time limits and conditions of supply and the procedure to be followed to determine the resultant costs;

Whereas, for a given lot, given the small quantities to be supplied, the packaging methods and the large number of destinations of the supplies, provision should be made for

the possibility for tenderers to indicate two ports of loading, where necessary not belonging to the same port area,

HAS ADOPTED THIS REGULATION:

Article 1

Milk products shall be mobilized in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by the tendering procedure.

For lot A, notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.

The successful tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

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, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ No L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ No L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** ⁽¹⁾: 203/96 (A1); 204/96 (A2)
2. **Programme**: 1996
3. **Recipient** ⁽²⁾: Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland (tel.: (31-70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: A1: Peru; A2: Angola
6. **Product to be mobilized**: vitaminized skimmed-milk powder
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁴⁾: see OJ No C 114, 29. 4. 1991, p. 1 (I.B.(1))
8. **Total quantity (tonnes)**: 195
9. **Number of lots**: 1 in 2 parts (A1: 180 tonnes; A2: 15 tonnes)
10. **Packaging and marking** ⁽⁵⁾ ⁽⁶⁾: see OJ No C 267, 13. 9. 1996, p. 1 (6.3 A and B.2)
see OJ No C 114, 29. 4. 1991, p. 1 (I.B.(3))
Language to be used for the marking: A1: Spanish; A2: Portuguese
11. **Method of mobilization**: the Community market
The manufacture of the skimmed-milk powder, and the incorporation of vitamins, must be carried out after the award of the tender
12. **Stage of supply**: free at port of shipment ⁽⁶⁾
13. **Port of shipment**: —
14. **Port of landing specified by the recipient**: —
15. **Port of landing**: —
16. **Address of the warehouse and, if appropriate, port of landing**: —
17. **Period for making the goods available at the port of shipment**: 9. — 29. 6. 1997
18. **Deadline for the supply**: —
19. **Procedure for determining the costs of supply**: invitation to tender
20. **Date of expiry of the period allowed for submission of tenders**: 12 noon (Brussels time) on 12. 5. 1997
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 26. 5. 1997
 - (b) period for making the goods available at the port of shipment: 23. 6. — 13. 7. 1997
 - (c) deadline for the supply: —
22. **Amount of tendering security**: ECU 20 per tonne
23. **Amount of delivery security**: 10 % of the amount of the tender in ecus
24. **Address for submission of tenders and tendering securities** ⁽¹⁾:
Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard
Bâtiment Loi 130, bureau 7/46
Rue de la Loi/Wetstraat 200, B-1049 Brussels
Telex: 2 56 70 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
25. **Refund payable on application by the successful tenderer** ⁽⁷⁾: refund applicable on 16. 4. 1997, fixed by Commission Regulation (EC) No 558/97 (OJ No L 85, 27. 3. 1997, p. 22)

Notes:

- (1) The operation number should be mentioned in all correspondence.
- (2) The successful tenderer shall contact the recipient as soon as possible to establish which consignment documents are required.
- (3) The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (4) Commission Regulation (EEC) No 2330/87 (OJ No L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ No L 214, 25. 7. 1989, p. 10), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 25 of this Annex.
- The amount of the refund shall be converted into national currency by applying the agricultural conversion rate applicable on the day of completion of the customs export formalities. The provisions of Articles 13 to 17 of Commission Regulation (EEC) No 1068/93 (OJ No L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ No L 188, 27. 7. 1996, p. 22), shall not apply to this amount.
- (5) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following documents:
- health certificate issued by an official entity stating that the product was processed under excellent sanitary conditions which are supervised by qualified technical personnel. The certificate must state the temperature and duration of the pasteurization, the temperature and duration in the spray-drying-tower and the expiry date for consumption,
 - veterinary certificate issued by an official entity stating that the area of production of raw milk had not registered foot-and-mouth disease nor any other notifiable infectious/contagious disease during the 12 months prior to the processing.
- (6) Notwithstanding Article 7 (3) (d) of Regulation (EEC) No 2200/87, the tender may indicate two ports of shipment not necessarily belonging to the same port area.
- (7) Notwithstanding OJ No C 114, point I.A.3 (c) is replaced by the following: 'the words "European Community"'.
- (8) Shipment to take place in 20-foot containers, condition FCL/FCL each containing 15 tonnes net. The supplier shall be responsible for the cost of making the containers available in the stack position at the container terminal at the port of shipment. The recipient shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal. The provisions of Article 13 (2), second paragraph, of Regulation (EEC) No 2200/87 shall not apply.

The supplier has to submit to the recipient's agent a complete packing list of each container, specifying the number of bags belonging to each shipping number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Sysko locktainer 180 seal), number of which to be provided to the beneficiary's forwarder.

COMMISSION REGULATION (EC) No 747/97**of 25 April 1997****fixing the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex II to the Treaty**

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 1587/96⁽²⁾, and in particular Article 17 (3) thereof,

Whereas Article 17 (1) of Regulation (EEC) No 804/68 provides that the difference between prices in international trade for the products listed in Article 1 (a), (b), (c), (d), (e), and (g) of that Regulation and prices within the Community may be covered by an export refund; whereas Commission Regulation (EC) No 1222/94 of 30 May 1994 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex II to the Treaty, and criteria for fixing the amount of such refunds⁽³⁾, as last amended by Regulation (EC) No 229/96⁽⁴⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in the Annex to Regulation (EEC) No 804/68;

Whereas, in accordance with the first subparagraph of Article 4 (1) of Regulation (EC) No 1222/94, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month;

Whereas Article 4 (3) of Regulation (EC) No 1222/94 provides that, when the rate of the refund is being fixed, account should be taken, where necessary, of production refunds, aids or other measures having equivalent effect applicable in all Member States in accordance with the Regulation on the common organization of the market in the product in question to the basic products listed in Annex A to that Regulation or to assimilated products;

Whereas Article 11 (1) of Regulation (EEC) No 804/68 provides for the payment of aid for Community-produced

skimmed milk processed into casein if such milk and the casein manufactured from it fulfil certain conditions set out in Article 1 of Council Regulation (EEC) No 987/68 of 15 July 1968 laying down general rules for granting aid for skimmed milk processed into casein or caseinates⁽⁵⁾, as last amended by Regulation (EEC) No 1435/90⁽⁶⁾;

Whereas Commission Regulation (EEC) No 570/88 of 16 February 1988 on the sale of butter at reduced prices and the granting of aid for butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs⁽⁷⁾, as last amended by Regulation (EC) No 531/96⁽⁸⁾, lay down that butter and cream at reduced prices should be made available to industries which manufacture certain goods;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1222/94 and listed in Article 1 of Regulation (EEC) No 804/68, exported in the form of goods listed in the Annex to Regulation (EEC) No 804/68, are hereby fixed as shown in the Annex to this Regulation.

2. No rates of refund are fixed for any of the products referred to in the preceding paragraph which are not listed in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 May 1997.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ No L 136, 31. 5. 1994, p. 5.

⁽⁴⁾ OJ No L 30, 8. 2. 1996, p. 24.

⁽⁵⁾ OJ No L 169, 18. 7. 1968, p. 6.

⁽⁶⁾ OJ No L 138, 31. 5. 1990, p. 8.

⁽⁷⁾ OJ No L 55, 1. 3. 1988, p. 31.

⁽⁸⁾ OJ No L 78, 28. 3. 1996, p. 13.

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

Done at Brussels, 25 April 1997.

For the Commission
Martin BANGEMANN
Member of the Commission

ANNEX

to the Commission Regulation of 25 April 1997 fixing the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex II to the Treaty

(ECU/100 kg)		
CN code	Description	Rate of refund
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):	
	(a) On exportation of goods of CN code 3501	—
	(b) On exportation of other goods	63,00
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):	
	(a) Where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EEC) No 570/88 are exported	67,23
	(b) On exportation of other goods	108,00
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):	
	(a) Where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EEC) No 570/88 are exported	65,00
	(b) On exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	197,25
	(c) On exportation of other goods	190,00

COMMISSION REGULATION (EC) No 748/97**of 25 April 1997****amending Annex I and II of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin⁽¹⁾, as last amended by Commission Regulation (EC) No 716/97⁽²⁾, and in particular Articles 6, 7 and 8 thereof,

Whereas, in accordance with Regulation (EEC) No 2377/90, maximum residue limits must be established progressively for all pharmacologically active substances which are used within the Community in veterinary medicinal products intended for administration to food-producing animals;

Whereas maximum residue limits should be established only after the examination within the Committee for Veterinary Medicinal Products of all the relevant information concerning the safety of residues of the substance concerned for the consumer of foodstuffs of animal origin and the impact of residues on the industrial processing of foodstuffs;

Whereas, in establishing maximum residue limits for residues of veterinary medicinal products in foodstuffs of animal origin, it is necessary to specify the animal species in which residues may be present, the levels which may be present in each of the relevant meat tissues obtained from the treated animal (target tissue) and the nature of the residue which is relevant for the monitoring of residues (marker residue);

Whereas, for the control of residues, as provided for in appropriate Community legislation, maximum residue limits should usually be established for the target tissues of liver or kidney; whereas, however, the liver and kidney are frequently removed from carcasses moving in interna-

tional trade, and maximum residue limits should therefore also always be established for muscle or fat tissues;

Whereas, in the case of veterinary medicinal products intended for use in laying birds, lactating animals or honey bees, maximum residue limits must also be established for eggs, milk or honey;

Whereas, moxidectin should be inserted into Annex I to Regulation (EEC) No 2377/90;

Whereas isoxsuprine and praziquantel should be inserted into Annex II to Regulation (EEC) No 2377/90;

Whereas a period of 60 days should be allowed before the entry into force of this Regulation in order to allow Member States to make any adjustment which may be necessary to the authorisations to place the veterinary medicinal products concerned on the market which have been granted in accordance with Council Directive 81/851/EEC⁽³⁾, as last amended by Directive 93/40/EEC⁽⁴⁾, to take account of the provisions of this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I and II of Regulation (EEC) No 2377/90 are hereby amended as set out in the Annex hereto.

Article 2

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

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 1.

⁽²⁾ OJ No L 106, 24. 4. 1997, p. 10.

⁽³⁾ OJ No L 317, 6. 11. 1981, p. 1.

⁽⁴⁾ OJ No L 214, 24. 8. 1993, p. 31.

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

Done at Brussels, 25 April 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

The Annexes to Regulation (EEC) No 2377/90 are amended as follows:

A. Annex I is amended as follows:

- 2. Anti-parasitic agents
- 2.3. Agents acting against endo- and ectoparasites
- 2.3.1. Avermectins

Pharmacologically active substance	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'2.3.1.5. Moxidectin	Moxidectin	Bovine, ovine	500 µg/kg	Fat	
			100 µg/kg	Liver	
			50 µg/kg	Muscle, kidney'	

B. Annex II is amended as follows:

- 2. Organic compounds

Pharmacologically active substance(s)	Animal species	Other provisions
'2.79. Isoxsuprine	Bovine, equidae	For therapeutic use only in accordance with Council Directive 96/22/EEC (*)
2.80. Praziquantel	Ovine	For use in non-lactating sheep only

(*) OJ No L 125, 23. 5. 1996, p. 3.'

**COMMISSION REGULATION (EC) No 749/97
of 25 April 1997**

amending Annexes I, II and III of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin ⁽¹⁾, as last amended by Commission Regulation (EC) No 748/97 ⁽²⁾, and in particular Articles 6, 7 and 8 thereof,

Whereas, in accordance with Regulation (EEC) No 2377/90, maximum residue limits must be established progressively for all pharmacologically active substances which are used within the Community in veterinary products intended for administration to food-producing animals;

Whereas maximum residue limits should be established only after the examination within the Committee for Veterinary Medicinal Products of all the relevant information concerning the safety of residues of the substance concerned for the consumer of foodstuffs of animal origin and the impact of residues on the industrial processing of foodstuffs;

Whereas, in establishing maximum residue limits for residues of veterinary medicinal products in foodstuffs of animal origin, it is necessary to specify the animal species in which residues may be present, the levels which may be present in each of the relevant meat tissues obtained from the treated animal (target tissue) and the nature of the residue which is relevant for the monitoring of residues (marker residue);

Whereas, for the control of residues, as provided for in appropriate Community legislation, maximum residue limits should usually be established for the target tissues of liver or kidney; whereas, however, the liver and kidney are frequently removed from carcasses moving in international trade, and maximum residue limits should therefore also always be established for muscle or fat tissues;

Whereas, in the case of veterinary medicinal products intended for use in laying birds, lactating animals or

honey bees, maximum residue limits must also be established for eggs, milk or honey;

Whereas, difloxacin and vedaprofen should be inserted into Annex I to Regulation (EEC) No 2377/90;

Whereas thiomersal and timerfonate should be inserted into Annex II to Regulation (EEC) No 2377/90;

Whereas, in order to allow for the completion of scientific studies, clavulanic acid should be inserted into Annex III to Regulation (EEC) No 2377/90;

Whereas, in order to allow for the completion of the scientific studies in progress, the duration of the validity of the provisional maximum residue limits previously defined in Annex III of Regulation (EEC) No 2377/90 should be extended for dexamethasone;

Whereas a period of 60 days should be allowed before the entry into force of this Regulation in order to allow Member States to make any adjustment which may be necessary to the authorisations to place the veterinary medicinal products concerned on the market which have been granted in accordance with Council Directive 81/851/EEC ⁽³⁾, as last amended by Directive 93/40/EEC ⁽⁴⁾, to take account of the provisions of this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I, II and III of Regulation (EEC) No 2377/90 are hereby amended as set out in the Annex hereto.

Article 2

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

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 1.

⁽²⁾ See page 21 of this Official Journal.

⁽³⁾ OJ No L 317, 6. 11. 1981, p. 1.

⁽⁴⁾ OJ No L 214, 24. 8. 1993, p. 31.

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

Done at Brussels, 25 April 1997.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

The Annexes to Regulation (EEC) No 2377/90 are amended as follows:

A. Annex I is amended as follows:

1. Anti-infectious agents
- 1.2. Antibiotics
- 1.2.3. Quinolones

Pharmacologically active substance	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'1.2.3.3. Difloxacin	Difloxacin	Chicken, turkey	1 900 µg/kg	Liver	
			600 µg/kg	Kidney	
			300 µg/kg	Muscle	
			400 µg/kg	Skin/fat'	

4. Anti-inflammatory agents

4.1. Nonsteroidal anti-inflammatory agents

4.1.1. Arylpropionic acid derivative

Pharmacologically active substance	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'4.1.1.1. Vedaprofen	Vedaprofen	Equidae	1 000 µg/kg	Kidney	
			100 µg/kg	Liver	
			50 µg/kg	Muscle	
			20 µg/kg	Fat'	

B. Annex II is amended as follows:

2. Organic compounds

Pharmacologically active substance(s)	Animal species	Other provisions
'2.82. Thiomersal	All food producing species	For use only as preservatives in multidose vaccines at a concentration not exceeding 0,02 %
2.83. Timerfonate	All food producing species	For use only as preservatives in multidose vaccines at a concentration not exceeding 0,02 %

C. Annex III is amended as follows:

- 1. Anti-infectious agents
- 1.2. Antibiotics
- 1.2.10. Beta-lactamase inhibitors

Pharmacologically active substance(s)	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'1.2.10.1. Clavulanic acid	Clavulanic acid	Bovine, ovine, porcine	200 µg/kg	Muscle, liver, kidney, fat	Provisional MRLs expire on 1. 7. 1999'
		Bovine, ovine	200 µg/kg	Milk	

4. Corticoids

4.1. Glucocorticoids

Pharmacologically active substance(s)	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'4.1.1. Dexamethasone	Dexamethasone	Bovine, porcine, equidae	2,5 µg/kg	Liver	Provisional MRLs expire on 1. 7. 1997'
			0,5 µg/kg	Muscle, kidney	
		Bovine	0,3 µg/kg	Milk	

COMMISSION REGULATION (EC) No 750/97

of 25 April 1997

amending Regulation (EC) No 3582/93 on detailed rules for the application of
Council Regulation (EEC) No 2073/92 on promoting consumption in the
Community and expanding the markets for milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Community,

Having regard to Council Regulation (EEC) No 2073/92
of 30 June 1992 on promoting consumption in the
Community and expanding the markets for milk and
milk products⁽¹⁾, and in particular Article 4 thereof,

Whereas Article 1 (4) of Commission Regulation (EC) No
3582/93⁽²⁾, as last amended by Regulation (EC) No
2134/96⁽³⁾, states that the time limit for implementation
of the contract may be extended where the contractor so
requests the competent authority at least three months
before the final date and furnishes proof that, as a result
of exceptional circumstances beyond his control, he is
unable to meet the deadline initially laid down and where
the Commission gives agreement;

Whereas experience has shown that that provision is too
restrictive and in certain cases does not result in efficient
management of contracts; whereas the procedure for
extending contracts should accordingly be made more

flexible while the Commission's prior agreement is still
required;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 (4) of Regulation (EC) No 3582/93 is hereby
replaced by the following:

'4. The time limit laid down in paragraph 2 shall
not preclude the possibility of an extension thereof
being agreed subsequently where the contractor makes
a request to that effect giving full reasons therefor to
the competent authority before the expiry date. Such
extensions may not exceed three months and must be
submitted to the Commission for prior approval.'

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, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 67.

⁽²⁾ OJ No L 326, 28. 12. 1993, p. 23.

⁽³⁾ OJ No L 285, 7. 11. 1996, p. 15.

COMMISSION REGULATION (EC) No 751/97

of 25 April 1997

fixing the maximum buying-in price and the quantities of beef to be bought in under the 180th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 2222/96⁽²⁾, and in particular Article 6 (7) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef⁽³⁾, as last amended by Regulation (EC) No 545/97⁽⁴⁾, an invitation to tender was opened pursuant to Article 1 (1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender⁽⁵⁾, as last amended by Regulation (EC) No 699/97⁽⁶⁾;

Whereas, in accordance with Article 13 (1) of Regulation (EEC) No 2456/93, a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received; whereas, in accordance with Article 14 of that Regulation, only tenders quoting prices not exceeding the maximum buying-in price and not exceeding the average national or regional market price, plus the amount referred to in paragraph 1 of that Article, are to be accepted;

Whereas, once tenders submitted in respect of the 180th partial invitation to tender have been considered and taking account, pursuant to Article 6 (1) of Regulation (EEC) No 805/68, of the requirements for reasonable support of the market and the seasonal trend in slaughtering, the maximum buying-in price and the quantities which may be bought in should be fixed;

Whereas, following the buying in of forequarters, the price of such products should be defined on the basis of carcase prices;

Whereas the quantities offered at present exceed the quantities which may be bought in; whereas a reducing coefficient or, where appropriate, depending on the differences in prices and the quantities tendered for, several reducing coefficients should accordingly be applied to the quantities which may be bought in in accordance with Article 13 (3) of Regulation (EEC) No 2456/93;

Whereas the scale of the quantities awarded warrants the application of the possibility provided for in Article 16 (2) of Regulation (EEC) No 2456/93 of extending the period during which the intervention products are to be delivered;

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the 180th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89:

(a) for category A:

- the maximum buying-in price shall be ECU 269,99 per 100 kg of carcasses or half-carcasses of quality R3,
- the price of forequarters shall be derived from the carcase price using the coefficient 0,80 for the straight cut,
- the maximum quantity of carcasses, half-carcasses or forequarters accepted shall be 10 240 tonnes,
- the quantities offered at a price greater than ECU 249 shall be multiplied by a coefficient of 25 %, in accordance with Article 13 (3) of Regulation (EEC) No 2456/93;

(b) for category C:

- the maximum buying-in price shall be ECU 269,99 per 100 kg of carcasses or half-carcasses of quality R3,
- the price of forequarters shall be derived from the carcase price using the coefficient 0,80 for the straight cut,
- the maximum quantity of carcasses, half-carcasses or forequarters accepted shall be 11 000 tonnes,
- the quantities offered at a price greater than ECU 249 shall be multiplied by a coefficient of 25 % in accordance with Article 13 (3) of Regulation (EEC) No 2456/93.

Article 2

The first sentence of Article 16 (2) of Regulation (EEC) No 2456/93 notwithstanding, the time limit for delivery to intervention stores is extended by one week.

Article 3

This Regulation shall enter into force on 28 April 1997.

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ No L 296, 21. 11. 1996, p. 50.

⁽³⁾ OJ No L 225, 4. 9. 1993, p. 4.

⁽⁴⁾ OJ No L 84, 26. 3. 1997, p. 11.

⁽⁵⁾ OJ No L 159, 10. 6. 1989, p. 36.

⁽⁶⁾ OJ No L 102, 19. 4. 1997, p. 26.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

**COMMISSION REGULATION (EC) No 752/97
of 25 April 1997**

determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic and the Slovak Republic can be accepted

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

Having regard to Commission Regulation (EEC) No 2698/93 ⁽¹⁾ laying down detailed rules for the application in the pigmeat sector of the arrangements provided for by the Agreements between the European Economic Community and the Republic of Poland, the Republic of Hungary and the former Czech and Slovak Federal Republic, as last amended by Regulation (EC) No 691/97 ⁽²⁾, and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1997 are, for certain products, for quantities less than the quantities available and can therefore be met in full and for other products the said applications are for quantities greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution;

Whereas the surplus to be added to the quantity available for the following period should be determined;

Whereas, it is appropriate, for the first mentioned category of products, to draw the attention of operators to

the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1997 submitted pursuant to Regulation (EEC) No 2698/93 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 July to 30 September 1997 applications may be lodged pursuant to Regulation (EEC) No 2698/93 for import licences for a total quantity as referred to in Annex II.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 245, 1. 10. 1993, p. 80.

⁽²⁾ OJ No L 102, 19. 4. 1997, p. 12.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1997
1	100
2	100
3	100
4	97,9
H1	100
H2	100
5	100
6	100
7	100
8	100
9	100
10	100
11	100
12	100
13	100

ANNEX II

Group No	Total quantity available for the period 1 July to 30 September 1997 (tonnes)
1	2 373,0
2	198,5
3	1 091,5
4	7 542,5
H1	1 800,0
H2	375,0
5	2 250,0
6	1 400,0
7	6 296,0
8	1 050,0
9	7 350,0
10	2 789,5
11	532,5
12	1 597,5
13	157,5

COMMISSION REGULATION (EC) No 753/97

of 25 April 1997

determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with Bulgaria and Romania can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1590/94 of 30 June 1994 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for in the Interim Agreement between the Community and Bulgaria and Romania⁽¹⁾, as last amended by Regulation (EC) No 691/97⁽²⁾, and in particular Article 4 (4) thereof,

Whereas the applications for import licences lodged for the second quarter of 1997 are for quantities less than the quantities available and can therefore be met in full;

Whereas the surplus to be added to the quantity available for the following period should be determined;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1997 submitted pursuant to Regulation (EC) No 1590/94 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 July to 30 September 1997 applications may be lodged pursuant to Regulation (EC) No 1590/94 for import licences for a total quantity as referred to in Annex II of this Regulation.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 167, 1. 7. 1994, p. 16.

⁽²⁾ OJ No L 102, 19. 4. 1997, p. 12.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1997
14	100,00
15	100,00
16	100,00
17	100,00

*ANNEX II**(tonnes)*

Group No	Total quantity available for the period 1 July to 30 September 1997
14	172,50
15	765,00
16	1 484,25
17	7 235,00

COMMISSION REGULATION (EC) No 754/97

of 25 April 1997

determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1432/94 of 22 June 1994 laying down detailed rules for the application in the pigmeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products⁽¹⁾, as last amended by Regulation (EC) No 2068/96⁽²⁾, and in particular Article 4 (4) thereof,

Whereas the applications for import licences lodged for the second quarter of 1997 are for quantities less than the quantities available and can therefore be met in full;

Whereas the quantity available for the following period should be determined;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1997 submitted pursuant to Regulation (EC) No 1432/94 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 July to 30 September 1997 applications may be lodged pursuant to Regulation (EC) No 1432/94 for import licences for a total quantity as referred to in Annex II.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 156, 23. 6. 1994, p. 14.

⁽²⁾ OJ No L 277, 30. 10. 1996, p. 12.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1997
1	100,00

ANNEX II

<i>(tonnes)</i>	
Group No	Total quantity available for the period 1 July to 30 September 1997
1	1 959

COMMISSION REGULATION (EC) No 755/97

of 25 April 1997

determining the extent to which applications lodged in April 1997 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 July 1996 to 30 June 1997

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

Having regard to Commission Regulation (EC) No 1486/95 of 28 June 1995 opening and providing for the administration of tariff quotas for certain products in the pigmeat sector⁽¹⁾, as amended by Regulation (EC) No 2068/96⁽²⁾, and in particular Article 5 (5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1997 are, for certain products, for quantities less than the quantities available and can therefore be met in full and for other products the said applications are for quantities greater than the quantities

available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences for the period 1 April to 30 June 1997 submitted under Regulation (EC) No 1486/95 shall be met as referred to in the Annex.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 145, 29. 6. 1995, p. 58.

⁽²⁾ OJ No L 277, 30. 10. 1996, p. 12.

ANNEX

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1997
G2	100
G3	60
G4	100
G5	100
G6	100
G7	100

COMMISSION REGULATION (EC) No 756/97

of 25 April 1997

determining the extent to which applications lodged in April 1997 for import licences for certain pigmeat products under the regime provided for by the Agreement concluded by the Community with Slovenia can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas the applications for import licences lodged for the second quarter of 1997 are for quantities less than the quantities available and can therefore be met in full;

Whereas the surplus to be added to the quantity available for the following period should be determined;

Whereas it is appropriate to draw the attention of operators to the fact that licences may only be used for

products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 January to 30 June 1997 submitted pursuant to Regulation (EC) No 571/97 shall be met as referred to in Annex I.
2. During the first 10 days of the period 1 July to 30 September 1997 applications may be lodged pursuant to Regulation (EC) No 571/97 for import licences for a total quantity as referred to in Annex II of this Regulation.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 85, 27. 3. 1997, p. 56.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 January to 30 June 1997
23	100,00
24	100,00

ANNEX II

<i>(tonnes)</i>	
Group No	Total quantity available for the period 1 July to 30 September 1997
23	37,5
24	75,0

COMMISSION REGULATION (EC) No 757/97

of 25 April 1997

fixing the refunds applicable to cereal and rice sector products supplied as
Community and national food aid

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 Commission Regulation (EC) No 923/96⁽²⁾, and in particular the third subparagraph of Article 13 (2) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice⁽³⁾, and in particular Article 13 (3) thereof,

Whereas Article 2 of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid⁽⁴⁾ lays down that the portion of the expenditure corresponding to the export refunds on the products in question fixed under Community rules is to be charged to the European Agricultural Guidance and Guarantee Fund, Guarantee Section;

Whereas, in order to make it easier to draw up and manage the budget for Community food aid actions and to enable the Member States to know the extent of Community participation in the financing of national food aid actions, the level of the refunds granted for these actions should be determined;

Whereas the general and implementing rules provided for in Article 13 of Regulation (EEC) No 1766/92 and in

Article 13 of Regulation (EC) No 3072/95 on export refunds are applicable *mutatis mutandis* to the above-mentioned operations;

Whereas the specific criteria to be used for calculating the export refund on rice are set out in Article 13 of Regulation (EC) No 3072/95;

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

HAS ADOPTED THIS REGULATION:

Article 1

For Community and national food aid operations under international agreements or other supplementary programmes, and other Community free supply measures, the refunds applicable to cereals and rice sector products shall be as set out in the Annex.

Article 2

The refunds fixed in this Regulation shall not be regarded as refunds varying according to destination.

Article 3

This Regulation shall enter into force on 1 May 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ No L 329, 30. 12. 1995, p. 18.

⁽⁴⁾ OJ No L 288, 25. 10. 1974, p. 1.

ANNEX

to the Commission Regulation of 25 April 1997 fixing the refunds applicable to cereal and rice sector products supplied as Community and national food aid

(ECU/tonne)

Product code	Refund
1001 10 00 9400	0
1001 90 99 9000	0
1002 00 00 9000	24,00
1003 00 90 9000	24,00
1004 00 00 9400	24,00
1005 90 00 9000	22,00
1006 30 92 9100	299,00
1006 30 92 9900	299,00
1006 30 94 9100	299,00
1006 30 94 9900	299,00
1006 30 96 9100	299,00
1006 30 96 9900	299,00
1006 30 98 9100	299,00
1006 30 98 9900	299,00
1006 40 00 9000	—
1007 00 90 9000	22,00
1101 00 15 9100	0
1101 00 15 9130	0
1102 20 10 9200	35,00
1102 20 10 9400	30,00
1102 30 00 9000	—
1102 90 10 9100	38,57
1103 11 10 9200	0
1103 11 90 9200	0
1103 13 10 9100	45,00
1103 14 00 9000	—
1104 12 90 9100	33,42
1104 21 50 9100	51,42

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), amended.

COMMISSION REGULATION (EC) No 758/97

of 25 April 1997

determining the extent to which applications lodged in April 1997 for licences for certain eggs and poultrymeat products under the regime provided for by the Interim Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, the Slovak Republic, Romania and Bulgaria can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EEC) No 2699/93 ⁽¹⁾ laying down detailed rules for the application in the eggs and poultrymeat sector of the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary and the former Czech and Slovak Federal Republic, as last amended by Regulation (EC) No 2513/96 ⁽²⁾, and in particular Article 4 (5) thereof,

Having regard to Commission Regulation (EC) No 1559/94 ⁽³⁾ laying down detailed rules for the application in the eggs and poultrymeat sector of the regime provided for by the Agreements concluded by the Community, of the one part, and Bulgaria and Romania, of the other part, as last amended by Regulation (EC) No 2513/96, and in particular Article 4 (5) thereof,

Whereas the applications for import licences lodged for the second quarter of 1997 are, in the case of some products, for quantities less than or equal to the quantities

available and can therefore be met in full, but in the case of other products the said applications are for quantities greater than the quantities available and must therefore be reduced by a fixed percentage to ensure a fair distribution,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 April to 30 June 1997 submitted under Regulations (EEC) No 2699/93 and (EC) No 1559/94 shall be met as referred to in Annex I.

2. During the first 10 days of the period 1 July to 30 September 1997 applications may be lodged pursuant to Regulations (EEC) No 2699/93 and (EC) No 1559/94 for import licences for a total quantity as referred to in Annex II.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 245, 1. 10. 1993, p. 88.

⁽²⁾ OJ No L 345, 31. 12. 1996, p. 30.

⁽³⁾ OJ No L 166, 1. 7. 1994, p. 62.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 1997
1	3,20
2	4,46
4	100,00
7	2,47
8	10,75
9	2,87
10	100,00
11	—
12	45,45
14	—
15	8,13
16	100,00
17	100,00
18	—
19	30,30
21	100,00
22	100,00
23	100,00
24	—
25	—
26	—
27	—
28	—
30	—
31	—
32	100,00
33	—
34	—
35	—
36	—
37	18,17
38	—
39	—
40	—
43	100,00

ANNEX II

Group No	(tonnes)	
	Total quantity available for the period 1 July to 30 September 1997	
1	3 262,00	
2	302,50	
4	6 817,06	
7	2 100,00	
8	512,50	
9	512,50	
10	449,56	
11	210,25	
12	462,00	
14	2 625,00	
15	1 225,00	
16	518,00	
17	1 105,00	
18	165,00	
19	145,25	
21	769,25	
22	668,80	
23	1 376,75	
24	181,25	
25	3 652,50	
26	225,00	
27	1 477,50	
28	169,00	
30	937,50	
31	412,50	
32	497,50	
33	337,50	
34	1 822,50	
35	105,00	
36	735,00	
37	43,75	
38	516,75	
39	1 330,20	
40	248,10	
43	636,94	

COMMISSION REGULATION (EC) No 759/97
of 25 April 1997
fixing the agricultural conversion rates

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy⁽¹⁾, as last amended by Regulation (EC) No 150/95⁽²⁾, and in particular Article 3 (1) thereof,

Whereas the agricultural conversion rates were fixed by Commission Regulation (EC) No 575/97⁽³⁾;

Whereas Article 4 of Regulation (EEC) No 3813/92 provides that, subject to confirmation periods being triggered, the agricultural conversion rate for a currency is to be adjusted where the monetary gap between it and the representative market rate exceeds certain levels;

Whereas the representative market rates are determined on the basis of basic reference periods or, where applicable, confirmation periods, established in accordance with Article 2 of Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates⁽⁴⁾, as last amended by Regulation (EC) No 1482/96⁽⁵⁾; whereas paragraph 2 of that Article provides that, in cases where the absolute value of the difference between the monetary gaps in two Member States, calculated from the average of the ecu rates for three consecutive quotation days, exceeds six points, the representative market rates are to be adjusted on the basis of the three quotation days in question;

Whereas, as a consequence of the exchange rates recorded from 16 to 25 April 1997, it is necessary to fix a new agricultural conversion rate for the Belgian franc, the German mark, the Dutch guilder and the Austrian schilling;

Whereas Article 15 (2) of Regulation (EEC) No 1068/93 provides that an agricultural conversion rate fixed in advance is to be adjusted if the gap between that rate and the agricultural conversion rate in force at the time of the operative event applicable for the amount concerned exceeds four points; whereas, in that event, the agricultural conversion rate fixed in advance is brought more closely into line with the rate in force, up to the level of a gap of four points with that rate; whereas the rate which replaces the agricultural conversion rate fixed in advance should be specified,

HAS ADOPTED THIS REGULATION:

Article 1

The agricultural conversion rates are fixed in Annex I hereto.

Article 2

In the case referred to in Article 15 (3) of Regulation (EEC) No 1068/93, the agricultural conversion rate fixed in advance shall be replaced by the ecu rate for the currency concerned, shown in Annex II:

- Table A, where the latter rate is higher than the rate fixed in advance,
- Table B, where the latter rate is lower than the rate fixed in advance.

Article 3

Regulation (EC) No 575/97 is hereby repealed.

Article 4

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽²⁾ OJ No L 22, 31. 1. 1995, p. 1.

⁽³⁾ OJ No L 86, 28. 3. 1997, p. 1.

⁽⁴⁾ OJ No L 108, 1. 5. 1993, p. 106.

⁽⁵⁾ OJ No L 188, 27. 7. 1996, p. 22.

ANNEX I

Agricultural conversion rates

ECU 1 =	40,4180	Belgian and Luxembourg francs
	7,49997	Danish kroner
	1,95903	German marks
	311,761	Greek drachmas
	198,202	Portuguese escudos
	6,61023	French francs
	6,02811	Finnish marks
	2,20270	Dutch guilders
	0,756658	Irish punt
	1 973,93	Italian lire
	13,7880	Austrian schillings
	165,571	Spanish pesetas
	8,83274	Swedish kroner
	0,742320	Pound sterling

ANNEX II

Agricultural conversion rates fixed in advance and adjusted

Table A			Table B		
ECU 1 =	38,8635	Belgian and Luxembourg francs	ECU 1 =	42,1021	Belgian and Luxembourg francs
	7,21151	Danish kroner		7,81247	Danish kroner
	1,88368	German marks		2,04066	German marks
	299,770	Greek drachmas		324,751	Greek drachmas
	190,579	Portuguese escudos		206,460	Portuguese escudos
	6,35599	French francs		6,88566	French francs
	5,79626	Finnish marks		6,27928	Finnish marks
	2,11798	Dutch guilders		2,29448	Dutch guilders
	0,727556	Irish punt		0,788185	Irish punt
	1 898,01	Italian lire		2 056,18	Italian lire
	13,2577	Austrian schillings		14,3625	Austrian schillings
	159,203	Spanish pesetas		172,470	Spanish pesetas
	8,49302	Swedish kroner		9,20077	Swedish kroner
	0,713769	Pound sterling		0,773250	Pound sterling

COMMISSION REGULATION (EC) No 760/97**of 25 April 1997****establishing the standard import values for determining the entry price of
certain fruit and vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 2375/96 ⁽²⁾, and in particular Article 4 (1) 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 last amended by Regulation (EC) No 150/95 ⁽⁴⁾, and in particular Article 3 (3) thereof,

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commis-

sion fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto;

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 25 April 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 20	052	116,3
	204	84,2
	212	96,5
	999	99,0
0707 00 15	052	114,0
	068	123,8
	999	118,9
0709 90 75	052	99,1
	999	99,1
0805 10 11, 0805 10 15, 0805 10 19	052	53,9
	204	42,7
	212	61,8
	220	32,9
	400	38,0
	448	25,8
	600	49,7
	624	46,5
	625	36,3
	999	43,1
0805 30 20	400	73,6
	600	62,9
	999	68,3
0808 10 61, 0808 10 63, 0808 10 69	052	56,7
	060	56,6
	388	82,1
	400	92,4
	404	101,0
	508	72,3
	512	76,1
	524	70,0
	528	75,7
	804	102,1
0808 20 37	999	78,5
	388	69,6
	512	69,4
	528	77,3
	999	72,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 761/97**of 25 April 1997****providing for the rejection of applications for export licences in relation to
products falling within CN code 1101 00 15**

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 Commission
Regulation (EC) No 923/96⁽²⁾,

Having regard to Commission Regulation (EC) No
1162/95 of 23 May 1995 laying down special detailed
rules for the application of the system of import and
export licences for cereals and rice⁽³⁾, as last amended by
Regulation (EC) No 1527/96⁽⁴⁾, and in particular Article 7
(3) thereof,

Whereas the quantity covered by applications for advance
fixing of refunds on common wheat flour could give rise
to speculation; whereas it has therefore been decided to

reject all applications for export licences of such products
made on 23, 24 and 25 April 1997,

HAS ADOPTED THIS REGULATION:

Article 1

In accordance with Article 7 (3) of Regulation (EC) No
1162/95, applications for export licences with advance
fixing of refunds for products falling within CN code
1101 00 15 made on 23, 24 and 25 April 1997 shall be
rejected.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ No L 126, 24. 5. 1996, p. 37.

⁽³⁾ OJ No L 117, 24. 5. 1995, p. 2.

⁽⁴⁾ OJ No L 190, 31. 7. 1996, p. 23.

COMMISSION REGULATION (EC) No 762/97

of 25 April 1997

amending representative prices and additional duties for the import of certain products in the sugar sector

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 1599/96⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses⁽³⁾, as last amended by Regulation (EC) No 1127/96⁽⁴⁾, and in particular the second subparagraph of Article 1 (2), and Article 3 (1) thereof,

Whereas the amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation (EC) No 1195/96⁽⁵⁾, as last amended by Regulation (EC) No 737/97⁽⁶⁾;

Whereas it follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 26 April 1997.

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

Done at Brussels, 25 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ No L 150, 25. 6. 1996, p. 12.

⁽⁵⁾ OJ No L 161, 29. 6. 1996, p. 3.

⁽⁶⁾ OJ No L 108, 25. 4. 1997, p. 45.

ANNEX

to the Commission Regulation of 25 April 1997 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(ECU)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	24,85	3,87
1701 11 90 ⁽¹⁾	24,85	9,11
1701 12 10 ⁽¹⁾	24,85	3,70
1701 12 90 ⁽¹⁾	24,85	8,68
1701 91 00 ⁽²⁾	25,70	12,42
1701 99 10 ⁽²⁾	25,70	7,86
1701 99 90 ⁽²⁾	25,70	7,86
1702 90 99 ⁽¹⁾	0,26	0,39

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ No L 89, 10. 4. 1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ No L 94, 21. 4. 1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 20 November 1996

declaring a concentration to be incompatible with the common market

(Case No IV/M.784 — Kesko/Tuko)

Council Regulation (EEC) No 4064/89

(Only the English text is authentic)

(Text with EEA relevance)

(97/277/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Whereas:

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area, and in particular Article 57 (2) (a) thereof,

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings⁽¹⁾, as amended by the Act of Accession of Austria, Finland and Sweden, and in particular Articles 8 (3) and 22 thereof,

Having regard to the Commission decision of 26 July 1996 to initiate proceedings in this case,

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

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

1. The procedure under consideration concerns a request from the Finnish Office of Free Competition pursuant to Article 22 of Regulation (EEC) No 4064/89 (the Merger Regulation) to examine the acquisition of Tuko Oy by Kesko Oy. The request was received by the Commission on 26 June 1996. The operation was made known to the Office of Free Competition on 27 May 1996 by means of a press release sent from Kesko Oy. The request pursuant to Article 22 has therefore been made within the one-month period provided for in Article 22 (4).
2. After examination of the abovementioned request the Commission concluded that the request was admissible within the meaning of Article 22 of the Merger Regulation and that the concentration raised serious doubts as to its compatibility with the common market. By decision of 26 July 1996, the Commission accordingly initiated proceedings pursuant to Article 6 (1) (c) of the Merger Regulation.

I. THE PARTIES

3. Kesko Oy (Kesko) is a limited company incorporated in Finland. The share capital of Kesko is divided into exclusive shares and ordinary shares.

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

⁽²⁾ OJ No C 130, 26. 4. 1997.

Its ordinary shares are quoted on the Helsinki Stock Exchange. Holders of ordinary shares are entitled to one vote on a holding of between 1 and 10 000 shares and an additional vote for each subsequent 10 000 shares. No holder of ordinary shares controls more than 7,08 % of Kesko's share capital (corresponding to 0,16 % of the votes).

4. The exclusive shares are, in principle, only held by Kesko retailers (K retailers), their pension fund and other organs close to the K retailers. The total number of exclusive shares make up 38 % of Kesko's total capital, but, since they carry six votes for the first 100 shares held and an additional vote for each subsequent 100 shares, the collective of K retailers in effect control the majority of votes in Kesko. This arrangement, whilst not conferring on the K retailers joint control within the meaning of Article 3 of the Merger Regulation, in effect precludes any third party from acquiring control of Kesko. According to the company charter of Kesko, all members of its Supervisory Board shall be K retailers. The Supervisory Board nominates all other decision-making and executive organs of Kesko.
5. Kesko and the K retailers who are, legally, independent entrepreneurs, are commonly referred to as 'the K block'. All K retailers are contractually bound to Kesko. They are active in the retail sales of daily consumer goods and/or speciality goods. Kesko's activities are also within the fields of daily consumer goods and speciality goods, as well as in the provision of numerous services relating to those activities.
6. Tuko Oy (Tuko) is a Finnish limited company, active in the wholesale and retail of daily consumer goods and speciality goods. In addition to its wholly-owned retail outlets, Tuko has contractual agreements with a large number of, legally, independent T retailers. Tuko and the T retailers are commonly referred to as 'the T block'.

II. THE OPERATION

7. On 27 May 1996 Kesko acquired 56,3 % of Tuko's share capital, thereby obtaining 59,3 % of the voting rights, and direct control of Tuko.

III. CONCENTRATION

8. The operation constitutes a concentration within the meaning of Article 3 of the Merger Regulation.

IV. NO COMMUNITY DIMENSION

9. On the basis of the figures provided by the Office of Free Competition, the combined world-wide turnover of Kesko and Tuko exceeds ECU 5 billion. However, both Kesko and Tuko achieve more than two-thirds of their respective Community-wide turnover in Finland. It follows that the concentration has no Community dimension within the meaning of Article 1.

V. EFFECT ON TRADE BETWEEN MEMBER STATES

10. Kesko has argued that it is not within the Commission's competence to assess its acquisition of Tuko. In Kesko's view, the Commission would be excluded from assessing concentrations following a request pursuant to Article 22 (3) when the undertakings concerned realize more than two-thirds of their Community-wide turnover in the same Member State. However, Kesko's argument stems from a misinterpretation of the Interpretative Notes adopted at the same time as the Merger Regulation, which deal only with the intention of the Commission not to apply its residual powers pursuant to Article 89 of the Treaty of Rome if certain quantitative criteria are not fulfilled.
11. Article 22 (3) of the Merger Regulation requires that an effect on trade between Member States is shown. The acquisition of Tuko by Kesko will create foreclosure effects for new entrants, including potential entrants from other Member States, in particular on the Finnish markets for daily consumer goods. In addition, a large amount (about 30 %) of the products sold by both Kesko and Tuko originates outside Finland. The transaction will also affect trade between Member States in that suppliers from other Member States will, in effect, require access to Kesko's distribution channels to secure sufficient marketing of their products in Finland.
12. Moreover both companies are members of several international purchasing organizations, together with similar companies in other Member States. Since the spring of 1996, Kesko has also expanded its operations by opening retail outlets in Sweden.

13. It follows from the above that the change in the structure of the Finnish retail and wholesale markets for daily consumer goods will have an appreciable influence, directly or indirectly, actually or potentially, on the pattern of trade between Member States⁽¹⁾.

- (1) the retail market for daily consumer goods;
- (2) the market for cash-and-carry sales of daily consumer goods;
- (3) the markets for procurement of daily consumer goods.

VI. ASSESSMENT PURSUANT TO ARTICLE 2 OF THE MERGER REGULATION

A. RELEVANT MARKETS

14. Kesko has argued that the current operation should be assessed at the wholesale rather than the retail level. The reason for this would be that the K retailers and T retailers are independent from the Kesko and Tuko companies and their central units. The assertion is based on the grounds that Kesko and Tuko basically provide purchasing, marketing, informatics, and other support services to the retailers, who nevertheless retain a large freedom of choice concerning supply sources, pricing policy, and other commercial matters, and indeed compete with each other as well as with other retailers.
15. Kesko's above argument cannot, however, be accepted. The assessment of the competitive impact of any concentration has to be based on all structural elements relating to the concentration, the parties thereto and the markets concerned. In this respect it is particularly appropriate to analyse the internal relationships of the Kesko group in the light of the major reorganization of this group, which was implemented in 1995. This analysis, see paragraphs 39 to 66, leads to the conclusion that the operation should be assessed at retail level since it is appropriate to consider Kesko, including the K retailers, as a centrally planned, structural feature of the Finnish retail market.
16. In addition to the assessment at retail level, an assessment will also be necessary at wholesale level, as regards cash-and-carry sales, as well as on the procurement markets for daily consumer goods.
17. According to the investigation, the concentration will primarily have an impact on the following markets:

1. The retail market for daily consumer goods

I. Relevant product market

18. The range of goods concerned includes principally food, drink, tobacco and non-food household consumables (that is, cleaning products, toiletries, disposable paper products, and healthcare products). A common characteristic of these products is that they all form part of a 'basket of daily consumer goods' that consumers expect to find in a supermarket environment. As the Finnish grocery retail sector has developed from small specialized stores (butchers, bakers, etc.) to the larger supermarket stores, consumer behaviour has developed accordingly. Therefore competition in Finland today takes place between supermarkets and other stores that are able to provide the kind of wide selection that enables the consumer to purchase most of the household necessities in a 'one-stop shop', with attendant conveniences, such as parking facilities, trolleys, etc. (See also previous Commission decisions within this sector)⁽²⁾.
19. Although the basket of goods supplied by different supermarkets may vary considerably in physical size, some smaller types of outlets, including specialized stores (which are relatively uncommon in Finland), kiosks and petrol stations, do not offer a service which is in direct competition with the basket of goods concept. Petrol stations have a selling area much smaller than even the smallest Kesko and Tuko outlets, and the sale of daily consumer goods at petrol stations is heavily focused on dry goods (about 70 to 80 % of total sales), whereas traditional daily consumer goods outlets achieve about 50 % of their sales from fresh produce.
20. In conclusion, the relevant market consists of the provision of a basket of fresh and dry food-stuffs and non-food household consumables sold in a supermarket environment. The market does not include sales at specialized stores, kiosks and petrol stations. Instead, these outlets provide a service that is complementary to those of supermarkets.

⁽¹⁾ See judgment of the Court of Justice of the EC in Case 56/65, *Société Technique Minière v. Maschinenbau Ulm*, [1966] ECR, p. 235.

⁽²⁾ For example Case No IV/M.242 — Promodes/BRMC.

II. Relevant geographic market

21. Retailing professionals consider the catchment area for a supermarket to be delimited by a boundary within which the supermarket can be reached by car in no more than about 20 minutes. From the consumers' viewpoint, a 20-minute car journey might offer a choice of one, two, or more supermarkets and smaller outlets which also offer a 'basket of goods', depending on his and their location. It is clearly impracticable to define exactly all the possible combinations and permutations, which are a function of the density and distribution both of the population of consumers and of the network of supermarkets. Furthermore, the degree of overlapping which occurs between supermarket catchment areas, together with the distribution of the consumer population, will not only determine the competitive interactions between geographically proximate supermarkets, but will also, to some extent, have a 'knock-on' or 'chain-reaction' effect on more distant supermarkets. Moreover, many important parameters of competition, such as range of products, sources of such products, quality, service level (opening hours, etc), advertising, promotion and prices (e.g. on campaign products) are not decided on the local level, but on a regional or national level. Such decisions are generally implemented at a number of retail outlets within a certain region. In view of the above, it is necessary and appropriate to aggregate what, from the viewpoint of any single consumer, may be a very local market.
22. Aggregation of sales figures can be made on, in principle, an indefinite number of different levels. As far as Finland is concerned, the widest possible geographic market is national, for reasons of, for example, language differences and consumer purchase preferences.
23. Both Kesko and Tuko (as well as their main competitors) operate their retail outlets according to national chain concepts, for which joint marketing and pricing decisions are taken. Moreover, customer loyalty schemes, such as the K-advantage card, are applicable all over Finland. Even though these factors indicate a relatively wide geographic market, it is not necessary for the assessment of the operation to decide finally on the exact scope of the relevant geographic market, given that the combined market share of Kesko and Tuko is of

the same order whether assessed on national, regional or local level (see paragraph 106).

2. The market for cash-and-carry sales of daily consumer goods

I. Relevant product market

24. The products handled by wholesalers of daily consumer goods, naturally, mainly reflect the sales of such products at retail level and the use of such products by industrial households. The Commission's investigation has shown that in the Finnish market there are significant differences in 'classic wholesale' sales, and cash-and-carry sales.
25. Kesko has argued that the 'classic wholesale' market should be subdivided into three different markets: negotiations with suppliers, central invoicing and logistics. However, since Kesko's activities within 'classic wholesaling' *vis-à-vis* external customers have been of minor importance (about 1 %), and the concentration therefore does not raise competitive problems within this field, it is not necessary to make any assessment on Kesko's arguments in this respect.
26. Both Kesko and Tuko achieve significant turnovers from their sales in cash-and-carry outlets. As the term implies, cash and carry, as a means of wholesaling, is different from 'classic wholesaling', in that customers provide the transport themselves and pay for the goods in cash rather than on credit. Cash and carry is therefore advantageous for customers who are less able to predict long-term demand, who do not have the physical facilities to hold large stocks for a period of time, who do not have the financial resources to guarantee the credit required for large bulk purchases and who therefore prefer to buy smaller quantities on a more frequent basis. Such customers are generally smaller companies, whereas larger customers tend to use wholesaling, as Kesko itself has confirmed in its reply to the Commission's Statement of Objections.
27. The distinct function of cash-and-carry outlets is reflected by the number of items available from, on the one hand cash-and-carry outlets, which normally stock about 10 000 different items, and 'classic wholesale' units, which normally have a much smaller number of items in stock (except for the central warehouses, in Helsinki, of Kesko, Tuko and Inex Partners). It is also reflected by the fact that Kesko has organized its cash-and-carry activities in a different subsidiary.

28. The main customer group of cash-and-carry outlets consists of industrial households (hotels, restaurants, hospitals, etc). The majority of these customers are small and medium-sized companies, which are, for the reasons mentioned in paragraph 26, largely unable to switch to 'classic wholesaling'. According to Tuko's annual report for 1995, its total sales through cash and carry equalled those of 'classic wholesale', however, the ratio of the number of cash and carry customers to wholesale customers was approximately four to one. This shows that the average cash-and-carry customer purchases only about one-quarter of the amount purchased by the average 'classic wholesale' customer. The main product group purchased by these customers is dry-food products, which account for 60 to 70 % of total sales of Kesko and Tuko within this market, the remaining part being made up of fresh food and non-food products.

29. Given the distinct characteristics of cash-and-carry services and given that a substantial majority of cash and carry customers are in practice captive customers, even in the event of a rise in prices of the goods sold, the limited financial and storage capacities of these customers would make it uneconomic for them to switch to 'classic' wholesaling.

30. Kesko has stated that a number of its customers use classic wholesaling and cash-and-carry services 'in parallel', and draw the conclusion that a rise in cash-and-carry prices would cause these customers to switch entirely to classic wholesaling, thus in practice rendering such a price rise unprofitable. The argument is fallacious in that it confuses complementarity with substitutability. Given the distinct differences between classic wholesaling and cash and carry as already outlined, it is clear that the limited number of customers who use both types of service regard them as complementary rather than substitutable. For example, a customer who finds it appropriate to use classic wholesaling to supply some of his requirements may have no alternative to using cash-and-carry services to meet the rest of his requirements (for example, for particular types of goods, or when his storage facilities are currently fully utilized, or when urgent 'topping up' is required to meet a sudden surge in demand). Therefore, the existence of a limited number of 'dual usage' customers does not indicate that a price rise in cash and carry would cause such customers to switch to classic wholesaling to an extent which would render a cash-and-carry price rise

unprofitable, and thereby 'shielding' captive customers of cash and carry.

31. For the above reasons, sales from cash-and-carry outlets constitute a relevant product market that is separate from that of other wholesaling activities.

II. *Relevant geographic market*

32. The customers of cash-and-carry outlets are professional customers, mainly industrial households and, to a lesser extent, retailers. As such they are able to purchase within a relatively wide area, even though they will have to cater for the transport of the goods themselves. Evidence shows that customers of cash and carry buy regionally. Given the skewed population of Finland, cash-and-carry customers in northern Finland will generally have to travel further for their supplies than customers in south-western Finland, on the other hand regions are larger in northern Finland. It is therefore considered appropriate to assess the impact of the operation on a regional level.

3. **Markets for procurement of daily consumer goods**

I. *Relevant product markets*

33. The markets involve the sale of daily consumer goods by producers of such goods to customers such as wholesalers, retailers, and other enterprises. Not all producers will supply the full range of daily consumer goods; some may specialize, for example, in individual products or product groups, such as fresh products, or dry food or non-food products.

34. Again, from the demand side, corporate customers such as large supermarket chains will probably attempt to obtain the best possible conditions for their purchases of individual products, such as meat, canned food, or any other products. Each product or product group constitutes an individual product market as it is not, or imperfectly, substitutable for other products or product groups from the point of view of the demand side. However, since, in Finland, the pattern of demand for each of the product groups is broadly similar and concentrated (see paragraph 150), it is not necessary to assess the impact of the concentration on each individual product or group of products. It is sufficient to assess the impact of the increased buying power, brought about by the new demand structure, across the whole range of daily consumer goods.

35. It should be acknowledged that, especially for producers of non-food items, distribution channels other than supermarkets, e.g. pharmacies, are available. However, these are unimportant in relation to supermarket and cash-and-carry channels (see paragraphs 146 to 153) and would not affect the assessment of this case.

II. Relevant geographic market

36. About 70 % of the products sold by Kesko and Tuko consists of domestically produced goods. The manufacturers of these products achieve most, if not all, of their turnover in Finland. In view of this, these suppliers have stated that they regard Finland as the relevant geographic market.
37. Of the 30 % of imported products sold by Kesko and Tuko only a relatively small part, about 5 percentage points, is actually imported by the companies themselves. The remaining part is purchased from Finnish subsidiaries of international producers or from companies specializing in trade with imported goods. As regards such goods, and given that the present concentration affects the demand side of these markets, it is appropriate to define the geographic markets with particular reference to the ability of suppliers to switch their means of channelling goods to final consumers. As regards the manufacturers in question (much of whose goods are specially adapted for sale on the Finnish market, e.g. packaging, languages, etc.), access to the demand side, i.e. retail and cash-and-carry customers, can only be gained via Finnish retail/cash-and-carry distribution channels. Therefore as international manufacturers cannot switch to non-Finnish distribution channels it can be concluded that the relevant geographic market is Finland.

B. EFFECTS OF THE CONCENTRATION

38. The three daily consumer goods markets described above are vertically inter-connected in such a way that the position of Kesko and Tuko on the retail market for daily consumer goods creates the basis for their positions on the procurement markets (e.g. *vis-à-vis* suppliers of daily consumer goods). Conversely their position at the procurement level significantly affects their position at retail level. The market for cash-and-carry sales is also connected to their position on the procurement markets, in that Kesko and Tuko, from buying

significant amounts for their retail operations, will have a further competitive advantage over the smaller, local cash-and-carry operators.

1. Retail of daily consumer goods

I. Structure of supply

1. Voluntary retail chains in Finland

39. Traditionally the Finnish retail market has been characterized by the existence of an important role played by voluntary retail chains. However, in the field of daily consumer goods there are now only two such chains in Finland; the K and T blocks. One of the main objects of these chains is to make buying and promotion possible on a larger scale than is possible for individual retailers. A common characteristic for these retail chains is that the benefit of the cooperation is secured through contracts. These contracts, while in principle of a horizontal nature (i.e. between each of the retailers of the K and T block respectively) are, for reasons of simplicity and surveillance, concluded between the individual retailer and the central organs of the group.
40. The contracts between individual retailers and the central organ focus on standardizing the behaviour of individual retailers, and thus limiting their independence, in areas such as purchasing, identification, promotion and sales policy, which are of key importance to the achievement of the purposes of the group. The level on which individual behaviour needs to be standardized for the system to be successfully implemented will depend on the competitive relationship, and thus interdependence, between the individual units of the chain. It is therefore consistent that Tuko and Kesko, in particular following its reorganization (see below), have standardized the behaviour of individual retailers to a much greater extent than, for example, international joint purchasing organizations or other similar organs, which do not to the same extent involve companies that in the absence of the cooperation would be in direct competition with one another.
41. Since the achievement of the group's purposes is dependent on the individual retailer's adhesion to the joint policies, as set out in the contracts, Kesko has been entrusted with internal power mechanisms to ensure individual retailer adherence to the common objectives. These internal power mechanisms include incentive creating schemes

(e.g. the payment of bonuses and provision of services related to the business of the retailers) as well as dis-incentive schemes (e.g. the removal of benefits, exclusion or the threat thereof). Such dis-incentive schemes will be very effective where, as in the case of Kesko, individual members have made significant investments in the organization and are to a large extent dependent on the central organs for their business operations.

2. Nature and structure of the K block

42. From a company law perspective, the K retailers are independent legal entities, and the entrepreneurs themselves carry the economic risk of their business. For the reasons stated below, this cannot, however, be taken as a decisive criterion for assessing whether Kesko's acquisition will affect the retail market.

(a) Common interest

43. As described in paragraph 4, the K retailers together hold the majority of votes in Kesko. Moreover, all members of the Kesko Supervisory Board, which nominates all other decision-making and executive organs of Kesko, are K retailers. This arrangement reflects the strong common interest of the K retailers.

(b) Agreements between Kesko and the K retailers

44. The K retailer agreement specifies the general rights and obligations of the K retailers, whereas the chain agreement defines the rights and obligations related to the membership of one of Kesko's five sub-chains (see paragraph 47). According to the K retailer agreement the retailer undertakes to 'carry on, as its main area of activity, K retail which must be profitable' and, further to 'attempt to take full advantage of the benefits of joint purchasing of the K group and its private label products. The K retailer shall not, without justification, treat Kesko less favourably than other suppliers'. The chain agreements state further that the K retailer and chain agreements together constitute the basis for cooperation between the retailer and Kesko; and that the main purpose of these agreements is to promote trade in goods between the parties (i.e. the retailer and Kesko). According to the chain agreement, the K retailer is bound by decisions of the chain's Board of Directors concerning marketing,

products to be entered into the basic selection and retail prices of campaign products⁽¹⁾. The result of this, in 1995, was that the K retailers in the five chains obtain between [75 and 100] % ⁽²⁾ of their total purchases through Kesko (see paragraph 72).

45. The K retailer obligations further include using the Kesko logotypes. The K retailers do not pay any consideration for the use of such logotypes, slogans or other intellectual property rights owned by Kesko, nor do they pay any consideration for some of the support services provided by Kesko (e.g. marketing assistance). Instead the K retailers pay an indirect consideration for such services through the margins which are added on when goods are transferred from Kesko's chain control unit to the retailer. Therefore any retailer wishing to purchase, for example, marketing assistance from a third party instead of Kesko would, in practice, be paying twice for these services. Thus, it must be concluded that the K retailers are intended to use Kesko as their only provider of such support services.

46. Moreover, the K retailers receive bonuses and rebates from Kesko based on volumes purchased through Kesko. The fact that these rebates increase according to the amounts purchased provides a typical incentive for retailers to remain loyal to the group strategy.

(c) Organization of Kesko

47. Kesko, as the central organ of the K group, is responsible for the corporate planning of the group's activities. In 1995 a major reorganization programme was implemented in the group's organizational structure. The main focus of this reorganization was to remodel existing K retailers into five national Kesko sub-chains, each of which would consist of retail outlets with common characteristics in terms of identification (logotype), size of sales area, basic product assortment and which would cooperate between themselves in joint advertising, campaigns, etc. (see paragraphs 67 to 72 for a detailed description of these chains).

⁽¹⁾ According to the Rimi Store chain agreement, the Board can also fix prices for the basic selection.

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

48. To support this retail reform, five matching chain control units were created within Kesko's foodstuffs division. These chain control units form, together with a Board of Directors made up of retailers from the chain, the nationwide management of the chain to which it corresponds. The responsibilities of the chain control unit, which is totally operated by Kesko employees, include coordinating activities of the retailers in the chain concerning purchasing, marketing and sales policies, e.g. joint campaigns. The chain control units also serve as Kesko's profit centres (i.e. by calculating Kesko's profit margin on to all jointly purchased goods by each sub-chain before resale to the retailers).
49. All chain control units are part of Kesko's foodstuffs division. As such they share common management structures and report to the same manager (one of Kesko's executive Vice-Presidents).
50. One important and integral part of the reorganization is that the K stores of all five chains will be equipped with up-to-date information systems suitable for use in the Kesko network. These computer systems will be placed in the retail stores, but will continue to be owned by Kesko. Following completion of this project, the possibilities for rapidly transmitting information within the group will be significantly improved. The fact that Kesko has publicly stated its commitment to increased use of information technology is in line with the development in other retail groups throughout Europe. For example, the installation of check-out scanners connected to a central computer provides a basis for increased coordination of stock control, product range selection and flow of price information.
- K retailers decisions on sourcing
51. Kesko has argued that K retailers take their decisions on sourcing independently from Kesko. To support this view, Kesko has indicated that only [30 to 50] %, as an average of the stores of all five chains, of the K retailers total supplies are purchased from Kesko's wholesale function, whereas [30 to 50] % is supplied directly from producers to the retailers and merely invoiced by Kesko.
52. The Commission's investigation, however, strongly indicates that producers, when supplying their products, perceive Kesko and the K retailers as an integrated entity, irrespective of the fact that the actual contact point within the entity may differ according to circumstances, and irrespective of the sales channel employed (whether classic wholesaling or central invoicing). This is supported by the following facts:
- all purchases by K retailers which are invoiced by Kesko are based on invoicing agreements concluded between Kesko and its suppliers, i.e. it is not possible for a K retailer to use this sales channel without the active involvement of Kesko,
 - in relation to all invoicing transactions, Kesko does take legal possession of the goods in question, which are then resold to the retailer that ordered the goods. As such these transactions are included in Kesko's annual income statement as sales and not separated from Kesko's 'classic wholesale' sales,
 - moreover, invoicing agreements concluded between Kesko and its suppliers generally specify the marketing support fees and/or other rebates, based on sales volumes, granted by the supplier to Kesko. These fees and rebates, which are the main method by which suppliers differentiate between their customers, are based on all purchases of the K group, i.e. including sales to Kesko in its capacity as a wholesaler as well as purchases made directly from K retailers based on invoicing agreements. Suppliers would not agree to pay such support if they did not believe that Kesko is in a position to ascertain the fulfilment of agreements (e.g. on the achievement of set volume targets or to carry out agreed promotional campaigns at store level),
 - although Kesko has stated that '... it is not necessary in the routine work (of the Kesko personnel handling the invoices) to pay attention to individual products and their prices specified on invoices' it has to be concluded that Kesko, as it handles about [...] million invoice transactions every year (most, but not all, of which concern transactions involving K retailers), will have the possibility to gain enormous amounts of information concerning prices and other commercial terms applied by individual suppliers. Moreover, Kesko will only be able to ascertain that marketing fees and bonuses are received according to its agreements with the suppliers, if total amounts are followed.

53. In view of the above, the Commission cannot accept that the [30 to 50] % of total K retailers' supplies which are invoiced, but not physically delivered by Kesko, should be regarded as sourcing which is independent of Kesko. On the contrary, it is clear that Kesko has a central role even in these relations. It can therefore be concluded that whether certain supplies will pass through Kesko's warehouse facilities ('classic wholesale') or be delivered directly to the retailer is basically a logistical question, depending on the type of good involved, the size of the order, etc.

K retailers' decisions on marketing and pricing

54. Kesko has also argued that the independence of K retailers *vis-à-vis* Kesko is demonstrated by the retailers' freedom as regards their individual commercial behaviour on the market, i.e. concerning advertising and pricing. To support these allegations Kesko has supplied three studies concerning price dispersion and advertising behaviour.

55. The Commission has identified several weaknesses in the methodology employed in these studies, as well as in the presentation of the data on which they are based (e.g. lack of clarity regarding selection criteria in terms of stores, products, geographic distribution and the period of the studies). These methodological problems are not, however, of vital importance given that it can be seen in two of the studies that a common feature is that the alleged individual freedom is demonstrated by comparing prices and advertising behaviour of the different Kesko chains, rather than individual behaviour within those chains. As the five Kesko chains have been created by Kesko to join all stores that present similar characteristics and defined chain policies in the same chain, it would be an expected result that the pricing and advertising behaviour differs between the chains.

56. If the studies are viewed with respect to the individual Kesko chains, a very high degree of concerted behaviour is found. Concerning advertising, the studies show that the amount spent on joint advertising within each chain is between [50 and 100] %. The study then continues to state that '... retailers from a chain which are not competing with each other will generally place joint advertisements rather than advertising separately'. Similarly, the study that purposes to show differences in

advertised prices over a five-day period actually confirms that K retailers within the same chain showed a high degree of conformity.

57. In view of the above, and given Kesko's role in organizing the K retailers into the five different chains, it has to be concluded that the differences in terms of advertising and pricing behaviour that exist between the chains is part of a centrally planned strategy for the whole Kesko group.

(d) Ownership of business premises

58. As has been stated above, Kesko is responsible for the development and maintenance of the network of outlets of the K block. One area of particular strategic importance to Kesko is the ownership of business premises on which the retailing activities is conducted. Indeed according to Kesko's balance sheet, its property investments amount to almost two-thirds of its total fixed assets.

59. The strategic importance Kesko has attributed to being the owner of the retail business premises can be demonstrated by the fact that all retail outlets planned and/or built by Kesko continue to be owned by Kesko, but are leased to K retailers. Kesko's interest in maintaining the ownership of the business premises is particularly clear as regards larger outlets. More specifically, Kesko owns the business premises of [...] Citymarket and Rimi stores, [...] % of the Supermarkets and [...] % of the K markets. In the Neighbourhood store chain [...] % operate on premises owned by Kesko. Thus, the majority (> 60 %) of the total turnover of all K retailers is realized from operations where Kesko owns the business premises. The K retailers operating on premises owned by Kesko have entered into a collaboration agreement with Kesko which sets out the principles of Kesko's business premises operations and the fee, calculated from the turnover or profit margin of the retailer, which Kesko receives as rent.

60. While no K retailer can, without the approval of Kesko, transfer (sell or sub-lease) his business as a going concern, the retailers that operate from business premises owned by Kesko have even more limited possibilities of transferring their business.

61. K retailers are not given an exclusive territory, in which they will be the only K retailer. In fact, the retailer's agreement with Kesko obliges him to accept that other retail outlets may be set up in the

same area. The collaboration agreement can be terminated by Kesko for 'a valid reason relating to the development of the network'.

(e) Financial commitment

62. The obligations of a K retailer include owning a minimum of [...] exclusive shares in Kesko or, where greater, shares representing the equivalent of [...] weeks' purchases from Kesko (including amounts invoiced by Kesko). The average number of shares held by K retailers is [...], representing a stock market value of ECU [...]. These shares are pawned to Vähittäiskaupan Taka Oy, VT, and used as a collateral for the retailers' purchases from/through Kesko. VT is [...] % owned directly by Kesko, and [...] % owned by the K retailers association and individual retailers, the remaining shares being held by other organs close to, and partly owned by Kesko (these organs are also the most important shareholders in Kesko). According to Finnish law, Kesko itself would not be allowed to accept its own shares as collateral. However, given the shareholding structure of VT, it is clear that, from the retailers' point of view, the shares are in effect pawned to Kesko.

3. Conclusion

63. Kesko, as the central organ of the Kesko group has responsibility for the planning and execution of changes to the overall group structure. Following the recent reorganization, it has organized the K retailers in five national Kesko sub-chains, each with its own specific characteristics, and each corresponding to a control unit within the Kesko company. Therefore, it has to be concluded that the horizontal cooperation and lack of competition within each of these five Kesko chains constitutes a structural feature of the Kesko group, and, as such of the Finnish retail market. The same is also true for whatever competition that may seem to exist between the five chains, since the main elements of that competition have, in fact, been centrally planned by Kesko.
64. It follows from the above that although the K retailers bear the financial risk of their business operations, they have through the agreements concluded with Kesko accepted to adhere to the overall principles planned by Kesko for the whole group. The fact that the K retailers make a major investment in Kesko through the acquisition of

shares in the company, receive a number of support services from Kesko, but are not given an exclusive territory, which means that Kesko, at any particular time, may allow a new outlet to be set up in the same area, creates a strong combination of incentives and dis-incentives for K retailers, and in particular those who rent their business premises from Kesko, to remain loyal to Kesko and the Kesko chain in which the retailer has been placed.

65. Most of the above analysis concerning the relationship between Kesko and the K retailers is applicable also to the relationship between Tuko and the T retailers. However, it is not necessary to assess finally the position of T retailers prior to the concentration. The fact that Kesko would control Tuko would confer on it the ability to organize the various T retailers in a similar way as it has organized the K retailers in five different sub-chains. Indeed, Kesko would be in an even stronger position *vis-à-vis* the T retailers than Tuko, since the operation will in effect make it impossible for the T retailers to join a competing voluntary chain. (The transaction would, in the same way, also further increase the dependency of K retailers on Kesko.)
66. In view of the abovementioned elements, i.e. agreements within the K group, the organizational characteristics, ownership of business premises and financial commitment, it is appropriate to consider Kesko, including the K retailers, as a centrally-planned, structural feature of the Finnish retail market, Kesko's assertion that the competitive impact of the operation should not be assessed at the retail level cannot be accepted. Similarly, it would be appropriate to consider the T retailers as an integral part of the Kesko group following the operation.

(i) National chains operated by Kesko and Tuko

Kesko

67. The smallest Kesko shops are included in the Neighbourhood Store chain (K shops); there are 1 115 such shops in Finland. Their average sales area is [...] m² and the average number of items sold in K shops is between [...]. The average annual turnover of a K shop is about ECU [...]. According to Kesko the basic range of products decided by the chain's Board of Directors covered [...] % of all sales in 1995, and [...] % of all sales resulted from joint campaigns.

68. There are 226 Kesko Supermarkets (KK shops) in Finland. These have an average sales area of [...] m² and sell between [...] items. The average annual turnover of a KK shop is about ECU [...]. According to Kesko, the basic range of products decided by the chain's Board of Directors covered [...] % of all sales in 1995, and [...] % of all sales resulted from joint campaigns.

69. The Kesko Superstores (KKK shops), of which there are 78 in Finland, are, on average [...] m² and sell between [...] items. These shops have an average turnover of ECU [...]. According to Kesko the basic range of products decided by the chain's Board of Directors covered [...] % of all sales in 1995, and [...] % of all sales resulted from joint campaigns.

70. The largest shops are the Kesko Citymarkets (KKKK shops), of which there are 38 in Finland. In addition to daily consumer goods, these also have a speciality goods section, which is normally operated by Kesko itself. The daily consumer goods sections of Citymarkets are, on average, [...] m², sell between [...] items and have an average turnover of ECU [...]. According to Kesko the basic range of products decided by the chain's Board of Directors covered [...] % of all sales in 1995, and [...] % of all sales resulted from joint campaigns.

71. Finally, there are 19 discount Rimi Stores. Their average sales area is [...] m² and they sell [...] items. Their average turnover is ECU [...]. In the Rimi stores [...] % of the products are included in the basic range of products decided by the chain's Board of Directors. [...] % of all sales resulted from joint campaigns. According to Kesko's 1994 annual report, these stores are based on cost-efficiency and uniformly inexpensive prices. It is noteworthy that the agreements between Rimi retailers and Kesko contain basically the same obligations as Kesko's agreement with other K retailers.

72. The sources of supply were similar for all chains. Between [...] % were purchased independently from Kesko, whereas the remaining [...] % were purchased through Kesko, i.e. [...] % from Kesko's 'classic wholesale' and about [...] % invoiced through Kesko (Kesko's involvement in the invoicing transactions have been analysed in para-

graphs 51 to 53). Although Kesko has not been able to supply exact figures, it is clear that Kesko's wholesale unit represents the major source of all chains for dry food and nonfood articles, whereas invoicing is mainly related to fresh produce.

Tuko

73. Following a recent reorganization, the T retailers are organized in three major groups.

74. The most important of the three groups is the Spar chain, which consists of 125 Sparstores, 216 Sparmarkets and 34 SuperSpar stores. The Sparstores are, on average [...] m², sell [...] items and have turnovers of ECU [...]. The corresponding figures for Sparmarkets are [...] m², [...] items and ECU [...], and for SuperSpar stores [...] m², [...] items and ECU [...].

75. Tuko also owns and operates 30 Anttila department stores. The daily consumer goods sections of these have an average sales area of [...] m², sell [...] items and have a turnover of ECU [...].

76. The smallest outlets within the Tuko group are the Tarmo stores. This group consists of stores that used to have T retailer agreements, but which were unsuitable for conversion into the Spar concept. Their relation to Tuko is based on 'the Tarmo promise', under which Tuko, free of charge, grants to the shops the use of the Tarmo concept developed by Tuko. In return, the stores must, *inter alia*, stock a basic product range, participate in joint marketing and use advertising material decided by Tuko. There are in total 565 Tarmo stores in Finland. Their average size is [...] m² and they sell between [...] items. Their average turnover is ECU [...].

(ii) Cooperative organizations

77. In the Finnish daily consumer goods market, there are three cooperative retail groups: Suomen Osuuskauppojen Keskuskunta (SOK), Tradeka Oy (Tradeka) and Osuusliike Elanto (Elanto). The cooperative retail groups are based on cooperative societies which are owned by, in principle, members/consumers. Each cooperative society operates chains of retail outlets that are fully owned by it. The managers of the retail outlets of these groups are employees of the group.

SOK

78. SOK operates three different national chains of outlets: Prisma, S-market/Citysoikos and Sale/Alepa. The outlets cooperate nationally and regionally in 23 regional cooperatives. The regional Board of Directors, which always include, at least, one representative of SOK, decide on marketing and pricing policy for all chains. Price differences between regions are mainly due to transport costs, which usually means that prices are higher in northern Finland. Although it is very rare that conflicts arise between the different regional cooperatives, the board of SOK, can settle such disputes. SOK is also responsible for planning and building new outlets. About 85 % of all outlets have been set up by SOK, the remaining part mainly consists of smaller and older stores.
79. The Prisma chain consists of 28 large outlets. Although the average selling area and number of items sold by these outlets is somewhat smaller than the Kesko Citymarkets, their average turnover is of the same order as that of the Citymarkets.
80. The S-market chain consists of 260 outlets. These outlets are in the same category as the KK shops in terms of selling area, number of items and average turnover.
81. The third chain operated by SOK is the discount Sale/Alepa stores. There are 220 such outlets. They are somewhat smaller than the Kesko Rimi stores, but nevertheless in the same category.
82. In addition to its activities in retail of daily consumer goods, SOK owns 50 % of Inex Partners Oy. The remaining 50 % of this company, which is active in the wholesale of daily consumer goods, is owned by Tradeka (see below). SOK is also active in the hotel and restaurant sector.

Tradeka and Elanto

83. Tradeka and Elanto are both cooperative organizations. Whereas Tradeka is active basically all over Finland, Elanto's activities are concentrated to the greater Helsinki area. Both groups are, due to financial difficulties, undergoing reorganization in accordance with the Finnish Act on Reorganization of Companies (No 47/1993). This will affect both companies until the end of 2003.
84. Partly as a result of their reorganization programmes, Tradeka and Elanto have, in 1996,

entered into a far-reaching cooperation, covering the coordination of outlets, purchasing, selections, customer loyalty schemes, personnel and administration of information technology. Due to this cooperation, it is appropriate to assess both companies as part of the same group.

85. Tradeka operates three different chains of daily consumer-goods outlets. The largest outlets are the Euromarkets, of which there are 21 in Finland. These outlets are slightly smaller than the Kesko Super stores (KKK), in terms of sales area, number of items sold and average turnover. The 147 Valintatalo markets (28 of which are operated by Elanto) are smaller units, basically in the same range as the Tuko Sparmarkets, and the 479 Siwa stores (45 of which are operated by Elanto) are basically in the same range as the Tarmo stores. Three of Tradeka's outlets are operated from business premises owned by Tuko.
86. In addition to operating the Valintatalo and Siwa outlets in the Helsinki area, Elanto also operates three hypermarket Maxi outlets and 23 Marketta outlets. The latter are somewhat smaller than the K shops (K).

(iii) Stockmann, Wihuri and Sentra

87. One of the largest private companies in the field of retail of daily consumer goods is Oy Stockmann Ab (Stockmann), which has five department stores and 17 Sesto discount stores in southern Finland, and a total turnover in sales of daily consumer goods of around ECU 200 million. Although Stockmann does not carry the Kesko logos, it has entered into K retailer agreements with Kesko and use Kesko as its main supplier. Stockmann also sells private label product of Kesko and Tuko. Further, there is an agreement between Kesko and Stockmann on cross-ownership.
88. Wihuri Oy is another privately owned company. It operates two large Eurospar outlets and 114 smaller Ruokavarasto outlets in south-western Finland. In 1995 the total sales of these amounted to between ECU 150 and 200 million. Wihuri was one of the companies that originally founded Tuko and it owned a large block of shares in the company until, as part of the concentration presently assessed, this was sold to Kesko. Even though Wihuri is also active as a wholesaler, Tuko is Wihuri's main supplier of daily consumer goods, and Wihuri has concluded a long-term supply contract with Tuko.

89. Sentra Oy runs one large Eurospar outlet and 27 smaller Prima and Rabatti daily consumer outlets, all in the area of Uusimaa in southern Finland. Its total turnover is around ECU 100 million. As Wihuri, Sentra used to be a large shareholder in Tuko. Moreover, Tuko is still Sentra's main supplier of daily consumer goods, including private label products, and Sentra has concluded a long-term supply contract with Tuko. In addition, Sentra leases almost half of its business premises from Tuko. These lease contracts are connected to the abovementioned supply contract.
90. Sentra and Wihuri, together with Tuko and Oy Hallman (a company whose outlets are part of the Spar chain operated by Tuko), own Eurospar Oy, which is the franchisor of the Eurospar trademark in Finland.
91. The investigation has revealed that Stockmann is commonly referred to as being part of the Kesko group, and that Wihuri and Sentra are similarly referred to as being part of the Tuko group (see paragraph 97).

(iv) *Other companies on the market*

92. According to Nielsen Finland (Newsletter 1/96) there were 1 286 other private daily consumer-goods shops in Finland in 1995. Many of the shops in this category have been using Tuko, and to some extent Kesko, as their main supplier. The combined market share of this group was just over 6 %, which represented a decrease by 0,7 % units since 1994.

II. *Market shares*

(a) *National level*

93. Even before the acquisition of Tuko by Kesko, the Finnish retail of daily consumer goods was one of the most concentrated in the European Union. Only in the Netherlands, Denmark, and Sweden does any single group of daily consumer goods retailers have more than 30 % of the national market, and the median figure for all Member States is of the order of 18 %⁽¹⁾. Following the concentration the K block would account for at least 55 %, see paragraph 98, of all sales of daily consumer goods in Finland. National sales of daily consumer goods in 1995 are illustrated in Table 1.

⁽¹⁾ According to statistics provided by AIM (1995).

Table 1⁽²⁾

	Sales (million ECU)	%
Kesko (including Stockmann)	3 564,3	39,9
Tuko (including Wihuri and Sentra)	1 753,9	19,7
SOK	1 958,3	21,9
Tradeka/Elanto	1 087,0	12,2
Others	561,6	6,3
Total	8 925,1	100

Source: Nielsen Finland (Newsletter 1/96).

94. As can be seen from the above table the combined national sales of Kesko and Tuko was almost three times larger than that of their largest competitor, SOK. According to the Nielsen register, the market share of the companies indicated in Table 1, and in particular that of Kesko, has been stable over the last 10 years. The four main groups have reported their actual sales in daily consumer goods to the Commission. These figures indicate that the total size of the market may be about 15 % smaller than that reported by Nielsen, which in its turn might indicate that the figures reported to Nielsen include some sales of other products as well. However, as all four groups have reported lower actual figures to the Commission, the use of these figures does not alter the relative positions of Kesko and Tuko *vis-à-vis* SOK and Tradeka/Elanto.

(i) *Kesko's argument on market shares*

95. In its reply to the Commission's statement pursuant to Article 18, Kesko has argued that the combined market share of Kesko and Tuko at retail level would not be 60 %, but 49 %. Kesko claims

⁽²⁾ The Nielsen register of retailers of daily consumer goods is supervised by a consultative committee consisting of Kesko, Tuko, SOK and Tradeka. This committee makes decisions concerning the register's contents according to the principle of unanimity. The figures do not include sales at kiosks and petrol stations.

that this finding can be supported by more recent figures from Nielsen, relating to retail sales in weeks 1 to 34 of 1996, and by deducting the market share of four retail organizations (Stockmann, Sentra, Wihuri and Tarmo), which although included in the Nielsen figures for Kesko and Tuko respectively have weaker links to them.

(ii) Appropriate reference period

96. First, the Nielsen data on which Kesko bases its allegations applies a different methodology (e.g. by including kiosks) from the Nielsen data previously supplied to the Commission. Kesko has not explained the reasons for this. Secondly, figures representing only 34 selected weeks cannot be presumed to have the same degree of reliability as figures representing a full year, which would fully take into account existing seasonal variations. In addition, the particular period chosen by Kesko reflects an abnormal period for Kesko itself, as it was undergoing major reorganizational measures over this period. As regards Tuko, the period chosen by Kesko will also show abnormal results as it represents the period when Kesko was in the process of taking over the ownership of Tuko. In view of this, any assessment of the possible effects of excluding the four abovementioned retail organizations have to take as its point of departure the abovementioned figures for 1995.

(iii) Inclusion of Stockmann, Wihuri and Sentra

97. According to Nielsen, the indicated data has been collected by means of telephone interviews, where each outlet is asked to identify whether it belongs to one of the four main groups, or should be included in the group 'others'. It is thus clear that all four groups have been included in the Nielsen register due to their own statements to that effect. Moreover, as Kesko (as well as Tuko) are on the consultative committee of Nielsen's register of retailers of daily consumer goods, it is therefore also clear that Kesko and Tuko have considered it appropriate to include the four retail organization in their respective figures.
98. Given the above, and the existing links between Kesko/Tuko and each of the four retail groups as described above (Stockmann's K retailer agreement and cross-share holding with Kesko (see paragraph 87), Tuko's ownership of business premises used by Sentra (see paragraphs 89 and 90), Tuko's active role behind the operations of the Tarmo chain (see paragraph 76)), the Commission would continue to be of the opinion that Kesko, post-merger, would have a significant influence over these retail groups, especially as their choice of wholesale supplier, which until now has mainly consisted of Kesko and Tuko, would in effect be removed by the operation. It is, however, not necessary to finally decide on this question as, using sales figures for 1995 supplied by Stockmann, Wihuri and Sentra⁽¹⁾, even excluding these companies from the market share of Kesko and Tuko, the combined market share would still exceed 55 % on a national basis. Thus even if these companies were to be excluded from Kesko's post-merger market share, it would still be almost three times as high as that of its closest competitor, SOK. Similarly, the effect of excluding these four groups would have very limited effect on a regional level (see paragraph 101).
- (b) *Regional level*
99. If the sales are broken down to the 16 statistical areas used by Nielsen to monitor retail sales in Finland, the combined Kesko/Tuko share varies between [40 and 90] %. In all such areas the overlap between Kesko and Tuko is significant, as Tuko's share of the sales varies between [10 and 30] %. At the same time SOK's sales represent between [0 and 40] % in these areas, and the combined sales of Tradeka/Elanto vary between [0 and 20] %. The share of the group 'others' varies between [0 and 20] %. (These regional statistics are provided as Annex 1⁽²⁾).
100. The four major groups have supplied their actual sales figures in each of the 16 areas used by Nielsen. Again, the actual figures are lower than those used by Nielsen. The result is, however, very

(¹) According to Kesko, the national market share of the Tarmo stores is [...] %.

(²) Annex withheld from public version for confidentiality reasons.

similar. Although the Commission does not have information on the actual sales of the group 'others', the exclusion of this group seems, if anything, to increase the combined Kesko/Tuko share *vis-à-vis* SOK and Tradeka/Elanto.

sales. Out of those 104 areas, Kesko or Tuko achieve singly more than [...] % of the sales in 44 areas. Finally, the statistics show that there were 12 areas where neither Kesko nor Tuko achieved any sales. In view of the widespread nature of their operations, it can be presumed that the areas where there is no overlap between Kesko and Tuko cover a very minor part of the Finnish population.

101. As has been explained above, see paragraph 95, Kesko has argued that the sales of Stockmann, Sentra, Wihuri and Tarmo should be excluded from its retail market share. Although the Commission continues to be of the opinion that Kesko, post-merger, would have a significant influence over these companies, this question can be left open as their exclusion would not significantly affect the assessment. On a regional level the three first mentioned retail organizations are only active in five out of 16 regions in Finland. Their exclusion could therefore only have an impact in these regions. However, even in these five regions the combined market share of Kesko and Tuko would still be between [50 and 70] % even if the three organizations were to be excluded. Moreover, in all of these five regions Kesko's post-merger market share would be at least three times higher than the second largest competitor. The effect of excluding the Tarmo chain would similarly have very minor effects as this chain, according to Kesko, has a national market share of [...] % spread over about 500 outlets all over Finland.

(c) Local level

102. The Nielsen statistics are available also on a very local level, where Finland is divided into 439 areas. According to SOK, these areas are too small to even represent catchment areas, at least for larger outlets. The Commission does not have access to relevant turnover figures at this level for Stockmann, Wihuri and Sentra, as these have been included in the figures of Kesko and Tuko respectively. Given the limited activity of these three companies as explained above (see paragraphs 97, 98 and 101), it can be concluded that this does not significantly affect the reliability of the figures presented below.

103. The Nielsen statistics show that the combined Kesko and Tuko share of the sales is over [...] % in 294 (67 %) of the 439 areas, and that the combined sales exceeds [...] % in 49 of the areas. These statistics also indicate that there are 104 areas where either Kesko or Tuko achieved no

104. As an example of the function of these local statistics, the Uusimaa area, which is the region surrounding Helsinki, is broken down in these statistics to 35 different areas. It is clear that these 35 areas are too small to represent catchment areas in this region since, *inter alia*, they fail to take into account that a major part of the population in Uusimaa work in the central regions of Helsinki and thus have a good opportunity to do their shopping in the close vicinity of their place of work, or while driving between home and work. In any case, since these local areas might provide an indication of the combined strength of Kesko and Tuko at a very local level, the statistical figures for Uusimaa is presented below. The Uusimaa area should, if anything, understate the position of Kesko and Tuko since the Helsinki area is the most densely populated area where the number of competitors is the greatest (e.g. Elanto is only active there).

105. Within the Uusimaa area the combined Kesko and Tuko share of the sales is over [...] % in 29 of the 35 local areas. It is over [...] % in 23 of the areas, and over [...] % in 17. Finally, in 12 areas their share is over [...] %, and in three areas it is over [...] %.

III. Other factors

106. The combined market share of Kesko and Tuko of at least 55 %, whether assessed at local, regional or national level, creates a presumption of dominance. This presumption is further strengthened by Kesko's and Tuko's position as regards large retail outlets, their control of a significant part of all business premises suited for retail outlets in Finland, their customer loyalty schemes and private label products, their distribution systems and, not least, by the position of their central organs as buyers of daily consumer goods. All these factors, which contribute to raising significant barriers to entry on the Finnish markets for retail and wholesale of daily consumer goods will be examined below.

(i) *Large retail outlets*

107. The largest unit outlets, the hypermarkets, are normally located in off-centre locations and provide free parking space for their customers. Hypermarkets are generally considered to have significantly greater catchment areas than smaller outlets. Such hypermarkets are of particular importance, because the activity of a hypermarket will have a competitive impact on a larger number of other outlets than the smaller outlets.
108. There is a clear trend in the Finnish retail market for daily consumer goods that the hypermarkets are gaining sales at the expense of smaller retail outlets. In 1995, sales of hypermarkets grew by over ECU 140 million according to the 'Kehittyvä Kauppa' magazine, published by the K retailer association. It is notable that Kesko and Tuko accounted for two-thirds of the total increase in the hypermarkets. At the same time sales of all other outlets fell, with the greatest fall in terms of value (minus ECU 194 million) experienced by outlets with selling areas below 400 m².
109. In the Kehittyvä Kauppa magazine, hypermarkets are defined as outlets with a selling area exceeding 2 500 m². In a study conducted by KPMG Management Consulting⁽¹⁾ on the Finnish market for retail of daily consumer goods, hypermarkets in Finland are defined as outlets with a selling area exceeding 1 000 m².
110. Kesko argues that the definition of large retail outlets with a sales area exceeding 1 000 m² is probably out of date, and that the figure 2 500 m² is more appropriate. However, even Kesko itself has been inconsistent in this respect and used various figures to divide stores according to their size. In a study on price dispersion attached to Kesko's written reply to the Commission's Statement of Objections, Kesko itself refers to 1 000 m². Furthermore, at the oral hearing held in the case on 8 October 1996, Kesko's presentation material used a sales area for daily consumer goods of 1 500 m² for hypermarkets. Moreover, in its 1994 annual report (page 33), Kesko considers both K superstores and Citymarkets as 'large retail units'.
111. Furthermore, the Commission has received information on the average selling area of the outlets in the different chains operated by Kesko, Tuko and

their competitors. According to this information, none of the retail chains operating in Finland has an average selling area in excess of 2 500 m² (Kesko's Citymarket chain being closest with an average selling area of [...] m²).

112. For the reasons mentioned above, and as the Finnish population is rather small and dispersed, it is not unreasonable to assess the advantages resulting from having a strong position as regards large retail outlets on the basis of selling areas of 1 000 m².
113. Account being taken of outlets with a selling area exceeding 1 000 m², it is clear that the position of Kesko and Tuko is very strong. This is illustrated in Table 2.

Table 2

	Number of outlets (+ 1 000 m ²)	%
Kesko (Citymarket, Supermarket)	116	53
Tuko (SuperSpar)	34	16
SOK (Prisma)	28	13
Tradeka/Elanto (Euromarket, Maxi)	24	11
Others (Wihuri, Sentra, Suni)	15	7
Total	217	100

114. Apart from the fact that the average selling area of all outlets indicated in Table 2 is above 1 000 m², these outlets also share common characteristics as regards the average number of items sold (> 5 000) and their average yearly turnover (> ECU 5 million). Within the four main groups, the chain that 'comes closest' to qualifying to these criteria is the Tuko Spar Anttila outlets, which apart from having an average selling area of 905 m² are well

⁽¹⁾ 'Päivittäistavarakaupan kansainvälinen tehokkuusvertailu', Helsinki 25 October 1991.

above the other criteria. The second largest SOK outlets, the S-markets, of which there are 260 in Finland, are well below all three criteria. These outlets are instead in the same category as the 226 Kesko K markets. The second largest Tradeka/Elanto outlets, the Valintatalo chain, are even smaller.

Kesko has on several occasions used this possibility to delay its setting up of new retail outlets. If an appeal is lodged, the whole process can take up to five years.

115. In view of the above, and given the trend in Finland toward the growing importance of larger outlets, the stronger position of Kesko and Tuko regarding these outlets will increase further the dominance created by their combined market shares as described above.

118. Both Kesko and Tuko control a significant number of business premises suited for the retail of daily consumer goods, and have extensive experience in the management of such premises. This will further serve to maintain and increase the strength of the dominant position held by Kesko and Tuko on the retail market.

(ii) *Control of business premises suitable for retail outlets*

(iii) *Customer loyalty schemes*

119. Kesko operates the very successful K-advantage card, which exists as a charge or a credit card. In total, there are close to 600 000 K-advantage cards issued. Tuko has, so far not been very active in this area, as Tuko has issued just over 2 000 Sparcards.

116. The possibility to acquire or lease business premises suitable for the operation of retail of daily consumer goods is of vital importance for the profitability of such operations. Both Kesko and Tuko have over a long period built up extensive experience in the area of business premises management. As has been explained above, Kesko and Tuko own a significant share of all business premises within their respective group. In addition, Tuko owns 19 business premises operated by competitors. It should be noted that the percentage of business premises that are owned by Kesko and Tuko is especially high as regards the larger retail outlets, which are of key importance to the group. Ownership of these business premises guarantees that these locations will remain within the group, even if the retailer presently operating them was to terminate his business operations.

120. The K-advantage card can be used in a total of about 3 000 shops in Finland, including all K shops (i.e. supermarkets and all speciality goods outlets). In addition to creating incentives for customer loyalty, these cards also serve as an important marketing tool for Kesko. Through the information received on customers' purchasing habits, marketing can be timed and directed to target groups.

117. The setting up of a retail outlet for daily consumer goods requires a number of permits from local authorities, the most important of which is to get the approval of altering the city plan. According to the competitors of Kesko and Tuko, such approvals are getting more and more difficult to acquire, especially for larger outlets. In areas which have not yet been city planned, which is often the case for locations suitable for hypermarkets, a company wanting to set up such an outlet has to start the whole process of getting the local authorities to draw up a city plan. Such a procedure can take up to three years in Finland. Moreover, the administrative procedure involved in the city planning allows for third parties to appeal against the setting up of new retail outlets. According to one competitor,

121. Kesko has argued that the K block has the same number of or fewer cardholders than its competitors and that several persons in a household can have cards. This argument is, however, irrelevant as the Commission is not assessing Kesko's position in a market for loyalty cards. The key issue relating to such cards is the potential to use the flow of information regarding customer's purchase habits. Taking into consideration the very high market share of Kesko following the acquisition of Tuko, the possibility of Kesko to use such information will clearly be improved and will be at a level which none of its competitors can match.

122. Kesko states further in its reply to the Commission's Statement of Objections that information on consumers' purchasing habits cannot be used because of the diversity of the computer systems of the K retailers. However, in its 1994 annual report Kesko declares its decision 'to provide the K stores with up-to-date information systems suitable for use in the K network', and to make a large investment in the K retailers' information systems and to

lease equipment to the K retailers. Further, in its 1995 annual report Kesko announces that two new companies 'Tietokesko Oy and K-linkki Oy, which were organized into subsidiaries and are responsible for Kesko's and the K stores' information technology', started their operations on 1 September 1995. The function of K-linkki Oy is 'to provide the K-Group's retail stores with information technology services appropriate for chain operations'.

123. In addition to the abovementioned, the chain agreements between Kesko and the K retailer further state that 'The competitive advantage of the chain is strengthened by compatible information systems and by the centralized decision-making of the chain's retailers effected on the basis of the information received therefrom'. The same agreement states further that 'The retailer's information systems are in accordance with the chain's needs and with the K group's information systems architecture, as well as compatible with the systems of the chain. The retailer uses the chain's common product grouping and keeps the updating and codes of his information system up-to-date all the time.' Moreover, under the collaboration agreement between Kesko and the K retailer, Kesko offers to the retailer certain services, including planning of information system solutions as well as giving training and advice in their use.
124. It is clear from the above, that the development and compatibility of the K retailers' and Kesko's information systems, for, for example, the common use of information, play an important role in Kesko's recent reorganization.
125. Following the acquisition of Tuko, the coverage of the K-advantage cards could be expanded to cover also the Tuko outlets. Since Tuko has issued relatively few Sparcards, many customers used to shopping in the Tuko outlets would be expected to acquire such cards. This potential increase in the number of issued K-advantage cards, when realized, will give Kesko a significant advantage in terms of knowledge of customer purchasing habits, and allow its marketing efforts to increase the loyalty of its customers.

(iv) *Private brands*

126. Kesko has stated that sales in the different chains sales of private label products (Pirkka) accounted for between [...] % of all sales in 1995. In addition,

Kesko sells, jointly with ICA of Sweden and Hakon Gruppen of Norway, products under other private labels (Diva and Menu). According to information received by the Commission, Kesko's private labels account for 20 to 30 % of its total sales in many product groups. In the Tuko Spar chain [...] % of total sales were accounted for by its Eldorado products. It is unclear whether products sold under the Spar and Smart brands are included in this figure indicated for Tuko. In addition, as has been mentioned earlier, the private brand products of Kesko and Tuko are sold by Stockmann and possibly others. None of the competitors of Kesko and Tuko have managed to establish such successful private brand products.

127. According to the 1995 annual report of the Spar organization, private label products are a vital element of the product mix and continue to account for a continuing proportion of total sales. Further, according to the same source, private-label products are used to encourage consumers to make repeat visits.
128. Although it is probably necessary for retailers to stock at least one premium brand product in each product group, private label products offer several advantages to Kesko and Tuko in their retail operations. One such advantage is that these products are not sold by other retailers, which are perceived of as competitors. Although private-label products are generally sold at lower retail price than branded products, the margins on these products can in fact be set at a higher level compared to branded products, which are available from competing retailers as well.
129. However, according to producers of branded products, private label products of Kesko and Tuko are used as a negotiation tool *vis-à-vis* their suppliers (see below).

130. In conclusion, the strong position of the private label products of Kesko and Tuko will provide advantages in terms of customer loyalty and possibly the ability to price a greater proportion of its sales without having the need to take into account the reaction of its competitors in the same way as with branded products.

(v) *Distribution systems*

131. Kesko has a subsidiary, Kesped Oy, active in, *inter alia*, transportation of daily consumer goods. Tuko's transport activities are carried out by Finn-frost Oy, a joint venture between Tuko and Inex Partners. According to information received by the Commission, these two systems offer the only available distribution systems for frozen foods in Finland.

132. The acquisition of Tuko will therefore increase Kesko's possibilities to influence the conditions under which daily consumer goods are transported in Finland. This will increase the dependency *vis-à-vis* Kesko of competing third party retailers, industrial households and, at least, small and medium-sized producers of frozen foods that use the transport services of either of the two companies. As frozen products constitute an important and integral part of the basket of daily consumer goods, Kesko's control over this distribution system will constitute a significant barrier to entry on the retail market.

(vi) *Advantages resulting from increased buying power*

133. The position of Kesko following the acquisition of Tuko, where an agreement with Kesko would be the only way for a supplier to guarantee shelf space in retail outlets representing at least 55 % of the Finnish market will create a unique purchasing power in the hands of Kesko. This will be further strengthened by their position on the cash-and-carry market (see also below paragraphs 146 to 153). Moreover, the strength created by this gate-keeper effect would be further increased by the combination of the successful Kesko and Tuko private label products, which could be used as a further negotiating tool *vis-à-vis* suppliers to achieve additional concessions on, *inter alia*, reduced prices or increased marketing support.

134. Post-merger, Kesko will thus be able to obtain lower prices from producers to an extent that none of its competitors will be able to match. This will act as a further dis-incentive for Kesko's competitors to actively compete, in particular, on prices against Kesko. It will also make new entry on the market more difficult and as such act as a significant barrier to entry on the market.

135. Therefore, Kesko's purchasing power would allow it the ability to act, to a significant extent, independently of its competitors on the retail market.

(vii) *Conclusion*

136. Following the acquisition of Tuko, Kesko would hold a market share of at least 55 % of the Finnish market for retail of daily consumer goods, whether assessed at local, regional or national level. This position will be further strengthened by the special factors explained above, which would raise barriers to entry and make it more difficult for existing competitors to compete actively on the market.

137. These strengths of Kesko makes it extremely unlikely that SOK, Tradeka/Elanto or any of the smaller private competitors of Kesko would be able to restrict Kesko's behaviour in the market in any significant way, and in particular if it were to increase consumer prices. The Commission's investigation shows that Kesko's competitors are fully aware of the dominant position that would be held by Kesko following the acquisition, as well as of the several ways in which Kesko could use this position against them.

138. For the above reasons, the Commission has come to the conclusion that the concentration would lead to the creation or strengthening of a dominant position on the Finnish market for retail of daily consumer goods through which effective competition would be significantly impeded.

2. Cash-and-carry market*1. Structure of supply in cash-and-carry market*

139. The Finnish market for cash-and-carry sales of daily consumer goods is very concentrated. In this respect, it should be noted that a large majority of cash and carry customers are captive to this form of distribution (see paragraphs 24 to 31). Kesko and Tuko operate 26 and 30 such outlets respectively in Finland. Neither Inex Partners or its sister company, Meira Nova, is active in the cash-and-carry business. Apart from the outlets operated by Kesko and Tuko, there are only 11 other cash-and-carry outlets in Finland, seven of them operated by Wihuri, and two each operated by Heinon Tukku and Veljekset Halonen Oy (Halonen). The geographic dispersion of cash-and-carry outlets operated by these companies is illustrated in Table 3.

Table 3

	Kesko	Tuko	Wihuri	Halo- nen	Heinon Tukku
Uusimaa	3	6			2
Varsinais-Suomi	2	1	3		
Ahvenanmaa					
Satakunta	1	2	1		
Etelä-Häme	2	1	1		
Tammermaa	1	2	2		
Kaakkois-Suomi	3	1		2	
Keski-Suomi	1	1			
Etelä-Savo	2				
Pohjois-Savo	2	3			
Pohjois-Karjala	1	2			
Etelä-Pohjanmaa	2	5			
Keski-Pohjanmaa	2	3			
Pohjois-Pohjanmaa	1	2			
Kainuu	1				
Lappi	2	1			

140. It should be noted that all three of the local cash-and-carry companies have links to Tuko, since Tuko invoices part of the sales to their customers. In addition, Tuko is the main supplier of Wihuri's retail operation.

II. Market shares

141. The total cash-and-carry sales of Kesko in Finland in 1995 was ECU 295 million, [...] % of which was made up from sales to industrial households. Over the same period, Tuko achieved total sales of ECU 197 million, [...] % of which was made up from sales to industrial households. Thus, the combined

sales of Kesko and Tuko on this market was ECU 492 million. This was almost four times as much as the combined sales of the only other three companies active in the cash-and-carry market. Measured at national level, the combined market share of Kesko and Tuko would reach almost 80 %.

142. However, given that the cash-and-carry customers have to transport the purchased goods themselves, the national market share of Kesko and Tuko cannot provide more than an indication of their combined strength within this field.
143. On a regional level, i.e. within the statistical areas indicated in Table 3, the combined market share of Kesko and Tuko would exceed [...] % in all areas. In fact, the combined market share would exceed [...] % in all areas except in Uusimaa, where Heinon Tukku has a relatively strong position. Out of the 16 regions, Kesko would be the only cash-and-carry operator in nine following the concentration. In seven of these nine areas, this position is created by the acquisition of Tuko.

III. Conclusion

144. The acquisition of Tuko by Kesko would create a dominant supply structure on the Finnish market for cash-and-carry sales of daily consumer goods. The combined market share would be between [50 and 100] % in all regions. In addition this position would be strengthened by Kesko's buying power in the same way as explained above concerning the retail market (see paragraphs 133 to 135). It is therefore extremely unlikely that Wihuri, Heinon Tukku or Halonen, which are all linked to Tuko, would be able to restrict Kesko's actions if it were to increase prices. The investigation has shown that the local cash-and-carry companies would have very limited possibilities of restricting Kesko from abusing its strong position following the concentration.
145. For the above reasons, the Commission has come to the conclusion that the concentration would lead to the creation or strengthening of a dominant position on the Finnish market for cash and carry of daily consumer goods through which effective competition would be significantly impeded.
- ### 3. Markets for procurement of daily consumer goods
146. The most important distribution channel for daily consumer goods is clearly through retail supermarkets. As stated above (paragraph 106) the combined national share of Kesko and Tuko of the retail

market for daily consumer goods is at least 55 %. The second most important channel is sales at cash-and-carry outlets. In this market, the combined national market share of Kesko and Tuko is about 80 %. Kesko's and Tuko's total sales in the cash-and-carry market equal more than 25 % of their retail sales. This guarantees Kesko an extremely powerful negotiating position *vis-à-vis* the producers of daily consumer goods.

ness and consumer perception regarding their products. Thus, although some very large producers of highly regarded brand products may have some countervailing power *vis-à-vis* Kesko, it will be of vital importance for most small and medium-sized producers to maintain sales through Kesko at the present level.

147. Although distribution channels other than supermarkets, e.g. pharmacies, are available to some producers, mainly in the non-food sector it is clear that distribution channels other than those dominated by Kesko and Tuko are not viable alternative distribution channels for the majority of producers.

148. Kesko has stated that as far as central invoicing is concerned, 'all terms and prices of products are negotiated directly between the supplier and the retailer'. However, the Commission's investigation strongly indicates that most or all negotiations between producers and Kesko involve personnel employed by Kesko and its associated companies, rather than K retailers. This applies to negotiations both on product prices and marketing support fees. The latter are particularly important since in Finland they are the means by which producers grant concessions to important customers. In any event the Commission maintains its contention in paragraph 52 that producers perceive Kesko as an integrated entity irrespective of contact point or sales channel. Therefore, a producer will feel himself to be in a weaker negotiating position if he is convinced that his negotiating stance will become known throughout the K block.

149. In a wider sense, the very economic rationale of the K block is increased purchasing power, a fact proclaimed in Kesko's 1995 annual report where it is stated that the aim of its recent reorganization is to increase Kesko's purchasing power.

150. As an indication of the magnitude of the buying power of Kesko and Tuko, the majority of the suppliers (including several major multinationals) who replied to the Commission's investigation indicated that they depend on Kesko and Tuko for approximately 50 to 75 % of their total sales in Finland. The dependency of different suppliers will differ according to the nature and size of their busi-

151. Kesko will not be dependent on any individual supplier to the same extent. Kesko has provided a series of statistics purporting to show its dependence on producers in terms of percentages of individual products purchased from individual producers. However, the percentages are not particularly high, exceeding 50 % for one supplier in only four of 10 product groups cited. In any event, for any one product group Kesko will normally be able to switch from one supplier to another, since there will nearly always be an alternative large producer with adequate capacity to meet increased short-term demand. The producers, on the other hand, will not have a similar possibility to switch from Kesko post-merger, since Kesko's retailing competitors will not have the capacity (with only about 40 % of the market) and additional retailing capacity can only be brought on-stream in the medium or even long term.

152. Moreover, recent developments in retailing will enhance the buying power of the merged entity. In particular, private label development is a key element in the power wielded by retailers *vis-à-vis* branded daily consumer-goods producers. It enables retailers, who are inevitably privy to commercially sensitive details regarding the branded goods producers' product launches and promotional strategies, to act as competitors as well as key customers of the producers. This privileged position increases the leverage enjoyed by retailers over branded-goods producers. Both Kesko and Tuko already market successful private label products. Again, a new dimension in retailers' control over information is emerging with the increased use of store payment cards and 'loyalty' cards, which enable retailers to make targeted appeals to individual consumers based on known patterns of past purchases and socio-demographic profiles. The potential combination and expansion of Kesko's and Tuko's card schemes will enhance their negotiating power *vis-à-vis* producers, who do not enjoy the same immediate access to information as consumer behaviour.

153. For these reasons, and given that the concentration would lead to dominant positions on the retail and cash-and-carry markets, the Commission is of the opinion that the increased buying power of Kesko would further reinforce the dominant position of Kesko on the retail and cash-and-carry markets. In particular Kesko would be able to use its buying power to employ different strategies, the long-term effects of which would be to further weaken the position of its competitors.

C. POTENTIAL COMPETITION

154. There has not been any foreign new entry to any of the markets discussed above. It is very likely that one of the main reasons for this is that Kesko even before the acquisition of Tuko enjoyed a very strong buying position as the most important customer of the majority of all producers of daily consumer goods. It would also seem that Finland's geographic position reduces the scope for most potential entrants in achieving economies of scale and/or scope from an expansion of business operations to Finland.
155. Whereas the acquisition of Tuko might have offered a window of opportunity for entering the Finnish market, there are in effect no other companies in Finland, the acquisition of which could be used to achieve a similar result. It can thus be presumed that any foreign company wishing to enter the Finnish market will have to be prepared to invest significant amounts in finding and developing new retail outlets, marketing of a new brand name, etc. Such investments would to a large extent not be recoverable if the entry showed to be unsuccessful.
156. According to Kesko, food retailing is undergoing a process of internationalization, demonstrated by the fact that several western European companies have expanded their operations outside their country of origin. In view of this the Commission has contacted all companies mentioned by Kesko as potential entrants on the Finnish markets, as well as several companies known to have expanded retail operations abroad. According to these companies, the most important criteria in assessing whether to enter a new market relate to existing competition, availability of local partners (suppliers, wholesalers) and access to competitively priced

goods, access to sufficient number of good store locations and local spending power.

157. The strengthening of Kesko's position on the markets described above makes it very doubtful that a potential new entrant would find any of the abovementioned criteria fulfilled. Prior to the concentration, a new entrant could have established a cooperation with Tuko as a wholesaler. Following the concentration, a new entrant would most certainly find it very difficult to find local wholesalers and/or suppliers to cooperate with and, in particular, to secure supplies at prices comparable to those of Kesko. A potential new entrant would experience difficulties in securing access to store location, given, *inter alia*, the existing possibilities under Finnish law to appeal city planning decisions (see paragraph 117).
158. The increase in Kesko's buying power will constitute one of the most significant barriers to foreign entry, since one of the key questions for any potential entrant will be to secure access to daily consumer goods at prices which allows such an entrant to effectively compete with Kesko. This would apply also to the market for cash-and-carry sales.
159. Even in the hypothetical scenario where a foreign company would try to enter the Finnish market for retail of daily consumer goods, it is unlikely that such an entry would have any impact on the position of Kesko. This can be demonstrated by an example from Sweden, a market that in many respects has similar characteristics as the Finnish market. The Norwegian company Rema 1000, stated by Kesko as one of the most likely entrants to the Finnish market, did enter the Swedish market in 1991 with their discount store concept. According to the company itself, its market share in Sweden, after five years of operations, is below 1 %.
160. Theoretically, the most logical potential entrants on the Finnish market would seem to be companies with strong positions in Sweden or Norway, since such companies are situated closest to the Finnish market both in terms of geography and in market structure. However, Kesko has extensive cooperation with the Swedish market leader, ICA, as well as with the Norwegian market leader, Hakon-gruppen. This cooperation includes joint

purchasing and cooperation concerning private labels products, e.g. 'Diva'. Similarly, Tuko has extensive cooperation with Swedish Dagab, Danish Dagrofa and Norwegian Unil, which also involves the joint ownership of the 'Eldorado' private labels.

161. In conclusion, in the past there has been no entry on any of the markets where Kesko would hold a dominant position following the concentration. It is also likely that Kesko, when acquiring Tuko, had realized that the acquisition of Tuko would serve as a window of opportunity to enter the Finnish market at reasonably high risk. It has therefore to be concluded that the concentration increases barriers to entry, and that it is extremely unlikely that any entry would be possible following completion of the acquisition.

VII. UNDERTAKINGS PROPOSED BY KESKO

162. By letter of 23 October 1996, Kesko submitted proposals for undertakings in order to remove the doubts raised as to the compatibility of the concentration with the common market. Kesko's proposal contained undertakings to:

- (1) sell about 55 % of Tuko's previous activities relating to wholesaling of daily consumer goods and all Tuko's Cash-and-Carry outlets; and
- (2) sell [...] retail outlets ([...] Spar stores owned by Tuko and [...]).

Kesko proposed to complete the said undertakings before the end of year 1997.

163. According to Kesko the proposed divestiture would form the basis for the creation of a new block of retailers on the market (Newco). In addition to the [...] retail stores mentioned above, this new 'block' would consist of four retail groups; Stockmann, Wihuri, Sentra and Tarmo (see paragraphs 76 and 87 to 91). The combined market share of Newco would, according to Kesko, be about 11 %.

Market position of Newco

164. Newco would consist of five different retailing organizations (each with a national market share of about 2 %). Of these five organizations only the [...] previous Tuko and [...] would be legally incorporated in Newco. The other four organizations are Stockmann, Wihuri, Sentra and Tarmo, which are a heterogeneous group of retailing organ-

izations, whose connections to Newco would be weaker than they were with Kesko/Tuko before the concentration and which would only consist of sales agreements. Moreover, Newco would be regionally skewed, since most of its outlets would be in the south-west of Finland.

165. Newco would be at a competitive disadvantage *vis-à-vis*, in particular, Kesko since it would be very weak as regards large size outlets and since it would not have any joint private label or customer loyalty scheme. Newco would also be at a competitive disadvantage as concerns logistics and distribution to its outlets. Furthermore, the majority of the [...] Spar stores that would be sold to Newco have not been operating profitably. Lastly, Newco would have a competitive disadvantage as concerns purchasing as it would not be able to conclude purchasing agreements for more than, at most, one-fifth of the volume of Kesko. This would also have a negative impact on Newco's cash-and-carry activities.

166. In view of the above none of the representatives of producers, competitors or customers contacted by the Commission were of the opinion that Newco would be able to act as an integrated competitor in the medium to long term. Moreover, all companies contacted replied that they would not be interested in acquiring Newco.

Market position of Kesko following the proposed measures

167. In spite of Kesko's proposal, the concentration would still mean that the K retailers and the Spar retailers, which constitute the essential elements in the concentration, would be combined in the same organization, with a market share approaching 50 %. The [...] Spar stores to be divested would represent only some 9 % of Tuko's turnover at retail level. The corresponding figure for the [...] would be some 2 %.

168. In this respect it has to be borne in mind that, prior to the concentration, Kesko already had the highest national market share of any retailer of daily consumer goods in the EU, and faced competition from, mainly, Tuko and SOK, each with a market share of approximately 20 %. Even if Kesko's proposal were to be implemented, Kesko would have a market share 2,5 times larger than that of SOK. Moreover, Newco would, for the reasons indicated above, be a much weaker competitor than Tuko has been in the past.

169. All representatives of producers, competitors or customers contacted by the Commission were of the opinion that, since the concentration would still significantly increase Kesko's market share as well as reduce the competitive strength of the other retailers on the market, the operation would, despite the proposed remedies, result in a dominant position. One competitor indicated that, due to the inherent weakness of Newco, it is likely that Kesko would be able to regain most of the market share seemingly transferred to Newco in the medium term.

Overall comment

170. The main competitive concerns identified by the Commission concerns the retail market, which is the main market, in terms of turnover as well as direct impact on Finnish consumers. For the reasons stated above, Kesko's proposal is clearly insufficient to deal with the problems identified on this market.
171. Given that Kesko has not offered any undertaking able to address the problems identified on the retail market, this would mean that the problems identified would remain on the retail market. It is also doubtful whether the proposal could remove the competitive concerns on the cash-and-carry market, since Newco would not have the same possibility as Tuko to compete with Kesko concerning the achievement of advantageous purchasing conditions.
172. Therefore, it has to be concluded that the remedies proposed by Kesko are not capable of removing the dominant position, in particular on the retail market for daily consumer goods in Finland.

Therefore, the concentration cannot be authorized on the basis of the proposals made by Kesko.

VIII. CONCLUSION

173. As a result of the concentration, Kesko Oy would acquire a dominant position on the Finnish markets for retail of daily consumer goods and cash-and-carry sales of daily consumer goods. As the concentration has already been implemented, the Commission will, in a separate decision based on Article 8 (4) of Regulation (EEC) No 4064/89, adopt appropriate measures in order to restore conditions of effective competition,

HAS ADOPTED THIS DECISION:

Article 1

The concentration by which Kesko Oy acquired sole control of Tuko Oy by purchase of shares is declared incompatible with the common market and with the functioning of the EEA Agreement.

Article 2

This Decision is addressed to:

Kesko Oy
Satamakatu 3
FIN-00160 Heksinki.

Done at Brussels, 20 November 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 11 April 1997

amending Decisions 95/160/EC, 95/161/EC and 95/168/EC concerning the methods to be used for microbiological testing

(Text with EEA relevance)

(97/278/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/539/EEC of 15 October 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 9 (a) (2) and (b) (2) thereof,

Having regard to Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (1) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC⁽²⁾, as last amended by Directive 96/90/EC⁽³⁾, and in particular Annex II, Chapter 2, first indent, thereof,

Whereas Commission Decision 95/160/EC of 21 April 1995 establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of breeding poultry and day-old chicks for introduction into flocks of breeding poultry or flocks of productive poultry⁽⁴⁾ provides in particular for a microbiological test for the examination of the samples;

Whereas Commission Decision 95/161/EC of 21 April 1995 establishing additional guarantees regarding salmonella for consignments to Finland and Sweden of laying hens⁽⁵⁾ provides in particular for a microbiological test for the examination of the samples;

Whereas Commission Decision 95/168/EC of 8 May 1995 establishing, as regards salmonella, additional guarantees for consignments to Finland and Sweden of certain types of eggs intended for human consumption⁽⁶⁾ provides in

particular for a microbiological test for the examination of the samples;

Whereas the Scientific Veterinary Committee in its report of 3 June 1996 has given an opinion concerning microbiological testing methods offering equivalent guarantees;

Whereas it is appropriate to amend Decisions 95/160/EC, 95/161/EC and 95/168/EC in order to introduce the possibility to use a microbiological testing method offering equivalent guarantees as the one which is provided for;

Whereas the methods described in this Decision take into account the opinion of the Scientific Veterinary Committee;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

In Annex I to Decision 95/160/EC, point 3 is replaced by the following:

'3. Microbiological test for examination of the samples

— Microbiological testing of the samples for salmonella should be carried out to the standard of the International Organization for Standardization ISO 6579:1993 or revised editions, or by the method described by the Nordic Committee on Food Analysis (NMKL method No 71, fourth edition, 1991) or revised editions.

— Where the results of analysis are contested between Member States the standard of the International Organization for Standardization ISO 6579:1993 or revised editions should be regarded as the reference method.'

Article 2

In Annex I to Decision 95/161/EC, point 4 is replaced by the following:

⁽¹⁾ OJ No L 303, 31. 10. 1990, p. 6.

⁽²⁾ OJ No L 62, 15. 3. 1993, p. 49.

⁽³⁾ OJ No L 13, 16. 1. 1997, p. 24.

⁽⁴⁾ OJ No L 105, 9. 5. 1995, p. 40.

⁽⁵⁾ OJ No L 105, 9. 5. 1995, p. 44.

⁽⁶⁾ OJ No L 109, 16. 5. 1995, p. 44.

'4. Microbiological test for examination of the samples

- Microbiological testing of the samples for salmonella should be carried out to the standard of the International Organization for Standardization ISO 6579:1993 or revised editions, or by the method described by the Nordic Committee on Food Analysis (NMKL method No 71, fourth edition, 1991) or revised editions.
- Where the results of analysis are contested between Member States the standard of the International Organization for Standardization ISO 6579:1993 or revised editions should be regarded as the reference method.'

Article 3

In Annex I to Decision 95/168/EC, point 3 is replaced by the following:

'3. Microbiological test for examination of the samples

- Microbiological testing of the samples for salmonella should be carried out to the standard of the International Organization for Standardization

ISO 6579:1993 or revised editions, or by the method described by the Nordic Committee on Food Analysis (NMKL method No 71, fourth edition, 1991) or revised editions.

- Where the results of analysis are contested between Member States the standard of the International Organization for Standardization ISO 6579:1993 or revised editions should be regarded as the reference method.'

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 11 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission
