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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1740/97
of 5 September 1997
amending Regulation (EEC) No 1201/89 laying down rules implementing the
system of aid for cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act of Accession of Greece, and in particular Protocol 4 on cotton, as last amended by Council Regulation (EC) No 1553/95⁽¹⁾,

Having regard to Council Regulation (EEC) No 1964/87 of 2 July 1987 adjusting the system of aid for cotton introduced by Protocol 4 annexed to the Act of Accession of Greece⁽²⁾, as last amended by Regulation (EC) No 1553/95, and in particular Article 2 (4) thereof,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81⁽³⁾, as amended by Regulation (EC) No 1584/96⁽⁴⁾, and in particular Article 11 (1) thereof,

Whereas Commission Regulation (EEC) No 1201/89 of 3 May 1989⁽⁵⁾, as last amended by Regulation (EC) No 1645/96⁽⁶⁾, lays down the detailed rules for implementing the system of aids for cotton; whereas, in order to improve the administration and control of the system and to avoid the risk of double payments on the same land, certain provisions of the integrated administration and control system (IACS) should be made applicable to the system;

Whereas, in particular, the lodging of declarations of areas sown to cotton should be harmonized with the relevant rules provided for under IACS; whereas identification of

the areas sown to cotton must be carried out in accordance with IACS; whereas an additional measure consisting in carrying out cross-checks with the system provided for in the integrated system should be added to the controls carried out by Member States;

Whereas Article 9 (2) of Regulation (EEC) No 1201/89 lays down a time limit for the lodging of applications for supervised storage; whereas, in order to prevent the excessive withholding of unginned cotton by producers and, as a result, the deterioration of the quality of the stored product, Member States should be given the possibility of setting an earlier date;

Whereas Article 9 (8) of Regulation (EEC) No 1201/89 provides for operators, upon application, to be granted an advance on the aid under certain conditions; whereas, with a view to clarification, the method for calculating the advance where it relates to several supervised storage operations carried out on different dates should be specified;

Whereas Article 14 (1) of Regulation (EEC) No 1201/89 sets 15 August as the date by which certain information relating to the current marketing year should be reported each year; whereas this date should be brought forward in order to make that information more useful in the management of the sector; whereas the same provision also sets 15 August as the date by which the areas sown to cotton in the following marketing year are communicated each year; whereas, in order to facilitate the proper functioning of the system a communication covering the relevant estimated production should be added;

Whereas the second subparagraph of Article 15 of Regulation (EEC) No 1201/89 provides for the possibility to fix in advance the agricultural conversion rate for the aid; whereas that provision can only be applied under certain precise conditions, in particular the mechanism for the advance fixing of aid as referred to in Articles 13 to 17 of

⁽¹⁾ OJ L 148, 30. 6. 1995, p. 45.

⁽²⁾ OJ L 184, 3. 7. 1987, p. 14.

⁽³⁾ OJ L 148, 30. 6. 1995, p. 48.

⁽⁴⁾ OJ L 206, 16. 8. 1996, p. 16.

⁽⁵⁾ OJ L 123, 4. 5. 1989, p. 23.

⁽⁶⁾ OJ L 207, 17. 8. 1996, p. 3.

Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates⁽¹⁾, as last amended by Regulation (EC) No 1482/96⁽²⁾; whereas as a result of the abolition of that mechanism in the cotton sector the advance fixing of the green rate should also be abolished;

Whereas Annex B to Regulation (EEC) No 1201/89 sets the rules for adjusting the weight of unginned cotton as a function of fibre quality criteria; whereas, with a view to harmonization, those adjustments should be aligned with those practised on the world market;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1201/89 is hereby amended as follows:

1. Article 8 (1) is replaced by the following:

'1. All Community cotton growers shall send an annual declaration of areas sown to cotton by means of the "area" aid application form provided for in the integrated administration and control system (IACS) before a date set by the Member State concerned. The agricultural plot or plots concerned shall be identified in accordance with the system for identifying agricultural plots provided for under IACS. Where applicable, the grower shall submit a corrected declaration to take account of the area actually sown to cotton by 1 July of the following year at the latest.'

2. In Article 9 (2), the following subparagraph is inserted between the first and second subparagraphs:

'However, Member States may set the time limit for lodging applications at an earlier date than that referred to in the previous subparagraph provided this does not distort in a significant way trade in the sector. In such a case, Member States shall adopt the new time limit no later than 30 days before the established time limit and shall immediately inform the Commission thereof.'

3. In Article 9 (8) is replaced by the following:

'From the start of supervised storage and with effect from 16 October following the start of the marketing year, Member States shall, on request, grant those

concerned an advance on the aid, provided a security at least equal to 110 % of the advance is lodged. The advance shall be equal to the amount of the advance in ecus per 100 kilograms valid on the day on which the application for supervised storage was lodged multiplied by the quantities to which the application relates. The security shall take one of the forms provided for in Article 8 of Regulation (EEC) No 2220/85. The security shall be forfeited pro rata to the amount by which the advance to be paid exceeds the amount of the aid to be granted.'

4. Article 10 (2) (e) is replaced by the following:

'(e) the area, expressed in hectares and ares, with identification of the agricultural plot or plots in accordance with the system for identifying agricultural plots laid down under IACS;'

5. In Article 12 (1), the following point is added:

'(f) by cross-checks, that the agricultural plots mentioned in the contracts correspond to those declared by the growers in their "area" aid applications.'

6. In Article 14 (1) (d), '15 August' is replaced by '15 May' and the first indent is deleted.

7. In Article 14 (1), the following point is added:

'(e) by 15 August at the latest each year:

- the areas shown to cotton during the current year, if necessary adjusted in accordance with Article 8 (2),
- the corresponding estimated production of unginned cotton as referred to in Article 5 (3) of Regulation (EC) No 1554/95.'

8. Article 15 is replaced by the following:

Article 15

The conversion rate to be applied to the minimum price, the amount of the advance and the aid shall be the representative rate in force on the day the cotton is placed under supervised storage.'

9. Annex B is amended as follows:

(a) in point 2, the first paragraph is replaced by the following:

'Without prejudice to point 4, the weight as such of a consignment of ginned cotton is to be increased by 0,6 % for each half-point of moisture below 8,5 % and reduced by the same percentage for each half-point of moisture above 8,5 %.'

⁽¹⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽²⁾ OJ L 188, 27. 7. 1996, p. 22.

(b) in point 3.1, the table is replaced by the following table:

'Grade	Percentage by which weight is adjusted
3,5 and less	plus 1,5
4	plus 1
4,5	plus 0,5
5	—
5,5	minus 0,5
6	minus 1
6,5	minus 1,5
7	minus 2
7,5	minus 2,5
8	minus 4
8,5 and more	minus 5'

(c) in point 3.2, the second paragraph is replaced by the following:

'The actual weight is to be increased by 0,6 % for each half-point of impurities below 2,5 % and reduced by the same percentage for each half-point of impurities above 2,5 %.'

Article 2

This Regulation shall enter into force on the 7th day following its publication in the *Official Journal of the European Communities*.

Article 1 (2), (3), (8) and (9) shall apply from the 1997/98 marketing year.

Article 1 (1), (4), (5), (6) and (7) shall apply to area declarations lodged from the 1998/99 marketing year.

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

Done at Brussels, 5 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

**COMMISSION REGULATION (EC) No 1741/97
of 5 September 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,

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.

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, 5 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ L 81, 28. 3. 1991, p. 108.

ANNEX

LOTS A, B, C

1. **Operation Nos** ⁽¹⁾: 388/96 (A); 16/97 (B); 17/97 (C)
2. **Programme**: 1996 + 1997
3. **Recipient** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma (tel.: (39-6) 52 28 29 88; fax: 52 28 28 44/3; telex: 626675 WFP I)
4. **Representative of the recipient**: to be designated by the recipient
5. **Place or country of destination**: A: Angola; B: Ethiopia; C: Tajikistan
6. **Product to be mobilized**: white sugar
7. **Characteristics and quality of the goods** ⁽³⁾ ⁽⁷⁾ ⁽⁸⁾: see OJ C 114, 29. 4. 1991, p. 1 (V.A (1))
8. **Total quantity (tonnes)**: 900
9. **Number of lots**: 3 (A: 100 tonnes; B: 500 tonnes; C: 300 tonnes)
10. **Packaging and marking** ⁽⁹⁾ ⁽⁶⁾: see OJ C 267, 13. 9. 1996, p. 1 (11.2, A(1)(b) and B(4))
see OJ C 114, 29. 4. 1991, p. 1 (V.A (3))
Language to be used for the marking: A: Portuguese; B + C: English
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
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**: 20. 10 — 9. 11. 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**: 22. 9. 1997 (12 noon (Brussels time))
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 6. 10. 1997 (12 noon (Brussels time))
 - (b) period for making the goods available at the port of shipment: 3 — 23. 11. 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 Bruxelles/Brussel (tlx: 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 27. 8. 1997, fixed by Commission Regulation (EC) No 1648/97 (OJ L 230, 21. 8. 1997, p. 1)

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 L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ 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 L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ L 188, 27. 7. 1996, p. 22), shall not apply to this amount.
 - (5) Notwithstanding OJ C 114, point V.A (3) (c) is replaced by the following: 'the words "European Community"'.
 - (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 Regulation (EEC) No 2103/77 (OJ L 246, 27. 9. 1977, p. 12) is binding for determination of the sugar category.
 - (8) The successful tenderer shall supply to the beneficiary or its representative, on delivery, the following document:
 - health certificate.
-

COMMISSION REGULATION (EC) No 1742/97
of 5 September 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,

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.

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, 5 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 204, 25. 7. 1987, p. 1.

⁽³⁾ OJ L 81, 28. 3. 1991, p. 108.

ANNEX

LOT A

1. **Operation No** (1): 402/96
2. **Programme**: 1996
3. **Recipient** (2): Euronaid, Postbus 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**: Cuba
6. **Product to be mobilized**: whole milk powder
7. **Characteristics and quality of the goods** (3) (5): see OJ C 114, 29. 4. 1991, p. 1 (I.C. (1))
8. **Total quantity (tonnes)**: 45
9. **Number of lots**: 1
10. **Packaging and marking** (4) (7): see OJ C 267, 13. 9. 1996, p. 1 (6.3 A and B.2)
see OJ C 114, 29. 4. 1991, p. 1 (I.C. (3))
Language to be used for the marking: Spanish
11. **Method of mobilization**: the Community market
The whole milk powder must be manufactured after the award of the tender
12. **Stage of supply**: free at port of shipment
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**: 13. 10 — 2. 11. 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 22. 9. 1997
21. **In the case of a second invitation to tender**:
 - (a) deadline for the submission of tenders: 12 noon (Brussels time) on 6. 10. 1997
 - (b) period for making the goods available at the port of shipment: 27. 10 — 16. 11. 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, à l'attention de Monsieur 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): refund applicable on 3. 9. 1997, fixed by Commission Regulation (EC) No 1678/97 (OJ L 238, 29. 8. 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 L 210, 1. 8. 1987, p. 56), as last amended by Regulation (EEC) No 2226/89 (OJ 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 L 108, 1. 5. 1993, p. 106), as last amended by Regulation (EC) No 1482/96 (OJ 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 OJ C 114, point I.A.3 (c) is replaced by the following: 'the words "European Community".'
- (7) 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 operation 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 is to be provided to the beneficiary's forwarder.
-

COMMISSION REGULATION (EC) No 1743/97
of 5 September 1997
amending Regulation (EEC) No 1627/89 on the buying in of beef by invitation to tender

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European 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 Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender⁽³⁾, as last amended by Regulation (EC) No 1630/97⁽⁴⁾, opened buying in by invitation to tender in certain Member States or regions of a Member State for certain quality groups;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 1627/89 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 8 September 1997.

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

Done at Brussels, 5 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 296, 21. 11. 1996, p. 50.

⁽³⁾ OJ L 159, 10. 6. 1989, p. 36.

⁽⁴⁾ OJ L 225, 15. 8. 1997, p. 8.

*ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO —
BIJLAGE — ANEXO — LIITE — BILAGA*

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1 del Reglamento (CEE) n° 1627/89

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1 i forordning (EØF) nr. 1627/89

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 1627/89

Member States or regions of a Member State and quality groups referred to in Article 1 (1) of Regulation (EEC) No 1627/89

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er} paragraphe 1 du règlement (CEE) n° 1627/89

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1 del regolamento (CEE) n. 1627/89

In artikel 1, lid 1, van Verordening (EEG) nr. 1627/89 bedoelde lidstaten of gebieden van een lidstaat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n° 1 do artigo 1º do Regulamento (CEE) n° 1627/89

Jäsenvaltiot tai alueet ja asetukset (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmitt

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

Estados miembros o regiones de Estados miembros	Categoría A					Categoría C		
Medlemsstat eller region	Kategori A					Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A					Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α					Κατηγορία Γ		
Member States or regions of a Member State	Category A					Category C		
États membres ou régions d'États membres	Catégorie A					Catégorie C		
Stati membri o regioni di Stati membri	Categoria A					Categoria C		
Lidstaat of gebied van een lidstaat	Categorie A					Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A					Categoria C		
Jäsenvaltiot tai alueet	Luokka A					Luokka C		
Medlemsstater eller regioner	Kategori A					Kategori C		
	S	E	U	R	O	U	R	O
België/Belgique		x	x	x				
Danmark				x	x			
Deutschland			x	x				
Spain			x	x				
Italia				x				
Ireland						x	x	x
Nederland				x				
Österreich			x	x				
Portugal			x	x				
Suomi				x	x			
Sweden				x	x			
Great Britain			x	x	x	x	x	
Northern Ireland			x	x	x	x	x	x

COMMISSION REGULATION (EC) No 1744/97
of 5 September 1997
fixing export refunds on fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables ⁽¹⁾, and in particular Article 35 (11) thereof,

Whereas Commission Regulation (EC) No 2190/96 ⁽²⁾, as last amended by Regulation (EC) No 610/97 ⁽³⁾, lays down detailed rules on export refunds on fruit and vegetables;

Whereas Article 35 (1) of Council Regulation (EC) No 2200/96, provides that, to the extent necessary for economically significant quantities of the products listed in that Article to be exported, the difference between the international market prices for those products and their prices in the Community may be covered by export refunds;

Whereas Article 35 (4) of Regulation (EC) No 2200/96 provides that refunds must be fixed in the light of the existing situation or the outlook for fruit and vegetable prices on the Community market and supplies available on the one hand, and prices on the international market on the other hand; whereas account must also be taken of the costs referred to in Article 26 (4) (b) of that Regulation and of the economic aspect of the exports planned;

Whereas, pursuant to Article 35 (1) of Regulation (EC) No 2200/96, refunds are to be set with due regard to the limits resulting from agreements concluded in accordance with Article 228 of the Treaty;

Whereas, in accordance with Article 35 (5) of Regulation (EC) No 2200/96, prices on the Community market are to be established in the light of the most favourable prices from the export standpoint; whereas international trade

prices are to be established in the light of the prices referred to in the second subparagraph of that paragraph;

Whereas the international trade situation or the special requirements of certain markets may call for the refund on a given product to vary according to its destination;

Whereas tomatoes, lemons, oranges, peaches and nectarines, apples of classes Extra, I and II of the common quality standards, table grapes of classes Extra and I, shelled almonds, hazelnuts and walnuts in shell can currently be exported in economically significant quantities;

Whereas the representative market rates as defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁴⁾, as last amended by Regulation (EC) No 150/95 ⁽⁵⁾, are used to convert amounts expressed in currencies of third countries and provide the basis for determining the agricultural conversion rates for the Member States' currencies; whereas rules for determining and applying those conversion rates are laid down in Commission Regulation (EEC) No 1068/93 ⁽⁶⁾, as last amended by Regulation (EC) No 1482/96 ⁽⁷⁾;

Whereas the application of the abovementioned rules to the present and forecast market situation, and in particular to fruit and vegetable prices in the Community and international trade, gives the refund rates set out in the Annex hereto;

Whereas, pursuant to Article 35 (2) of Regulation (EC) No 2200/96, the resources available should be used as efficiently as possible while avoiding discrimination between traders; whereas, therefore, care should be taken not to disturb the trade flows previously induced by the refund arrangements; whereas, for those reasons and because of the seasonal nature of exports of fruit and vegetables, quotas should be fixed for each product;

Whereas Commission Regulation (EEC) No 3846/87 ⁽⁸⁾, as last amended by Regulation (EC) No 1490/97 ⁽⁹⁾, establishes an agricultural product nomenclature for export refunds;

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 1.

⁽²⁾ OJ L 292, 15. 11. 1996, p. 12.

⁽³⁾ OJ L 93, 8. 4. 1997, p. 16.

⁽⁴⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁵⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁶⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽⁷⁾ OJ L 188, 27. 7. 1996, p. 22.

⁽⁸⁾ OJ L 366, 24. 12. 1987, p. 1.

⁽⁹⁾ OJ L 202, 30. 7. 1997, p. 24.

Whereas Regulation (EEC) No 3719/88⁽¹⁾, as last amended by Commission Regulation (EC) No 1404/97⁽²⁾, lays down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products;

Whereas, owing to the market situation, in order to make the most efficient use of the resources available and given the structure of Community exports, the most appropriate method should be selected for export refunds on certain products and certain destinations and consequently refunds under the A1 and A2 licence arrangements referred to in Article 1 of Regulation (EC) No 2190/96 should not be fixed simultaneously for the export period in question;

Whereas the quantities laid down for the various products should be distributed in accordance with the different systems for the grant of the refund, taking account in particular of their perishability;

Whereas account should be taken of the definitive rates under the A2 system fixed for the preceding licence application period;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds on fruit and vegetables shall be as set out in the Annex hereto.
2. Quantities covered by licences issued for food aid as referred to in Article 14a of Regulation (EEC) No 3719/88 shall not count against the eligible quantities covered by paragraph 1.
3. Without prejudice to the application of Article 4 (5) of Regulation (EC) No 2190/96, the term of validity of A1 and A2 licences shall be two months.

Article 2

This Regulation shall enter into force on 10 September 1997.

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

Done at Brussels, 5 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 331, 2. 12. 1988, p. 1.

⁽²⁾ OJ L 194, 23. 7. 1997, p. 5.

ANNEX

EXPORT REFUNDS ON FRUIT AND VEGETABLES

Product (Full definitions of eligible products are given in the 'Fruit and vegetables' section of Commission Regulation (EEC) No 3846/87 amended)	Product code	A1 applications from 10. 9. 1997 to 11. 11. 1997			A2 applications from 11. 9. 1997 to 15. 9. 1997			B applications from 17. 9. 1997 to 18. 11. 1997		
		Destination or destination group (!)	Refund rate (ECU/tonnes net weight)	Scheduled quantity (tonnes)	Destination or destination group (!)	Indicative refund rate (ECU/tonnes net weight)	Scheduled quantity (tonnes)	Destination or destination group (!)	Indicative refund rate (ECU/tonnes net weight)	Scheduled quantity (tonnes)
Tomatoes	0702 00 15 9100 0702 00 20 9100 0702 00 25 9100 0702 00 30 9100 0702 00 35 9100 0702 00 40 9100 0702 00 45 9100 0702 00 50 9100	F	30		F	30	2 341	F	30	4 681
Shelled almonds	0802 12 90 9000	F	75	255				F	75	255
Hazelnuts in shell	0802 21 00 9000	F	88	103				F	88	103
Shelled hazelnuts	0802 22 00 9000	F	171	369				F	171	369
Walnuts in shell	0802 31 00 9000	F	110	135				F	110	135
Oranges	0805 10 01 9200 0805 10 05 9200 0805 10 09 9200 0805 10 11 9200 0805 10 15 9200 0805 10 19 9200 0805 10 21 9200 0805 10 25 9200 0805 10 29 9200 0805 10 31 9200 0805 10 33 9200 0805 10 35 9200 0805 10 37 9200 0805 10 38 9200 0805 10 39 9200 0805 10 42 9200 0805 10 44 9200 0805 10 46 9200 0805 10 51 9200 0805 10 55 9200 0805 10 59 9200 0805 10 61 9200 0805 10 65 9200 0805 10 69 9200	XYC	60		XYC	60	8 750	XYC	60	8 750
Lemons	0805 30 20 9100 0805 30 30 9100 0805 30 40 9100	F	70		F	70	6 500	F	70	6 500

Product (Full definitions of eligible products are given in the 'Fruit and vegetables' section of Commission Regulation (EEC) No 3846/87 amended)	Product code	A1 applications from 10. 9. 1997 to 11. 11. 1997			A2 applications from 11. 9. 1997 to 15. 9. 1997			B applications from 17. 9. 1997 to 18. 11. 1997		
		Destination or destination group (1)	Refund rate (ECU/tonnes net weight)	Scheduled quantity (tonnes)	Destination or destination group (1)	Indicative refund rate (ECU/tonnes net weight)	Scheduled quantity (tonnes)	Destination or destination group (1)	Indicative refund rate (ECU/tonnes net weight)	Scheduled quantity (tonnes)
Table grapes	0806 10 21 9200 0806 10 29 9200 0806 10 30 9200 0806 10 40 9200 0806 10 50 9200 0806 10 61 9200 0806 10 69 9200	F	30		F	30	11 310	F	30	22 619
Apples	0808 10 51 9910	X	30		X	30	1 763	X	30	1 763
	0808 10 53 9910									
	0808 10 59 9910									
	0808 10 61 9910									
	0808 10 63 9910	Y	10		Y	10	2 163	Y	10	2 163
	0808 10 69 9910									
	0808 10 71 9910									
	0808 10 73 9910									
	0808 10 79 9910	ZD	54	6 459				ZD	54	3 229
	0808 10 92 9910									
	0808 10 94 9910									
	0808 10 98 9910									
Peaches and nectarines	0809 30 11 9100 0809 30 19 9100 0809 30 21 9100 0809 30 29 9100 0809 30 31 9100 0809 30 39 9100 0809 30 41 9100 0809 30 49 9100 0809 30 51 9100 0809 30 59 9100	E	35		E	35	1 257	E	35	2 515

(1) The destination codes are defined as follows:

X: Norway, Iceland, Greenland, Faeroes, Poland, Hungary, Romania, Bulgaria, Albania, Estonia, Latvia, Lithuania, Bosnia-Herzegovina, Croatia, Slovenia, Former Yugoslav Republic of Macedonia, Federal Republic of Yugoslavia (Serbia and Montenegro), Malta.

Y: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine.

Z: African countries and territories except South Africa, countries of the Arabian Peninsula (Saudi Arabia, Bahrain, Qatar, Oman, United Arab Emirates (Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qaiwain, Ras al Khaimah, Fujairah), Kuwait, Yemen), Syria, Iran, Jordan, Bolivia, Brazil, Venezuela, Peru, Panama, Ecuador, Colombia.

C: Switzerland, Czech Republic, Slovakia.

D: Hong Kong SAR, Singapore, Malaysia, Indonesia, Thailand, Taiwan, Papua New Guinea, Laos, Cambodia, Vietnam, Uruguay, Paraguay, Argentina, Mexico, Costa Rica.

E: All destinations except Switzerland.

F: All destinations.

COMMISSION REGULATION (EC) No 1745/97
of 5 September 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 Commission 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 6 September 1997.

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

Done at Brussels, 5 September 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 5 September 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
0709 90 79	052	74,1
	999	74,1
0805 30 30	388	59,7
	524	59,8
	528	53,4
	600	62,5
	999	58,9
	052	82,3
0806 10 40	400	168,1
	624	156,4
	999	135,6
	388	60,8
0808 10 92, 0808 10 94, 0808 10 98	400	55,9
	512	23,9
	528	56,3
	804	76,9
	999	54,8
	052	81,2
	064	65,4
	388	39,4
0808 20 57	512	8,9
	528	64,8
	999	51,9
	052	54,2
	064	53,8
	066	44,5
0809 40 30	068	63,1
	093	47,5
	400	110,5
	624	187,6
	999	80,2

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

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 June 1997

pursuant to Article 90 (3) of the EC Treaty on the exclusive right to broadcast television advertising in Flanders

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(97/606/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 90 (3) thereof,

Having given the Belgian authorities and the private television company Vlaamse Televisie Maatschappij NV notice to submit their comments on the Commission's objections to the monopoly on television advertising in Flanders,

Whereas:

January 1987 on the retransmission of radio and television programmes on the radio and television cable networks and the approval of non-public television companies (hereinafter referred to as 'the 1987 Decree' ⁽²⁾), the Decree of 12 June 1991 laying down rules on radio and television advertising and sponsorship (hereinafter referred to as 'the 1991 Decree' ⁽³⁾) and the Decree of 4 May 1994 on radio and television cable networks and the authorization required to establish and exploit such networks and on the promotion of the broadcasting and production of television programmes (hereinafter referred to as 'the 1994 Cable Decree' ⁽⁴⁾).

I. THE FACTS

The State measure

- (1) This Decision relates to the monopoly granted to the private company Vlaamse Televisie Maatschappij NV ('VTM') by the Flemish community of the Kingdom of Belgium to broadcast television advertising aimed at the Flemish community as a whole.

The Flemish legislation on the media was consolidated by the Decree of the government of the Flemish community of 25 January 1995, which was ratified by the Decree of the Council of the Flemish community of 23 February 1995, hereinafter referred to as the 'Codex' ⁽¹⁾. The Codex consolidates the provisions of the Decree of 28

Pursuant to the second paragraph of Article 80 of the Codex, the Flemish Government may authorize only one of the broadcasters belonging to it or approved by it to broadcast commercial and non-commercial advertising aimed at the Flemish Community as a whole. This provision of the Codex originates in the 1991 Decree, Article 3 of which contains an identical provision.

Pursuant to Article 41, point 1, of the Codex, only one private broadcaster may be authorized by the Flemish Government to broadcast to the entire Flemish community. This provision is taken from Article 7 (1) (a) of the 1987 Decree. As for the

⁽¹⁾ *Belgisch Staatsblad/Moniteur belge*, 30 May 1995.

⁽²⁾ *Belgisch Staatsblad/Moniteur belge*, 19 March 1987.

⁽³⁾ *Belgisch Staatsblad/Moniteur belge*, 14 August 1991.

⁽⁴⁾ *Belgisch Staatsblad/Moniteur belge*, 4 June 1994.

structure of any such private broadcaster, Article 8 (1) of the 1987 Decree laid down *inter alia* that it should have the status of a private company at least 51 % of whose capital should be subscribed by publishers of Dutch-language newspapers and magazines having their head office in Flanders or in Brussels. Article 44 (1) of the Codex did not maintain the requirement concerning the location of the shareholder's head office but did require that 51 % of the company's capital be subscribed by publishers of Dutch-language newspapers and magazines. Article 39 (2) of the Codex maintained the provision of the 1987 Decree requiring the head office of the private broadcasting organization to be located in Flanders or Brussels.

- (2) These provisions, read together, mean that only one private company having its head office in Flanders or Brussels and 51 % of whose capital is held by Dutch-language publishers may be authorized to broadcast television advertising in Flanders from its territory and aimed at the Flemish community as a whole.

It emerges from parliamentary documents concerning the 1987 Decree and from statements by representatives of the Flemish executive referred to in those documents that the purpose of granting a monopoly on television advertising was to protect existing Flemish newspaper and magazine publishers. According to the official statements of the Minister for Cultural Affairs contained in the parliamentary documents, the Decree was to be adopted in order to prevent the entry of foreign operators onto the Flemish television market⁽¹⁾. Such protection aimed at allowing all television-advertising revenues to accrue to the Flemish press would, according to the Minister, compensate the latter for the loss of advertising revenues it was experiencing. The exclusive right conferred on VTM thus pursued a cultural objective, namely, the maintenance of pluralism in the press.

The undertaking

- (3) VTM is a private Dutch-language television company established in Flanders. By Decision of the Flemish executive of 19 November 1987, adopted on the basis of the 1987 Decree, VTM was

approved as the only private television company authorized to broadcast to the Flemish community as a whole. This exclusive authorization was granted for a period of 18 years.

By Royal Order of 3 December 1987 (confirmed by a decision of the Flemish Government dated 11 December 1991, adopted on the basis of the 1991 Decree), VTM received authorization to broadcast advertising during its programmes for a period of 18 years.

Thus the consequence of the abovementioned legislative acts and the relevant provisions of the Codex is that VTM is the only private television company to be authorized by the Flemish Government to broadcast television programmes and television advertising aimed at the whole Flemish community. The only other Flemish television company available to the Flemish community, the public radio and television company BRTN, which is run and owned by the Flemish community, is not authorized to broadcast television advertising. The monopoly granted to VTM runs until 2005.

- (4) VTM was formed in 1987 by nine associates, all having interests in the Flemish press and each holding 11,1 % of its capital.

At present, the company Vlaamse Media Holding ('VMH') holds 55,55 % of VTM's shares. VMH is owned in equal proportions by De Persgroep NV and Roularta Media Group NV.

VTM's other shareholders are: Tijdschriften Uitgevers Maatschappij NV, Tijdschriften Vereniging Vlaanderen NV and Perexma NV, all of which are subsidiaries of the Netherlands media group Verenigde Nederlandse Uitgeverijen (VNU). All of VTM's shareholders are active, either wholly or in part, in the Flemish press sector. Only De Persgroep NV publishes daily newspapers, while the others operate on the magazines market.

The first- and third-largest Flemish press groups, Vlaamse Uitgevers Maatschappij NV and Concentra Holding NV, do not own shares in VTM. According to the CIM, the Belgian press monitoring agency, the only publisher of daily newspapers with a stake in VTM currently holds a market share on the Flemish newspaper market of 28,3 %⁽²⁾.

⁽¹⁾ Report of the Flemish Parliamentary Committee on the Media No 152 of 28 November 1996, pp. 3 to 4, and minutes of the plenary session of the Council of the Flemish community of 17 December 1986, p. 325.

⁽²⁾ Centrum von informatie over de media/Centre Information Médias, data for 1995 to 1996.

The service

- (5) The economic activity to which this Decision relates is that of the broadcasting of television advertising to the Flemish public as a whole.

Television is a major advertising medium in the Community. The usual indicator used to assess the development of advertising is that of gross investment by advertisers. Advertising investment in the mass media (television, press, radio, cinema and poster advertising) increased as follows in Belgium in the period 1989 to 1993: 1989: ECU 648 million; 1990: ECU 709 million; 1991: ECU 756 million; 1992: ECU 849 million; 1993: ECU 908 million; 1994: ECU 951 million. In 1994, the breakdown of total advertising investment in Belgium (ECU 951 million) was as follows: television: ECU 351, 5 million; newspapers and magazines: ECU 404 million; radio: ECU 88,2 million; cinema: ECU 10,1 million; poster advertising: ECU 97,3 million ⁽¹⁾.

Advertising investment in television saw the following trend in Belgium: 1989: ECU 192 million; 1990: ECU 253 million; 1991: ECU 253 million; 1992: ECU 281 million; 1993: ECU 303 million; 1994: ECU 351,5 million. In percentage terms, these amounts make up between 29,5 % and 35,5 % of total investment in the mass media in the years 1989 to 1992. During the period 1991 to 1993, this percentage remained more or less stable at close to 33 %. In 1994 it amounted to 34,5 %, and in 1995 to 35,2 % ⁽²⁾. In Flanders, such investment amounted to ECU 186 million in 1993 and ECU 211 million in 1994. Of this amount, the 11 regional channels in Flanders received 1,5 % in 1993 and 5 % in 1994 ⁽³⁾. VTM received 98,5 % in 1993 and 95 % in 1994, equivalent to ECU 183 million and ECU 201 million respectively. All Flemish channels combined received a market share of advertising investment of 34,3 % (33,8 % going to VTM) in 1993 and 36,3 % (34,5 % going to VTM) in 1994.

- (6) The more than 90 % of households in the Flemish community connected to the cable network are

able to receive television programmes from channels in other Member States in addition to those of the two Flemish broadcasters (BRTN and VTM) and the French-language Belgian channels.

Even if it is assumed that television programmes from other Member States do compete to a certain extent with Flemish programmes, the fact is, as the Commission has already indicated in the Court proceedings in Case C-211/91 *Commission v. Belgium* ⁽⁴⁾, that the stations in question are not substitutes for the Flemish channels BRTN and VTM and the Dutch channels as far as the Flemish audience is concerned, because an overwhelming part of this audience is not interested in programmes broadcast in any language other than Dutch, as is shown by the market shares in Flanders for 1995 (January to June 1995, peak viewing times, namely, 7 to 10 p.m.): VTM: 43,3 %; VT4: 3,5 %; BRTN: 26,5 %; the public channels in the Netherlands: 6,2 %; the non-Dutch-language channels RTBF: 10,8 % and Eurosport 0,7 %. No figures are available for the non-Dutch-language channels TF1, RTL and BBC in this period; in 1994 they had market shares of 0,9 %, 0,7 % and 0,6 % respectively ⁽⁵⁾. Flemish viewers' lack of interest in television programmes broadcast in a language other than Dutch is not contradicted by the high percentage of households that are connected to the cable television network in the Flemish community.

Consequently, the Commission considers that channels broadcasting television programmes in a language other than Dutch are not good substitutes for the Flemish television channels.

- (7) As regards the channels broadcast from the Netherlands, Dutch-speaking Belgians seem to be more interested in them than in the foreign non-Dutch-language channels. As indicated above, in 1995 (January to June, peak viewing times, namely, 7 to 10 p.m.) the audience share in Flanders for all Netherlands public channels combined was 6,2 %, while VTM's share was over 43 % and BRTN's was 26,5 % ⁽⁶⁾. However, in view of the fact that television advertising on the Netherlands channels is

⁽¹⁾ *Statistical yearbook. Cinema, television, video and the new media in Europe*. Edition 1995, European Audiovisual Observatory (EAO), Strasbourg, 1995, pp. 279, 282.

⁽²⁾ MediaMarkt 1996.

⁽³⁾ EAO Statistical yearbook 1994, p. 267.

⁽⁴⁾ ECR [1992] I-6757, at p. 6763.

⁽⁵⁾ EAO Statistical yearbook 1995, p. 171.

⁽⁶⁾ Ibid.

neither entirely nor mainly targeted at Belgians, these channels are not a substitute for VTM as far as television advertising is concerned (BRTN being disregarded since it does not broadcast advertising). The advertising market is still a national market, largely because of restrictions on the cross-border supply of advertising space. The result is that conditions of competition vary between Belgium and the Netherlands. In Belgium, VTM is authorized to broadcast television advertising and sell advertising spots. In the Netherlands, the organization which has responsibility for selling advertising spots on behalf of the public channels, STER, does not take account of the impact which the advertisements broadcast by those channels might have in Flanders. The Flemish audience is therefore not included in the parameters used by STER to calculate its price for advertising spots⁽¹⁾. For its part, VTM does not sell advertising spots in the Netherlands, since its programmes are not carried by the Dutch cable operators. Moreover, differences exist between Belgium and the Netherlands in terms of the rules governing advertising. For example, advertising aimed at children is prohibited in Flanders. It is also forbidden to broadcast advertising less than five minutes before or after children's programmes. Finally, the range and combination of the advertising broadcast are generally determined by the preferences of the audience at which it is targeted. Consequently, the territories of Belgium and the Netherlands should be considered to constitute two separate advertising markets.

- (8) In its reply, VTM stated that the television channels Eurosport and Superchannel broadcast television advertising aimed at the Flemish public. The Belgian authorities pointed out in their letter of 14 September 1995 that the channels MTV, CNN, TF1 and RTL also broadcast such advertising. Neither the Belgian authorities nor VTM have indicated the volume of advertising broadcast by these channels aimed at the Flemish public compared to their total advertising. As was stated above, the audience shares of TF1 and RTL in Flanders were 0,9 % and 0,7 % respectively in 1994⁽²⁾.

Other proceedings linked to this case

- (9) The abovementioned provisions (see point 1) of Article 8 of the 1987 Decree requiring that 51 %

of the capital of the new private company be held by publishers of daily or weekly newspapers or magazines in the Dutch-language having their head office in the region of Flanders or in the bilingual capital region of Brussels capital were the subject of proceedings initiated by the Commission on 8 August 1991 against the Kingdom of Belgium for its failure to meet its obligations pursuant to Article 52 of the EC Treaty. In the same proceedings, the Commission also contested the compatibility of Article 3 of the Decree with the Community rules on freedom to provide services. Within the meaning of Article 8, television programmes from other Member States could not be transmitted via the cable network unless they were in the language or one of the languages of the country of origin. Moreover, the programmes of foreign private broadcasters had to obtain authorization from the Flemish executive, which had the power to impose conditions before granting such authorization.

It is true that the 1994 Cable Decree repealed the requirement that television programmes from another Member State should be in one of that State's national languages. However, it nevertheless maintains the system of prior authorization in the region of Flanders. The new provisions were the subject of fresh proceedings brought by the Commission against Belgium before the Court of Justice⁽³⁾. The Court ruled that, by maintaining the system of prior authorization, the Kingdom of Belgium had failed to fulfil its obligations within the meaning of Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽⁴⁾. These provisions are not at issue here.

As was indicated above, Article 44 (1) of the Codex repeals the requirement concerning the location of the shareholder's head office in Flanders or Brussels, but maintains the requirement that 5 % of the capital of VTM be held by Dutch-language newspaper publishers. These provisions are the subject of a reasoned opinion notified to the Belgian authorities on 15 May 1997.

⁽¹⁾ This is apparent from the analysis of the geographical market for television advertising carried out by the Commission in its Decision in Case IV/M. 553 *RTL/Veronica/Endmol* (OJ L 134, 5. 6. 1996, p. 32).

⁽²⁾ EAO Statistical yearbook 1995, p. 171.

⁽³⁾ Case C-11/95 *Commission v. Belgium* [1996] ECR I-4115.

⁽⁴⁾ OJ L 298, 17. 10. 1989, p. 23.

- (10) Claiming that the monopoly on television advertising in Flanders favours the private broadcaster VTM and disadvantages foreign television broadcasters, the company VT4 Ltd ('VT4') has lodged a complaint with the Commission. VT4, whose sole shareholder is the Luxembourg company Scandinavian Broadcasting System SA (SBS), is a company established in London under English law, whose main activity is to broadcast television programmes. On 13 September 1994, VT4 obtained a licence from the United Kingdom authorities to broadcast programmes via satellite (a 'non-domestic satellite broadcasting licence'). Since 1 February 1995, VT4 has been broadcasting television programmes under that licence.

VT4's programmes are targeted at the Flemish public. They are either produced or sub-titled in Dutch.

The television signal is transmitted towards the satellite from UK territory. By letter of 17 October 1995, the UK authorities informed the Commission that VT4 falls under UK jurisdiction within the meaning of Article 2 (1) of Directive 89/552/EEC.

By letter of 13 July 1995, the Commission asked the Belgian Government to provide details concerning the compatibility of the Flemish legislation on the television-advertising monopoly with the Community rules on freedom to provide services. The Belgian Government's reply of 14 September 1995 states that the wording of the legislation in question does not prohibit television channels established in other Member States from broadcasting advertising targeted at the Flemish public and that, consequently, it is consistent with Article 59 of the Treaty.

However, the Flemish authorities do not consider VT4 to be a broadcaster approved by another Member State, on the ground that it is a Flemish broadcaster established in the UK in order to circumvent the legislation of the Flemish community. Moreover the Flemish authorities argue that VT4 falls outside the scope of Article 10 (1), point 2, of the Cable Directive, which requires cable operators to distribute the programmes of the authorized non-public television company covering the Flemish community as a whole: this is so because VTM is the only authorized private broadcaster. For these reasons, VT4 was, by Ministerial Order, refused access to the Flemish cable

network⁽¹⁾. This Order was suspended by the Belgian *Raad van State/Conseil d'État*, which then referred the matter to the Court of Justice for a preliminary ruling with a view to determining which broadcasters fall within a Member State's jurisdiction within the meaning of Directive 89/552/EEC. By judgment of 5 June 1997⁽²⁾, the Court ruled that, where a television broadcaster is established in more than one Member State, it falls within the jurisdiction of the Member State on whose territory its centre of activities is located. The Court also considered that the mere fact that all of its programmes are targeted at a Flemish public does not mean that VT4 cannot be regarded as being established in the United Kingdom.

II. LEGAL ASSESSMENT

Article 90 (1)

- (11) Article 90 (1) of the EC Treaty states that where Member States grant special or exclusive rights to particular undertakings they may not enact or maintain in force any measure contrary to the rules in the Treaty. That an undertaking should hold an exclusive right is not in itself incompatible with the Treaty. But while Article 90 implies that undertakings may enjoy certain special or exclusive rights, it does not follow that all special or exclusive rights are necessarily compatible with the Treaty⁽³⁾. Their compatibility has to be assessed in the light of the various rules in the Treaty to which Article 90 (1) refers.

VTM is a private undertaking to which the Flemish Community has granted the exclusive right to broadcast advertising aimed at the Flemish public as a whole. The exclusive right derives from a State measure, namely the Flemish Decree of 1991 (and in particular the second paragraph of Article 3 thereof, which became the second paragraph of Article 80 of the Codex already referred to) in conjunction with the 1987 Decree (and in particular Article 7 (1) (a) thereof, which became Article 41, point 1, of the Codex).

⁽¹⁾ Order of the Flemish Minister for Cultural Affairs and for Brussels of 16 January 1995.

⁽²⁾ Not yet published.

⁽³⁾ See Case C-320/91 Corbeau [1993] ECR I-2563.

- (12) Article 52 of the EC Treaty states that 'restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished'.

VTM's monopoly on the broadcasting of television advertising aimed at the Flemish public prevents any operator from another Member State from establishing itself in Flanders, or setting up a secondary establishment there, with a view to broadcasting television advertisements aimed at the Flemish public via the Belgian cable distribution network.

The provisions at issue apply without distinction to undertakings established in Belgium, other than VTM, and to undertakings from other Member States; but this does not serve to take the preferential treatment of VTM outside the scope of Article 52 of the Treaty.

This is so because the fact that television advertising is restricted to a single, domestic undertaking means that all of the market in television advertising, or at least most of it, benefits the home economy. The object and the effect are incontestably protectionist. That the purpose of granting a legal monopoly to VTM is discriminatory can be seen clearly from the circumstances: the conditions laid down in the 1987 decree excluded all nationals of other Member States at the outset, and it was the avowed intention of the Flemish executive and Council to establish a monopoly corporation controlled by the Flemish press, and to prevent any access by foreign television companies to the Flemish broadcasting system.

As has already been said, the Belgian Government's letter of 14 September 1995 states that the rules on the executive right do not prevent a broadcaster established in another Member State from broadcasting Dutch-language programmes and advertising aimed at the Flemish public as a whole. But a broadcaster of that kind would be under a serious competitive disadvantage as compared with VTM, because it would have to operate at a distance from its Flemish viewers and from its advertisers' market.

Even if these measures do apply without distinction to non-Belgian operators and to Belgian operators other than VTM, it has to be concluded that they constitute a disguised form of discrimination whose effects are protectionist. If such effects do genu-

inely apply without distinction, they would have to be accepted if they are found to be justified by imperative requirements in the public interest, are suitable for securing the attainment of the objectives which they pursue, and do not go beyond what is necessary in order to attain it⁽¹⁾.

- (13) In the course of the proceedings in Case C-211/91 *Commission v. Belgium*, cited above, the Belgian authorities put forward the argument that part of VTM's advertising revenue was transferred to the press as compensation for the loss of income due to the introduction of commercial advertising on radio and television, so that the intention was to maintain pluralism in the Flemish press. Thus the Flemish Government initially invoked arguments of cultural policy to justify the granting of a monopoly in television advertising to VTM. But in the light of the present structure of VTM, and of developments in the media and in the Flemish press, where there have been several mergers and alliances, the Flemish Government now takes the view (in its letter of 11 February 1997 in reply to the Commission's letter of 10 January 1997) that this measure is no longer likely to secure an objective in the public interest. The Flemish Government doubts, therefore, whether the measure qualifies for the saving clause in Article 90 (2).

VTM, however, is still arguing along these lines. According to VTM, the transfer of advertising revenue to the publishers of Flemish newspapers is an essential component in the function given to it in the public interest, and is directly related to its monopoly right. Another aspect of this function is the way in which it complements the public broadcaster, BRTN, and the local television stations, especially by providing a general news and information service on an independent basis and by broadcasting educational and entertainment programmes.

The Commission accepts that a cultural policy and the preservation of pluralism, which is an aspect of the freedom of expression, may constitute imperative requirements in the public interest such as to justify the restriction of the freedom of establishment. But the means to those ends must not limit the freedoms established by the Treaty any more than is necessary. The objectives in the present case

⁽¹⁾ See Case C-55/94 Gebhard [1995] ECR I-4165.

must not be pruned by methods which eliminate any competition which the domestic broadcaster might otherwise have to face from media organizations wishing to establish themselves in Belgium in order to distribute their own advertisements via cable distribution networks: that would deprive Article 52 of any effect whatsoever.

The Commission takes the view that in this case there is no necessary relationship between the purported cultural policy objective of preserving pluralism in the Flemish press and the grant in Flanders of a private commercial television monopoly to VTM. First, the Codex does not guarantee every Flemish newspaper publisher, without distinction, the right to become a shareholder in VTM or to receive a return from its profits. If a newspaper publisher did not take part in the setting-up of VTM, which is the case for example of those that entered the Flemish press market after 1987, the law does not confer it any entitlement to share in the profits generated by VTM. The exclusive right conferred on VTM merely favours one group of publishers at the expense of others. The publishers enjoying this privilege are given a secure monopoly income guaranteed by law, which will enable them to compete more effectively with any competitors or new entrants to the Flemish press market, including those from other Member States. In addition, there is no guarantee that VTM's advertising revenue, which is divided among the shareholders in proportion to their holdings in the capital, will be used by them to help their newspapers to overcome possible financial difficulties. Such revenue might equally well be used for activities having no cultural purpose whatsoever, and quite unconnected with support for the Flemish press. Thus, VTM's monopoly runs counter to the stated objective of ensuring pluralism in the Flemish press.

Secondly, the conditions laid down in the Codex regarding the structure of the only private television corporation in Flanders to have received the authorization of the Flemish executive, that is to say the provisions reserving 51 % of VTM's capital for Flemish press publishers, are ill-suited to the attainment of the stated cultural aim, since it is not impossible that VTM's capital, and more particularly the reserved 51 % portion, might come to be concentrated in the hands of a single shareholder, at the expense of any preservation of pluralism in the media. Indeed, whereas VTM had originally consisted of nine shareholders, only five are left today⁽¹⁾.

Turning to the question of the viability of broadcasting stations, there is no reason to suppose that a

private television station cannot survive in the Flemish community without a monopoly on television advertising. Indeed, the fact that VTM in 1995 launched a second television channel carrying advertising shows that it believes that more than one private channel can be profitable in Flanders.

To sum up, the Commission does not believe that VTM's monopolization of advertising revenue is justified on imperative grounds in the public interest. To ensure the pluralism which it hopes to maintain, the Flemish Government could have recourse to appropriate measure which do not impede economic integration to so great an extent.

- (14) Article 90 (2) provides for an exception to the application of the Treaty rules in the case on undertakings 'entrusted with the operation of services of general economic interest' in so far as the application of those rules would obstruct the performance, in law or in fact, of the particular tasks assigned to them.

The Belgian authorities have not cited this saving provision. In any event, VTM would not appear to be entrusted with the operation of a service of general economic interest. Article 41 of the Codex merely authorizes VTM to arrange television broadcasts aimed at the Flemish community. The provisions of the Codex requiring VTM to ensure balance in its programming, to contribute to the general development of the Flemish public, to maintain objectivity in its journalism and not to broadcast programmes contrary to public morals or security do not stand as evidence that VTM has been assigned a task of general economic interest by the Flemish authorities. These are very general requirements in respect of VTM's programme content; in no way do they point to the conclusion that the Flemish community has given VTM the task of carrying out one of its cultural policies. A distinction has to be made between, on the one hand, the conditions of authorization which a private television corporation must satisfy on grounds of public interest, that is to say conditions of the kind imposed on VTM, and on the other hand the State's assignment to a private firm of a task in the public interest. The Commission notes that the Codex expressly gives the responsibility of acting as a 'public television corporation' to BRTN, whose capital is held by the Flemish community. As well as having to perform this role as a 'public

⁽¹⁾ As was explained in paragraph 9, those conditions are the subject of the Reasoned Opinion of 15 May 1997.

television corporation', BRTN is subject to specific public service obligations, requiring it for example to carry Flemish Government broadcasts and party-political broadcasts, and to provide air time for associations representing various schools of thought. None of these requirements applies to VTM. A recent amendment to the Codex further specifies the public service obligations imposed on BRTN, which is to be renamed VRT. VRT is here required to conclude a management contract with the Flemish authorities which will spell out VRT's public service mission in more detail⁽¹⁾.

Lastly, even if it were to be accepted that VTM has a public service function, the means by which it is to be performed, namely the exclusive rights which are the subject of this Decision, affect trade to an extent which is disproportionate and contrary to the interests of the Community, and such as to deprive Article 52 of any effect despite the fact that effective competition in television advertising in Flanders would be facilitated if other television broadcasters were permitted to establish themselves there. The fact that they would then be operating close to their audience and to their advertisers would make their work easier and less burdensome,

HAS ADOPTED THIS DECISION:

Article 1

The second paragraph of Article 80 and Article 41, point 1, of the Codex of Flemish rules on radio and television broadcasting, sponsoring and cable distribution, which

provide that the Flemish Government may authorize only one private broadcaster to broadcast to the Flemish community as a whole and to broadcast commercial and non-commercial advertising to that Community, that broadcaster being the private television company Vlaamse Televisie Maatschappij NV, and the Decision of the Flemish executive of 19 November 1987 and the Royal Order of 3 December 1987, confirmed by a Decision of the Flemish executive of 11 December 1991, by which VTM was recognized as the sole private television company broadcasting to the Flemish community as a whole and was authorized to include commercial advertising in its programmes, are incompatible with Article 90 (1) of the EC Treaty, read in conjunction with Article 52 thereof.

Article 2

The Belgian authorities shall bring to an end the infringement referred to in Article 1, and shall inform the Commission within two months of notification of this Decision of the measures they have taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 26 June 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ Decree of 29 April 1997 on the conversion of BRTN into a limited company established under public law: *Belgisch Staatsblad/Moniteur belge*, 1 May 1997.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 1273/97 of 1 July 1997 establishing a forecast balance for the supply to the Azores and Madeira of cereal products covered by the specific measures provided for in Articles 2 to 10 of Council Regulation (EEC) No 1600/92

(Official Journal of the European Communities L 174 of 2 July 1997)

On page 43, in the fourth recital:

for: 'the period 1 July 1997 to 31 December 1998',

read: 'the period 1 July 1997 to 31 December 1997'.

On page 44, in the title of the Annex:

for: 'Forecast supply balance for the Azores and Madeira for the period 1 July 1997 to 31 December 1998',

read: 'Forecast supply balance for the Azores and Madeira for the period 1 July 1997 to 31 December 1997'.
