

Official Journal

of the European Communities

ISSN 0378-6978

L 301

Volume 40

5 November 1997

English edition

Legislation

Contents

I Acts whose publication is obligatory

- ★ **Council Regulation (ECSC, EC, Euratom) No 2190/97 of 30 October 1997 amending Regulation (EEC, Euratom, ECSC) No 260/68 laying down the conditions and procedure for applying the tax for the benefit of the European Communities** 1
- ★ **Council Regulation (ECSC, EC, Euratom) No 2191/97 of 30 October 1997 amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply**..... 3
- ★ **Council Regulation (ECSC, EC, Euratom) No 2192/97 of 30 October 1997 amending the Staff Regulations of Officials of the European Communities** 5
- ★ **Commission Regulation (EC) No 2193/97 of 3 November 1997 concerning the stopping of fishing for Greenland halibut by vessels flying the flag of the United Kingdom** 6
- ★ **Commission Regulation (EC) No 2194/97 of 3 November 1997 concerning the stopping of fishing for common sole by vessels flying the flag of Belgium**..... 7
- ★ **Commission Regulation (EC) No 2195/97 of 3 November 1997 concerning the stopping of fishing for herring by vessels flying the flag of Germany** 8
- Commission Regulation (EC) No 2196/97 of 4 November 1997 fixing, for October 1997, the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the sugar sector..... 9
- Commission Regulation (EC) No 2197/97 of 4 November 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables 11

Commission Regulation (EC) No 2198/97 of 4 November 1997 amending representative prices and additional duties for the import of certain products in the sugar sector	13
--	----

Information on the date of entry into force of the Agreement on fisheries relations between the European Community and the Republic of Lithuania and of the Protocol laying down the conditions relating to temporary joint ventures and joint enterprises provided for in the Agreement on fisheries relations between the European Community and the Republic of Lithuania	15
---	----

II *Acts whose publication is not obligatory*

Council

97/743/EC, Euratom:

* Council Decision of 27 October 1997 appointing a member of the Economic and Social Committee	16
---	----

Commission

97/744/EC:

* Commission Decision of 21 October 1997 pursuant to Article 90 (3) of the EC Treaty on the provisions of Italian ports legislation relating to employment⁽¹⁾	17
---	----

97/745/EC:

* Commission Decision of 21 October 1997 relating to a proceeding pursuant to Article 90 (3) of the EC Treaty regarding the tariffs for piloting in the Port of Genoa⁽¹⁾	27
--	----

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (ECSC, EC, EURATOM) No 2190/97
of 30 October 1997**

amending Regulation (EEC, Euratom, ECSC) No 260/68 laying down the conditions and procedure for applying the tax for the benefit of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities and, in particular, the first subparagraph of Article 28 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 13 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Court of Justice⁽²⁾,

Having regard to the opinion of the Court of Auditors⁽³⁾,

Whereas Regulation (EEC, Euratom, ECSC) No 260/68⁽⁴⁾ should be amended in order to take account of the following Regulations:

- Council Regulation (Euratom, ECSC, EEC) No 2274/87 of 23 July 1987 introducing special measures to terminate the service of temporary staff of the European Communities⁽⁵⁾;
- Council Regulation (EEC) No 1857/89 of 21 June 1989 introducing special and temporary measures to terminate the service of officials of the European Communities⁽⁶⁾;
- Council Regulation (EC, Euratom, ECSC) No 2688/95 of 17 November 1995 introducing special measures to terminate the service of officials of the European Communities as a result of the accession of Austria, Finland and Sweden⁽⁷⁾;
- Council Regulation (EC, Euratom, ECSC) No 2689/95 of 17 November 1995 introducing special measures to

terminate the service of temporary staff of the European Communities⁽⁸⁾, as a result of the accession of Austria, Finland and Sweden,

HAS ADOPTED THIS REGULATION:

Article 1

The following twelfth, thirteenth, fourteenth and fifteenth indents shall be added to Article 2 of Regulation (EEC, Euratom, ECSC) No 260/68:

- those entitled to the allowance for termination of service under Article 4 of Regulation (Euratom, ECSC, EEC) No 2274/87⁽⁹⁾,
- those entitled to the allowance for termination of service under Article 3 of Regulation (EEC) No 1857/89⁽¹⁰⁾,
- those entitled to the allowance for termination of service under Article 4 of Regulation (EC, Euratom, ECSC) No 2688/95⁽¹¹⁾,
- those entitled to the allowance for termination of service under Article 4 of Regulation (EC, Euratom, ECSC) No 2689/95⁽¹²⁾.

⁽¹⁾ OJ L 209, 31. 7. 1987, p. 1. Regulation as amended by Regulation (EEC) No 2168/89 (OJ L 208, 20. 7. 1989, p. 4).

⁽²⁾ OJ L 181, 28. 6. 1989, p. 2.

⁽³⁾ OJ L 280, 23. 11. 1995, p. 1.

⁽⁴⁾ OJ L 280, 23. 11. 1995, p. 4.

Article 2

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

It shall apply, with regard to each of the indents added by Article 1, from the date of entry into force of each Regulation referred to respectively.

⁽⁸⁾ OJ L 280, 23. 11. 1995, p. 4.

⁽¹⁾ OJ C 85, 17. 3. 1997, p. 175.

⁽²⁾ Opinion delivered on 11 November 1996.

⁽³⁾ Opinion delivered on 12 December 1996.

⁽⁴⁾ OJ L 56, 4. 3. 1968, p. 8. Regulation as last amended by Regulation (ECSC, EEC, Euratom) No 3162/94 (OJ L 335, 23. 12. 1994, p. 5).

⁽⁵⁾ OJ L 209, 31. 7. 1987, p. 1. Regulation as amended by Regulation (EEC) No 2168/89 (OJ L 208, 20. 7. 1989, p. 4).

⁽⁶⁾ OJ L 181, 28. 6. 1989, p. 2.

⁽⁷⁾ OJ L 280, 23. 11. 1995, p. 1.

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

Done at Luxembourg, 30 October 1997.

For the Council

The President

F. BODEN

**COUNCIL REGULATION (ECSC, EC, EURATOM) No 2191/97
of 30 October 1997**

amending Regulation (Euratom, ECSC, EEC) No 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular the first paragraph of Article 28 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Articles 16 and 22 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the Court of Justice⁽²⁾,

Having regard to the opinion of the Court of Auditors⁽³⁾,

Whereas Regulation (Euratom, ECSC, EEC) No 549/69⁽⁴⁾ should be amended in order to take account of the following Regulations:

— Council Regulation (Euratom, ECSC, EEC) No 2274/87 of 23 July 1987 introducing special measures to terminate the service of temporary staff of the European Communities⁽⁵⁾,

— Council Regulation (EEC) No 1857/89 of 21 June 1989 introducing special and temporary measures to terminate the service of officials of the European Communities⁽⁶⁾,

— Council Regulation (EC, Euratom, ECSC) No 2688/95 of 17 November 1995 introducing special measures to terminate the service of officials of the European Communities, as a result of the accession of Austria, Finland and Sweden⁽⁷⁾,

— Council Regulation (EC, Euratom, ECSC) No 2689/95 of 17 November 1995 introducing special measures to terminate the service of temporary staff of the European Communities⁽⁸⁾, as a result of the accession of Austria, Finland and Sweden,

HAS ADOPTED THIS REGULATION:

Article 1

The following shall be added to Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69:

- (l) those entitled to the allowance provided for in the event of termination of service under Article 4 of Regulation (Euratom, ECSC, EEC) No 2274/87^(*),
- (m) those entitled to the allowance provided for in the event of termination of service under Article 3 of Regulation (EEC) No 1857/89^(**),
- (n) those entitled to the allowance provided for in the event of termination of service under Article 4 of Regulation (EC, Euratom, ECSC) No 2688/95^(***),
- (o) those entitled to the allowance provided for in the event of termination of service under Article 4 of Regulation (EC, Euratom, ECSC) No 2689/95^(****).

(*) OJ L 209, 31. 7. 1987, p. 1. Regulation amended by Regulation (EEC) No 2168/89 (OJ L 208, 20. 7. 1989, p. 4).

(**) OJ L 181, 28. 6. 1989, p. 2.

(***) OJ L 280, 23. 11. 1995, p. 1.

(****) OJ L 280, 23. 11. 1995, p. 4.

Article 2

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

It shall apply, with regard to each of the indents added by Article 1, from the date of entry into force of each Regulation referred to respectively.

(8) OJ L 280, 23. 11. 1995, p. 4.

(1) OJ C 85, 17. 3. 1997, p. 175.

(2) Opinion delivered on 11 November 1996.

(3) Opinion delivered on 12 December 1996.

(4) OJ L 74, 27. 3. 1969, p. 1. Regulation as last amended by Regulation (ECSC, EEC, Euratom) No 3163/94 (OJ L 335, 23. 12. 1994, p. 6).

(5) OJ L 209, 31. 7. 1987, p. 1. Regulation as amended by Regulation (EEC) No 2168/89 (OJ L 208, 20. 7. 1989, p. 4).

(6) OJ L 181, 28. 6. 1989, p. 2.

(7) OJ L 280, 23. 11. 1995, p. 1.

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

Done at Luxembourg, 30 October 1997.

For the Council

The President

F. BODEN

COUNCIL REGULATION (ECSC, EC, EURATOM) No 2192/97
of 30 October 1997
amending the Staff Regulations of Officials of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 24 thereof,

Having regard to the proposal presented by the Commission after consulting the Staff Regulations Committee ⁽¹⁾,

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

Having regard to the opinion of the Court of Justice ⁽³⁾,

Having regard to the opinion of the Court of Auditors ⁽⁴⁾,

Whereas Article 1 of Annex II to Regulation (EEC, Euratom, ECSC) No 259/68 ⁽⁵⁾ lays down the term of office of the members and alternates, if any, of the Staff Committee;

Whereas that term of office, which is currently fixed at a maximum of two years, should be replaced by a maximum term of three years to permit fuller implementation of the staff representatives' mandate;

Whereas it is unnecessary to amend the minimum term of office of members of the Staff Committee and their alternates,

HAS ADOPTED THIS REGULATION:

Article 1

The first subparagraph of Article 1 (Section 1) of Annex II to the Staff Regulations is hereby replaced by the following:

'The Staff Committee shall comprise the members thereof, together with their alternates if any, whose term of office shall be three years. The institution may, however, decide to fix a shorter term of office, which may not be less than one year. Every official of the institution shall be entitled to vote and stand for election.'

Article 2

This Regulation shall enter into force on the day following that of 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 Luxembourg, 30 October 1997.

For the Council

The President

F. BODEN

⁽¹⁾ OJ C 160, 27. 5. 1997, p. 8.

⁽²⁾ OJ C 286, 22. 9. 1997, p. 30.

⁽³⁾ Opinion delivered on 7 July 1997.

⁽⁴⁾ Opinion delivered on 15 May 1997.

⁽⁵⁾ OJ No L 56, 4. 3. 1968, p. 1. Regulation as last amended by Regulation (Euratom, ECSC, EC) No 2485/96 (OJ No L 338, 28. 12. 1996, p. 1).

COMMISSION REGULATION (EC) No 2193/97
of 3 November 1997
concerning the stopping of fishing for Greenland halibut by vessels flying the
flag of the United Kingdom

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, as last amended by Regulation (EC) No 686/97⁽²⁾, and in particular Article 21 (3) thereof,

Whereas Council Regulation (EC) No 395/97 of 20 December 1996 allocating, for 1997, Community catch quotas in Greenland waters⁽³⁾, provides for Greenland halibut quotas for 1997;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of Greenland halibut in the waters of ICES divisions V, XIV (Greenland waters) by vessels flying the flag of the United Kingdom or registered in the United Kingdom have reached the quota

allocated for 1997; whereas the United Kingdom has prohibited fishing for this stock as from 17 October 1997; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of Greenland halibut in the waters of ICES divisions V, XIV (Greenland waters) by vessels flying the flag of the United Kingdom or registered in the United Kingdom are deemed to have exhausted the quota allocated to the United Kingdom for 1997.

Fishing for Greenland halibut in the waters of ICES divisions V, XIV (Greenland waters) by vessels flying the flag of the United Kingdom or registered in the United Kingdom is prohibited, as well as the retention on board, the transhipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 17 October 1997.

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

Done at Brussels, 3 November 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 102, 19. 4. 1997, p. 1.

⁽³⁾ OJ L 66, 6. 3. 1997, p. 71.

COMMISSION REGULATION (EC) No 2194/97
of 3 November 1997
concerning the stopping of fishing for common sole by vessels flying the flag of
Belgium

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

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 686/97 ⁽²⁾, and in particular Article 21 (3) thereof,

Whereas Council Regulation (EC) No 390/97 of 20 December 1996 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1997 and certain conditions under which they may be fished ⁽³⁾, as last amended by Council Regulation (EC) No 1974/97 ⁽⁴⁾, provides for common sole quotas for 1997;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of common sole in the waters of ICES division VII e by vessels flying the flag of Belgium or registered in Belgium have reached the quota allocated

for 1997; whereas Belgium has prohibited fishing for this stock as from 19 October 1997; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of common sole in the waters of ICES division VII e by vessels flying the flag of Belgium or registered in Belgium are deemed to have exhausted the quota allocated to Belgium for 1997.

Fishing for common sole in the waters of ICES division VII e by vessels flying the flag of Belgium or registered in Belgium is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 19 October 1997.

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

Done at Brussels, 3 November 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 102, 19. 4. 1997, p. 1.

⁽³⁾ OJ L 66, 6. 3. 1997, p. 1.

⁽⁴⁾ OJ L 278, 11. 10. 1997, p. 1.

COMMISSION REGULATION (EC) No 2195/97
of 3 November 1997
concerning the stopping of fishing for herring by vessels flying the flag of
Germany

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

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy⁽¹⁾, as last amended by Regulation (EC) No 686/97⁽²⁾, and in particular Article 21 (3) thereof,

Whereas Council Regulation (EC) No 390/97 of 20 December 1996 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1997 and certain conditions under which they may be fished⁽³⁾, as last amended by Council Regulation (EC) No 1974/97⁽⁴⁾, provides for herring quotas for 1997;

Whereas, in order to ensure compliance with the provisions relating to the quantitative limitations on catches of stocks subject to quotas, it is necessary for the Commission to fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;

Whereas, according to the information communicated to the Commission, catches of herring in the waters of ICES divisions V b (EC zone), VI a (north of 56° N), VI b by vessels flying the flag of Germany or registered in Germany have reached the quota allocated for 1997;

whereas Germany has prohibited fishing for this stock as from 17 October 1997; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of herring in the waters of ICES divisions V b (EC zone), VI a (north of 56° N), VI b by vessels flying the flag of Germany or registered in Germany are deemed to have exhausted the quota allocated to Germany for 1997.

Fishing for herring in the waters of ICES divisions V b (EC zone), VI a (north of 56° N), VI b by vessels flying the flag of Germany or registered in Germany is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the abovementioned vessels after the date of application of this Regulation.

Article 2

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

It shall apply with effect from 17 October 1997.

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

Done at Brussels, 3 November 1997.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 102, 19. 4. 1997, p. 1.

⁽³⁾ OJ L 66, 6. 3. 1997, p. 1.

⁽⁴⁾ OJ L 278, 11. 10. 1997, p. 1.

COMMISSION REGULATION (EC) No 2196/97
of 4 November 1997

**fixing, for October 1997, the specific agricultural conversion rate for the amount
of the reimbursement of storage costs 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 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⁾,

Having regard to Commission Regulation (EEC) No 1713/93 of 30 July 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector ⁽⁵⁾, as last amended by Regulation (EC) No 59/97 ⁽⁶⁾, and in particular Article 1 (3) thereof,

Whereas Article 1 (2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EEC) No 1785/81 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural

conversion rates applicable during the month of storage; whereas that specific rate must be fixed each month for the previous month;

Whereas application of these provisions will lead to the fixing, for October 1997, of the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific agricultural conversion rate to be used to convert the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EEC) No 1785/81 into each of the national currencies for October 1997 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 5 November 1997.

It shall apply with effect from 1 October 1997.

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

Done at Brussels, 4 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽⁵⁾ OJ L 159, 1. 7. 1993, p. 94.

⁽⁶⁾ OJ L 14, 17. 1. 1997, p. 25.

ANNEX

to the Commission Regulation of 4 November 1997 fixing, for October 1997, the specific agricultural conversion rate for the amount of the reimbursement of storage costs in the sugar sector

Agricultural conversion rates		
ECU 1 =	40,9321	Belgian and Luxembourg francs
	7,54917	Danish kroner
	1,98243	German marks
	312,011	Greek drachmas
	167,153	Spanish pesetas
	6,68769	French francs
	0,759189	Irish punt
	1 973,93	Italian lire
	2,23273	Dutch guilders
	13,9485	Austrian schillings
	200,321	Portuguese escudos
	6,02811	Finnish marks
	8,72775	Swedish kroner
	0,695735	Pound sterling

COMMISSION REGULATION (EC) No 2197/97
of 4 November 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 5 November 1997.

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

Done at Brussels, 4 November 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 4 November 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 45	064	57,0
	204	49,9
	999	53,5
0709 90 79	052	69,2
	999	69,2
0805 20 31	204	75,6
	999	75,6
0805 20 33, 0805 20 35, 0805 20 37, 0805 20 39	052	42,7
	999	42,7
0805 30 40	052	83,8
	388	53,7
	524	67,8
	528	48,0
	999	63,3
	052	100,4
0806 10 50	064	62,8
	400	231,4
	999	131,5
	060	41,6
	064	44,3
	388	88,0
0808 10 92, 0808 10 94, 0808 10 98	400	87,7
	404	87,9
	528	52,4
	999	67,0
	052	91,6
	064	78,2
0808 20 67	400	86,3
	999	85,4

⁽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'.

COMMISSION REGULATION (EC) No 2198/97**of 4 November 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 1143/97 ⁽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 1222/97 ⁽⁵⁾, as last amended by Regulation (EC) No 2189/97 ⁽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 5 November 1997.

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

Done at Brussels, 4 November 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ L 141, 24. 6. 1995, p. 16.

⁽⁴⁾ OJ L 165, 24. 6. 1997, p. 11.

⁽⁵⁾ OJ L 173, 1. 7. 1997, p. 3.

⁽⁶⁾ OJ L 299, 4. 11. 1997, p. 19.

ANNEX

to the Commission Regulation of 4 November 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⁾	25,60	3,61
1701 11 90 ⁽¹⁾	25,60	8,73
1701 12 10 ⁽¹⁾	25,60	3,47
1701 12 90 ⁽¹⁾	25,60	8,30
1701 91 00 ⁽²⁾	26,91	11,78
1701 99 10 ⁽²⁾	26,91	7,26
1701 99 90 ⁽²⁾	26,91	7,26
1702 90 99 ⁽³⁾	0,27	0,38

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ 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 L 94, 21. 4. 1972, p. 1).

⁽³⁾ By 1 % sucrose content.

Information on the date of entry into force of the Agreement on fisheries relations between the European Community and the Republic of Lithuania and of the Protocol laying down the conditions relating to temporary joint ventures and joint enterprises provided for in the Agreement on fisheries relations between the European Community and the Republic of Lithuania

As the internal procedures for application by both parties of the Agreement on fisheries relations between the European Community and the Republic of Lithuania and of the Protocol laying down the conditions relating to temporary joint ventures and joint enterprises provided for in the Agreement on fisheries relations between the European Community and the Republic of Lithuania, signed in Brussels on 20 December 1996⁽¹⁾, have been completed, the Agreement and the Protocol accordingly entered into force on 13 October 1997.

⁽¹⁾ OJ L 332, 20. 12. 1996, p. 6.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 October 1997

appointing a member of the Economic and Social Committee

(97/743/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 194 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to Council Decision 94/660/EC, Euratom of 26 September 1994 appointing the members of the Economic and Social Committee for the period from 21 September 1994 to 20 September 1998 ⁽¹⁾,

Whereas a seat as a member of that Committee has fallen vacant following the resignation of Mr Werner Löw, of which the Council was notified on 14 May 1997;

Having regard to the nominations submitted by the German Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Ms Renate Hornung-Draus is hereby appointed a member of the Economic and Social Committee in place of Mr Werner Löw for the remainder of the latter's term of office, which runs until 20 September 1998.

Done at Luxembourg, 27 October 1997.

For the Council

The President

R. GOEBBELS

⁽¹⁾ OJ L 257, 5. 10. 1994, p. 20.

COMMISSION

COMMISSION DECISION

of 21 October 1997

pursuant to Article 90 (3) of the EC Treaty on the provisions of Italian ports
legislation relating to employment

(Only the Italian text is authentic)

(Text with EEA relevance)

(97/744/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 Italian authorities, Associazione Nazionale Compagnie e Imprese Portuali (ANCIP), Compagnia Unica fra i Lavoratori delle Merci Varie del Porto di Genova (CULMV), Federazione Italiana Imprese di Servizi (Ausitra), the Comitato Nazionale degli Utenti e degli Operatori Portuali, Associazione degli operatori dei magazzini e deposito merci e delle imprese operanti nel settore della logistica (Assologistica) and Associazione degli operatori terminalisti (Assotop) the opportunity to make known their views concerning the objectives of the Commission of the provisions of Italian legislation relating to dock work and port operations,

Whereas:

dock-work company formed exclusively of national workers' ⁽¹⁾.

- (2) Following that judgment, and finding that Italy had not amended its legislation, the Commission sent the Italian Government on 31 July 1992 a letter of formal notice under Article 90 (3) of the Treaty requesting it to state the measures it intended to take in this respect.
- (3) Following the Commission's letter, the Italian Government adopted, in succession, a decree-law, renewed eight times, law No 84 of 28 January 1994 on port reform, then a further decree-law which amends that law, was renewed some fifteen times and most recently on 21 October 1996, and was converted in Law No 647 on 23 December 1996.
- (4) On 7 May 1997 the Commission, taking the view that the Italian ports legislation, that is Law No 84/94, as amended by 647/96 (hereinafter 'Law No 84/94') continued to be incompatible with Community competition law, sent a further letter of formal notice to the Italian Government. The latter replied by letter of 7 July 1997.

1. THE FACTS

1.1. Background

- (1) In its judgment of 10 December 1991 in Case C-179/90 *Convenzionali Porto di Genova* ('Port of Genova judgment'), in reply to a reference for a preliminary ruling, the Court of Justice of the European Communities ruled that 'Article 90, in conjunction with Articles 30, 48 and 86 of the Treaty, precludes rules of a Member State which confer on an undertaking established in that State the exclusive right to organize dock work and require it for that purpose to have recourse to a

1.2. Italian port legislation prior to Law No 84/94

- (5) This procedure concerns port handling operations in Italy. Port operations means the activities listed in Article 16 (1) of Law No 84/94, that is the

⁽¹⁾ [1991] ECR I-5889.

loading, unloading, embarkation, disembarkation, storage and transhipment of all types of goods.

- (6) At the time of the Port of Genoa judgment, the market for port operations, as regulated by the Codice della Navigazione, took the form of a dual monopoly:

— on the one hand, a monopoly for the organization of port operations: an undertaking (generally controlled by the port authority) was granted an exclusive right to carry out port operations; in practice, although several undertakings were granted the right in each port, the right was always limited to a specific market segment (various goods, containers, fresh produce, etc.) which justifies the conclusion that it was indeed an exclusive right (on the reference market); however, those undertakings were not authorized to use their own workforce to carry out the operations,

— on the other hand, a monopoly for carrying out port operations: in each port, a port company was granted the exclusive right to supply (to the undertakings referred to in the first indent) the necessary labour to carry out the port operations in question,

— in addition, it was prohibited for a vessel to load or unload using its own crew.

- (7) In the Port of Genoa judgment, the Court of Justice examined specifically the question of port operations involving ordinary freight at the Port of Genoa and found that the undertakings in question had a legal monopoly over a substantial part of the common market (for the sectors of the organization and of the performance of dock work respectively).

- (8) It then concluded that the undertakings enjoying exclusive rights in accordance with the procedures laid down by the national rules in question had occasion, as a result, either to demand payment for services which had not been requested, to charge disproportionate prices (infringements under Article 86 (a)), to refuse to have recourse to modern technology (which has the effect of limiting technical development within the meaning of Article 86 (b)) which involved an increase in the cost of the operations and a prolongation of the time, or to grant price reductions to certain consumers and at the same time to offset such reductions by an increase in the charges to other consumers (which is contrary to Article 86 (c)).

- (9) The Court of Justice therefore concluded that: 'in these circumstances it must be held that a Member State creates a situation contrary to Article 86 of the Treaty where it adopts rules of such a kind as those at issue (...), which are capable of affecting trade between Member States' ⁽¹⁾.

1.3. Port legislation following Law No 84/94

- (10) Law No 84/94 modified the operation of the market in question.

The amendments only partly satisfied the objections raised in the letter of formal notice of 31 July 1992 and, furthermore, introduce fresh distortions of competition that are incompatible with the Treaty.

- (11) Analysis of Law No 84/94 should be based on the provisions of Law No 1369 of 23 October 1960 (hereinafter 'Law No 1369/60') which prohibits recourse to all forms of intermediary for the supply of labour and regulates the use of labour in sub-contracted work:

(a) Article 1 of Law No 1369/60 states that 'the contractor shall be prohibited from contracting out ... labour ...'. In the event of failure to comply, the law imposes fines on both the contractor having recourse to such labour and the firm supplying the labour.

(b) In the present case, the effect of the Law is to prevent port undertakings, in principle, from using temporary labour to absorb surges in demand or from placing their surplus workers at the disposal of competitors when there is a lull in demand.

(c) In addition, Italian case-law appears to have extended the ban on temporary labour to the supply of temporary labour for subcontracted work where such work is characterized by a 'high labour content'. As regards ports, therefore, the Italian courts consider that Article 1 of Law No 1369/60 prohibits subcontracting (both active and passive) of loading, unloading and transhipment operations (see for example the reference for a preliminary ruling by Pretura di La Spezia to the Court of Justice, Case C-163/96 *Criminal proceedings against Silvano Raso*, still pending).

⁽¹⁾ Judgment cited above, at paragraph 20.

This means in particular that terminal operators cannot sub-contract certain operations with a high labour content and, similarly, that port undertakings cannot be subcontracted to supply such services. On the other hand, the subcontracting of operations with a high capital content and low labour content is not covered by the general ban.

- (d) The Italian Government informed the Commission of the fact that on 18 June 1997 the Italian Parliament had approved a new law on the liberalization of temporary work. This was Law No 196 of 24 June 1997 (hereinafter 'Law No 196/97'). According to information acquired by the Commission and the reply given by the Italian Government on 7 July 1997, however, it would seem that the new Law is not as yet applicable in the ports for two reasons:

(i) First, Law No 196/97 does not repeal Law No 1369/60 but sets up a derogatory scheme by which the Minister for Labour licenses certain undertakings to supply temporary labour. Law No 84/94, however, establishes a specific scheme of derogation from Law No 1369/60 for the ports sector. Thus the derogation from Law No 1369/60 that is applicable in the ports should be the derogation provided for by Law No 84/94 and not that provided for in Law No 196/97;

(ii) Second, even if Law No 196/97 were theoretically applicable in ports, the objective constraints provided for in the Law considerably restrict its scope as regards port work. On the one hand it would seem that port undertakings cannot be issued an operating licence as, under Law No 196/97, only undertakings with the sole object of supplying labour are entitled to do so (Article 2 (2) (a) of Law No 196/97). On the other hand, small firms, which play an important part in the operation of a port, are excluded (because only firms offering temporary labour in at least four separate regions are eligible pursuant to Article 2 (2) (b)) and, lastly, because Article 12 of Law No 196/97 makes it impossible to employ temporary labour less than 10 days after the first time. These rules would thus make it

impossible to meet two peaks of demand within a 10-day period.

- (12) The main characteristics of the market after Law No 84/94 may be summarized as follows:

- (a) From an administrative point of view, the new Law creates Port Authorities, which replace the port managers as the administrative authority. Unlike the managers, the Port Authorities are not authorized to supply port services, either directly or indirectly;
- (b) Vessels may now perform their own port handling operations (Article 16 (3)), provided they are authorized by the Port Authority;
- (c) The market for port work on behalf of third parties is open to competition, provided that authorization is issued by the Port Authority (Article 16). However, the Port Authority may limit the number of authorized firms in order to take account of the characteristics of the port and traffic, whilst continuing to guarantee a maximum degree of competition. Unlike in the past, firms authorized under Article 16 may use their own workforce to carry out port work (Article 27, which repeals Article 110 (4) of the *Codice della Navigazione*). However, until 31 December 1996, they were required to recruit members of the former port companies first.

Under Article 18 of Law No 84/94, the port authorities may also grant dock or partial dock concessions to firms authorized under Article 16. In general, an undertaking holding a concession for part of the port is a terminal operator. Terminal operators may use their own workers to carry out port work (Article 27, which repeals Article 110 (4) of the *Codice della Navigazione*). Here too, the obligation when recruiting to give priority to former port company members ended on 31 December 1996.

The former port companies have been dissolved and converted into firms which, amongst other activities, perform port work (Article 21). In principle, the former companies compete with each other. However, the Law gives them certain advantages in relation to their competitors (see (d)), as well as granting them aid.

- (d) The Law provides for the following derogations from Law No 1369/60 under which temporary work and the subcontracting of work with a high-labour content are prohibited:

(i) on the one hand, as regards the subcontracting of services with a high-labour content, Article 17 (3) of Law No 84/94 grants the former port companies the exclusive right to derogate from the general ban, thus granting them a monopoly for the supply of such services. The Law does not specify the point at which dock work becomes an operation 'with a high-labour content', so that it is difficult to determine the exact limits of the monopoly;

(ii) on the other hand, as regards temporary work to meet surges in demand, the Port Authority:

- either favours the formation of a consortium within which the Port Authority itself will designate one or more firms authorized to subcontract labour to its competitors, or
- sets up an agency for the supply (subject to the monopoly) of temporary labour to port undertakings; until such an agency is set up, the monopoly is held by the former port company.

2. ASSESSMENT OF LAW No 84/94

(13) Although Law No 84/94 introduces changes in relation to the preceding organization of the market, it has not fully complied with the requirements set out in the letter of formal notice of 31 July 1992 and has introduced new elements that are incompatible with Article 86 of the Treaty. Law No 196/97 does not alter this assessment. The reasons are set out below.

(14) This assessment does not concern the compatibility with Community law of Law No 1369/60.

2.1. General legal framework

2.1.1. *Relevant services markets*

(15) The changes brought about by Law No 84/94 have altered the organization of the markets.

The relevant services markets are as follows:

(a) the market for port work on behalf of third parties (the list of port operations is contained in Article 16 of Law No 84/94).

As in practice all these operations are complementary to each other and each one can be provided by a different operator, each operation can be considered to give rise to a market in itself. Nevertheless, for the sake of simplification, in this procedure all these services will be treated as constituting a single market.

(b) the market for temporary labour (Article 17 (2) and (3) of Law No 84/94)

Following the reform, port undertakings were able to recruit workers to carry out port operations. However, in addition to their own workforce, port undertakings also engender demand for temporary labour. This is due to the fact that they have structured their workforce to be below the number needed to cover demand in peak periods (fluctuating demand is inherent to dock work as it is tied to the arrival of ships). Thus, in peak periods, port undertakings (including terminal operators) must either refuse work or recruit temporary labour;

(c) the market for the subcontracted supply of services with a high labour content (Article 17 (3) of Law No 84/94)

Port undertakings offering a complete service (terminal operators) can either carry out all the work using their own equipment and workforce (possibly recruited on temporary contracts), or subcontract certain operations. The decision whether to subcontract has considerable implications in terms of organization of work, investments in training and equipment, recruitment, etc. In addition, for the short term at least, own performance or subcontracting are not fully substitutable.

Thus, there is a specific market for subcontracted port operations (more precisely, a specific market for each subcontracted operation). The relevant market in the context of this procedure is limited to operations with a high labour content.

(16) The Italian Government has objected that the definition of the latter two markets is too 'technical'. It considers that the market for the supply of temporary labour (b) and the market for the subcontracted supply of services with a high labour content (c) constitute a single market, i.e. the market for port services. The reason given is that both temporary labour and the supply of services with a high labour content satisfy the same demand.

Temporary labour and services with a high labour content may, in certain circumstances, satisfy the same demand. However, the two are not sufficiently substitutable to be regarded as constituting one and the same market. This is true as regards both demand and supply.

— In the first place, the use of temporary labour constitutes a purchase of 'means', whereas recourse to a subcontractor is a purchase of a 'result'. The difference in the impact on the organization of the undertaking is obvious: the use of temporary labour does not alter the organization of the undertaking in question, since it has extra workers only for a specific period. The extra workers provide their services like any other employee of the firm in question, in accordance with the firm's own procedures. In addition, the firm continues to be responsible for organizing and managing the work. On the other hand, an undertaking which entrusts certain tasks to a subcontractor is delegating some of the responsibility for organization and management. The workers in question perform the loading and unloading under the orders and in accordance with the procedures (and know-how) of the subcontractor.

— Secondly, temporary labour and subcontracting satisfy different demands for flexibility.

By subcontracting services, a contractor is able to entrust an entire operation to a third party. The subcontracting agreement ends with the performance of the service. The use of temporary labour, on the contrary, enables port undertakings to make use of extra workers for a specific period. Thus it can determine the number of port workers it wishes to have (which may be less than the number of dockers needed to carry out a task) and the period for which they are required (which will generally be different from the time needed for an operation).

— Thirdly, it is clear from the preceding paragraph that the type of demand is different: in practice, although any kind of port undertaking authorized to carry out port operations under Article 16 of Law No 84/94 may use temporary

labour to satisfy peak demand, it is likely that the main demand for subcontracting work will come from the terminal operators. Similarly, while the demand for temporary labour has the stated aim of meeting peak demand, the demand for subcontracted services may also form part of an industrial policy of tertiarization of activities, which cannot be satisfied by a temporary workforce.

— Fourthly, the conditions governing access to the two markets (supply side) are different.

Temporary labour could in theory be supplied by any temporary employment agency, for instance the agency provided for in Article 17 (1) (b). However, subcontracted port work can be carried out only by a port undertaking with the necessary know-how and a licence to carry out port work issued under Article 16 of Law No 84/94.

The legislation in question should also be examined on the basis of three separate, although adjacent, markets.

2.1.2. *Substantial part of the common market*

(17) The Court held in its Port of Genoa judgment that, having regard to the volume of traffic, the port in question constituted a substantial part of the common market.

(18) In its letter of formal notice of 31 July 1992 the Commission extended that concept to the ports of Taranto, Venice, Livorno, Naples and Ravenna.

(19) The legislation in question establishes the same organization of the market in all Italian ports, the organization comprising similar dominant positions in each of the principal Italian ports. This situation is liable to create a distortion of competition throughout Italy.

(20) The Court, however, held in Case C-323/93 *Centre d'insemination de la Crespelle v. Coopérative de*

Mayenne⁽¹⁾ that 'By thus establishing (...) a contiguous series of monopolies territorially limited but together covering the entire territory of a Member State, those national provisions create a dominant position, within the meaning of Article 86 of the Treaty, in a substantial part of the common market'. It may therefore be concluded that the Italian legislation should be assessed not only in the light of its impact on the Port of Genoa or the ports of Genoa, Taranto, Venice, Livorno, Naples and Ravenna (which already account for a substantial part of the common market), but in respect of all the Italian ports dealing with intra-Community traffic, as stated in the supplementary letter of formal notice of 7 May 1997.

- (21) The Italian Government disputed the Commission's assessment concerning the 'substantial part of the common market'. The main argument put forward is that the markets for temporary labour and subcontracted port work with a high labour content are very small compared with the market for port operations. They are two separate markets which cannot be substituted for one another or for the market for port operations. As stated above, however, the Italian ports legislation establishes, for those markets, the same market organizations for the whole of Italy.

The fact that the relevant markets are relatively small, from a financial point of view, compared with the larger market of port operations does not affect the fact that a substantial part of the common market is involved. For example, the Court held in Case C-18/93 *Corsica Ferries v. Corpo dei piloti del porto di Genova*⁽²⁾ that the market for piloting services in the Port of Genoa may be regarded as constituting a substantial part of the common market even though the cost of piloting represents only a marginal part of the cost of operating the ferries.

2.1.3. *Effect on trade between Member States*

- (22) One of the effects of the legislation in question has been to influence the cost of port operations, irrespective of the nationality of the beneficiary of the service.
- (23) As the Court held in the Port of Genoa judgment, the extra expense of unloading is 'capable, by

reason of its effect on the prices of the goods, of affecting imports⁽³⁾' and hence of affecting trade between Member States.

2.2. Article 90 of the Treaty

- (24) The infringements of and situations infringing the Treaty competition rules described below are the result of a State measure, Law No 84/94, in conjunction with Law 1369/60. In adopting such a measure, Italy infringed Article 90 (1), read in conjunction with Article 86, of the Treaty.
- (25) Article 90 (1) provides that Member States, in the case of undertakings to which they grant special or exclusive rights, shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaty, in particular to those rules provided for in Article 6 and Articles 85 to 94.
- (26) Undertaking(s) authorized to supply temporary labour or to carry out port operations with a high labour content by way of derogation from Law 1369/60 are undertakings to which the State grants special or exclusive rights within the meaning of Article 90 of the Treaty.
- (27) The Port Authority is a public body entrusted with carrying out public authority duties in the port. Under Article 12 of Law No 84/94, it comes under the aegis of the Transport Ministry. Its administrative acts (including acts pursuant to Article 17 of Law No 84/94) are State measures within the meaning of Article 90 of the Treaty.

2.3. Article 90 in conjunction with Article 86 of the Treaty

2.3.1. *The voluntary consortium provided for in Article 17 (1) (a) of Law No 84/94*

- (28) Under the Article in question, the Port Authority promotes the formation of a voluntary consortium open to all port undertakings (see Articles 16, 18 and 21), the sole purpose of which is to enable its members to use temporary workers, by way of derogation from the general ban imposed by Law No 1369/60. To that end, the Port Authority will appoint one or several members of the consortium who will be authorized to supply temporary labour to the other members.
- (29) The Law thus allows the Port Authority to license only a limited number of undertakings (one or more) to supply labour to the other undertakings.

⁽¹⁾ [1994] ECR I-5077, paragraph 17.

⁽²⁾ [1994] ECR I-1783, 1812.

⁽³⁾ Paragraph 22.

(30) The exercise by the Port Authority of this facility could lead to infringements of Article 86 of the Treaty; if the Port Authority does not license all the members of a consortium to supply temporary labour to the other undertakings, it could lead to abuses within the meaning of Article 86. Such abuses are due to the fact that the undertaking(s) licensed to supply temporary labour are thus in a position of being able unduly to benefit from the following competitive advantages in relation to other undertakings on the market for port operations:

- (a) First, the decision of the Port Authority to license only a limited number of undertakings has the effect of enabling the undertaking(s) authorized to supply temporary labour to pass on part of their labour costs to their competitors, when the latter have recourse to temporary workers. An unauthorized undertaking, however, would not be able when demand is slack to hire out its surplus workers to other undertakings.
- (b) Secondly, if the Port Authority licenses only one undertaking to supply labour to other undertakings, the licensed undertaking is placed in a situation of conflict of interest as it becomes the sole supplier of its competitors.

In practice, the undertaking licensed to supply temporary labour will have the monopoly and will thus hold a dominant position within the meaning of Article 86 of the Treaty on the market for temporary labour and could abuse that position, for example by charging (its competitors on the market for port operations) excessive prices for the supply of temporary labour or by supplying its competitors with the less efficient workers.

- (c) The conflict of interest described in (b) is inherently an abuse. It is not necessary to wait until undertakings actually commit such abuses before action can be taken against them. It is sufficient for them to be legally placed in a position in which they are induced to commit abuses if they have an interest in so doing⁽¹⁾.

The Italian Government and ANCIP disputed this point, on the ground that compliance with the competition rules would in any event be closely monitored both by the Port Authority and, if necessary, the Commission.

The Commission does not doubt the ability of the Port Authority to enforce compliance with the law. It is the law itself that is incompatible with the Treaty.

There is a body of consistent case-law on this problem, for example the judgment in Case C-18/88 *RTT v. GB-Inno-BM*⁽²⁾ in which the Court held that a conflict of interest is inherently abusive. The Court was asked to decide on rules that conferred on the dominant telephony operator, which also sold telephone equipment, the right to approve the telephone installations of its competitors. The Court held that 'a system of undistorted competition, as laid down in the Treaty, can be guaranteed only if equality of opportunity is secured as between the various economic operators. To entrust an undertaking which markets terminal equipment with the task of drawing up the specifications and granting type-approval in respect thereof is tantamount to conferring upon it the power to determine at will which terminal equipment may be connected to the public network, and thereby placing that undertaking at an obvious advantage over its competitors. In those circumstances, the maintenance of effective competition requires that the drawing up of technical specifications (...) and the granting of type-approval must be carried out by a body which is independent (...)'⁽³⁾.

In response to the arguments of the RTT, the Court also stated⁽⁴⁾ that the fact that the RTT had not itself committed an abuse could not be invoked to justify the rules in question.

- (d) As to the possibility of the Port Authority designating several undertakings licensed to supply temporary labour, this would not suffice to prevent the emergence of an undertaking in a dominant position on the market and the eventual abuse of its position. The Commission notes that, in view of Article 17 (1) (a) of the Law, the Port Authority will include among the undertakings it licenses at least the former port company which, in view of its current size, will easily hold the largest share of the market. Under that Law, the undertakings licensed by the Port Authority to supply temporary labour will be 'only those members of consortiums which have adequate staff and own resources with staff competence for port activities taking account of the surplus capacities resulting from the process of rationalization and conversion stemming from this Law'. In practice, only the former port companies meet these criteria.

The Italian Government stated in its reply of 7 July that it planned to promulgate an interpretative ministerial circular asking the port

⁽¹⁾ See also the recent Judgment of 17 July 1997 in Case C-242/95 *GT-Link AS v. De Danske Statsbaner*, paragraphs 33 *et seq.* Not yet published.

⁽²⁾ [1991] ECR I-5941.

⁽³⁾ Paragraphs 25 and 26.

⁽⁴⁾ Paragraphs 23 and 24.

authorities to issue, if possible, a licence to supply temporary labour to all consortium undertakings with surplus workers.

Irrespective of any considerations as to the legal significance of a circular in relation to the Law to which it refers, the Italian Government's proposal to distribute a ministerial circular does not constitute a satisfactory response to the supplementary letter of formal notice sent by the Commission on 7 May 1997 since, in view of the facts described, only the former port companies satisfy the criteria set out by the Law.

- (e) The Italian Government and the ANCIP objected that Law No 84/94 will not necessarily entail a conflict of interest for the former port company since, under Article 21 of Law No 84, it would have to become two separate entities: one to carry out port operations and the other to supply temporary labour.

This argument is not satisfactory since it is not correct to state that Article 21 of Law No 84/94 requires former companies to become two separate undertakings. The Article in question states that the former port companies must change into one or more undertakings, the obligation thus relating only to the minimum requirement of forming one undertaking. Article 21 also states that the formations must take place no later than 18 March 1995, a deadline which, according to the information in the possession of the Commission, was not kept to or monitored by the Italian authorities. In addition, it is not mandatory under Law No 84/94 to make a distinction between the two roles (port undertaking and supplier of temporary labour to port undertakings). On the contrary, it allows a confusion of the roles and, therefore, a conflict of interest and abuse of a dominant position. The information in the Commission's possession indicates that such confusion of roles is already evident at the Port of Genoa.

- (f) Lastly, even separating the two roles would not be sufficient if it occurred within the same group. It would be necessary for the two undertakings with separate roles to be entirely independent.

(g) In view of that situation, it must be concluded that Law No 84/94 has the effect of restoring the former port companies to their dominant position although the Court of Justice held in the Port of Genoa judgment that such a situation led to abuses and there are no grounds for believing that such abuses will cease.

- (31) In such circumstances, the undertaking(s) licensed to supply temporary labour would be led to infringe Article 86 of the Treaty.
- (32) In the present case, the conduct of the undertakings in question is the result of State measures. As a result, Article 17 (1) (a) of Law No 84/94, which requires the Port Authority to promote the voluntary formation of undertakings having the sole object of allowing temporary labour to be made available by one or more undertakings licensed to that end by the Port Authority to other undertakings constitutes an infringement of Article 90 (1) in conjunction with Article 86 of the Treaty.

2.3.2. The agency provided for in Article 17 (1) (b) of Law No 84/94

- (33) According to Article 17 (1) (b), if a voluntary consortium is not set up, the Port Authority may set up an agency holding a monopoly for the supply of temporary labour. However, the law does not specify the procedures for setting up or running such an agency, such details being left to a subsequent Ministerial decree. It is possible that questions affecting the Commission's assessment concerning the legality of such an agency under Community law could arise.
- (34) The Commission will analyse the market situation after any such decree is adopted and reserves the right to take action at that time if necessary.

2.3.3. The transitional period provided for in Article 17 (2) of Law No 84/94

- (35) Article 17 (2) states that until such time as a consortium or agency is set up, the former port company will hold the monopoly for the supply of temporary workers to other port undertakings.

(36) The former company, which is present on the market for port operations, thus becomes the sole distributor of its competitors and is encouraged to abuse its dominant position within the meaning of Article 86 of the Treaty. Reasoning analogous to that set out in Chapter 2.3.1 applies.

(37) The Court further held in the Port of Genoa judgement: 'The simple fact of creating a dominant position by granting exclusive rights within the meaning of Article 90 (1) of the Treaty is not as such incompatible with Article 86. However, the Court has had occasion to state, in this respect, that a Member State is in breach of the prohibitions contained in those two provisions if the undertaking in question, merely by exercising the exclusive rights granted to it, cannot avoid abusing its dominant position (...) or when such rights are liable to create a situation in which that undertaking is induced to commit such abuses' ⁽¹⁾.

(38) Such is the case here. The rule which requires the former companies to hold the exclusive right to supply temporary labour during the transitional period is a State measure contrary to Article 90 (1) in conjunction with Article 86 because it places the former company in a position of benefiting unduly from the advantages described above in paragraph 30.

2.3.4. *The market for subcontracted services (Article 17 (3) of Law No 84/94)*

(39) Article 17 (3) provides that subcontracted services supplied by the former port companies, including services with a high labour content, are not covered by the ban in Article 1 of Law No 1369/60. In practice, this means that the former company holds a monopoly, by virtue of the exclusive rights granted it by Law No 84/94 in conjunction with Law No 1369/60, on the market for the supply of subcontracted services with a high labour content.

(40) The situation resulting from the application of Article 17 (3) of Law No 84/94 is in breach of Article 86 of the Treaty.

(41) It may be concluded, on the same basis as the reasoning set out in section 2.3.3 concerning the temporary labour market, that the former company is enabled to abuse its dominant position on the market for subcontract port work. It not only holds the monopoly for subcontracted services with a high labour content but is also present on the larger market for port work. It is thus the exclusive supplier of its competitors and, as such, is in a

position to abuse its dominant position, as stated *mutatis mutandis* in section 2.3.1.

(42) By analogy with the reasoning in section 2.3.3, Article 17 (3) of Law No 84/94, which states that subcontracted services with a high labour content supplied by the former port company are not caught by the ban in Article 1 of Law No 1369/60, constitutes a State measure contrary to Article 90 (1) in conjunction with Article 86.

(43) According to ANCIP, the Commission is mistaken in its interpretation. Article 17 (3) of Law No 84/94, it claims, does not have the effect of conferring on the former company a monopoly on the market for the supply of subcontracted services with a high labour content, but only a monopoly on the market for the supply of temporary labour.

Although ANCIP's view cannot be shared, it must be considered that a State measure having the scope described by ANCIP would also be a State measure contrary to Article 90 (1) in conjunction with Article 86, in accordance with the conclusions reached in sections 2.3.1. and 2.3.3.

(44) In its reply of 7 July 1997, the Italian Government informed the Commission that it considered it advisable to repeal Article 17 (3) of Law No 84/94. It did not state when it would take such a step, or how it intended to define the concept of 'high labour content'. The significance of a statutory amendment such as this will have to be assessed as and when it takes place.

2.4. Article 90 (2)

(45) The Italian authorities have not invoked the exception in Article 90 (2) of the Treaty to justify authorizing one or more enterprises to derogate from Article 1 of Law No 1369/60, authorizing only the former port company to derogate from Article 1 of the same Law during the transitional period and exempting the former company from the ban on the subcontracted supply of services with a high labour content.

(46) It should also be pointed out that, as the Court held in its Port Genoa judgement, 'it does not appear either from the documents supplied (...) or from the observations submitted to the Court of Justice that dock work is of a general economic interest exhibiting special characteristics as compared with the general economic interest of other economic activities' ⁽²⁾.

⁽¹⁾ Paragraphs 16 and 17.

⁽²⁾ Paragraph 27.

- (47) Lastly, even if it were accepted that the supply of temporary labour to carry out dock work or subcontracted dock work constituted a public service, in the present case the application of the competition rules would not obstruct the performance of a particular public interest task by a port company.
- (48) The exception provided for in Article 90 (2) is not therefore applicable.

CONCLUSION

It can be concluded from the foregoing that the State measure referred to in sections 2.3.1, 2.3.3 and 2.3.4 constitutes an infringement of Article 90 (1) of the Treaty in conjunction with Article 86,

HAS ADOPTED THIS DECISION:

Article 1

The following provisions of Italian Law No 84/94, as last amended by Law No 647/96 (hereinafter 'Law No 84/94'), are incompatible with Article 90 (1) in conjunction with Article 86:

- (a) the provision stating that the Port Authorities are to promote the setting-up of a voluntary consortium open to all undertakings licensed to operate in the ports for the sole purpose of dealing more efficiently with unforeseeable fluctuations in the demand for labour and, to that end, are to licence one or more members of the consortium, insofar as they have the appropriate workforce and own resources with the

specific vocational skills to carry out port operations, as well as the surplus workforce resulting from rationalisation and restructuring under Law No 84/94, to provide other consortium members with manpower services (Article 17 (1) (a));

- (b) the provision stating that, until the consortium or agency is set up to provide temporary labour in each Italian port, the undertakings provided for in Article 21 (b) of Law No 84/94, namely the former port companies are to have the monopoly for the for the supply of temporary labour to other port undertakings (Article 17 (2));
- (c) the provision giving the monopoly to the former port companies for the supply of subcontracted services, including those with a high labour content, to other port undertakings (Article 17 (3)).

Article 2

Italy must bring to an end the infringements referred to in Article 1 and inform the Commission of the measures it has taken to that end within two months of the notification of this Decision.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 21 October 1997.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 21 October 1997

relating to a proceeding pursuant to Article 90 (3) of the EC Treaty regarding the tariffs for piloting in the Port of Genoa

(Only the Italian text is authentic)

(Text with EEA relevance)

(97/745/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the complaint lodged by Tourship on 21 June 1994 concerning the system of reductions in piloting tariffs in the port of Genoa, withdrawn on 8 July 1997,

Having given the Italian authorities, the *Corpo dei Piloti del Porto di Genova* (Corporation of Pilots of the Port of Genoa), *Tirrenia*, *Viamare di Navigazione*, *Navarma* and Tourship the opportunity to make known their views on the objections raised by the Commission concerning the system of reductions in piloting tariffs in the port of Genoa,

Whereas:

ferent tariffs to maritime transport undertakings, depending on whether they operate transport services between Member States or between ports situated on national territory, in so far as trade between Member States is affected'.

On 26 May 1994, Tourship (formerly Corsica Ferries) applied to the Corporation of Pilots of the Port of Genoa for the reductions granted to vessels engaged in cabotage, pursuant to the abovementioned judgment. On 1 June 1994, the Corporation informed Tourship that it was obliged to apply the tariffs laid down by the Ministry for the Merchant Navy. The Ministry not having issued new tariffs at that time, the Corporation had been compelled to apply the tariffs objected to by the Court.

On 21 June 1994, Tourship complained to the Commission concerning the system of reductions in piloting tariffs in the port of Genoa, a system which had been the subject of the abovementioned Court ruling.

THE FACTS

This procedure concerns the system of reductions in piloting tariffs in the port of Genoa.

The State measure concerned

- (1) Following several references for preliminary rulings from the Court of Genoa in connection with a dispute between Corsica Ferries and the Corporation of Pilots, on 17 May 1994, the Court of Justice delivered a judgement in Case C-18/93 Corsica Ferries ('), on piloting tariffs in the port of Genoa. It held that 'Article 90 (1) and Article 86 of the Treaty prohibit a national authority from inducing an undertaking which has been granted the exclusive right of providing compulsory piloting services in a substantial part of the common market, by approving the tariffs adopted by it, to apply dif-

On 5 October 1994 a new tariff was published in Circular No 5203904. Pursuant to Article 91 of the Navigation Code, piloting tariffs are approved by the Minister for the Merchant Navy after seeking the opinions of the trade union associations concerned. The tariffs are put into effect in each port by decree of the competent maritime authority. In the port of Genoa, the abovementioned circular was put into effect by Decree 17/94 of 12 October 1994 of the maritime authority.

Article 1 of the Decree in question fixes the basic rate calculated on the basis of the gross registered tonnage of a vessel.

Article 4 lays down the tariff increases for services supplied outside normal working hours and days which range from 40 % to 50 % of the basic tariff.

Article 10 provides for a system of reductions on the following piloting tariffs:

(¹) [1994] ECR I-1783.

- a reduction of 65 % of the basic piloting tariff is granted to shipping companies operating passenger vessels which carry out regular scheduled services according to a fixed route and make at least three port calls a day,
- a reduction of 50 % of the basic piloting tariff is granted to shipping companies operating passenger vessels which carry out regular scheduled services according to a fixed rate and make at least four port calls a week,
- shipping companies which make the following number of calls in a quarter benefit from the following tariffs:
 - from 1 to 3 calls: 100 % of the basic tariff,
 - from 4 to 10 calls: 95 % of the basic tariff,
 - from 11 to 20 calls: 85 % of the basic tariff,
 - over 20 calls: 80 % of the basic tariff.

A 'call' for the purposes of the circular means one entry and one exit from the port.

On 4 September 1996 a new tariff was published in Circular No 5203359. It was put into effect at the port of Genoa by Decree 19/96 of 9 September 1996 of the maritime authority.

Article 1 of the Decree fixes the basic tariff calculated on the basis of gross registered tonnes. There are three types of basic tariff: oil tankers with or without segregated ballast, and other vessels. Article 1 (2) establishes the tariffs for vessels of up to 2 000 grt that are piloted by radio and for vessels authorized to use radio piloting in order leave Porto Vecchio under the Ministerial Decree of 2 September 1996⁽¹⁾.

Article 5 lays down the tariff increases for services provided outside normal working hours and days which range from 40 % to 100 % of the basic tariff.

Article 10 provides for the following reductions in piloting tariffs:

- a reduction of 65 % of the basic piloting tariff is granted to shipping companies operating passenger vessels which carry out regular scheduled services according to a fixed route and make at least four port calls a week,
- shipping companies which make the following number of calls in a quarter benefit from the following tariffs:

- from 1 to 3 calls: 100 % of the basic tariff,
- from 4 to 10 calls: 95 % of the basic tariff,
- from 11 to 20 calls: 85 % of the basic tariff,
- over 20 calls: 80 % of the basic tariff.

The firms and services concerned

(2) The Corporation of Pilots of the Port of Genoa (Corpo dei Piloti del Porto di Genova) is a trade association comprising the 21 pilots working in that port. Through its members, it is engaged in an economic activity, namely, the supply of piloting services. It has received from the public authorities the exclusive right to provide compulsory piloting services in the port of Genoa.

(3) Tourship Italia (formerly Corsica Ferries) is a shipping company governed by Italian law operating regular scheduled services between Genoa and Corsica with two ferries. Since June 1997 Tourship has also operated a high-speed link. It has a concession for a quay within the port of Genoa.

(4) Tirrenia di Navigazione is 99 % controlled by Società Finanziaria Marittima Finmare, which is in turn controlled by IRI (a public holding company). It chiefly operates ferry and cargo services to Sicily and Sardinia.

Viamare di Navigazione (taken over on 18 December 1996 by Italia di Navigazione) is 99 % controlled by Società Finanziaria Marittima Finmare, which is itself controlled by IRI. Italia di Navigazione operates six container vessels.

Navarma specializes in the transport of passengers and vehicles on ferries sailing to Elba, Corsica and Sardinia.

(5) Piloting services in Italian seaports, governed by the Navigation Code (Articles 86 to 100) and the Implementing Regulation (Articles 98 to 137) are provided under the authority of the harbour master. Although usually optional, piloting services can be made compulsory by decree of the President of the Republic. In virtually all Italian ports, piloting has become compulsory. In the port of Genoa, a Decree of the Ministry of Transport and Shipping of 30 December 1992 made piloting compulsory. This was reaffirmed by Ministerial Decree of 2 September 1996.

That Decree of the Ministry of Transport and Shipping provided for the possibility of recourse, under certain conditions, to piloting services by radio on departure from Porto Vecchio.

⁽¹⁾ See recital 5 for a description of the Decree.

Pursuant to Article 86 of the Navigation Code a corporation of pilots having legal personality is to be set up by decree of the President of the Republic in ports and other places for the access or passage of vessels where there is a recognized need for a piloting service.

Thus, at a given port, the corporation of pilots and the master of a vessel representing the shipowner conclude a contract for the provision of services against payment. Under the contract, a pilot, as a member of the corporation, assists the master of the vessel with the necessary manoeuvres to enter, leave or manoeuvre in the port and the necessary operations for berthing and unberthing. The shipowner applies to the corporation, which designates a pilot to provide the appropriate services.

LEGAL ASSESSMENT

Article 90 (1)

- (6) Article 90 (1) provides that, in the case of public undertakings and undertakings to which Member States grant special or exclusive right, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaty.

In the abovementioned judgment, the Court ruled that the Corporation of Pilots of the Port of Genoa is an undertaking to which the public authorities have granted the exclusive right to supply compulsory piloting services in the port of Genoa. It also stated that endorsement by the Member State of the piloting tariffs was a State measure within the meaning of Article 90 (1).

On 2 September 1996 the Minister for Transport and Shipping adopted a Decree which confirmed the compulsory nature of the piloting service. Circular No 5203359 of the Ministry approved the tariffs for such services in Italian ports. The circular was put into effect by Decree No 19/96 of 9 September 1996 of the Genoa Board of Navigation for the port of Genoa. Such endorsement of the piloting tariffs thus constitutes a State measure within the meaning of Article 90 (1) and the judgment of the Court of Justice in Case C-18/93 Corsica Ferries.

Article 86

The relevant market

- (7) The relevant market is that for piloting services in the port of Genoa (Corsica Ferries⁽¹⁾).

⁽¹⁾ [1994] ECR I-1783, at paragraph 41.

Furthermore, the maritime links within the Community make up a neighbouring, but separate, market which is affected by the behaviour of the corporation of Pilots on the piloting-services market.

The dominant position

- (8) According to the case-law of the Court of Justice, an undertaking which has a legal monopoly in a substantial part of the common market may be regarded as occupying a dominant position within the meaning of Article 86 of the Treaty (see the judgments, of 23 April 1991, 18 June 1991 and 10 December 1991 respectively, in Cases C-41/90 Höfner⁽²⁾, C-260/89 ERT⁽³⁾; and C-179/90 Port of Genoa⁽⁴⁾).

The Corporation of Pilots of the Port of Genoa is an undertaking within the meaning of Article 90 (1) of the EC Treaty which, by virtue of the exclusive right granted pursuant to Article 96 of the Code of Navigation, holds a dominant position on the market for piloting services in the port of Genoa.

Substantial part of the common market

- (9) Having regard in particular to the volume of traffic in that port and its importance in relation to maritime import and export operations as a whole in the Member State concerned, that market may be regarded as constituting a substantial part of the common market (judgment of the Court in Port of Genoa).

Abuse of a dominant position

- (10) The system of reductions in piloting tariffs introduced by Circular No 5203359 has the effect of applying dissimilar conditions to equivalent transactions with other shipping companies, as regards entering, leaving and manoeuvring within the port, thereby placing them at a competitive disadvantage.

(a) Dissimilar conditions

- (11) The system of reductions in question is based on the number of weekly calls. The following table lists the beneficiaries of reductions.

⁽²⁾ [1991] ECR I-1979.

⁽³⁾ [1991] ECR I-2925.

⁽⁴⁾ [1991] ECR I-5889.

Company	Current reduction	Reduction at 15. 9. 1996	Average reduction at 5. 10. 1994	Flag
Tirrenia	65 %	65 %	65 %	Italy
Tourship ⁽¹⁾	65 %	50 %	0%	Panama
Navarma	65 %	50 %	44 %	Italy
Viamare di Navigazione ⁽²⁾	65 %	50 %	65 %	Italy
Other liner companies	from 5 to 20 %	from 5 to 20 %	depending on the flag	Various

⁽¹⁾ Only from July to September.

⁽²⁾ Now 'Italia di Navigazione'.

A comparison of the different tariffs shows a certain consistency as regards the beneficiaries of the reductions. Tirrenia enjoys a 65 % discount regardless of the tariff applied.

(b) Equivalent transactions

- (12) With regard to entry, departure or manoeuvres within the port of Genoa, the piloting service is identical for any given type of vessel (size or tonnage). The fact that a vessel belongs to one shipping company rather than another does not affect the provision of the piloting service.

In their reply to the letter of formal notice, the Italian authorities state that the size of the vessel, type of cargo and the use of tugs were important factors which altered the piloting service supplied to different vessels. However, it is the number of calls in a port which is decisive as regards the service supplied, the latter being very reduced in the case of a master who manoeuvres frequently in the port concerned.

The Commission considers that the factors referred to by the Italian authorities affect the provision of piloting services. This, moreover, is why the tariff takes account of some of those factors, in particular the tonnage of the vessel and the distinction made between oil tankers and other vessels. The use of tugs can also affect the provision of piloting services, although it is clear that this factor has no bearing on the reductions. As regards the argument relating to a reduced service, this point is dealt with in detail in paragraph 19.

(c) Effect on competition

- (13) On a route such as Genoa-Bastia where Tourship, Moby Lines (Navarma) and Tirrenia among others are competitors, those companies receive a large reduction in their piloting costs for an equivalent service provided by the corporation of pilots, thereby placing any other operating company or company wishing to gain access to the route at a competitive disadvantage.
- (14) The Italian authorities state that such a system is justified by the economies of scale that are achieved, first in the planning and allocation of pilots and second, by the reduced piloting service required by ferries.

Economies of scale in planning

According to the Italian authorities, considerable economies of scale are achieved in the area of planning. Passenger vessels notify their quarterly timetables in advance to the pilots corporation. The latter is thus able to assess the number of times that piloting services will be required, the minimum number of pilots per shift and the hours of work. The forecasts allow optimum deployment of the pilots and reduce stand by time considerably. Non-liner vessels which by their nature have no fixed timetables require the corporation to have a larger number of pilots or set up a duty roster.

Pilots have two main tasks: coordination/organization of vessels and on-board or radio piloting. In the case of non-liner vessels, the former takes up 65 % of the pilots' time, while for vessels making three calls a day the time spent on such duties is virtually nil.

In their last two replies to the Commission's request for information (letters of 6 November 1995 and 22 February 1996), the Italian authorities proposed two methods of calculation to demonstrate the economies of scale described below

First method: letter of 6 November 1995

- (15) Since 1973, the annual turnover at a piloting station which determines the pilots' incomes has been defined as follows:

$$F = C + n/32 \times Q_b \times N \times 12$$

where

F is the annual turnover of a pilot station,

C is the cost of the service (general and administrative costs, repairs, etc.),

n is the number of hours worked a week per pilot,

32 is the statutory number of working hours per week per pilot,

Q_b is the basic quota

$$Q_b = E_b \times (100 + K_t)/100$$

where

E_b corresponds to a minimum income guaranteed by the State to pilots in Italian ports,

K_t measures the specificities (°) of each port,

N is the number of pilots

The turnover (F) is the sum of the various costs incurred through the provision of piloting services (overheads, repairs and labour).

According to the Italian authorities, piloting costs (c) would be reduced if account were taken only of the regular scheduled traffic, which requires less planning:

Cost reductions obtained by servicing scheduled traffic only

	Current total traffic costs	Scheduled traffic costs	Comments
Overheads	424	117	Reduction from 3 to 1 station
Administration	269	67	Mechanization from 4 to 1 employee
Miscellaneous	341	170	
Communications	329	72	Reduction in communications
Nautical facilities			
Staff	1 274	398	Reduction in staff
Repairs, consumption	668	334	Reduction in repairs
Total	3 306	1 158	That is a reduction of 65 %

The coefficient (K) which measures the specificities of the port would be reduced by 12 %, as the port would no longer require round-the-clock services or a laying-up service.

The number of hours worked per week per pilot (n) would fall by 12 % as only the commercial port would remain in business.

The annual turnover (F) would total Lit 4 005 million instead of Lit 7 954 million, representing a reduction of 50 %.

The 50 % would break down as follows:

- 80 % of traffic benefits from a 65 % reduction,
- 20 % of traffic benefits from a 15 % reduction.

- (16) The initial assumption used by the Italian authorities in their calculation is incorrect. In order to identify cost reductions due to the nature of the

(°) The K coefficients refer to pilots' schedules, workload, tonnage of piloted vessels, proportion of night work, weather conditions and the lack or inadequacy of other port services.

traffic (scheduled/non-scheduled), the calculation should be based on the constant traffic level in the port and not simply by eliminating the present non-scheduled traffic. That is why the reductions set out above are to a large extent explained by less traffic and not by a change in the type of transport (scheduled/non-scheduled). Only the administrative and communications costs would be likely to benefit from economies of scale in a comparison of scheduled with non-scheduled traffic. The economies would at most be 14 % (lower administrative and communications costs to total costs) and not 65 %. The total saving using the above formula would thus be between 15 % and 20 %.

It is worth noting that the calculation compares scheduled passenger traffic with non-scheduled traffic and not the traffic resulting from a number of weekly with other traffic. As a result, if the 50 % calculated above were justified by the economies of scale defined by the Italian authorities, the corresponding reduction would apply to scheduled passenger traffic as a whole.

The effect of peak and off-peak activity is already partially taken into account in the increases for services supplied outside normal working hours and days (Article 5 of the Decree).

Second method: amortization of fixed costs. Study by the 'Tor Vergata' University (Letter of 22 February 1996)

- (17) The aim of the study communicated by the Italian authorities is to demonstrate that the cost of supplying piloting services to Tirrenia is far less than the cost of supplying the same services to four other liner shipping companies. To that end, the study compares the average cost of the service, on the one hand for Tirrenia and on the other for the four other lines. The difference between the two average costs, according to the study, represents the economies of scale achieved. The average daily cost to Tirrenia and to the four other companies, GNV, Navarma, Compagnie Tunisienne de Navigation and Tourship (formerly Corsica Ferries), is as follows:

Hypotheses:

Tirrenia and the four companies account for 28,62 % of pilot services supplied.

The monthly basic quota (guaranteed minimum income) generated by the traffic of the five companies thus accounts for 28,62 % of each pilot's revenue ($Q_b \times 28,62 \%$).

Tirrenia makes an average of 13 calls a day, the other four companies together accounting for an average of nine calls.

The other liner companies calling at the port of Genoa (some 25) are not included in the sample.

The daily piloting cost (CU) borne by the corporation for the five companies in question (28,62 % of the corporation's business) is dependent on the daily income of all the 21 pilots ($Q_b \times 21/30$) or the formula:

$$CU = Q_b \times 28,62 \% \times 21/30.$$

The average daily cost for Tirrenia is thus the cost of the daily service for the corporation divided by the number of daily calls (CU/13).

The average daily cost for the other four companies is thus CU/9 where 9 is the number of daily calls.

The difference is thus the economy of scale achieved.

- (18) Again, the reasoning is incorrect. On the one hand, it would mean that at any time the 21 pilots were working only for Tirrenia. On the other, the cost of the service should be assessed by unit supplied and not by group of services supplied daily. The latter reasoning would be justified if the corporation supplied a single unit of service for the 13 calls against one for the nine calls. There is no reason to consider that piloting a Tirrenia vessel is different from piloting a Tourship vessel. Furthermore, if the logic used in the study were carried to its limits, the average unit cost for each company except Tirrenia would be far lower than that for Tirrenia. Tirrenia would thus be the only one not to benefit from reductions.

The study then examines the daily, monthly and annual distribution of calls in the port of Genoa. According to the author, Tirrenia is more regular than the other companies both over a day and over a year. The reductions, it is inferred, are a regularity incentive.

As piloting is compulsory, this approach must be rejected. It is possible that the tariffs for peak and off-peak hours or high and low season differ in order to resolve the problems of pilot allocation during peak periods. However, it is not possible to consider, as the study claims, that Tirrenia's traffic is 'normal' and that all the other companies produce peak traffic. As in the preceding explanation, distinguishing between scheduled and non-scheduled traffic could be justified on grounds of economies of scale linked with planning.

Reduced service

- (19) The Italian authorities consider that a company making four port calls a week requires a reduced piloting service.

According to the study on EU maritime piloting carried out by RH&H Consult at the request of the Commission, all the Member States with the exception of Italy grant either a piloting exemption certificate (*ad personam* authorization of the captain) after a certain number of visits to a port, or a piloting exemption for regular transshipment vessels. The number of calls required for a piloting exemption certificate ranges from 6 to 36 depending on the Member State and the port. These Member States thus consider that a captain calling into port between 6 and 36 times a year no longer needs a pilot. It can therefore be concluded that captains achieving such totals effectively require in a Member State which makes piloting mandatory, a reduced or even nil service. In Genoa, at least four calls a week (208 per annum) per company are necessary before substantial reductions can be enjoyed. Reductions are calculated by company and not by master. A new master in a company owning vessels will give entitlement to a reduction, although a full piloting service will be provided. In view of the number of vessels of the companies in question, the thresholds giving entitlement to a reduction are considerably higher than in the other Member States, although there is no evidence that entering and leaving the port of Genoa is particularly difficult.

The decree of the minister for Transport and Shipping of 2 September 1996 stipulated that regular

scheduled ferries in excess of 15 000 gross tonnes operating a liner service, with fixed itineraries and timetables, may use radio piloting services only on departure from Porto Vecchio and provided they do not use tugs if the master speaks Italian and has completed 10 approaches on the same type of vessel with a pilot on board (entering and leaving the port). This possibility is not, however, available at any port other than Porto Vecchio.

- (20) The various studies submitted by the Italian authorities do not show that there are any economies of scale in the supply of piloting services to the four companies benefiting from the 65 % reduction compared with the other companies operating from the port of Genoa. The studies show, however, that liner companies pay less for piloting services than non-liner companies. Nevertheless, the saving made in providing piloting services for liner companies as a whole is far from accounting for 65 % of the cost of the service. According to the study of 6 November 1995, it accounts for a maximum of 20 %, which should therefore be fairly distributed among all the liner companies and not only between the four beneficiaries referred to above.

The present system, accordingly, has the effect of applying dissimilar conditions to equivalent transactions with other shipping companies in respect of sailing into, out of and inside the port, thereby placing them at a competitive disadvantage.

- (21) In their reply to the formal notice, the Italian authorities indicated that an economic operator, even with a monopoly, must be able to establish a policy of incentives for its most important customers and hence a port marketing policy.

According to the case-law of the Court⁽¹⁾, commercial behaviour regarded as normal may constitute abuse within the meaning of Article 86 of the Treaty if it is carried out by an undertaking in a dominant position.

A difference in the way an undertaking in a dominant position treats its different customers must be justified on objective grounds.

Because of its geographic position and the communications network surrounding it, the port of Genoa has a natural monopoly for a large part of its traffic,

⁽¹⁾ Judgment of the Court of First Instance in Case T-65/89 BPB Industries and British Gypsum V. Commission [1993] ECR II-389, paragraph 69.

especially as regards passenger traffic. It is the only possible port for shipping companies wishing to serve the islands of the Mediterranean (Corsica, Sicily, Sardinia).

Shipping companies have no alternative. There is very little danger that a company will alter its route and hence change port in order to benefit from a more advantageous offer from a competing port. Pilots cannot, without an objective reason, favour certain shipping companies to the detriment of others.

Objective reasons could, for example, be economies of scale or protection of the sea bed.

As was explained above, the economies of scale are of minor importance in the present case and fail to reach the 65 % reductions granted to certain shipping companies.

Indeed, those reductions are not based on any criterion relating to the protection of the sea bed.

For the reasons set out above, an undertaking such as the corporation of pilots which applies dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage, is abusing a dominant position within the meaning of point (c) of the second paragraph of Article 86.

Therefore, where a Member State has, as in the present case, formally approved such a system by adopting a circular laying down the tariffs, it constitutes a State measure that is contrary to Article 90 in conjunction with point (c) of the second paragraph of Article 86 of the Treaty.

In its judgment concerning the former piloting tariffs in the port of Genoa, the Court considered that a Member State infringes Articles 90 and 86 of the Treaty if, by approving the tariffs adopted by the undertaking, it induces it to abuse its dominant position, *inter alia*, by applying dissimilar conditions to equivalent transactions with its trading partners, within the meaning of point (c) of the second paragraph of Article 86 of the Treaty (judgment in *Corsica Ferries*).

Effect on trade between Member States

- (22) The system of reductions places a burden on the transport prices of carriers unable to benefit from the system. Harbour duties are a major item of

expenditure in a shipping company's operating charges.

In *Corsica Ferries* ⁽¹⁾, the Court ruled that inasmuch as the discriminatory practices applied to the provision of identical services 'affect undertakings providing transport services between two Member States, they may affect trade between Member States'.

Article 90 (2)

- (23) Although the Italian authorities stated that there was a large element of public service in the supply of piloting services, they have not pleaded the exemption pursuant to Article 90 (2) of the Treaty to justify introducing and maintaining the reductions. Furthermore, the application in the present case of the rules on competition does not obstruct the performance of the particular tasks assigned to the corporation of pilots which is to monitor and ensure the safety of traffic inside the port and to protect the sea bed.

The exemption provided for in Article 90 (2) is therefore not applicable.

Conclusion

In view of the foregoing, the Commission considers that the State measure referred to in recital 1 constitutes an infringement of Article 90 (1) of the Treaty in conjunction with Article 86,

HAS ADOPTED THIS DECISION:

Article 1

The system of reductions in piloting tariffs in the port of Genoa introduced most recently by Circular No 5203359 of the Ministry of Transport and Shipping of 4 September 1996 is incompatible with Article 90 (1) of the EC Treaty, read in conjunction with Article 86.

Article 2

The Italian Government shall put an end to the infringement referred to in Article 1 of this Decision and shall inform the Commission of the measures it has taken to that end within two months of the notification of this Decision.

⁽¹⁾ [1994] ECR I-1783, paragraph 44.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 21 October 1997.

For the Commission

Karel VAN MIERT

Member of the Commission
