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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2616/98
of 4 December 1998
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 1498/98 ⁽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 December 1998.

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

Done at Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

⁽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 December 1998 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 00	052	71,4
	204	72,1
	999	71,8
0709 90 70	052	90,1
	204	87,4
	999	88,8
0805 10 10, 0805 10 30, 0805 10 50	052	41,7
	204	43,3
	388	45,4
	999	43,5
0805 20 10	204	65,5
	999	65,5
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	58,3
	464	232,7
	999	145,5
	052	55,1
0805 30 10	388	47,7
	524	37,2
	528	40,0
	600	83,9
	999	52,8
	039	75,0
	052	94,1
0808 10 20, 0808 10 50, 0808 10 90	060	15,0
	064	30,4
	400	78,4
	404	68,3
	999	60,2
	052	85,4
	064	64,2
	400	94,2
0808 20 50	999	81,3
	052	85,4
	064	64,2
	400	94,2

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2617/98**of 4 December 1998****on the issue of system B export licences in the fruit and vegetables sector**

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

Having regard to Commission Regulation (EC) No 2190/96 of 14 November 1996 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1287/98 ⁽²⁾, and in particular Article 5(5) thereof,

Whereas Commission Regulation (EC) No 2379/98 ⁽³⁾, fixes the indicative quantities for system B export licences other than those sought in the context of food aid;

Whereas, in the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for table grapes will shortly be exceeded; whereas this overrun will prejudice the proper working of the export refund scheme in the fruit and vegetables sector;

Whereas, to avoid this situation, applications for system B licences for table grapes exported after 4 December 1998 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for table grapes submitted pursuant to Article 1 of Regulation (EC) No 2379/98, export declarations for which are accepted after 4 December 1998 and before 15 January 1999, are hereby rejected.

Article 2

This Regulation shall enter into force on 5 December 1998.

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

Done at Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 292, 15. 11. 1996, p. 12.

⁽²⁾ OJ L 178, 23. 6. 1998, p. 11.

⁽³⁾ OJ L 295, 4. 11. 1998, p. 15.

COMMISSION REGULATION (EC) No 2618/98**of 4 December 1998****opening a standing invitation to tender for the export of rye held by the Spanish intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 2547/98⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as last amended by Regulation (EC) No 2193/96⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas, given the current market situation, a standing invitation to tender should be opened for the export of 26 271 tonnes of rye held by the Spanish intervention agency;

Whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas, to that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, where removal of the rye is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency the Member State concerned must pay compensation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the provisions of this Regulation the Spanish intervention agency issues a standing invitation to tender for the export of rye held by it in accordance with Regulation (EEC) No 2131/93.

⁽¹⁾ OJ L 181, 1. 7. 1992, p. 21.

⁽²⁾ OJ L 318, 27. 11. 1998, p. 41.

⁽³⁾ OJ L 191, 31. 7. 1993, p. 76.

⁽⁴⁾ OJ L 293, 16. 11. 1996, p. 1.

Article 2

1. The invitation to tender shall cover a maximum of 26 271 tonnes of rye for export to third countries.

2. The regions in which the 26 271 tonnes of rye are stored are set out in Annex I.

Article 3

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.

2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

Article 4

1. The export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted pursuant to Article 44 of Commission Regulation (EEC) No 3719/88⁽⁵⁾.

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 10 December 1998.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 27 May 1999.

4. Tenders shall be lodged with the Spanish intervention agency.

Article 6

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of

⁽⁵⁾ OJ L 331, 2. 12. 1988, p. 1.

removal from storage as the successful tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The analysis results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

- (a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;
- (b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

- one kilogram per hectolitre as regards specific weight, which must not, however, be less than 68 kg/hl,
- one percentage point as regards moisture content,
- half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92 ⁽¹⁾, and
- half a percentage point as regards impurities as specified in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

- (c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

- accept the lot as established, or
- refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention rye of the quality laid down at no additional charge, the

security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

- (d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, he may request the intervention agency to supply him with another lot of intervention rye of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the rye is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

Article 7

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 ⁽²⁾, the documents relating to the sale of rye in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where necessary, the T5 copy shall carry the entry:

⁽¹⁾ OJ L 74, 20. 3. 1992, p. 18.

⁽²⁾ OJ L 301, 17. 10. 1992, p. 17.

- Centeno de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) n° 2618/98
- Rug fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 2618/98
- Interventionsroggen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 2618/98
- Σίκαλη παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 2618/98
- Intervention rye without application of refund or tax, Regulation (EC) No 2618/98
- Seigle d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) n° 2618/98
- Segala d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 2618/98
- Rogge uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 2618/98
- Centeio de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n° 2618/98
- Interventioruista, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 2618/98
- Interventionsråg, utan tillämpning av bidrag eller avgift, förordning (EG) nr 2618/98.

Article 8

1. The security lodgement pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.
2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than ECU 10 per tonne. Half of the security shall be lodged when the licence is issued and

the balance shall be lodged before the cereals are removed.

Notwithstanding Article 15(2) of Regulation (EEC) No 3002/92:

- the part of the security lodged when the licence is issued must be released within 20 working days of the date on which the successful tenderer provides proof that the cereals removed have left the customs territory of the Community,
- the remainder must be released within 15 working days of the date on which the successful tenderer provides the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to ECU 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Spanish intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

Article 10

This Regulation shall enter into force on the day 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 Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

<i>(tonnes)</i>	
Place of storage	Quantity
Albacete	241
Palencia	23 562
La Rioja	206
Soria	2 262

ANNEX II

**Communication of refusal of lots under the standing invitation to tender for the export of
rye held by the Spanish intervention agency**

(Article 6(1) of Regulation (EC) No 2618/98)

— Name of successful tenderer:

— Date of award of contract:

— Date of refusal of lot by successful tenderer:

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			— Specific weight (kg/hl) — % sprouted grains — % miscellaneous impurities (Schwarzbesatz) — % of matter which is not basic cereal of unimpaired quality — Other

*ANNEX III***Standing invitation to tender for the export of rye held by the Spanish intervention agency**

(Regulation (EC) No 2618/98)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (ECU/tonne) ⁽¹⁾	Price increases (+) or reductions (-) (ECU/tonne) p.m.	Commercial costs (ECU/tonne)	Destination
1						
2						
3						
etc.						

⁽¹⁾ This price includes the increases or reductions relating to the lot to which the tender refers.

ANNEX IV

The only numbers to use to call Brussels are (DG VI-C-1):

— fax: 296 49 56,
295 25 15,

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters).

COMMISSION REGULATION (EC) No 2619/98
of 4 December 1998
amending Regulation (EC) No 2042/98 on special conditions for the granting of
private storage aid for pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, as last amended by Regulation (EC) No 3290/94 ⁽²⁾, and in particular Articles 4(6) and 5(4) thereof,

Whereas Commission Regulation (EC) No 2042/98 ⁽³⁾ obliges the operators to export the products subject of a storage contract after the end of the storage period; whereas this provision reduces considerably the flexibility of this support measure and, as a consequence, the interest of the operators in this operation; whereas it is, therefore, appropriate to delete this obligation;

Whereas it is necessary that this Regulation applies from the beginning of the period for submission of the requests for contracts, i.e. from 28 September 1998 in order to

ensure equal treatment of all the operators taking part in the aid for private storage scheme;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EC) No 2042/98, paragraphs 2 and 3 are deleted and paragraph 4 becomes paragraph 2.

Article 2

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

It shall apply with effect from 28 September 1998.

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

Done at Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ L 263, 26. 9. 1998, p. 12.

COMMISSION REGULATION (EC) No 2620/98

of 4 December 1998

laying down detailed rules for the application in 1999 of the arrangements applicable to imports laid down in Council Decision 97/831/EC as regards certain beef and veal products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 97/831/EC of 27 November 1997 concerning the conclusion of a Cooperation Agreement between the European Community and the former Yugoslav Republic of Macedonia⁽¹⁾,

Having regard to Council Regulation (EC) No 77/98 of 9 January 1998 on certain procedures for applying the Cooperation Agreement between the European Community and the former Yugoslav Republic of Macedonia⁽²⁾, and in particular Article 1 thereof,

Whereas Article 15(2) of the Cooperation Agreement annexed to Decision 97/831/EC provides for a tariff quota for 1999 of 1 650 tonnes of products listed in Annex E to the Agreement, expressed in carcase weight; whereas the detailed rules of application for that quota should be adopted;

Whereas, in order to ensure flexible management of the quota, applications should be managed using a system of import rights; whereas, on the basis of those rights, importers may apply for import licences throughout 1999 under Commission Regulation (EEC) No 3719/88 of 16 November 1988 laying down common detailed rules for the application of the system of import and export licences and advance-fixing certificates for agricultural products⁽³⁾, as last amended by Regulation (EC) No 1044/98⁽⁴⁾, and Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80⁽⁵⁾, as last amended by Regulation (EC) No 2365/98⁽⁶⁾, subject to certain complementary provisions;

Whereas, in view of the risk of speculation inherent in these arrangements for beef and veal, clear conditions should be laid down as regards access by operators; whereas verification of the abovementioned conditions

requires that applications be submitted in the Member State in which the importer is entered into the value-added tax register;

Whereas, in order to ensure close control of the origin of the products, it should be laid down that either a EUR.1 movement certificate or an invoice declaration in accordance with Protocol 2 of the Cooperation Agreement must be presented;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. A tariff quota of 1 650 tonnes of certain beef and veal products, expressed in carcase weight, originating in the former Yugoslav Republic of Macedonia is hereby opened for the period 1 January to 31 December 1999.

The contingent shall bear the serial number 09.4505.

2. Import under the quota referred to in paragraph 1 shall be reserved for certain live animals and certain meat falling within CN codes:

- ex 0102 90 51, ex 0102 90 59, ex 0102 90 71 and ex 0102 90 79,
- ex 0201 10 00,
- ex 0201 20 20,
- ex 0201 20 30,
- ex 0201 20 50,

referred to in Annex E to Decision 97/831/EC.

3. For the purposes of attributing the quota, 100 kilograms live weight shall be equivalent to 50 kilograms carcase weight.

4. The *ad valorem* customs duty and the specific amounts of customs duty laid down in the Common Customs Tariff (CCT) shall be reduced by 80 % for products imported under the quota.

⁽¹⁾ OJ L 348, 18. 12. 1997, p. 1.

⁽²⁾ OJ L 8, 14. 1. 1998, p. 1.

⁽³⁾ OJ L 331, 2. 12. 1988, p. 1.

⁽⁴⁾ OJ L 149, 20. 5. 1998, p. 11.

⁽⁵⁾ OJ L 143, 27. 6. 1995, p. 35.

⁽⁶⁾ OJ L 293, 31. 10. 1998, p. 49.

Article 2

In order to import under the arrangements referred to in Article 1, applicants for import rights must be natural or physical persons who, at the time of submission of applications, can prove to the satisfaction of the competent authorities of the Member State concerned that they have been active in trade in beef and veal and/or live animals of the bovine species with third countries at least once during the previous 12 months; applicants must be entered in a national VAT register.

Article 3

1. The application for import rights may only be presented in the Member State in which the applicant is registered within the meaning of Article 2.

2. The application for import rights must be for a minimum quantity of 15 tonnes carcase weight and not exceed the total quantity of the quota.

3. Applications for import rights may be submitted from 4 to 8 January 1999.

4. Only one application may be submitted by each applicant. Where an applicant submits more than one application, all his applications shall be rejected.

5. Member States shall notify the Commission by 15 January 1999 of all applications received. Notification shall consist of a list of applicants and the quantities applied for.

All notifications, including 'zero' notifications, shall be sent by telex or fax using, where applications have been received, the form set out in the Annex hereto.

Article 4

The Commission shall decide to what extent applications may be granted. If the quantities applied for exceed the quantities available, the Commission shall fix a single percentage reduction to be applied to the quantities applied for.

Article 5

1. Imports of the quantities granted shall be subject to presentation of one or more import licences.

Notwithstanding this Regulation, Regulations (EEC) No 3719/88 and (EC) No 1445/95 shall apply.

2. Licence applications may only be submitted in the Member State in which the importer applied for import rights.

3. The following shall be entered on the licence application and on the licence itself:

(a) in Section 8, 'the former Yugoslav Republic of Macedonia'; the licence shall carry an obligation to import from that country;

(b) in Section 17, in addition to the number of animals, the relevant liveweight, which must correspond to part or all of the import rights allocated to the operator;

(c) in Section 20, the order number 09.4505 and at least one of the following:

- Reglamento (CE) n° 2620/98
- Forordning (EF) nr. 2620/98
- Verordnung (EG) Nr. 2620/98
- Κανονισμός (ΕΚ) αριθ. 2620/98
- Regulation (EC) No 2620/98
- Règlement (CE) n° 2620/98
- Regolamento (CE) n. 2620/98
- Verordening (EG) nr. 2620/98
- Regulamento (CE) n° 2620/98
- Asetus (EY) N:o 2620/98
- Förordning (EG) nr 2620/98.

4. Notwithstanding Article 3 of Regulation (EC) No 1445/95, import licences drawn up in accordance with this Regulation shall be valid until 31 December 1999.

5. Licences shall be valid throughout the Community.

Article 6

The duties referred to in Article 1 shall be applied on presentation either of a EUR.1 movement certificate issued by the exporter country in accordance with Protocol 2 annexed to the Cooperation Agreement or an invoice declaration made out by the exporter in accordance with that Protocol.

Article 7

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

It shall apply from 1 January 1999.

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

Done at Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

EC Fax No (32 2) 296 60 27 / 295 36 13

Application of Regulation (EC) No 2620/98

Order No 09.4505

COMMISSION OF THE EUROPEAN COMMUNITIES

DG VI/D/2 — BEEF AND VEAL SECTOR

APPLICATION FOR IMPORT RIGHTS

Date: Period:

Member State:

[illegible]

Member State: Fax No:

Tel:

(¹) Continuous numbering.

COMMISSION REGULATION (EC) No 2621/98
of 4 December 1998

amending Regulation (EEC) No 388/92 laying down detailed rules for implementation of the specific arrangements for the supply of cereal products to the French overseas departments (FOD) and establishing a forecast supply balance

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

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

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

Whereas, pursuant to Article 2 of Regulation (EEC) No 3763/91, the forecast supply balance of cereal products to the FOD for 1998 was established by Commission Regulation (EEC) No 388/92 ⁽³⁾, as last amended by Regulation (EC) No 1959/98 ⁽⁴⁾; whereas this forecast supply balance

for 1999 should be drawn up; whereas, subsequently, Regulation (EEC) No 388/92 should be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 388/92 is replaced by the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 1999.

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

Done at Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 356, 24. 12. 1991, p. 1.

⁽²⁾ OJ L 267, 9. 11. 1995, p. 1.

⁽³⁾ OJ L 43, 19. 2. 1992, p. 16.

⁽⁴⁾ OJ L 254, 16. 9. 1998, p. 11.

ANNEX

ANNEX

Cereals supply balance for the French overseas departments (1999)

(tonnes)

Cereals originating in third countries (ACP/developing countries) or EC	Common wheat	Durum wheat	Barley	Maize	Durum wheat meal and groats	Malt
Guadeloupe	60 000	—	1 000	16 000	—	100
Martinique	1 500	—	1 000	22 000	1 000	500
French Guiana	200	—	300	1 500	—	—
Réunion	28 000	—	15 000	100 000	—	3 000
Total	89 700	—	17 300	139 500	1 000	3 600
Total	251 100'					

COMMISSION REGULATION (EC) No 2622/98
of 4 December 1998
amending Regulation (EC) No 1710/95 on the arrangements for the imports of
certain cereal products from certain countries

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

Having regard to Council Regulation (EC) No 3290/94 of 22 December 1994 on the adjustments and transitional arrangements required in the agriculture sector in order to implement the agreements concluded during the Uruguay Round of multilateral trade negotiations ⁽¹⁾, as last amended by Regulation (EC) No 1340/98 ⁽²⁾, and in particular Article 3(1) thereof,

Whereas Commission Regulation (EC) No 1710/95 ⁽³⁾, as last amended by Regulation (EC) No 1616/98 ⁽⁴⁾, lays down transitional measures, valid until 30 June 1999, concerning the special arrangements on importation of bran, sharps and other residues of the sifting, milling or other working of certain cereals originating in Algeria, Morocco or Egypt, in preparation for implementation of the Agreement on agriculture concluded in the context of the Uruguay Round of multilateral trade negotiations;

Whereas, in accordance with the Cooperation Agreement between the European Economic Community and the Arab Republic of Egypt ⁽⁵⁾, the variable component of the import levy on bran, sharps and other residues of the sifting, milling or other working of cereals under subheading 23.02A of the Common Customs Tariff is reduced provided Egypt levies a charge on exports; whereas that subheading includes, in addition to CN codes 2302 30 10 to 2302 40 90, CN codes 2302 10 10,

2302 10 90, 2302 20 10 and 2302 20 90; whereas, by mistake, those codes are not referred to in Regulation (EC) No 1710/95; whereas that Regulation should, therefore, be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 3(1) of Regulation (EC) No 1710/95 is replaced by:

‘1. The customs duties applicable on importation to the Community of bran, sharps and other residues of the sifting, milling or other working of certain cereals, of CN codes 2302 30 10 to 2302 40 90 originating in Algeria or Morocco and CN codes 2302 10 10, 2302 10 90, 2302 20 10, 2302 20 90 and 2302 30 10 to 2302 40 90 originating in Egypt, shall be 40 % of the amount set in the Common Customs Tariff’.

Article 2

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

It shall apply with effect from 1 July 1995.

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

Done at Brussels, 4 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 349, 31. 12. 1994, p. 105.

⁽²⁾ OJ L 184, 27. 6. 1998, p. 1.

⁽³⁾ OJ L 163, 14. 7. 1995, p. 1.

⁽⁴⁾ OJ L 209, 25. 7. 1998, p. 31.

⁽⁵⁾ OJ L 266, 27. 9. 1978, p. 1.

COMMISSION REGULATION (EC) No 2623/98**of 4 December 1998****amending Regulation (EC) No 1555/96 on rules of application for additional import duties on fruit and vegetables and repealing Regulation (EC) No 1556/96**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables⁽¹⁾, as amended by Commission Regulation (EC) No 2520/97⁽²⁾, and in particular Articles 31(2) and 33(4) thereof,

Whereas Commission Regulation (EC) No 1555/96⁽³⁾ provides for imports of the products listed in its Annex to be subject to surveillance; whereas that surveillance is based on the import licences issued under the arrangements introduced by Commission Regulation (EC) No 1556/96⁽⁴⁾, as last amended by Regulation (EC) No 2306/98⁽⁵⁾; whereas those arrangements were introduced subject to their being replaced by a rapid and computerised procedure for recording imports once the latter could be legally and practically set up; whereas such a procedure has been successfully tested;

Whereas, therefore, the import surveillance scheme laid down in Article 308d of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code⁽⁶⁾, as last amended by Regulation (EC) No 1677/98⁽⁷⁾, should be extended to the products listed in the Annex to Regulation (EC) No 1555/96; whereas in order for the additional import duties system to operate correctly the information should be notified to the Commission every week; whereas, in addition, provisions should be adopted permitting Member States to obtain the information necessary for surveillance purposes at the time the products in question are put into free circulation under the simplified procedures laid down in Regulation (EEC) No 2454/93; whereas as a result of the introduction of the surveillance system Regulation (EC) No 1555/96 should be adjusted and Regulation (EC) No 1556/96 should be repealed with effect from 1 December 1998;

Whereas Article 5(4) of the Agreement on Agriculture⁽⁸⁾ lays down criteria for determining the volumes which trigger additional duties; whereas Article 5(6) of that Agreement permits the triggering periods to be set according to the specific characteristics of perishable and seasonal products; whereas, in application of those criteria, the volumes triggering additional duties should be set as indicated in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1555/96 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

1. Additional import duty as referred to in Article 33(1) of Council Regulation (EC) No 2200/96^(*), termed "additional duty" below, may be applied to the products and during the periods listed in the Annex hereto on the conditions set out below.

2. Trigger levels for the additional duties are listed in the Annex hereto.

^(*) OJ L 297, 21.11.1996, p. 1.;

2. Article 2 is replaced by the following:

'Article 2

1. For each of the products listed in the Annex hereto and during the periods indicated Member States shall notify the Commission of details of the volumes put into free circulation using the method for the surveillance of preferential imports set out in Article 308d of Commission Regulation (EEC) No 2454/93^(*).

Such notification shall take place no later than midday Brussels time each Wednesday for the volumes put into free circulation during the preceding week.

⁽¹⁾ OJ L 297, 21. 11. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 41.

⁽³⁾ OJ L 193, 3. 8. 1996, p. 1.

⁽⁴⁾ OJ L 193, 3. 8. 1996, p. 5.

⁽⁵⁾ OJ L 288, 27. 10. 1998, p. 7.

⁽⁶⁾ OJ L 253, 11. 10. 1993, p. 1.

⁽⁷⁾ OJ L 212, 30. 7. 1998, p. 18.

⁽⁸⁾ OJ L 336, 23. 12. 1994, p. 22.

2. Declarations for release for free circulation of products covered by the present Regulation which the customs authorities may accept at the declarant's request without their containing certain particulars referred to in Annex 37 of Regulation (EEC) No 2454/93 shall contain, in addition to the particulars referred to in Article 254 of that Regulation, an indication of the net mass (kg) of the products concerned.

Where the simplified declaration procedure referred to in Article 260 of Regulation (EEC) No 2454/93 is used to put into free circulation products covered by the present Regulation, the simplified declarations shall contain, in addition to other requirements, an indication of the net mass (kg) of the products concerned.

Where the local clearance procedure referred to in Article 263 of Regulation (EEC) No 2454/93 is used to put into free circulation products covered by the present Regulation, the notification to the customs authorities referred to in Article 266(1) of that Regulation shall contain all necessary data for the identification of the goods, as well as an indication of the net mass (kg) of the products concerned.

Article 266(2b) shall not apply to imports of the products covered by the present Regulation.

(*) OJ L 253, 11.10.1993, p. 1.;

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

Done at Brussels, 4 December 1998.

3. Article 3 is replaced by the following:

Article 3

1. If it is found that, for one of the products and one of the periods listed in the Annex hereto, the quantity put into free circulation exceeds the corresponding triggering volume the Commission shall levy an additional duty.

2. The additional duty shall be levied on quantities put into free circulation after the date of application of the said duty, provided that:

- their tariff classification determined in accordance with Article 5 of Regulation (EC) No 3223/94 entails application of the highest specific duties applicable to imports of the origin in question,
- importation is effected during the period of application of the additional duty.;

4. the Annex is replaced by the Annex to this Regulation.

Article 2

Regulation (EC) No 1556/96 is hereby repealed.

Article 3

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

It shall apply with effect from 1 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

ANNEX

Without prejudice to the rules for the interpretation of the Combined Nomenclature, the description of the products is deemed to be indicative only. The scope of the additional duties for the purposes of this Annex is determined by the scope of the CN codes as they exist at the time of the adoption of this Regulation. Where the indication "ex" is placed before the CN code the scope of the additional duties is determined both by the scope of the CN code and by the corresponding trigger period.

Serial No	CN code	Description	Trigger period	Trigger level (tonnes)
78.0015	ex 0702 00 00	Tomatoes	— 1 October to 31 March	164 102
78.0020			— 1 April to 30 September	15 622
78.0065	ex 0707 00 05	Cucumbers	— 1 May to 31 October	16 028
78.0075			— 1 November to 30 April	3 865
78.0085	ex 0709 10 00	Artichokes	— 1 November to 30 June	1 180
78.0100	0709 90 70	Courgettes	— 1 January to 31 December	45 160
78.0110	ex 0805 10 10	Oranges	— 1 December to 31 May	465 695
	ex 0805 10 30			
	ex 0805 10 50			
78.0120	ex 0805 20 10	Clementines	— 1 November to end February	218 217
78.0130	ex 0805 20 30	Mandarins, including tangerines,	— 1 November to end February	114 194
	ex 0805 20 50	satsumas, wilkings and similar citrus		
	ex 0805 20 70	hybrids		
	ex 0805 20 90			
78.0155	ex 0805 30 10	Lemons	— 1 June to 31 December	285 329
78.0160			— 1 January to 31 May	24 448
78.0170	ex 0806 10 10	Table grapes	— 21 July to 20 November	190 422
78.0180	ex 0808 10 20	Apples	— 1 September to 31 December	395 887
	ex 0808 10 50			
	ex 0808 10 90			
78.0190			— 1 January to 31 March	51 279
78.0200			— 1 April to 31 August	575 829
78.0220	ex 0808 20 50	Pears	— 1 January to 30 April	155 487
78.0235			— 1 July to 31 December	202 569
78.0250	ex 0809 10 00	Apricots	— 1 June to 31 July	2 432
78.0260	ex 0809 20	Cherries	— 21 May to 10 August	108 193
78.0270	ex 0809 30	Peaches, including nectarines	— 11 June to 30 September	1 166
78.0280	ex 0809 40 05	Plums	— 11 June to 30 September	112 005'

COMMISSION REGULATION (EC) No 2624/98
of 3 December 1998
concerning the stopping of fishing for herring by vessels flying the flag of
Denmark

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 2635/97 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas Council Regulation (EC) No 45/98 of 19 December 1997 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1998 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EC) No 783/98 ⁽⁴⁾, provides for herring quotas for 1998;

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 IV c (except Blackwater stock), VII d by vessels flying the flag of Denmark or registered in Denmark have reached the quota allocated for 1998; whereas Denmark

has prohibited fishing for this stock as from 20 November 1998; 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 IV c (except Blackwater stock), VII d by vessels flying the flag of Denmark or registered in Denmark are deemed to have exhausted the quota allocated to Denmark for 1998.

Fishing for herring in the waters of ICES divisions IV c (except Blackwater stock), VII d by vessels flying the flag of Denmark or registered in Denmark 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 20 November 1998.

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

Done at Brussels, 3 December 1998.

For the Commission
Emma BONINO
Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 14.

⁽³⁾ OJ L 12, 19. 1. 1998, p. 1.

⁽⁴⁾ OJ L 113, 15. 4. 1998, p. 8.

COMMISSION REGULATION (EC) No 2625/98**of 3 December 1998****concerning the stopping of fishing for haddock by vessels flying the flag of Spain**

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 2635/97 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas Council Regulation (EC) No 45/98 of 19 December 1997 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1998 and certain conditions under which they may be fished ⁽³⁾, as last amended by Regulation (EC) No 783/98 ⁽⁴⁾, provides for haddock quotas for 1998;

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 haddock in the waters of ICES divisions V b (EC-zone), VI, XII, XIV by vessels flying the flag of Spain or registered in Spain have reached the quota allocated for 1998; whereas Spain has

prohibited fishing for this stock as from 22 November 1998; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of haddock in the waters of ICES divisions V b (EC-zone), VI, XII, XIV by vessels flying the flag of Spain or registered in Spain are deemed to have exhausted the quota allocated to Spain for 1998.

Fishing for haddock in the waters of ICES divisions V b (EC-zone), VI, XII, XIV by vessels flying the flag of Spain or registered in Spain 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 22 November 1998.

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

Done at Brussels, 3 December 1998.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 14.

⁽³⁾ OJ L 12, 19. 1. 1998, p. 1.

⁽⁴⁾ OJ L 113, 15. 4. 1998, p. 8.

COMMISSION REGULATION (EC) No 2626/98
of 3 December 1998
concerning the stopping of fishing for mackerel by vessels flying the flag of
Denmark

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 2635/97 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas Council Regulation (EC) No 49/98 of 19 December 1997 allocating, for 1998, certain catch quotas between Member States for vessels fishing in Faeroese waters ⁽³⁾, provides for mackerel quotas for 1998;

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 mackerel in Faeroese waters by vessels flying the flag of Denmark or registered in Denmark have reached the quota allocated for 1998; whereas Denmark has prohibited fishing for this stock as

from 18 November 1998; whereas it is therefore necessary to abide by that date,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of mackerel in Faeroese waters by vessels flying the flag of Denmark or registered in Denmark are deemed to have exhausted the quota allocated to Denmark for 1998.

Fishing for mackerel in Faeroese waters by vessels flying the flag of Denmark or registered in Denmark is prohibited, as well as the retention on board, the transshipment and the landing of such stock captured by the above-mentioned 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 18 November 1998.

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

Done at Brussels, 3 December 1998.

For the Commission
Emma BONINO
Member of the Commission

⁽¹⁾ OJ L 261, 20. 10. 1993, p. 1.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 14.

⁽³⁾ OJ L 12, 19. 1. 1998, p. 70.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 July 1998

concerning the Spanish *Plan Renove Industrial* system of aid for the purchase of commercial vehicles (August 1994 — December 1996)

(notified under document number C(1998) 2048)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(98/693/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93(2) thereof,

Having given notice to the parties concerned to submit their comments, in accordance with the abovementioned Article (1),

Whereas:

I

On 9 February 1995 the Commission sent a request, followed by a reminder sent on 4 April 1995, for information on a matter of which it had been made aware by the press, namely a system of aid for the purchase of commercial vehicles. The system forms part of the *Plan Renove Industrial* and is designed to assist natural persons, small and medium-sized enterprises (SMEs), regional public bodies and bodies providing local public services. It involves the granting of loans for the purchase of commercial vehicles and its purpose is to renew the commercial vehicle fleet in Spain. Not until 7 April 1995 did the Directorate-General for Transport receive a reply from the Spanish authorities, dated 6 March 1995. A further request for information, dated 6 July 1995, was answered by the Spanish authorities on 26 July 1995.

Finally, on 20 February 1996, the Commission asked for further details. These were received in a letter dated 14 March 1996, receipt of which was recorded on 18 March 1996.

The system was set up under an Agreement, concluded on 27 September 1994 between the Official Credit Institute (*Instituto de Crédito Oficial*: ICO) and the Spanish Ministry of Industry and Energy, whereby the ICO is responsible for arranging mediation contracts with the financial institutions. Under these contracts, the financial institutions implement the aid scheme and are subsequently compensated by the ICO.

The aid consists of a subsidy of up to five percentage points of the interest payable on the loans granted for purchasing vehicles or for leasing them with intention to purchase. These loans may cover as much as 70 % of the total value of the new vehicle (excluding VAT) and last for four years, with no grace period, the loan guarantees being negotiated between the recipient and the financial institution.

The initial budget was for roughly ESP 9 billion (ECU 53,8 million) (2), given that the credit line opened with the ICO was ESP 100 billion (ECU 598,1 million) and that the maximum subsidy was ESP 93 196 (ECU 557) per

(1) OJ C 266, 13. 9. 1996, p. 10.

(2) Exchange rate of 11 May 1998: 1 ECU = ESP 167,182.

million (ECU 5 981) loaned (up-dated value of a five-point interest-rate subsidy for a four-year loan of ESP 1 million). In view of that limit, the maximum subsidy can also be calculated as roughly 6,5 % of the total cost of the vehicle (9,3 % x 70 %), exclusive of VAT.

The subsidy is for the purchase of five categories of vehicle: (A) semi-trailers and lorries weighing more than 30 tonnes, (B) commercial vehicles weighing between 12 and 30 tonnes, (C) commercial vehicles weighing between 3,5 and 12 tonnes, (D) car-based vehicles, light commercial vans and commercial vehicles weighing up to 3,5 tonnes, and (E) motor buses and coaches. Some 60 % of the subsidised vehicles are in categories B, C and D, while 30 % are in category A and 10 % in category E.

The system was originally intended to run from August 1994 to December 1995, but was extended to the end of 1996, since only 33 % of the credit line had been committed by the end of 1995. However, in their letter of 26 February 1997, the Spanish authorities formally notified the Commission that a new *Plan Renove* would be in force throughout 1997.

One essential condition for obtaining the subsidy is the requirement that a vehicle of roughly equivalent capacity and registered more than 10 years ago (seven years ago in the case of tractor units) be irrevocably withdrawn from the market. The proof of that withdrawal will be passed on by the Directorate-General for Traffic (Dirección General de Tráfico) which presupposes that the withdrawn vehicle has been registered in Spain. The following table shows the matching between the purchased and the withdrawn vehicle:

Type of vehicle purchased	Type of vehicle to be withdrawn from the market
A: Semi-trailers and lorries weighing more than 30 tonnes	A or B
B: Commercial vehicles weighing between 12 and 30 tonnes	A, B or C
C: Commercial vehicles weighing between 3,5 and 12 tonnes	A, B, C or D
D: Car-based vehicles, commercial light vans and commercial vehicles weighing up to 3,5 tonnes	A, B, C or D
E: Motor buses and coaches	E

II

Access to the international road haulage market was opened up to Community competition in 1969, with the entry into force of Council Regulation (EEC) No 1018/68⁽³⁾ introducing a Community quota for the carriage of goods by road between Member States, though there were

already bilateral agreements between Member States. Access to international transport was subject to Community quotas until the adoption of Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States⁽⁴⁾, as amended by the Act of Accession of Austria, Finland and Sweden. Consequently, the market has been completely open to competition since 1 January 1993, when Regulation (EEC) No 881/92 abolished all quantitative restrictions on international road transport.

Road haulage cabotage was opened up to Community competition on 1 July 1990, with the entry into force of Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State⁽⁵⁾. This Regulation introduced cabotage quotas.

The Regulation was replaced by Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State⁽⁶⁾, amended by Regulation (EC) No 3315/94⁽⁷⁾ and currently in force, under which cabotage is to be completely deregulated from 1 July 1998, after a transitional period during which the initial number of Community authorisations (30 000) will increase by 30 % annually from 1 January 1995.

Access to the international market for the carriage of persons has been liberalised through Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus⁽⁸⁾, as amended by Regulation (EC) No 11/98⁽⁹⁾. This Regulation, which entered into force on 1 June 1992 lays down market access conditions for each type of passenger transport service. Cabotage rights were introduced by Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State⁽¹⁰⁾, as amended by the Act of Accession of Austria, Finland and Sweden. Under this Regulation, road passenger transport cabotage, except for regular services, is liberalised as from 30 August 1992.

⁽⁴⁾ OJ L 95, 9. 4. 1992, p. 1.

⁽⁵⁾ OJ L 390, 30. 12. 1989, p. 3.

⁽⁶⁾ OJ L 279, 12. 11. 1993, p. 1.

⁽⁷⁾ OJ L 350, 31. 12. 1994, p. 9.

⁽⁸⁾ OJ L 74, 20. 3. 1992, p. 1.

⁽⁹⁾ OJ L 4, 8. 1. 1998, p. 1.

⁽¹⁰⁾ OJ L 251, 29. 8. 1992, p. 1.

⁽³⁾ OJ L 175, 23. 7. 1968, p. 13.

III

By letter dated 26 June 1996, the Commission informed the Spanish authorities of its decision to initiate the procedure provided for in Article 93(2) of the Treaty, inviting them to state their views on the decision to initiate the procedure, and it informed the other Member States and interested third parties by publishing its letter in the *Official Journal of the European Communities*⁽¹¹⁾. In this decision the Commission stated that it considered the aid illegal and expressed its doubts on the conformity of the aid with the Treaty.

Following initiation of the procedure, the Spanish authorities submitted their comments in a letter dated 26 July 1996, receipt of which was recorded by the Commission on 1 August 1996. Following a request for further information sent on 19 December 1996, the Spanish authorities communicated certain details in the course of a bilateral meeting held on 14 January 1997 and by letter of 12 February 1997. Publication in the Official Journal drew no reactions from any interested third parties.

With regard to the actual recipients of the aid, the Spanish authorities, in their letter of 12 February 1997, pointed out that many of them fell into the category of 'regional public bodies and bodies providing local public services'. These are firms which provide public services, such as urban passenger transport, fire-fighting and waste collection services, under a special concession. They include, for example, local passenger transport companies such as *Transportes de Barcelona*, *Empresa Municipal de Transportes de Gijón*, *Tranvías de Cadiz SA* and *Empresa Municipal de Transportes de Madrid*.

The remaining recipients are natural persons or SMEs, covered by the definition laid down in the Community guidelines on State aid for SMEs⁽¹²⁾ and the Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises⁽¹³⁾, engaged in transport for hire-and-reward but also own account transport operations. Most are very small firms with just one lorry or bus, carrying passengers or goods by road. In their letter of 12 February, these details were spelt out. Nevertheless, given the difficulty in obtaining detailed information about all 12 591 recipients of the aid granted under the *Plan Renove*, since the details are not on computer file, the Spanish authorities have obtained their information by analysing a sample of cases relating to 46 % of vehicles in category A and 67,1 % in category E which, by reason of their size, are the most likely to be involved in intra-Community trade. On this basis, the Spanish authorities have stated that 80,8 % of aid recipients are very small firms holding just one licence for road

transport operations, 16,2 % are firms holding two to five licences, 2,4 % have six to 20 licences and only 0,1 % are large enough to have more than 20 licences.

Moreover, in their comments on the initiation of the procedure, the Spanish authorities argued that the delay in examining the aid scheme and the amount of time which had elapsed between the Commission's requests for information, gave them reasonable grounds for believing that no aids were involved, or that any aid which had been granted was compatible with the Treaty. In defence of this view they referred to judgments of the Court of Justice of the European Communities, in particular those given on 20 March 1984 in Case No C-84/82 (*Germany v. Commission*⁽¹⁴⁾) and on 21 March 1991 in Case No C-303/88 (*Italy v. Commission*⁽¹⁵⁾).

At the meeting on 14 January 1997, the Spanish authorities informed the Commission that, by the end of 1996, the system had been applied as follows: 12 591 operations carried out, 14 295 vehicles subsidised, ESP 7 976 million (ECU 47,7 million) granted.

In their letter of 12 February 1997 the Spanish authorities maintain that, in the case of subsidies for vehicles in categories B, C and D, the risk of distortion to competition is minimal since these types of vehicle are normally used for activities which are not open to international competition and that, consequently, intra-Community trade cannot be appreciably affected.

In the abovementioned letter, the Spanish authorities pointed out that semi-trailers and lorries weighing more than 30 tonnes (A) and buses and coaches (E) are used in road transport activities open to competition. Only 4 288 vehicles in category A were subsidised in 1995, as against 167 353 licences granted for this type of vehicle. Similarly, 1 459 buses and coaches were subsidised in 1995, out of a total of 28 012 licensed.

The Spanish authorities stressed, in their letter of 26 July 1996, that the introduction of the *Plan Renove* had not led to any increase in capacity in this sector, since it was impossible for a withdrawn vehicle to be placed on the market again and there was an almost exact correspondence between the withdrawn vehicle and the new one. As the Spanish authorities confirmed at the meeting on 14 January 1997, no subsidy is granted prior to production of a document certifying that the vehicle has been definitively withdrawn. This certificate appears on the vehicle licence, so the vehicle cannot possibly be put on the road again. The withdrawn vehicles are then scrapped. However, with regard to the equivalence in capacity between withdrawn vehicles and those replacing them,

⁽¹¹⁾ See footnote 1.

⁽¹²⁾ OJ C 213, 19. 8. 1992, p. 2 and OJ C 213, 23. 7. 1996, p. 4.

⁽¹³⁾ OJ L 107, 30. 4. 1996, p. 4.

⁽¹⁴⁾ [1984] ECR 1451.

⁽¹⁵⁾ [1991] ECR I-1433.

the Spanish authorities recognised, in their letter of 26 July 1996, that in 15,7 % of cases there had been no equivalence in capacity: in 3,4 % of cases the replacement vehicle was in a lower category, while in 12,3 % of cases (i.e. 1 758 of the 14 295 vehicles subsidised) the new vehicle was in a higher category.

When initiating the Article 93 procedure, the Commission warned of the danger of discrimination, since to qualify for the aid in question, applicants were required to produce a document issued by the Dirección General de Tráfico (Directorate-General for Traffic) certifying that the vehicle concerned had been withdrawn from service. This meant that the withdrawn vehicle had to have been registered in Spain.

However, the Spanish authorities, in their letter of 26 July 1996, argued that there was no requirement that the recipient of the aid be the owner of the vehicle withdrawn from circulation. Carriers not established in Spain were thus eligible for the subsidy if they signed an agreement with a carrier established in Spain who would then scrap his old vehicle to enable the subsidy to be granted to the foreign carrier. Although the vehicle must be registered in Spain, a non-resident carrier could thus receive the aid indirectly.

Moreover, according to the Spanish authorities, there is no requirement that the recipient of the aid purchase the new vehicle in Spain, only that the purchase be financed via one of the bodies associated with the *Plan Renove*. This obligation could not give rise to problems of discrimination, since there are a great many such bodies (not only banks but also the financial arms of international vehicle manufacturers such as Scania and Iveco) located not only in Spain but also throughout Europe.

The Spanish authorities did, however, point out that foreign carriers never opted for this arrangement since the benefits to be derived from the *Plan Renove Industrial* were insufficient when compared with those available in other Member States, where interest rates are generally much lower than in Spain.

When initiating the Article 93 procedure, the Commission pointed out that, because the ICO enjoys a wide margin of discretion, the *Plan Renove* lacks transparency and could lead to discrimination. In their letter of 26 July 1996 and at the meeting on 14 January 1997, the Spanish authorities explained that there had never been any recourse to the theoretical option of exceptionally granting loans which did not meet the stipulated conditions, since the purpose of this exception was to enable the Plan to benefit firms which met all the criteria for

consideration as SMEs but which, for exceptional reasons, marginally failed to meet one or other of those criteria at some point in the process.

Furthermore, the Spanish authorities stated that the ICO had had no margin of discretion with regard to the maximum amount of the subsidy, since this amount, ESP 93 196 (ECU 557) had already been fixed in the Agreement. They also stated that the interest rate actually applied to the loans was the going rate on the Madrid interbank market (the MIBOR) and was therefore a commercial and objectively-based interest rate.

On a number of occasions the Spanish authorities alleged that the amount of the subsidy in question was lower than the *de minimis* figure laid down in the abovementioned Community guidelines on State aids for SMEs and in the Commission Communication concerning *de minimis* aids⁽¹⁶⁾, and that the subsidy therefore does not constitute aid within the meaning of Article 92(1) of the Treaty.

The Spanish authorities have also argued that most of the potential applicants for subsidies are own-account transport operators whose main business is not transport, and that the Community guidelines on State aids for SMEs and the *de minimis* rule should therefore apply to purchases made by those non-transport companies.

When initiating the Article 93 procedure, the Commission pointed out that the aids granted under the *Plan Renove Industrial* might be cumulated with those authorised under the Commission Decisions of 6 April 1993⁽¹⁷⁾ and 7 February 1996⁽¹⁸⁾, including the option of granting aid for the purchase of rolling stock or vehicles to companies which merge or consolidate, and guaranteeing loans for vehicle replacement.

In their letter of 12 February 1997 the Spanish authorities stated that no such cumulation had occurred in the case of merger and consolidation aids granted under Article 21(b) of the Ministerial Order of 26 April 1993, since this relates to the purchase, not of new vehicles but of transport equipment by firms holding restricted licences under business merger and consolidation procedures.

Article 28 of the Order provides for guarantees for loans and leasing or commercial credit operations, including loans for replacing vehicles more than eight years old. The Spanish authorities stated that, although ESP 9 055 million (ECU 54,2 million) was earmarked for this aid scheme, only ESP 149 million (ECU 891 000) had been

⁽¹⁶⁾ OJ C 68, 6. 3. 1996, p. 9.

⁽¹⁷⁾ OJ C 128, 8. 5. 1993, p. 6.

⁽¹⁸⁾ OJ C 70, 8. 3. 1996, p. 6.

allocated to vehicle replacement loans. These loan guarantees were provided by means of a temporary contribution of not more than 9 % of the loan amount to mutual guarantee companies, enabling the firms concerned to obtain loans on more favourable terms.

First by fax and then in a letter dated 19 November 1997 the Commission asked the Spanish authorities to provide further information on companies who were not providing transport services as a main activity and only operate in local markets without impact on intra-Community trade. The Spanish authorities replied by their letters of 27 November 1997 and 20 February 1998, registered on 3 December 1997 and 23 February 1998 by the General Secretariat of the Commission respectively. It derives from the information provided that with regard to the purchasers of Category D vehicles a number of beneficiaries, identifiable for the Spanish authorities, operate under restricted licences.

IV

Article 92 of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. This concept of aid therefore requires the consideration of three fundamental issues: the use of State resources, the distortion of competition and the extent to which trade is affected.

In the case under examination, the Commission considers that the aid for the purchase of commercial vehicles is granted from State resources since the subsidies come from the budget of the Spanish Ministry of Industry and Energy.

The aid in question takes the form of purchasing aid, which presumes that it will benefit the purchasers of commercial vehicles by lowering the cost of such vehicles.

From the point of view of these purchasers, the aid is intended to benefit natural persons, SMEs, local or regional authorities or local service providers. The subsidies reduce their normal business expenses, thus giving them an advantage over their competitors. The Commission considers that the aid strengthens the financial position of the recipient firms, giving them greater scope for action and a competitive advantage.

The Commission considers that, where the recipients are public or private bodies providing local or regional public services not open for competition on the basis of Community legislation⁽¹⁹⁾ with carriers from other Member States, trade between Member States is not affected within the meaning of Article 92(1) of the Treaty. The aid is granted within the context of the provision of a public service via a concession contract in a regulated market. Due to the lack of liberalisation there is no competition with carriers from other Member States and, therefore, no reference to international transport services.

Accordingly, the Commission considers that measures under the *Plan Renove Industrial* to assist local or regional public bodies or to local firms providing local public services under a concession do not constitute State aids within the meaning of Article 92(1) of the Treaty, since the services provided by such bodies and companies do not affect trade between Member States.

In those cases where the aid is granted, to natural persons or SMEs pursuing a business other than transport at a solely local or regional level, and where only the purchase of small commercial vehicles (Category D) typically used for very short journeys in such environments is subsidised, it can also be concluded that such aid has no effect on trade between Member States. Such business activities are considered to affect only the companies' respective local markets. In addition, the effect of such own account services on the transport market is negligible because entrusting a transport company with the provision of the service — contracting it out — is not a viable option in economic terms. The Commission is, therefore, of the opinion the aid provided does not constitute State aid within the meaning of Article 92(1) of the Treaty.

The other recipients, however, having transport as their main business or only as an auxiliary one compete with transport companies which are not eligible for aid under the *Plan Renove Industrial* both from Spain or from other Member States since the liberalisation of road transport in 1990 led to competition with firms from other Member States, both in international transport and in the cabotage sector.

⁽¹⁹⁾ Article 3 of Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ L 251, 29. 8. 1992, p. 1) and Council Regulation (EEC) No 1191/69 of 26 July 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28. 6. 1969, p. 1) as last amended by Regulation (EEC) No 1893/91 (OJ L 169, 29. 6. 1991, p. 1).

The Commission considers that although there is no formal legal reason why carriers not established in Spain should not take advantage, albeit indirectly, of the subsidies available under the *Plan Renove*, in practice the system nevertheless discriminates against non-resident carriers since they have to scrap a vehicle registered in Spain and, therefore, may have to buy scrapping rights from Spanish operators, whereas the latter can take direct advantage of the subsidies without recourse to an intermediary.

It is therefore reasonable to conclude that granting subsidies for purchasing commercial vehicles under the *Plan Renove Industrial* leads also to a distortion of competition between carriers established in Spain and those who operate in Spain but are based in other Member States. Above all, however, the aids granted distort or threaten to distort competition because recipients of subsidies under the *Plan Renove* are in a privileged position *vis-à-vis* competitors unable to take advantage of the aid scheme.

The Commission considers it reasonable to accept that the management of the loans through ICO does not imply any potential discrimination between recipients of the subsidies.

Where aid strengthens the financial position of firms in a particular sector involved in intra-Community trade, this trade must be regarded as affected within the meaning of Article 92(1) of the Treaty. Since the aid provided for in the *Plan Renove Industrial* strengthens the financial position and scope for action of the recipient companies as compared with their competitors, and since this effect takes place within the context of intra-Community trade, the Commission considers that the latter is likely to be affected by the granting of such aid.

V

Accordingly, the Commission considers that aid granted to SMEs under the *Plan Renove Industrial* constitutes aid within the meaning of Article 92(1) of the Treaty, under which aid having the characteristics described in that paragraph is, in principle, incompatible with the common market. Article 77 as well as Article 92(2) and (3) of the Treaty set out the types of aid which are, or may be, compatible with the common market.

Article 77 of the Treaty, especially designed for the needs of the transport sector, provides exemptions for State aid granted for the coordination of transport or compensating for the provision of a public service. Pursuant to

that Article, Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway⁽²⁰⁾, as last amended by Regulation (EC) No 543/97⁽²¹⁾, authorises aid for the coordination of transport. The Commission, however, considers that the Spanish aid scheme in question cannot be covered by any of the exemptions provided for in the Regulation since it does not constitute a measure necessary for the coordination of transport.

The concept of aid meeting the needs of coordination of transport implies Government intervention in the transport sector. The more a sector is liberalised, the less need there is for coordinating activities to be undertaken by the Member States. Indeed, in a liberalised transport market coordination may be achieved by the market itself, within the limits of the framework conditions set by the Member States in accordance with Community law as set out in Article 75 of the Treaty. In conclusion, in this case no transport specific exceptions apply.

In the case at issue, the exceptions provided for in Article 92(2) of the Treaty are not applicable because the aid scheme is not directed towards the attainment of the objectives set out. According to those objectives aid shall be compatible with the common market if it is granted either to individuals for social purposes, or to compensate for damages caused by natural disasters or exceptional occurrences, or for effects of the division of Germany.

Under Article 92(3) of the Treaty aid may be considered compatible with the common market. In order to ensure the proper functioning of the common market and having regard to the principles in competition matters established by the Treaty, the exceptions provided for in that Article must be construed narrowly when aid measures are assessed.

Article 92(3)(a) exempts aid which promotes the development of areas with economic difficulties and a special need for assistance. The exception cannot be considered relevant to aid schemes without a regional element — the whole territory of the Member State is covered — and with a clear sectoral objective and the Commission has traditionally considered vehicle-purchasing aid, within the common transport policy context not to be justifiable from a regional viewpoint, given the mobile nature of the object of the subsidy. The same can be said for the exception provided by Article 92(3)(c) of the Treaty when reference is made to the development of regions.

⁽²⁰⁾ OJ L 130, 15. 6. 1970, p. 1.

⁽²¹⁾ OJ L 84, 26. 3. 1997, p. 6.

With regard to the exceptions provided for in Article 92(3)(b) and (d), the aid at issue is not intended to promote the execution of a project of common European interest or to remedy a serious disturbance in the Spanish economy, nor does it have any features of such projects. It is also not intended to promote culture or heritage conservation, nor does it comply with any other exemption on the basis of Council legislation.

Article 92(3)(c) also provides for an exception relating to aid granted to facilitate the development of certain economic activities and where the aid measures do not adversely affect trading conditions to an extent contrary to the common market. Legal practice requires, *inter alia*, that the aid has to be restricted to those cases where it is necessary to achieve objectives which market forces do not achieve by themselves (judgment of the Court of 17 September 1980 in Case C-730/79, *Philip Morris v. Commission*⁽²²⁾). In conclusion, the Commission considers that the State aid measures notified in the given case should be assessed under Article 92(3)(c) of the Treaty.

The Commission has adopted some specific conditions for aid schemes which are not considered to be incompatible with Article 92 of the Treaty: the *de minimis* rule. As has already been pointed out by the Commission when initiating the Article 93 procedure, under these rules, certain amounts provided by the Member States, due to their low thresholds, are not considered to threaten to distort competition and trade between Member States to any perceptible degree. However, the *de minimis* rule explicitly exempts the transport sector from its scope, as in this sector — characterised by a large number of small companies — even relatively small amounts can have an impact on competition and trade between Member States.

The Commission similarly regards as invalid the arguments mentioned in the context of the application of the Community guidelines on State aids for SMEs and the applicability of the *de minimis* rule to companies who are performing own-account transport operations. The transport sector is made up of transport for hire or reward as well as own-account transport, as both activities are regarded as being interchangeable. From a macroeconomic as well as an operational point of view in certain situations the outsourcing of transport services permits an

optimum allocation of resources and brings a desired element of flexibility to the organisation of transport.

The Commission acknowledges the validity of the argument that financial incentive may help to withdraw from the market commercial vehicles with low technical standards with regard to safety and/or the environment. However, the Member State concerned needs to prove the positive impact of a proposed measure.

In particular, in order to be compatible with the common market, aid provided for the purchase of vehicles must be organised in such a way that, in compliance with the Community guidelines on State aid for environmental protection⁽²³⁾, the eligible costs are strictly confined to the extra investment costs necessary to meet environmental objectives by achieving standards higher than those already required by law. A similar approach can be considered for safety standards. Any measure justified under the guidelines may never counteract other Community legislation or the Articles of the Treaty.

The Commission in its guidelines does not consider aid provided to ensure compliance with existing mandatory technical standards to be eligible except for certain investment in fixed assets. Such aid has a considerable distortive effect on competition as it subsidises investment which becomes necessary anyhow under economic considerations and is, therefore, inevitable. Aid compensating for such investments is not regarded as serving the common European interest.

First, Spain has never provided the Commission with any proof of the positive impact, nor does the measure provide any incentive to go beyond the existing mandatory technical standards.

Secondly, in a market with overcapacity like the road transport sector, aid for the purchase of tonnage and even more additional tonnage — there is no exact equivalence, in terms of size, between the new vehicles and those withdrawn — is, in principle, considered contrary to the Community interest. It had been confirmed to the Commission that the granting of the aid under the *Plan Renove Industrial*, has led to a certain increase in capacity, although the Commission accepts that the system of prior checks provides a sufficient guarantee that replaced vehicles are indeed finally withdrawn from the market. The Commission, in its general aid practice, authorises aid for new investment which would not take place otherwise but not just for replacement⁽²⁴⁾.

⁽²³⁾ OJ C 72, 10. 3. 1994, p. 3.

⁽²⁴⁾ Paragraph 18 of the Communication of the Commission of 1975, COM(75) 77 final, 26. 2. 1975.

⁽²²⁾ [1980] ECR 2671.

However, under the *Renove Industrial* aid system, the basis for calculating the subsidy is the price of a new vehicle: no environmental factor is taken into account. The subsidy is proportional to the price of the vehicles and not to their environmental or safety performance.

Already in Decision 98/182/EC⁽²⁵⁾ the Commission contended that a similar measure in a scheme intended to improve the competitive position of commercial road haulage companies is likely to produce a distortion of competition, since it seeks to reduce the normal business running costs of a company, whereas such costs have to be borne in full by its competitors.

The Commission therefore considers that the exemption under Article 92(3)(c) of the Treaty cannot be applied in this case. Furthermore, the Spanish authorities have neither argued nor shown that the aids in question qualify for any of the abovementioned exemptions provided for in the Treaty, in Regulation (EEC) No 1107/70 or in any other Council Regulation.

In addition the Commission considers that there has been a genuine risk of cumulating the aids granted under the *Plan Renove Industrial* with those granted under the guarantee measures authorised by the Commission in 1993 and 1996, and that this may have resulted in aids exceeding the levels provided for in the *Plan Renove Industrial*.

On the basis of all the foregoing information, the Commission considers that the aid for the purchase of commercial vehicles granted under the *Plan Renove Industrial* to certain natural persons and SMEs is not compatible with the common market for the purposes of Article 92 of the Treaty.

VI

Under Article 93(3) of the Treaty, the Commission should have been informed of that aid in sufficient time to enable it to submit its comments. The Spanish Government implemented the aid system without having met that notification requirement: accordingly, the Commission considers that system illegal under Community law.

The Commission does not accept the argument that the aid became legal by virtue of time elapsing since the scheme was first put into effect. The Spanish authorities still failed to comply with their obligation under Article 93(3) of the Treaty to notify their plans to grant aid and await the relevant Commission decision authorising the provision of the aid. The Commission reminds them that

under that Article a Member State may not put its proposed measures into effect until the procedure has resulted in a final decision, and that failure to comply with this provision constitutes an infringement of Community law which may result in recovery of the aid, with interest.

The Spanish Government was informed by letter of 26 June 1996 that the Article 93 procedure was being initiated. On that occasion, the Spanish Government's attention was drawn to the Commission Communication to the Member States⁽²⁶⁾ pointing out that any aid illegally granted may be the subject of a Decision ordering the Member State concerned to recover it. In their reply, the Spanish authorities argued that such a Decision would contravene the principle of proportionality, given the low level of aid involved.

The Commission nevertheless considers that, in this instance, the aid should be recovered in order to restore the conditions of fair competition, which prevailed before the aid was granted,

HAS ADOPTED THIS DECISION:

Article 1

Aid granted under the *Plan Renove Industrial* to regional public bodies and bodies providing local public services, in the form of interest rate subsidies on loans for the purchase of commercial vehicles between August 1994 and December 1996, under the cooperation Agreement of 27 September 1994 between the Spanish Ministry of Industry and Energy and the *Instituto de Crédito Oficial*, does not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

Aid granted to natural persons or SMEs pursuing a business other than transport on a solely local or regional level, for the purchase of commercial vehicles of Category D, does not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 3

All other aid granted to natural persons and SMEs constitutes State aid within the meaning of Article 92(1) of the Treaty, is illegal and is incompatible with the common market.

⁽²⁵⁾ OJ L 66, 6. 3. 1998, p. 18.

⁽²⁶⁾ OJ C 156, 22. 6. 1995, p. 5.

Article 4

Spain shall abolish and recover the aid referred to in Article 3. The aid shall be repaid in accordance with the provisions of national law, and maturity interest shall be added to the sums recovered. The interest shall be calculated on the basis of the reference rates used in evaluating regional aid schemes and shall run from the date when the illegal aid was granted until the date when it is actually repaid.

Article 5

Spain shall inform the Commission, within two months of the date of notification of this Decision, of the steps it has taken to comply therewith.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 1 July 1998.

For the Commission

Neil KINNOCK

Member of the Commission
