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Contents

I *Acts whose publication is obligatory*

- ★ **Council Regulation (EC) No 2678/98 of 10 December 1998 amending Regulation (EC) No 1890/97 and (EC) No 1891/97 imposing definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway** 1
- ★ **Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States** 8
- Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, of 7 December 1998 on the free movement of goods 10
- Commission Regulation (EC) No 2680/98 of 11 December 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables 12
- Commission Regulation (EC) No 2681/98 of 11 December 1998 fixing the maximum buying-in price and the quantities of beef to be bought in under the 214th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89 14
- Commission Regulation (EC) No 2682/98 of 11 December 1998 concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled long grain rice issued in Regulation (EC) No 2566/98 16
- Commission Regulation (EC) No 2683/98 of 11 December 1998 concerning tenders submitted in response to the invitation to tender for the export of husked long grain rice to the island of Réunion referred to in Regulation (EC) No 2563/98 17
- Commission Regulation (EC) No 2684/98 of 11 December 1998 fixing the maximum export refund on wholly milled medium round grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2565/98..... 18

Price: ECU 19,50

(Continued overleaf)

EN

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

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

Commission Regulation (EC) No 2685/98 of 11 December 1998 fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2564/98	19
★ Commission Regulation (EC) No 2686/98 of 11 December 1998 amending Annexes I and II of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin ⁽¹⁾	20
Commission Regulation (EC) No 2687/98 of 11 December 1998 fixing the maximum aid for concentrated butter for the 194th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90	24
Commission Regulation (EC) No 2688/98 of 11 December 1998 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 22nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97.....	25
Commission Regulation (EC) No 2689/98 of 11 December 1998 determining the quantity available for the first half of 1999 for certain products in the milk and milk products sector under the schemes provided for in the Europe Agreements between the Community and the Republic of Hungary, the Republic of Poland, the Czech Republic, the Slovak Republic, Bulgaria and Romania and in the Agreements on free trade between the Community and the Baltic States	27
★ Commission Directive 98/90/EC of 30 November 1998 adapting to technical progress Council Directive 70/387/EEC relating to the doors of motor vehicles and their trailers ⁽¹⁾	29

II Acts whose publication is not obligatory

Council

98/709/EC, ECSC, Euratom:

★ Council Decision of 7 December 1998 amending the Council's Rules of Procedure	40
--	-----------

Commission

98/710/EC:

★ Commission Decision of 16 September 1998 on a procedure relating to the application of Council Regulation (EEC) No 2408/92 (Case VII/AMA/11/98 — Italian traffic distribution rules for the airport system of Milan)⁽¹⁾ (<i>notified under document number C(1998) 2625</i>).....	42
---	-----------

98/711/EC:

★ Commission Decision of 24 November 1998 amending Decision 97/296/EC drawing up the list of third countries from which the import of fishery products is authorised for human consumption ⁽¹⁾ (<i>notified under document number C(1998) 3585</i>).....	58
--	-----------

- ★ **Commission Decision of 26 November 1998 amending the information contained in the list in the Annex to Commission Regulation (EC) No 44/98 establishing, for 1998, the list of vessels exceeding 8 m length overall permitted to fish for sole in certain Community areas using beam trawls whose aggregate length exceeds 9 m (*notified under document number C(1998) 3617*)** 61

- ★ **Commission Decision of 26 November 1998 amending the information contained in the list in the Annex to Commission Regulation (EEC) No 55/87 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain coastal areas of the Community (*notified under document number C(1998) 3618*)** 64

I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2678/98
of 10 December 1998**

amending Regulation (EC) No 1890/97 and (EC) No 1891/97 imposing definitive anti-dumping and countervailing duties on imports of farmed Atlantic salmon originating in Norway

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, (hereinafter referred to as 'the basic anti-dumping Regulation'), and in particular Article 8(9) and Article 9 thereof,

Having regard to Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community⁽²⁾ (hereinafter referred to as 'the basic anti-subsidies Regulation'), and in particular Article 13(9) and Article 15 thereof,

Having regard to the proposal submitted by the Commission after consulting the Advisory Committee,

Whereas:

A. PROVISIONAL MEASURES

- (1) In the framework of the anti-subsidy and anti-dumping investigations initiated by two separate notices published in the *Official Journal of the European Communities*⁽³⁾, the Commission accepted, by Decision 97/634/EC⁽⁴⁾, undertaking offered by the Kingdom of Norway and by 190 Norwegian exporters.

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1. Regulation as last amended by Regulation (EC) No 905/98 (OJ L 28, 30. 4. 1998, p. 18).

⁽²⁾ OJ L 288, 21. 10. 1997, p. 1.

⁽³⁾ OJ C 235, 31. 8. 1996, p. 18, and OJ C 235, 31. 8. 1996, p. 20.

⁽⁴⁾ OJ L 267, 30. 9. 1997, p. 81. Decision as last amended by Regulation (EC) No 2249/98 (OJ L 282, 20. 10. 1998, p. 57).

- (2) In monitoring the reports received for the fourth quarter of 1997, it appeared that three Norwegian exporters — Icelandic Freezing Plants Norway AS, Incofood AS, and Ma-vo Norge AS — had made sales on the Community market below the minimum price stipulated in the undertaking and were therefore in breach of their obligations under the undertaking. When given the possibility to correct any possible clerical mistakes, one company made submissions showing that it had so far been reporting to the Commission sales to its related companies in the Community, instead of its resales to the first independent buyer, as required under the terms of the undertaking. These sales to related companies represented the overwhelming majority of total export sales of the product concerned to the Community made by this company.

- (3) Consequently, the Commission, by Regulation (EC) No 1789/98⁽⁵⁾, hereinafter referred to as 'the provisional duty Regulation', imposed provisional anti-dumping and countervailing duties on imports of farmed Atlantic salmon falling within CN codes ex 0302 12 00, ex 0304 10 13, ex 0303 22 00 and ex 0304 20 13 originating in Norway and exported by the three companies mentioned above. By the same Regulation, the Commission removed the companies concerned from the Annex to Decision 97/634/EC listing the companies from which undertakings were accepted.

B. SUBSEQUENT PROCEDURE

- (4) Immediately after the imposition of the provisional duties, these three Norwegian companies received disclosure in writing of the essential facts and considerations, on the basis of which these provisional duties were imposed.

⁽⁵⁾ OJ L 228, 15. 8. 1998, p. 4.

- (5) One company did not submit any comments further to the Commission's disclosure document. Furthermore, the company had previously informed the Commission that on 1 January 1998 it had returned its export licence issued by the Norwegian authorities.
- (6) Within the time limit set in the provisional duty Regulation, the other two companies submitted comments in writing and were granted a hearing.
- (7) Subsequent to the written submissions received, the Commission sought and examined all information it deemed necessary for the purpose of a definitive determination on the apparent violations.
- (8) As regards the company having reported sales to its related parties, this further examination confirmed the provisional findings set out in recital 11 of the provisional duty Regulation. Indeed, it was established that almost the totality of the transactions reported for the fourth quarter of 1997 as well as those included in the quarterly reports submitted for the third quarter of 1997, and the first and second quarter of 1998 within the given deadlines were in fact sales to related companies in the Community and not to independent parties, it being the latter which should have been reported, in accordance with the clear terms of the undertaking. In reaction to the disclosure document sent after the provisional duties were imposed, the company claimed that it had only made a reporting error and on 15 September 1998 sent the Commission new reports for the third and fourth quarters of 1997 and for the first and second quarters of 1998. In addition, the company contended that the sales to first independent customers reported in the revised reports respected the minimum price provision. Thus, it was alleged no injury was caused to the Community industry.
- (9) In its undertaking, the company undertook to send the Commission, within the given deadlines, a confidential report of all sales transactions to the first unrelated customers in the Community. Furthermore, the undertaking stipulates that failure to submit the quarterly report as required within the prescribed time limits shall be considered a violation of the undertaking, except in cases of *force majeure*. Despite these clear terms, of which the company was fully aware, it only reported transfer sales, within the given deadlines, and thus violated its reporting obligation. Indeed, transfer sales do not allow any conclusions to be reached on the actual sales prices charged to first unrelated customers, and thus do not enable the Commission to monitor the undertaking.
- (10) In view of the fact that the non-compliance with the explicit reporting obligations must be construed as a breach of the undertaking, in accordance with Article 8(7) of the basic anti-dumping Regulation and Article 13(7) of the basic Anti-subsidies Regulation, it is not considered necessary to establish whether actual sales price levels infringed the minimum price provision set in the undertaking. Indeed, this could only have shown that, in addition to having breached the undertaking by reporting in a way which prevents its effective monitoring by the Commission, the minimum price set therein might have not been respected.
- (11) The third company admitted that it had made a sale below the minimum price stipulated by the undertaking, this transaction representing the totality of sales of the presentation in question. However, the exporter claimed that for this transaction, which was admitted to be a special sale intended to be made with no profit, the minimum price would have been respected if unforeseen transport arrangements had not resulted in an unexpectedly low sales price. It was claimed that the goods were shipped through a border point different from the one foreseen by the company, and that they were shipped on a partial instead of a full truck load, the higher transport costs thus incurred thereby increasing the deduction per kilo for transport costs within the Community made from the delivered duty paid (DDP) price to the first independent customer, in order to obtain the Community border price.
- Quite apart from the difficulty of verifying such hypothetical arguments, which were only gradually put forward in the course of successive explanations, the breach seems to result from the fact that the sale was planned too close to the minimum price level, not even yielding any profit. Given the clear terms of the minimum price obligation in the undertaking, which include the deduction for direct selling expenses in case of DDP sales, it is incumbent upon the company to make sure that the minimum price is respected regardless of whether favourable transport arrangements can be made, or otherwise.

C. DEFINITIVE MEASURES

- (12) The interested parties were informed of the essential facts and considerations, on the basis of which it was intended to confirm the withdrawal of the Commission's acceptance of their undertaking and to recommend the imposition of definitive anti-dumping and countervailing duties and the definitive collection of the amounts secured by way of

provisional duties. The parties were also granted a period, within which to make representations subsequent to this disclosure.

- (13) After having duly considered the comments submitted, it is concluded that definitive anti-dumping and countervailing duties should be imposed on imports of farmed Atlantic salmon originating in Norway and exported by the companies listed in Annex I.
- (14) The investigations which led to the undertakings were concluded by a final determination as to dumping and injury by Regulation (EC) No 1890/97 ⁽¹⁾, and by a final determination as to subsidisation and injury by Regulation (EC) No 1891/97 ⁽²⁾. Therefore in accordance with Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidies Regulation, the rate of the definitive duties for the three Norwegian companies should be fixed at the level of the duties established in those two Regulations.

D. DEFINITIVE COLLECTION OF PROVISIONAL DUTIES

- (15) A breach of the undertaking has been established in relation to the three exporters listed in Annex I to this Regulation. Therefore, it is considered necessary that the amounts secured by way of provisional anti-dumping and countervailing duties be definitively collected at the level of the definitive duties.

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

Done at Brussels, 10 December 1998.

E. UPDATING OF THE LIST OF EXPORTERS EXEMPTED FROM ANTI-DUMPING AND COUNTERVAILING DUTIES

- (16) The Annexes to Regulation (EC) No 1890/97 and Regulation (EC) No 1891/97 exempting the parties listed therein from the duty, should be amended to remove that exemption from the three companies listed in Annex I to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Annex to Regulation (EC) No 1890/97 is hereby replaced by Annex II to this Regulation.
2. The Annex to Regulation (EC) No 1891/97 is hereby replaced by Annex II to this Regulation.

Article 2

The amounts secured by way of the provisional anti-dumping and countervailing duties imposed by Regulation (EC) No 1126/98 in relation to farmed (other than wild) Atlantic salmon falling within CN codes ex 0302 12 00 (Taric code: 0302 12 00*19), ex 0304 10 13 (Taric code: 0304 10 13*19), ex 0303 22 00 (Taric code: 0303 22 00*19) and ex 0304 20 13 (Taric code: 0304 20 13*19) originating in Norway and exported by the companies listed in Annex I to this Regulation shall be definitively collected.

Article 3

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

For the Council

The President

W. SCHÜSSEL

⁽¹⁾ OJ L 267, 30. 9. 1997, p. 1. Regulation as last amended by Regulation (EC) No 2052/98 (OJ L 264, 29. 9. 1998, p. 17).

⁽²⁾ OJ L 267, 30. 9. 1997, p. 19. Regulation as last amended by Regulation (EC) No 2052/98 (OJ L 264, 29. 9. 1998, p. 17).

*ANNEX I***LIST OF COMPANIES SUBJECT TO DEFINITIVE ANTI-DUMPING AND COUNTER-
VAILING DUTIES**

UT No	Company	Taric additional code
68	Icelandic Freezing Plants N. AS	8165
70	Incofood AS	8172
89	Ma-vo Norge AS	8190

ANNEX II

LIST OF COMPANIES BENEFITING FROM UNDERTAKINGS

UT No	Company name	Taric additional code
1	A. Øvreskotnes AS	8095
3	Agnefest Seafood	8325
5	Alsvåg	8098
7	Aqua Export A/S	8100
8	Aqua Partner A/S	8101
11	Arctic Group International	8109
13	Artic Superior A/S	8111
14	Arne Mathiesen A/S	8112
15	A/S Aalesundfisk	8113
16	A/S Austevoll Fiskeindustri	8114
17	A/S Keco	8115
20	A/S Refsnes Fiskeindustri	8118
21	A/S West Fish Ltd	8119
22	Astor A/S	8120
23	Atlantic King Stranda A/S	8121
24	Atlantic Seafood A/S	8122
26	Borkowski & Rosnes A/S	8124
27	Brødrene Aasjord A/S	8125
28	Brødrene Eilertsen A/S	8126
30	Brødrene Remø AS	8128
31	Christiansen Partner A/S	8129
32	Clipper Seafood A/A	8130
33	Coast Seafood A/S	8131
35	Dafjord Laks A/S	8133
36	Delfa Norge A/S	8134
39	Domstein Salmon A/S	8136
41	Ecco Fisk & Delikatesse	8138
42	Edvard Johnson A/S	8139
43	Eurolaks AS	8140
44	Euronor AS	8141
46	Fiskeforsyningen AS	8143
47	Fjord Aqua Group AS	8144
48	Fjord Trading Ltd AS	8145
49	Fonn Egersund AS	8146
50	Fossen AS	8147
51	Fresh Atlantic AS	8148
52	Fresh Marine Company AS	8149
53	Fryseriet AS	8150
58	Grieg Seafood AS	8300
60	Haafa fisk AS	8302
61	Hallvard Lerøy AS	8303
62	Herøy Filetfabrikk AS	8304
64	Hirsholm Norge AS	8306
65	Hitramat & Delikatesse AS	8154
66	Hydro Seafood Sales AS	8159

UT No	Company name	Taric additional code
67	Hydrotech-gruppen AS	8428
72	Inter Sea AS	8174
75	Janas AS	8177
76	Joh. H. Pettersen AS	8178
77	Johan J. Helland AS	8179
79	Karsten J. Ellingsen AS	8181
80	Kr. Kleiven & Co. AS	8182
82	Labeyrie Norge AS	8184
83	Lafjord Group AS	8185
84	Langfjord Laks AS	8186
85	Leica Fiskeprodukter	8187
86	Leonhard Products AS	8423
87	Lofoten Seafood Export AS	8188
88	Lorentz A. Lossius AS	8189
90	Marex AS	8326
92	Marine Seafood AS	8196
93	Marstein Seafood AS	8197
96	Memo Food AS	8200
98	Midsundfisk AS	8202
99	Myre Sjømat AS	8203
100	Naco Trading AS	8206
101	Namdal Salmon AS	8207
104	Nergård AS	8210
105	Nils Williksen AS	8211
107	Nisja Trading AS	8213
108	Nor-Food AS	8214
111	Nordic Group ASA	8217
112	Nordreisa Laks AS	8218
113	Norexport AS	8223
114	Norfi Produkter AS	8227
115	Norfood Group AS	8228
116	Norfra Eksport AS	8229
117	NorMan Trading Ltd AS	8230
119	Norsk Akvakultur AS	8232
120	Norsk Sjømat AS	8233
121	Northern Seafood AS	8307
122	Nortrade AS	8308
123	Norway Royal Salmon Sales AS	8309
124	Norway Royal Salmon AS	8312
126	Norway Seafoods ASA	8314
128	Norwell AS	8316
129	Notfisk Arctic AS	8234
130	Nova Sea AS	8235
134	Ok-Fish Kvalheim AS	8239
137	Pan Fish Sales AS	8242
140	Polar Seafood Norway AS	8247
141	Prilam Norvège AS	8248
142	Pundslett Fisk	8251
143	Roger AS	8253
144	Rolf Olsen Seafood AS	8254

UT No	Company name	Taric additional code
145	Ryfisk AS	8256
146	Rørvik Fisk- og fiskematforretning AS	8257
147	Saga Lax Norge AS	8258
148	Saga Lax Nord A/S	8259
149	Salomega AS	8260
151	Sangoltgruppa AS	8262
153	Scanfood AS	8264
154	Sea Eagle Group AS	8265
155	Sea Star International AS	8266
156	Sea-Bell AS	8267
157	Seaco AS	8268
158	Seacom AS	8269
159	Seacom Nord AS	8270
160	Seafood Farmers of Norway Ltd AS	8271
161	Seanor AS	8272
162	Sekkingstad AS	8273
164	Sirena Norway AS	8275
165	Kinn Salmon AS	8276
166	Skarpsno Mat	8277
167	SL Fjordgruppen AS	8278
168	SMP Marine Produkter AS	8279
171	Stavanger Røkeri AS	8282
172	Stjernelaks AS	8283
174	Stolt Sea Farm AS	8285
175	Storm Company AS	8286
176	Superior AS	8287
177	Svenodak AS	8288
178	Terra Seafood AS	8289
180	Timar Seafood AS	8294
182	Torris Products Ltd AS	8298
183	Troll Salmon AS	8317
187	Vie de France Norway AS	8321
188	Vikenco AS	8322
189	Wannebo International AS	8323
190	West Fish Norwegian Salmon AS	8324
191	Nor-Fa Food AS	8102

COUNCIL REGULATION (EC) No 2679/98

of 7 December 1998

on the functioning of the internal market in relation to the free movement of goods among the Member States

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

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

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

- (1) Whereas, as provided for in Article 7a of the Treaty, the internal market comprises an area without internal frontiers in which, in particular, the free movement of goods is ensured in accordance with Articles 30 to 36 of the Treaty;
- (2) Whereas breaches of this principle, such as occur when in a given Member State the free movement of goods is obstructed by actions of private individuals, may cause grave disruption to the proper functioning of the internal market and inflict serious losses on the individuals affected;
- (3) Whereas, in order to ensure fulfilment of the obligations arising from the Treaty, and, in particular, to ensure the proper functioning of the internal market, Member States should, on the one hand, abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade and, on the other hand, take all necessary and proportionate measures with a view to facilitating the free movement of goods in their territory;
- (4) Whereas such measures must not affect the exercise of fundamental rights, including the right or freedom to strike;
- (5) Whereas this Regulation does not prevent any actions which may be necessary in certain cases at Community level to respond to problems in the functioning of the internal market, taking into account, where appropriate, the application of this Regulation;
- (6) Whereas Member States have exclusive competence as regards the maintenance of public order and the safeguarding of internal security as well as in determining whether, when and which measures are

necessary and proportionate in order to facilitate the free movement of goods in their territory in a given situation;

- (7) Whereas there should be adequate and rapid exchange of information between the Member States and the Commission on obstacles to the free movement of goods;
- (8) Whereas a Member State on the territory of which obstacles to the free movement of goods occur should take all necessary and proportionate measures to restore as soon as possible the free movement of goods in their territory in order to avoid the risk that the disruption or loss in question will continue, increase or intensify and that there may be a breakdown in trade and in the contractual relations which underlie it; whereas such Member State should inform the Commission and, if requested, other Member States of the measures it has taken or intends to take in order to fulfil this objective;
- (9) Whereas the Commission, in fulfilment of its duty under the Treaty, should notify the Member State concerned of its view that a breach has occurred and the Member State should respond to that notification;
- (10) Whereas the Treaty provides for no powers, other than those in Article 235 thereof, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of this Regulation:

1. the term 'obstacle' shall mean an obstacle to the free movement of goods among Member States which is attributable to a Member State, whether it involves action or inaction on its part, which may constitute a breach of Articles 30 to 36 of the Treaty and which:
 - (a) leads to serious disruption of the free movement of goods by physically or otherwise preventing, delaying or diverting their import into, export from or transport across a Member State,

⁽¹⁾ OJ C 10, 15. 1. 1998, p. 14.

⁽²⁾ OJ C 359, 23. 11. 1998.

⁽³⁾ OJ C 214, 10. 7. 1998, p. 90.

- (b) causes serious loss to the individuals affected, and
 - (c) requires immediate action in order to prevent any continuation, increase or intensification of the disruption or loss in question;
2. the term 'inaction' shall cover the case when the competent authorities of a Member State, in the presence of an obstacle caused by actions taken by private individuals, fail to take all necessary and proportionate measures within their powers with a view to removing the obstacle and ensuring the free movement of goods in their territory.

Article 2

This Regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States.

Article 3

1. When an obstacle occurs or when there is a threat thereof
- (a) any Member State (whether or not it is the Member State concerned) which has relevant information shall immediately transmit it to the Commission, and
 - (b) the Commission shall immediately transmit to the Member States that information and any information from any other source which it may consider relevant.
2. The Member State concerned shall respond as soon as possible to requests for information from the Commission and from other Member States concerning the nature of the obstacle or threat and the action which it has taken or proposes to take. Information exchange between Member States shall also be transmitted to the Commission.

Article 4

1. When an obstacle occurs, and subject to Article 2, the Member State concerned shall

- (a) take all necessary and proportionate measures so that the free movement of goods is assured in the territory of the Member State in accordance with the Treaty, and

- (b) inform the Commission of the actions which its authorities have taken or intend to take.

2. The Commission shall immediately transmit the information received under paragraph 1(b) to the other Member States.

Article 5

1. Where the Commission considers that an obstacle is occurring in a Member State, it shall notify the Member State concerned of the reasons that have led the Commission to such a conclusion and shall request the Member State to take all necessary and proportionate measures to remove the said obstacle within a period which it shall determine with reference to the urgency of the case.

2. In reaching its conclusion, the Commission shall have regard to Article 2.

3. The Commission may publish in the *Official Journal of the European Communities* the text of the notification which it has sent to the Member State concerned and shall immediately transmit the text to any party which requests it.

4. The Member State shall, within five working days of receipt of the text, either:

- inform the Commission of the steps which it has taken or intends to take to implement paragraph 1, or
- communicate a reasoned submission as to why there is no obstacle constituting a breach of Articles 30 to 36 of the Treaty.

5. In exceptional cases, the Commission may allow an extension of the deadline mentioned in paragraph 4 if the Member State submits a duly substantiated request and the grounds cited are deemed acceptable.

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

Done at Brussels, 7 December 1998.

For the Council

The President

J. FARNLEITNER

**RESOLUTION OF THE COUNCIL AND OF THE REPRESENTATIVES OF
THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE
COUNCIL**

of 7 December 1998

on the free movement of goods

THE COUNCIL OF THE EUROPEAN UNION AND THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITIES, MEETING WITHIN THE COUNCIL,

UNDERLINING the central role of the Single Market in the overall strategy of the European Union to promote competitiveness, economic growth and employment;

UNDERLINING also in this regard the fundamental importance of free movement of goods for the proper functioning of the Single Market;

RECALLING the obligation of Member States to ensure the free movement of goods in accordance with Articles 30 to 36 of the Treaty establishing the European Community and reaffirming their full commitment to deal promptly and effectively with problems in this respect;

NOTING that severe obstacles to the free movement of goods impose significant economic costs on individuals and obstruct modern distribution and production methods; noting also that such obstacles cast strong doubt on the credibility of the Single Market, the effective functioning of which has become increasingly important in view of the Economic and Monetary Union and enlargement;

STRESSING the need for rapid and effective action by Member States and the Community institutions to tackle such problems, including through the use of administrative cooperation;

RECALLING the Conclusions of the Amsterdam and Luxembourg European Councils;

NOTING Council Regulation (EC) No 2679/98 of 7 December 1998 on the functioning of the internal market in relation to the free movement of goods among the Member States⁽¹⁾;

NOTING also the judgement of the Court of Justice of the European Communities of 9 December 1997 (Case C 265/95) which recalled the obligation of Member States to take all the necessary and proportionate actions available to them in order to ensure the free movement of goods;

EMPHASISING that there is no question of interventions that might restrict or adversely affect the exercise of fundamental rights, including the right or freedom to strike as recognised in the Member States,

HAVE AGREED AS FOLLOWS:

1. MEMBER STATES undertake to do all within their powers, taking into account the protection of fundamental rights, including the right or freedom to strike, to maintain the free movement of goods and to deal rapidly with actions which seriously disrupt the free movement of goods, as defined in Regulation (EC) No 2679/98.

2. MEMBER STATES undertake to inform their economic operators of such disruptions and of efforts to overcome them.

3. MEMBER STATES agree to ensure that rapid and effective review procedures are available for any person who has been harmed as a result of a breach of the Treaty caused by an obstacle within the meaning of Article 1 of Regulation (EC) No 2679/98. They undertake to take all reasonable and proportionate steps to inform persons affected by a breach of the Treaty of this kind, of the existence of such remedies and of the procedure to be followed in pursuing them.

4. MEMBER STATES also agree to take the necessary steps, in accordance with the provisions of the Treaty, to make sure that requests for debate on the free movement of goods can be dealt with swiftly at the appropriate level within the Council, should a given situation warrant such attention.

5. THE COUNCIL notes the Commission's intention to impose tight deadlines for procedures under Article 169 of the Treaty regarding cases falling within the scope of Regulation (EC) No 2679/98 and requests the Commission to inform the Council of specific initiatives to be taken in this respect.

6. MEMBER STATES take note that in cases referred to in paragraph 5 the time set by the Commission for submission of observations may be as short as five working days, as may also the time for response to a reasoned opinion.

⁽¹⁾ See page 8 of this Official Journal.

7. THE COUNCIL invites the Court of Justice of the European Communities to consider whether cases within the scope of Regulation (EC) No 2679/98 can be expedited and promises to examine any proposals to amend the Rules of Procedure of the Court of Justice urgently and with an open mind.
 8. THE COUNCIL invites the Commission to submit a report on the application of Regulation (EC) No 2679/98 two years after the entry into force thereof.
-

COMMISSION REGULATION (EC) No 2680/98
of 11 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 12 December 1998.

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

Done at Brussels, 11 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 11 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	204	78,4
	624	128,0
	999	103,2
0707 00 05	204	85,3
	999	85,3
0709 90 70	052	97,0
	204	96,5
	628	156,1
	999	116,5
0805 10 10, 0805 10 30, 0805 10 50	052	39,6
	204	45,7
	388	45,4
	999	43,6
0805 20 10	204	64,8
	999	64,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	59,4
	464	258,6
	999	159,0
0805 30 10	052	58,6
	600	95,5
	999	77,0
0808 10 20, 0808 10 50, 0808 10 90	039	75,0
	060	16,5
	064	44,1
	400	71,3
	404	77,9
0808 20 50	999	57,0
	064	60,5
	400	65,3
	720	50,7
	999	58,8

⁽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 2681/98
of 11 December 1998

**fixing the maximum buying-in price and the quantities of beef to be bought in
under the 214th partial invitation to tender as a general intervention measure
pursuant to Regulation (EEC) No 1627/89**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 1633/98⁽²⁾, and in particular Article 6(7) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 2456/93 of 1 September 1993 laying down detailed rules for the application of Council Regulation (EEC) No 805/68 as regards the general and special intervention measures for beef⁽³⁾, as last amended by Regulation (EC) No 2304/98⁽⁴⁾, an invitation to tender was opened pursuant to Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender⁽⁵⁾, as last amended by Regulation (EC) No 2466/98⁽⁶⁾;

Whereas, in accordance with Article 13(1) of Regulation (EEC) No 2456/93, a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received; whereas, in accordance with Article 13(2) of that Regulation, a decision may be taken not to proceed with the tendering procedure; whereas, in accordance with Article 14 of that Regulation, only tenders quoting prices not exceeding the maximum buying-in price and not exceeding the average national or regional market price, plus the amount referred to in paragraph 1 of that Article, are to be accepted;

Whereas, once tenders submitted in respect of the 214th partial invitation to tender have been considered and taking account, pursuant to Article 6(1) of Regulation (EEC) No 805/68, of the requirements for reasonable support of the market and the seasonal trend in slaughterings and prices, it has been decided not to proceed with the tendering procedure for category A and to fix the maximum buying-in price and the quantities which may be accepted into intervention for category C;

Whereas the scale of the quantities awarded warrants the application of the possibility provided for in Article 16(2) of Regulation (EEC) No 2456/93 of extending the period

during which the intervention products are to be delivered;

Whereas Article 2 of Council Regulation (EC) No 1103/97 of 17 June 1997 on certain provisions relating to the introduction of the euro⁽⁷⁾ provides that, as from 1 January 1999, all references to the ecu in legal instruments are to be replaced by references to the euro at the rate of EUR 1 to ECU 1;

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the 214th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89:

- (a) for category A, it has been decided not to proceed with the tendering procedure;
- (b) for category C:
 - the maximum buying-in price shall be ECU 235,50 per 100 kg of carcasses or half-carcasses of quality R3,
 - the maximum quantity of carcasses, half-carcasses and forequarters accepted shall be 2 451 tonnes.

Article 2

By derogation to Article 16(2) of Regulation (EEC) No 2456/93, the time limit for delivery to intervention stores is extended by one week to 6 January 1999. However, in Member States where no deliveries may be made during the period 24 December 1998 to 3 January 1999 or during part thereof, the time limit for delivery shall be extended by the corresponding number of days.

Article 3

This Regulation shall enter into force on 14 December 1998.

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 210, 28. 7. 1998, p. 17.

⁽³⁾ OJ L 225, 4. 9. 1993, p. 4.

⁽⁴⁾ OJ L 288, 27. 10. 1998, p. 3.

⁽⁵⁾ OJ L 159, 10. 6. 1989, p. 36.

⁽⁶⁾ OJ L 307, 17. 11. 1998, p. 13.

⁽⁷⁾ OJ L 162, 19. 6. 1997, p. 1.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2682/98
of 11 December 1998

**concerning tenders submitted in response to the invitation to tender for the
export to certain third countries of wholly milled long grain rice issued in
Regulation (EC) No 2566/98**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas an invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2566/98 ⁽³⁾;

Whereas Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award;

Whereas on the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed;

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

No action shall be taken on the tenders submitted from 7 to 10 December 1998 in response to the invitation to tender for the export refund on wholly milled long grain rice falling within CN code 1006 30 67 to certain third countries issued in Regulation (EC) No 2566/98.

Article 2

This Regulation shall enter into force on 12 December 1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 265, 30. 9. 1998, p. 4.

⁽³⁾ OJ L 320, 28. 11. 1998, p. 49.

⁽⁴⁾ OJ L 61, 7. 3. 1975, p. 25.

⁽⁵⁾ OJ L 35, 15. 2. 1995, p. 8.

COMMISSION REGULATION (EC) No 2683/98**of 11 December 1998****concerning tenders submitted in response to the invitation to tender for the export of husked long grain rice to the island of Réunion referred to in Regulation (EC) No 2563/98**

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

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 10 (1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion ⁽³⁾, and in particular Article 9 (1) thereof,

Whereas Commission Regulation (EC) No 2563/98 ⁽⁴⁾ opens an invitation to tender for the subsidy on rice exported to Réunion;

Whereas Article 9 of Regulation (EEC) No 2692/89 allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award;

Whereas on the basis of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89, a maximum subsidy should not be fixed;

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

No action shall be taken on the tenders submitted from 7 to 10 December 1998 in response to the invitation to tender referred to in Regulation (EC) No 2563/98 for the subsidy on exports to Réunion of husked long grain rice falling within CN code 1 006 20 98.

Article 2

This Regulation shall enter into force on 12 December 1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 265, 30. 9. 1998, p. 4.

⁽³⁾ OJ L 29, 7. 9. 1989, p. 8.

⁽⁴⁾ OJ L 320, 28. 11. 1998, p. 40.

COMMISSION REGULATION (EC) No 2684/98**of 11 December 1998****fixing the maximum export refund on wholly milled medium round grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2565/98**

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

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas an invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2565/98 ⁽³⁾;

Whereas Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund; whereas in fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account; whereas a contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund;

Whereas the application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1;

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 maximum export refund on wholly milled medium round grain and long grain A rice to be exported to certain third countries of Europe pursuant to the invitation to tender issued in Regulation (EC) No 2565/98 is hereby fixed on the basis of the tenders submitted from 7 to 10 December 1998 at ECU 124,00 per tonne.

Article 2

This Regulation shall enter into force on 12 December 1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 265, 30. 9. 1998, p. 4.

⁽³⁾ OJ L 320, 28. 11. 1998, p. 46.

⁽⁴⁾ OJ L 61, 7. 3. 1975, p. 25.

⁽⁵⁾ OJ L 35, 15. 2. 1995, p. 8.

COMMISSION REGULATION (EC) No 2685/98**of 11 December 1998****fixing the maximum export refund on wholly milled round grain, medium grain
and long grain A rice in connection with the invitation to tender issued in
Regulation (EC) No 2564/98**

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

Having regard to Council Regulation (EC) No 3072/95 of
22 December 1995 on the common organisation of the
market in rice ⁽¹⁾, as last amended by Regulation (EC) No
2072/98 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas an invitation to tender for the export refund on
rice was issued pursuant to Commission Regulation (EC)
No 2564/98 ⁽³⁾;

Whereas Article 5 of Commission Regulation (EEC) No
584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/
95 ⁽⁵⁾, allows the Commission to fix, in accordance with
the procedure laid down in Article 22 of Regulation (EC)
No 3072/95 and on the basis of the tenders submitted, a
maximum export refund; whereas in fixing this
maximum, the criteria provided for in Article 13 of Regu-
lation (EC) No 3072/95 must be taken into account;
whereas a contract is awarded to any tenderer whose
tender is equal to or less than the maximum export
refund;

Whereas the application of the abovementioned criteria
to the current market situation for the rice in question
results in the maximum export refund being fixed at the
amount specified in Article 1;

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 maximum export refund on wholly milled round
grain, medium grain and long grain A rice to be exported
to certain third countries pursuant to the invitation to
tender issued in Regulation (EC) No 2564/98 is hereby
fixed on the basis of the tenders submitted from 7 to 10
December 1998 at ECU 130,00 per tonne.

Article 2

This Regulation shall enter into force on 12 December
1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 265, 30. 9. 1998, p. 4.

⁽³⁾ OJ L 320, 28. 11. 1998, p. 43.

⁽⁴⁾ OJ L 61, 7. 3. 1975, p. 25.

⁽⁵⁾ OJ L 35, 15. 2. 1995, p. 8.

COMMISSION REGULATION (EC) No 2686/98

of 11 December 1998

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

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin ⁽¹⁾, as last amended by Commission Regulation (EC) No 2560/98 ⁽²⁾ and in particular Articles 6, 7 and 8 thereof,

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

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

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

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

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

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

Whereas oleylolate, calcium glucoheptonate, calcium glucono glucoheptonate, calcium gluconolactate, calcium glutamate, nickel gluconate, nickel sulphate, sodium hypophosphite, bacitracin, bronopol, cetostearyl alcohol, menadione, phytomenadione, 2-pyrrolidone, sodium cetostearyl sulphate, wool alcohols, *lespedeza capitata*, *majoranae herba*, *medicago sativa extractum*, *sinapis nigrae semen* and flumethrin should be inserted into Annex II to Regulation (EEC) No 2377/90;

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

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

HAS ADOPTED THE FOLLOWING REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on the 60th day following its publication in the *Official Journal of the European Communities*.

⁽¹⁾ OJ L 224, 18. 8. 1990, p. 1.

⁽²⁾ OJ L 320, 28. 11. 1998, p. 28.

⁽³⁾ OJ L 317, 6. 11. 1981, p. 1.

⁽⁴⁾ OJ L 214, 24. 8. 1993, p. 31.

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

Done at Brussels, 11 December 1998.

For the Commission
Martin BANGEMANN
Member of the Commission

ANNEX

A. Annex I to Regulation (EC) No 2377/90 is amended as follows:

2. Antiparasitic agents
- 2.2. Agents acting against ectoparasites
- 2.2.3. Pyrethroids

Pharmacologically active substance(s)	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'Flumethrin	Flumethrin (sum of trans-Z isomers)	Bovine	10 µg/kg 150 µg/kg 20 µg/kg 10 µg/kg 30 µg/kg	Muscle Fat Liver Kidney Milk'	

B. Annex II to Regulation (EC) No 2377/90 is amended as follows:

1. Inorganic chemicals

Pharmacologically active substance(s)	Animal species	Other provisions
'Calcium glucoheptonate	All food-producing species	
Calcium glucono glucoheptonate	All food-producing species	
Calcium gluconolactate	All food-producing species	
Calcium glutamate	All food-producing species	
Nickel gluconate	All food-producing species	
Nickel sulphate	All food-producing species	
Sodium hypophosphite	All food-producing species'	

2. Organic compounds

Pharmacologically active substance(s)	Animal species	Other provisions
'2-Pyrrolidone	All food-producing species	At parenteral doses up to 40 mg/kg bw
Bacitracin	Bovine	For intramammary use in lactating cows only and for all tissues except milk
Bronopol	Salmonidae	For use only on farmed fertilised eggs
Cetostearyl alcohol	All food-producing species	
Flumethrin	Honey bees	
Menadione	All food-producing species	
Oleyloleate	All food-producing species	For topical use only
Phytomenadione	All food-producing species	
Sodium cetostearyl sulphate	All food-producing species	For topical use only
Wool alcohols	All food-producing species	For topical use only'

6. Substances of vegetable origin

Pharmacologically active substance(s)	Animal species	Other provisions
<i>Lespedeza capitata</i>	All food-producing species	
<i>Majoranae herba</i>	All food-producing species	
<i>Medicago sativa extractum</i>	All food-producing species	For topical use only
<i>Sinapis nigrae semen</i>	All food-producing species'	

COMMISSION REGULATION (EC) No 2687/98
of 11 December 1998

fixing the maximum aid for concentrated butter for the 194th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 7a(3) thereof,

Whereas, in accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽³⁾, as last amended by Regulation (EC) No 417/98 ⁽⁴⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; whereas Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; whereas the end-use security must be fixed accordingly;

Whereas, in the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 194th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

— maximum aid:	ECU 134/100 kg
— end-use security:	ECU 148/100 kg.

Article 2

This Regulation shall enter into force on 12 December 1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 45, 21. 2. 1990, p. 8.

⁽⁴⁾ OJ L 52, 21. 2. 1998, p. 18.

COMMISSION REGULATION (EC) No 2688/98
of 11 December 1998

**fixing the minimum selling prices for butter and the maximum aid for cream,
butter and concentrated butter for the 22nd individual invitation to tender under
the standing invitation to tender provided for in Regulation (EC) No 2571/97**

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

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 6(3) and (6) and Article 12(3) thereof,

Whereas the intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽³⁾, as last amended by Regulation (EC) No 1982/98 ⁽⁴⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter; whereas Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter; whereas it is further stipulated that the price or aid may vary according

to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted; whereas the amount(s) of the processing securities must be fixed accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 22nd individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 December 1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 350, 20. 12. 1997, p. 3.

⁽⁴⁾ OJ L 256, 18. 9. 1998, p. 9.

ANNEX

to the Commission Regulation of 11 December 1998 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 22nd individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(ECU/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		109	105	—	105
	Butter < 82 %		104	100	104	—
	Concentrated butter		134	130	134	130
	Cream		—	—	46	44
Processing security	Butter		120	—	120	—
	Concentrated butter		148	—	148	—
	Cream		—	—	51	—

COMMISSION REGULATION (EC) No 2689/98
of 11 December 1998

determining the quantity available for the first half of 1999 for certain products in the milk and milk products sector under the schemes provided for in the Europe Agreements between the Community and the Republic of Hungary, the Republic of Poland, the Czech Republic, the Slovak Republic, Bulgaria and Romania and in the Agreements on free trade between the Community and the Baltic States

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

Having regard to Commission Regulation (EC) No 2508/97 of 15 December 1997 laying down detailed rules for the application to milk and milk products of the schemes provided for in the Europe Agreements between the Community and the Republic of Hungary, the Republic of Poland, the Czech Republic, the Slovak Republic, Bulgaria and Romania, the Agreements on free trade between the Community and the Baltic States and the Interim Agreement between the Community and the Republic of Slovenia and repealing Regulations (EEC) No 584/92, (EC) No 1588/94, (EC) No 1713/95 and (EC) No 455/97 ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas, in application of Commission Regulation (EC) No 1620/98 ⁽²⁾, determining the extent to which applications for import licences for the said products lodged in

July 1998 can be accepted, applications for import licences lodged for the products referred to in Regulation (EC) No 2508/97 concern quantities less than those available; whereas, therefore, the quantity available for the period 1 January to 30 June 1999 should be fixed for each product,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available for the period 1 January to 30 June 1999 pursuant to Regulation (EC) No 2508/97, shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 12 December 1998.

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

Done at Brussels, 11 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 345, 16. 12. 1997, p. 31.

⁽²⁾ OJ L 209, 25. 7. 1998, p. 38.

ANNEX

Total quantities available for the period 1 January to 30 June 1999

Country	Poland			Czech Republic			Slovak Republic			Hungary		
CN codes	0402 10 19 0402 21 19 0402 21 99	0405 10 11 0405 10 19 0405 10 30 0405 10 50 0405 10 90 0405 20 90	0406	0402 10 19 0402 21 19 0402 21 99	0405 10 11 0405 10 19 0405 10 30 0405 10 50	0406	0402 10 19 0402 21 19 0402 21 99	0405 10 11 0405 10 19 0405 10 30 0405 10 50	0406	0402 10	0406 90 29	0406
In tonnes	2 875	1 197,5	3 220	1 325,1	575	942,7	692,8	345	842,2	172,5	200	1 150,5

Country	Republic of Estonia			Republic of Latvia				Republic of Lithuania			
CN codes	0402 10 19 0402 21 19	0405 10 11 0405 10 19	0406	0402 10 19 0402 21 19	0405 10	0406	ex 0402 29	0402 10 19 0402 21 19	0405 10 11 0405 10 19	0406	0402 99 11
In tonnes	1 725	1 010,7	920	1 437,5	517,5	790,2	230	2 012,5	690	904,2	260

Country	Romania	Bulgaria
CN codes	0406	0406
In tonnes	1 659	5 060

COMMISSION DIRECTIVE 98/90/EC**of 30 November 1998****adapting to technical progress Council Directive 70/387/EEC relating to the doors of motor vehicles and their trailers****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DIRECTIVE:

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to type-approval of motor vehicles and their trailers⁽¹⁾, as last amended by Commission Directive 98/14/EC⁽²⁾, and in particular Article 13(2) thereof,

Having regard to Council Directive 70/387/EEC of 27 July 1970 on the approximation of the laws of the Member States relating to the doors of motor vehicles and their trailers⁽³⁾, as amended by the Act of Accession of Denmark, Ireland and the United Kingdom, and in particular Article 3 thereof,

Whereas Directive 70/387/EEC is one of the separate Directives of the EC type-approval procedure established by Directive 70/156/EEC; whereas consequently the provisions laid down in Directive 70/156/EEC relating to vehicle systems, components and separate technical units apply to the present Directive;

Whereas it is possible further to adapt Directive 70/387/EEC to technical progress by improving safety of persons entering and leaving the driver's compartment of some heavy goods vehicles;

Whereas, in particular, Article 3(4) and Article 4(3) of Directive 70/156/EEC necessitate that each separate Directive has attached to it an information document incorporating the relevant items referred to in Annex I to that Directive and also a type-approval certificate based on Annex VI thereto in order that type-approval may be computerised;

Whereas with a view to the practical application of Directive 70/387/EEC, it is necessary to ensure that uniform provisions exist in all Member States;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee for the adaption to technical progress established by Directive 70/156/EEC,

Article 1

Directive 70/387/EEC is amended as follows:

1. In Article 1, the words 'agricultural tractors' are replaced by 'agricultural and forestry tractors' and the words 'machinery and public works vehicles' are replaced by 'all mobile machinery'.
2. The Annexes are amended in accordance with the Annex to this Directive.

Article 2

1. With effect from 1 January 1999 Member States may not on grounds relating to vehicle doors:
 - refuse, in respect of a type of vehicle, to grant EC type-approval or national type-approval, or
 - prohibit the sale, registration, entry into service of vehicles,if the vehicles comply with the requirements of Directive 70/387/EEC, as amended by this Directive.
2. With effect from 1 October 2000 Member States:
 - shall no longer grant EC type-approval, and
 - may refuse to grant national type-approvalfor a new type of vehicle on grounds relating to vehicle doors if the requirements of Directive 70/387/EEC, as amended by this Directive, are not fulfilled.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1998 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

⁽¹⁾ OJ L 42, 23. 2. 1970, p. 1.

⁽²⁾ OJ L 91, 25. 3. 1998, p. 1.

⁽³⁾ OJ L 176, 10. 8. 1970, p. 5.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 30 November 1998.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

1. The following list of Annexes is inserted before the Annexes to Directive 70/387/EEC:

‘LIST OF ANNEXES

1. *ANNEX I:* Scope, definitions, general requirements, application for EC type-approval, granting of EC type-approval, modifications of the type and amendments to approvals, conformity of production
Appendix 1: Information document
Appendix 2: Type-approval certificate
2. *ANNEX II:* Construction and fitting requirements and strength tests
3. *ANNEX III:* Requirements concerning access to and exit from doors of driver’s compartment’.

2. Annex I is replaced by the following:

*ANNEX I***SCOPE, DEFINITIONS, GENERAL REQUIREMENTS, APPLICATION FOR EC TYPE-APPROVAL, GRANTING OF EC TYPE-APPROVAL, MODIFICATIONS OF THE TYPE AND AMENDMENTS TO APPROVALS, CONFORMITY OF PRODUCTION**

1. SCOPE

- 1.1. This Directive applies to the doors of motor vehicles of categories M₁ and N⁽¹⁾.

2. DEFINITIONS

For the purpose of this Directive:

- 2.1. “approval of a vehicle”, means the approval of a vehicle type with regard to its doors and to the characteristics applicable to such doors;
- 2.2. “vehicle type”, means vehicles which do not differ essentially with respect to the following main characteristics:
 - design and strength characteristics of the latches and hinges as regards the vehicles mentioned in Annex II,
 - construction and fitting requirements of the running boards and steps as regards vehicles not covered by Annex III,
 - position and geometrical characteristics of the access steps and the handholds as regards vehicles mentioned in Annex III,

in so far as these characteristics have a bearing on the requirements of this Directive.

3. GENERAL REQUIREMENTS

3.1. Design

- 3.1.1. The design characteristics of the vehicle must permit entry to and exit from it in perfect safety.
- 3.1.2. Vehicles of category N₂ with a maximum mass exceeding 7,5 tonnes and N₃ are deemed to satisfy the abovementioned requirements if they comply with the prescriptions of Annex III.

⁽¹⁾ As defined in Annex IIA to Directive 70/156/EEC.

- 3.2. Doors, entries and exits
 - 3.2.1. Doors, entries and exits must be such that they can be used easily and without danger.
- 3.3. Doors and latches
 - 3.3.1. Doors and latches must be designed in such a way that any irritating noise on closing may be avoided.
 - 3.3.2. Door latches must be designed in such a way as to prevent the doors from opening accidentally.
- 3.4. Latches and hinges (construction and fitting requirements)
 - 3.4.1. The hinges of hinge-mounted doors (with the exception of folding doors), when fitted to the sides of the vehicles, must be fixed at the front edge of the doors in the direction of forward travel. In the case of double doors, these requirements apply to the door wing which opens first; it must be possible to bolt the other wing of the door.
 - 3.4.2. The latches and hinges of the side doors of vehicles of category M₁ must satisfy the requirements set out in Annex II to this Directive.
- 3.5. Running boards and steps (construction and fitting requirements)
 - 3.5.1. The wheel hub, rims and other parts of the wheel shall not be deemed to be running boards or steps for the purpose of this Directive, except where reasons relating to construction or use preclude the fitting of running boards or steps elsewhere on the vehicle.
 - 3.5.2. In vehicles of categories M₁, N₁ and N₂ with a maximum mass not exceeding 7,5 tonnes if the floor entrance to the passenger compartment of such vehicles is more than 600 mm above the ground, the vehicle must have one or more running boards or steps.
 - 3.5.2.1. However, for off-road vehicles, as defined in Annex IIA to Directive 70/156/EEC, such a distance from the ground may be increased up to 700 mm.
 - 3.5.2.2. The running boards or steps must be constructed in such a way as to preclude the risk of slipping.
- 4. APPLICATION FOR EC TYPE-APPROVAL
 - 4.1. The application for EC type-approval of a vehicle type with respect to the doors shall be submitted by the vehicle manufacturer.
 - 4.2. A model for the information document is given in Appendix 1.
 - 4.3. A vehicle representative of the type to be approved must be submitted to the technical service responsible for type-approval tests.
- 5. GRANTING OF EC TYPE-APPROVAL
 - 5.1. If the relevant requirements are satisfied, EC type-approval pursuant to Article 4(3) of Directive 70/156/EEC shall be granted.
 - 5.2. A model for the EC type-approval certificate is given in Appendix 2.
 - 5.3. An approval number in accordance with Annex VII to Directive 70/156/EEC shall be assigned to each type of vehicle approved. The same Member State shall not assign the same number to another type of vehicle.
- 6. MODIFICATIONS OF THE TYPE AND AMENDMENTS TO APPROVALS
 - 6.1. In the case of modifications of the type approved pursuant to this Directive, the provisions of Article 5 of Directive 70/156/EEC shall apply.
- 7. CONFORMITY OF PRODUCTION
 - 7.1. Measures to ensure the conformity of production shall be taken in accordance with the provisions laid down in Article 10 of Directive 70/156/EEC.

*Appendix 1***INFORMATION DOCUMENT No. . .**

pursuant to Annex I to Council Directive 70/156/EEC (*) relating to EEC type-approval of a vehicle with respect to the doors (Directive 70/387/EEC, as amended by Directive . . ./EC)

The following information, if applicable, must be supplied in triplicate and include a list of contents.

Any drawings must be supplied in appropriate scale and in sufficient detail on size A4 or folder of A4 format. Photographs, if any, must show sufficient detail.

If the systems, components or separate technical units have electronic controls, information concerning their performance must be supplied.

0. GENERAL

0.1. Make (trade name of manufacturer):

0.2. Type:

0.3. Means of identification of type, if marked on the vehicle (b):

0.3.1. Location of that marking:

0.4. Category of vehicle (c):

0.5. Name and address of manufacturer:

0.8. Address(es) of assembly plant(s):

1. GENERAL CONSTRUCTION CHARACTERISTICS OF THE VEHICLE

1.1. Photographs and/or drawings of a representative vehicle:

9. BODYWORK

9.2. Materials used and methods of construction:

9.3. Occupant doors, latches and hinges:

9.3.1. Door configuration and number of doors:

9.3.1.1. Dimensions, direction and maximum angle of opening:

9.3.2. Drawing of latches and hinges and of their position in the doors:

9.3.3. Technical description of latches and hinges:

9.3.4. Details (including dimensions) of entrances, steps and necessary handles where applicable:

(*) The item numbers and footnotes used in this information document correspond to those set out in Annex I to Directive 70/156/EEC. Items not relevant for the purpose of this Directive are omitted.

Additional information in the case of off-road vehicles

- 1.3. Number of axles and wheels:
- 1.3.3. Powered axles (number, position, interconnection):
- 2.4.1. For chassis without bodywork
 - 2.4.1.4.1. Approach angle (na):
 - 2.4.1.5.1. Departure angle (nb):
 - 2.4.1.6. Ground clearance (as defined in paragraph 4.5 of section A of Annex II to Directive 70/156/EEC):
 - 2.4.1.6.1. between the axles:
 - 2.4.1.6.2. under the front axle(s):
 - 2.4.1.6.3. under the rear axle(s):
 - 2.4.1.7. Ramp angle (nc):
- 2.4.2. For chassis with bodywork
 - 2.4.2.4.1. Approach angle (na):
 - 2.4.2.5.1. Departure angle (nb):
 - 2.4.2.6. Ground clearance (as defined in paragraph 4.5 of section A of Annex II to Directive 70/156/EEC):
 - 2.4.2.6.1. between the axles:
 - 2.4.2.6.2. under the front axle(s):
 - 2.4.2.6.3. under the rear axle(s):
 - 2.4.2.7. Ramp angle (nc):
- 2.15. Hill-starting ability (solo vehicle):
- 4.9. Differential lock: yes/no/optional ⁽¹⁾

⁽¹⁾ Delete where not applicable.

Appendix 2

MODEL

(maximum format: A4 (210 × 297 mm))

EC TYPE-APPROVAL CERTIFICATE

Stamp of administration

Communication concerning the

- type-approval ⁽¹⁾
- extension of type-approval ⁽¹⁾
- refusal of type-approval ⁽¹⁾
- withdrawal of type-approval ⁽¹⁾

of a type of a vehicle/component/separate technical unit ⁽¹⁾ with regard to Directive 70/387/EEC, as amended by Directive .../.../EC.

Type-approval number:

Reason for extension:

SECTION I

- 0.1. Make (trade name of manufacturer):
- 0.2. Type:
- 0.3. Means of identification of type if marked on the vehicle/component/separate technical unit ⁽¹⁾ ⁽²⁾:
- 0.3.1. Location of that marking:
- 0.4. Category of vehicle ⁽¹⁾ ⁽³⁾:
- 0.5. Name and address of manufacturer:
- 0.7. In the case of components and separate technical units, location and method of the affixing of the EEC approval mark:
- 0.8. Address(es) of assembly plant(s):

⁽¹⁾ Delete where not applicable.

⁽²⁾ If the means of identification of type contains characters not relevant to describe the vehicle, component or separate technical unit types covered by this type-approval certificate such characters shall be represented in the documentation by the symbol '?' (e.g. ABC??123??).

⁽³⁾ As defined in Annex IIA to Directive 70/156/EEC.

SECTION II

1. Additional information (where applicable): See Addendum
2. Technical service responsible for carrying out the tests:
3. Date of test report:
4. Number of test report:
5. Remarks (if any): See Addendum
6. Place:
7. Date:
8. Signature:
9. The index to the information package lodged with the approval authority, which may be obtained on request, is attached.

Addendum to EC type-approval certificate No...

concerning the type approval of a vehicle with regard to Directive 70/387/EEC as amended by Directive .../.../EC

1. Additional information
- 1.1. Occupant door configuration(s):
- 1.2. Method of opening:
- 1.3. Latch-opening method:
5. Remarks:

3. Annex II is amended as follows:

- (a) in the heading, the words 'PRIVATE CARS' are replaced by 'VEHICLES OF CATEGORY M₁';
- (b) in point 1.1, the word 'Directive' is replaced by 'Annex'.

4. The following Annex III is added:

ANNEX III

REQUIREMENTS CONCERNING THE ACCESS TO AND EXIT FROM THE DOORS OF THE DRIVER'S COMPARTMENT OF VEHICLES OF CATEGORY N₂ HAVING A MAXIMUM MASS EXCEEDING 7,5 TONNES AND OF CATEGORY N₃

1. Access steps to the driver's compartment (see figure)

1.1. The distance (A) from the ground to the upper surface of the lowest step, measured with the vehicle in running order on a horizontal and flat surface, shall not be more than 600 mm.

1.1.1. However, for off-road vehicles, as defined in Annex IIA to Directive 70/156/EEC, that distance (A) may be increased up to 700 mm.

1.2. The distance (B) between the upper surfaces of the steps shall be not more than 400 mm. The vertical distance between two subsequent steps shall not vary by more than 50 mm.

1.2.1. However, for off-road vehicles (see 1.1.1), this latter figure may be increased up to 100 mm.

1.3. In addition, the following minimum geometrical specifications shall be fulfilled:

— step depth (D):	80 mm
— step clearance (E) (include step depth):	150 mm
— step width (F):	300 mm
— width of the lowest step (G):	200 mm
— step height (S):	120 mm
— transversal offset between steps (H):	0 mm
— longitudinal overlap (J):	200 mm

1.3.1. However, for off-road vehicles (see 1.1.1), the value (F) may be reduced to 200 mm.

1.4. The lowest step may be designed as a rung, if this is necessary for reasons relating to construction or use, and in the case of off-road vehicles (see 1.1.1). In such case the rung depth (R) shall be at least 20 mm.

1.4.1. Rungs of round cross section are not permitted.

1.5. While getting down from the driver's compartment the position of the uppermost step shall be easily found out.

1.6. The upper surface of the steps shall be non-slip. In addition, steps exposed to the weather and the dirt during driving shall have adequate run-off (draining surface).

2. Access to handholds to the driver's compartment (see figure)

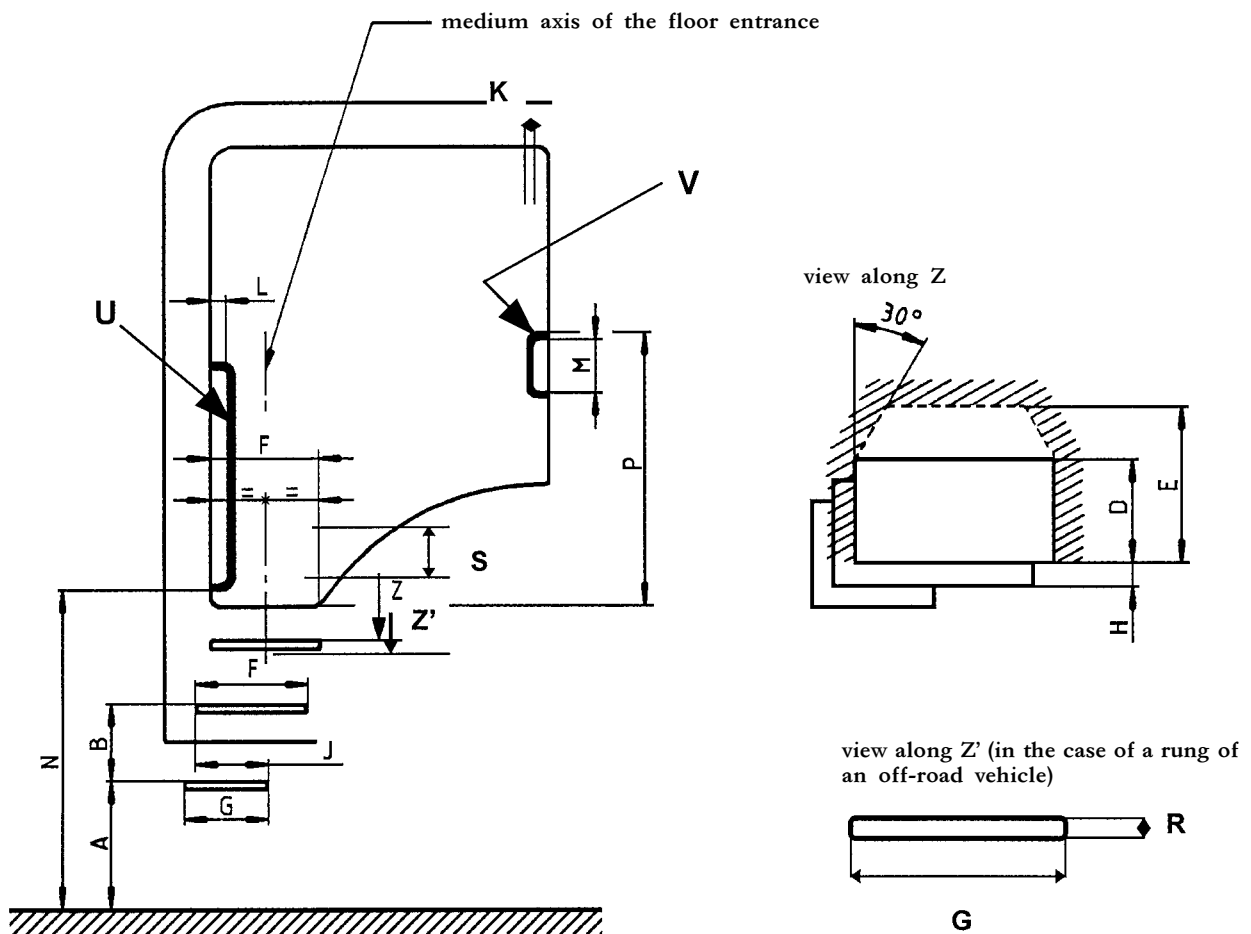
2.1. One or more suitable handrails and handholds or other equivalent holding devices shall be provided for the access to the driver's compartment.

2.1.1. The handrail(s) or handholds or equivalent holding devices must be positioned in such a way that they can be easily grasped and do not obstruct access.

2.1.2. A maximum discontinuity of 100 mm in the holding area of the handrails or handholds or equivalent holding devices may be allowed (for instance intermediate fixation).

2.1.3. In the case of access with more than two steps the handrails, handholds or equivalent holding devices shall be located so that a person may support himself at the same time at three points (with two hands and one foot or with two feet and one hand).

- 2.1.4. Except in the case of a stairway, the design and positioning of the handrails, handholds and equivalent holding devices must be such that operators are encouraged to descend facing the cab.
- 2.1.5. The steering wheel may be considered as a handhold.
- 2.2. The height (N) of the lower edge of at least one handrail or handhold or equivalent holding device, measured from the ground with the vehicle in running order on a horizontal and flat surface, shall not be more than 1 850 mm.
- 2.2.1. However, for off-road vehicles (see 1.1.1), such distance (N) may be increased up to 1 950 mm.
- 2.2.2. If the floor of the driver's compartment has a height from the ground greater than "N", this height shall be assumed as "N".
- 2.2.3. In addition, the minimum distance "P" of the upper edge of the handrail(s) or handholds or equivalent holding devices from the uppermost step (floor of the driver's compartment) shall be:
- handrail(s) or handholds or equivalent holding devices (U) 650 mm,
 - handrail(s) or handholds or equivalent holding devices (V) 550 mm.
- 2.3. The following geometrical specifications shall be fulfilled:
- gripping dimension (K): 16 mm minimum
38 mm maximum,
 - length (M): 150 mm minimum,
 - clearance to vehicle components (L): 40 mm minimum with open door.



Figure

-
3. In the case of a sloped floor of the driver's compartment the required measurements shall be made from a horizontal plane passing through a point which is given by the intersection of the front edge of the floor with a vertical plane through the centre of the step immediately below and which is perpendicular to the longitudinal medium plane of the vehicle.'
-

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION
of 7 December 1998
amending the Council's Rules of Procedure

(98/709/EC, ECSC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151(3) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 30(3) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 121(3) thereof,

Whereas it has become necessary to amend the Council's Rules of Procedure⁽¹⁾;

Whereas the European Central Bank possesses a power of initiative in the Community decision-making process under the conditions laid down in the Treaty establishing the European Community;

Whereas the order in which the Presidency of the Council is held by the Member States is laid down by the Council;

Whereas a simplified written procedure is needed for consultation by the Council of other institutions or bodies,

HAS DECIDED AS FOLLOWS:

Article 1

The Council's Rules of Procedure are hereby amended as follows:

⁽¹⁾ Decision 93/662/EC (OJ L 304, 10. 12. 1993, p. 1). Decision as amended by Decision 95/24/EC, Euratom, ECSC (OJ L 31, 10. 2. 1995, p. 14).

(a) Article 4(2) shall be replaced by the following:

'2. The Commission shall be invited to take part in meetings of the Council. The same shall apply to the European Central Bank in cases where the latter exercises its right of initiative. The Council may, however, decide to deliberate without the presence of the Commission or of the European Central Bank.'

(b) Article 7(2) shall be replaced by the following:

'2. The members of the Council shall vote in the order of the Member States fixed in accordance with Article 27 of the Treaty establishing the European Coal and Steel Community (ECSC), Article 146 of the Treaty establishing the European Community (EC) and Article 116 of the Treaty establishing the European Atomic Energy Community (EAEC), beginning with the member who, according to that order, follows the member holding the office of President.'

(c) the following subparagraph shall be added to Article 8(4):

'The Council may also, on the initiative of the Presidency and for the purposes of deciding to consult other institutions or bodies, act by means of a simplified written procedure in all cases in which consultation is required by Community legislation. In such cases the decision to consult shall be deemed to be adopted at the end of the deadline set by the Presidency according to the urgency of the matter, unless a member of the Council objects.'

Article 2

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

Done at Brussels, 7 December 1998.

For the Council

The President

W. SCHÜSSEL

COMMISSION

COMMISSION DECISION

of 16 September 1998

on a procedure relating to the application of Council Regulation (EEC) No 2408/92
(Case VII/AMA/11/98 — Italian traffic distribution rules for the airport system of
Milan)

(notified under document number C(1998) 2625)

(Only the Italian text is authentic)

(Text with EEA relevance)

(98/710/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for
Community air carriers to intra-Community air routes⁽¹⁾, as amended by the Act of Accession of
Austria, Finland and Sweden, and in particular Article 8(3) thereof,

After consulting the Advisory Committee established under Article 11 of that Regulation,

Whereas:

BACKGROUND

I

- (1) On 16 February 1998 the air carriers British Airways, Iberia, Lufthansa, Olympic Airways, Sabena, Scandinavian Airlines System and TAP Air Portugal submitted to the Commission a joint request asking for it to take a decision with the effect of:
 - (i) declaring the traffic distribution rules adopted by the Italian authorities for the airport system of Milan ('the Italian rules') incompatible with Community law, in particular with Regulation (EEC) No 2408/92;
 - (ii) requiring the Italian authorities not to apply those rules and to adopt other rules fully compatible with Community law.
- (2) On 15 April 1998, Air France informed the Commission that it was joining the abovementioned carriers in their action against the Italian rules.
- (3) On 22 April 1998, those carriers submitted to the Commission an additional request asking it to take an interim decision prior to any decision on the substance of the Italian rules in order to ensure that those rules are not put into effect until adequate transport links to Malpensa airport are established.

⁽¹⁾ OJ L 240, 24. 8. 1992, p. 8.

- (4) On 27 May 1998, Austrian Airlines submitted to the Commission a separate request which had the same object as the initial and additional requests of the complaining carriers and was based on the same grounds.

II

- (5) The airport system of Milan comprises the airports of Linate, Malpensa and Orio al Serio(Bergamo). The airport of Linate, located 10 km from the city centre, concentrates most of the intra-Community international and domestic traffic. Linate airport faces severe capacity problems since 14,2 million passengers used the airport in 1997 whereas its optimum capacity is estimated at around 8 million. The airport of Malpensa, located 53 km from the city centre, concentrates all intercontinental flights, since operating constraints prevent their operation at Linate airport. Only a few intra-Community flights are operated from that airport since passengers tend to favour Linate airport because of its location close to the city centre. Thus, Malpensa airport received only 3,9 million passengers in 1997 whereas its optimum capacity is estimated at around 6 million. Orio al Serio airport, located approximately 50 km from the city centre and close to Bergamo, is mainly used for cargo and charter traffic, although a limited number of scheduled passenger services are also operated from that airport.
- (6) So far, the distribution of traffic between those airports has been market-driven, taking into account the abovementioned operational constraints. This has resulted in an inefficient use of the existing airport capacity, since Linate airport is overutilised and Malpensa airport underutilised. In addition, none of the airports of the system has been able to develop as a major hub for national, international and intercontinental flights. In fact, Alitalia has used Rome-Fiumicino airport as a hub. Hence, the offer of air services from the airport system of Milan, in particular in terms of intercontinental services, is clearly not adapted to the demand as passengers are frequently obliged to fly via hub airports such as Rome, London, Frankfurt and Paris. Moreover, the existing capacity will not be able to cope with short-term traffic volumes, which are estimated at around 20 million passengers and 300 000 tonnes of freight for the year 2000. Consequently, the present structure and organisation of the airport system of Milan is clearly inadequate for the needs of the area it serves, namely the city of Milan and the whole of northern Italy, which represents the third largest area in the Community in terms of population and economic activity.
- (7) Accordingly, the Italian authorities decided to reorganise the airport system of Milan in order to create a hub at Malpensa and provide adequate airport capacity for the future. That objective is to be achieved through the extension and upgrading of Malpensa airport, known as the Malpensa 2000 project. This project is one of the 14 priority projects of the trans-European network under Decision No 1692/96/EC of the European Parliament and of the Council⁽¹⁾. It is financially supported by the Community, the European Investment Fund and the European Investment Bank (EIB). Construction works for a new terminal started in 1990. A first section will be operating in 1998 with a yearly capacity of 12 million passengers (which will add to existing capacity of 6 million) and the terminal will be fully completed in 2000. The overall capacity of the airport (existing and new terminal) will, by then, reach 24 million passengers.
- (8) The financial arrangements underlying the new Malpensa airport require a concentration of traffic at that airport. That necessarily involves a transfer of traffic from Linate airport. However, market forces alone would not ensure such transfer, as passengers generally

⁽¹⁾ OJ L 228, 9. 9. 1996, p. 1.

prefer to use Linate because of its location close to the city centre. On that basis, the Italian authorities decided to adopt mandatory traffic distribution rules aimed at ensuring a substantial transfer of traffic from Linate to Malpensa. In this regard, it is worth noting that the EIB made its financial assistance conditional on the adoption by the Italian authorities of traffic distribution rules resulting in a substantial transfer of traffic from Linate to Malpensa.

- (9) On 1 July 1994, the Italian authorities adopted Decree-Law No 428, which later became Law No 505 on 8 August 1994, Article 3(2) of which empowered the Ministry of Transport to bring about the concentration of air traffic at the airport of Malpensa in time for the liberalisation of European air transport services, scheduled to be completed on 1 April 1997. On that basis and in order to attain that objective, the Italian Minister for Transport issued Decree No 46-T on 5 July 1996. That Decree lays down traffic distribution rules for the airport system of Milan as set out in points 9.1, 9.2 and 9.3.
- 9.1. Article 1(1) provides that from the date of the entry into service of priority structures at Malpensa 2000 (first section of the new terminal) which is to be determined by a further decree, all scheduled and non-scheduled services on intercontinental and intra-Community air routes (including domestic or international intra-Community air routes) shall be operated to and from Malpensa airport.
- 9.2. Article 1(2) provides that the same services can also be operated to and from Orio al Serio airport.
- 9.3. Article 1(3) and (4) provides that Linate airport may only be used for general aviation and for the operation of direct air services on routes serving Milan whose total annual passenger volume is equal to or more than 2 million in the year prior to the abovementioned date of entry into force of priority structures, or has reached an annual average of 1,75 million over the previous three-year period.
- (10) On 13 October 1997, the Italian Government adopted Decree No 70-T, Article 1(1) of which provides that the priority structures referred to in Decree No 46-T are to enter into service on 25 October 1998. That date has been set without any prior information or consultation of the Commission.
- (11) The effect of Decrees No 46-T and No 70-T is that from 25 October 1998 onwards, all air services to and from Milan will have to be operated either from Malpensa airport or Orio al Serio airport, with the exception of general aviation services and air transport services meeting the traffic thresholds defined by Article 1(4) of Decree No 46-T.
- (12) In practice, the only route meeting those thresholds is Milan-Rome. No other air transport service will therefore be authorised at Linate airport.
- (13) Between July 1997 and October 1997, contacts took place between the complainant carriers (with the exception of Austrian Airlines) and the Italian authorities. The carriers indicated that they considered the criteria and timing set out by the Italian rules to be incompatible with Community law. The Italian authorities did not agree with the arguments put forward by the carriers and confirmed both the criteria and timing of the traffic distribution rules.
- (14) The requests formally presented to the Commission by the complainant carriers (hereinafter referred to as 'the carriers') are directed against both the criteria and the timing set out in Decree No 46-T and Decree No 70-T.

III

- (15) In support of their complaint to the Commission against the Italian rules, the carriers rely on the arguments set out in points 15.1 and 15.2.

15.1. The Italian rules infringe Article 8(1) of Regulation (EEC) No 2408/92.

The carriers point out that Article 3(1) of that Regulation lays down a general principle of freedom of access and that in its Decision 95/259/EC ⁽¹⁾ (Paris airport system), the Commission considered that this principle includes the right to choose between different airports of an airport system. However, this right remains subject to the possibility for the Italian authorities to distribute traffic between airports of an airport system on the basis of Article 8(1) of Regulation (EEC) No 2408/92. Article 8(1) provides that this right must be exercised without discrimination on grounds of nationality or identity of the air carriers. The carriers refer to Commission Decision 93/347/EEC ⁽²⁾ (Viva Air) which states that, like any exception to the general principle of freedom of access laid down by Article 3(1), the restrictions introduced by Member States on the basis of Article 8(1) must be based on transparent, objective, consistent and non-discriminatory criteria. According to the carriers there are two separate infringements.

- 15.1.1. First, the carriers point out that the Italian rules are discriminatory because in practice they favour Alitalia. In this regard, they cite Decision 95/259/EC in which the Commission stated that the principle of non-discrimination is also opposed to any measure which, without explicitly distinguishing by reference to the nationality or identity of a carrier, none the less produces, even indirectly, discriminatory effect in practice.

The application of the Italian rules will result in only the Milan-Rome route being operated from Linate; this route is presently operated by several Community air carriers, including Alitalia. From Milan, Alitalia operates an average of 28 flights per day to Rome which is the hub of its network. Alitalia currently operates direct long-haul services from Malpensa only to a limited number of destinations (New York, Los Angeles, Miami, Tokyo, Osaka and Beijing) as the majority of its services outside the EEA are operated from Rome-Fiumicino. The opening of Malpensa 2000 will not terminate the role of Rome-Fiumicino as a hub for both medium- and long-haul services of Alitalia.

The airline's draft programme for Winter 1998/1999 plans a considerable development of service to destinations outside the EEA from Malpensa to the detriment of Rome. Nevertheless, several destinations would continue to be served only from Rome and a greater number would be shared between Rome and Malpensa (for example on certain weekdays from one and on other weekdays from the other). On this basis, Alitalia can still rely in significant part on its Rome hub which it will be able to serve from Linate while non-Italian Community air carriers will no longer be able to serve their hubs from Linate airport as they will have to operate those services from Malpensa.

Malpensa is far less convenient than Linate because of its geographical location. The duration of the journey by car between Milan city centre and Malpensa is 50 to 70 minutes as opposed to 15 to 20 minutes for Linate. For the time being, there is no rail link to either of those airports and the cost of a taxi fare to Malpensa (ECU 67) is more than four times higher than to Linate (ECU 15).

As a result, Alitalia will enjoy a competitive advantage over non-Italian Community carriers for the provision of air transport services to long-haul and medium-haul destinations via its hub. In other words, passengers flying

⁽¹⁾ OJ L 162, 13. 7. 1995, p. 25.

⁽²⁾ OJ L 140, 11. 6. 1993, p. 51.

from Milan to long-haul or medium-haul destinations via a hub will prefer to fly via the hub of Alitalia rather than via the hubs operated by other Community carriers.

In this context, the carriers contend that the primary objective of Decrees No 46-T and No 70-T is not to distribute the traffic within the airport system of Milan but to grant a competitive advantage to Alitalia.

In addition, the carriers consider that the discrimination which, as explained above, stems from the location of Malpensa airport is further reinforced by the fact that Malpensa will not be served by adequate transport links to the city centre at the time of the transfer of the services. None of the transport links between the city centre and the airport will be fully functional by 25 October 1998 whereas an additional 11 million passengers per year are expected to use the airport.

In particular, according to the carriers, the rail link will not be ready for passenger use before the end of 1999.

Substantial works still need to be completed on the A8 Milan-Lakes motorway, which will be the only high capacity/high standard road serving Malpensa airport. This motorway is already heavily congested. The works to be carried out involve the construction of an emergency lane and until their completion, scheduled for December 2000, the capacity of the motorway will be further reduced. In any case, even if the projected works somewhat improve the capacity of the motorway, it will remain insufficient to cope with the increase in traffic generated by the transfer of 11 million passengers from Linate to Malpensa.

Moreover, as taxi drivers from Milan will only be authorised, for administrative reasons, to drive passengers from the city to the airport and not from the airport to the city, a one way fare to the airport will be calculated on the basis of a return journey, resulting in a highly expensive fare (ECU 67,66).

The absence of adequate transport links will reinforce the inconvenience of Malpensa as compared to Linate and thus the discriminatory effect of the Italian rules.

- 15.1.2. Secondly, the carriers point out that the Italian rules are not proportionate to the objective sought by the Italian authorities. In this regard, they point out that in its Decision 94/290/EC⁽¹⁾ (TAT-Paris(Orly)-London), the Commission found that air-traffic distribution rules adopted by the French authorities infringed the principle of proportionality since the result they sought to achieve could have been achieved by measures which were less restrictive and less harmful to intra-Community trade.

The objectives of the Italian rules are to concentrate air traffic at Malpensa airport in order to promote its role as the intercontinental hub for northern Italy and at the same time to maintain Linate airport in operation. The eleventh recital of Decree No 46-T states that Linate airport will have to be kept in service anyway, given that, in terms of expected growing traffic, it would be contrary to economic logic to deprive the area of existing capacity in a sector like air transport.

⁽¹⁾ OJ L 127, 19. 5. 1994, p. 22.

The transfer of traffic envisaged by the Italian rules will result on the one hand in Linate airport being under-utilised (only 2 million passengers will use this airport whose optimum capacity is 8 million passengers) and on the other in Malpensa airport facing capacity problems in the medium term. According to the President of Società per Azioni Esercizi Aeroportuali (SEA), the company managing the airports of Milan, it is likely that in the next few years Malpensa will become saturated and that a proportion of flights will need to be moved back to Linate.

Consequently, the carriers consider that the Italian rules are not proportionate since the objectives sought could be attained without discrimination and with a more rational use of airport capacity avoiding both underutilisation of Linate and congestion at Malpensa. In this framework all Community air carriers should be allowed to operate services from Linate airport to their respective hubs.

- 15.2. The Italian rules are contrary to Commission Decision 97/789/EC⁽¹⁾ concerning aid granted by Italy to Alitalia. The discrimination resulting from the Italian rules constitutes a breach of the conditions imposed by Article 1(4) of that Decision in order to ensure the compatibility of the aid with the common market. Article 1(4) states that the aid is deemed to be compatible with the common market provided that Italy fulfils its undertaking 'not to give Alitalia priority in any way over other Community companies, in particular as regards the allocation of traffic rights (including those for third countries in the European Economic Area), slot allocation, ground-handling assistance and access to airport facilities where preferential treatment would be contrary to Community law'.

IV

- (16) In order to permit a full investigation of this case under the procedure laid down by Article 8(3) of Regulation (EEC) No 2408/92 and to safeguard the rights of the defence, on 3 March 1998, the Commission transmitted the request lodged by the carriers to the Italian authorities and invited them to comment thereon within one month from that date.
- (17) In reply, the Italian authorities sent a note to the Commission on 1 April 1998 setting out the considerations summarized in points 17.1 to 17.4.
- 17.1. The airport policy of a Member State falls within the competence of that Member State. On this basis, and in accordance with Decision 95/259/EC, a Member State must be free to decide which airport should be given priority for the development of an airport system.

In this framework, the Italian authorities indicate that the present structure of the airport system of Milan does not offer adequate capacity to meet the demand for transport services generated by Milan and its area. Maintaining this structure would not enable the Milan airport system to develop as an international connecting point as envisaged within the framework of the European common transport policy. For that very reason, the Community has included the Malpensa 2000 project in its list of priority projects for the trans-European networks. The success of this project requires the concentration of air traffic at Malpensa airport. In this regard, the European Investment Bank has agreed to finance part of the project on condition that the concentration of traffic at Malpensa airport is effective by the date of entry into service of its priority structures. On that basis, the Italian authorities adopted Decrees No 46-T and No 70-T which clearly aim at such concentration. In that framework, Linate will, as a complementary and subsidiary airport, handle specific traffic and continue to serve as a useful resource in the event that capacity were to prove insufficient in the future.

⁽¹⁾ OJ L 322, 25. 11. 1997, p. 44.

- 17.2. As to the discriminatory effect of the Italian rules, the Italian authorities consider that no discrimination is involved since access to the Milan-Rome route is open to all Community air carriers in accordance with the applicable Community rules. It is presently operated by two carriers from Linate (Alitalia and Air One) and by two carriers from Malpensa (Alitalia and Meridiana).

The concentration of traffic at Malpensa will allow all Community air carriers to have access from this airport to all Community airports including Italian airports. Cabotage rights as well as fifth, sixth and seventh freedoms will therefore be freely accessible through Malpensa airport.

The fact that this route is the only route meeting the thresholds set by Decree No 46-T does not in itself give rise to any discrimination.

- 17.2.1. The setting of very high thresholds is intended to lead to the operation at Linate airport only of the most frequented air routes which are primarily used by point-to-point passengers who demand high frequencies. This is precisely the case for the Milan-Rome route which is the most frequented air route in Italy with the highest share of business point-to-point passengers. Traffic volume on this route far exceeds that on all other air routes operated from Milan, and this justifies a special treatment. Moreover, the Milan-Rome route does not play the role of a feeder route for the Alitalia hub in Rome-Fiumicino. This is evidenced by the fact that services are operated all day long and not only according to the few long-haul flight-waves operated by Alitalia from Rome-Fiumicino.
- 17.2.2. The discriminatory effect of the rules cannot be assessed on the basis of the present situation. The policy of Alitalia is clearly to develop hub operations at Malpensa. On this basis, Alitalia and other carriers will be offering new direct services from Milan which are not presently available. These services will be operated from Malpensa airport. As a result, passengers will no longer be obliged to travel to their final destination via hubs located elsewhere in the Community.
- 17.2.3. In any case, Malpensa is more convenient than Linate for the users. Work on access infrastructures has proceeded in accordance with the timetable indicated by the Italian authorities. In fact, it has always been considered that the necessary conditions for the transfer would be the completion of the SS336 (the road linking the existing terminal to the new terminal) which will be done by 25 October 1998. The existing road system is fully compatible with the amount of traffic to be transferred to Malpensa. In this regard, it is necessary to consider the entire catchment area for Malpensa and not only the city of Milan. On that basis, the number of passengers for whom the geographic location of Malpensa is more favourable than Linate more or less equals the share of passengers for which the reverse applies. With regard to the problem of excessive taxi fares, the Region of Lombardy has proposed to regulate taxi fares so that they remain at acceptable levels.
- 17.3. As regards the principle of proportionality, the Italian authorities consider that the traffic distribution rules are necessary to attain the objective of creating a hub at Malpensa and keeping Linate as a supplementary airport.

The high thresholds will make it possible to keep at Linate only those routes whose level of traffic would justify operations both from Linate and Malpensa. Linate will in fact be used for routes on which the traffic is predominantly 'point to point' in order to meet the demand of business and commuting passengers. The underutilisation of

Linate will be justified in order to achieve the objective of an operational hub at Malpensa; this objective presupposes that as many short-haul and medium-haul services as possible are integrated with long-haul services. That is necessary to ensure that the Malpensa hub can effectively be fed by passengers originating from diverse points within the Community (for example, London, Brussels, Lisbon, Frankfurt, Copenhagen, Rome, Palermo, Venice, Pantelleria and so forth). Similarly, it will still be possible to feed other European hubs from Rome, Milan and other Italian regional centres.

Any other consideration would in fact be discriminatory against the Malpensa hub.

- 17.4. As regards the breach of the conditions imposed by Decision 97/789/EC, the Italian authorities consider that such a reference is not relevant since that Decision was adopted after the Italian rules and made no reference to them.

V

- (18) The Commission met with the carriers on 10 May 1998. The carriers stressed the urgency of the case as the allocation of slots for Milan airports was to be decided in the framework of the 102nd IATA Schedule Coordination Conference to be held in Montreal in June 1998.
- (19) On the occasion of two meetings held in Brussels on 9 and 19 June 1998 and by letter of 25 June 1998, the Commission formally informed the Italian authorities of its position on this case, based on the facts currently in its possession, summarizing the reasons why it had doubts about the compatibility of the Italian rules with Article 8(1) of Regulation (EEC) No 2408/92. The Commission indicated that the Italian rules appeared to result in practice in discrimination in favour of Alitalia. It also indicated that they were in any case not proportionate to the objective sought. Both issues were in particular linked to the adequacy of the planned state of readiness of access infrastructures to Malpensa with the volume of traffic to be transferred to that airport. On that basis, the Italian authorities were invited to modify the rules so as to ensure full compatibility with Community law.
- (20) By letters of 2 and 15 July 1998, the Italian authorities informed the Commission that they were not willing to consider any modification of the rules and made the observations set out in points 20.1 to 20.4.
- 20.1. The Italian authorities reiterated that the criteria adopted by Decree No 46-T for the distribution of traffic within the airport system of Milan do not involve any discrimination in favour of Alitalia. However, in order to reassure the Commission on this aspect, the Italian authorities mentioned that they might envisage conditions for the operation of the Milan-Rome route from Linate airport which would, *de facto*, prevent any feeding of the Alitalia hub at Rome-Fiumicino. For that purpose, the route could only be operated on the basis of shuttle services with restrictions on checked-in luggage and no through check-in (no issuing at Linate of the boarding pass for the connecting flight at Rome-Fiumicino).
- 20.2. The criteria adopted by Decree No 46-T were presented to the Commission in the framework of the various meetings of the 'Christophersen group', which was given responsibility for the follow up of the project, held between 1994 and 1997. At that time, the Commission did not raise any problem regarding the compatibility of those measures with Community law. Similarly, the Commission was always kept informed of the various schedules for the access infrastructure works.

- 20.3. In the course of the abovementioned meetings, only two access infrastructures were considered as 'minimal but sufficient' to ensure the transfer of traffic to Malpensa: the SS336 road and the modernised A8 motorway. Moreover, the Commission was always kept informed of the timing for the completion of the various works concerning access infrastructures to the airport.
- 20.4. The position expressed by the Commission threatens the achievement of creating a fully viable and operational hub at Malpensa. Therefore, it threatens the viability of a project of common interest which is one of the priority projects of the trans-European networks.
- (21) On the occasion of a last meeting held in Brussels on 24 July 1998, the Italian authorities provided updated information to the Commission on the progress concerning the works on access infrastructures to Malpensa airport. The Commission informed the Italian authorities that it did not consider the imposition of shuttle type conditions on the Milan(Linate)-Rome(Fiumicino) route to be an adequate solution. Such conditions, which in any event are not part of the traffic distribution rules under consideration in this Decision, do not remove the potential for feeding the Fiumicino hub. Even if they could be introduced in the face of likely user and airline resistance, a ban on checking-in luggage and checking-through luggage would be difficult to enforce and would not deter travellers with only carry-on luggage from transferring. In any case, it would not address the problem of a lack of proportionality between the rules and their objective.

LEGAL ASSESSMENT

VI

- (22) On the subject of the distribution of traffic between airports within an airport system, the Commission holds the powers conferred on it by Article 8(3) of Regulation (EEC) No 2408/92 which reads as follows:
- 'At the request of a Member State or on its own initiative the Commission shall examine the application of paragraphs 1 and 2 and, within one month of receipt of a request and after consulting the Committee referred to in Article 11, decide whether the Member State may continue to apply the measure'.
- (23) In view of the complaints lodged by the carriers, the Commission considers it necessary to use those powers to decide whether Italy can apply the traffic distribution rules for the airport system of Milan laid down by Decree No 46-T and Decree No 70-T whereby, from 25 October 1998 onwards, all air transport services must be operated at Malpensa airport with the exception of services meeting specific thresholds which may continue to be operated at Linate airport⁽¹⁾. The Commission does so on its own initiative, as explicitly provided for in Article 8(3) of Regulation (EEC) No 2408/92, and its examination is in no way limited to the complaint and situation of the complaining carriers.
- (24) In this regard, the fact that the Commission's services have given no indication on the compatibility of the contested Italian rules with Community law on the occasion of the meetings which took place in the framework of the Christophersen group cannot be considered as prejudging a formal position of the Commission on this matter. The Commission recalls that the object of those meetings, which in any event involved a larger audience than the Commission services, was the general follow up of the Malpensa 2000 project and not a detailed examination of the compatibility of the Italian rules with

⁽¹⁾ While access to Bergamo airport is still possible, the distant location of this airport and the lack of adequate access and technical infrastructure make this an even less attractive alternative to Linate.

Community law. Moreover, the Commission's services already at that stage insisted on the necessity of having adequate access infrastructures operational at the time of the transfer. Furthermore the Commission was never consulted about the timing for the application of the measures in question. In those circumstances the Italian authorities could have no legitimate expectations that the Commission would find the contested Italian rules to be in conformity with Community law. In any event, what is called into question in this procedure is, in particular, the application of the Italian rules in the situation where road and rail access to Malpensa is inadequate.

VII

- (25) The principle of freedom to operate air services within the Community provided for in Article 3(1) of Regulation (EEC) No 2408/92 allows Community air carriers to operate at any airport located within an airport system according to their own commercial decisions. On this basis, the freedom of market access generally includes the right to choose between the different airports of an airport system. The Commission considers that this right is an essential element of the liberalisation process since, in most cases, the airports belonging to an airport system are not equally attractive in economic terms as was stated in Decisions 93/347/EEC and 95/259/EC ⁽¹⁾.

- (26) Member States may, however, restrict the abovementioned freedom on the basis of Article 8(1) of Regulation (EEC) No 2408/92, which reads as follows:

'This Regulation shall not affect a Member State's right to regulate without discrimination on grounds of nationality or identity of the air carrier, the distribution of traffic between the airports within an airport system'.

- (27) As the Commission has already indicated in Decisions 95/259/EC and 94/290/EC ⁽²⁾, any restriction adopted under that provision must comply with both the principles referred to in points 27.1 and 27.2.

27.1. The principle of non-discrimination as explicitly mentioned in Article 8(1)

This principle not only prohibits any form of discrimination based on the air carrier's nationality, thus reflecting the principle laid down by Article 6 of the Treaty, but also any form of discrimination based on the identity of the air carrier. In adopting Regulation (EEC) No 2408/92, the Council considered that the absence of discrimination on grounds of the carrier's nationality was not sufficient, in view of the structure of the air transport sector in the Community, to ensure the satisfactory working of the internal market in civil air transport and to ensure compliance with the principle of free access to the market laid down in Article 3(1) of that Regulation. Consequently, it added the principle of non-discrimination on the basis of the air carriers' identity, which was expressly referred to by the Court of First Instance of the European Communities in the *Air Inter* case ⁽³⁾.

27.2. The general principles governing the freedom to provide services are set out in the case-law of the Court of Justice of the European Communities ⁽⁴⁾.

In Regulation (EEC) No 2408/92, the Council set out, pursuant to Article 84(2) of the Treaty, the detailed rules for applying the principles laid down by Articles 59 and 62 of the Treaty in the air transport sector, thus harmonising all questions of market

⁽¹⁾ At pp. 54-55 and at p. 30 respectively.

⁽²⁾ At pp. 30-31 and at pp. 28-31 respectively.

⁽³⁾ Case T-260/94 *Air Inter v. Commission* [1997] ECR II-997, paragraph 112.

⁽⁴⁾ See in particular Case C-288/89 *Collectieve Antenne voorziening Gouda (Mediawet)* [1991] ECR I-4007, paragraphs 10 to 15.

access by air carriers holding Community licences. As a result, it is henceforth necessary to refer directly to these principles, which have moreover been the subject of a Communication from the Commission ⁽¹⁾, when interpreting Regulation (EEC) No 2408/92.

The principles governing the freedom to provide services go beyond the mere prohibition of any discrimination on grounds of nationality or on grounds of identity of the carrier. Even if national measures restricting that freedom apply without discrimination, they are still unacceptable if not warranted by mandatory requirements in the public interest, or if the same result can be obtained by less restrictive rules in accordance with the principle of proportionality.

VIII

- (28) In the case at hand, the verification by the Commission on its own initiative of the compatibility with Article 8(1) of Regulation (EEC) No 2408/92 of the Italian rules involves an appreciation of the compatibility of those rules with the principle of non-discrimination and with the principle of proportionality.

The principle of non-discrimination

- (29) The Commission considers that the criteria set out in Decree No 46-T, based on traffic volumes, are objective criteria which do not distinguish carriers by reference to their nationality or identity since they apply in the same way to all Community air carriers. The mere fact that those criteria are met only by the Milan-Rome route does not appear in itself to be a discrimination since, pursuant to Article 3(1) of Regulation (EEC) No 2408/92, that route is open to any Community air carrier without restrictions.
- (30) However, as already stated by the Commission in Decision 95/259/EC ⁽²⁾, the principle of non-discrimination set out in Article 8(1) also precludes any measure which, even without explicitly making reference to the carrier's nationality or identity, none the less produces, even indirectly, discriminatory effects in practice.
- (31) In order to determine whether the criteria set out in Decree No 46-T produce discriminatory effects in practice, it is necessary to examine the effects which will be produced by their application as of 25 October 1998, as provided for by Decree No 70-T.
- (32) In this regard, the Commission notes that the operation of hub and spoke networks has become a common feature among Community air carriers. The networks of those carriers are based on hub airports which, because of the former division of the Community into several restricted markets and the existing regulatory constraints on the provision of air services between the Community and countries outside the EEA, are always located in the Member State where the carriers are established. For the time being, the largest carriers operating hub networks include Air France (at Paris-Charles de Gaulle), Alitalia (at Rome-Fiumicino), British Airways (at London-Heathrow and London Gatwick), Iberia at (Madrid-Barajas), Lufthansa (at Frankfurt), KLM (at Amsterdam-Schiphol), Sabena (at Brussels) and SAS (at Copenhagen-Karlstrup). The hub system allows them to achieve a comprehensive coverage of the Community air transport market by providing services between any two Community airports served from the hub airport without supporting the investments required by direct services. Similarly, the hub system also enables services to be provided between any Community airport served from the hub airport and airports located in third countries, thus providing an alternative to the prohibition of direct services laid down by bilateral agreements concluded between Member States and third countries.
- (33) Although the hub system has increased competition between the abovementioned carriers, it does not always allow them to compete with each other on a particular route. Indirect

⁽¹⁾ OJ C 334, 9. 12. 1993, p. 3.

⁽²⁾ At p. 32.

services are as a rule not substitutable for direct services because of the substantial difference in the duration of the journey, level of service (a stopover with a change of aircraft is less attractive to the user than a direct service) and price (indirect services are priced at a lower level than direct services). On this basis, competition on a particular route between direct and indirect services is very limited. Conversely, indirect services via hubs are usually substitutable, although this is not the case for all available indirect services. In this regard, the geographic location of the intermediate hubs needs to be taken into account, especially if the point of destination is located in Europe.

- (34) In the case at hand, the information available to the Commission indicates that, for the time being, competition exists for the provision of air services from Milan to a number of airports located mainly outside the EEA (for example: Los Angeles, Dubai, Rio de Janeiro, and so forth) between services operated by Alitalia via its Rome-Fiumicino hub and services operated by other Community carriers via their respective hubs⁽¹⁾. Hence, the Commission cannot accept the argument put forward by the Italian authorities according to which the Milan-Rome route does not play the role of a feeder route for the Alitalia hub in Rome-Fiumicino⁽²⁾.
- (35) The Commission does not consider that Alitalia's intention to progressively establish from 25 October 1998 onwards hub operations at Malpensa airport will put an end to this situation. It is true that the increasing availability of direct services from Malpensa may reduce the incentive for passengers to take indirect service⁽³⁾. However, all the evidence indicates that Alitalia's operations are and will continue to be split between two hubs: Rome-Fiumicino and Milan-Malpensa. This was one of the tenets of Alitalia's restructuring plan as notified by Italy to the Commission under the rules on State aid. In Decision 97/789/EC, it was stated that the Italian authorities had stressed the economic and financial validity of a strategy based on a network with two hubs; they stated that Rome-Fiumicino was to be seen 'as the Mediterranean terminal but maintaining a strong intercontinental emphasis'. Moreover, the hub strategy underlies the alliance agreement with KLM. Even though Alitalia's draft programme for Winter 1998/1999 plans a considerable development of services to destinations outside the EEA from Malpensa to the detriment of Rome, several destinations would continue to be served only from Rome and a greater number of destinations alternate between Rome and Malpensa (e.g. on certain weekdays from one and on other weekdays from the other).

⁽¹⁾ In 1997, 846 100 passengers flew from Milan to another airport via Amsterdam, Frankfurt, Paris, London, Madrid and Rome. 24,5 % of these passengers flew via Rome, 21,4 % via London, 17,4 % via Frankfurt and 15,1 % via Amsterdam. Out of this number:

- 73 399 passengers flew to a European airport (non domestic). 27,3 % of these passengers flew via Frankfurt, 24,4 % via Amsterdam, 21,3 % via London and 13,5 % via Rome,
- 169 626 passengers flew to an airport located in North America. 33,4 % of these passengers flew via London, 25,7 % flew via Amsterdam, 13,4 % flew via Rome and 11 % flew via Paris,
- 130 552 passengers flew to an airport located in South America. 41 % of these passengers flew via Madrid, 22 % via Rome, 16 % via Amsterdam and 7,8 % via Paris,
- 255 998 passengers flew to an airport located in the Far East. 32,2 % of these passengers flew via London, 22,2 % via Frankfurt, 18,3 % via Rome, and 15,2 % via Amsterdam,
- 71 282 passengers flew to an airport located in Africa. 65 % of these passengers flew via Rome, 12 % via Paris, 10 % via Frankfurt and 6,7 % via London.

⁽²⁾ In 1997, 16,4 % of passengers flying between Milan and Rome (Fiumicino) connected to another flight departing from that airport. This represented a volume of 207 750 passengers of whom only 15 % connected on a domestic or European flight while 85 % connected on an intercontinental flight. These passengers generate proportionately more revenue because of the long-haul segment.

⁽³⁾ Although even if Alitalia serves a particular destination by means of a direct flight and only from Malpensa, in particular price-sensitive passengers may still prefer to take connecting services through another hub. Convenient access to Linate is likely to incite such passengers to fly from Linate to Rome to connect with another airline offering for example a cheaper service than Alitalia's direct service, rather than from Malpensa to another hub in the Community.

Furthermore, even assuming that Alitalia's draft programme for winter 1998/1999 was final, there is no indication about the relative development of Malpensa and Rome-based services in future seasons; in view of the increasing activity at Malpensa, Fiumicino is unlikely to be phased out as a hub and may well become more important as congestion at Malpensa increases.

On this basis, it is evident that Alitalia still relies to a significant extent on its Rome hub which it will be able to serve from Linate while other non-Italian Community air carriers will no longer be able to serve their hub from that same airport as they will have to operate their services from Malpensa.

- (36) The fact that by virtue of the Italian rules only the route Milan-Rome will continue to be operated at Linate airport implies that, as of 25 October 1998, Alitalia will be the only Community carrier able to access its hub at Rome-Fiumicino from Milan using either Linate airport or Malpensa airport. All the other abovementioned Community carriers will be able to access their respective hub from Malpensa airport only.
- (37) Linate airport is located 10 km south-east from the city centre of Milan. Most Community airports serving cities of a similar or greater size are not located so close to the city centre. Because of this privileged location, the airport benefits both from the transport infrastructure network linking all major areas of the northern Italy basin to the city of Milan and from the transport infrastructure network of the city itself. A comprehensive network of motorways links Milan to Turin, Bergamo and Venice (A4), Varese (A8), Genoa (A7), and Bologna (A1). This network is complemented by an inner and an outer ring road, the latter serving directly Linate airport. The airport is therefore easily accessible both from the northern Italy basin and from the city of Milan. The short distance from Linate to the city centre makes a rail service superfluous.
- (38) Malpensa airport is located 53 km north-west from the city centre of Milan. No other Community airport serving a city of a similar or greater size is located so far away from the city centre. Because of this location, it can only partially benefit from the transport infrastructure network linking the northern Italy basin to the city of Milan and from the transport infrastructure network of the city. In fact, the airport is accessible only by the A8 motorway linking Milan to Varese. However, the A8 motorway does not directly access Malpensa airport; from the motorway, a connection to the airport is ensured by the SS336 road. No direct link to the other motorways serving Milan exists for the time being. Moreover, despite the long distance from Milan, no direct rail service is currently available.
- (39) Consequently, for the time being, access conditions to Malpensa airport are clearly not equivalent to those to Linate airport. Hence, these airports are not comparatively equally attractive.
- (40) After 25 October 1998, this situation will remain unchanged and might even get worse as access infrastructures which are considered necessary for a transfer of traffic will not be ready. These infrastructures were clearly identified on the occasion of the meeting of 27 October 1997 of the Christophersen group for the follow up of the Malpensa 2000 project and comprise the elements referred to in points 40.1, 40.2 and 40.3.

40.1. An extended SS336 road

At present, the SS336 road linking the A8 motorway to the airport terminates at the existing North terminal and does not extend to the new terminal.

40.2. An upgraded A8 motorway

This motorway is presently highly congested. The situation will worsen once the transfer of traffic resulting from the Italian rules takes place. The following modernisation works are aimed at increasing the capacity of the motorway:

- the construction of one additional lane in each side,
- the construction of an emergency lane,
- the increase of the capacity of the toll-booths.

40.3. An operational direct rail service from Milan to the airport

- (41) According to the information transmitted by the Italian authorities, while the extension of the SS336 should be completed by 25 October 1998, the works for the modernisation of the A8 motorway will not be completed until December 2000 (so far, only the additional lane has been constructed) and a direct rail service will probably not be operational until May 1999. This rail service will be a provisional service (two trains per hour — journey time: 39 minutes). The fully operational rail service ('Malpensa Express': four trains per hour — journey time: 30 minutes) will be available only in 2001. No formal commitment has been given by the Italian authorities about the respect of this timetable.
- (42) Hence, the level of available access infrastructures to Malpensa airport from 25 October 1998 will not be compatible with the traffic which the airport will have to handle as a result of the transfer of traffic from Linate, on the one hand, and of market growth, on the other. On the basis of the information available to the Commission, it seems that this will be the case at least until December 2000, when all the abovementioned infrastructure is planned to be completed.
- (43) However, even when those infrastructures are completed, the level will not necessarily be sufficient to offset the less favourable geographic location of this airport as compared to Linate airport. In this regard, it will be necessary to take into account both the availability of various transport links and the quality of these links.
- (44) Given the existing differences between Linate airport and Malpensa airport with regard to access conditions, the Commission is of the opinion that these airports will not be comparable from the point of view of their attractiveness until the level of access infrastructures to Malpensa offsets the geographic location of this airport as compared to Linate airport.
- (45) In view of the foregoing and taking into account the competitive situation between Alitalia and the other Community air carriers, the criteria set out in Decree No 46-T, by permitting only Alitalia to serve its Rome-Fiumicino hub from Linate airport while other Community air carriers will be obliged to serve their respective hubs from Malpensa airport, will in fact afford Alitalia a competitive advantage. This competitive advantage will exist as long as Malpensa airport does not enjoy a level of access infrastructures such as to overcome the present situation which leads to consumer reluctance to use Malpensa airport.
- (46) Therefore, the Commission considers that the application of the criteria set out in Decree No 46-T from 25 October 1998 by virtue of Decree 70-T will in practice produce discriminatory effects in favour of Alitalia. Consequently, the application of those criteria from 25 October 1998 is not compatible with the principle of non-discrimination on the grounds of the identity of the air carrier as provided for in Article 8(1) of Regulation (EEC) No 2408/92.

The principle of proportionality

- (47) The Malpensa 2000 project, by extending and upgrading existing facilities at Malpensa airport, aims at creating a fully operational and viable hub at that airport. The Italian rules

contribute to that objective by ensuring that a sufficient amount of traffic will be transferred from Linate airport to Malpensa airport so as to ensure the viability of the hub. Article 8(1) of Regulation (EEC) No 2408/92 expressly recognises the legitimacy of an active airport planning policy. It must however comply with the general principles of Community law and, in particular, the third package of measures for the liberalisation of air transport (see Decision 95/259/EC, page 31).

- (48) Under the Italian rules, air carriers will no longer be allowed to choose Linate airport for the operation of air routes other than those meeting specific thresholds. In practice, this will apply to all air routes except Milan-Rome. Consequently, these rules will restrict the freedom to provide air services in the Community to and from Milan. Even if these rules were not regarded as being discriminatory, according to the consistent case-law of the Court of Justice (see in particular the abovementioned judgment in Case C-288/89 *Collectieve Antenne voorziening Gouda*) 'the application of national provisions to providers of services established in other Member States must be such as to guarantee the achievement of the intended aim and must not go beyond that which is necessary in order to achieve that objective. In other words, it must not be possible to obtain the same result by less restrictive rules' (paragraph 15 of the judgment).
- (49) In this regard, the Commission notes that it has not been proven that the creation of a viable operational hub and the success of the trans-European networks project make such restrictive measures necessary. The contrary seems to be established by the factors set out in points 49.1 and 49.2.

49.1. The operational viability of the Malpensa 2000 project (including the timely operation of all flights and the prerequisite normal access of travellers thereto) does not necessitate the complete transfer on 25 October 1998 of such a volume of traffic as that provided by the Italian rules. The application of the criteria laid down by those rules will result in an estimated transferred traffic of 11,7 million passengers while only 2,5 million passengers will remain at Linate airport.

The operational viability of the Malpensa hub necessitates the transfer of a volume of traffic which is compatible with the level of airport facilities and access infrastructures. Otherwise, the development and future positioning of Malpensa airport as a successful hub in the Community could be threatened. As already indicated above, the necessary access infrastructures to the airport will not be ready on 25 October 1998; hence, at that date, existing access infrastructures will not be compatible with the volume of traffic which will be transferred. This would seem to be the case at least until December 2000 when the upgrading of the A8 motorway and a provisional rail service are planned to be operational according to the information transmitted by the Italian authorities, provided that the level of traffic of the airport at that time does not make further improvements necessary to the access infrastructures.

49.2. The financial arrangements for the Malpensa 2000 project do not require that the transfer of traffic from Linate airport to Malpensa airport be completed by 25 October 1998. In fact, according to the contract entered into between the EIB and SEA for the financing of the project, the concentration of traffic from Linate to Malpensa needs to be completed by 31 December 2000 at the latest.

- (50) In view of the foregoing, the Commission is of the opinion that the creation of a fully viable and operational hub does not necessarily presuppose the transfer of 11,7 million passengers from 25 October 1998. A postponement of the transfer or a gradual transfer of that volume from 25 October 1998 onwards would be better suited to that objective and would also reduce the effect on freedom to provide air services to and from Milan. Therefore, the Italian rules are not indispensable to secure the objective pursued by the Italian authorities which could be attained with rules less restrictive of the freedom to provide air services.

- (51) Lastly the Italian authorities also justified the imposition of high thresholds for traffic permitted to remain at Linate by indicating that only at these levels would airline operations be justified both at Malpensa and at Linate and that this would concern routes where traffic was predominantly point-to-point.

If one of the objectives of Decree No 46-T was really to keep at Linate routes where traffic was predominantly point-to-point which indeed appears to be the intention since the 12th recital in the preamble to that Decree refers 'in particular' to services between Milan and Rome, then the Decree cannot be regarded as appropriate to achieving the objective of retaining such routes at Linate since they impose unnecessary restrictions on all routes other than Milan-Rome by actually excluding them from Linate altogether.

Further the imposition of restrictions resulting in an immediate and drastic reduction of activities at Linate from 14,2 million passengers per year in 1997 to 2,5 million after the new measures take effect would not appear to be an appropriate measure to attain the objective indicated in the 11th recital in the preamble to the Decree, namely that Linate airport should in any event be kept in service.

- (52) Consequently, the Commission considers that the traffic distribution rules set out in Decree No 46-T and Decree No 70-T are not compatible with the principle of proportionality.

Conclusion

- (53) In conclusion, the Commission considers that the traffic distribution rules set out in Decree No 46-T and Decree No 70-T are not compatible with Article 8(1) of Regulation (EEC) No 2408/92 in so far as their application is contrary to both the principle of non-discrimination and the principle of proportionality. It is therefore appropriate to decide, pursuant to Article 8(3) of Regulation (EEC) No 2408/92, that Italy may not apply these rules.
- (54) This Decision in no way calls into question the right of Italy to pursue an active airport policy and, more specifically, the objective of creating a fully viable and operational hub at Malpensa airport. However, the traffic distribution rules necessary in order to achieve that objective must comply with the principles of Community law as set out above.
- (55) Nor is this Decision incompatible with the fact that the Malpensa 2000 project is a project of common interest and has been identified as a priority project within the framework of the trans-European networks. In this regard, the Commission recalls that actions by Member States in support of priority projects in the framework of the trans-European networks or designed to create the conditions for the achievement of the objectives pursued by such projects must be fully compatible with Community law,

HAS ADOPTED THIS DECISION:

Article 1

Italy may not apply the traffic distribution rules for the airport system of Milan set out in Decree No 46-T of 5 July 1996 and Decree No 70-T of 13 October 1997.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 September 1998.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION

of 24 November 1998

**amending Decision 97/296/EC drawing up the list of third countries from which
the import of fishery products is authorised for human consumption***(notified under document number C(1998) 3585)*

(Text with EEA relevance)

(98/711/EC)

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

Having regard to Council Decision 95/408/EC of 22 June
1995 on the conditions for drawing up, for an interim
period, provisional lists of third country establishments
from which Member States are authorised to import
certain products of animal origin, fishery products or live
bivalve molluscs⁽¹⁾, as last amended by Decision 98/
603/EC⁽²⁾, and in particular Article 2(2) and Article 7
thereof,

Whereas Commission Decision 97/296/EC⁽³⁾, as last
amended by Decision 98/573/EC⁽⁴⁾, lists the countries
and territories from which importation of fishery products
for human consumption is authorised; whereas part I of
Annex I lists the names of the countries and territories
covered by a specific Decision and part II names those
qualifying under Article 2(2) of Decision 95/408/EC;
whereas Annex II lists the names of the countries and
territories from which importation is authorised until 31
January 1999, under the conditions of Article 11(7) of
Council Directive 91/493/EEC⁽⁵⁾;

Whereas Commission Decisions 98/695/EC⁽⁶⁾, and 98/
975/EC⁽⁷⁾, set specific import conditions for fishery and
aquaculture products originating, respectively, in Mexico
and Estonia;

Whereas Mexico and Estonia should therefore be added
to part I of the list of Annex I countries and territories
from which importation of fishery products for human
consumption is authorised;

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

HAS ADOPTED THIS DECISION:

Article 1

Annex I and Annex II of the present Decision replace
Annex I and the Annex II to Decision 97/296/EC.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 24 November 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 243, 11. 10. 1995, p. 17.

⁽²⁾ OJ L 289, 28. 10. 1998, p. 36.

⁽³⁾ OJ L 122, 14. 5. 1997, p. 21.

⁽⁴⁾ OJ L 277, 14. 10. 1998, p. 49.

⁽⁵⁾ OJ L 268, 24. 9. 1991, p. 15.

⁽⁶⁾ OJ L 332, 8. 12. 1998, p. 9.

⁽⁷⁾ OJ L 317, 26. 11. 1998, p. 42.

ANNEX I

List of countries and territories from which importation of fishery products in any form intended for human consumption is authorised

I. Countries and territories covered by a specific decision under Council Directive 91/493/EEC

AL	ALBANIA	FO	FAROE	MY	MALAYSIA
AR	ARGENTINA	GH	GHANA	NG	NIGERIA
AU	AUSTRALIA	GM	GAMBIA	NZ	NEW ZEALAND
BD	BANGLADESH	GT	GUATEMALA	PE	PERU
BR	BRAZIL	ID	INDONESIA	PH	PHILIPPINES
CA	CANADA	IN	INDIA	RU	RUSSIA
CI	CÔTE D'IVOIRE	JP	JAPAN	SG	SINGAPORE
CL	CHILE	KR	SOUTH KOREA	SN	SENEGAL
CO	COLOMBIA	MA	MOROCCO	TH	THAILAND
CU	CUBA	MG	MADAGASCAR	TN	TUNISIA
EC	ECUADOR	MR	MAURITANIA	TW	TAIWAN
EE	ESTONIA	MV	MALDIVES	TZ	TANZANIA
FK	FALKLAND ISLANDS	MX	MEXICO	UY	URUGUAY
				ZA	SOUTH AFRICA

II. Countries and territories meeting the terms of Article 2(2) of Council Decision 95/408/EC

BJ	BENIN	HR	CROATIA	PG	PAPUA NEW GUINEA
BZ	BELIZE	HU	HUNGARY ⁽¹⁾	PK	PAKISTAN
CH	SWITZERLAND	IL	ISRAEL	PL	POLAND
CM	CAMEROON	JM	JAMAICA	SC	SEYCHELLES
CN	CHINA	KZ	KAZAKHSTAN ⁽²⁾	SI	SLOVENIA
CR	COSTA RICA	LT	LITHUANIA	SR	SURINAME
CV	CAPE VERDE	LV	LATVIA	TG	TOGO
CZ	CZECH REPUBLIC	MT	MALTA	TR	TURKEY
FJ	FIJI	MU	MAURITIUS	UG	UGANDA
GL	GREENLAND	NA	NAMIBIA	US	UNITED STATES OF AMERICA
GN	GUINEA CONAKRY	NI	NICARAGUA	VE	VENEZUELA
HK	HONG KONG	PA	PANAMA	VN	VIETNAM
HN	HONDURAS				

⁽¹⁾ Authorised only for import of live animals intended for human consumption.

⁽²⁾ Authorised only for import of caviar.

ANNEX II

List of countries and territories from which importation of fishery products intended for human consumption is authorised until 31 January 1999, on the conditions of the Article 11(7) of Directive 91/493/EEC

AO	ANGOLA
AZ	AZERBAIJAN ⁽¹⁾
BG	BULGARIA
BS	BAHAMAS
CG	CONGO BRAZZAVILLE
DZ	ALGERIA
EG	EGYPT
ER	ERITREA
GA	GABON
GW	GUINEA BISSAU
IR	IRAN
KE	KENYA
LC	SAINT LUCIA
LK	SRI LANKA
MK	FYROM
MM	MYANMAR
MZ	MOZAMBIQUE
RO	ROMANIA
SB	SOLOMON ISLANDS ⁽²⁾
SH	SAINT HELENA
ZW	ZIMBABWE

⁽¹⁾ Only authorised for imports of caviar.

⁽²⁾ Only authorised for imports from Solomon Taiyo Limited.

COMMISSION DECISION

of 26 November 1998

amending the information contained in the list in the Annex to Commission Regulation (EC) No 44/98 establishing, for 1998, the list of vessels exceeding 8 m length overall permitted to fish for sole in certain Community areas using beam trawls whose aggregate length exceeds 9 m

(notified under document number C(1998) 3617)

(98/712/EC)

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

Having regard to Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources⁽¹⁾,

Having regard to Commission Regulation (EEC) No 3554/90 of 10 December 1990 adopting provisions for the establishment of the list of vessels exceeding 8 m length overall which are permitted to fish for sole within certain areas of the Community using beam trawls whose aggregate length exceeds 9 m⁽²⁾, as amended by Regulation (EC) No 3407/93⁽³⁾, and in particular Article 2 thereof,

Whereas Commission Regulation (EC) No 44/98⁽⁴⁾ establishes, for 1998, the list of vessels exceeding 8 m length overall permitted to fish for sole in certain Community areas using beam trawls whose aggregate length exceeds 9 m, as provided for in Article 10(3)(c) of Regulation (EC) No 894/97;

Whereas authorities of the Member States concerned have applied for the information in the above list to be amended; whereas the said authorities have provided all

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

HAS ADOPTED THIS DECISION:

Article 1

The information in the list annexed to Regulation (EC) No 44/98 is amended as shown in the Annex hereto.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 26 November 1998.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 132, 23. 5. 1997, p. 1.

⁽²⁾ OJ L 346, 11. 12. 1990, p. 11.

⁽³⁾ OJ L 310, 14. 12. 1993, p. 19.

⁽⁴⁾ OJ L 5, 9. 1. 1998, p. 24.

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

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

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

Z	211	Christoph	OPIC	Zeebrugge	221
Z	582	Asannat	OPWZ	Zeebrugge	107

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

HV	89	Helga-Vera	5QEV	Havneby	168
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ALEMANIA / TYSKLAND / DEUTSCHLAND / ΓΕΡΜΑΝΙΑ / GERMANY / ALLEMAGNE / GERMANIA /
DUITSLAND / ALEMANHA / SAKSA / TYSKLAND

SC	43	Horns Riff	DIZA	Büsum	220
CUX	17	Osteriff	DDGE	Cuxhaven	146
DOR	5	Stör	DFAT	Dorum	165
FED	2	Sirius		Fedderwardsiel	147
GRE	18	Capella	DITL	Greetsiel	221
GRE	28	Vorwärts	DCDN	Greetsiel	110
HAR	3	Sperber	DCVF	Greetsiel	146
HAR	14	Georg Albrecht	DCBU	Harlesiel	180
SH	9	Glaube	DMY	Heiligenhafen	220

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

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

O	211	Zeester	OPIC	Oostende	216
Z	582	Asannat	OPWZ	Zeebrugge	221

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

HV	42	Janni	OU7573	Havneby	165
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1	2	3	4	5
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ALEMANIA / TYSKLAND / DEUTSCHLAND / ΓΕΡΜΑΝΙΑ / GERMANY / ALLEMAGNE / GERMANIA /
DUITSLAND / ALEMANHA / SAKSA / TYSKLAND

ACC	11	Tina	DCDN	Accumersiel	110
CUX	17	Osteriff	DDGE	Cuxhaven	210
HAR	3	Sperber	DCVF	Harlesiel	146
LIST	2	Stör	DFAT	List	165
SH	9	Glaube	DMJY	Heiligenhafen	220
SM	18	Capella	DITL	Maasholm	221
ST	21	Maria	DJED	Tönning	220

COMMISSION DECISION**of 26 November 1998****amending the information contained in the list in the Annex to Commission Regulation (EEC) No 55/87 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain coastal areas of the Community***(notified under document number C(1998) 3618)**(98/713/EC)*

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

Having regard to Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 55/87 of 30 December 1986 establishing the list of vessels exceeding eight metres length overall permitted to use beam trawls within certain coastal areas of the Community ⁽²⁾, as last amended by Regulation (EC) No 3410/93 ⁽³⁾, and in particular Article 3 thereof,

Whereas authorities of the Member States concerned have applied for the information in the list provided for in Article 10(3)(b) of Regulation (EC) No 894/97 to be amended; whereas the said authorities have provided all the information supporting their applications pursuant to Article 3 of Regulation (EEC) No 55/87; whereas it has been found that the information complies with the

requirements and whereas, therefore, the information in the list annexed to the Regulation should be amended,

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 26 November 1998.

For the Commission

Emma BONINO

Member of the Commission

⁽¹⁾ OJ L 132, 23. 5. 1997, p. 1.

⁽²⁾ OJ L 8, 10. 1. 1987, p. 1.

⁽³⁾ OJ L 310, 14. 12. 1993, p. 27.

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

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

1	2	3	4	5
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BÉLGICA / BELGIEN / BELGIEN / ΒΕΛΓΙΟ / BELGIUM / BELGIQUE / BELGIO / BELGIË / BÉLGICA /
BELGIA / BELGIEN

Z	211	Christoph	OPIC	Zeebrugge	221
Z	582	Asannat	OPWZ	Zeebrugge	107

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

E	428	Christina	XP3312	Esbjerg	161
HV	89	Helga-Vera	5QEV	Havneby	168

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

ACC	11	Helene	DJDR	Accumersiel	183
BRA	8	Jade	DDJD	Brake	220
BÜS	15	Paloma	DJET	Büsum	74
DOR	5	Stör	DFAT	Dorum	165
FED	2	Sirius		Fedderwardsiel	147
FRI	3	Holsatia	DIST	Friedrichskoog	151
GRE	18	Capella	DITL	Greetsiel	221
GRE	28	Vorwärts	DCDN	Greetsiel	110
HAR	14	Georg Albrecht	DCBU	Harlesiel	180
NG	7	Silvia	DFLJ	Emden	221
SC	43	Horns Riff	DIZA	Büsum	220
SH	9	Glaube	DMY	Heiligenhafen	220
SH	13	Hoffnung	DLYD	Heiligenhafen	147

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

1	2	3	4	5
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BÉLGICA / BELGIEN / BELGIEN / ΒΕΛΓΙΟ / BELGIUM / BELGIQUE / BELGIO / BELGIË / BÉLGICA /
BELGIA / BELGIEN

O	211	Zeester	OPIC	Oostende	216
Z	582	Asannat	OPWZ	Zeebrugge	221

1	2	3	4	5
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DINAMARCA / DANMARK / DÄNEMARK / ΔΑΝΙΑ / DENMARK / DANEMARK / DANIMARCA /
DENEMARKEN / DINAMARCA / TANSKA / DANMARK

HV	42	Janni	OU7573	Havneby	165
RI	75	Connie Vinther	OYFH	Hvide Sande	220

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

ACC	11	Tina	DCDN	Accumersiel	110
BRA	8	Jade	DDID	Brake	220
LIST	2	Stör	DFAT	List	165
NG	7	Anna	DFLJ	Emden	221
NG	15	Aaltje Visser	DFRA	Emden	220
SB	16	Hoffnung	DLYD	Burgstaaken	147
SH	9	Glaube	DMJY	Heiligenhafen	220
SM	18	Capella	DITL	Maasholm	221
ST	16	Yasmin	DJDR	Tönning	183
ST	21	Maria	DJED	Tönning	220

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

ZK	19	Solea		Ulrum-Zoutkamp	79
ZK	24	Soltkamp		Ulrum-Zoutkamp	198