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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1129/2001
of 8 June 2001
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,

Whereas:

- (1) 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.

- (2) 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 9 June 2001.

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

Done at Brussels, 8 June 2001.

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.

ANNEX

to the Commission Regulation of 8 June 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	75,9
	999	75,9
0707 00 05	052	88,4
	068	68,6
	999	78,5
0709 90 70	052	83,2
	999	83,2
0805 30 10	388	65,2
	528	64,7
	999	65,0
0808 10 20, 0808 10 50, 0808 10 90	388	87,2
	400	102,9
	508	75,7
	512	97,7
	524	69,8
	528	80,9
	720	144,2
	804	85,7
	999	93,0
	052	270,7
0809 10 00	999	270,7
	052	386,4
0809 20 95	064	138,6
	068	264,1
	400	301,7
	999	272,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1130/2001**of 8 June 2001****fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2281/2000**

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 1667/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2281/2000 ⁽³⁾.
- (2) 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. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) 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.

(4) 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 rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2281/2000 is hereby fixed on the basis of the tenders submitted from 1 to 7 June 2001 at 188,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 7.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1131/2001**of 8 June 2001****fixing the maximum export refund on wholly milled medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2282/2000**

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 1667/2000 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2282/2000 ⁽³⁾.
- (2) 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. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) 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.

(4) 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 grain and long grain A rice to be exported to certain European third countries pursuant to the invitation to tender issued in Regulation (EC) No 2282/2000 is hereby fixed on the basis of the tenders submitted from 1 to 7 June 2001 at 200,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 10.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1132/2001**of 8 June 2001****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 2283/2000**

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 1667/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2283/2000 ⁽³⁾.
- (2) 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. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) 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.

(4) 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 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 2283/2000 is hereby fixed on the basis of the tenders submitted from 1 to 7 June 2001 at 198,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 13.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1133/2001**of 8 June 2001****fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2284/2000**

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 1667/2000 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2284/2000 ⁽³⁾.
- (2) 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. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) 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.

(4) 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 long grain rice falling within CN code 1006 30 67 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2284/2000 is hereby fixed on the basis of the tenders submitted from 1 to 7 June 2001 at 295,00 EUR/t.

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 16.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 1134/2001
of 8 June 2001
amending Regulation (EEC) No 1627/89 on the buying in of beef by invitation to tender

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 47(8) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender ⁽²⁾, as last amended by Regulation (EC) No 1021/2001 ⁽³⁾, opened buying in by invitation to tender in certain Member States or regions of a Member State for certain quality groups.
- (2) The application of Article 47(3), (4) and (5) of Regulation (EC) No 1254/1999 and the need to limit intervention to buying in the quantities necessary to ensure

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 159, 10.6.1989, p. 36.

⁽³⁾ OJ L 140, 24.5.2001, p. 53.

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

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

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1, i forordning (EØF) nr. 1627/89
Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

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

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

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

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

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

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

Jäsenvaltiot tai alueet ja asetuksen (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmät
Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

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

COMMISSION REGULATION (EC) No 1135/2001**of 8 June 2001****amending the provisions concerning sizing, presentation and labelling laid down in the marketing standards for certain fresh vegetables and amending Regulation (EC) No 659/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Commission Regulation (EC) No 911/2001 ⁽²⁾, and in particular Articles 2(2) and 48 thereof,

Whereas:

(1) Article 2 of Regulation (EC) No 2200/96 lays down that, when adopting standards for fresh fruit and vegetables, the Commission must take account of the international standards laid down by the United Nations Economic Commission for Europe. Those standards lay down that aubergines, cauliflowers, cabbages and courgettes may be marketed in the form of miniature produce, subject to special rules on presentation and labelling. The Regulations laying down the marketing standards for those products should therefore be amended accordingly, i.e. Commission Regulation (EEC) No 1292/81 of 12 May 1981 laying down quality standards for aubergines and courgettes ⁽³⁾, as last amended by Regulation (EC) No 888/97 ⁽⁴⁾, Commission Regulation (EEC) No 1591/87 of 5 June 1987 laying down quality standards for cabbages, Brussels sprouts, ribbed celery, and spinachs ⁽⁵⁾, as last amended by Regulation (EC) No 1168/1999 ⁽⁶⁾, and Commission Regulation (EC) No 963/98 of 7 May 1998 laying down marketing standards for cauliflowers and artichokes ⁽⁷⁾, as last amended by Regulation (EC) No 2551/1999 ⁽⁸⁾.

(2) Some varieties of courgette, aubergine, cauliflower and cabbage can reach maturity while remaining below the minimum sizes laid down in the relevant marketing standards. The standards should therefore lay down that the size requirements do not apply to miniature produce. However, provisions must be laid down to ensure uniformity of size and suitable labelling of miniature produce.

(3) There is an undeniable commercial interest in marketing mixtures of species of miniature produce. Such presentation for the miniature vegetables concerned should

therefore be provided for and the corresponding provisions on labelling laid down.

(4) Any risk of confusion between miniature produce and non-miniature product varieties or those that have not sufficiently developed should be avoided during withdrawal operations. To prevent misuse and to ensure that controls are effective, Commission Regulation (EC) No 659/97 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards intervention arrangements in the fruit and vegetables sector ⁽⁹⁾, as last amended by Regulation (EC) No 398/2000 ⁽¹⁰⁾, should be amended to provide that the possibility of withdrawing produce in bulk without sizing is not extended to miniature produce.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1292/81 is amended as follows:

1. In Annex II (Quality standard for aubergines), Title III (Provisions concerning sizing), the following subparagraph and the associated footnote are added:

The size requirements shall not apply to miniature produce ^(a).

^(a) Miniature produce means a variety or cultivar of aubergine, obtained by plant breeding and/or special cultivation techniques, excluding aubergines of non-miniature varieties which have not fully developed or are of inadequate size. All other requirements of the standards must be met.'

2. In Annex II (Quality standard for aubergines), Title V (Provisions concerning presentation), paragraph A (Uniformity), the following subparagraph is inserted after the second subparagraph:

'Miniature aubergines must be reasonably uniform in size. They may be mixed with other miniature products of a different type and origin.'

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 129, 11.5.2001, p. 3.

⁽³⁾ OJ L 129, 15.5.1981, p. 38.

⁽⁴⁾ OJ L 126, 17.5.1997, p. 11.

⁽⁵⁾ OJ L 146, 6.6.1987, p. 36.

⁽⁶⁾ OJ L 141, 4.6.1999, p. 5.

⁽⁷⁾ OJ L 135, 8.5.1998, p. 18.

⁽⁸⁾ OJ L 308, 3.12.1999, p. 26.

⁽⁹⁾ OJ L 100, 17.4.1997, p. 22.

⁽¹⁰⁾ OJ L 50, 23.2.2000, p. 7.

3. In Annex II (Quality standard for aubergines), Title VI (Provisions concerning marking), paragraph D (Commercial specifications), the following indent is added:

— “mini aubergines”, “baby aubergines” or other appropriate term for miniature produce, where appropriate. Where several types of miniature produce are mixed in the same package, all products and their respective origins must be mentioned.’

4. In Annex III (Quality standard for courgettes), Title III (Provisions concerning sizing), the following subparagraph and the associated footnote are added:

‘The size requirements shall not apply to miniature produce ⁽²⁾.

⁽²⁾ Miniature produce means a variety or cultivar of aubergine, obtained by plant breeding and/or special cultivation techniques, excluding aubergines of non-miniature varieties which have not fully developed or are of inadequate size. All other requirements of the standards must be met.’

5. In Annex III (Quality standard for courgettes), Title V (Provisions concerning presentation), paragraph A (Uniformity), the following subparagraph is inserted after the first subparagraph:

‘Miniature courgettes must be reasonably uniform in size. They may be mixed with other miniature products of a different type and origin.’

6. In Annex III (Quality standard for courgettes), Title VI (Provisions concerning marking), paragraph D (Commercial specifications), the following indent is added:

— “mini courgettes”, “baby courgettes” or other appropriate term for miniature produce, where appropriate. Where several types of miniature produce are mixed in the same package, all products and their respective origins must be mentioned.’

Article 2

Annex I to Regulation (EEC) No 1591/87 is amended as follows:

1. In Title III (Provisions concerning sizing), the following subparagraph and the associated footnote are added:

‘The size requirements shall not apply to miniature produce ^(a).

^(a) Miniature produce means a variety or cultivar of aubergine, obtained by plant breeding and/or special cultivation techniques, excluding aubergines of non-miniature varieties which have not fully developed or are of inadequate size. All other requirements of the standards must be met.’

2. In Title V (Provisions concerning presentation), paragraph A (Uniformity), the following subparagraph is inserted after the second subparagraph:

‘Miniature cabbages must be reasonably uniform in size. They may be mixed with other miniature products of a different type and origin.’

3. In Title VI (Provisions concerning marking), paragraph D (Commercial specifications), the following indent is added:

— “mini cabbages”, “baby cabbages” or other appropriate term for miniature produce, where appropriate. Where several types of miniature produce are mixed in the same package, all products and their respective origins must be mentioned.’

Article 3

Annex I to Regulation (EEC) No 963/98 is amended as follows:

1. In Title III (Provisions concerning sizing), the following subparagraph and the associated footnote are added:

‘The size requirements shall not apply to miniature produce ⁽²⁾.

⁽²⁾ Miniature produce means a variety or cultivar of aubergine, obtained by plant breeding and/or special cultivation techniques, excluding aubergines of non-miniature varieties which have not fully developed or are of inadequate size. All other requirements of the standards must be met.’

2. In Title V (Provisions concerning presentation), paragraph A (Uniformity), the following subparagraph is inserted after the first subparagraph:

‘Miniature cauliflowers must be reasonably uniform in size. They may be mixed with other miniature products of a different type and origin.’

3. In Title VI (Provisions concerning marking), paragraph D (Commercial specifications), the following indent is added:

— “mini cauliflowers”, “baby cauliflowers” or other appropriate term for miniature produce, where appropriate. Where several types of miniature produce are mixed in the same package, all products and their respective origins must be mentioned.’

Article 4

In Article 2(2) of Regulation (EC) No 659/97, the second subparagraph is replaced by the following:

‘However, tomatoes withdrawn from 16 July to 15 October, as well as miniature produce as defined in the relevant marketing standards, must comply with the applicable marketing standard.’

Article 5

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1136/2001**of 8 June 2001****opening intervention in accordance with Article 47(5) of Council Regulation (EC) No 1254/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 47(8) thereof,

Whereas:

- (1) Article 47(5) of Regulation (EC) No 1254/1999 lays down that intervention must be opened in a Member State or regions of a Member State if, for a period of two consecutive weeks, the average Community market price of young uncastrated male animals less than two years old or of castrated male animals, recorded on the basis of the Community grading scale for carcasses of adult bovine animals, falls short of 78 % of the intervention price, and if in a Member State or regions of a Member State the average market price, recorded on the same basis, falls short of 60 % of the intervention price.

- (2) Where these conditions are met, all offers for sale into intervention of the products referred to in Article 4 of Commission Regulation (EC) No 562/2000 of 15 March 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef ⁽²⁾, as last amended by Regulation (EC) No 1082/2001 ⁽³⁾.

- (3) The above conditions are met in the Netherlands with respect to young uncastrated male animals,

HAS ADOPTED THIS REGULATION:

Article 1

Intervention as referred to in Article 47(5) of Regulation (EC) No 1254/1999 is hereby opened in the Member State listed in the Annex to this Regulation for the categories and qualities referred to therein.

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 68, 16.3.2000, p. 22.

⁽³⁾ OJ L 149, 2.6.2001, p. 19.

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

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el artículo 1

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1

Member States or regions of a Member State and quality groups referred to in Article 1

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er}

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1

In artikel 1 bedoelde lidstaten of gebieden van een lidstaat en kwaliteitsgroepen

Estados-Membros ou regiões de Estados-Membros e grupos de qualidades referidos no artigo 1.º

Jäsenvaltiot tai alueet ja 1 artiklassa tarkoitettut laatuyhmitt

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχή κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lidstaat of gebied van een lidstaat	Categorie A			Categorie C		
Estados-Membros ou regiões de Estados-Membros	Categoria A			Categoria C		
Jäsenvaltiot tai alueet	Luokka A			Luokka C		
Medlemsstater eller regioner	Kategori A			Kategori C		
Nederland	U	R	O	U	R	O
		×	×			

**COMMISSION REGULATION (EC) No 1137/2001
of 8 June 2001
concerning the issue of A licences for the import of garlic**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1047/2001 of 30 May 2001 introducing a system of import licences and certificates of origin and establishing the method for managing the tariff quotas for garlic imported from third countries ⁽¹⁾,

Whereas:

- (1) Article 8(1) of Regulation (EC) No 1047/2001 provides that if quantities covered by applications for A licences exceed the quantities available, the Commission is to fix a simple reduction percentage and suspend the issue of such licences covered by subsequent applications.
- (2) Quantities applied for on 4 and 5 June 2001 under Article 4(1) of Regulation (EC) No 1047/2001 for products originating in China exceed the quantities available. The extent to which A licences can be issued, and whether the issue of those licences should be suspended for any subsequent applications, should therefore be determined,

HAS ADOPTED THIS REGULATION:

Article 1

A import licences covered by applications under Article 1(1), of Regulation (EC) No 1047/2001 for products originating in China on 4 and 5 June 2001 and forwarded to the Commission on 6 June 2001 shall be issued, with the entry referred to in Article 1(2) of that Regulation, at the rate of:

- 1,415 % of the quantity applied for, for traditional importers,
- 0,768 % of the quantity applied for, for new importers.

Article 2

Issue of the import licences covered by applications under Regulation (EC) No 1047/2001 for products originating in China is hereby suspended for applications lodged from 5 June to 3 September 2001.

Article 3

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission
Franz FISCHLER
Member of the Commission

⁽¹⁾ OJ L 145, 31.5.2001, p. 35.

COMMISSION REGULATION (EC) No 1138/2001
of 8 June 2001
concerning the issue of A licences for the import of garlic

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1047/2001 of 30 May 2001 introducing a system of import licences and certificates of origin and establishing the method for managing the tariff quotas for garlic imported from third countries ⁽¹⁾,

Whereas:

- (1) Article 8(1) of Regulation (EC) No 1047/2001 provides that if quantities covered by applications for A licences exceed the quantities available, the Commission is to fix a simple reduction percentage and suspend the issue of such licences covered by subsequent applications.
- (2) Quantities applied for on 4 and 5 June 2001 under Article 4(1) of Regulation (EC) No 1047/2001 for products originating in all third countries other than China and Argentina exceed the quantities available. The extent to which A licences can be issued, and whether the issue of those licences should be suspended for any subsequent applications, should therefore be determined,

Article 1

A import licences covered by applications under Article 1(1), of Regulation (EC) No 1047/2001 for products originating in all third countries other than China and Argentina on 4 and 5 June 2001 and forwarded to the Commission on 6 June 2001 shall be issued, with the entry referred to in Article 1(2) of that Regulation, at the rate of:

- 8,751 % of the quantity applied for, for traditional importers,
- 0,691 % of the quantity applied for, for new importers.

Article 2

Issue of the import licences covered by applications under Regulation (EC) No 1047/2001 for products originating in all third countries other than China and Argentina is hereby suspended for applications lodged from 5 June to 3 September 2001.

Article 3

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 145, 31.5.2001, p. 35.

COMMISSION REGULATION (EC) No 1139/2001**of 8 June 2001****on the issue of import licences for high-quality fresh, chilled or frozen beef and veal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat ⁽¹⁾, as last amended by Regulation (EC) No 134/1999 ⁽²⁾,

Whereas:

- (1) Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f).
- (2) Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on

special terms for the period 1 July 2000 to 30 June 2001 at 11 500 t.

- (3) It should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

All applications for import licences from 1 to 5 June 2001 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

Article 2

This Regulation shall enter into force on 11 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 137, 28.5.1997, p. 10.

⁽²⁾ OJ L 17, 22.1.1999, p. 22.

COMMISSION REGULATION (EC) No 1140/2001
of 8 June 2001
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 2235/2000 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 1053/2001 ⁽⁵⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1053/2001,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 1053/2001 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 256, 10.10.2000, p. 13.

⁽⁵⁾ OJ L 148, 1.6.2001, p. 11.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty by land inland waterway or sea from Mediterranean, the Black Sea or Baltic Sea ports (EUR/tonne)	Import duty by air or by sea from other ports ⁽²⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00	0,00
	medium quality ⁽¹⁾	0,00	0,00
1001 90 91	Common wheat seed	0,00	0,00
1001 90 99	Common high quality wheat other than for sowing ⁽³⁾	0,00	0,00
	medium quality	15,11	5,11
	low quality	52,72	42,72
1002 00 00	Rye	44,52	34,52
1003 00 10	Barley, seed	44,52	34,52
1003 00 90	Barley, other ⁽³⁾	44,52	34,52
1005 10 90	Maize seed other than hybrid	71,32	61,32
1005 90 00	Maize other than seed ⁽³⁾	71,32	61,32
1007 00 90	Grain sorghum other than hybrids for sowing	44,52	34,52

⁽¹⁾ In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

⁽²⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic Coasts of the Iberian Peninsula.

⁽³⁾ The importer may benefit from a flat-rate reduction of EUR 24 or 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 31 May to 7 June 2001)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	138,88	136,54	112,49	88,22	200,70 (**)	190,70 (**)	114,53 (**)
Gulf premium (EUR/t)	—	18,53	4,97	10,64	—	—	—
Great Lakes premium (EUR/t)	29,04	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).

(**) Fob Duluth.

2. Freight/cost: Gulf of Mexico — Rotterdam: 21,56 EUR/t; Great Lakes — Rotterdam: 32,68 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

COMMISSION REGULATION (EC) No 1141/2001
of 8 June 2001
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽³⁾, as last amended by Regulation (EC) No 624/98 ⁽⁴⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1411/2000 ⁽⁵⁾, as last amended by Regulation (EC) No 1048/2001 ⁽⁶⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 9 June 2001.

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

Done at Brussels, 8 June 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 175, 14.7.2000, p. 59.

⁽³⁾ OJ L 141, 24.6.1995, p. 16.

⁽⁴⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁵⁾ OJ L 161, 1.7.2000, p. 22.

⁽⁶⁾ OJ L 145, 31.5.2001, p. 41.

ANNEX

to the Commission Regulation of 8 June 2001 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	25,94	3,50
1701 11 90 ⁽¹⁾	25,94	8,56
1701 12 10 ⁽¹⁾	25,94	3,37
1701 12 90 ⁽¹⁾	25,94	8,13
1701 91 00 ⁽²⁾	33,14	8,66
1701 99 10 ⁽²⁾	33,14	4,40
1701 99 90 ⁽²⁾	33,14	4,40
1702 90 99 ⁽³⁾	0,33	0,33

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 28 May 2001

on a financial contribution by the Community to certain expenditure incurred by the Member States in implementing the control, inspection and surveillance systems applicable to the common fisheries policy

(2001/431/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 37 thereof,

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

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

Whereas:

- (1) The common fisheries policy, which guarantees the long-term existence of fishery stocks and thus employment in the sector, can achieve its objectives only if its rules are complied with and effectively controlled.
- (2) Those objectives and rules are primarily established by Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽³⁾ and by Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽⁴⁾.
- (3) By guaranteeing the implementation of the control, inspection and surveillance systems applicable to the common fisheries policy, the Member States discharge an obligation of Community interest.
- (4) For some Member States the scale of the control task is particularly onerous and may be disproportionately burdensome.
- (5) The Community should therefore make a financial contribution towards certain control, inspection and

surveillance expenditure incurred by some Member States.

- (6) Given the positive overall impact of the Community financial contribution under Council Decision 89/631/EEC ⁽⁵⁾, for 1991 to 1995, and Council Decision 95/527/EC ⁽⁶⁾, for 1996 to 2000, a follow-on to those Decisions is required, but not a simple renewal. Certain expenditure should therefore be reduced in order to permit more active assistance in other areas.
- (7) A period of three years, from 2001 to 2003, for the application of this Decision allows the Community contribution to be set for a long enough period but without prejudging any modifications of the common fisheries policy that may be decided under Article 14 of Regulation (EEC) No 3760/92.
- (8) A financial reference, within the meaning of point 34 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽⁷⁾, is inserted in this Decision for the entire duration of the period for which financial assistance is to be provided, without thereby affecting the powers of the budgetary authority as defined by the Treaty.
- (9) The corresponding financial resources are entered as annual appropriations in the General Budget of the European Union.
- (10) The financial contribution by the Community is conditional on the recipient Member State attaining a satisfactory standard of control both at sea and on land.

⁽¹⁾ OJ C 62 E, 27.2.2001, p. 276.

⁽²⁾ Opinion delivered on 5 April 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 389, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 1181/98 (OJ L 164, 9.6.1998, p. 1).

⁽⁴⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 2846/98 (OJ L 358, 31.12.1998, p. 5).

⁽⁵⁾ OJ L 364, 14.12.1989, p. 64. Decision last amended by Decision 95/528/EC (OJ L 301, 14.12.1995, p. 35).

⁽⁶⁾ OJ L 301, 14.12.1995, p. 30.

⁽⁷⁾ OJ C 172, 18.6.1999, p. 1.

- (11) Recipient Member States must assess the objectives and the impact of their expenditure on control programmes, both annually and in the aggregate at the end of the three-year period (2001 to 2003).
- (12) The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (13) To ensure continuity of a Community financial contribution to certain expenditure incurred by Member States in implementing the control, inspection and surveillance systems applicable to the Common Fisheries Policy, it is imperative to apply this Decision with effect from 1 January 2001,

HAS ADOPTED THIS DECISION:

Article 1

Under the conditions set out in this Decision, the Community may grant a financial contribution (hereinafter 'financial contribution') to control programmes established by the Member States for the implementation of the control, inspection and surveillance systems applicable to the common fisheries policy laid down in Council Regulation (EEC) No 2847/93.

The control programmes shall specify their objectives and the facilities to be deployed and expenditure envisaged, in particular for the action referred to in Article 2.

Article 2

The financial contribution may be granted in respect of certain expenditure provided for in the control programmes and intended to contribute to the following actions:

- (a) creation of the mechanisms and IT networks necessary for information exchange in connection with control;
- (b) experimentation with and implementation of new technologies to improve control of fishery activities;
- (c) training of control departments' officials;
- (d) implementation of new inspection and observer schedules in the framework of Regional Fishery Organisations (RFOs) to which the Community is a contracting party;
- (e) acquisition and modernisation of control, inspection and surveillance equipment.

Under points (a), (b), (d) and (e), the financial contribution per project shall be limited to expenditure of an amount greater than EUR 13 200.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

Article 3

The expenditure referred to in Article 2 arising from legal and financial commitments entered into by Member States' competent authorities during the period of application of this Decision, in respect of which no other financial aid is received from the Community, shall be regarded as eligible. Value added tax (VAT) shall not be regarded as eligible expenditure.

Expenditure shall be eligible to the extent to which it is actually used to implement the control programmes.

Article 4

1. The financial contribution shall relate to eligible expenditure effected by Member States between 1 January 2001 and 31 December 2003.

2. The financial reference for the implementation of the measures for which financial assistance is provided for the period 2001 to 2003 shall be EUR 105 million. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

3. If appropriations available in the general budget of the European Union do not permit a financial contribution to all eligible expenditure proposed by a Member State, priority shall be given to expenditure on the control measures provided for in the Community rules.

Article 5

1. Financial contributions towards the expenditure referred to in Article 2(a) shall cover eligible expenditure for the creation of the mechanisms and IT networks necessary for information exchange in connection with control, including IT applications, computers and software.

2. The annual financial contribution per Member State shall be, at most, 65 % of eligible expenditure.

Article 6

1. Financial contributions towards the expenditure referred to in Article 2(b) shall cover eligible expenditure for experimentation with, and the introduction of, new technologies to improve controls on fishing and related activities.

2. The annual financial contribution per Member State shall be, at most, 50 % of eligible expenditure.

3. The Commission may decide on a rate of contribution higher than that provided for in paragraph 2 to enable financial contributions towards eligible expenditure, where necessary, extending the VMS provided for in Article 3 of Regulation (EEC) No 2847/93 to include vessels other than those referred to in Article 3(2) thereof, and towards recording information other than vessel position and installing electronic logbooks.

Article 7

1. Financial contributions towards the expenditure referred to in Article 2(c) shall cover, in accordance with the rules in Annex I, eligible expenditure on the training of national officials involved in control activities arising from the organisation of seminars or training courses of at least one day and from exchanges of national officials.

2. The annual financial contribution per Member State shall be, at most, 50 % of eligible expenditure.

Article 8

1. Financial contributions towards the expenditure referred to in Article 2(d) shall cover eligible expenditure on the introduction of new inspection and observer schedules adopted in the framework of RFOs to which the Community is a contracting party.

2. The annual financial contribution per Member State shall be, at most, 50 % of eligible expenditure.

Article 9

1. Financial contributions towards the expenditure referred to in Article 2(e) shall cover investment in the acquisition or modernisation of vessels and aircraft used for control, inspection and surveillance of fishery activities.

2. The annual financial contribution per Member State shall be, as a maximum, 35 % of eligible expenditure.

3. The Commission may decide on a rate of contribution higher than that provided for in paragraph 2, of up to 50 % of eligible expenditure, in the following cases:

- (a) to Member States which have to control an extensive Exclusive Economic Zone, Exclusive Fishing Zone or continental shelf or which have to deal with disproportionate obligations arising in connection with the control of fishing at sea;
- (b) to Member States which assign control resources each year, during the period 2001 to 2003, to the regulatory zone of an RFO to which the Community is a contracting party, in which vessels flying their flag operate.

Article 10

A special financial contribution of up to 50 % of eligible expenditure per Member State per year may be granted for implementing a system to assess expenditure incurred in controlling the common fisheries policy. This contribution shall be granted towards eligible expenditure on introducing a system of assessment, including developing analytical accounting procedures permitting calculation of the cost of various control measures carried out by the competent authorities of the Member States.

Article 11

The annual budget allocation for action towards which a financial contribution of more than 50 % is paid shall be restricted to 20 % of the budget envelope.

Article 12

1. Member States wishing to receive a financial contribution shall send the Commission, by 30 June 2001 at the latest, a forecast programme of their annual expenditure for 2001, 2002 and 2003 for which they are seeking a financial contribution, accompanied by a three-year programme describing the controls they intend to carry out during the three-year period.

The control programme must describe the objectives of the control and inspection measures scheduled, the actual operational plan envisaged and the results anticipated, and must cover the full range of fishery control work relevant to the Member State.

Programmes received after 30 June 2001 shall be considered only in exceptional circumstances, justified by the Member States concerned.

2. The programmes shall include the details specified in points 1 and 2 of Part A of Annex II.

Article 13

On the basis of the information provided by Member States, and having due regard to the criteria in point 3 of Part A of Annex II, the Commission shall decide before 31 October 2001 for 2001 and before 30 June 2002 for 2002 and 30 June 2003 for 2003 respectively, in accordance with the procedure laid down in Article 24(2) on:

- (a) the eligibility of the expenditure scheduled for the current budget year;
- (b) the rate of the financial contribution;
- (c) any conditions applying to the financial contribution.

Article 14

At the reasoned request of a Member State the Commission may grant advances of up to 50 % of the annual financial contribution. These shall be deducted from the final amount of the financial contribution towards the eligible expenditure actually incurred.

Article 15

1. Member States' expenditure shall be committed both legally and financially at the latest within the calendar year following the year of notification of the decision referred to in Article 13. If the legal and financial commitment is not made within the time specified, any advance granted shall be repaid forthwith.

2. Member States shall implement their scheduled expenditure within one year of this legal and financial commitment as provided for in paragraph 1.

Article 16

Where a Member State decides not to implement all or part of the eligible expenditure for which a financial contribution has been granted it shall immediately inform the Commission, stating the implications for its control programme.

Article 17

1. Member States shall submit their applications for reimbursement of expenditure by 31 May of the year following the year in which it was incurred at the latest.

2. When submitting applications for reimbursement Member States shall verify and certify that the expenditure has been incurred in compliance with the conditions laid down in this Decision and the Directives concerning the coordination of procedures for the award of public works, supply and service contracts, and in accordance with the detailed rules in point 4 of Part A of Annex II.

3. If it appears from the application that the conditions referred to in paragraph 2 have not been met, the Commission shall examine the situation thoroughly, requesting the Member State to submit its observations. If the examination confirms non-compliance, the Commission shall set a time-limit for the Member State to comply. If by the expiry of that time-limit the Member State has not acted in accordance with the recommendations, the Commission may reduce, suspend or cancel the financial contribution in the area concerned. All undue payments shall be reimbursed to the Commission with interest for the period in question.

4. Member States shall keep all supporting documentation for a period of three years from the date of the Commission's reimbursement of the expenditure.

Article 18

Member States shall submit their expenditure programmes and applications for reimbursement of expenditure and payment of advances in euro. Expenditure programmes not made out in euro shall not be admissible.

Member States not participating in the third stage of economic and monetary union shall specify the exchange rate used.

Article 19

Member States shall provide the Commission with any information it may request with a view to performing the tasks attributed to it by this Decision.

Member States shall provide the Commission with all information permitting it to verify the use made of the control, inspection and surveillance resources for which a financial contribution has been made under this Decision. They shall keep this information available to the Commission for at least three years from the date of the Commission's reimbursement of expenditure.

If the Commission considers that these resources are not being used for their proper purpose or in accordance with the conditions laid down in this Decision, it shall inform the Member State concerned, which shall conduct an administrative inquiry in which Commission officials may take part. The Member State shall inform the Commission of its progress and of the findings of that inquiry and send it without delay a copy of the report drawn up following the inquiry, notifying the main elements on which it is based. The Commission may decide to reclaim any sum unduly paid, with interest for the period in question.

Article 20

The Commission may make any checks it deems necessary to ensure that Member States comply with the conditions and execute the tasks specified in this Decision. Member States shall assist officials assigned to these checks by the Commission.

The first paragraph shall apply without prejudice to Article 29 of Regulation (EEC) No 2847/93.

Article 21

1. Member States shall send the Commission, before 30 April each year, an intermediate assessment report, with contents as specified in Annex III, covering the previous year's eligible expenditure, detailing the extent to which the anticipated progress has been made and the impact of the expenditure on the control programmes and reporting any need to adjust the programmes referred to in Article 12(2).

2. Member States shall send the Commission, by 31 May 2004 at the latest, a final assessment report, with contents as specified in Annex III, covering the impact of the financial contribution on the three-year control programme as a whole.

3. The information referred to in paragraphs 1 and 2 must enable the Commission to monitor properly the use made of the financial contribution.

Article 22

On the basis of the information provided by the Member States under Article 21(1), the Commission shall submit to the European Parliament and to the Council, by 31 December 2003 at the latest, a report on the application of this Decision.

Article 23

The measures necessary for the implementation of this Decision relating to the matter referred to in Article 13 shall be adopted in accordance with the management procedure referred to in Article 24(2).

Article 24

1. The Commission shall be assisted by the Management Committee for Fisheries and Aquaculture established by Article 17 of Regulation (EEC) No 3760/92.

2. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply.

The period referred to in Article 4(3) of Decision 1999/468/EC shall be set at one month.

3. The Committee shall adopt its rules of procedure.

Article 25

This Decision shall apply from 1 January 2001.

Article 26

This Decision is addressed to the Member States.

Done at Brussels, 28 May 2001.

For the Council

The President

T. ÖSTROS

*ANNEX I***RULES APPLYING TO EXPENDITURE ON TRAINING OFFICIALS ENGAGED IN INSPECTION WORK**

1. Expenditure on organising courses and seminars should in particular cover the hire of a room, purchase or hire of teaching materials and equipment, payment of the fees of trainers who are not officials of a national or Community administration, and travel and subsistence costs of the participating national officials and the trainers.
 2. Expenditure on exchanges of national officials should cover their travel and subsistence costs.
 3. Travel costs should be those for a return journey between an official's home and the destination by public transport.
 4. Subsistence costs should be those for accommodation, meals and local transport.
 5. Travel and subsistence costs are to be determined according to national reimbursement rules.
-

ANNEX II

PART A

1. The programme of annual expenditure referred to in Article 12 should state the expenditure scheduled for the years 2001, 2002 and 2003, specifying in particular:
 - the expenditure timetable;
 - the nature, cost and inspection objectives of the new technologies and IT networks;
 - the nature, duration, number of participants, cost and purposes of the training for inspection officials;
 - for inspection and monitoring equipment: technical characteristics, cost, planned mode of payment, inspection objectives and planned utilisation, including date of entry into service.
2. Member States must send the Commission all relevant information on the following:
 - the objectives pursued by the proposed expenditure;
 - the results expected from this expenditure;
 - in connection with the purchase and modernisation of vessels and aircraft, an estimate of the period of time for which these will be used for fishery inspection and surveillance work;
 - the Member State's use over previous years of the contribution granted under Decision 95/527/EC;
 - the improvement in the effectiveness of the controls at sea and on land carried out by the Member State during the period preceding the application and the improvement that should result from the proposed expenditure.

Member States shall also complete and send to the Commission the forms, of which models are given in Part B.
3. Criteria to be considered when deciding on a financial contribution:
 - the scale and efficiency of the human and physical resources actually devoted to inspection work;
 - the degree of cooperation with other Member States and the Commission in policing fisheries;
 - the Member State's contribution to inspection work and its compliance with obligations under inspection and observer schedules established by RFOs to which the Community is a contracting party;
 - the extent of its controls on fishing by its own vessels on the high seas;
 - the diversity of fishing activities in the Member State's fishery zone;
 - the reliability of the catch figures notified to the Commission and the Member State's ability to prevent overrun of its quotas;
 - the state of execution of the eligible expenditure for which a Community contribution has been approved under Decision 95/527/EC or under this Decision;
 - the extent of prevention and detection of infringements of the common fisheries policy and the action taken to penalise them;
 - the existence in national legislation and application in practice of penalties proportionate to the gravity of infringements that actually deter from further infringements of the same type;
 - compliance with the requirement to notify the Commission of detected cases of behaviour seriously infringing common fishery policy rules, as required by Regulation (EC) No 1447/1999.
4. The completed questionnaires on public contracts must refer to the public tender notices published in the Official Journal of the European Communities. If notices have not been published in the Official Journal, the beneficiary must certify that the Community legislation on public contracts has been respected.

The Commission may call for any information it considers necessary to decide whether or not Community legislation on public contracts has been respected.

Reimbursement shall be conditional on submission of supporting documents (two copies) comprising at least the main elements of the agreement between the Member State and the supplier and the proof of payment. To be reimbursed, the individual items of expenditure must be listed in a summary statement clearly indicating for each its nature, link with the proposed programme and amount before VAT.

PART B

1. Vehicle inventory

Member state:

Date:

	a. authority	b. age	c. life expectancy	d. remaining life	e. % time spent on enforcement	g. FTE (ex1)
> 10 m vessel name/description						
1						
2						
3						
4						
5						
					Total	
aeroplane name/description						
1						
2						
3						
4						
5						
					Total	
helicopter name/description						
1						
2						
3						
4						
5						
					Total	
< 10 m vessels					F. number	
		n/a	n/a	n/a		
		n/a	n/a	n/a		
		n/a	n/a	n/a		
		n/a	n/a	n/a		
		n/a	n/a	n/a		
					Total	
					Total	

Notes

name/description — the vehicle name should be recorded, if applicable. If the vehicle does not have a name a brief description should be given e.g. the make and model. If the authority has more than one vehicle of the same make and model, the vehicle should be assigned a number. Whichever method is used to describe the vehicle, that method should be used in all records or correspondence relating to the vehicle.

- a. the name of the enforcement/government authority that operates the vehicle
- b. the age of the vehicle in years
- c. the operational life expectancy of the vehicle from new in years
- d. the remaining operational life of the vehicle in years (c - b)
- e. the percentage of operating time the vehicle spends engaged in enforcement activity
- f. total number of < 10 m vessels or land vehicles operated by each enforcement authority
- g. FTE (Full Time Equivalent) (percentage of operating time spent on enforcement $\times$ 1) FTE should be less than 1

total — the sum of all FTE giving the total effective number of vehicles engaged in enforcement activity. The total should not exceed the number of vehicles used in MCS

< 10 m vessels — number of < 10 m vessels operated by each enforcement authority

land vehicles — number of land vehicles operated by each enforcement authority

2. Staff inventory

Member state:

Date:

a. authority	b. main area of operation	c. number (FTE)	d. % time spent on enforcement	e. FTE – enforcement staff
1	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
2	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
3	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
4	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
5	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
6	Sea/air based			
	Land based inspectors			
	Other land based staff (e.g administrative)			
	Total			
	Grand Total			

Notes

- a. the name of the enforcement/government authority
- b. the type of duty carried out by enforcement staff
- c. the FTE (Full Time Equivalent) number of people employed by each enforcement authority as sea and air based inspectors, land based inspectors and other land based staff
- d. percentage of total time sea and air based inspectors, land based inspectors and other land based staff spend on enforcement duties
- e. the FTE (Full Time Equivalent) number of enforcement staff ($d \times c$). Should not exceed the FTE number of people employed (c).

3. Vehicle Activity

Member state:

Date:

a. authority	b. vehicle type	c. number	d. FTE	e. No days at sea (vessels)	f. days per vessel	g. No hours (planes/helis)	h. hours per craft
1	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
2	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
3	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
4	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
5	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
6	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			
Total	< 10 m vessels					n/a	
	> 10 m vessels					n/a	
	Planes			n/a			
	Helicopters			n/a			

Notes

- a. the name of the enforcement/government authority
- b. type of vehicle used for enforcement duties (< 10 m vessel, > 10 m vessel, plane, helicopter)
- c. total number of craft used for enforcement duties (from vehicles spreadsheet)
- d. FTE (Full Time Equivalent) number of vehicles used for enforcement duties (from vehicles spreadsheet)
- e. total number of days at sea all vessels spent on enforcement duties
- f. number of days spent at sea on enforcement duties per vessel (c/b)
- g. total number of hours at sea all planes and helicopters spent on enforcement duties
- h. number of hours spent at sea on enforcement duties per craft (e/b).

4. Budget

Member State:

Date:

a. authority	b. total budget (own currency)	c. enforcement budget (own currency)
1		
2		
3		
4		
5		
6		
7		
Total		

Notes

- a. the name of the enforcement/government authority with fisheries enforcement obligations
- b. total budget for each authority with fisheries enforcement duties
- c. budget spent on fisheries enforcement activity by each authority with enforcement duties. $c < \text{or} = b$

5. Inspections (*)

(*) In accordance with Title I of Council Regulation (EEC) No 2847/93.

Member state:

Date:

	a. no. inspections		b. No of infringements
	a1. Visual	a2. Other	
Inspection type			
Import/port controls			
At sea			
By air		n/a	
Total		n/a	
Nationality of vessel inspected			
Own state vessels			
Other Member State vessels			
Third country vessels			
Total			
ICES Area inspected (by sea)			
II			
III			
IVa			
IVb			
V			
VIa			
VIb			
VIIa			
VIIb-k			
VIII			
IX			
X			
Med			
Other			
Total			
ICES Area inspected (by air)			
II		n/a	
III		n/a	
IVa		n/a	
IVb		n/a	
V		n/a	
VIa		n/a	
VIb		n/a	
VIIa		n/a	
VIIb-k		n/a	
VIII		n/a	
IX		n/a	
X		n/a	
Med		n/a	
Other1		n/a	
Total		n/a	
VMS No vessels fitted with VMS	c. number		b. No of infringements

Notes

- a. number of inspections carried out by air, by sea and from land
- a1. number of visual inspections carried out
- a2. number of other inspections carried out e.g. boarding vessel, checking logbook, etc.
- b. number of infringements detected

Inspection type - number of inspections carried out at sea, from the air and in port

- | | |
|---------------------------------|--|
| Nationality of vessel inspected | — number of inspections of own State vessels, other Member State vessels and Third Country vessels |
| ICES Area inspected (by sea) | — number of inspections carried out in each ICES Area by enforcement vessels |
| ICES Area inspected (aerial) | — number of inspections carried out in each ICES Area by enforcement planes/helicopters |

6. Effort/physical characteristics

Member state:**Date:**

	Number
length of coast (km)	
size of EEZ (KM ²)	
Number of landing ports	
Fleet size	
< 10 m vessels	
> 10 m vessels	
Total	
Landings by Nationality of vessel	(Tonnes)
Own state vessels	
Other Member State vessels	
Third country vessels	
Total	
Landings by ICES Area (own State vessels)	(Tonnes)
II	
III	
IVa	
IVb	
V	
VIa	
VIb	
VIIa	
VIIb-k	
VIII	
IX	
X	
Med	
Other	
Total	

Notes

Fleet size — number of own State vessels of each size (< 10m and > 10m)

Landings by Nationality of vessel — landings into own State by own State vessels, other Member State vessels and Third Country vessels, in tonnes

Landings by ICES Area (own State vessels) — landings into own State by own State vessels by Area of capture

*ANNEX III***CONTENT OF ASSESSMENT REPORT**

programme objectives
resources deployed
actual expenditure
programme results
programme impact
cost-effectiveness of the expenditure
impact of the Community contribution

COMMISSION

COMMISSION DECISION

of 12 July 2000

declaring a concentration to be compatible with the common market and the functioning of the EEA Agreement

(Case COMP/M. 1813 — Industri Kapital (Nordkem/Dyno))

(notified under document number C(2000) 1988)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/432/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, and in particular Article 8(2) thereof,

Having regard to the Commission Decision of 3 August 1999 to initiate proceedings in this case,

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

Having regard to the opinion of the Advisory Committee on Concentrations ⁽³⁾,

Whereas:

- (1) On 24 January 2000, the Commission received a notification pursuant to Article 4 of Regulation (EEC) No 4064/89 (the Merger Regulation) of a proposed concentration by which the Industri Kapital group (Industri Kapital) would acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the undertaking Dyno ASA (Dyno), Norway.
- (2) After examination of the notification, the Commission concluded by Decision of 25 February 2000 that the notified operation falls within the scope of the Merger

Regulation and raises serious doubts as to its compatibility with the common market. The Commission therefore decided to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation and Article 57 of the EEA Agreement.

I. PARTIES

- (3) Industri Kapital manages and controls a number of private equity funds. These funds control numerous undertakings. Among the undertakings controlled is Neste Chemicals Oy (Neste), a chemical company and Arca, a company active in materials handling systems.
- (4) Dyno is the parent of a group of companies active in explosives, chemicals and plastic packaging. Dyno's two core businesses are chemicals and explosives. Dyno's chemical business can be divided into industrial resins, wood and speciality adhesives, paper overlays, coating resins, oil field chemicals, methanol, plastics and speciality polymers. Dyno has joint control together with CVC of the Polimoon Group (Polimoon), a company active, *inter alia*, in materials handling systems and plastic packaging.

II. OPERATION

- (5) Industri Kapital 1997 Fund (IK 97) and Industri Kapital 2000 fund (IK 2000) will acquire all the shares in Dyno through a Norwegian holding company, Nordkem AS. Dyno's explosives operations will be transferred to a holding company (NewCo Explosives) which will be jointly owned by IK 97 fund and IK 2000 fund. The

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrected version OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1.

⁽³⁾ OJ C 166, 9.6.2001.

shares in Dyno, which will be the remaining chemicals operation, will be owned by the two funds, through Nordkem AS and Nordkemi. IK 97 fund and IK 2000 fund, through their respective investment managers, will be in control of both Nordkemi and NewCo Explosives.

- (6) The rationale of the operation is to create a strong Nordic-based speciality chemicals and explosives company. In speciality chemicals, the aim is to capture synergies in resins, wood and speciality adhesives and paper overlays and, according to the papers presented to the board members, become the world market leader. Industrial resins account for [< 60]*% (*) of the new entity's business.
- (7) Industri Kapital acquired Neste from Fortum Corporation on 30 November 1999. Neste is the largest resin producer worldwide with a strong presence in Europe and North America. Based on the 1998 sales figures, Neste produced 1 980 million tonnes of resins worldwide. Borden Chemical UK Ltd (Borden) was the second largest producer with 1 950 million tonnes and Georgia Pacific the third with some 1 500 million tonnes. Dyno is currently number four in the world in resins with a strong presence in Europe and Asia. In 1998, Dyno produced [some 1 billion]* tonnes of resins.
- (8) Industri Kapital has submitted that Neste's and Dyno's most important customers of formaldehyde used resins are found in the wood panel industry, i.e. in the manufacture of plywood, particle board, medium density fibreboard (MDF) and oriented strand board (OSB).

III. CONCENTRATION

- (9) IK 1997 and IK 2000 are private equity funds. They are not legal entities but the result of contractual arrangements between the funds' respective investment management companies, IK 97 Ltd and IK 2000 Ltd and the investors. IK 97 Ltd and IK 2000 Ltd are incorporated under the laws of Jersey. They exercise the voting rights in the portfolio companies. The investors have no voting rights.
- (10) IK 97 Ltd and IK 2000 Ltd are wholly owned by Industri Kapital Europa BV which in turn is owned by Industri Kapital NV. Industri Kapital has claimed in the notification that through 'undertakings' made to certain investors in IK 1997 a number of investors are guaranteed representation on the board of IK 97 Ltd. Furthermore, Industri Kapital stated in the notification that it is a precondition for IK 97 Ltd's permission to conduct business as an investment management company under the laws of Jersey that the investors, for whom IK 97 Ltd manage investments, shall be represented by a majority on IK 97 Ltd's board. Industri Kapital states therefore, that it can be argued that IK 97 Ltd and

Industri Kapital Europa BV form separate economic entities.

- (11) However, in a response to a formal request for information, Industri Kapital has confirmed that the 'undertakings' referred to have been given orally, that Industri Kapital has not made any notes or minutes which refer to these undertakings on the occasions where they were given and that in Industri Kapital's view the 'undertakings' are not legally binding. Furthermore, Industri Kapital has confirmed that, contrary to its previous statement, it is not a requirement under the laws of Jersey that the investors are represented in the board of the investment management company. According to IK 97 Ltd's permit to conduct business, it has only to report changes in the composition of directors to the relevant authority. Therefore, the composition of the board of IK 97 Ltd can be determined by its only shareholder, Industri Kapital Europa BV.
- (12) On the basis of the foregoing the Commission concludes that Dyno will ultimately be controlled by Industri Kapital NV.

IV. COMMUNITY DIMENSION

- (13) Industri Kapital and Dyno have a combined aggregate worldwide turnover in excess of EUR 5 000 million (Industri Kapital, EUR 6 475 million; Dyno, EUR 1 200 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Industri Kapital, EUR 4 427 million; Dyno, EUR 250 million), but they do not achieve more than two thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension. It constitutes a cooperation case pursuant to Article 57 of the EEA Agreement and Article 2(1)(c) of Protocol 24 to that Agreement and thus the case is to be assessed by the Commission in cooperation with the EFTA Surveillance Authority in accordance with Article 58 of the EEA Agreement.

V. COMPETITIVE ASSESSMENT

- (14) The transaction will result in horizontal overlaps between Dyno and Neste. Moreover, horizontal overlaps will arise between the Industri Kapital controlled company Arca and Polimoon in plastic materials handling systems.

A. RELEVANT PRODUCT MARKETS

1. Formaldehyde-based resins

- (15) Both Dyno and Neste are active as producers of formaldehyde based resins. They produce resins for more or less the same applications, in particular for wood application.

(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

- (16) Industri Kapital submits that urea formaldehyde based resins (UF/(M)UF resins) and phenol formaldehyde based resins (PF/P(R)F resins) may be delivered in different mixes with different characteristics, such as difference in water and/or heat resistance and hardness. UF/(M)UF resins are combined with melamine for heat, light, moisture and water-resistant applications or applications, which require a high degree of hardness. PF/P(R)F resins are combined with resorcinol to get strong bonding characteristics, for example in glue-bonded timber beams. UF/(M)UF resin is a non-coloured product whereas PF/P(R)F resin is reddish.
- (17) Industri Kapital submits that UF/(M)UF resins are primarily used for bonding as adhesives in various kinds of wood panel applications, for instance particleboard, MDF, OSB and plywood. Industri Kapital submits further that also PF/P(R)F resins are used to a significant degree in wood panel applications. According to Industri Kapital, both UF/(M)UF and PF/P(R)F resins are also used for glue-bonded timber beams, veneer, parquet, paper lamination and impregnation, insulation bonding and in foundry processes. While Industri Kapital argues that, from the demand side, UF/(M)UF and PF/P(R)F resins can to a certain degree be used for the same applications, Industri Kapital nevertheless submits that UF/(M)UF resins and PF/P(R)F resins should be regarded as belonging to separate product markets due to, for instance, cost considerations and tradition. In this respect, Industri Kapital has provided information, which shows that PF/P(R)F resins are 60 % to 70 % more expensive than UF/(M)UF resins.
- (18) Industri Kapital further submits that, for some applications, non-formaldehyde based resins (Iso Cyanate (P-MDI) and Polyvinyl Acetate (PVAc)) are effective substitutes for formaldehyde based resins. Industri Kapital argues that P-MDI is often used as a substitute for water-resistant wood panels and PVAc is used in non-structural wood applications, for instance in joiners.
- (19) Industri Kapital finally argues that, from the supply side, most producers of formaldehyde based resins produce both UF/(M)UF and PF/P(R)F resins. Industri Kapital submits that the basic production principles, the basic technology and know-how are the same for all kinds of formaldehyde based resins and for different applications. Industri Kapital argues further that the production lines can easily be switched from the production of UF/(M)UF resins to PF/P(R)F resins without significant cost.
- a) *Demand-side*
- (20) The Commission's investigation confirms that UF/(M)UF resins and PF/P(R)F resins should be regarded as belonging to separate product markets from the demand side. Customers in the wood panel industry, resin impregnated papers, insulation materials and foundry business have indicated that substitutability between the two resins is limited due to technical reasons. These technical reasons relate both to the product in question, the inherent properties of the resins and to the technical processes used. In comparison with PF/P(R)F resins, UF/(M)UF resins are light in colouring, faster curing and provide superior hardness and arc resistance. However, UF/(M)UF resins are less durable, tend to break down in hot and cold water and have less resistance to a variety of chemicals. The investigation also shows that substitutability is not possible due to considerable price differences, PF/P(R)F resins being more expensive.
- (21) More particularly, the manufacturers of plywood have indicated that UF/(M)UF and PF/P(R)F resins are not substitutes in plywood production as UF/(M)UF resins are not weatherproof and not suitable for the plywood producers' main applications, which are in the construction and transport industries. In this respect, customers have indicated that while the moisture resistance of an UF/(M)UF resin based glue can be improved by adding melamine, this does not make the glue weatherproof.
- (22) As for the question whether it is possible to substitute resins developed for one industry with resins used in another industry, the investigation shows that the substitutability is very limited. Customers have indicated that resins are tailored for each end application and that they differ in respect of the solids content, the degree of polymerisation and additives. According to customers, these factors have an impact on the reactivity, viscosity, cold tack (pre-pressing properties) and the surface activity of the glue together with the hardener system that is used.
- (23) The investigation shows further that formaldehyde based resins are not, in general terms, substitutable with non-formaldehyde based resins. Customers have indicated that any substitution would affect the product quality and require changes to the production process, such as building new production lines. Moreover, customers who replied to the Commission's questionnaires have indicated that substituting formaldehyde based resins for instance with PVAc is not a realistic alternative, as PVAc is some five times more expensive than PF/P(R)F resins. Furthermore, the investigation shows that PVAc and PMD-I are dangerous substances and their use is regulated in a number of Member States. In sum, the investigation shows that the limitations to use PVAc and PMD-I are such that factors such as costs, equipment, process and health considerations effectively limit substitution.
- b) *Supply-side*
- (24) The investigation confirms Industri Kapital's submission that the manufacturing process and the equipment for both types of resins are largely similar. All types of formaldehyde based resins are made by mixing various

reactants together. The target molecule distribution of the final resin is reached by adjusting various parameters like temperature and pH. The molecules of the reactants are chained together, in other words polymerised, while the viscosity of the liquid increases. When the target is reached, the remaining water is in some cases further removed in an evaporation step.

(25) UF/(M)UF resins are produced by the controlled reaction of formaldehyde with urea. PF/P(R)F resins are produced by condensation from phenol or substituted phenol with formaldehyde. The investigation shows that the manufacturing process is relatively straightforward, the polymerisation technology generally well known and has been established for many years.

(26) The investigation shows, however, that switching production is in general terms time-consuming and costly if the manufacturer is producing only one type of formaldehyde based resin. With regard to switching from producing UF/(M)UF resins to PF/P(R)F resins, Industri Kapital has submitted that reactions between formaldehyde and phenol release large amounts of excess heat. Therefore, and due to the toxic nature of phenol, proper cooling and safety systems must be installed. Competitors have confirmed the exothermic nature of PF/P(R)F resins and the need to have more heat transfer area. The investigation also shows that PF/P(R)F resins are in general manufactured in smaller capacity reactors than UF/(M)UF resins. Moreover, specific environmental permits are required for the production of any products containing phenol. With regard to switching from producing PF/P(R)F resins to UF/(M)UF resins, Industri Kapital has argued that a reactor for PF/P(R)F production does not require any alterations for the production of UF/(M)UF resins besides possibly the installation of a new charging system for dry products since urea and melamine are dry products whereas phenol, according to the parties, is liquid. Industri Kapital has submitted that such an investment can be made within a few months and without significant costs.

(27) While it may be true that switching from manufacturing PF/P(R)F resins to UF/(M)UF resins may be easier than the reverse, the investigation shows that neither switch can be made without delay and additional costs. Moreover, as for the question whether manufacturers are able to alternate between the production of different types of resins on the same production line, competitors have indicated that while it may be possible to move in and out of the production of resins for various end-applications, switching requires specific technical installations. Attention must be paid to issues such as cross-contamination, temperature controls, reactor cleansing and storage regimes. Although Industri Kapital has submitted that so called multipurpose reactors allow the switching between producing both kinds of resins, almost all

competitors who replied to the Commission's enquiries have separate production lines for each resin.

(28) Competitors have indicated that they manufacture resins for a variety of end applications and that the composition and condensation of a particular type of resin varies according to the end-use and the application method. It has nevertheless been indicated to the Commission that switching from manufacturing one type of resin to another is not difficult, provided that the resins belong to the same family of resins (UF/(M)UF or PF/P(R)F).

(29) With regard to the manufacture of P-MDI and PVAc resins, the investigation shows that these resins cannot be produced at plants designed for formaldehyde based resins. The production process of for instance P-MDI resins is both complex and hazardous, the technology not in the public domain and some of the most important raw materials are not generally available.

c) Conclusion

(30) On the basis of the foregoing and for the purposes of this Decision, the Commission draws the conclusion that UF/(M)UF resins and PF/P(R)F resins constitute separate product markets from the demand side. Furthermore, the Commission draws the conclusion that there is not a sufficient degree of supply-side substitutability to justify placing UF/(M)UF and PF/P(R)F resins in the same market from the supply side. In view of the fact that the activities of Dyno and Neste overlap mainly in wood applications, the question whether narrower submarkets should be defined for each type of resin can be left open for the purposes of this Decision as the operation as notified would lead to the creation of a dominant position regardless of whether the operation was assessed at the overall level of PF/P(R)F resins or at the level of the wood application resins.

2. Formaldehyde

(31) Formaldehyde is made from methanol and is a colourless gas compound which is dissolved in water (formalin). It is primarily used in the manufacture of UF/(M)UF and PF/P(R)F resins, in plastics and for a variety of special industrial chemicals, for instance as preservative in some paints and coating products.

(32) Both Dyno and Neste manufacture formaldehyde primarily for captive use in their production of resins. [< 30]*% of Neste's production and [< 15]*% of Dyno's production of formaldehyde is sold to third parties.

(33) Industri Kapital submits that formaldehyde constitutes a separate product market since it has no realistic substitutes as a chemical building block and in terms of price. This has been confirmed by the Commission's investigation.

Conclusion

- (34) On the basis of the foregoing and for the purposes of this Decision, the Commission concludes that formaldehyde constitutes a separate relevant product market.

3. Methanol

- (35) Methanol is a clear, colourless liquid primarily obtained from natural gas. It has two main applications: methanol is used in the production of formaldehyde, acetic acid and a variety of other chemical additives which form the foundations of a large number of secondary derivatives. Methanol is also used in the fuel industry in the production of unleaded gasoline. Industri Kapital submits that methanol constitutes a separate relevant product market.
- (36) Both Dyno and Neste buy methanol from Methanor, a joint venture between Dyno, Akzo Noble and DSM Melamine. Dyno owns 40 % of Methanor, Akzo Nobel and DSM Melamine 30 % each. Dyno and Neste also distribute small quantities of methanol to third parties. Therefore, there is both a horizontal and a vertical relationship between Dyno and Neste.

Conclusion

- (37) The Commission considers methanol to be a separate product market ⁽⁴⁾.

4. Materials handling systems

- (38) Both Industri Kapital, through its subsidiary Arca Systems AB (Arca), and Polimoon produce plastic materials handling products. For the production of plastic materials handling systems different techniques can be used, injection moulding as well as blow moulding and rotation moulding. These products consist in principle of containers (stack-nest containers and stackable containers) and pallets which are used for the transport and storage of goods in the manufacturing, distribution and retail sector and of beverage container trays and crates, which are used by manufacturers and retailers of food and beverages to transport and to store bottles or other packaging for liquids. Materials handling systems are often designed to be used in pooling system, which collects the transport packaging for reuse by the distribution company or the manufacturer. Producers manufacture standard materials handling products but also products according to the customers' specifications. In the course of the investigation Industri Kapital stated

that plastic foldable pallet containers, plastic pallets and plastic small-parts storage systems also form part of the market of materials handling products.

- (39) Industri Kapital has identified in the notification three areas of overlap between Arca and Polimoon in materials handling products: stackable containers, stack-nest containers and bottle trays.
- (40) Stackable containers are used primarily in the manufacturing industry for in-house materials/components handling.
- (41) Stack-nest containers are mainly used for the handling and transport of food. They are available either with or without a lid in different sizes. Arca produces sizes ranging from 18 to 87 litres and Polimoon specialises in two types of containers, a 37-litre and a 50-litre container. Stack-nest containers will sit in each other when empty.
- (42) Bottle trays are used for the transport of beverage bottles to the retail outlet and for the display of these bottles in the place of sale. Bottle trays are a relatively new product and have recently begun to replace traditional bottle crates. Bottles in trays are more visible than in crates and are therefore attractively displayed. The use of trays also makes loading easier and more flexible. At present, bottle trays are used primarily for PET bottles. Industri Kapital submits that bottle trays are normally produced according to customers' specific demands since their bottles differ in shape and size. Therefore, different bottles cannot be stacked in the same type of trays due to differences in shape and size. Industri Kapital nevertheless submits that a manufacturer delivering to one customer can easily switch production to meet other customers' specifications.
- (43) Both companies also produce plastic bottle crates for the storage and transport of bottles. Furthermore, both companies produce plastic pallets and plastic small-parts storage systems. Arca also produces plastic foldable pallet containers.
- (44) Industri Kapital submits that the relevant product market covers all types of materials handling products and that a further distinction according to the type of the product is not necessary. Industri Kapital further submits that materials such as wood, metal, cardboard or plastic are largely substitutable for materials handling products. Overall, Industri Kapital submits that the relevant product market is the market for materials handling products including all kinds of materials.

⁽⁴⁾ See also Commission Decision of 31 March 1993, Case IV/M.331 — *Fletcher Challenge/Methanex*.

- (45) As for the substitutability between different materials, the Commission's investigation shows that substitutability is limited both from the demand and the supply side. The investigation shows that almost all customers use containers or trays made of plastic and that, in the face of a 5 % to 10 % price increase, they would not switch to other materials. Plastic products can therefore not be substituted by products made out of other materials. From the supply side, competitors have indicated that changing materials and processes is very difficult and the inherent differences between wood, metal and plastic make direct conversion impossible. By way of example, it has been indicated to the Commission that the entry cost for a wooden container manufacturer to switch to producing injection moulded plastic containers would be EUR 15 million. Such entry would also require specific know-how and take up to two years.
- (46) In principle, different materials handling products cannot be substituted by the user with other material handling products. With regard to bottle trays, customers have indicated that switching is difficult as trays form part of an integrated system. Some third parties have indicated that stack-nest containers and stackable containers are substitutable. However, containers used in the food industry must be suitable and approved for the handling of food. Furthermore, prices and transportation costs between the two types of containers differ. Although most producers of materials handling systems are able to manufacture a range of different products, considerations of supply-side substitution do not lead to the result that all materials handling products form one product market. A switch of production which would require investment in new moulds would involve substantial costs.

Conclusion

- (47) On the basis of the foregoing, it seems to be appropriate to analyse the effects of the concentration for each product group separately. However, according to the figures provided by Industri Kapital the concentration would also lead to the creation or strengthening of a dominant position if all plastic material handling products were to constitute one product market. The exact market definition can, therefore, be left open.

5. Plastic containers

- (48) Dyno, through its subsidiary Superfos AS (Superfos), and Polimoon are both active in the manufacture of plastic containers used for packaging. These are canisters, pails, buckets and drums made out of plastic which are used in the distribution and retail sectors, for example in the food industry, the chemical industry and the pharmaceutical industry.

- (49) Industri Kapital submits that Superfos and Polimoon are not primarily active in the same segments of the packaging market. While Polimoon has specialised in high volume (up to 50 litres) canisters and drums primarily for the chemical/technical industry and in the food packaging sector, Superfos specialises in lower volume (50 ml to 33 litres) containers for the food, chemical/technical and pharmaceutical industry. Industri Kapital has identified overlapping activities in the following segments: pots and tubs below 2 litres, containers between 2 and 35 litres, and bottles and canisters below 5 litres.
- (50) Industri Kapital submits that the relevant product market is the packaging market which consists of all kinds of packaging made out of all kinds of materials (metal, glass, cardboard, plastic). However, customers have indicated that in particular for marketing reasons, they would not be able to switch from a particular type of container to another. Tailored or custom-designed products play an important role in certain consumer products such as lubricant oils, food, baby care and cosmetics. In addition, switching to a different type and size of a container could require technical changes to the filling lines and would therefore not be possible without changes to the machinery and tooling and investment. This applies even more to the arguments concerning switching between different materials.
- (51) From the supply side, the Commission's investigation shows that different techniques are used in the production of plastic containers. For instance, it has been indicated to the Commission that closed and open top containers can be made using the blow moulding technique while open top containers with lids are commonly injection moulded or thermoformed. Unless the producer has all these manufacturing processes and lines, the possibility of switch from one production technology to another is limited without investment cost and time. Moreover, it has been indicated to the Commission that few companies cover the whole range of plastic containers but restrict themselves to certain sizes, applications and customer groups.

Conclusion

- (52) On the basis of the foregoing, the Commission concludes that there is no justification for placing containers made of all different kinds of materials in the same market. The Commission therefore considers that the relevant market is limited to plastic.
- (53) The exact market definition, and whether each of the aforesaid segments constitute separate submarkets, can be left open because the transaction does not raise any competition concerns as to the compatibility of the operation with the common market, regardless of the market definition used.

B. RELEVANT GEOGRAPHIC MARKETS

1. Formaldehyde based resins

- (54) Industri Kapital submits that UF/(M)UF and PF/P(R)F resins are produced and traded throughout Europe, transported over long distances and frequently traded cross-border. Therefore, Industri Kapital submits, the relevant geographic markets for UF/(M)UF and PF/P(R)F resins are at least EEA wide, but should possibly also include the Baltic States, part of Russia and countries in central and eastern Europe.
- (55) For the reasons set out below, however, the Commission considers that, in relation to Finland, the market for formaldehyde based resins is national. With regard to Norway, the market is either national or, at most, comprises also Sweden.
- (56) Comments obtained from customers suggest that the effects of the operation should be assessed at national or, at most, regional level. Imports are not generally considered to be a realistic alternative first of all due to high transport costs. Customers, in their replies to the Commission's enquiries, have indicated that transport costs can account for as much as 30 % of the resin sales price and that the radius for transporting formaldehyde based resins is 400 km to 700 km. Formaldehyde based resins are said to sell at a relatively low price in relation to weight and transport is considered to be an important cost factor.
- (57) It is to be noted that Industri Kapital itself has submitted that proximity to the customer is important due to the cost of transportation. In this respect, Industri Kapital has supplied information concerning transport costs. According to Industri Kapital, the cost of transportation by truck per tonne and kilometre is [< 1] * DM/tonne per km for customers close by. For distances of 1 000 km and more the cost of transport is [$< 0,5$] * DM/tonne and [$< 0,5$] * DM/tonne for distances of 700 km or more. In other words, a customer close by pays up to [< 30] * DM/tonne and a customer within the radius of 100 km to 700 km pays [> 100] * DM/tonne, four times more than customers close by.
- (58) The investigation also shows that resins require specific transport conditions due to their perishable nature. In this respect, it has been indicated to the Commission that for instance the transport of PF/P(R)F resins for wood applications and insulation purposes requires specific containers and conditions, as the product is damaged if the temperature drops below a certain level. The requirement for special transport raises the price of the final product but may also affect the shelf life of a resin. Indeed, some customers have indicated that if the temperature rises above 20 Celsius degrees, the storage time of the product decreases significantly. Industri Kapital has itself recognised in the papers presented to the board members, that industrial resins have a short shelf life and cannot be transported over a long distance.
- (59) Customers in the plywood and isolation materials industries have also indicated that formaldehyde based resins have an inherently short life span. By way of example, the life span for some resins used in the plywood industry is said to be only three weeks. This limits storage possibilities and makes frequent deliveries necessary, emphasising the importance of suppliers close by. As a result, the industry operates at low inventory levels.
- (60) Lastly, the investigation shows that the development of new resins is a slow process where the supplier and the customer have to work in close cooperation. In practice, third parties have indicated that physical proximity of the supplier to the customer's production site facilitates this cooperation.
- (61) Customers in the plywood, insulation materials and resin impregnated papers industries in Finland have indicated to the Commission that they source their resins in Finland.
- (62) The information provided by Industri Kapital demonstrates that Neste supplies the bulk of its UF/(M)UF resins from its Finnish plant in Finland [< 80] * % and some small amounts to Norway [< 10] * %. Industri Kapital has not explained where the remaining [< 20] * % of the production is delivered. The bulk of Neste's production of PF/P(R)F resins in Finland is sold in that country too [> 80] * %. There are some small deliveries to Sweden [< 10] * % and Norway [< 10] * %. Industri Kapital has not explained where the remaining [< 10] * % of the production is shipped. Dyno's Finnish plant made all its deliveries of formaldehyde based resins in Finland.
- (63) An exception of the pattern whereby the bulk of the production is supplied in the country of supply appears to be Norway, where Dyno has two plants producing formaldehyde based resins: one in Lilleström and the other in Engene. In 1998, the Engene plant produced [some 60 000] * tonnes of UF/(M)UF resins and [some 6 000] * tonnes of PF/P(R)F resins. The smaller Lilleström plant produced [some 20 000] * tonnes of UF/(M)UF resins and [some 30 000] * tonnes of PF/P(R)F resins. While the bulk of the production from the larger Engene plant was sold in Norway [< 90] * % of UF/(M)UF resins and [> 80] * % of PF/P(R)F resins, the Lilleström plant supplied only [< 20] * % of its production of UF/(M)UF resins and [< 30] * % of PF/P(R)F resins in Norway. A large part of the production from this plant was exported to Germany [> 20] * %, Austria [> 20] * % and Sweden [> 0] * %. Deliveries of smaller amounts were also made to a number of other Member States. The Commission has estimated, on

the basis of the information submitted by Industri Kapital in the notification and in a subsequent reply to the Commission's questionnaire, that the total exports from the two Dyno plants represent [> 30] * % for UF/(M)UF resins and [> 10] * % for PF/P(R)F resins.

- (64) However, while it is true that Dyno exports part of its formaldehyde based resins to other Member States in continental Europe, the investigation shows that imports into Norway from continental Europe are practically non-existent. None of the customers who replied to the Commission's enquiries in Norway have indicated that they source formaldehyde based resins outside the Nordic region. Exports cannot alone be taken as evidence of a wider geographic market because the absence of imports from continental Europe demonstrates that imports are not a competitive alternative for customers located in Norway.
- (65) As for continental Europe, the investigation suggests that customers source their resins on a wider than national base and there is evidence of cross-border trade with countries located nearby. Therefore, the markets in continental Europe are larger than national.
- (66) Industri Kapital has submitted that customers of formaldehyde based resins could source their supplies from the Baltic States, Russia and countries in central and Eastern Europe.
- (67) However, the Commission's investigation shows that none of the resin customers contacted currently source from these countries. Customers do not consider the manufacturers in those countries as a realistic alternative due to high transport costs, the relatively short shelf life of resins, quality considerations, the requirement for frequent supplies and supply security in the long term. Customers have also indicated in their replies to the Commission's enquiries that imports from those countries would not be possible because a number of different resin specifications are needed and the product range and the quality of the suppliers in the Baltic States, Russia and other countries in central and eastern Europe is not sufficient due to the outdated technology used. In this respect, customers have indicated that the only producer with sufficient know-how about formaldehyde based resins, Lignums in Riga, is manufacturing resins under the licence of Neste.

Conclusion

- (68) On the basis of the foregoing and for the purposes of this Decision, the Commission concludes that Finland constitutes a separate relevant geographic market. With regard to Norway, the question whether Norway should be regarded as constituting a separate relevant geographic market or whether the geographic scope should be extended to include also Sweden can be left open as the assessment of the case would not be materially affected regardless of the market definition used. The possibility cannot be excluded, however, that the geographic scope for various end-application resins

other than those for wood applications could be different from what has been indicated in this Decision.

2. Formaldehyde

- (69) Industri Kapital submits that formaldehyde is an internationally traded commodity and prices are relatively homogenous in all parts of the world. Industri Kapital therefore argues that the relevant geographic market for formaldehyde is at least EEA-wide but probably includes neighbouring countries such as Russia, the Baltic States, Poland, Hungary, Slovakia and Turkey.
- (70) Although Industri Kapital argues that formaldehyde can be profitably transported over long distances, it admits that the transportation costs are significant due to the stability problems related to the storing of formaldehyde for long periods of time. Industri Kapital submits further in its reply to the Commission's Statement of Objections that the sale of formaldehyde to third parties is of limited, off the margin nature, which means that the producers do not have more than very limited marketing organisations. According to Industri Kapital, the formaldehyde producers' merchant activities are therefore often restricted to sales nearby. Industri Kapital nevertheless argues that formaldehyde producers in a certain area could fairly easily expand the geographical scope of their marketing efforts if the prices for merchant formaldehyde rose in a nearby area.
- (71) The Commission's investigation shows that the scope of the geographic market for trading formaldehyde is narrower than the EEA. Indeed, a number of replies to the Commission's enquiries show that formaldehyde is sourced at national or, at most, regional level rather than EEA-wide. All Finnish customers contacted have indicated to the Commission that they buy formaldehyde only in Finland. The reasons for the limited sourcing radius of formaldehyde are set out below.
- (72) First, Industri Kapital has explained that formaldehyde stores relatively poorly and large resin manufacturers therefore normally produce their own formaldehyde internally. Indeed, the open market for formaldehyde is relatively small, approximately 10 % of the total capacity.
- (73) Second, the Commission's enquiries show that, due to its toxic nature, formaldehyde is normally transported dissolved in water (formaldehyde with high solid contents can be transported over longer distances, but the transport of solid formaldehyde is not usual). Liquid derivatives of formaldehyde have a high level of water content which renders the transport over long distances unprofitable. It has been indicated to the Commission that formaldehyde in liquid form is transported within a radius of approximately 320 km from the production plant. Industri Kapital submits that the costs of transporting formaldehyde are comparable to resin transportation costs.

- (74) The information provided in the notification shows that the parties' plants tend to supply formaldehyde on mostly national and, at most, regional bases. By way of example, all Dyno's plants manufacturing formaldehyde (in Norway, Denmark, Finland and Ireland) supply [> 80] * % of their production in the country where the plants are located. Neste's plant in Finland supplies [> 70] * % of the production in Finland and [< 20] * % to Sweden. Industri Kapital has explained in its reply to the Statement of Objections that, for example, Neste's Finnish resin plant suffers from shortage of formaldehyde during peak production periods and, therefore, imports formaldehyde from Neste's plant in the Netherlands and, from time to time, from Casco and Perstorp from Sweden. However, these imports are spot deliveries and do not take place on a continuous basis. Moreover, it is to be noted that the imports are typically between formaldehyde and resin producers. None of the customers who replied to the Commission's questionnaires import formaldehyde.
- (75) With regard to continental Europe, it is to be noted that Neste has no plants in Belgium and it supplies some quantities to Member States which are physically close by, in particular to Germany, from its plants in the Netherlands and Austria.
- (76) These distribution patterns show that formaldehyde is not transported over long distances. In this respect, Industri Kapital has submitted that Neste supplies a customer in Norway from its plant in the Netherlands and that this confirms the parties' submission regarding the geographic scope of the market. The Commission notes, however, that these deliveries constitute less than [< 5] * % of the total production of that plant and cannot be taken as evidence of a market comprising the whole of EEA.
- (77) As to Industri Kapital's submission that suppliers could be found in Russia, the Baltic States, Poland, Hungary, Slovakia and Turkey, the investigation shows that sourcing from these countries is not considered realistic essentially for the same reasons as apply to formaldehyde based resins above. It is not necessary to define any other geographic markets because on any other conceivable geographic market on which the parties' activities overlap the combined market shares would not raise competition concerns.

Conclusion

- (78) On the basis of the foregoing and for the purposes of this Decision, the Commission concludes that the relevant geographic market is Finland.

3. Methanol

- (79) Industri Kapital submits that methanol is traded internationally. However, Industri Kapital submits that due to tariff barriers, transport costs and varying demand, the geographic market should possibly be divided into three main demand areas: Europe, North America and Asia.

- (80) Industri Kapital's submission is line with the Commission's previous decision concerning methanol ⁽⁵⁾. In that decision the Commission found that although methanol is internationally traded as a commodity, conditions of competition differ between Europe, North America and Asia.

Conclusion

- (81) A precise definition of the relevant geographic market does not need to be established in this case as the concentration will not create or strengthen a dominant position even on the basis of the narrowest geographic market. In line with the Commission's previous decision and for the purposes of this Decision, the market for methanol will be assessed at the EEA-wide level, the narrowest area where conditions of competition are homogenous.

4. Materials handling systems

- (82) Arca has plants in Sweden, Finland, Germany, France and Spain. Polimoon has plants in Finland, Sweden, England and the Netherlands. Industri Kapital submits that the average transportation distances differ between different kinds of materials handling systems depending on whether they can be folded or nested. Industri Kapital submits that the transport costs for stack-nest containers are relatively low due to the possibility to nest the containers during transportation. Therefore, Industri Kapital submits that the relevant geographic market is EEA wide. As for stackable containers, Industri Kapital submits that these containers cannot be nested but are locked into each other when transported and therefore take up more space. The transport costs are therefore relatively high and Industri Kapital submits the Nordic countries as the relevant geographic market. The same reasoning applies to crates. Lastly, concerning bottle trays, Industri Kapital submits that these are nestable and can therefore be transported over long distances. Despite the fact that standards for bottles and thus for the trays differ from one country to another, Industri Kapital submits that the relevant geographic market for bottle trays is EEA-wide.
- (83) The investigation has shown that the transport costs for materials handling systems are relatively high. Polimoon submits that the approximate supply radius for nestable materials handling systems is 400 to 500 km. For beverage tray systems it is submitted that the transport distance is longer, but that the geographic market does not go beyond the Nordic area due to customer service requirements.

⁽⁵⁾ Decision of 31 March 1993, Case No IV/M.331 — *Fletcher Challenge/Methanex*.

- (84) Customers have confirmed that transportation costs limit the area where material handling systems are sourced. They have also indicated that proximity of the supplier is an important factor. Empty materials handling systems are a relatively voluminous product in relation to value and weight even if folded or nested. A returnable transport packaging is not intended to be transported over longer distances but between the producer of the product to be packaged and the recipient of that product such as the retail outlet. In addition, in the case of a pooling system, the product is usually specially designed for that system, which is only used in a designated area.

Conclusion

- (85) Therefore, on the basis of the foregoing, the geographic market for all types of materials handling systems does not extend beyond Sweden, Finland and Norway nor is it even national.

5. Plastic containers

- (86) Industri Kapital claims that the geographic market for plastic containers is EEA-wide.
- (87) The Commission's investigation shows that empty plastic containers are a low weight but a large volume product. This results in relatively high transport costs and limits to a certain extent the radius within which it is economical to source plastic containers. On the other hand, it has been indicated to the Commission that the transport costs can be outweighed by economies of scale. The investigation shows that large suppliers cover a geographic market which is regional and sometimes even EEA-wide and large customers, in turn, source on a regional and/or EEA-wide basis.

Conclusion

- (88) In view of the foregoing, the Commission concludes that geographic markets for plastic containers are at least regional. Given that the activities of Superfos and Polimoon overlap in the Nordic area (Finland, Sweden, Norway and Denmark), for the purposes of this Decision, this area will be considered to constitute the relevant geographic market.

C. ASSESSMENT

1. Formaldehyde based resins

Actual competition

- (89) Industri Kapital has provided market share figures relating to formaldehyde based resins both including and excluding captive production. However, Industri Kapital's estimates of the market shares excluding captive use do not materially differ from those calculated on the basis of the total market volume.

- (90) Industri Kapital has verified and amended the market share information it submitted in the notification for PF/P(R)F and UF/(M)UF resins. Industri Kapital has explained that the new figures are based on new and more complex calculations and give a better indication of the position of Dyno and Neste on these markets. In the Nordic countries, the market position of the new entity is not materially changed in view of the new figures.

a) PF/P(R)F resins

- (91) On the assumption of national markets, based on the information submitted by Industri Kapital, Dyno and Neste would attain high market shares in Finland and Norway in the market for PF/P(R)F resins. Dyno and Neste would jointly account for [> 70] * % of the market in Finland (Dyno [> 20] * %, Neste [> 50] * % and [> 60] * % in Norway (Dyno [> 55] * % Neste [> 50] * %). Industri Kapital submits that Perstorp has [< 10] * % of the market in Finland. In Norway, Industri Kapital submits that Perstorp accounts for [> 20] * % of the market and Casco [> 5] * %. Assuming a regional market comprising Norway and Sweden, the Commission has estimated on the basis of the figures submitted by Industri Kapital that Dyno and Neste would jointly account for [> 20] * % of the market for PF/P(R)F resins in that area (Neste: [> 10] * %, Dyno: [> 10] * %). Perstorp would account for [> 30] * % of the market and Casco would have [> 20] * %. Given that the production of Neste and Dyno is directed mainly to wood application resins, considering this end application area alone, the position of the parties would even be stronger.
- (92) In Finland, the market position of Dyno and Neste has been relatively stable over the past three years. By contrast, in Norway Neste has increased its market share from [< 5] * % in 1997 to [> 5] * % in 1999. During the same period, Dyno's market share has dropped 10 percentage points from [> 60] * % in 1997 to [< 60] * % in 1999. It can thus be seen that the bulk of the decline in Dyno's market share has been picked up by Neste.
- (93) In Sweden, Dyno and Neste would account for [> 20] * % of the market for PF/P(R)F resins (Dyno [< 10] * % Neste [< 30] * % while Casco accounts for some [> 20] * % of the market.

b) UF/(M)UF resins

- (94) In UF/(M)UF resins, Dyno and Neste would jointly achieve very high market shares in two Nordic countries: in Finland, the combined market share would be [> 80] * % (Dyno [> 40] * %, Neste [> 30] * % and in Norway [> 80] * % (Dyno [> 80] * %, Neste [< 10] * %). Assuming a regional market comprising Norway and Sweden, Dyno and Neste would jointly account for [> 30] * % of the UF/(M)UF resins market (Dyno: [> 30] * %, Neste: [< 10] * %). On the basis of the figures submitted by Industri Kapital, the Commission has estimated that Casco would account for

[> 40] * % of that market and Elf Atochem for [< 20] * %. Given that the production of Neste and Dyno is directed mainly to wood application resins, considering this end application area alone, the position of the parties would be even stronger.

- (95) In Finland and Norway, the new entity's position would be far superior to that of the competitors. Indeed, Industri Kapital has submitted that Casco would have [<10] * % in Finland. In Norway, Casco would be the largest competitor with [> 10] * % of the market while Borden would have [< 10] * % of the market.

- (96) On the basis of the foregoing, Neste and Dyno would jointly achieve a very strong position in Finland and Norway with only a few competitors on the market.

Potential competition

- (97) In the following, the arguments apply both to PF/P(R)F as well as UF/(M)UF resins.

- (98) Industri Kapital argues that new entry to the Nordic market would easily be feasible. According to Industri Kapital, the market for PF/P(R)F resin has been growing slightly above the European average. As for UF/(M)UF resins, Industri Kapital submits that the growth has been slightly below the European average. Industri Kapital adds further that the growth prospects differ significantly depending on application areas. According to Industri Kapital, future growth is expected in the Finnish plywood industry, the glue bonded timber beam industry and the MDF industry. Moreover, Industri Kapital submits that new plants have either been constructed or the construction has been announced in the particleboard industry. Industri Kapital also argues that margins in the Nordic countries do not significantly differ from those in other Member States. Industri Kapital further submits that the probability of market entry post-merger will increase due to customers' multiple sourcing policies. Finally, Industri Kapital argues that the resin customers could invite a new supplier to enter the market.

- (99) The Commission notes that there has been no new entry to the Nordic market in formaldehyde based resins in general or in Finland or Norway in particular for the past five years. The investigation shows that new entry is not viable in the foreseeable future either for the reasons set out below.

- (100) More particularly, the investigation shows that new entry in the Nordic area is difficult due to the fact that the market for industrial resins is considered to be mature and the supply and demand in balance. The Commission notes that the rate of capacity utilisation in

Neste's and Dyno's plants in Finland and Norway for PF/P(R)F resins is [> 40] * % and for UF/(M)UF resins [> 30] * %. Given this excess capacity, Dyno and Neste could use the threat of a temporary capacity increase as a deterrent to discourage new entry. Industri Kapital has submitted in the notification that while a new plant producing formaldehyde based resins may be set up in 12 to 24 months and would cost EUR [> 5] * million, expansion of existing capacity is less expensive (approximately EUR [< 5] * million and could be carried out in a shorter time period, in 6 to 12 months.

- (101) New entry is made difficult also due to the fact that customers themselves have no access to the specific resin recipes they purchase. The Commission's investigation shows that customers typically have only limited knowledge of the specific recipes. Therefore, in case of new entry, unless the supplier already has suitable recipes available, the development of a resin must basically begin from scratch. The Commission's enquiries show that it would be difficult for a newcomer to enter the market and develop resins relatively quickly for instance for the plywood industry due to the special know-how required to understand the product itself and the various wood species used in production, unless the producer already has the specific know-how required. In their replies to the Commission's enquiries, customers and competitors have estimated that, for an experienced supplier, it may take up to two or three years to develop a new resin which can be marketed. Some customers have also indicated that they use up to 50 different resins, some of which can only be sourced from Dyno, some only from Neste. Therefore, even if the new entrant was an established resins producer, it appears unlikely that this producer would be able to supply immediately all the resins required by, for instance, plywood manufacturers or paper manufacturers. Therefore, the comprehensive supply response from new entry would not be immediate.

- (102) Moreover, the investigation shows that new entry is made unattractive due to the relatively small size of the Nordic market, the isolated geographic location, high capital expenditure requirements and long and difficult processes, for obtaining permits.

- (103) Industri Kapital has itself submitted that the manufacture of industrial resins is scale-driven business particularly in raw-material purchase, logistics, production and R & D. Moreover, critical success factors according to Industri Kapital are raw material volume, proximity to customers and leading production technology and application service. Under these conditions, it will be difficult for a new entrant to compete against a dominant supplier.

- (104) Industri Kapital argues further that customers who, at present, do not have captive production can set up their own production facilities for the manufacture of formaldehyde based resins in a relatively short period of time. Industri Kapital argues that some of the customers already produce their own resins in-house. However, apart from two producers of insulation materials, no other customer in the Nordic area has the possibility to produce its resins in-house.
- (105) All customers contacted by the Commission have indicated that, in case of a price increase of 5 % to 10 %, they would not consider starting to produce formaldehyde based resins themselves. The replies to the Commission's questionnaires show that a resin plant would require not only a significant financial investment but also know-how and expertise in the development of resins. Know-how is not readily available, for instance, in paper impregnation resins and customers are, in any case, reluctant to commit themselves to something which is not their core business. Moreover, customers have indicated that such production would not be profitable due to the relatively small amounts of resins required. Therefore, the Commission concludes that starting in-house production would not be an economically viable solution for customers to react to a price increase.
- (106) Customers have also indicated that, in case of a price increase, they would not consider starting to import from Russia, the Baltic states or countries in central and eastern Europe essentially for the same reasons as discussed above in connection with the relevant geographic market. Customers do not consider the manufacturers in these countries as a realistic alternative, *inter alia* due to high transport costs, limited product range, low quality, and the absence of supply security.
- (107) On the basis of the foregoing, it is concluded that competitive pressure through potential competition from Russia or the Baltic states or via new entry to the Nordic area is not likely. Given also the limitations relating to the captive production of resins, it is concluded that potential competition is not sufficient to offset the market power of the new entity in the market for formaldehyde based resins in Finland and Norway.

Comments of third parties

- (108) Customers situated in the Nordic countries have generally indicated that competition between Dyno and Neste in the two markets for formaldehyde based resins, UF/(M)UF and PF/P(R)F, has been intensive. The comparison of quantities sourced by customers from the two producers over the last three years indeed confirms this and demonstrates that quantities sourced from each

producer have changed, often drastically, from one year to another, due to differences in prices and in other supply conditions.

- (109) Customers in particular in the plywood industry, insulation materials and resin-impregnated paper have expressed serious concerns over the proposed transaction. Customers have indicated that the operation as notified would lead to price increases, potential foreclosure of the market, reduction of the current product range and reduction in R & D.
- (110) Following the operation, Industri Kapital would become the dominant supplier for formaldehyde based resins in Finland and in Norway. In Finland, it would have a de facto monopoly. Given the fact that there are only a few alternative suppliers, who are considerably smaller than the combined entity, and the absence of potential competition, Industri Kapital could act independently on the market and raise prices.

Conclusion

- (111) In view of the foregoing, the Commission concludes that the operation would lead to the creation of a dominant position in PF/P(R)F resins and UF/(M)UF resins in Finland. The question whether Norway constitutes a distinct geographic market or forms part of a wider geographic market comprising Norway and Sweden can finally be left open because the undertaking to divest one of the Finnish plants necessarily removes any potential competition problem in Norway.

2. Formaldehyde

Actual competition

- (112) Neste and Dyno have overlapping activities in the production and sale of formaldehyde only in Finland, where they are the only two producers. Therefore, following the operation, the parties would have a de facto monopoly in the supply of formaldehyde to third parties in that country. Industri Kapital submits that, in addition to Neste and Dyno, Bang & Bonsomer is active as an independent distributor of formaldehyde to small volume customers. However, the Commission notes that Bang & Bonsomer currently distributes formaldehyde produced by Neste and cannot therefore be considered as a competitive alternative to the combined entity.
- (113) Industri Kapital has submitted that Caldic Netherland, Synthite, Elf Atochem and Degussa are competitors in the supply of formaldehyde to third parties. The Commission's investigation does not, however, show that any of these producers are active in Finland.

Potential competition

- (114) Industri Kapital argues that there are producers close to Finland which all have excess capacity and could start delivering formaldehyde to the Finnish market within a short time period. According to Industri Kapital, these companies include Casco Products in Sweden, Viru Keemia Grupp in Estonia and Akron in Russia.
- (115) The Commission's investigation and in particular the comments obtained from customers demonstrate, however, that the prices charged by these producers are higher than those charged by local producers due to the transport costs. The investigation shows that the vast majority of formaldehyde is transported within a radius of 320 km. Therefore, as already discussed, although Industri Kapital claims that Neste has from time to time obtained certain volumes of formaldehyde from its plant in the Netherlands and from Perstorp in Sweden and Dyno has imported formaldehyde from Casco in Sweden to Finland, these imports have been mainly spot deliveries. Customers in general terms do not import formaldehyde. Customers in Finland have indicated that they do not consider Casco as a viable alternative to Dyno and Neste because of transport costs. According to the investigation, customers in Finland have not sourced formaldehyde from Casco. The Commission notes further that some customers have reported that they have attempted to purchase formaldehyde from Russia in the past but that these attempts failed, in particular due to technical difficulties.
- (116) Therefore, on the basis of the foregoing and in view of high transport costs, the Commission does not consider that imports from Russia or the Baltic States constitute a competitive alternative for customers located in Finland.
- (117) The investigation shows further that there has not been any new market entry to the Finnish market in the last five years. The investigation also suggests that potential competitors are not willing to enter the Finnish formaldehyde market in the near future. This is due to the fact that setting up a new plant would take time and is costly. In addition, the administrative procedures to get the necessary public approvals are considered to be burdensome. Moreover, third parties have argued that because formaldehyde provides as a well-known chemical merely low margins, the likelihood of new market entry is very low given the strong position of a merged entity.
- (118) As to the question whether customers would be willing to start own production of formaldehyde, the investigation clearly shows that this is not a realistic alternative essentially for the same reasons as apply to formaldehyde based resins. Customers of formaldehyde have indicated that their need for formaldehyde is relatively small and an economic production would require a certain volume (minimum 20 000 to 25 000 tonnes/year). Therefore, in order to produce formaldehyde on economically profitable terms, they would have to sell

their excess capacity on the free market in competition with the considerably stronger new entity. In its reply to the Commission's Statement of Objections, Industri Kapital has submitted that there is formaldehyde technology available based on reactors designed for a production of as little as 6 000 tonnes per year and that formaldehyde production based on this kind of technology would require significantly smaller annual production and still be economically profitable. This has not been confirmed in the Commission's investigation.

- (119) In its reply to the Commission's Statement of Objections, Industri Kapital submitted that there is competitive pressure from urea-formaldehyde pre-condensate (UFC) producers. In this respect, Industri Kapital has submitted that formaldehyde can be further developed into UFC, which is an interim product produced in formaldehyde plants by adding urea in the formaldehyde/water absorption column. Industri Kapital has submitted that UFC can be used as a raw material in the production of UF/(M)UF resins in the condensation stage. Industri Kapital has further contended that UFC is very stable, has a high resin content and contains only a small amount of water compared to a standard 37 % solution of formaldehyde. This, Industri Kapital argues, increases the transportability of UFC compared to straight formaldehyde. The Commission's enquires do not, however, confirm Industri Kapital's argument of competitive pressure arising from UFC. None of the third parties contacted by the Commission have indicated that, in the event of an increase in the price of formaldehyde, they could start sourcing UFC.

Comments from third parties

- (120) Customers of formaldehyde have expressed serious concern over the transaction. First, since after the operation the parties would enjoy a de facto monopoly in the supply of formaldehyde to third parties in Finland, they would be able to act independently on the market and increase prices. Second, there is a potential threat that those customers which currently buy the low-margin product for their own resin production, would be eventually forced to buy more expensive, higher margin ready-made resins from the new entity. Third, concerns have also been expressed in relation to possible capacity decreases. Several third parties have explained to the Commission that they are concerned that the new entity would reduce sales of formaldehyde to third parties. The operation could therefore lead to the foreclosure of the market.

Conclusion

- (121) On the basis of the foregoing, the Commission concludes that the operation as notified would lead to the creation of a dominant position in Finland in the market for the sale of formaldehyde to third parties.

3. Methanol

- (122) Adverse competition effects are unlikely to arise in the manufacture and distribution of methanol. Neste and Dyno have a combined market share of less than 5 % on the market encompassing the whole of the EEA. As to the vertical relationship, Methanol's market share is approximately 14 % in the EEA, which is unlikely to lead to any adverse competition effects such as the foreclosure of the market.

4. Materials handling systems

- (123) Arca and Polimoon are the main producers of plastic materials handling systems in the Nordic countries and in particular in Finland, Sweden and Norway. Dyno has joint control together with CVC of Polimoon ⁽⁶⁾. After the operation, Industri Kapital will not only control Arca but through Dyno also Polimoon. Both companies produce the whole range of material handling products, with the exception of plastic foldable pallet containers which are not produced by Polimoon. The operation will lead to a substantial addition of market shares, regardless whether the product market is defined as consisting of all types of materials handling systems or consisting of separate markets defined by each individual product. The market shares of Arca and Polimoon for materials handling systems in value in 1999 are presented in Tables 1 to 7. The figures are based on Industri Kapital's estimates; the term 'Nordic Region' is understood to comprise Finland, Sweden and Norway.

Table 1

All material handling products	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[10 to 20]* %	[70 to 90]* %
Finland	[70 to 80]* %	[0 to 10]* %	[80 to 90]* %
Sweden	[70 to 80]* %	[0 to 10]* %	[70 to 80]* %
Norway	[20 to 30]* %	[40 to 50]* %	[60 to 80]* %

Table 2

Plastic stack-nest containers	Arca	Polimoon	
The Nordic Region	[50 to 60]* %	[20 to 30]* %	[80 to 90]* %
Finland	[70 to 80]* %	[0 to 10]* %	[80 to 90]* %
Sweden	[70 to 80]* %	[0 to 10]* %	[70 to 90]* %
Norway	[20 to 30]* %	[60 to 70]* %	[60 to 100]* %

Table 3

Plastic stackable containers	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[10 to 20]* %	[70 to 90]* %
Finland	[70 to 80]* %	[0 to 10]* %	[70 to 90]* %
Sweden	[80 to 90]* %	[0 to 10]* %	[80 to 100]* %
Norway	[20 to 30]* %	[30 to 40]* %	[50 to 70]* %

⁽⁶⁾ Decision of 8 March 1999, Case IV/M. 1349 — CVC Capital Partners/Dynoplast.

Table 4

Plastic bottle trays	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[20 to 30]* %	[90 to 100]* %
Finland	[60 to 70]* %	[30 to 40]* %	[90 to 100]* %
Sweden	[80 to 90]* %	[10 to 20]* %	[90 to 100]* %
Norway	[50 to 60]* %	[30 to 40]* %	[80 to 100]* %

Table 5

Plastic crates	Arca	Polimoon	
The Nordic Region	[50 to 60]* %	[10 to 20]* %	[70 to 80]* %
Finland	[90 to 100]* %	[0 to 10]* %	[90 to 100]* %
Sweden	[10 to 20]* %	[0 to 20]* %	[20 to 30]* %
Norway	[0 to 10]* %	[50 to 60]* %	[50 to 70]* %

Table 6

Plastic pallets	Arca	Polimoon	
The Nordic Region	[50 to 60]* %	[10 to 20]* %	[60 to 80]* %
Finland	[40 to 50]* %	[20 to 30]* %	[60 to 80]* %
Sweden	[50 to 60]* %	[0 to 10]* %	[60 to 70]* %
Norway	[50 to 60]* %	[10 to 20]* %	[60 to 80]* %

Table 7

Plastic small-parts storage systems	Arca	Polimoon	
The Nordic Region	[60 to 70]* %	[0 to 10]* %	[70 to 80]* %
Finland	[30 to 40]* %	[0 to 10]* %	[30 to 50]* %
Sweden	[70 to 80]* %	[0 to 10]* %	[70 to 90]* %
Norway	[60 to 70]* %	[10 to 20]* %	[70 to 90]* %

- (124) The operation gives rise to the possibility of either creation or strengthening of a dominant position in the markets for plastic stack-nest containers, plastic stackable containers and plastic bottle trays in Finland, Sweden and Norway where the parties have market shares of [70 to 100] * %. Furthermore, the parties will obtain market shares above [> 60] * % in the market for plastic pallets in Finland, Sweden and Norway and above [> 70] * % for plastic small-parts storage systems in

Sweden and Norway. On the basis of a product market comprising all plastic materials handling products the parties would likewise achieve a dominant position in Finland, Sweden and Norway with market shares of [60-80] * %. Even if the geographic reference market was assumed to be wider including Denmark and Iceland, the parties would still have a market share of [> 60] * % for all plastic materials handling products in this area.

- (125) Arca and Polimoon both produce the whole range of materials handling products, i.e. plastic stack-nest containers, plastic stackable containers, plastic bottle trays, plastic crates, plastic pallets and plastic small-parts storage systems, with the exception of plastic foldable pallet containers which are not produced by Polimoon. None of the larger European competitors, Linpac Materials Handling, Allibert, SSI Schäfer and Schoeller Wafin Trepak, have production facilities in Finland, Sweden and Norway, or have substantial sales in these countries. Plastic Form AB is only active in Sweden and Schoeller Plast has only limited sales outside Denmark. Industri Kapital stated in response to a formal decision pursuant to Article 11(5) of the Merger Regulation which requested the names of the five largest competitors for each product group in Finland, Sweden, Norway and Denmark, that it was not able to state more than one competitor per country due to the fact that the remaining competitors had such small market shares that Industri Kapital did not have the necessary information. Arca is by far the strongest operator in the Nordic area and Polimoon is the only substantial competitor to Arca. After the operation Industri Kapital will have a substantial and controlling interest in its major competitor Polimoon. This will significantly weaken the position of Polimoon as an independent competitor to Arca which could exercise a restraining pressure on Arca's behaviour in the market.
- (126) There is no indication that competitors from outside the Nordic area intend to enter the market.

Conclusion

- (127) On the basis of the foregoing, the Commission concludes that the operation as notified would lead to the creation or strengthening of a dominant position in the markets for plastic stack-nest containers, plastic stackable containers, plastic bottle trays and plastic pallets in Finland and Sweden and Norway, and in the markets for plastic small-parts storage systems in Sweden and Norway or, alternatively, in the markets for plastic materials handling systems in the Nordic region comprising Finland, Sweden and Norway.

5. Plastic containers

- (128) On the regional market constituted by the Nordic area (Finland, Sweden, Norway and Denmark), the combined market share of Polimoon and Superfos for open top containers between 2 and 35 litres would not exceed [< 40] * %. In all the other product segments, the combined market share would be lower. Competitors active in the Nordic market include such large players as Huhtamaki/Van Leer, Rexam and PLM. A significant number of smaller suppliers are also present.
- (129) Customers have not expressed serious concerns over the transaction in relation to plastic containers. Customers have indicated that they have switched suppliers in the past and can do so if facing a price increase of 5 % to 10 %. Most competitors contacted by the Commission have confirmed that competitive conditions would prevail on the market after the transaction.
- (130) On the basis of the foregoing, the Commission concludes that the transaction as notified would not lead to the creation of a dominant position in plastic containers in the Nordic area.

VI. MODIFICATIONS TO THE PROPOSED TRANSACTION

- (131) In order to remove the competition concerns identified by the Commission, the parties have offered the Commission undertakings. The full text of those undertakings is annexed to this Decision. The full text of the annexed undertakings forms an integral part of this Decision.
- (132) First, Industri Kapital proposes to divest the formaldehyde and resin plant of Dyno in Kitee, Finland, to an existing or potential competitor. In the event that this transaction does not take place within the time period foreseen, Industri Kapital will divest the formaldehyde and resin plant of Neste in Hamina, Finland. In the case of a divestiture of the Kitee business, Industri Kapital has further undertaken to cause Neste to offer the new owner of the Kitee plant a non-exclusive license to use Neste recipes for the production of impregnation resins in Kitee.
- (133) Secondly, Industri Kapital proposes to cause Dyno to sell its shares in Polimoon to purchaser independent of Industri Kapital. Industri Kapital shall be released from this commitment if it divests within the time period foreseen in this Decision its complete holding in Arca to a buyer independent of Industri Kapital.
- (134) The Commission considers that all undertakings are sufficient to remove the competition concerns identified in this case.
- (135) With regard to formaldehyde based resins in Finland and Norway, the dominant position will disappear if the sale of either the Kitee plant or the Hamina plant is carried out. More particularly, in Finland, the entire overlap between the activities of Neste and Dyno will be removed regardless of which plant is divested.
- (136) In Norway, or alternatively in the area covering Norway and Sweden, where the market share increment results from imports from Neste's Hamina plant, the sale of Neste's Hamina plant would remove the entire overlap between Dyno and Neste. In the event that Dyno's Kitee plant is sold, the Commission considers that the new owner could start exporting resins into Norway on an equal basis with the Hamina plant. The parties have provided information on transport costs showing that the Kitee plant would not be in any worse position in this respect. Therefore, should the current customers of Neste in Norway wish to switch to the new owner of the Kitee plant, transport costs would not inhibit the switch.
- (137) As for the market for formaldehyde, the divestment of either the Kitee or the Hamina plant will remove the entire overlap between Dyno and Neste in Finland and thus remove the competition concerns arising on this market.
- (138) As concerns the market for materials handling systems, either of the undertakings given will remove the entire overlap between Industri Kapital and Polimoon.

VII. CONCLUSION

- (139) In light of the foregoing, the Commission has reached the conclusion that the notified concentration should be declared compatible with the common market and the functioning of the EEA Agreement, subject to the condition of full compliance with the undertakings given to the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The concentration notified by Industri Kapital on 24 January 2000, whereby Industri Kapital acquires all the shares in Dyno ASA, is hereby declared compatible with the common market and the functioning of the EEA Agreement, subject to the condition of full compliance with the undertakings given by Industri Kapital to the Commission and set out in the Annex.

Article 2

This Decision is addressed to:

Industri Kapital
Birger Jarlgatan 2
S-114 34 Stockholm.

Done at Brussels, 12 July 2000.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

UNDERTAKINGS

Industri Kapital NV, on its own behalf and on behalf of the group of companies ultimately controlled by it (hereinafter jointly referred to as Industri Kapital), hereby makes the following commitment (the Commitment) to the European Commission in order to obtain the Commission's clearance of Industri Kapital's (through Nordkem AS) notified public bid for the shares in Dyno ASA (the Concentration).

Commitment to sell the formaldehyde and resins plant in Kitee or Hamina

1. Industri Kapital shall cause Dyno ASA (Dyno) to divest either the formaldehyde and resins plant in Kitee (the Kitee Business) or Neste Chemicals Oy to divest the formaldehyde and resins plant in Hamina (the Hamina Business) as an ongoing concern to a Suitable Purchaser as defined under point 4.
2. Industri Kapital will first seek to sell the Kitee Business during the period of time set out in point 9 (the Kitee Period) and will, failing such sale, sell the Hamina Business during an additional period of time set out in point 10 (the Hamina Period).
3. The Kitee Business or the Hamina Business will include personnel and existing assets (including non-exclusive licences and R & D facilities) necessary to continue the production and sale of formaldehyde as well as wood panel resins and impregnation resins in Kitee or Hamina, as the case may be. In the case of a divestiture of the Kitee Business, Industri Kapital shall cause Neste to offer, subject to third-party rights, the new owner of the Kitee Business a non-exclusive licence to use Neste recipes for the production of impregnation resins in Kitee. Such licence shall be granted on reasonable commercial terms which in case of disagreement shall be decided in arbitration between Neste and the new owner of the Kitee Business.
4. A Suitable Purchaser shall be a viable existing or prospective competitor independent of and unconnected with the merged entity with the ability to maintain and develop the Kitee Business or the Hamina Business as an active competitive force in the markets concerned.
5. The Suitable Purchaser shall be approved by the Commission prior to the signing of a final agreement of sale.
6. Within one week from the date of the Commission's decision to clear the Concentration, Industri Kapital shall appoint an independent trustee who shall be an investment bank or a similar institution (the Trustee). The Trustee shall be subject to approval by the Commission.
7. Immediately upon appointment of the Trustee, Industri Kapital shall give the Trustee a mandate whose terms shall have been previously agreed with the Commission and which will include the following functions:
 - (i) monitoring the operation and management of the Kitee Business during the Kitee Period and the Hamina Business during the Hamina Period in order to report on its continued viability and marketability;
 - (ii) monitoring the satisfactory discharge by Industri Kapital of its obligation to divest first the Kitee Business and the Hamina Business, as the case may be;
 - (iii) execution of the sale of the Hamina Business in case such mandate is given to the Trustee pursuant to point 10 below;
 - (iv) providing written reports every second month to the Commission, with copies to Industri Kapital, on the management and efforts to sell the Kitee Business and the Hamina Business; and
 - (v) providing evidence to the Commission that the sale of the Kitee Business or the Hamina Business, as the case may be, has been finally completed.
8. Prior to and until completion of the sale of the Kitee Business and the Hamina Business, as the case may be, Industri Kapital undertakes to ensure that, during the Kitee Period the Kitee Business, and during the Hamina Period the Hamina Business, is held separate and managed as a distinct and saleable entity with its own management accounts. Industri Kapital further undertakes to ensure that the Kitee Business and the Hamina Business, as the case may be, has its own management, separate and distinct from that of the merged entity and supervised by the Trustee. The management, under the guidance and control of the Trustee, shall be under instruction to manage the Kitee Business and the Hamina Business, as the case may be, on an independent basis in order to ensure its continued viability, market value and independence. In addition, Industri Kapital undertakes to ensure that no structural changes shall be made to the Kitee Business during the Kitee Period or the Hamina Business during both the Kitee Period and the Hamina Period without the prior approval of the Commission.
9. Industri Kapital shall have signed a binding agreement of sale of the Kitee Business (subject to due diligence as well as regulatory and other approvals) with a Suitable Purchaser within [...] months from the date of the Commission's decision to clear the Concentration. This period of time is referred to as the Kitee Period.
10. If Industri Kapital is not able to fulfil its undertaking to divest the Kitee Business by the end of the time period set out in point 9, it shall give the Trustee an irrevocable power of attorney to sell the Hamina Business to a Suitable Purchaser [...] within an additional period of [...] months (i.e. within [...] months from the date of the Commission's decision to clear the Concentration). The period of time running from the end of the Kitee Period until the end of the additional period set out herein is referred to as the Hamina Period.

Commitment to sell the shares in Polimoon Group Ltd

11. Industri Kapital undertakes to cause Dyno to sell its shares (the Shares) in Polimoon Group Ltd (Polimoon) to a purchaser independent of Industri Kapital (the Share Purchaser).
12. The Share Purchaser shall be approved by the Commission prior to the signing of a final agreement of sale.
13. Within one week from the date of the Commission's decision to clear the Concentration, Industri Kapital shall propose an investment bank or a similar institution (the Share Trustee) with whom the share certificates in respect of the Shares shall be deposited pending divestiture of the Shares. The Share Trustee shall be subject to approval by the Commission.
14. The share certificates in respect of the Shares shall be deposited with the Share Trustee within one week from the Commission's approval of the Share Trustee, with an irrevocable instruction:
 - (i) not to consult with or seek or take any instructions from Industri Kapital in relation to the exercise of any right pertaining to the Shares;
 - (ii) not to provide any privileged information to Industri Kapital which the Share Trustee has obtained by virtue of the Shares;
 - (iii) to appoint, on behalf of Dyno but at its sole discretion, a director of the board of Polimoon which director shall not be an owner or in the employ of Industri Kapital or part of its management;
 - (iv) to deliver the share certificates in respect of the Shares to the Share Purchaser when advised by Industri Kapital that the Shares have been sold.
15. Industri Kapital shall, within one week from the date of the Commission's decision to clear the Concentration, cause Dyno's nominated director to resign from his current board directorship in Polimoon. Industri Kapital shall thereafter refrain from giving any instructions to any member of the board of directors or the management of Polimoon or otherwise exercising any right by virtue of the Shares or the shareholders agreement pertaining to the Shares.
16. Industri Kapital shall have signed a binding agreement for the sale of all the Shares to the Share Purchaser within [...] from the date of the Commission's decision to clear the Concentration.
17. The Share Trustee shall be instructed by Industri Kapital to immediately confirm in writing to the Commission that the share certificates in respect of the Shares have been deposited with it and shall thereby provide the Commission with a copy of the instructions by Industri Kapital pursuant to point 15 above. The Share Trustee shall report in writing to the Commission when the Shares have been finally divested.
18. Industri Kapital shall be released from this commitment in relation to the Shares in case Industri Kapital divests its complete holding in Arca Systems AB to a buyer independent of Industri Kapital. Such release shall be subject to the prior approval of the Commission.

Miscellaneous

19. The Trustee and the Share Trustee may be the same institution subject to the Commission's approval.
 20. Industri Kapital shall pay reasonable remuneration to the Trustee and the Share Trustee for their services.
 21. Industri Kapital shall ensure that the Trustee and the Share Trustee are given all information and assistance they may reasonably require in order to carry out their mandates.
 22. Industri Kapital, or alternatively the Trustee and/or the Share Trustee, shall provide the Commission with a fully documented and reasoned proposal pursuant to points 5, 12 and/or 18 enabling the Commission to assess:
 - (i) whether the prospective purchaser satisfies the relevant purchase criteria;
 - (ii) the envisaged time of completion of the divestiture; and
 - (iii) whether the purchaser has, or reasonably can be expected to obtain, all necessary approvals from the competent regulatory bodies.

Prior to approval, the Commission may request to meet the prospective purchaser and, if deemed necessary, ask for the submission of a business plan for the Kitee Business or the Hamina Business, as the case may be.
 23. If the Commission has not within two weeks following receipt of a fully documented proposal for a prospective purchaser expressed in writing its disagreement, negotiations with such a party as a valid purchaser shall be free to proceed. In the case that the Commission has to request additional information, the receipt of such information shall constitute the starting point for the two weeks referred to.
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COMMISSION DECISION
of 21 May 2001
for purchase by the Community of bluetongue vaccine and restocking of the Community bank
(notified under document number C(2001) 1440)

(2001/433/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/75/EC ⁽¹⁾ laying down specific provisions for the control and eradication of bluetongue and in particular Article 9(2),

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽²⁾, as last amended by Council Decision 2001/12/EC ⁽³⁾, and in particular Article 3(3) and (5),

Whereas:

- (1) In a first stage, Italian authorities decided on the basis of the epidemiological situation, to perform a vaccination campaign in Sicily, Calabria and Basilicate.
- (2) Originally the need for this campaign was of 1 700 000 doses of monovalent type 2 vaccine, and Decision 2001/141/EC ⁽⁴⁾ has been adopted to provide Italy with the necessary vaccine.
- (3) On the 5 of March Italy notified to the Commission the existence of serotype 9 in eastern Calabria and this new epidemiological situation makes that the need of vaccine in this region is now of 1 200 000 doses of bivalent vaccine (2 and 9) and 500 000 doses of monovalent type 2.
- (4) Furthermore, on 12 February 2001, Italian authorities informed the Commission of their intention to extend the vaccination campaign to Sardinia in spring 2001.
- (5) The amount of vaccine necessary to carry out this campaign in Sardinia is 3 000 000 doses of monovalent bluetongue vaccine serotype 2.
- (6) The total need of Italy to perform these campaigns is therefore of 3 500 000 doses of monovalent (2) and 1 200 000 bivalent (2 and 9) vaccine.
- (7) 2 400 000 doses of monovalent (2) vaccine have been already provided to Italy by the Commission, 1 700 000 initially intended to be used in Calabria, in the frame of

Decision 2001/141/CE, and 700 000 from the Community bank of 750 000 doses established in agreement with Commission Decision 2001/69/EC ⁽⁵⁾, the remaining 50 000 doses of which have been sent to Corsica (France).

- (8) Due to the emergency, Italian authorities have directly purchased 1 100 000 doses of monovalent (2) and 1 200 000 doses of bivalent (2 and 9) vaccine, with the agreement of the Commission.
- (9) The Commission furthermore authorises the Italian authorities to set up a security bank of 100 000 doses of monovalent (2) and 300 000 doses of bivalent (2 and 9) vaccine, and to purchase directly the vaccine at this end.
- (10) At this stage the Italian needs for carrying out the campaign are covered.
- (11) Nevertheless, the Community bank has to be restocked with 1 000 000 doses of monovalent (2) vaccine, in order to face a possible extension of the outbreaks in new regions.
- (12) No bluetongue vaccine is produced by the pharmaceutical industry based in the Community, the Onderstepoort laboratory in South Africa being the only laboratory which may produce that type of monovalent vaccine (attenuated vaccine) with the serotype 2.
- (13) Pursuant to Council Regulation (EC) No 1258/1999 ⁽⁶⁾, veterinary and plant health measures undertaken in accordance with Community rules shall be financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund. For financial control purposes, Articles 8 and 9 of that Regulation apply.
- (14) The financial contribution from the Community should only be granted if the actions planned are carried out efficiently, and the authorities supply all the necessary information within the time limits laid down.
- (15) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

⁽¹⁾ OJ L 327, 22.12.2000, p. 74.

⁽²⁾ OJ L 224, 18.8.1990, p. 19.

⁽³⁾ OJ L 3, 6.1.2001, p. 27.

⁽⁴⁾ OJ L 50, 21.2.2001, p. 23.

⁽⁵⁾ OJ L 23, 25.1.2001, p. 32.

⁽⁶⁾ OJ L 160, 26.6.1999, p. 103.

HAS ADOPTED THIS DECISION:

Article 1

The Community bank of bluetongue vaccine serotype 2 shall be restocked with 1 000 000 doses of vaccine.

Article 2

The maximum cost of the measure referred to in Article 1 shall be EUR 100 000.

Article 3

The Director General for Health and Consumer Protection shall be authorised to make arrangements with Onderstepoort laboratory in South Africa for the purchase, storage and air freight to a Member State, of 1 000 000 doses of monovalent bluetongue vaccine (serotype 2).

Article 4

Italy will implement in spring 2001 a vaccination campaign against bluetongue in Sardinia and 1 200 000 doses of the monovalent (2) vaccine initially provided to perform the vaccination in Calabria in the frame of Decision 2001/141/CE will be affected to this campaign.

Article 5

The Commission may carry out on the spot checks in Italy in collaboration with the competent national authorities to ensure that the program referred to in article 4 has been implemented.

The Commission shall inform the Member States of the outcome of these checks.

Article 6

The financial contribution of the Community for the program referred to under Article 4 shall be granted subject to:

- (a) bringing into force by 1 April 2001 the laws, regulations and administrative provisions necessary for the implementation of the programme,
- (b) forwarding a final report by 1 August 2001 at the latest on the technical execution of the programme, accompanied by justifying evidence as to the costs incurred and the results attained,
- (c) implementing the programme efficiently, and respecting Community veterinary legislation.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 21 May 2001.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION
of 21 May 2001
laying down specific measures in the beef sector for Germany under Regulation (EC) No 2777/2000

(notified under document number C(2001) 1441)

(Only the German text is authentic)

(2001/434/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 38(2) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2777/2000 of 18 December 2000 adopting exceptional support measures for the beef market ⁽²⁾, as amended by Regulation (EC) No 111/2001 ⁽³⁾, provides in its Article 3(4) that a Member State may be authorised to stop the application of the purchase scheme concerned if it can prove that sufficient capacity is available for BSE testing of all animals above 30 months of age constituting a normal slaughter throughput. Germany has presented to the Commission such proofs and consequently, on its request, this Member State should be authorised to stop the application of the scheme.

- (2) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS DECISION:

Article 1

Germany shall be authorised to stop the application of the purchase scheme laid down in Regulation (EC) No 2777/2000.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 21 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 321, 19.12.2000, p. 47.

⁽³⁾ OJ L 19, 20.1.2001, p. 11.

COMMISSION DECISION
of 21 May 2001
on the inventory of wine production potential presented by France pursuant to Council Regulation
(EC) No 1493/1999

(notified under document number C(2001) 1443)

(Only the French text is authentic)

(2001/435/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999, of 17 May 1999, on the common organisation of the market in wine ⁽¹⁾, as amended by Regulation (EC) No 2826/2000 ⁽²⁾, and in particular Article 23(4) thereof,

Whereas:

- (1) Article 16 of Regulation (EC) No 1493/1999 provides for the presentation of an inventory of wine production potential. Access to the regularisation of unlawfully planted areas, the increase in planting rights and support for restructuring and conversion is subject to prior presentation of this inventory.
- (2) Article 19 of Commission Regulation (EC) No 1227/2000, of 31 May 2000, laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential ⁽³⁾ sets out details of the information to be included in the inventory.
- (3) By letters of 25 September 2000, 29 December 2000 and 8 January 2001 France sent the Commission the information referred to in Article 16 of Regulation (EC) No 1493/1999. Examination of this information shows that France has compiled the inventory.

(4) This Decision does not entail recognition by the Commission of the accuracy of the information contained in the inventory or of the compatibility of the legislation referred to in the inventory with Community law. It is without prejudice to any future Commission decision on these points.

(5) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS DECISION:

Article 1

The Commission notes that France has compiled the inventory referred to in Article 16 of Regulation (EC) No 1493/1999.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 21 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 328, 23.12.2000, p. 2.

⁽³⁾ OJ L 143, 16.6.2000, p. 1.

COMMISSION DECISION
of 22 May 2001
on the inventory of wine production potential presented by Portugal pursuant to Council Regulation (EC) No 1493/1999

(notified under document number C(2001) 1458)

(Only the Portuguese text is authentic)

(2001/436/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, as amended by Regulation (EC) No 2826/2000 ⁽²⁾, and in particular Article 23(4) thereof,

Whereas:

- (1) Article 16 of Regulation (EC) No 1493/1999 provides for the presentation of an inventory of wine production potential. Access to the regularisation of unlawfully planted areas, the increase in planting rights and support for restructuring and conversion is subject to prior presentation of this inventory.
- (2) Article 19 of Commission Regulation (EC) No 1227/2000 of 31 May 2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential ⁽³⁾ sets out details of the information to be included in the inventory.
- (3) By letters of 21 June 2000, 23 November 2000 and 12 February 2001 Portugal sent the Commission the information referred to in Article 16 of Regulation (EC) No 1493/1999. Examination of this information shows that Portugal has compiled the inventory for mainland Portugal (not including the Azores and Madeira).

(4) This Decision does not entail recognition by the Commission of the accuracy of the information contained in the inventory or of the compatibility of the legislation referred to in the inventory with Community law. It is without prejudice to any future Commission decision on these points.

(5) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS DECISION:

Article 1

The Commission notes that Portugal has compiled the inventory referred to in Article 16 of Regulation (EC) No 1493/1999 for mainland Portugal (not including the Azores and Madeira).

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 22 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 328, 23.12.2000, p. 2.

⁽³⁾ OJ L 143, 16.6.2000, p. 1.

COMMISSION DECISION

of 8 June 2001

amending for the fourth time Decision 2001/356/EC concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom

(notified under document number C(2001) 1609)

(Text with EEA relevance)

(2001/437/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, as last amended by Directive 92/118/EEC ⁽²⁾, and in particular Article 10 thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽³⁾, as last amended by Directive 92/118/EEC, and in particular Article 9 thereof,

Whereas:

- (1) Following the reports of outbreaks of foot-and-mouth disease in the United Kingdom, the Commission adopted Decision 2001/356/EC concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom ⁽⁴⁾, as last amended by Decision 2001/430/EC ⁽⁵⁾.
- (2) Council Directive 85/511/EEC ⁽⁶⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, introduces Community measures for the control of foot-and-mouth disease.
- (3) Council Directive 88/407/EEC ⁽⁷⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, lays down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species.
- (4) Council Directive 89/556/EEC ⁽⁸⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, concerns the animal health conditions governing intra-

Community trade in and imports from third countries of embryos of domestic animals of the bovine species.

- (5) Frozen bovine semen or embryos imported into the United Kingdom in accordance with applicable Community legislation before or after the date of 1 February 2001 do not represent a particular animal health risk if stored, handled and transported separately from frozen semen and embryos produced after that date in the United Kingdom. It appears therefore appropriate to allow dispatch of such semen and embryos from the areas listed in Annex I or Annex II under the strict responsibility of the central veterinary services if such semen and embryos are intended for dispatch outside the territory of the United Kingdom.
- (6) The situation shall be reviewed at the meeting of the Standing Veterinary Committee scheduled for 12-13 June 2001 and the measures adapted where necessary.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Article 6(3) in Decision 2001/356/EC is replaced by the following:

‘3. This prohibition shall not apply to frozen bovine semen and embryos produced before 1 February 2001.

This prohibition shall also not apply to frozen bovine semen and embryos imported into the United Kingdom in accordance with the conditions laid down in Council Directives 88/407/EEC and 89/556/EEC respectively, and which since introduction into the United Kingdom has/have been stored and transported separately from semen and embryos not eligible for dispatch in accordance with paragraphs 1 and 2.’

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 62, 15.3.1993, p. 49.

⁽³⁾ OJ L 395, 30.12.1989, p. 13.

⁽⁴⁾ OJ L 125, 5.5.2001, p. 46.

⁽⁵⁾ OJ L 153, 8.6.2001, p. 33.

⁽⁶⁾ OJ L 315, 26.11.1985, p. 11.

⁽⁷⁾ OJ L 194, 22.7.1988, p. 10.

⁽⁸⁾ OJ L 302, 19.10.1989, p. 1.

Article 2

Member States shall amend the measures which they apply to trade so as to bring them into compliance with this Decision. They shall immediately inform the Commission thereof.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 8 June 2001.

For the Commission

David BYRNE

Member of the Commission
