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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1936/2001

of 27 September 2001

laying down control measures applicable to fishing for certain stocks of highly migratory fish

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 Community has since 14 November 1997 been a Contracting Party to the International Convention for the Conservation of Atlantic Tunas ⁽³⁾ (hereinafter referred to as the ICCAT Convention).
- (2) The ICCAT Convention provides a framework for regional cooperation on the conservation and management of resources of tuna and tuna-like fish in the Atlantic ocean and adjacent seas through an International Commission for the Conservation of Atlantic Tunas (hereinafter referred to as ICCAT), and the adoption of recommendations on conservation and management in the Convention area that become obligatory for Contracting Parties.
- (3) ICCAT has adopted a number of recommendations creating control and surveillance obligations, notably on the establishment and transmission of statistics, inspection in port, vessel surveillance by satellite, vessel observations and transshipments, and checks on non-contracting parties and on stateless vessels. These recommendations have become obligatory for the Community and should therefore be implemented.
- (4) Certain obligations have been transposed by Council Regulation (EC) No 1351/1999 of 21 June 1999 laying down certain control measures to ensure compliance with the measures adopted by ICCAT ⁽⁴⁾ and into Article 22(1) of Council Regulation (EC) No 2742/1999 of 17 December 1999 fixing for 2000 the fishing opportuni-

ties and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and, for Community vessels, in waters where limitations in catch are required and amending Regulation (EC) No 66/98 ⁽⁵⁾. For reasons of clarity these measures should be incorporated in a single Regulation, repealing and replacing former Regulations.

- (5) For scientific research purposes masters of Community fishing vessels should be required to comply with the instructions of the 'Operational manual for statistics and sampling of tuna and tuna-like fish in the Atlantic Ocean' published by ICCAT.
- (6) The Community has approved the Agreement for the establishment of the Indian Ocean Tuna Commission ⁽⁶⁾, (hereinafter referred to as IOTC). The Agreement provides a useful framework for strengthening international cooperation for the purpose of conserving and rationally utilising Indian Ocean tuna and related species, through creation of the IOTC and the adoption of recommendations on conservation and management in its area of competence that become binding on Contracting Parties. The Community should apply the control measures adopted by the IOTC.
- (7) The IOTC has adopted a recommendation on the recording and exchange of information on tropical tuna. This is binding on the Community, which should therefore implement it.
- (8) The Community has fishing interests in the Eastern Pacific and has initiated the procedure for accession to the Inter-American Tropical Tuna Commission, (hereinafter referred to as IATTC). Pending accession and in line with its cooperation requirement arising under the United Nations Convention on the Law of the Sea, it should apply the control measures adopted by the IATTC.

⁽¹⁾ OJ C 62 E, 27.2.2001, p. 79.

⁽²⁾ Opinion delivered on 28 February 2001 (not yet published in the Official Journal).

⁽³⁾ OJ L 162, 18.6.1986, p. 34.

⁽⁴⁾ OJ L 162, 26.6.1999, p. 6.

⁽⁵⁾ OJ L 341, 31.12.1999, p. 1. Regulation as last amended by Regulation (EC) No 2765/2000 (OJ L 321, 19.12.2000, p. 5).

⁽⁶⁾ OJ L 236, 5.10.1995, p. 24.

- (9) The Community, which has signed the Agreement on the International Dolphin Conservation Programme ⁽¹⁾, has decided by Decision 1999/386/EC ⁽²⁾ to apply it provisionally pending its approval, and should therefore apply its control measures.
- (10) In order to ensure the respect of the applicable control measures of the IOTC, IATTC and of the Agreement on the International Dolphin Conservation Programme, Member States should take the necessary action.
- (11) Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽³⁾ applies to all fishing activities and all associated activities carried out on the territory and in the maritime waters subject to the sovereignty or jurisdiction of Member States, including those of Community fishing vessels operating in the waters of third countries or on the high seas, without prejudice to fishery agreements concluded between the Community and third countries or international conventions to which the Community is a Party.
- (12) The measures necessary for implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for exercise of implementing powers conferred on the Commission ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Purpose

This Regulation lays down control and inspection measures relating to fishing for stocks of the highly migratory fish species listed in Annex I to this Regulation and shall apply to vessels flying the flag of Member States and registered in the Community, (hereinafter referred to as Community fishing vessels), operating in one of the zones specified in Article 2.

Article 2

Zones

For the purposes of this Regulation the following marine zones are specified:

- (a) Zone 1:
- All waters of the Atlantic Ocean and adjacent seas included in the ICCAT Convention area specified in Article I of that Convention.
- (b) Zone 2:
- All Indian Ocean waters included in the area of competence specified in Article II of the Agreement for the establishment of the IOTC.

- (c) Zone 3:

All Eastern Pacific Ocean waters included in the area specified in Article III of the Agreement on the International Dolphin Conservation Programme.

Article 3

Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'boarding': the boarding of a fishing vessel within an organisation's area of competence by one or more authorised inspectors in order to make an inspection;
- (b) 'transshipment': unloading of any quantity of highly migratory fish and/or products from such fish from on board a fishing vessel to another vessel either at sea or in port, without the products having been recorded by a port State as landed;
- (c) 'landing': unloading of any quantity of highly migratory fish and/or products from such fish from on board a fishing vessel to port or to land;
- (d) 'infringement': any presumed act committed or omitted by a fishing vessel that is recorded in an inspection report and gives serious reason for suspecting a breach of the provisions of this Regulation or any other Regulation transposing a recommendation adopted by a regional organisation for one of the zones indicated in Article 2;
- (e) 'vessel of a non-Contracting Party': vessel observed and identified as engaged in fishing activities in one of the zones specified in Article 2 that is flying the flag of a country that is not a Contracting Party to the relevant regional organisation;
- (f) 'stateless vessel': vessel for which there are reasonable grounds for suspecting it to be without nationality.

CHAPTER I

CONTROL AND INSPECTION MEASURES APPLICABLE IN ZONE 1

Section 1

Control measures

Article 4

Catch sampling

1. Sampling of catches shall be carried out in accordance with the provisions laid down in Council Regulation (EC) No 1543/2000 of 29 June 2000 establishing a Community framework for the collection and management of the data needed to conduct the common fisheries policy ⁽⁵⁾ and the requirements of the 'Field manual for statistics and sampling Atlantic tunas and tuna-like fishes' (Third edition, ICCAT, 1990).

⁽¹⁾ OJ L 132, 27.5.1999, p. 1.

⁽²⁾ OJ L 147, 12.6.1999, p. 23.

⁽³⁾ 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).

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁵⁾ OJ L 176, 15.7.2000, p. 1.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 5

Catch notification

1. Member States shall transmit to the Commission, which in turn will transmit to the ICCAT Executive Secretariat, the annual nominal catch data (task I as defined by ICCAT), for those species that are indicated in Annex II. In order to fulfil the requirements of ICCAT, the data transmission from the Member States to the Commission shall be not later than:

1 March of following year: preliminary estimates for entire year;

15 April of following year: definitive estimates.

2. Member States shall transmit the following data (task II as defined by ICCAT) annually before 31 July to the ICCAT Executive Secretariat with electronic access for the Commission:

- (a) catch and fishing effort data for the previous year, giving a detailed spatio-temporal breakdown;
- (b) any data they have on sport fishing catches of fish of the species listed in Annex I.

3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 6

Information on shark catches

1. Member States shall transmit any available data on catches of and trade in sharks to the ICCAT Executive Secretariat with electronic access for the Commission.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 7

Undeclared catches

For imports of frozen bluefin tuna and bigeye tuna products fished by long liners greater than 24 metres overall in length, at the Commission's request Member States shall collect and examine as much import data as possible and all related information such as vessel names, their registration and owner, species fished and weight, fishing zone and place of export.

Article 8

Observation of vessels

1. For the purposes of this Article 'observation' means any observation, by a Member State's vessel, aircraft or competent authority responsible for inspection at sea, of:

- a stateless vessel likely to be fishing for species listed in Annex I,
- or a vessel flying the flag of another Contracting Party and likely to be fishing in breach of ICCAT conservation measures,
- or a vessel flying the flag of a non-Contracting Party, entity or fishing entity and likely to be fishing in breach of ICCAT conservation measures.

2. The observation shall be transcribed onto a standard observation form and shall if possible give all the information for which that form provides. It may be accompanied by photographs of the vessel.

3. Observation forms shall be sent without delay to the competent authority of the observer's Member State, which shall immediately transmit them to the Commission, which shall inform the flag country of the vessel observed. The Commission shall immediately transmit observation forms to the ICCAT Executive Secretariat.

4. A Member State receiving observations on the activity of a vessel flying its flag from the competent authority of a Contracting Party shall immediately notify these and all relevant information to the Commission, which shall notify this information in due time to the Executive Secretariat for examination by the Compliance Committee.

5. Masters of Community fishing vessels shall transmit to their authority any information on vessels assumed to be fishing for bigeye tuna in the Convention area that are not on the list drawn up by the ICCAT Executive Secretariat. Member States shall notify these observations as soon as possible to the Commission, which shall inform the ICCAT Executive Secretariat.

6. Detailed rules for the application of this Article on the layout and the requirements of the observation form referred to in paragraph 2 shall be adopted in accordance with the procedure referred to in Article 24(2).

Article 9

Annual report

1. Before 15 June each year Member States shall send the Commission a national report, using the layout adopted by ICCAT and including (a) information on implementation of the satellite surveillance system and (b) an 'ICCAT declaration table' for each fishery accompanied by comments, *inter alia* on breaches of the tolerance margins set by ICCAT for the minimum sizes of certain species and the action taken or to be taken. Member States shall also say how sport fishing for fish of the species listed in Annex I is regulated and give details of any transshipment operations involving their vessels during the previous year.

2. Detailed rules for the application of this Article shall be adopted in accordance with the procedure referred to in Article 24(2).

Section 2

Port inspection procedures

Article 10

General

1. Member States shall assign to inspection duties at their ports inspectors responsible for the surveillance and inspection of transshipment and landing of the species listed in Annex I.
2. Member States shall ensure that inspection is non-discriminatory and in line with ICCAT port inspection arrangements.
3. The port State may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.

Article 11

Inspectors

1. Member States shall issue a special identification document to each ICCAT inspector which he must carry and present before making an inspection. The particulars of the card shall be determined in accordance with the procedure referred to in Article 24(2). Member States shall notify a list of their inspectors to the Commission for transmission to the ICCAT Executive Secretariat.
2. Member States shall ensure that ICCAT inspectors discharge their tasks in conformity with the rules laid down in the ICCAT port inspection arrangements. Inspectors shall remain under the operational control of their competent authority and be responsible to it for their acts.

Article 12

Inspection procedures

1. Member States shall ensure that their ICCAT inspectors:
 - in making their inspections cause minimum disturbance to the vessel's activities and cause no deterioration in fish quality,
 - draw up an inspection report in line with rules laid down in accordance with the procedure referred to in Article 24(2) and transmit it to their authority.
2. Inspectors have the ability to examine all zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and any documentation thought to be needed to check compliance with the conservation measures adopted by ICCAT, including the log book and the loading papers in the case of mother ships and carriers.
3. Inspectors shall sign their report in the presence of the master, who shall have the right to add or cause to be added any information that he considers relevant and sign it. The

inspector shall indicate in the log book that an inspection has been made.

Article 13

Master's obligations during inspection

Masters of Community vessels shall:

- (a) raise no objection to inspections in national or foreign ports by authorised inspectors, not try to intimidate them or incommode them in the course of their work and ensure their safety;
- (b) cooperate in inspection of the vessel performed in accordance with the procedures laid down in this Regulation and lend their assistance thereto;
- (c) afford inspectors the means of examining the zones, decks and chambers of the vessel, catches (processed or not), gear, equipment and all documents, including fishing logs and loading papers.

Article 14

Procedure in event of infringement

1. If an ICCAT inspector has serious reason to believe that a fishing vessel has engaged in an activity breaching the conservation measures adopted by ICCAT, he shall:
 - (a) note the infringement in the inspection report;
 - (b) take all necessary action to ensure safekeeping of the evidence for it;
 - (c) immediately send the inspection report to his authority.
2. The inspecting Member State shall immediately send the original inspection report to the Commission, which shall immediately transmit it, with a copy to the ICCAT Executive Secretariat, to the competent authority of the flag country of the inspected vessel.

Article 15

Follow-up of infringements

1. If a Member State is notified by an ICCAT Contracting Party or another Member State of an infringement by a vessel flying its flag, it shall take speedy action in line with its national legislation to obtain and examine the evidence, carry out any necessary investigation and if possible inspect the vessel.
2. Each Member State shall name the authority mandated to receive evidence of infringements and notify its name, address and other contact particulars to the Commission.
3. The flag Member State shall notify the Commission, which shall in turn notify the ICCAT Executive Secretariat, of the penalties imposed and measures taken with regard to the vessel concerned.

*Article 16***Treatment of inspection reports**

1. Each Member State shall attach the same value to reports made by ICCAT inspectors of other Member States and other Contracting Parties as to those made by its own inspectors.

2. Each Member State shall cooperate with the Contracting Parties concerned by facilitating, in line with its national legislation, legal or other proceedings arising from a report submitted by an ICCAT inspector under the ICCAT port inspection arrangements.

*Section 3***Stateless and non-contracting parties' vessels***Article 17***Transshipment**

1. Community fishing vessels may not receive transshipments of fish of the species listed in Annex I from stateless vessels or those flying the flag of a non-Contracting Party that does not have the status of a cooperating party, entity or fishing entity.

2. The list of cooperating parties, entities and fishing entities adopted by ICCAT is published by the Commission in the *Official Journal of the European Communities* C series).

3. Before 15 September each year Member States shall send the Commission particulars of transshipments of fish of the species listed in Annex I made during the previous year between vessels flying their flag and vessels flying the flag of a non-Contracting Party enjoying the status of cooperating party, entity or fishing entity. The Commission shall forward this information to the ICCAT Executive Secretariat.

*Article 18***Control measures for fishing activities**

1. The competent authority of a Member State that has boarded and/or inspected a stateless vessel shall immediately inform the Commission of the inspection findings and of any action it has taken under international law. The Commission shall send this information as soon as possible to the ICCAT Executive Secretariat.

2. Member States shall ensure that every stateless or non-Contracting Party vessel that enters a designated port within the meaning of Article 28(e)(2) of Regulation (EEC) No 2847/93 is inspected by their competent authority. Until inspection is completed the vessel's catches may not be landed or transhipped.

3. If inspection reveals that the vessel has on board resources covered by an ICCAT recommendation in force the Member State shall prohibit their landing or transhipment.

4. The prohibition referred to in paragraph 3 shall not be issued if the master of the inspected vessel or his representative demonstrates to the competent authority's satisfaction that:

- (a) the catches on board were taken outside the zone; or
- (b) the catches on board were taken without infringing the conservation measures in force.

*Article 19***Member States' nationals**

Each Member State shall try, as its national legislation permits, to deter its nationals from participating in activities of non-Contracting Parties that conflict with implementation of the ICCAT conservation and management measures.

CHAPTER II

CONTROL AND SURVEILLANCE MEASURES APPLICABLE IN ZONE 2*Article 20***General**

Each Member State shall take the action necessary in order that vessels flying its flag respect the measures applicable in the zone.

*Article 21***Observations**

1. Masters of Community vessels authorised to fish in the zone shall transmit to their national authority their observations of non-Contracting Parties' vessels presumed or known to be fishing for bigeye, yellowfin or skipjack tuna in the zone.

2. Member States shall send this information as soon as possible to the Commission, which shall forward it to the IOCT.

CHAPTER III

CONTROL AND SURVEILLANCE MEASURES APPLICABLE IN ZONE 3*Article 22***General**

Each Member State shall take the action necessary in order that vessels flying its flag respect the IATTC measures transposed into Community law and the International Dolphin Conservation Programme Agreement measures applicable.

CHAPTER IV

FINAL PROVISIONS*Article 23*

The measures necessary for the implementation of Article 4(2), Article 5(3), Article 6(2), Article 8(6) and Article 9(2) 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 Committee established by Article 17 of Council 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 laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.
3. The Committee shall adopt its rules of procedure.

Article 25

1. Regulation (EC) No 1351/1999 is hereby repealed.
2. Article 22(1) of Regulation (EC) No 2742/1999 is hereby repealed.
3. References made to the repealed Regulation (EC) No 1351/1999 shall be construed as being made to this Regulation, and should be read in accordance with the correlation table in Annex III.

Article 26

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

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

Done at Brussels, 27 September 2001.

For the Council
The President
R. LANDUYT

ANNEX I

LIST OF SPECIES REFERRED TO IN THIS REGULATION

- Albacore: *Thunnus alalunga*
 - Bluefin tuna: *Thunnus thynnus*
 - Bigeye tuna: *Thunnus obesus*
 - Skipjack: *Katsuwonus pelamis*
 - Atlantic bonito: *Sarda sarda*
 - Yellowfin tuna: *Thunnus albacares*
 - Blackfin tuna: *Thunnus atlanticus*
 - Little tuna: *Euthynnus* spp.
 - Southern bluefin tuna: *Thunnus maccoyii*
 - Frigate tuna: *Auxis* spp.
 - Oceanic sea bream: *Bramidae*
 - Marlin: *Tetrapturus* spp.; *Makaira* spp.
 - Sailfish: *Istiophorus* spp.
 - Swordfish: *Xiphias gladius*
 - Sauries: *Scomberesox* spp.; *Cololabis* spp
 - Dolphinfin; common dolphinfin: *Coryphaena hippurus*; *Coryphaena equiselis*.
 - Shark: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Rhincodon typus*; *Carcharhinidae*; *Sphyrnidae*; *Isuridae*; *Lamnidae*
 - Cetaceans (whales and porpoises): *Physeteridae*; *Belaenopteridae*; *Balenidae*; *Eschrichtiidae*; *Monodontidae*; *Ziphiidae*; *Delphinidae*.
-

ANNEX II

LIST OF SPECIES SUBJECT TO COMMUNICATION TO ICCAT

Latin name	English name
<i>Thunnus thynnus</i>	Bluefin tuna
<i>Thunnus maccoyii</i>	Southern bluefin tuna
<i>Thunnus albacares</i>	Yellowfin tuna
<i>Thunnus alalunga</i>	Albacore
<i>Thunnus obesus</i>	Bigeye tuna
<i>Thunnus atlanticus</i>	Blackfin tuna
<i>Euthynnus alletteratus</i>	Atlantic black skipjack
<i>Katsuwonus pelamis</i>	Skipjack
<i>Sarda sarda</i>	Atlantic bonito
<i>Auxis thazard</i>	Frigate tuna
<i>Orcynopsis unicolor</i>	Plain bonito
<i>Acanthocybium solandri</i>	Wahoo
<i>Scomberomorus maculatus</i>	Spotted Spanish mackerel
<i>Scomberomorus cavalla</i>	King mackerel
<i>Istiophorus albicans</i>	Atlantic sailfish
<i>Makaira indica</i>	Black marlin
<i>Makaira nigricans</i>	Atlantic blue marlin
<i>Tetrapturus albidus</i>	Atlantic white marlin
<i>Xiphias gladius</i>	Swordfish
<i>Tetrapturus pfluegeri</i>	Spearfish
<i>Scomberomorus tritor</i>	West African Spanish mackerel
<i>Scomberomorus regalis</i>	Cero
<i>Auxis rochei</i>	Bullet tuna
<i>Scomberomorus brasiliensis</i>	Serra Spanish mackerel

ANNEX III

CORRELATION TABLE

Regulation (EC) No 1351/1999	This Regulation
Articles 1, 2, 3	Article 8
Article 4	Article 18
Article 5	Article 17

COMMISSION REGULATION (EC) No 1937/2001
of 2 October 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 3 October 2001.

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

Done at Brussels, 2 October 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 2 October 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
0707 00 05	052	94,9
	999	94,9
0709 90 70	052	107,1
	999	107,1
0805 30 10	052	63,6
	388	68,0
	512	46,9
	524	50,0
	528	57,5
	999	57,2
0806 10 10	052	77,3
	400	183,5
	624	110,0
	999	123,6
0808 10 20, 0808 10 50, 0808 10 90	060	38,5
	388	61,5
	400	59,6
	528	49,7
	720	65,8
	800	188,1
	804	79,8
	999	77,6
0808 20 50	052	104,5
	999	104,5

⁽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 1938/2001
of 2 October 2001**

**on the opening of a standing invitation to tender for the resale on the Community internal market
of some 7 850 tonnes of rice held by the Spanish intervention agency for use in animal feed**

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 8(b) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 75/91 of 11 January 1991 laying down the procedures and conditions for the disposal of paddy rice held by intervention agencies ⁽³⁾ provides among other things that rice held by intervention agencies is to be sold by tendering procedure at prices that allow market disturbances to be avoided.
- (2) Spain has intervention stocks of paddy rice from harvests prior to 1998 whose quality is in danger of deteriorating as a result of prolonged storage.
- (3) Disposing of this rice on traditional markets inside the Community would inevitably trigger off, in the present production situation and when concessions for rice imports are being granted under international agreements, the placing of an equivalent quantity in intervention, which must be avoided.
- (4) This rice could be disposed of in the animal feed sector, on special conditions.
- (5) The undertakings given by tenderers are regarded as primary requirements within the meaning of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽⁴⁾, as last amended by Regulation (EC) No 1932/1999 ⁽⁵⁾.
- (6) In order to ensure that the rice is used for the purpose specified, provision should be made for special monitoring and for the successful tenderer to provide a security, the conditions for the release of which should be laid down.

(7) Commission Regulation (EEC) No 3002/92 ⁽⁶⁾, as last amended by Regulation (EC) No 770/96 ⁽⁷⁾, lays down common detailed rules for verifying the use of products from intervention. Procedures should also be laid down to ensure the traceability of the products used for animal feed.

(8) 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 Spanish intervention agency shall offer for sale by standing invitation to tender on the Community internal market some 7 850 tonnes of rice as referred to in Annex I from the 1997 harvest, for use in preparations of a kind used in animal feeding (products falling within CN code 2309).

Article 2

1. The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 75/91.

However, notwithstanding Article 5 of that Regulation:

- (a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;
 - (b) the minimum sale price shall be set at a level that does not disturb the market for cereals within the Community.
2. Tenderers shall give an undertaking:
- (a) to use in animal feed, within three months of the date of the award of the contract, rice for which they are declared the successful tenderer, save in cases of *force majeure*;
 - (b) to carry out immediately, under the supervision of the competent authorities at a place determined by agreement with them, the treatments described in Annex II, designed to ensure verification of the use made of the rice and the traceability of the products;
 - (c) to bear the costs of the processing referred to in Annex II;
 - (d) to keep stock records so that checks may be made that they have respected their undertakings.

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 9, 12.1.1991, p. 15.

⁽⁴⁾ OJ L 205, 3.8.1985, p. 5.

⁽⁵⁾ OJ L 240, 10.9.1999, p. 11.

⁽⁶⁾ OJ L 301, 17.10.1992, p. 17.

⁽⁷⁾ OJ L 104, 27.4.1996, p. 13.

Article 3

1. The Spanish intervention agency shall publish, at least eight days before the final day of the first period for the submission of tenders, a notice of invitation to tender.

The notice, and any changes to it, shall be forwarded to the Commission before publication.

2. The notice of invitation to tender shall contain:

- (a) the additional clauses and conditions of sale compatible with this Regulation;
- (b) the places of storage and the name and address of the storer;
- (c) particulars of the competent authorities responsible for monitoring the operation;
- (d) the main physical and technological characteristics of the various lots established upon buying in by the intervention agency or during checks carried out subsequently.

3. The Spanish intervention agency shall take all additional steps necessary to enable the parties concerned to assess the quality of the rice put up for sale before submitting their tenders.

Article 4

1. Tenders shall be valid only if they are accompanied by:

- (a) evidence that the tenderer has lodged a security of EUR 15 per tonne;
- (b) a written undertaking by the tenderer that the rice for which he is the successful tenderer will be processed into compound feed at his premises within three months of the date of the award of the contract;
- (c) evidence that the tenderer is an animal feed manufacturer;
- (d) a written undertaking by the tenderer to lodge a security for an amount equivalent to the difference between the intervention price for paddy rice applicable on the tender date plus EUR 15 and the price tendered per tonne of rice not later than two working days after the date of receipt of the notice of award of contract.

2. Once submitted, a tender may not be altered or withdrawn.

Article 5

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 17 October 2001 at 12.00 (Brussels time).

2. The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Wednesday at 12.00 (Brussels time), with the exception of Wednesday, 31 October 2001.

3. The closing date for the submission of tenders for the last partial invitation to tender shall be 19 December 2001 at 12.00 (Brussels time).

Tenders must be lodged with the Spanish intervention agency:

Fondo Español de Garantía Agraria FEGA
C/Beneficencia 8
E-28004 Madrid
(Telex 23427 FEGA E;
Fax: (34) 915 21 98 32, (34) 915 22 43 87).

Article 6

Not later than 10.00 (Brussels time) on the Thursday following the expiry of the deadline for the submission of tenders, the Spanish intervention agency shall notify the Commission of the tenders received. The information shall be forwarded using the form given in Annex III and the fax and telex numbers shown in Annex IV.

Details of inadmissible tenders shall be notified separately. The reasons for their rejection shall also be given.

Article 7

The Commission shall set the minimum sale price or decide not to accept the tenders. The decision shall be taken in accordance with the procedure laid down in Article 22 of Commission Regulation (EC) No 3072/95.

Article 8

The intervention agency shall immediately notify all tenderers of the outcome of their participation in the tendering procedure.

Within three working days of the notification referred to in the first paragraph, it shall send notices of award of contract to successful tenderers by registered letter or written telecommunication.

Article 9

Successful tenderers shall pay for the rice before it is removed, and at the latest within one month of the date of dispatch of the notice referred to in the second paragraph of Article 8. The risks and costs of storing rice that is not removed within the payment period shall be borne by the successful tenderers.

Following the expiry of the payment period, rice for which a contract is awarded and which is not removed shall be regarded for all purposes as having been removed from storage.

Where a successful tenderer fails to pay for the rice within the period referred to in the first paragraph, the contract shall be terminated by the intervention agency, where appropriate in respect of the quantity not paid for.

Article 10

1. The security referred to in Article 4(1)(a) shall be released in respect of quantities for which:

- (a) no award is made;
- (b) payment of the sale price is made within the period set and the security referred to in Article 4(1)(d) has been lodged.

2. The security referred to in Article 4(1)(d) shall be released in proportion to the quantities used only if the intervention agency has carried out all the checks necessary to ensure that the product is used in accordance with the provisions laid down in this Regulation.

However, if proof of the treatments referred to in Annex II is provided and not less than 95 % of the fine broken grains and/or fragments obtained are used in feed, the security shall be released in full.

3. Proof that the rice has been used in feed as referred to in this Regulation shall be provided in accordance with Regulation (EEC) No 3002/92.

Article 11

The obligation set out in Article 2(2) shall be regarded as a primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 12

In addition to the particulars provided for in Regulation (EEC) No 3002/92, box 104 of control copy T5 shall bear one or more of the following entries:

- Destinos a la transformación [Reglamento (CE) n° 1938/2001]
- Til forarbejdning (forordning (EF) nr. 1938/2001)
- Zur Verarbeitung bestimmt (Verordnung (EG) Nr. 1938/2001)
- Προορίζονται για μεταποίηση [Κανονισμός (ΕΚ) αριθ. 1938/2001]
- For processing (Regulation (EC) No 1938/2001)
- Destinées à la transformation [règlement (CE) n° 1938/2001]
- Destinate alla trasformazione [regolamento (CE) n. 1938/2001]
- Bestemd om te worden verwerkt (Verordening (EG) nr. 1938/2001)
- Para transformação [Regulamento (CE) n.º 1938/2001]
- Tarkoitettu jalostukseen (Asetus (EY) N:o 1938/2001)
- För bearbetning (förordning (EG) nr 1938/2001).

Article 13

This Regulation shall enter into force on the third 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, 2 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Zuera-Zaragoza	7 850

ANNEX II

Treatments provided for in Article 2(2)(b)

At the time of being taken over, the rice must undergo the following treatments:

1. The paddy rice must be husked and broken in such a way as to produce not less than 77 %, by weight of paddy rice, of fine broken grains and/or fragments of husked rice as defined in the Annex to Regulation (EC) No 3073/95.
2. The product obtained after processing (not including the husk) must be marked using the colourant E131 patent blue V or E142 acid brilliant green BS (lissamine green) to enable it to be identified.

ANNEX III

Standing invitation to tender for the resale of 7 850 tonnes of rice by the Spanish intervention agency for use in animal feed

(Regulation (EC) No 1938/2001)

1	2	3	4
Serial number of tenderers	Lot No	Quantity	Tender price (EUR/t)
1			
2			
3			
etc.			

ANNEX IV

The form given in Annex III is to be sent to the DG for Agriculture in Brussels:

— by fax:	(32-2) 296 60 21 (32-2) 295 25 15
— by telex:	22037 AGREC B 22070 AGREC B (Greek characters)

COMMISSION REGULATION (EC) No 1939/2001**of 2 October 2001****on the opening of a standing invitation to tender for the resale on the Community internal market of some 3 200 tonnes of rice held by the Greek intervention agency for use in animal feed**

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 8(b) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 75/91 of 11 January 1991 laying down the procedures and conditions for the disposal of paddy rice held by intervention agencies ⁽³⁾ provides among other things that rice held by intervention agencies is to be sold by tendering procedure at prices that allow market disturbances to be avoided.
- (2) Greece has intervention stocks of paddy rice from harvests prior to 1997 whose quality is in danger of deteriorating as a result of prolonged storage.
- (3) Disposing of this rice on traditional markets inside the Community would inevitably trigger off, in the present production situation and when concessions for rice imports are being granted under international agreements, the placing of an equivalent quantity in intervention, which must be avoided.
- (4) This rice could be disposed of in the animal feed sector, on special conditions.
- (5) The undertakings given by tenderers are regarded as primary requirements within the meaning of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽⁴⁾.
- (6) In order to ensure that the rice is used for the purpose specified, provision should be made for special monitoring and for the successful tenderer to provide a security, the conditions for the release of which should be laid down.

(7) Commission Regulation (EEC) No 3002/92 ⁽⁵⁾, as last amended by Regulation (EC) No 770/96 ⁽⁶⁾, lays down common detailed rules for verifying the use of products from intervention. Procedures should also be laid down to ensure the traceability of the products used for animal feed.

(8) The Management Committee for Cereals has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

The Greek intervention agency shall offer for sale by standing invitation to tender on the Community internal market some 3 200 tonnes of rice as referred to in Annex I from the 1996 harvest, for use in preparations of a kind used in animal feeding (products falling within CN code 2309).

Article 2

1. The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 75/91.

However, notwithstanding Article 5 of that Regulation:

- (a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;
- (b) the minimum sale price shall be set at a level that does not disturb the market for cereals within the Community.

2. Tenderers shall give an undertaking:

- (a) to use in animal feed, within three months of the date of the award of the contract, rice for which they are declared the successful tenderer, save in cases of *force majeure*;
- (b) to carry out immediately, under the supervision of the competent authorities at a place determined by agreement with them, the treatments described in Annex II, designed to ensure verification of the use made of the rice and the traceability of the products,
- (c) to bear the costs of the processing referred to in Annex II;
- (d) to keep stock records so that checks may be made that they have respected their undertakings.

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 9, 12.1.1991, p. 15.

⁽⁴⁾ OJ L 205, 3.8.1985, p. 5.

⁽⁵⁾ OJ L 301, 17.10.1992, p. 17.

⁽⁶⁾ OJ L 104, 27.4.1996, p. 13.

Article 3

1. The Greek intervention agency shall publish, at least eight days before the final day of the first period for the submission of tenders, a notice of invitation to tender.

The notice, and any changes to it, shall be forwarded to the Commission before publication.

2. The notice of invitation to tender shall contain:

- (a) the additional clauses and conditions of sale compatible with this Regulation;
- (b) the places of storage and the name and address of the storer;
- (c) particulars of the competent authorities responsible for monitoring the operation;
- (d) the main physical and technological characteristics of the various lots established upon buying in by the intervention agency or during checks carried out subsequently.

3. The Greek intervention agency shall take all additional steps necessary to enable the parties concerned to assess the quality of the rice put up for sale before submitting their tenders.

Article 4

1. Tenders shall be valid only if they are accompanied by:

- (a) evidence that the tenderer has lodged a security of EUR 15 per tonne;
- (b) a written undertaking by the tenderer that the rice for which he is the successful tenderer will be processed into compound feed at his premises within three months of the date of the award of the contract;
- (c) evidence that the tenderer is an animal feed manufacturer;
- (d) a written undertaking by the tenderer to lodge a security for an amount equivalent to the difference between the intervention price for paddy rice applicable on the tender date plus EUR 15 and the price tendered per tonne of rice not later than two working days after the date of receipt of the notice of award of contract.

2. Once submitted, a tender may not be altered or withdrawn.

Article 5

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 17 October 2001 at 12.00 (Brussels time).

2. The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Wednesday at 12.00 (Brussels time), with the exception of Wednesday, 31 October 2001.

3. The closing date for the submission of tenders for the last partial invitation to tender shall be 19 December 2001 at 12.00 (Brussels time).

Tenders must be lodged with the Greek intervention agency:

DIDAGEP

Directorate-General for the Administration of Purchases of Agricultural Produce
Acharnon Street 241

GR-10466 Athens

(Tel: (30-1) 212 47 87

Fax: (30-1) 862 93 73).

Article 6

Not later than 10.00 (Brussels time) on the Thursday following the expiry of the deadline for the submission of tenders, the Greek intervention agency shall notify the Commission of the tenders received. The information shall be forwarded using the form given in Annex III and the fax and telex numbers shown in Annex IV.

Details of inadmissible tenders shall be notified separately. The reasons for their rejection shall also be given.

Article 7

The Commission shall set the minimum sale price or decide not to accept the tenders. The decision shall be taken in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95.

Article 8

The intervention agency shall immediately notify all tenderers of the outcome of their participation in the tendering procedure.

Within three working days of the notification referred to in the first paragraph, it shall send notices of award of contract to successful tenderers by registered letter or written telecommunication.

Article 9

Successful tenderers shall pay for the rice before it is removed, and at the latest within one month of the date of dispatch of the notice referred to in the second paragraph of Article 8. The risks and costs of storing rice that is not removed within the payment period shall be borne by the successful tenderers.

Following the expiry of the payment period, rice for which a contract is awarded and which is not removed shall be regarded for all purposes as having been removed from storage.

Where a successful tenderer fails to pay for the rice within the period referred to in the first paragraph, the contract shall be terminated by the intervention agency, where appropriate in respect of the quantity not paid for.

Article 10

1. The security referred to in Article 4(1)(a) shall be released in respect of quantities for which:

- (a) no award is made;
- (b) payment of the sale price is made within the period set and the security referred to in Article 4(1)(d) has been lodged.

2. The security referred to in Article 4(1)(d) shall be released in proportion to the quantities used only if the intervention agency has carried out all the checks necessary to ensure that the product is used in accordance with the provisions laid down in this Regulation.

However, if proof of the treatments referred to in Annex II is provided and not less than 95 % of the fine broken grains and/or fragments obtained are used in feed, the security shall be released in full.

3. Proof that the rice has been used in feed as referred to in this Regulation shall be provided in accordance with Regulation (EEC) No 3002/92.

Article 11

The obligation set out in Article 2(2) shall be regarded as a primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 12

In addition to the particulars provided for in Regulation (EEC) No 3002/92, box 104 of control copy T5 shall bear one or more of the following entries:

- Destinos a la transformación [Reglamento (CE) n° 1939/2001]
- Til forarbejdning (forordning (EF) nr. 1939/2001)
- Zur Verarbeitung bestimmt (Verordnung (EG) Nr. 1939/2001)
- Προορίζονται για μεταποίηση [Κανονισμός (ΕΚ) αριθ. 1939/2001]
- For processing (Regulation (EC) No 1939/2001)
- Destinées à la transformation [règlement (CE) n° 1939/2001]
- Destinate alla trasformazione [regolamento (CE) n. 1939/2001]
- Bestemd om te worden verwerkt (Verordening (EG) nr. 1939/2001)
- Para transformação [Regulamento (CE) n.º 1939/2001]
- Tarkoitettu jalostukseen (Asetus (EY) N:o 1939/2001)
- För bearbetning (förordning (EG) nr 1939/2001).

Article 13

This Regulation shall enter into force on the third 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, 2 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Yannitsa	3 189,67

ANNEX II

Treatments provided for in Article 2(2)(b)

At the time of being taken over, the rice must undergo the following treatments:

1. The paddy rice must be husked and broken in such a way as to produce not less than 77 %, by weight of paddy rice, of fine broken grains and/or fragments of husked rice as defined in the Annex to Regulation (EC) No 3073/95.
2. The product obtained after processing (not including the husk) must be marked using the colourant E131 patent blue V or E142 acid brilliant green BS (lissamine green) to enable it to be identified.

ANNEX III

Standing invitation to tender for the resale of 3 200 tonnes of rice by the Greek intervention agency for use in animal feed

(Regulation (EC) No 1939/2001)

1	2	3	4
Serial number of tenderers	Lot No	Quantity	Tender price (EUR/t)
1			
2			
3			
etc.			

ANNEX IV

The form given in Annex III is to be sent to the DG for Agriculture in Brussels:

— by fax:	(32-2) 296 60 21 (32-2) 295 25 15
— by telex:	22037 AGREC B 22070 AGREC B (Greek characters)

**COMMISSION REGULATION (EC) No 1940/2001
of 2 October 2001**

**on the opening of a standing invitation to tender for the resale on the Community internal market
of some 39 000 tonnes of rice held by the Italian intervention agency for use in animal feed**

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 8(b) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 75/91 of 11 January 1991 laying down the procedures and conditions for the disposal of paddy rice held by intervention agencies ⁽³⁾ provides among other things that rice held by intervention agencies is to be sold by tendering procedure at prices that allow market disturbances to be avoided.
- (2) Italy has intervention stocks of paddy rice from harvests earlier than 1999 whose quality is in danger of deteriorating as a result of prolonged storage.
- (3) Disposing of this rice on traditional markets inside the Community would inevitably trigger off, in the present production situation and when concessions for rice imports are being granted under international agreements, the placing of an equivalent quantity in intervention, which must be avoided.
- (4) This rice could be disposed of in the animal feed sector, on special conditions.
- (5) The undertakings given by tenderers are regarded as primary requirements within the meaning of Commission Regulation (EEC) No 2220/85 of 22 July 1985 laying down common detailed rules for the application of the system of securities for agricultural products ⁽⁴⁾, as last amended by Regulation (EC) No 1932/1999 ⁽⁵⁾.
- (6) In order to ensure that the rice is used for the purpose specified, provision should be made for special monitoring and for the successful tenderer to provide a security, the conditions for the release of which should be laid down.

(7) Commission Regulation (EEC) No 3002/92 ⁽⁶⁾, as last amended by Regulation (EC) No 770/96 ⁽⁷⁾, lays down common detailed rules for verifying the use of products from intervention. Procedures should also be laid down to ensure the traceability of the products used for animal feed.

(8) 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 Italian intervention agency shall offer for sale by standing invitation to tender on the Community internal market some 39 000 tonnes of rice as referred to in Annex I from the 1997 and 1998 harvests, for use in preparations of a kind used in animal feeding (products falling within CN code 2309).

Article 2

1. The sale provided for in Article 1 shall take place in accordance with Regulation (EEC) No 75/91.

However, notwithstanding Article 5 of that Regulation:

- (a) tenders shall be drawn up on the basis of the actual quality of the lot to which they apply;
- (b) the minimum sale price shall be set at a level that does not disturb the market for cereals within the Community.

2. Tenderers shall give an undertaking:

- (a) to use in animal feed, within three months of the date of the award of the contract, rice for which they are declared the successful tenderer, save in cases of *force majeure*;
- (b) to carry out immediately, under the supervision of the competent authorities at a place determined by agreement with them, the treatments described in Annex II, designed to ensure verification of the use made of the rice and the traceability of the products;
- (c) to bear the costs of the processing referred to in Annex II;
- (d) to keep stock records so that checks may be made that they have respected their undertakings.

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 9, 12.1.1991, p. 15.

⁽⁴⁾ OJ L 205, 3.8.1985, p. 5.

⁽⁵⁾ OJ L 240, 10.9.1999, p. 11.

⁽⁶⁾ OJ L 301, 17.10.1992, p. 17.

⁽⁷⁾ OJ L 104, 27.4.1996, p. 13.

Article 3

1. A notice of invitation to tender shall be published by the Italian intervention agency at least eight days before the final day of the first period for the submission of tenders, a notice of invitation to tender.

The notice, and any changes to it, shall be forwarded to the Commission before publication.

2. The notice of invitation to tender shall contain:

- (a) the additional clauses and conditions of sale compatible with this Regulation;
- (b) the places of storage and the name and address of the storer;
- (c) particulars of the competent authorities responsible for monitoring the operation;
- (d) the main physical and technological characteristics of the various lots established upon buying in by the intervention agency or during checks carried out subsequently.

3. The Italian intervention agency shall take all additional steps necessary to enable the parties concerned to assess the quality of the rice put up for sale before submitting their tenders.

Article 4

1. Tenders shall be valid only if they are accompanied by:

- (a) evidence that the tenderer has lodged a security of EUR 15 per tonne;
- (b) a written undertaking by the tenderer that the rice for which he is the successful tenderer will be processed into compound feed at his premises within three months of the date of the award of the contract;
- (c) evidence that the tenderer is an animal feed manufacturer;
- (d) a written undertaking by the tenderer to lodge a security for an amount equivalent to the difference between the intervention price for paddy rice applicable on the tender date plus EUR 15 and the price tendered per tonne of rice not later than two working days after the date of receipt of the notice of award of contract.

2. Once submitted, a tender may not be altered or withdrawn.

Article 5

1. The closing date for the submission of tenders for the first partial invitation to tender shall be 17 October 2001 at 12.00 (Brussels time).

2. The closing dates for the submission of tenders for subsequent partial invitations to tender shall be each Wednesday at 12.00 (Brussels time), with the exception of Wednesday, 31 October 2001.

3. The closing date for the submission of tenders for the last partial invitation to tender shall be 19 December 2001 at 12.00 (Brussels time).

Tenders must be lodged with the Italian intervention agency:

Ente Nazionale Risi
Piazza Pio XI 1
I-20123 Milan
(Tel. (39-02) 885 51 11
Fax. (39-02) 86 13 72).

Article 6

Not later than 10.00 (Brussels time) on the Thursday following the expiry of the deadline for the submission of tenders, the Italian intervention agency shall notify the Commission of the tenders received. The information shall be forwarded using the form given in Annex III and the fax and telex numbers shown in Annex IV.

Details of inadmissible tenders shall be notified separately. The reasons for their rejection shall also be given.

Article 7

The Commission shall set the minimum sale price or decide not to accept the tenders. The decision shall be taken in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95.

Article 8

The intervention agency shall immediately notify all tenderers of the outcome of their participation in the tendering procedure.

Within three working days of the notification referred to in the first paragraph, it shall send notices of award of contract to successful tenderers by registered letter or written telecommunication.

Article 9

Successful tenderers shall pay for the rice before it is removed, and at the latest within one month of the date of dispatch of the notice referred to in the second paragraph of Article 8. The risks and costs of storing rice that is not removed within the payment period shall be borne by the successful tenderers.

Following the expiry of the payment period, rice for which a contract is awarded and which is not removed shall be regarded for all purposes as having been removed from storage.

Where a successful tenderer fails to pay for the rice within the period referred to in the first paragraph, the contract shall be terminated by the intervention agency, where appropriate in respect of the quantity not paid for.

Article 10

1. The security referred to in Article 4(1)(a) shall be released in respect of quantities for which:

- (a) no award is made;
- (b) payment of the sale price is made within the period set and the security referred to in Article 4(1)(d) has been lodged.

2. The security referred to in Article 4(1)(d) shall be released in proportion to the quantities used only if the intervention agency has carried out all the checks necessary to ensure that the product is used in accordance with the provisions laid down in this Regulation.

However, if proof of the treatments referred to in Annex II is provided and not less than 95 % of the fine broken grains and/or fragments obtained are used in feed, the security shall be released in full.

3. Proof that the rice has been used in feed as referred to in this Regulation shall be provided in accordance with Regulation (EEC) No 3002/92.

Article 11

The obligation set out in Article 2(2) shall be regarded as a primary requirement within the meaning of Article 20 of Regulation (EEC) No 2220/85.

Article 12

In addition to the particulars provided for in Regulation (EEC) No 3002/92, box 104 of control copy T5 shall bear one or more of the following entries:

- Destnados a la transformación [Reglamento (CE) n° 1940/2001]
- Til forarbejdning (forordning (EF) nr. 1940/2001)
- Zur Verarbeitung bestimmt (Verordnung (EG) Nr. 1940/2001)
- Προορίζονται για μεταποίηση [Κανονισμός (ΕΚ) αριθ. 1940/2001]
- For processing (Regulation (EC) No 1940/2001)
- Destinées à la transformation [règlement (CE) n° 1940/2001]
- Destinate alla trasformazione [regolamento (CE) n. 1940/2001]
- Bestemd om te worden verwerkt (Verordening (EG) nr. 1940/2001)
- Para transformação [Regulamento (CE) n.º 1940/2001]
- Tarkoitettu jalostukseen (Asetus (EY) N:o 1940/2001)
- För bearbetning (förordning (EG) nr 1940/2001).

Article 13

This Regulation shall enter into force on the third 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, 2 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

(in tonnes)	
Place of storage	Quantity
Fontevivo (Parma)	21 527,016
Formigliana (Vercelli)	671,630
Casalvolone (Novara)	395,410
Villa Poma (Mantova)	527,660
Racconigi (Cuneo)	999,490
Casaleto Vaprio (Cremona)	6 054,900
Novara	284,660
La Spezia	629,230
Cambiano (Torino)	548,540
Sannazzaro (Pavia)	1 462,150
Camisano Vicentino (Vicenza)	6 252,850
Total	39 353,536

ANNEX II

Treatment provided for in Article 2(2)(b)

At the time of being taken over, the rice must undergo the following treatment:

1. The paddy rice must be husked and broken in such a way as to produce not less than 77 %, by weight of paddy rice, of fine broken grains and/or fragments of husked rice as defined in the Annex to Regulation (EC) No 3073/95.
2. The product obtained after processing (not including the husk) must be marked using the colourant E131 patent blue V or E142 acid brilliant green BS (lissamine green) to enable it to be identified.

ANNEX III

Standing invitation to tender for the resale of 39 000 tonnes of rice by the Italian intervention agency for use in animal feed

(Regulation (EC) No 1940/2001)

1	2	3	4
Serial number of tenderers	Lot No	Quantity	Tender price (EUR/t)
1			
2			
3			
etc.			

ANNEX IV

The form shown in Annex III is to be sent to the Agriculture DG in Brussels by:

— fax:	(32-2) 296 60 21 (32-2) 295 25 15
— telex:	22037 AGREC B 22070 AGREC B (Greek characters)

COMMISSION REGULATION (EC) No 1941/2001
of 2 October 2001
derogating from Regulation (EC) No 1372/95 laying down detailed rules for implementing the
system of export licences in the poultrymeat sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽¹⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽²⁾, and in particular Article 3(2) and Article 8(12) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1372/95 ⁽³⁾, as last amended by Regulation (EC) No 1383/2001 ⁽⁴⁾, lays down detailed rules for implementing the system of export licences in the poultrymeat sector.
- (2) The most recent amendment to that Regulation *inter alia* adjusted the product categories given in Annex I thereto, adding products in category 4 to category 3 in order to facilitate the use of licences for the various presentations of whole chickens and to permit the export of all types of chicken under the same licence.
- (3) The new, more flexible rules apply to licences applied for from 10 July 2001. However, the problems in trade with Russia following the outbreak of foot-and-mouth disease in several Member States have made the use of certain licences applied for before 10 July 2001 impos-

sible. The validity of those licences should therefore be extended and the new rules applied to them.

- (4) Since the licences concerned expire on 24 September 2001, this Regulation should apply from that date.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

1. Annex I to Regulation (EC) No 1372/95 shall also apply to export licences applied for before 10 July 2001 and still valid on that date.

2. Notwithstanding Article 2(1) of Regulation (EC) No 1372/95, at the request of the holder, the validity of the licences referred to in paragraph 1 shall be extended by 45 days.

Article 2

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

It shall apply from 24 September 2001.

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

Done at Brussels, 2 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 77.

⁽²⁾ OJ L 305, 19.12.1995, p. 49.

⁽³⁾ OJ L 133, 17.6.1995, p. 26.

⁽⁴⁾ OJ L 186, 7.7.2001, p. 26.

**COMMISSION REGULATION (EC) No 1942/2001
of 2 October 2001**

amending Regulation (EC) No 1608/2000 laying down transitional measures pending the definitive measures implementing Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine

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 last amended by Regulation (EC) No 2826/2000 ⁽²⁾, and in particular Article 80 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1608/2000 of 24 July 2000 laying down transitional measures pending the definitive measures implementing Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine ⁽³⁾, as last amended by Regulation (EC) No 1099/2001 ⁽⁴⁾, extends the applicability of certain Council provisions repealed by Article 81 of Regulation (EC) No 1493/1999 until 30 September 2001, pending the finalisation and adoption of measures implementing that Regulation. The finalisation and adoption of those implementing measures will not be completed by 30 September 2001. Certain Council provisions repealed by Article 81 of Regulation (EC) No 1493/1999 should accordingly be allowed to stand for a short additional period.
- (2) The extra transitional period does not affect the implementation of the bulk of the reform of the common organisation of the market in wine on the date set by the Council since the main points concerning the areas covered by those Regulations have been settled in Regulation (EC) No 1493/1999 or in the implementing regulations already adopted.

- (3) Less progress has been made in adopting implementing measures in certain areas than in others, for example regarding the description, designation, presentation and protection of certain wine products, because of the complexity and sensitivity of the issues the Council has to deal with and the direct impact of any measures adopted on operators in the Community and in non-member countries. Provision should therefore be made for an extra transitional period in order to allow for the final adoption of those measures.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1608/2000 is amended as follows:

1. in Article 1, the date '30 September 2001' is replaced by '30 November 2001';
2. in Article 3, the date '30 September 2001' is replaced by '30 November 2001';
3. in part B of the Annex, the date '30 September 2001' is replaced by '30 November 2001'.

Article 2

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

It shall apply from 1 October 2001.

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

Done at Brussels, 2 October 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 185, 25.7.2000, p. 24.

⁽⁴⁾ OJ L 150, 6.6.2001, p. 38.

COMMISSION REGULATION (EC) No 1943/2001**of 2 October 2001****fixing, for September 2001, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 1713/93 of 30 June 1993 establishing special detailed rules for applying the agricultural conversion rate in the sugar sector ⁽²⁾, as last amended by Regulation (EC) No 1642/1999 ⁽³⁾, and in particular Article 1(3) thereof,

Whereas:

- (1) Article 1 of Commission Regulation (EC) No 1878/2001 of 26 September 2001 laying down transitional measures in connection with the compensation system for storage costs for sugar ⁽⁴⁾, lays down that Article 8 of Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽⁵⁾, as amended by Commission Regulation (EC) No 1527/2000 ⁽⁶⁾, will continue to apply to sugars carried forward from the 2000/01 marketing year to the 2001/02 marketing year.
- (2) Article 1(2) of Regulation (EEC) No 1713/93 provides that the amount of the reimbursement of storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 is to be converted into national currency using a specific agricultural conversion rate equal to the average, calculated *pro rata temporis*, of the agricultural conversion

rates applicable during the month of storage. That specific rate must be fixed each month for the previous month. However, in the case of the reimbursable amounts applying from 1 January 1999, as a result of the introduction of the agrimonetary arrangements for the euro from that date, the fixing of the conversion rate should be limited to the specific exchange rates prevailing between the euro and the national currencies of the Member States that have not adopted the single currency.

- (3) Application of these provisions will lead to the fixing, for September 2001, of the specific exchange rate for the amount of the reimbursement of storage costs in the various national currencies as indicated in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The specific exchange rate to be used for converting the amount of the reimbursement of the storage costs referred to in Article 8 of Regulation (EC) No 2038/1999 into national currency for September 2001 shall be as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 3 October 2001.

It shall apply with effect from 1 September 2001.

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

Done at Brussels, 2 October 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 349, 24.12.1998, p. 1.

⁽²⁾ OJ L 159, 1.7.1993, p. 94.

⁽³⁾ OJ L 195, 28.7.1999, p. 3.

⁽⁴⁾ OJ L 258, 27.9.2001, p. 9.

⁽⁵⁾ OJ L 252, 25.9.1999, p. 1.

⁽⁶⁾ OJ L 175, 14.7.2000, p. 59.

ANNEX

to the Commission Regulation of 2 October 2001 fixing, for September 2001, the specific exchange rate for the amount of the reimbursement of storage costs in the sugar sector

Specific exchange rate		
EUR 1 =	7,44180	Danish kroner
	9,66404	Swedish kroner
	0,623583	Pound sterling

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 June 2001

on the aid scheme Regional Venture Capital Funds

(notified under document number C(2001) 1547)

(Only the English text is authentic)

(Text with EEA relevance)

(2001/712/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾, and having regard to their comments,

Whereas:

- (4) The Commission received comments from interested parties. It forwarded them to the United Kingdom, which was given the opportunity to react; its comments were received by letters dated 23 March 2001, registered on 26 March 2001, and 2 May 2001, registered the same day.

2. DETAILED DESCRIPTION OF THE SCHEME

- (5) The purpose of the scheme is to address a lack of provision of equity funding at regional level for investment in the 'equity gap' range of GBP 100 000 to GBP 500 000 (about EUR 160 640 to EUR 800 000) for small and medium-sized enterprises (SMEs).

1. PROCEDURE

- (1) By letter dated 26 May 2000, registered on 7 June 2000, the United Kingdom notified the Commission of the scheme 'Regional Venture Capital Funds'. It provided the Commission with further information by letter dated 21 August 2000, registered on 24 August 2000.
- (2) By letter dated 7 November 2000, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the scheme. The United Kingdom authorities answered by letter dated 29 November 2000, registered on 1 December 2000.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (6) According to the United Kingdom authorities, the existence of this 'equity gap' is due to the relatively high fixed costs for the remuneration of investment executives. This cost and the direct costs for due diligence and legal documentation do not fall proportionately with smaller sizes of investment and may rise. Consequently, there is an incentive for venture capital firms to pursue larger investments in more mature companies, so that costs can be reduced relative to investment value, enhancing returns and lowering management charges to investors. Investors therefore seek to identify investments where growth is likely to be so exceptional that the capital gain more than compensates for the very high early costs. Consequently, the United Kingdom authorities claim, private investors demonstrate a reluctance to invest in businesses that need equity-based financing in amounts below GBP 500 000 (about EUR 800 000) and are not in leading-edge technology sectors. It has also proved more difficult for SMEs far from London to obtain risk capital, which explains the regional approach.

⁽¹⁾ OJ C 27, 27.1.2001, p. 20.

⁽²⁾ See footnote 1.

- (7) The Regional Venture Capital Funds scheme is based on the Industrial Development Act 1982, Section 8.
- (8) The United Kingdom authorities are planning to establish at least one Regional Venture Capital Fund in each of the English regions.
- (9) The duration of the scheme is four years initially, while the life expectancy of the Regional Funds is 10 to 12 years.
- (10) The budget foreseen for the first three years is GBP 50 million (about EUR 80 million). It is expected that private investors will contribute up to five times that amount. The Government will be a minority investor in each fund.

The selection of a fund manager and the establishment of a fund

- (11) A person who wants to set up a fund in a particular region is called a sponsor. It can be a natural or legal person including a regional development agency. The sponsor will appoint a manager for the fund based on a Community-wide public tender⁽³⁾. All of those entering the competition will be expected to have authorisation from the Financial Services Authority and to operate according to British Venture Capital Association guidelines. The main criterion for appointment will be experience of, and success in, fund management in the 'equity gap' part of the market. A track record in the particular region may be one of the criteria that prospective sponsors may wish to take into account but lack of experience in a particular region will not, on its own, prevent a prospective fund manager from entering a competition in that region. The United Kingdom authorities believe that to insist on a proven track record in any region prior to appointment would restrict the open competition for the process of appointment of fund managers. However, prospective fund managers will have to demonstrate that they have strategies in place to ensure that their expertise could be transferred and utilised in the region.
- (12) The Regional Venture Capital Funds will be commercially managed by professional fund managers, regulated under the auspices of the Financial Services Authority, the Investment Management Regulatory Organisation and the British Venture Capital Association.
- (13) The appointed fund manager will proceed to tender for private investors for the fund. The sponsor, the fund manager and prospective private investors negotiate the terms of the private sector investment. The next step is a public tender, in which the sponsors in England submit to the State the bids they have agreed with their investors. One of the selection criteria in the tender procedure will be the extent of the subordination of State returns that potential investors request. Sponsors have to explain in their bids why they believe that the degree and type of subordination they propose is the minimum necessary to attract private investors.

⁽³⁾ Those prospective sponsors for the creation of a fund who are already authorised fund managers will not be required to undertake a competitive process to appoint themselves.

- (14) The winning bids are selected by an Independent Appraisal Board, which is a subcommittee of the newly created Small Business Investment Taskforce (SBIT). It will consist of members from venture capital academics, experienced institutional investors, financial institutions, the Regional Development Agencies and venture capitalists. The final decision to make a commitment to invest Government money in any fund will remain with the State. In practice, the decision to commit to invest will generally follow the advice of the Board.

The investments

- (15) All investments will be equity-based, i.e. take the form of ordinary shares, preference shares or cumulative preference shares, etc. In principle, the maximum amount that may be invested in any one company is GBP 500 000 (about EUR 800 000) (see also point 5 second indent below).
- (16) The Regional Funds may only invest in small and medium-sized enterprises that fulfil the Community definition⁽⁴⁾ and are not in difficulty. Furthermore, the funds may not invest in SMEs that do not meet legal, moral or ethical standards, nor in companies active in the production, processing or marketing of products listed in Annex I of the Treaty.
- (17) A rough estimate is that about 300 SMEs will be able to benefit from investment each year. The funds may not invest in certain sectors⁽⁵⁾ considered to be low-risk and not requesting public stimulation.

The return on investments

- (18) The fund managers will invest on commercial terms. It is expected that the internal rate of return will be at least 12 %, which the United Kingdom authorities claim would be in line with data currently available on investments in this area. The State will seek a commercial return on its investment, although this return may be

⁽⁴⁾ Commission recommendation of 3 April 1996, concerning the definition of small and medium-sized enterprises (OJ L 107, 30.4.1996, p. 4).

⁽⁵⁾ Dealing in land, commodities futures, shares, securities or other financial instruments; dealing in goods (other than in normal wholesale or retail trades); banking, insurance, money lending, debt factoring, hire-purchase financing and other financial activities; leasing or letting assets on hire, except in the case of certain ship-chartering activities; providing legal or accountancy services; property development; farming, forestry or market gardening.

subordinated to that of private investors at the minimum level required in order to stimulate the creation of any fund. The type of subordination will depend on the individual bids brought forward in the tender, and may include State guarantees to other investors.

- (19) The Regional Funds will take the form of limited partnerships. Limited-partnership agreements normally contain a clause concerning carried interest, setting a profitability 'hurdle' which the manager has to exceed in order to get an extra bonus. This clause will be negotiated from the sponsor's and investors' point of view, so that the hurdle rate is attainable, yet stretching, thus giving an incentive to the fund managers to reach and exceed their hurdles.

Commitments

- (20) The United Kingdom authorities have undertaken to apply the Commission notice on the application of Articles 87 and 88 on State aid in the form of guarantees ⁽⁹⁾, should a regional fund choose a State guarantee as a form of subordination of the State return.
- (21) The United Kingdom authorities have set a formal limit of 50 % Government investment in each regional venture capital fund.
- (22) The United Kingdom authorities have undertaken to ensure that the Regional Venture Capital Funds will not invest in companies active in sensitive sectors for which special Community rules governing State aid have been laid down. The Regional Funds will not invest in companies active in the production, processing or marketing of products listed in Annex I of the EC Treaty.

3. GROUNDS FOR INITIATING THE PROCEDURE

Weak proof of market failure

- (23) The Commission expressed a general doubt concerning the incentive effect of the notified scheme. Among other things, the United Kingdom authorities stated in the notification that the British Venture Capital Association had 15 members in England who invested under GBP 250 000 (about EUR 400 000) and had an average investment size of GBP 500 000 or under (excluding technology specialists). The Commission therefore had doubts whether there was a market failure or not.

Possible presence of incompatible aid to the private investors

- (24) The State expects to have to subordinate its returns on investment in one way or another. These are not terms that are present in a purely commercial investment situation, so the Commission considered that the State would not be acting as a private investor in a market economy. As the financial markets are international, the Commission considered that the benefits granted to the private investors could distort competition and affect trade between Member States.
- (25) The scheme does not foresee a link between the aid provided to private investors and any expenditure that can be considered to constitute eligible costs. Moreover, although the development of SMEs and regional development are Community objectives, the Commission doubted whether the scheme really ensured that the aid was the minimum necessary to attain these objectives. The reason was that it appeared from the notification that the call for tenders for investors would be limited to England. Consequently, the Commission also doubted that any aid to the investors would be compatible with the State aid rules of the EC Treaty. A regional limit to the call for tenders could also have constituted an infringement of Article 43 of the EC Treaty on the freedom of establishment and/or Article 56 of the EC Treaty on the free movement of capital.

Possible presence of incompatible aid to the SMEs receiving investments

- (26) The SMEs in which the Regional Funds invest will receive equity capital that they would not have had access to otherwise, at least not if there is a true equity gap. The resources have partly been invested by the State and the private capital of each fund has been raised thanks to the State aid provided to the private investors. This could also imply that the capital might be provided on terms that would not be acceptable to a private investor, and that fund managers would not invest on commercial terms. Recipient SMEs will be able to strengthen their competitive position, which threatens to distort competition and can have an affect on intra-Community trade, since the beneficiaries can be active in international trade.
- (27) The scheme does not foresee an explicit commitment to link the equity-based investments to initial investments by the beneficiary companies. Therefore, it was neither in line with the Community guidelines on State aid to SMEs in force at the time, nor with the Community guidelines on national regional aid, and the Commission had doubts as to its compatibility with the EC Treaty.

⁽⁹⁾ OJ C 71, 11.3.2000, p. 14.

Possible presence of incompatible aid to the Regional Funds

- (28) The United Kingdom authorities stated in the notification that the British Venture Capital Association has 15 members in England who invest under GBP 250 000 (about EUR 400 000) and have an average investment size of GBP 500 000 or under (excluding technology specialists). These venture capitalists are active in the same segment as the Regional Funds, as are other venture capitalists in other Member States. Therefore, if the Regional Funds were to be seen as undertakings, the fact that they operate with the aid of public resources could distort competition on the venture capital market.
- (29) The compatibility problems of any aid to the Regional Funds would be the same as for the other potential aid recipients.

4. COMMENTS FROM INTERESTED PARTIES

- (30) The Commission received comments from 39 interested parties within the time limits specified in Article 6(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽⁷⁾. Of these, 37 were from the United Kingdom, and the other two from the Italian and German Governments. The comments from the United Kingdom were submitted by various regional authorities, venture capital companies, advisory bodies, a trade association and a university. There were also comments from three United Kingdom MPs and from two United Kingdom MEPs. Prospective sponsors of funds, fund managers and private investors and investee companies were represented.

On market failure

- (31) All interested parties who addressed the question of market failure agreed that there was one for amounts below GBP 500 000 (about EUR 800 000). There were also several mentions of an equity gap below GBP 1 million (about EUR 1,6 million), at least for sectors other than high technology. The gap was mainly due to the high costs of due diligence, and old data showing disproportionately high risks and low returns from this segment, so that there was a gap between perceived and real risk. At the same time successes in larger investments created a drive for even larger ones. Another remark was that the business angel network did not fill the gap.

- (32) Regarding the 15 members of the BVCA supposedly active in the equity gap segment, several interested parties stated that these venture capitalists may be registered as active in the segment, but there was no actual activity going on. One reason for this may be that the funds were already fully invested. However, it also appeared from the comments that although there may be some funds available, they were nowhere near satisfying market demand. It was also stated that although major United Kingdom venture capital companies may have regional offices, they serviced deals at the larger end of the market.
- (33) The London Development Agency quoted a BVCA report ⁽⁸⁾ finding that 'London is the main European centre for venture capital but that does not mean that London SMEs see the benefit of this. An equity gap exists in London up to GBP 500 000 and may extend beyond this given the greater cost pressures that tend to push London-based firms more rapidly towards larger investments.'

- (34) Finally, all interested parties claimed that there was an equity gap for small as well as for medium-sized enterprises, as the problem was not linked to the number of employees. One venture capital company proposed defining an eligible company as one that sought to raise less than GBP 500 000 (about EUR 800 000) a year. Several interested parties mentioned that a restriction to small companies would increase the risk of the fund and the private investors' requirements on return and, consequently, the need for subordination of the State's return.

On aid to the investors

- (35) Here the general opinion was that since there was no offer in the equity gap, i.e. in the high risk/low return quadrant of the market, there was no competition to distort, and so there was no aid to investors. At the same time several parties stressed that the possibility to invest had to be widely advertised in order to eliminate any discrimination between investors and to minimise the subordination needed. One party mentioned that even though the incentive might be granted to the investors, they were only a vehicle for passing the benefit on to the SMEs.
- (36) Another comment was that risk capital investments were usually a very small part of investors' portfolios, so that a slightly higher return from the regional venture capital funds would not have an impact on the overall performance of investors.

⁽⁷⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁸⁾ BVCA Report on Business Angel Investment Activity 1998/99.

On aid to the SMEs

- (37) The overall impression is that interested parties did not think that there was aid to the SMEs invested in, since the investments were made on commercial terms. The only element of aid acknowledged by interested parties was the very availability of the funds. As for the compatibility of any such aid, they referred to the fact that the recipients had to undertake some 'eligible' investments in order to grow.

On aid to the regional funds

- (38) Many interested parties mentioned that there was no basis for the Regional Funds being in receipt of aid, since the standard limited partnership structure in the industry that will be used did not create any separate legal entity. A Regional Fund would not earn profits in its own right and all assets and liabilities would be held by its partners in proportion to their investment.
- (39) A number of parties explained that if more funds began to be offered in the market segment concerned, there might be a danger of distortion of competition between funds. In that case the policy would have accomplished its aim and the problem of distortion would have to be addressed.

- The United Kingdom authorities undertake to ensure that fund managers advertise widely for investors in appropriate trade journals and in the *Official Journal of the European Communities*. There will be no restrictions placed on the location or nationality of investors.
- The United Kingdom authorities undertake to prescribe the need for incentives for the fund managers to maximise the performance of funds.
- In principle, an investor is committed for the life of the fund, i.e. for 10 to 12 years. The only way an investor can be released from this commitment is to sell the investment. If an investor wishes to do this, he must have the fund manager's and other investors' consent for any transfer of ownership. The Government does not intend to offer to purchase any share of the partnership that is being sold by a private sector investor, even if the Government's share of the Regional Fund is below 50 %. On the other hand, the Government would be willing to sell its share of the partnership to any private sector investor who is willing to take on board the subordinated terms.

- (41) In addition, the following comments have been made on each of the issues raised in the Commission decision to open the procedure.

5. COMMENTS FROM THE UNITED KINGDOM

On market failure

- (40) First of all, the United Kingdom authorities have clarified the following technical details of the scheme:
- There may well be an equity gap in London, and the scheme will not only operate outside London. There will probably be between 10 and 15 Regional Funds in total.
 - Each tranche of investment in a company is strictly limited to GBP 250 000 (about EUR 400 000), and there must be at least six months between tranches. In principle, the amount of investment per company is limited to GBP 500 000 (about EUR 800 000). The only exception to the GBP 500 000 limit will be where further investment is required in order to maintain the Regional Fund's percentage holding in a company, and making such investment is in the judgement of the fund manager in the best commercial interests of the fund. Such further investments will be subject to an overall limit of 10 % of any fund being invested in one company. The United Kingdom authorities point out that as investments above GBP 500 000 (about EUR 800 000) can only happen where there is a risk of dilution of shareholding, they will only happen alongside other private sector investments. The further investments will be on terms at least as good as those offered to the private sector investments.

- (42) The United Kingdom authorities state that there is strong evidence of market failure caused by investors' over-reliance on historic aggregate performance data. As the average deal size in the venture capital market has increased, SMEs have found it more difficult to access the type and size of finance most suited to their needs. In establishing these funds the United Kingdom Government is seeking to stimulate the market to provide funding in this area and demonstrate to the wider venture capital industry that good commercial returns can be made from this sector. The scheme is not intended to be a long-term public support programme.
- (43) Moreover, the United Kingdom authorities agree with several interested parties that the equity gap in England has been widened lately, so that it now covers amounts below GBP 1 million (about EUR 1,6 million). While a number of funds do currently exist which make investments in the equity gap, most are nearly fully invested. The United Kingdom authorities believe that there are currently no new private funds being raised for investment in the equity gap. The only funds proposed are those with support from either the ERDF or the Regional Venture Capital Funds Scheme.

On aid to the investors

- (44) The United Kingdom authorities stress that investors in the Regional Funds will be attracted by wide dissemination of an invitation. They are neither limited by number nor geography nor predetermined. Those who operate the Regional Venture Capital Funds will be commercial fund managers, chosen following a rigorous competitive process to ensure that any aid is the minimum required for funds to be created.

On aid to the SMEs

- (45) The United Kingdom authorities claim that the funds will operate in accordance with the market economy investor principle, since there are performance incentives for the fund managers and the private investors would not commit to a fund which did not offer them the highest possible return. There are no mechanisms in the scheme which allow for, or encourage, 'soft' investments to be made. Therefore, they think that the scope for aid to the SMEs is negligible.
- (46) As returns to the investors can only be generated by growth in the investee companies and as growth without initial investment is virtually impossible, it would seem inconceivable to the United Kingdom authorities that investments by the funds would not lead directly to investments by the SMEs.
- (47) Private investors are likely to consider that a restriction on investments to small companies would limit the Regional Funds' ability to secure the highest possible rates of return. Consequently, investors would require an even higher level of public support.

On aid to the regional funds

- (48) The United Kingdom authorities explain that it is not possible to distinguish between a fund and its investors. The fund does not have a separate taxation status and does not have the ability to make profits or losses in its own right. Any profits or losses are attributable to the investors in line with the legal agreement.

6. ASSESSMENT OF THE SCHEME

- (49) At the time of opening the procedure, the Commission did not yet have any State aid rules dealing specifically with the particular form of State aid that may be contained in measures providing risk capital to enterprises. The present assessment is based on Article 87 of

the EC Treaty, with particular reference to the new Commission Communication on State aid and risk capital⁽⁹⁾.

Presence of State aid under Article 87(1) of the EC Treaty

- (50) Point IV.3 of the Communication lists the criteria for a risk capital measure to constitute State aid.

At the level of the investors

- (51) Since the State participates directly in the Regional Funds, State resources are involved. The State expects to have to subordinate its returns on investment in one way or another. These are not terms that are present in a purely commercial investment situation, so the State cannot be said to be acting as a private investor in a market economy. Consequently, there is an advantage to the private investors. Although the private investors are found through an EU-wide call for tenders, the measure is selective in that not all applicants can finally participate. There is discretion at two points, i.e. firstly, when the fund manager selects offers from prospective private investors and, secondly, when the State decides in which proposed Regional Funds it will invest. These selections will be based on qualitative as well as quantitative criteria. Investment of capital is an activity which is the subject of very large trade between Member States. Consequently, the scheme threatens to distort competition and affect trade between Member States. The private investors are only covered by Article 87(1) of the EC Treaty to the extent that they constitute undertakings.
- (52) It is clearly stated in point IV.5(I) of the Communication that the fact that due to a market failure no investors would otherwise make such investments, is not in itself sufficient to rebut the presumption of an advantage.

At the level of the SMEs

- (53) As much as 50 % of the resources made available to the SMEs may constitute State resources. On the issue of whether there is an advantage, the aim of the measure is to give the SMEs access to capital to which they would not otherwise have had access. The existence of advantage depends on whether the terms on which this capital is made available would be acceptable to a private investor in a market economy. This is discussed in the following paragraph. At this level the measure is clearly selective as the Regional Funds may only invest in SMEs in certain regions of the United Kingdom. Recipient SMEs will be able to strengthen their position in relation to their competitors, which threatens to distort competition and have an effect on trade between Member States, since the beneficiaries can be active in international trade.

⁽⁹⁾ Adopted by the Commission on 23 May 2001 (not yet published in the Official Journal).

- (54) It is stated in point IV.5(III) of the Communication that the fact that the investment decisions are being taken by commercial managers of risk capital funds, or by representatives of investors, with an interest to ensure a maximum return for the fund is an important indicator that the company has received the investment on terms acceptable to a private investor in a market economy, but it is not in itself conclusive. If a risk capital measure has reduced the risks and/or increased the rewards which investors will obtain from making a particular investment then they may be said no longer to be operating as a normal economic operator. The Commission has already found, and the Court of Justice has agreed, that advantages granted to investors to persuade them to invest in a certain class of enterprise may constitute advantages to those enterprises ⁽¹⁰⁾. In accordance with point IV.5(III) of the Communication the Commission must take into account the possibility that any advantages accorded to investors in the funds are passed on to the enterprises invested in, when the investments are not made by the fund *pari passu*, with a private investor in a market economy. It may be that the typical investments of the funds are not made *pari passu* in this way, and the Commission cannot therefore conclude that the enterprises will receive the investment on terms which would be acceptable to a private investor in a market economy. The Commission therefore considers that the existence of an advantage and therefore of State aid at this level cannot be excluded.

At the level of the regional funds

- (55) As the Regional Venture Capital Funds will be limited partnerships, the Commission does not consider them to be separate aid beneficiaries. This principle was established in the Commission decision on another United Kingdom venture capital scheme, namely the Viridian Growth Fund ⁽¹¹⁾.

Exemption under Article 87(3)(c) of the EC Treaty

- (56) According to point VI.5 of the Communication, the Commission will require provision of evidence of market failure before proceeding to authorise risk capital measures. It may be prepared to accept that there is a market failure where each tranche ⁽¹²⁾ of finance for an enterprise from risk capital measures which are in turn

wholly or partially financed through State aid will contain a maximum of EUR 500 000 (about GBP 312 700). This criterion is fulfilled in the case under examination. In addition, the United Kingdom authorities and interested parties have stated that the majority of funds present in the equity gap segment are fully invested and that there is no evidence that new private funds are being established. There is also agreement on the fact that the available funds are far from sufficient to cover demand. Finally, there are indications that the equity gap is actually increasing to amounts below GBP 1 million (about EUR 1,6 million), rather than GBP 500 000 (about EUR 800 000).

- (57) In point VII.1 on the form of the aid measure, it is stated that one form of aid which the Commission will be prepared to view favourably under the compatibility criteria is that of schemes in which the State is an investor in Venture Capital Funds, even if on less advantageous terms than other investors.
- (58) In section VIII.3 of the Communication seven compatibility criteria are listed in order of importance.

1. Target enterprises and size of transactions

- (59) The scheme is not limited to small enterprises and to medium-sized enterprises in their start-up or other early stages, or in assisted areas. However, as there is a restriction on the total funding available through the measure, the inclusion of later stage medium-sized enterprises can be accepted. The Commission notes that any investments made in excess of GBP 500 000 (about EUR 800 000) in one enterprise will be made on terms at least as good as those of the other private investors investing at the same time.
- (60) It is a positive element that the ceiling for each tranche of financing provided is far below the stipulated thresholds of EUR 500 000 for non-assisted regions, EUR 750 000 for regions qualifying for assistance under Article 87(3)(c) of the EC Treaty or EUR 1 million in regions qualifying for assistance under Article 87(3)(a) of the EC Treaty.

2. Focus on risk capital market failure

- (61) It is a positive element that the measure is limited to the provision of equity-based investments.

⁽¹⁰⁾ Case C 16/97, OJ L 212, 30.7.1998, p. 50. This case was the subject of the judgment of the Court in Case C-156/98, 19 September 2000.

⁽¹¹⁾ Decision adopted by the Commission on 13 February 2001 (not yet published in the Official Journal).

⁽¹²⁾ Separate injections of capital within six months of each other would be considered to be part of the same tranche, as would different instalments, even over a longer period, to which a commitment is made simultaneously as part of a single transaction.

3. Profit-driven investment decisions

- (62) It is a positive element that the United Kingdom authorities have undertaken to ensure that there will be a link between investment performance and the remuneration of those responsible for investment decisions. In any case, this is common practice for funds established as limited partnerships.
- (63) Given the undertaking by the United Kingdom authorities, the Commission is confident that the investments in the equity of SMEs will be made on a commercial basis. Market economy investors will provide at least 50 % of each Regional Fund's capital, which can be considered a significant involvement. For funds operating in assisted areas the Commission would consider a private capital share of 30 % to be significant.

4. Minimised distortion of competition between investors and between investment funds

- (64) It is a positive element that the extent of subordination of the return on the public resources is determined through a series of calls for tender. First of all the invitation to invest in the funds will be published in the *Official Journal of the European Communities* and in appropriate trade journals. Secondly, each sponsor of a fund will present the Government with a bid containing an explanation of why the subordination proposed is the least necessary to attract private investors.
- (65) This should ensure that there is no overcompensation to the private investors.

5. Sectoral focus

- (66) It is a positive element that there is no sectoral focus, and that particularly low-risk sectors which should manage without State intervention have even been excluded.
- (67) The United Kingdom authorities have undertaken to ensure that the Regional Venture Capital Funds will not invest in companies active in sensitive sectors for which special Community rules governing State aid have been laid down. In particular, they will not invest in companies active in the production, processing or marketing of products listed in Annex I to the EC Treaty.

6. Investment on the basis of standard commercial practice in fund management

- (68) It is a positive element that the Regional Funds will be commercially managed by a professional fund manager, regulated under the auspices of the Financial Services Authority, the Investment Management Regulatory Organisation and the British Venture Capital Associa-

tion. This ensures that the fund managers will make professional judgements as to whether an expected return from a proposed equity injection into any SME will be a good commercial proposition.

- (69) The communication mentions the lack of an 'exit mechanism' for the State's involvement in individual enterprises as a negative element, since an exit mechanism would be a safeguard against schemes providing long-term financing to companies which will never be viable on their own. However, it is in the nature of a scheme taking the form of a Venture Capital Fund like this one that the individual investors, including the State, cannot withdraw from individual investments made by the fund. The exit mechanism is built into a Venture Capital Fund's design in that the State exits at the same time as the other investors when the fund is wound up. Moreover, the Regional Funds are operating on commercial terms. They will therefore withdraw from companies that will never be viable on their own and will seek to realise the value of successful investments when it is most advantageous to do so, leading ultimately to the withdrawal of the fund (and therefore of the State participation) from all of the companies invested in.

7. Avoidance of cumulation of aid measures to single enterprises

- (70) According to the Communication, the Commission may request commitments by a Member State to assess and set limits to other forms of State aid to enterprises funded by the risk capital measure, including under authorised schemes, if a measure provides aid to the enterprises invested in. In this particular case the Commission has decided not to exercise this right owing to the small size of the total investments and the individual tranches.

7. CONCLUSION

- (71) The Commission takes note of the comments received from interested parties and of the explanations given and further commitments made by the United Kingdom authorities since the opening of the procedure. It also notes that the scheme contains positive elements under each of the seven criteria stipulated in the Communication. Therefore, the Commission is able to take an overall favourable view of the scheme and to conclude that the aid granted to the private investors and to the small and medium-sized enterprises is compatible with the State aid rules. The doubts regarding a possible infringement of Articles 43 and 56 of the EC Treaty have also been allayed.

(72) The Commission concludes that there is no aid at the level of each Regional Fund, as the funds will not be legal entities and the resources of the funds belong to the investors. However, the United Kingdom authorities are invited to monitor the development of the equity gap situation and to ensure that there is no crowding-out of prospective fully private venture capital funds,

HAS ADOPTED THIS DECISION:

Article 1

The notified State aid scheme Regional Venture Capital Funds, as completed by the comments made by the United Kingdom authorities since the opening of the procedure, which the United Kingdom is planning to implement based on the Indus-

trial Development Act 1982, Section 8, is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 6 June 2001.

For the Commission

Mario MONTI

Member of the Commission
