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(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL COMMON POSITION

of 11 March 2002

concerning European Union support for the implementation of the Lusaka ceasefire agreement and the peace process in the Democratic Republic of Congo and repealing Common Position 2001/83/CFSP

(2002/203/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 15 thereof,

Having regard to Council Common Position 2001/83/CFSP of 29 January 2001 concerning European Union support for the implementation of the Lusaka ceasefire agreement and the peace process in the Democratic Republic of Congo ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) On 14 and 15 December 2001, the European Council in Laeken reaffirmed its full support for the Lusaka ceasefire agreement.
- (2) At its meetings on 26 February, 14 May, 16 July, 8 October, 29 October, 19 November and 10 December 2001, the Council adopted conclusions concerning the situation in the Great Lakes region.
- (3) The Council has adopted Common Position 2001/374/CFSP of 14 May 2001 concerning conflict prevention, management and resolution in Africa ⁽²⁾ and Common Position 98/350/CFSP of 25 May 1998 concerning human rights, democratic principles, the rule of law and good governance in Africa ⁽³⁾.
- (4) The Lusaka ceasefire agreement was signed on 31 August 1999 by the Democratic Republic of Congo, Angola, Namibia, Rwanda, Uganda, Zimbabwe, the 'Mouvement pour la libération du Congo' and the 'Rassemblement congolais pour la démocratie'.
- (5) The United Nations Security Council has adopted Resolutions 1234 (1999), 1258 (1999), 1291 (2000), 1304 (2000), 1332 (2000), 1341 (2001), 1355 (2001) and 1376 (2001).

(6) Common Position 2001/83/CFSP should be repealed,

HAS ADOPTED THIS COMMON POSITION:

Article 1

The objective of this Common Position is to support, through action by the European Union and its Member States, the implementation of the Lusaka ceasefire agreement and the relevant United Nations Security Council Resolutions within the framework of the peace process in the Democratic Republic of Congo (DRC).

The European Union affirms that lasting peace in the DRC can be achieved through a negotiated peace settlement which is fair to all parties, respect for the territorial integrity and national sovereignty of the DRC and respect for democratic principles and human rights in all States of the region, as well as for the principles of good-neighbourliness and non-interference in domestic affairs, while taking account of the security interests of the DRC and its neighbouring countries.

Article 2

The European Union will support action taken by the United Nations and the Organisation for African Unity in support of the implementation of the Lusaka ceasefire agreement and the relevant Security Council Resolutions within the framework of the peace process, and will cooperate closely with these organisations and other relevant actors of the international community in the implementation of this Common Position.

Article 3

The European Union will continue to work for the strict observance of the ceasefire between the signatories to the Lusaka agreement and, to this end, will continue to lend its support to the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) and the Joint Military Commission (JMC).

It will pursue its action for a full withdrawal without delay of all foreign troops from the DRC in accordance with the Security Council Resolutions.

⁽¹⁾ OJ L 29, 31.1.2001, p. 1.

⁽²⁾ OJ L 132, 15.5.2001, p. 3.

⁽³⁾ OJ L 158, 2.6.1998, p. 1.

Article 4

The European Union will strive for the rapid implementation of the process of disarmament, demobilisation, repatriation, reintegration and resettlement of combatants of armed groups as provided for under the Lusaka agreement and which is an essential element for restoring peace to the region.

It will recall that this process must be carried out voluntarily, with the cooperation of all the signatories to the Lusaka agreement, and must lend itself to support by coordinated action by the international community.

To this end, it will support action by MONUC and the JMC and will work in particular for the rapid application of the process to ex-combatants currently stationed in Kamina.

The Council notes that the Commission intends to support the disarmament, demobilisation, repatriation, reintegration and resettlement (DDRRR) process by appropriate Community measures.

Article 5

The European Union will continue to encourage the inter-Congolese dialogue process and lend its support to facilitation.

It will express its desire for that dialogue to produce concrete results at the earliest opportunity and under the conditions of independence, freedom, transparency, security and representativeness required for a peaceful, consensual, fair and lasting solution to the Congolese crisis.

The European Union hopes that the parties to the dialogue will reach an agreement which enables the unity and integrity of the country to be maintained and the rule of law to be re-established through a peaceful transition capable of restoring good governance, respect for human rights and fundamental freedoms and paving the way for a return to democracy.

The Agreement on transition and its institutions should in particular address the key issues of Congolese nationality and the new organisation of the army and of the State with a view to the full restoration of representative democracy as an essential guarantee for the country's lasting and equitable development.

Article 6

The European Union will maintain an appropriate level of humanitarian aid to the DRC and will lend its support to the reconstruction and development of the country, ensuring that such support benefits all the Congolese people and all the

regions of the DRC and that it contributes dynamically and proactively to the peace process by promoting the restoration of the Congolese State, good governance, an improvement in the economic situation and respect for human rights.

The Council notes the Commission's intention to continue its efforts in pursuit of the above objectives.

In this context, the Council welcomes the signing by the Commission on 21 January 2002 of the National Indicative Programme (NIP) under the 8th European Development Fund (EDF) for the DRC, which represents a firm commitment by the Union with respect to the country and its population, and it notes the Commission's intention to implement that commitment in the light of progress made towards national reconciliation and the prospects of stability and security within the framework of the peace process.

Article 7

The European Union's cooperation with the countries in the region involved in the Congolese crisis will take account of the efforts made by the latter to implement the Lusaka agreement and the relevant Security Council Resolutions.

Article 8

The European Union will continue to support the Burundi peace process based on the Arusha Agreement, the success of which is linked to the solution of the Congolese crisis and which could serve as an example for all the countries in this region of Africa affected by violence of an ethnic origin in particular.

In this context, it will support the holding of an international conference on peace, security, democracy and development in the Great Lakes region once progress in the Lusaka and Arusha peace processes so allows and the interested countries so decide.

Article 9

The European Union and its Member States reserve the right to modify or cancel any activities in support of the implementation of the Lusaka ceasefire agreement if the parties do not abide by the terms of the agreement.

Article 10

Common Position 2001/83/CFSP is hereby repealed.

Article 11

The implementation of this Common Position will be monitored regularly. The Common Position will be reviewed before 28 February 2003.

However, it may be reviewed before that date and in particular once conclusive results emerge from the implementation of the Lusaka agreement, including the inter-Congolese dialogue.

Article 12

This Common Position shall take effect on the day of its adoption.

Article 13

This Common Position shall be published in the Official Journal.

Done at Brussels, 11 March 2002.

For the Council

The President

J. PIQUÉ I CAMPS

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 442/2002
of 18 February 2002
amending Regulation (EEC) No 2019/93 introducing specific measures for the smaller Aegean islands concerning certain agricultural products

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 36 and 37 thereof,

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

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

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

Whereas:

- (1) Under Article 15 of Council Regulation (EEC) No 2019/93 ⁽⁴⁾ the Commission must submit an annual report to the European Parliament and the Council on the implementation of the measures and, at the end of the third year of application of the specific supply arrangements, a general report on the economic situation of the Aegean islands, showing the impact of the measures taken. These reports are to be accompanied, where necessary, by appropriate proposals for amendments and changes to the measures provided for in that Regulation.
- (2) Analysis of the implementation of these measures points to the need for appropriate adjustments and changes, taking into account the results and experience gathered and the evolution of the context in which these measures have been applied. Regulation (EEC) No 2019/93 should therefore be amended accordingly.
- (3) In particular, the specific supply arrangements have proved to be poorly suited to the milk products (yoghurt) and sugar sectors, especially as regards passing on the advantages to the end-user, while in the fruit and vegetables sector the arrangements expired at the end of 1997. These products should therefore be removed from the specific supply arrangements. On that basis the list of products referred to in the specific supply arrange-

ments should be reviewed, taking into account the real needs of the islands concerned. The groups of islands should also be redefined on the basis of their distance from the usual ports of shipment in mainland Greece, taking into account supplies to the islands of final destination from islands of transit and of loading.

- (4) The economic advantages of the specific supply arrangements must not provoke deflections of trade in the products concerned. Re-dispatching or re-exporting these products from the islands concerned should therefore be prohibited. In the case of processing, this prohibition should not apply to traditional exports and consignments.
- (5) The support measures for local products for the private storage of certain local cheeses, programmes of initiatives for fruit, vegetables and flowers, and the ageing of locally produced liqueur wines have been shown to be poorly suited to the situation in these sectors on the Aegean islands due in particular to the short storage periods for the cheeses and liqueur wines and thus the negligible impact of the aid, and to the complexity of procedures and the way the proposed aid for fruit, vegetables and flowers was structured. This aid should not therefore be renewed.
- (6) In order to continue to support traditional cattle farming in these islands, on the one hand, the stability of the special premium should be ensured for a specific number of male bovines also in receipt of the supplement to the special premium and the grant of the supplement to the suckler cow premium should be continued and, on the other, reference should be made to the new regulatory framework for the common organisation of the market in this sector since 1999.
- (7) As regards the continued grant of aid for the cultivation of vines for the production of quality wines *psr* in the traditional areas of production, the references to the legislation on the common organisation of the market in this sector since 1999 should be updated.

⁽¹⁾ Proposal of 7 November 2001 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 5 February 2002 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 16 January 2002 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 184, 27.7.1993, p. 1. Regulation as last amended by Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999, p. 80).

- (8) For the purposes of continuing to grant aid to traditional bee-keeping and contributing to the continued improvement of quality in this sector, the activities of recognised associations of bee-keepers should be encouraged and the number of hives eligible for such aid should be updated.
- (9) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾.
- (10) Article 13 of Regulation (EEC) No 2019/93, providing for derogations applicable to structural measures, has been repealed by Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ⁽²⁾. The structures of certain holdings and processing and marketing firms in the Aegean islands are seriously defective and face specific difficulties. Provision should therefore be made for derogations for certain types of investments from the provisions limiting the grant of some structural aid provided for in Regulation (EC) No 1257/1999,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2019/93 is hereby amended as follows:

1. Articles 2 and 3 shall be replaced by the following:

'Article 2

Specific supply arrangements are hereby introduced for the agricultural products listed in the Annex to this Regulation, which are essential for human consumption and as inputs in agricultural production in the smaller Aegean islands as well as for processing.

A forecast supply balance shall be drawn up stating the quantity of the agricultural products referred to in the above paragraph needed to meet supply requirements each year.

Article 3

1. Under the specific supply arrangements, aid shall be granted for the supply to the smaller Aegean islands of the products referred to in Article 2.

The amount of aid shall be fixed for a group of islands taking into consideration the additional costs of marketing products in these islands, calculated from the usual ports of shipment in mainland Greece, and from the ports of

islands of transit or of loading for the islands of final destination.

90 % of the amount of the aid shall be financed by the Community and 10 % by the Member State.

2. In implementing the specific supply arrangements, account shall be taken, in particular, of the following:

- (a) the specific needs of the smaller Aegean islands and the precise quality requirements;
- (b) traditional trade flows with ports in mainland Greece and between the islands;
- (c) the economic aspect of the proposed aid;
- (d) where applicable, the need not to obstruct the potential development of local products.

3. A condition for benefiting from the specific supply arrangements shall be that the advantages are actually passed on to the end-user.

4. Products covered by the specific supply arrangements may not be re-exported to third countries or re-dispatched to the rest of the Community.

5. Where the products referred to in paragraph 1 are processed in the smaller Aegean islands, the prohibition referred to in paragraph 4 shall not apply to traditional exports or to traditional shipments of the processed products to the rest of the Community. In the case of traditional exports, no refund shall be granted.;

2. the following Article shall be inserted:

'Article 3a

1. Detailed rules for applying this Title shall be adopted in accordance with the procedure referred to in Article 13a(2). They shall cover in particular:

- (a) the grouping of the smaller Aegean islands on the basis of their distance from the usual ports of shipment in mainland Greece, and in relation to the ports of islands of transit or of loading from which the islands of final destination are usually supplied;
- (b) the fixing of the amount of aid under the specific supply arrangements;
- (c) the provisions to ensure effective monitoring and that the advantages are actually passed on to the end user;
- (d) the introduction, if necessary, of a system of delivery licences.

2. The Commission shall draw up supply balances in accordance with the procedure referred to in Article 13a(2). It may revise those balances, and the list of products in the Annex, in accordance with the same procedure, in the light of changes in the requirements of the smaller Aegean islands.;

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 160, 26.6.1999, p. 80.

3. Article 4 shall be deleted;

4. Article 6 shall be replaced by the following:

'Article 6

1. The aid provided for in this Article shall be granted to assist traditional livestock farming activities in the beef and veal sector.

2. Fattening aid for male bovine animals, equal to an additional EUR 48,3 per head on top of the special premium provided for in Article 4 of Council Regulation (EC) No 1254/1999 (*), shall be granted to beef and veal producers.

The supplement may be granted for an animal of a minimum weight to be determined in accordance with the procedure referred to in Article 13a(2), up to a limit of 12 000 male bovines per year within the regional ceiling set in Article 4(1) and (4) of Regulation (EC) No 1254/1999. The proportionate reduction referred to in Article 4(4) of that Regulation shall not apply within that limit.

3. A supplement to the premium for maintaining suckler cows provided for in Article 6 of Regulation (EC) No 1254/1999 shall be paid to beef and veal producers each year. The amount of this supplement shall be EUR 48,3 per suckler cow held by the producer on the day on which the application is submitted.

4. Detailed rules for applying paragraphs 1, 2 and 3 shall be adopted in accordance with the procedure referred to in Article 13a(2). They may also provide for an amendment of the limit referred to in paragraph 2.

(*) OJ L 160, 26.6.1999, p. 21.;

5. Article 7 shall be deleted;

6. Article 8 shall be replaced by the following:

'Article 8

1. Aid per hectare shall be granted for the cultivation of potatoes for human consumption falling within CN codes 0701 90 50 and 0701 90 90 and for the cultivation of seed potatoes falling within CN code 0701 10 00, up to a limit of 2 200 hectares cultivated and harvested per year.

The amount of the aid shall be not more than EUR 603 per hectare.

2. Detailed rules for applying this Article shall be adopted in accordance with the procedure referred to in Article 13a(2).;

7. Article 9 shall be replaced by the following:

'Article 9

1. Aid per hectare shall be granted for the continued cultivation of vines for the production of quality wines psr in the traditional areas of production.

The following areas shall be eligible for aid:

(a) areas planted to vine varieties included among the varieties classified by the Member States as being suitable for the production of each of the quality wines psr produced in their territory, as referred to in Article 19 of Council Regulation (EC) No 1493/1999 (*), and

(b) areas where the yield per hectare is lower than a maximum to be fixed by the Member State, expressed as quantities of grapes, grape musts or wine, under the terms of Annex VI(l) to Regulation (EC) No 1493/1999.

2. The amount of the aid shall be EUR 476 per hectare per year. The aid shall be granted exclusively to producer groups or organisations initiating a measure to improve the quality of the wines produced in accordance with a programme approved by the competent authorities; the programme shall include in particular means for improving vinification, storage and distribution conditions.

3. Chapter II of Title II of Regulation (EC) No 1493/1999 shall not apply to the smaller Aegean islands.

4. Detailed rules for applying this Article shall be adopted as necessary in accordance with the procedure referred to in Article 13a(2).

(*) OJ L 179, 14.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 1622/2000 (OJ L 194, 31.7.2000, p. 1).;

8. Article 10 shall be deleted;

9. Article 11 shall be replaced by the following:

'Article 11

1. Aid per hectare shall be granted for the maintenance of olive groves in traditional olive-growing zones, provided that the groves are kept and maintained in good production conditions.

The amount of the aid shall be EUR 145 per hectare per year.

2. Detailed rules for applying this Article shall be adopted in accordance with the procedure referred to in Article 13a(2). In particular they shall fix the conditions for the application of the aid arrangements referred to in paragraph 1, the conditions for proper maintenance of olive groves and the control provisions.;

10. Article 12 shall be replaced by the following:

'Article 12

1. Aid shall be granted for the production of honey of specific quality from the smaller Aegean islands, containing a large proportion of thyme honey.

The aid shall be paid, on the basis of the number of registered hives in production, to associations of beekeepers recognised by the competent authorities which undertake to implement annual programmes of initiatives designed to improve the conditions under which quality honey is produced.

The amount of the aid shall be EUR 12 per hive per year.

2. The aid referred to in paragraph 1 shall be granted for up to 100 000 hives per year.

3. Detailed rules for applying this Article shall be adopted in accordance with the procedure referred to in Article 13a(2).;

11. Article 13 shall be replaced by the following:

'Article 13

1. Notwithstanding Article 7 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations (*), the total value of the aid, expressed as a percentage of the volume of eligible investments, may be increased by a maximum 15 percentage points for investments intended in particular to encourage diversification, restructuring or a move towards sustainable agriculture on agricultural holdings in the smaller Aegean islands.

2. Notwithstanding Article 28(2) of Regulation (EC) No 1257/1999, the total value of the aid, expressed as a percentage of the volume of eligible investments, shall not exceed 65 % for investments in small and medium-sized enterprises engaged in processing and marketing agricultural products consisting mainly of local produce in sectors to be defined in the programme complement referred to in Article 18(3) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (**).

3. The measures planned under this Article shall be described as part of the operational programmes as referred to in Article 18 of Regulation (EC) No 1260/1999 covering the smaller Aegean islands.

(*) OJ L 160, 26.6.1999, p. 80.

(**) OJ L 161, 26.6.1999, p. 1.;

12. the following Article shall be inserted:

'Article 13a

1. The Commission shall be assisted by the Management Committee for Cereals established by Article 22 of Council Regulation (EEC) No 1766/92 (*), or by one of the management committees established by the regulations on the common organisations of the market for the products concerned, hereinafter "Committee".

In the case of agricultural products covered by Council Regulation (EEC) No 827/68 (**) and products not covered by a common organisation of the market, the

Commission shall be assisted by the Management Committee for Hops established by Article 20 of Council Regulation (EEC) No 1696/71 (**).

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

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

3. The Committee shall adopt its rules of procedure.

(*) OJ L 181, 1.7.1992, p. 21.

(**) OJ L 151, 30.6.1968, p. 16. Regulation as last amended by Regulation (EC) No 195/96 (OJ L 26, 2.2.1996, p. 13).

(***) OJ L 175, 4.8.1971, p. 1. Regulation as last amended by Regulation (EC) No 191/2000 (OJ L 23, 28.1.2000, p. 4).;

13. Article 14 shall be replaced by the following:

'Article 14

The measures provided for in this Regulation, except for Article 13, shall constitute intervention intended to stabilise the agricultural markets within the meaning of Article 2(2) of Regulation (EC) No 1258/1999 (*).

(*) OJ L 160, 26.6.1999, p. 103.;

14. the following Article shall be inserted:

'Article 14a

The Member States shall take the measures necessary to ensure compliance with this Regulation, in particular as regards controls and administrative penalties, and shall inform the Commission thereof.

Detailed rules for applying this Article shall be adopted in accordance with the procedure referred to in Article 13a(2).;

15. Article 15 shall be replaced by the following:

'Article 15

1. Greece shall present an annual report to the Commission on the implementation of the measures provided for in this Regulation.

2. At the end of every five-year period of implementation of the measures provided for in this Regulation, the Commission shall submit to the European Parliament and the Council a general report on the impact of the measures taken pursuant to this Regulation, accompanied where appropriate by proposals concerning any adjustments which may prove necessary.

The first report shall be presented before the end of 2005.;

16. the Annex shall be replaced by the Annex to this Regulation.

Article 2

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, 18 February 2002.

For the Council
The President
M. ARIAS CAÑETE

ANNEX

'ANNEX

List of products covered by the specific supply arrangements under Title I for the smaller Aegean islands

Description	CN code
Wheat flour	1101 and 1102
Durum wheat	1001 10 00
Wheat of bread-making quality	1001 90 99
Feedingstuffs	
— cereals	
— wheat	1001
— rye	1002
— barley	1003
— oats	1004
— maize	1005
— cotton seeds	1207 20 90
— alfalfa and fodder	1214
— food industry wastes and residues	2302 to 2308
— preparations of a kind used in animal feed	2309 90'

COMMISSION REGULATION (EC) No 443/2002
of 11 March 2002
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 12 March 2002.

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

Done at Brussels, 11 March 2002.

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 11 March 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	186,7
	204	168,1
	212	174,9
	624	230,6
	999	190,1
0707 00 05	052	165,1
	068	109,7
	204	64,5
	220	196,3
	999	133,9
0709 90 70	052	124,7
	204	83,2
	999	104,0
0805 10 10, 0805 10 30, 0805 10 50	052	60,4
	204	47,1
	212	50,7
	220	45,4
	421	29,6
	600	59,5
	624	76,1
	999	52,7
0805 50 10	052	40,0
	600	61,3
	999	50,6
0808 10 20, 0808 10 50, 0808 10 90	060	40,7
	388	113,6
	400	120,5
	404	96,5
	508	84,3
	512	90,1
	528	96,3
	720	119,8
	728	132,3
	999	99,3
0808 20 50	204	204,9
	388	76,1
	400	102,5
	512	79,9
	528	73,3
	720	66,2
	999	100,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 444/2002
of 11 March 2002**

amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code and Regulations (EC) No 2787/2000 and (EC) No 993/2001

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by European Parliament and Council Regulation (EC) No 2700/2000 ⁽²⁾ (hereinafter: 'the Code'), and in particular Article 247 thereof,

Whereas:

- (1) Certain definitions set out in Commission Regulation (EEC) No 2454/93 ⁽³⁾, as last amended by Regulation (EC) No 993/2001 ⁽⁴⁾, require updating.
- (2) Under the common commercial policy it is frequently necessary to amend the list of countries and territories qualifying for autonomous Community tariff preferences and consequently to amend the list in Section 2 of Part I, Title IV, Chapter 2, of Regulation (EEC) No 2454/93.
- (3) The heading and wording of Section 2 should therefore be based not on an exhaustive list of those countries and territories, but on a general reference to 'beneficiary countries or territories', since the latter are duly listed in the Council regulations granting the preferences.
- (4) In certain circumstances it is possible to have defective goods repaired outside the customs territory of the Community without incurring a customs debt on reimportation.
- (5) After release for free circulation, the price agreed between buyer and seller can be subject in certain cases to modification in order to take account of the defective nature of goods.
- (6) Consequently, the rules in force should expressly allow a transaction value under Article 29 of the Code to take account of those special circumstances, with appropriate safeguards and subject to the application of reasonable time limits.
- (7) The purpose of Article 167(1) of Regulation (EEC) No 2454/93 was to avoid the levying of customs duties on software imported on carrier media. That objective has since been achieved by the Agreement on trade in infor-

mation technology products (ITA), approved by Council Decision 97/359/EC ⁽⁵⁾. Without prejudice to the application of GATT Decision 4.1 of 12 May 1995, it is therefore no longer necessary to provide special implementing provisions for the determination of the customs value of carrier media.

- (8) The threshold limit, specified in Article 179(1)(a) of Regulation (EEC) No 2454/93, for presentation of the declaration of particulars relating to customs value (value declaration) should be raised to EUR 10 000 to take into account monetary changes and to simplify import formalities.
- (9) Certain adjustments and corrections are required to the provisions on end-use, in particular to clarify them and to align them with the rules for the customs procedures with economic impact.
- (10) The provisions on Community transit laid down in Regulation (EEC) No 2454/93 have been the subject of a complete and thorough review that has led to the revision of a substantial part of the provisions. Since then, it has been found that the amended provisions contain certain inadequacies and inaccuracies, which need to be remedied.
- (11) For the protection of the financial interests of the other Contracting Parties to the Convention on a common transit procedure, approved by Council Decision 87/415/EEC ⁽⁶⁾, it should be ensured that an appropriate guarantee is furnished where a transit operation concerning Community goods involves their territory. The guarantee should be calculated as if the goods were non-Community goods.
- (12) Where the principal wishes to use the comprehensive guarantee certificate for all goods, the criteria concerning the use of the comprehensive guarantee for goods involving higher risk of fraud should apply to all goods.
- (13) In order to ensure the uniform application of the customs rules within the Community, provisions should be inserted concerning the import duties to be charged on import goods which receive a favourable tariff treatment by reason of their end-use. This should be done for clarification reasons. The insertion should have retroactive effect because similar provisions already existed

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 311, 12.12.2000, p. 17.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 141, 28.5.2001, p. 1.

⁽⁵⁾ OJ L 155, 12.6.1997, p. 1.

⁽⁶⁾ OJ L 226, 13.8.1987, p. 1.

until 30 June 2001, notably in Article 52 of Commission Regulation (EEC) No 2228/91 ⁽¹⁾, which was repealed by Regulation (EEC) No 2454/93, and in Article 585a of Regulation (EEC) No 2454/93, before it was amended by Regulation (EC) No 993/2001.

- (14) Article 859 of Regulation (EEC) No 2454/93 contains a list of cases in which no customs debt is incurred, even in one of the situations referred to in Article 204(1)(a) or (b) of the Code.
- (15) That list should be adapted so that it covers cases of non-compliance with certain obligations applicable to goods under a Community transit procedure, where those goods are presented intact at the office of destination.
- (16) The list should also cover cases of non-compliance with certain rules on transfers, applicable to goods placed under a suspensive procedure or to goods benefiting from a favourable treatment on account of their end-use, where those goods arrive at the specified destination.
- (17) Since the amendment of Article 859 is linked to the provisions of Regulation (EC) No 993/2001, which has applied since 1 July 2001, it is appropriate to make that amendment applicable from the same date.
- (18) In order to rationalise management of the deadlines for examining applications for waiver of post-clearance entry in the accounts under Article 220(2)(b) of the Code or for repayment or remission of duty under Article 239 thereof, the suspension of the period for examining such applications where the person concerned is consulted in accordance with Articles 872a or 906a of Regulation (EEC) No 2454/93 should be fixed at one month in all cases.
- (19) In order to ensure a consistent interpretation of the provisions concerning the designation of the office of destination for the control of the use and/or destination of goods, it is necessary to specify the office at which the goods should be presented for the control of the exit of goods from the customs territory of the Community.
- (20) The standard rates of yield should be calculated for certain main compensating products on the basis of the corresponding coefficients set out in Annex E to Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾ as last amended by Regulation (EC) No 1563/2001 ⁽³⁾ Corollary changes should be made for certain secondary compensating products.

- (21) Annex 111 to Regulation (EEC) No 2454/93 should be amended to take account of the introduction of the single currency from 1 January 2002.
- (22) The transitional provisions on the computerised transit system, laid down in Article 4 of Commission Regulation (EC) No 2787/2000 ⁽⁴⁾ and in Article 2 of Regulation (EC) No 993/2001, should not apply to authorisations granting the status of authorised consignor or authorised consignee in connection with simplifications for certain modes of transport.
- (23) Regulation (EEC) No 2454/93 as well as Regulations (EC) No 2787/2000 and (EC) No 993/2001 should therefore be amended accordingly.
- (24) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2454/93 is amended as follows:

1. Article 1 is amended as follows:

(a) Point 3 is replaced by the following:

‘3. *Committee means:*

the Customs Code Committee established by Articles 247a and 248a of the Code;’

(b) Point 10 is replaced by the following:

‘10. *Treaty means:*

the Treaty establishing the European Community;’.

2. The heading of Section 2 of Part I, Title IV, Chapter 2, is replaced by the following:

‘Beneficiary countries or territories to which preferential tariff measures adopted unilaterally by the Community for certain countries or territories apply’.

3. The introductory part of Article 98(1) is replaced by the following:

‘1. For the purposes of the provisions concerning preferential tariff measures adopted unilaterally by the Community for certain countries, groups of countries or territories (hereinafter referred to as “beneficiary countries or territories”), with the exception of those referred to in Section 1 of this Chapter and the overseas countries and territories associated with the Community, the following products shall be considered as products originating in a beneficiary country or territory:’.

4. In Articles 98 to 123, ‘beneficiary republic’ or ‘beneficiary republics’ are replaced, as appropriate, by ‘beneficiary country or territory’ or ‘beneficiary countries or territories’.

⁽¹⁾ OJ L 210, 31.7.1991, p. 1.

⁽²⁾ OJ L 177, 15.7.2000, p. 1.

⁽³⁾ OJ L 208, 1.8.2001, p. 8.

⁽⁴⁾ OJ L 330, 27.12.2000, p. 1.

5. The introductory part of Article 110(1) is replaced by the following:

'1. Originating products within the meaning of this section shall be eligible, on importation into the Community, to benefit from the tariff preferences referred to in Article 98, provided that they have been transported direct to the Community within the meaning of Article 107, on submission of an EUR.1 movement certificate issued by the customs or other competent governmental authorities of a beneficiary country or territory, on condition 87 beneficiary country or territory:'.

6. Article 145 is replaced by the following:

'Article 145

1. Where goods declared for free circulation are part of a larger quantity of the same goods purchased in one transaction, the price actually paid or payable for the purposes of Article 29(1) of the Code shall be that price represented by the proportion of the total price which the quantity so declared bears to the total quantity purchased.

Apportioning the price actually paid or payable shall also apply in the case of the loss of part of a consignment or when the goods being valued have been damaged before entry into free circulation.

2. After release of the goods for free circulation, an adjustment made by the seller, to the benefit of the buyer, of the price actually paid or payable for the goods may be taken into consideration for the determination of the customs value in accordance with Article 29 of the Code, if it is demonstrated to the satisfaction of the customs authorities that:

- (a) the goods were defective at the moment referred to by Article 67 of the Code;
- (b) the seller made the adjustment in performance of a warranty obligation provided for in the contract of sale, concluded before release for free circulation of the goods;
- (c) the defective nature of the goods has not already been taken into account in the relevant sales contract.

3. The price actually paid or payable for the goods, adjusted in accordance with paragraph 2, may be taken into account only if that adjustment was made within a period of 12 months following the date of acceptance of the declaration for entry to free circulation of the goods.'

7. Chapter 5 of Title V of Part I is deleted.

8. In Article 179(1)(a), the words 'EUR 5 000' are replaced by the words 'EUR 10 000'.

9. In Article 292, the following paragraph 7 is added:

'7. The applicant shall be informed of the decision to issue an authorisation, or of the reasons why the application was rejected, within thirty days of the date on which the application was lodged or of the date on which any outstanding or additional information requested was received by the customs authorities.

That period shall not apply in the case of a single authorisation unless it is issued under paragraph 6.'

10. Article 293 is amended as follows:

- (a) Paragraph 3 is amended as follows:

- (i) Point (c) is replaced by the following:

'(c) means and methods of identification and of customs supervision, including arrangements for:

- common storage, for which Article 534(2) and (3) shall apply *mutatis mutandis*,
- mixed storage of products subject to end-use supervision falling within Chapters 27 and 29 of the Combined Nomenclature or of such products with crude petroleum oils falling within CN code 2709 00.'

- (ii) The following second subparagraph is added:

'Where the goods referred to in the second indent of point (c) of the first subparagraph do not share the same eight-digit CN code, the same commercial quality and the same technical and physical characteristics, mixed storage may be allowed only where the whole mixture is to undergo one of the treatments referred to in Additional Notes 4 and 5 to Chapter 27 of the Combined Nomenclature.'

- (b) In paragraph 4, the following second subparagraph is added:

'The period of validity shall not exceed three years from the date on which the authorisation takes effect, except where there are duly substantiated good reasons.'

11. Article 296(2) is amended as follows:

- (a) In point (a), the second sentence is deleted.
- (b) In point (b), the first subindent of the ninth indent is replaced by the following:

'— the taxation elements of the goods, save where that requirement is waived by the customs authorities.'

12. In Article 314c(1)(f), the words 'Article 816' are replaced by the words 'Article 812'.

13. In Article 317b, the words 'in Articles 444 and 448' are replaced by the words 'in Articles 445 and 448'.

14. In Article 324e(5), the words 'Article 448(4)' are replaced by the words 'Article 448(5)'.

15. In Article 345(1), the first subparagraph is replaced by the following:

'1. The individual guarantee shall cover the full amount of customs debt liable to be incurred, calculated on the basis of the highest rates applicable to goods of the same kind in the Member State of departure. For the purposes of that calculation, Community goods carried in accordance with the Convention on a common transit procedure shall be treated as non-Community goods.'

16. In Article 359, paragraph 3 is replaced by the following:

'3. Where goods are carried via an office of transit other than that mentioned in Copies No 4 and No 5 of the transit declaration, the office of transit used shall send the transit advice note without delay to the office of transit initially specified, or notify the passage to the office of departure in the cases and according to the procedure mutually agreed by the customs authorities.'

17. In Article 379(2), third subparagraph, the following sentence is added:

'Community goods carried or to be carried in accordance with the Convention on a common transit procedure shall be treated as non-Community goods.'

18. In Article 381, the following paragraph 3a is inserted:

'3a. Paragraphs 1, 2 and 3 also apply where an application explicitly concerns the use of the comprehensive guarantee for both the types of goods referred to in Annex 44c and those not listed in that Annex under the same comprehensive guarantee certificate.'

19. In Article 423(3), the following tenth and eleventh indents are added:

— Tulliselvitetty,

— Tullklarerat.'

20. Article 450c is amended as follows:

(a) Paragraph 1 is replaced by the following:

'1. Where the procedure has not been discharged, the customs authorities of the Member State of departure shall, within 12 months of the date of acceptance of the transit declaration, notify the guarantor that the procedure has not been discharged.'

(b) The following paragraph 1a is inserted:

'1a. Where the procedure has not been discharged, the customs authorities, determined in accordance with Article 215 of the Code, shall, within three years of the date of acceptance of the transit declaration, notify the guarantor that he is or might be required to pay the debt for which he is liable in respect of the Community transit operation in question; the notification shall state the number and date of the declaration, the name of the office of departure, the name of the principal and the amount involved.'

(c) Paragraph 2 is replaced by the following:

'2. The guarantor shall be released from his obligations if either of the notifications provided for in paragraphs 1 and 1a have not been issued to him before the expiry of the time limit.'

21. The following Article 547a is inserted:

'Article 547a

The import duties to be charged under Article 121(1) of the Code on import goods eligible, at the time when the declaration of entry for the arrangements was accepted, for

favourable tariff treatment by reason of their end-use shall be calculated at the rate corresponding to such end-use. This shall be allowed only if an authorisation for such end-use could have been granted and if the conditions attaching to the granting of favourable tariff treatment would have been fulfilled.'

22. Article 859 is amended as follows:

(a) Point 2 is replaced by the following:

'2. in the case of goods placed under a transit procedure, failure to fulfil one of the obligations entailed by the use of that procedure, where the following conditions are fulfilled:

(a) the goods entered for the procedure were actually presented intact at the office of destination;

(b) the office of destination has been able to ensure that the goods were assigned a customs-approved treatment or use or were placed in temporary storage at the end of the transit operation;

(c) where the time limit set under Article 356 has not been complied with and paragraph 3 of that Article does not apply, the goods have nevertheless been presented at the office of destination within a reasonable time.'

(b) Point 7 is replaced by the following:

'7. in the case of goods or products physically transferred within the meaning of Articles 296, 297 or 511, failure to fulfil one of the conditions under which the transfer takes place, where the following conditions are fulfilled:

(a) the person concerned can demonstrate, to the satisfaction of the customs authorities, that the goods or products arrived at the specified premises or destination and, in cases of transfer based on Articles 296, 297, 512(2) or 513, that the goods or products have been duly entered in the records of the specified premises or destination, where those Articles require such entry in the records;

(b) where a time limit set in the authorisation was not observed, the goods or products nevertheless arrived at the specified premises or destination within a reasonable time.'

23. In Article 873, the third paragraph is replaced by the following:

'Where the Commission has notified the person concerned of its objections in accordance with Article 872a, the period of nine months shall be extended by one month.'

24. In Article 907, the third paragraph is replaced by the following:

‘Where the Commission has notified the person applying for repayment or remission of its objections, in accordance with Article 906a, the period of nine months shall be extended by one month.’

25. In Article 912a(3), the words ‘Article 347(2)’ are replaced by the words ‘Article 349(1)’.

26. Article 912b is amended as follows:

(a) In paragraph 7, the words ‘Article 349’ are replaced by the words ‘Article 357’.

(b) Paragraph 9 is replaced by the following:

‘9. Article 360 shall apply *mutatis mutandis*.’

27. In Article 912c(2), the third indent is replaced by the following:

‘— for goods leaving by any other modes of transport, the office of destination shall be the office of exit referred to in Article 793(2).’

28. Annex 37 is amended in accordance with Annex I to this Regulation.

29. Annex 44a is amended in accordance with Annex II to this Regulation.

30. Annex 69 is amended in accordance with Annex III to this Regulation.

31. In Annex 111, point B.12 of the Notes on the back of the ‘Application for repayment/remission’, the symbols and national currencies shall be replaced by the following:

‘— EUR: euro

— DKK: Danish kroner

— SEK: Swedish kronor

— GBP: Pound sterling’.

Article 2

In Article 4(5), second subparagraph, of Regulation (EC) No 2787/2000, the following sentence is added:

‘This subparagraph does not apply to transit operations carried out by the authorised consignor using simplified procedures referred to in Article 372(1)(g).’

Article 3

In Article 2(3), first subparagraph, of Regulation (EC) No 993/2001, the following sentence is added:

‘This subparagraph does not apply to transit operations where the authorised consignee receives goods using simplified procedures referred to in Article 372(1)(g).’

Article 4

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

2. Points 21 and 22 of Article 1 shall apply with effect from 1 July 2001.

3. Points 12 to 20 and 25 to 29 of Article 1 and Articles 2 and 3 shall apply from 1 April 2002.

The provisions referred to in the first subparagraph shall not apply to Community transit operations for which the transit declaration has been presented before 1 April 2002.

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

Done at Brussels, 11 March 2002.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

ANNEX I

Annex 37 is amended as follows:

1. In Title I, section A, the following subparagraph is added:

'Where a transit declaration is processed at an office of departure by a computerised system, one copy of the declaration must be lodged at that office.'

2. In Title III, section C, the second indent is replaced by the following:

— when the third subdivision of box 1 contains the symbol "T", boxes 32 (Item number), 33 (Commodity code), 35 (Gross mass (kg)), 38 (Net mass (kg)), 40 (Summary declaration/previous document) and 44 (Additional information, documents produced, certificates and authorisations) of the first item of goods of the transit declaration used must be struck through and the first box 31 (Packages and description of goods) of this document may not be used to enter the marks, numbers, number and kind of packages or goods description. In the first box 31 of this document, reference will be made, as appropriate, to the number of continuation sheets bearing the respective symbols T1bis, T2bis or T2Fbis.'

ANNEX II

Annex 44a is amended as follows:

1. In Title II, point 2.2., the second subparagraph is replaced by the following:

'Where a loading list accompanies a transit declaration, the list must include the information entered in boxes 31 (Packages and description of goods), 40 (Summary declaration/previous document) 44 (Additional information, documents produced, certificates and authorisations) and, where appropriate, 33 (Commodity code) and 38 (Net mass (kg)) of the transit declaration.'

2. In Title III, point 2, the first sentence is replaced by the following:

'Where a loading list is used, boxes 15 (Country of dispatch/export), 32 (Item number), 33 (Commodity code), 35 (Gross mass (kg)), 38 (Net mass (kg)), 40 (Summary declaration/previous document) and, where appropriate, 44 (Additional information, documents produced, certificates and authorisations) of the transit declaration form must be struck through and box 31 (Packages and description of goods) may not be used to enter the marks, numbers, number and kind of packages or goods description.'

ANNEX III

Annex 69 to Regulation (EEC) No 2454/93 is amended as follows:

1. the standard rates of yield '1,00' and '3,50' in column 5, numerical order 15, are replaced by '0,95' and '3,33' respectively;
 2. the standard rates of yield '1,00' and '3,50' in column 5, numerical order 37, are replaced by '0,98' and '3,42' respectively;
 3. the standard rates of yield '1,00' and '3,50' in column 5, numerical order 38, are replaced by '0,96' and '3,36' respectively;
 4. the standard rates of yield '62,11' and '30,10' in column 5, numerical order 56, are replaced by the footnote reference '(*)' and '29,91' respectively;
 5. the standard rates of yield '47,62', '30,10' and '10,00' in column 5, numerical order 57, are replaced by the footnote reference '(*)', '29,91' and '9,95' respectively;
 6. the standard rates of yield '62,11' and '30,10' in column 5, numerical order 58, are replaced by the footnote reference '(*)' and '29,91' respectively;
 7. the standard rates of yield in column 5, numerical order 62, are replaced as follows: '6,10' by '6,06'; '2,90' by '2,88'; '4,50' by '4,47'; '24,00' by '23,85'; '19,50' by '19,38'; '22,70' by '22,56'; '27,20' by '27,03'; '3,20' by '3,18' and '30,10' by '29,91';
 8. the standard rates of yield '99,00' in column 5, numerical order 128, 129 and 130, are replaced each by the footnote reference '(*)';
 9. the wording 'ex 2302 30 or' in column 3, numerical order 14 and 15, is deleted;
 10. the wording 'ex 2302 40 or' in column 3, numerical order 36, 37 and 38, is deleted.
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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 October 2001

on the waste disposal system for car wrecks implemented by the Netherlands

(notified under document number C(2001) 3064)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2002/204/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:

1. PROCEDURE

- (1) By letter dated 19 September 2000 (registered on 25 September 2000 under A/37820), the Netherlands authorities notified the Commission that they intended to extend the waste disposal system for car wrecks. The original system and the first extension were approved in 1995 and 1998 respectively, as the Commission concluded that the measure did not constitute aid within the meaning of Article 87(1) of the Treaty ⁽²⁾.
- (2) By letter dated 9 October 2000 (D/55102), the Commission requested further information. The Commission reminded the Netherlands authorities of this request by

letter dated 7 December 2000 (D/56086). The Netherlands authorities replied by letter dated 8 December 2000 (registered on 11 December 2000 under A/40432). A further request for information was sent by letter dated 10 January 2001 (D/50042). The Netherlands authorities replied by letter dated 19 January 2001 (registered on 24 January 2001 under A/30634).

- (3) By its decision of 28 February 2001 the Commission initiated the procedure laid down in Article 88(2) of the Treaty with respect to the waste disposal system. By letter dated 2 March 2001 (D/286578), the Commission informed the Netherlands of this decision. After having asked for more time (letter dated 29 March 2001, registered as A/32658 on 29 March 2001), which was granted by letter dated 5 April 2001 (D/51465), the Netherlands reacted to the decision by letter dated 5 June 2001 (registered on 13 June 2001 as A/34642).
- (4) The decision was published in the *Official Journal of the European Communities* ⁽³⁾ and interested third parties were invited to submit their comments on the aid. The Commission received 10 comments, though two of them were received only after the period of one month from the date of publication had expired. The Netherlands was asked to comment on these letters by letters dated 21 May 2001 (D/52087) and 16 July 2001 (D/52884). The Netherlands sent its comments on the comments from interested parties by letter dated 20

⁽¹⁾ OJ C 111, 12.4.2001, p. 2.

⁽²⁾ Letter D/17343 of 28 December 1995 concerning State aid NN 93/95 and letter D/7090 of 17 August 1998 concerning State aid N 656/97. In paragraph 15 of its guide to procedures in State aid cases, the Commission wrote that notification is required whenever there is a sufficient likelihood in the light of the case law of the Court of Justice and the Commission's practice that a measure involves State aid (Competition law in the European Communities, Volume IIA, Rules applicable to State aid, European Commission 1998). Footnote 8 to this paragraph adds that the Commission is willing to give informal advice on whether notification is required.

⁽³⁾ See footnote 1.

June 2001 (registered on 22 June 2001 as A/34929) and by letter dated 3 August 2001 (registered as A/36368 on 7 August 2001). Two meetings between the Commission, the Netherlands authorities and ARN, the central organisation in the waste management system (see below), took place on 21 March 2001 and 4 May 2001 respectively.

- (5) The Dutch authorities took the view that the prolongation of the system could not await the Commission's final decision and declared the new system generally binding in view of the expiry of the previous period.

2. DETAILED DESCRIPTION OF THE MEASURES

- (6) The aim of the waste disposal system is to ensure that the companies that manufacture and sell cars also take responsibility for a high degree of recycling and reuse of car wrecks. Because of the significant environmental consequences involved, the European Parliament and the Council adopted a Directive on end-of-life vehicles (hereinafter the car wrecks Directive) ⁽⁴⁾. The Directive sets an objective for 2006 of 85 % reuse and recovery and 80 % reuse and recycling for all end-of-life vehicles ⁽⁵⁾. The corresponding figures for 2015 are 95 % and 85 %. Having reached the first objective, the participants in the Dutch system want to realise the latter objective well before 2015. In line with the principle of producer responsibility and the 'polluter pays' principle, an important responsibility for reaching these objectives lies with car manufacturers and importers.
- (7) In the early 1990s, several sector organisations ⁽⁶⁾ combined to form the non-profit Foundation Car & Recycling (Stichting Auto & Recycling, hereinafter the SAR) and developed a nationwide collection and recycling system for car wrecks ⁽⁷⁾. For the implementation and management of the recycling system, the SAR set up a private limited liability company, Auto Recycling Nederland BV (hereinafter ARN), that is 100 % owned by the SAR. ARN is responsible for the organisation and logistic administration of the recycling of car wrecks. This system became operational on 1 January 1995.
- (8) The core of the system is a voluntary agreement among all manufacturers and professional importers of cars in the Netherlands (combined within the RAI). They agreed to pay a charge for each car that is registered for the first time in the Netherlands. The charge is collected by ARN,

which uses the resources for the cost of dismantling the car wrecks and recycling the collected materials, including transport. The agreement is concluded each time for a period of three years. The notified agreement, dated 19 July 2000, stipulates that the car manufacturers and importers pay EUR 45 (NLG 99,17) per car that is being registered in the Netherlands, regardless of brand or type ⁽⁸⁾. For the first two periods, the charge was EUR 113 (NLG 250) and EUR 68 (NLG 150) per car respectively.

- (9) The charge of EUR 45 (NLG 99,17) per car is based on a complex calculation. The most important variables in this calculation are the average composition of a car wreck, the average cost of dismantling and recycling a car wreck, the expected number of car wrecks and the expected number of new cars registered in the Netherlands. Another important variable is the extent to which the existing reserves are used for current dismantling premiums. The charge is a flat rate that applies to any brand or type of car, because, according to ARN, the cost of dismantling and recycling is about the same for each car wreck and differentiation would not really be possible.
- (10) In order to ensure that all car manufacturers and importers pay this charge, the Netherlands Government has declared the agreement generally binding on all manufacturers and importers in the market for the period 1 January 2001 — 1 January 2004 ⁽⁹⁾. The Minister for Housing, Planning and the Environment can grant an exemption if the requesting party ensures disposal of the car wrecks in at least an equivalent way to disposal under the system that has been declared generally binding ⁽¹⁰⁾.
- (11) Premiums are paid only for parts of car wrecks which according to the Netherlands authorities cannot be dismantled/collected and recycled in an economically viable manner. At present ARN grants waste disposal premiums for the dismantling of 18 materials.

ARN materials	Norm 2001
Batteries	13,6 kg
Oil	4,9 l
Coolant	3,6 l
Brake fluid	0,3 kg
Tyres	27,3 kg

⁽⁴⁾ Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles, OJ L 269, 21.10.2000, p. 34.

⁽⁵⁾ Lower targets may be laid down for vehicles produced before 1 January 1980.

⁽⁶⁾ RAI on behalf of the car producers and importers, BOVAG on behalf of the garage industry, FOCWA for the car manufacturers, STIBA for the car dismantling industry and SVN (now MRF) for the shredder industry.

⁽⁷⁾ The SAR is managed by four directors. The industry organisations BOVAG, FOCWA, RAI and STIBA have the right to appoint one director each. The SAR is advised by an Advisory Committee, whose members are representatives of interested government bodies, environmental and/or consumer organisations. They are appointed by the board of the SAR.

⁽⁸⁾ In 7 % of cases, the charge is paid by a private person.

⁽⁹⁾ Article 15(36) of the Law on Environmental Management gives the Minister for Housing, Planning and the Environment the power to declare an agreement generally binding.

⁽¹⁰⁾ Article 15(38) of the Law on Environmental Management.

ARN materials	Norm 2001
Inner tubes	0,2 kg
PUR foam	6,5 kg
Glass	25,4 kg
Rubber strips	7,7 kg
Safety belts	0,4 kg
Coconut fibre	0,9 kg
Windscreen washer fluid	0,9 kg
Bumpers	5,2 kg
Hubcaps	0,7 kg
Rear lights and indicators	1,4 kg
Grilles	0,8 kg
Fuels	5,0 kg
LPG tanks (number per wreck)	0,06

There are plans to add airbags, safety belt fasteners, air conditioning and plastic fuel tanks to the list from 2003 onwards.

- (12) In the theoretical situation that all materials are dismantled according to the 2000 norm, the total cost amounts to EUR 87,55 (NLG 192,93) per wreck, i.e. EUR 71,05 (NLG 156,58) for the costs of dismantling, EUR 13,39 (NLG 29,50) for the costs of packaging and collection and EUR 3,11 (NLG 6,85) for costs of recycling. Due to inflation, a higher recycling percentage (including new materials to be recycled) and technological developments with respect to cars, the cost is expected to increase over time. Accordingly, the expected total figure for 2003 is EUR 107,50 (NLG 236,89). For some of the materials, the recycling premium is actually negative, which means that the dismantling company receives a payment from the recycling company for the material to be recycled which is deducted from the premium received from ARN.
- (13) Currently about 267 car dismantling companies are affiliated to ARN. They dismantle about 90 % of all car wrecks in the Netherlands (286 595 in 2000). ARN pays the dismantling contributions only for the quantity of raw material that has actually been dismantled. This is on average 88,5 % of the norm quantities, corresponding to EUR 62,9 (NLG 138,57) in 2000.
- (14) ARN estimates the number of car wrecks in 2001 at between 344 000 and 372 000. ARN's market share is around 90 %. The total amount disbursed in 2000 amounted to about EUR 23,9 million (NLG 52,7 million).
- (15) The administrative cost of the system is budgeted at EUR 3,8 million (NLG 8,4 million) in 2000 and is expected to grow to EUR 4,5 million (NLG 10 million) in later years.
- (16) Any dismantling company may become ARN certified and thus eligible for the premiums, provided it meets certain objective criteria, e.g. having certain environmental licenses, being registered in the online registration system for car dismantling (ORAD), having working facilities of at least 72 m² and certain machines and tools, and using software that is in line with ARN standards. The certification procedure is carried out by an independent certifying body, Société Générale de Surveillance. In addition, ARN requires that dismantling companies be recognised by the Netherlands vehicle registration authority (RDW). It is provided by law that only companies with a legal establishment in the Netherlands can obtain such recognition, so in fact only those companies can obtain the waste disposal premiums.
- (17) A tender procedure is used for awarding contracts for collecting and transporting the dismantled materials to the recycling companies. Interested companies are invited to prove that they fulfil certain minimum technical and financial standards, such as an environmental transport licence, appropriate facilities and experience. One company per province is selected, taking into account in particular the cost price of collection, technical quality and organisational suitability. The collection of used oil is subject to a system regulated by law.
- (18) A tender procedure is also used for awarding contracts for the recycling of materials. Interested companies have to fulfil a number of minimum technical and financial requirements, in particular an environmental licence, appropriate equipment, no bankruptcy history and no criminal record. ARN selects the most attractive offers for the material in question, taking into account in particular the cost price of recycling, working methods, technical quality and organisational suitability.
- (19) Producers and importers of cars are free to pass the charge on to the buyers, or to refrain from doing so if they wish.
- (20) Part of the proceeds of the charge is used for professionalisation and pilot projects. The annual budget for professionalisation amounts to EUR 0,5 million for the period 2001-2005, while from 2006 onward it will amount to EUR 0,2 million. The annual budget for pilot projects relating to recycling is EUR 3,4 million for the period 2001-2003, and EUR 2,2 million for later years. Research topics include method analysis for dismantling, development of the appropriate tools, equipment and machinery, development of quality control systems, research into new separation technologies, optimisation of logistic systems, research into new products, market studies and development of IT-systems.

3. REASONS FOR THE INITIATION OF THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY

- (21) The Commission initiated the procedure laid down in Article 88(2) of the Treaty because it had doubts on several aspects of the system. First of all, it seemed that the dismantling contributions were likely to constitute overcompensation for the dismantling companies with potential spillover into the spare parts market. Secondly, the nature of the professionalisation and pilot projects, financed by the levy, was unclear.
- (22) Furthermore, the Commission expressed doubts as regards potential infringement of Article 29 of the Treaty (restrictions on exports), as ARN allows dismantling companies to participate in the system only if they are recognised by the Netherlands vehicle registration authority (RDW). Since it is provided by law that only companies with an establishment in the Netherlands can obtain such recognition, in practice only such companies can obtain the premiums.
- (23) The Commission did not express specific doubts as regards potential aid for car manufacturers and importers or for packaging, collecting and recycling companies. However, interested parties were given the opportunity to comment.

4. COMMENTS FROM INTERESTED PARTIES

- (24) Following the publication of the notice on the initiation of the procedure⁽¹¹⁾, the Commission received nine comments from third parties. Three of the comments came from car manufacturers, three from associations of companies active in the (waste) PUR foam market, one from a consultant working for a group of Dutch waste disposal companies, one from the United Kingdom authorities and one from the central organisation in the system, ARN. A fourth association of companies active in the field of PUR foam subsequently reacted in response of the other three reactions. However, this latter comment, and also one of the car manufacturers' comments, were not sent within the period of one month following publication of the notice in the Official Journal.

4.1. Comments from car manufacturers

- (25) The three comments from car manufacturers focus on quite different aspects of the ARN system. The first, Renault, welcomes the system as it places responsibility for a product at the last stage of its life on the consumer. It also thinks that the requirement for car dismantling companies to have an establishment in the Netherlands is a small concession to a Member State taking up its

responsibility for its waste streams⁽¹²⁾. However, Renault challenges the fact that a charge is paid regardless of the stage of life of the vehicle and regardless of its residual economic value. Car manufacturers make an effort to 'design for recycling' and they would like to see a return on these investments in differentiation of the treatment cost of their products, rather than having to pay for an average vehicle.

- (26) The second car manufacturer, Peugeot, argues that the ARN system is based on an incomplete and even contestable approach, which leads to an overestimation of the cost of treating car wrecks. Moreover, ARN did not take account of differences in efficiency, which were evident from certain European developments. The restriction to car dismantling companies having an establishment in the Netherlands was therefore not justified and was against European legislation. Finally, Peugeot regrets the total absence of transparency, as ARN refused to communicate the results of its research. As these results were unique in Europe, they should be shared, allowing further analysis.

- (27) The third car manufacturer, General Motors Europe (hereinafter GME), finds it unacceptable that ARN applied an average price, which effectively meant that car manufacturers were involuntarily subsidising inefficient players. GME maintains that the average price is based on the worst cost-base structure, and it alleges that Dutch dismantling companies use the excess amount of money they get through the ARN system to buy car wrecks in Germany. This would constitute unfair competition. If car manufacturers were involved in the process, which would seem normal since they are the payers, they would have a real system of tender offers with the cars going to the most efficient dismantling companies. This would force all the dismantling companies to make the productivity improvements that are required. GME thinks that there is a lot of room for productivity improvement. Moreover, GME believes that the system favours almost only dismantling, with no money being invested in energy recovery, which would be a good way to reach recycling quotas. Like Peugeot, GME argues that ARN is not sufficiently transparent, since it does not provide access to the results of technical studies. Neither is it clear how the recycling quotas are achieved and how the recycled materials, e.g. seat belts, are used. Finally, GME considers that the restriction of the ARN system to companies with an establishment in the Netherlands is a fairly complex issue. GME believes that the operators must be able to communicate in the home language of each country if there is to be proper monitoring.

⁽¹¹⁾ See footnote 1.

⁽¹²⁾ Both of these remarks negate the polluter-pays principle, which forms the basis of the ARN system.

4.2. Comments from associations of companies active in the (waste) PUR foam market

- (28) Three sets of comments, from the European Plastic Converters, the European Isocyanate Producers Association and the European Association of Manufacturers of Moulded Polyurethane Parts for the Automotive Industry (supported also by the European Association of Flexible Polyurethane Foam Blocks Manufacturers), draw attention to the alleged effects of the ARN system on the market for waste PUR foam. The three associations maintain that for many years the industry in the Netherlands has been recycling PUR foam scraps from industrial waste on a voluntary basis, without any subsidy and in a profitable way. However, the ARN subsidies for about 6,5 kg per vehicle have a detrimental impact on the price level of the recycled PUR. The final result is that the non-subsidised PUR foam recycling activities are squeezed out of the market. One of the associations points to the alternatives provided for by the car wrecks Directive: prevention, reuse, recycling and other forms of recovery of end-of-life vehicles and their components. Another adds that the system discriminates against other filling materials used in car seats or other car parts because there would be no similar obligations. Finally, it is argued that recycling PUR foam separately might not be the most economical solution, as the energetic value of automotive shredder residue is much higher if all types of plastics, including PUR foam, are left in it.

- (29) A later comment by the Association of Plastic Manufacturers in Europe, however, supported the view that if plastics recycling is to develop along the lines prescribed by the legislation, there needs to be a source of funding. The ARN system would represent one type of framework to provide such support for plastics recycling.

4.3. Comments on behalf of the waste disposal companies

- (30) The consultant that drew up this set of comments submitted a copy of the notice of objection submitted by several waste disposal companies to the Netherlands competition authority (NMa). This notice concerns, amongst other things, the distortion of competition between participating and non-participating car dismantling companies, with respect to matters such as the commercially profitable parts contained in car wrecks. Another important issue is the concern at distortion of competition resulting from the dominant position of ARN in the markets for dismantled materials. In partic-

ular, the fact that ARN has concluded a contract with only one waste oil collecting company for the whole country is called into question. The documents state that the collecting and treatment of hazardous waste, like waste oil, oil filters and batteries, are profitable activities.

4.4. Comments from the United Kingdom authorities

- (31) The United Kingdom authorities stress that in transposing the car wrecks Directive each Member State will need to take account of the different systems and industry structures that they have in place. Economic operators should not be prevented from entering into commercial negotiations about contracts on either a variable or a fixed payment basis, and they should be able to agree fixed price contracts if that is what they wish. It would be unnecessarily complex to oblige operators to enter into variable contracts.

4.5. Comments from ARN

- (32) ARN submitted extensive information on the system, a new study on the cost price of car dismantling and a report on the market structure in the car dismantling sector. The Netherlands authorities fully support the ARN comments, and there is a large overlap between those comments and the reaction of the Netherlands. These two sets of comments are therefore dealt with together in the following section.

5. COMMENTS FROM THE NETHERLANDS AND FROM ARN

5.1. General issues

- (33) The Netherlands authorities and ARN begin by reminding the Commission of its two earlier decisions on the system in which it concluded that there was no State aid. The principles of the system had not changed in the meantime. ARN doubts whether the Commission could adopt a decision that went against its two earlier decisions and asserts that the Commission should at any event have followed the procedural rules applicable to existing aid rather than the rules applicable to new aid.
- (34) ARN's comment also contains a description of the system. Among other issues, ARN stresses that the system is based on an agreement between private parties and that it is necessary to enter into a contract with as many dismantling companies as possible in order to achieve the objectives.

5.2. The definition of State aid and State resources

- (35) Referring to several Court cases, in particular *PreussenElektra* and the opinion of Mr Advocate General Jacobs in that case⁽¹³⁾, ARN and the Netherlands argue that the system does not involve State aid, as the levies that are collected do not constitute State resources. State

⁽¹³⁾ Case C-379/98, *PreussenElektra AG v Schleswig AG*, judgment of the Court of 13 March 2001, and opinion of Mr Advocate General Jacobs delivered on 26 October 2001 [2001] ECR I-2099.

resources would be funds over which the State exercises control in one way or another. Contrary to taxes, payments here are made on the basis of a voluntarily adopted agreement. The Minister declares such an agreement generally binding only if it has a market coverage of at least 75 %. In the case of ARN, some 93 % of the market has voluntarily adopted the agreement. The other 7 % are mainly non-professional importers. The private parties are not obliged to submit a request for a declaration that the agreement is generally binding.

- (36) Moreover, the funds are paid by private undertakings to a private legal entity, SAR, founded by private parties. At no time do the funds acquired through the charge become the property of the State. Nor does the State, at any point, exercise any form of control over how the funds are used. ARN is neither a public body nor an organisation designated or established by the State. In fact, when considering a request for an order declaring an agreement generally binding, the Minister conducts only a limited review of the agreement and the disposal system financed by the charge agreed upon. The Minister assesses whether the organisation entrusted with the task of operating the system is sufficiently independent, whether the targets for recycling set in governmental regulations can be met and whether everything has been done to involve as many parties as possible. This means that there is no State influence on the actual setting-up or operation of the system.
- (37) Finally, the collection of the charges is the responsibility of the private parties. If one of the parties refuses to abide by its obligations under the system, any other interested party will have to apply to the courts under civil law. The whole system is governed by civil law.
- (38) The Netherlands authorities and ARN also maintain that the contributions do not affect trade between Member States. There is no competition between Netherlands and foreign dismantling companies on the market for dismantling services, mainly because European legislation makes it almost impossible and in any event unattractive to export untreated car wrecks. For that reason too, there is no aid within the meaning of Article 87(1) of the Treaty.

5.3. Overcompensation of the car dismantling companies

- (39) The Netherlands authorities' and ARN's opinion is that the contributions to car dismantling companies constitute a reasonable payment for materials that are actually dismantled on the basis of realistically estimated dismantling costs. The activities for which these companies receive the remuneration would not be carried out

without such remuneration, because they are not economically profitable. Car dismantling companies are free to join the system or remain outside it. The system does not change anything in the competitive position of these companies. The market remains open and competitive also with respect to non-participating companies.

- (40) The contributions to car dismantling companies are based on independent research on the market and cost price. Car producers and importers, represented in the SAR, which determines the contributions, have an interest in keeping the contributions as low as possible. Where possible ARN will reduce the contributions, and as soon as ARN-activities become commercially feasible, the contribution, for these activities will be cancelled. At the same time, it is important to set the contributions at such a level that car dismantling companies are prepared and able to do the work.

5.3.1. Actual payments

- (41) Contributions are paid only for materials that are actually dismantled. Theoretically, the total dismantling contribution, in the event that all materials/car parts are dismantled according to the norm quantities, would be EUR 71,05. The average contribution per car is in practice only 88,5 % of this amount, as the companies are not always able to dismantle all the materials according to the norms established by ARN. This can be due to dismantling of commercially profitable parts, or due to the fact that the car wreck is not 'complete'.
- (42) The actual amounts that are being paid are only small. Almost half of the participating car dismantling companies received contributions below EUR 100 000 over a three-year period, see the table below. For 122 companies the payments remained below EUR 100 000 over the 1998-2000 period. For 260 companies, they remained below EUR 500 000. Only in 17 cases was a higher figure reached, the maximum being below EUR 1 400 000. Even for those companies that received more than EUR 100 000 the difference between the contributions and their costs is too small to result in aid above this threshold.

Received contributions over the period 1998-2000 (EUR)	Number of car dismantling companies
0—100 000	122
100 000—200 000	80
200 000—300 000	42
300 000—400 000	17

Received contributions over the period 1998-2000 (EUR)	Number of car dismantling companies
400 000—500 000	9
500 000—600 000	5
600 000—700 000	4
700 000—800 000	2
800 000—900 000	5
900 000—1 400 000	1
Total	287

5.3.2. Cost prices of car dismantling companies

(43) The Commission based its decision to initiate the procedure laid down in Article 88(2) of the Treaty on the investigation by an independent expert that was carried out between April and November 1998 and finalised in May 1999. ARN notes that this report was drafted with a view of determining the lowest possible contribution rather than assessing any overcompensation. In this report, there was only one company with a cost figure of EUR 29, and the figure in this case is particularly doubtful, whereas there is a large group of smaller companies with a cost higher than EUR 71 (up to EUR 136). The report should therefore not be interpreted as meaning that the cheapest dismantling companies could dismantle the ARN materials at a cost of EUR 29. In practice this not possible for any company: 1. the report itself already indicates that it is incomplete and unreliable, as it is, for example, based on only one year, on incomplete administrative information obtained from often very small companies with limited experience in accounting matters and on estimates by these companies themselves; 2. new materials are added to the list of ARN materials and other materials have become more complicated to dismantle; 3. general cost inflation and the shortage of qualified labour in particular; 4. certain costs and cost elements were deliberately not taken into account (e.g. cost of equipment, the allocation of general costs, the cost of transporting car wrecks to the dismantling company and the cost of maintenance). In particular the larger, more efficient companies indicated that in practice they had higher costs than the report calculated.

(44) For these reasons ARN submitted an updating of the report, drafted by the same consultant. The new report focuses on companies that dismantle more than 1 000 wrecks a year. These companies accounted for 71,7 % of all car wrecks dismantled in 2000. On average these

companies dismantle 2 000 car wrecks a year. The focus on larger companies is justified by the fact that smaller companies are expected to have a higher cost price as fixed costs weigh more heavily on them.

(45) For the average company that dismantled 2 000 wrecks in 1999, a reference cost price of NLG 151 (EUR 68,5) per car wreck is calculated (excluding transport costs⁽¹⁴⁾). This figure is well above the premium that is paid out on average⁽¹⁵⁾.

(46) The report calculates the 1999 cost price, on the basis of all relevant cost items, for six companies that were also analysed in the earlier report. The range of cost prices (including transport costs) obtained varies from NLG 144 (EUR 65) to NLG 196 (EUR 89). These figures are much higher than indicated in the 1997 report and variations are only limited. For three of these companies, the report calculates a cost price lower than the reference cost price (only two if transport costs are included). In only one case does the report calculate a cost price (including transport costs) that is below the average premium paid to the relevant company. The difference amounts to NLG 5 (EUR 2,27), which means that the company's profit margin on this activity was below 5 %.

(47) As the cost figures are higher, there is no spillover effect on the commercial spare parts market. Moreover, the smaller companies in particular are active on this market. For these companies, the contributions by ARN are relatively low in comparison to their costs. The contributions would not have a significant impact on trade between Member States or on competition.

5.3.3. Economic appraisal of the sector and tender procedures

(48) ARN submitted yet another study from another consultant concerning an economic appraisal of the car dismantling sector and an analysis of the outcome of tender procedures if they were to be used by ARN. The main argument is that under the current system ARN concludes contracts with dismantling companies on market terms and that these companies are, therefore, not overcompensated. There is no reason to expect that the use of tender procedures to select dismantling companies would lead to better results, especially if one were to take into account the effects of using such method on ARNs ability to achieve its own and the Community's recycling targets. On the contrary, payments to dismantling companies would probably be higher if tender procedures were used. The study notes that, in normal markets too, more efficient companies can make higher profits.

⁽¹⁴⁾ ARN does not take these costs into account for establishing premiums. However, if a tender procedure were used, these companies would certainly take these costs into consideration, because they are necessary in order to have a constant flow of car wrecks, which allows them to avoid idle capacity. For the six companies, transport costs vary between NLG 12 (EUR 5,4) and NLG 29 (EUR 13,2)

⁽¹⁵⁾ This reference cost price is based on the assumption of optimal management and does not take into account the heaviness of the work and the increasing complexity of dismantling the more recent car wrecks. It is also based on the assumption that a large part of the costs is borne by other activities. This has become more difficult, however, as metal shredder prices have decreased significantly since 1998.

- (49) The Netherlands authorities also hold that a tender procedure for the selection of car dismantling companies would not allow the Netherlands and European objectives for car wrecks to be achieved. A large number of participating dismantling companies is desirable. A tender procedure would, by definition, lead to a limited number of selected companies. Also, ARN will never be the owner of the car wrecks and is therefore not in a position to determine which dismantling company receives the car wrecks. Furthermore, a tender procedure would not lead to lower dismantling costs. If some companies were to offer dismantling services at a lower price, these companies would not have sufficient capacity to dismantle all wrecks. It would also be likely that these companies would mainly concentrate on relatively new wrecks (resulting from accidents), which are commercially attractive for the spare parts. They probably would refuse to dismantle the older, economically unattractive car wrecks.
- (50) The Netherlands authorities do not see how specific criteria in tender procedures (such as minimum number of dismantling companies per region) would effectively solve these problems. Such an approach would lead to the selection of a large number of very different car dismantling companies with very different costs. This would be contrary to the low cost objective which was the Commissions main reason for favouring tender procedures. Moreover, ARN would perform much more of a guiding role on the market than at present.
- (51) In fact, the way of selecting and concluding contracts with car dismantling companies has the same effects as a tender procedure would have. If real tender procedures were used for establishing market prices, it is unlikely that these would be lower than the current contributions. If they were lower, there would be few dismantling companies willing to dismantle car wrecks for this lower amount.
- (52) From the above, the Netherlands authorities and ARN conclude that there is no overcompensation of car dismantling companies.
- (54) None of these activities would involve State aid. They are all performed for the benefit of the companies paying the disposal fee. Assignments to third parties are always given on market conditions. In most cases the amounts of payments are so low that any aid would in any event be below the *de minimis* threshold.
- (55) The last category, pilot projects, concerns the 'recyclability' of materials. The resources are not used for the development of new technology, but existing separation technologies, e.g. from the mining industry or the recycling of other materials, are investigated with a view to potential application to car materials. The application of these technologies is necessary to reach the objectives set in the car wrecks Directive. ARN does not always bear the full cost of these projects itself.
- (56) Normally the results are publicly available. The only reason for ARN not to publish information is when it contains details that may harm ARN's or the other companies' competitive interests.

5.5. The obligations resulting from the car wrecks Directive

- (57) The Netherlands authorities maintain that until they implement the car wrecks Directive there is no legal obligation for producers or importers to bear (financial) responsibility for the collection and processing of car wrecks. By their agreement on the waste disposal levy, they voluntarily take an additional financial responsibility. Once the Directive is implemented, it can be maintained that the collection and processing of car wrecks constitutes a cost that is normally included in the budget of these companies. The agreement, however, does not lead to an exemption of this cost, but constitutes the elaboration of the underlying principle.

5.6. Participation of foreign car dismantling companies

5.4. ARN's research and development activities

- (53) ARN's budget for research and development covers 1. ARN's internal costs, 2. feasibility studies carried out by universities or research institutes on recycling of new materials or on new recycling methods, 3. research studies on the efficiency of the ARN system, 4. pilot projects carried out by companies that recycle/process dismantled materials. ARN provided a detailed breakdown of these expenditures for the period 1998-2001 (first quarter).
- (58) The Netherlands authorities and ARN do not perceive any infringement of Article 29 of the Treaty. Firstly, Article 29 does not target measures taken by private parties. The requirement of being recognised by ORAD (recognition to be provided by the RDW) is not the consequence of any government measure. It is imposed by ARN, which is not a public body. Secondly, all car dismantling companies can set up an establishment in the Netherlands in order to obtain ORAD recognition. Thirdly, measures that do not make a distinction on the basis of nationality do not fall under the application of Article 29. The requirement of being recognised by

ORAD is applicable without distinction to companies of domestic and foreign origin and to cars irrespective of where they have been produced. Fourthly, the exportation of car wrecks to car dismantling companies abroad is not impossible and is not restricted by the ORAD recognition system. Fifthly, the free movement of goods, as regards the imports and exports of car wrecks, has been harmonised by Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the EC ⁽¹⁶⁾.

(59) Alternatively, the Dutch authorities hold the opinion that there is an objective justification for ARN to require ORAD recognition. The link with the registration system is the only way of ensuring that the contributions are paid only for cars produced in or imported into the Netherlands.

(60) The Dutch authorities distinguish between the situation before and after the implementation of the car wrecks Directive. As concerns the situation before the implementation of the car wrecks Directive: RDW does not provide ORAD recognition to companies without an establishment because it cannot then control or monitor these companies. The same policy is followed in the context of the annual car tests (APK). The Netherlands authorities do not see any reason why the judgment in *Van Schaik* ⁽¹⁷⁾ would not be applicable. If RDW were to provide ORAD recognition to companies abroad, ARN would in theory allow these companies to participate in the system.

(61) As concerns the situation after the implementation of the car wrecks Directive: on the basis of Article 5(5), Member States have to mutually recognise and accept certificates of destruction issued by competent authorities in other Member States. Once this has been achieved, RDW will accept such certificates and deregister the car wreck concerned itself. This is different from giving foreign companies the power to deregister cars on-line themselves. Moreover, the fifth sentence of Article 5(3) specifies that issuing the certificate of destruction does not entitle the company to claim any financial reimbursement.

(62) Car dismantling is basically a locally operated activity. For several reasons that are not related to the ARN system, export of car wrecks is limited and the Netherlands authorities do not see any reason to expect this to be different in the future. Firstly, car wrecks containing liquids can only be exported in conformity with the 'red list procedure' of Regulation (EEC) No 259/93. Part of this procedure is the request of permission of both the

exporting and the importing country, the payment of a deposit and enabling third parties to object against the intended export. This makes such exportation a time-consuming, expensive and risky activity. Secondly, car wrecks without liquids can be exported in conformity with the 'green list procedure' of Regulation (EEC) No 259/93. The removal of the liquids before exportation, however, makes it financially and organisationally unattractive to export Netherlands car wrecks to car dismantling companies abroad.

(63) If a number of car dismantling companies abroad were to participate in the ARN system, it might become necessary to introduce separate collection and recycling measures for the materials dismantled by these companies. This might again lead to problems in the context of Regulation (EEC) No 259/93. Many of the ARN materials are not on the green list. Therefore, participation by foreign car dismantling companies would make the system more expensive.

5.7. Potential aid for packaging, collection and recycling companies

(64) The Netherlands authorities and ARN consider the contracts between ARN and the packaging, collecting and recycling companies to be normal contracts and do not see any reason to doubt that they are transparent and non-discriminating. Guarantees of a minimum supply of materials to recycling companies would never constitute a monetary transfer and are always provided under normal market conditions.

5.8. Comments on third party comments

(65) The Netherlands authorities note that the third parties, except ARN, have provided hardly any evidence in support of the various remarks. They also note that various comments supported the system and that on various points the parties contradict one another.

(66) The Netherlands authorities stress that no resources are used for the recycling of PUR foam and that the contribution concerns only the dismantling of the foam from the car wrecks. This contribution takes into account the proceeds that dismantling companies obtain for the material. Furthermore, a distortion of competition is unlikely. The ARN system leads to the dismantling of about 1 700 tonnes of PUR foam a year. This compares with a total annual production of 2 million tonnes of new PUR foam. Production waste amounts to about 120 000 tonnes, 70 000 tonnes of this is being exported, mainly to the United States. The quality of

⁽¹⁶⁾ OJ L 30, 6.2.1993, p. 1.

⁽¹⁷⁾ Case C-55/93 *Van Schaik* [1994] ECR I-4837.

foam from car wrecks is much lower than the foam from production waste and an extensive quality report is required. The Netherlands authorities believe that the lower proceeds from PUR foam other than the foam from car wrecks is probably due to other factors, notably the poor market situation in the United States with increasing supply of production waste foam and diminishing demand for its main use (underlay carpet). Already between 1993 and 1995, before ARN started the recycling of PUR foam, the price of production waste foam exported to the United States fell from DM 1,6 to DM 0,8 per kg. Finally, the Netherlands authorities note that other ways of using waste PUR foam may be in cement ovens or gasification installations and that PUR foam may be obtained from shredder waste. However, the car wrecks Directive explicitly expresses a preference for material reuse over recovery.

- (67) With respect to the comments by car manufacturers, the Netherlands authorities are in principle in favour of having differentiated premiums. ARN has investigated this, but concluded that it was not possible. With respect to the cost level, it is doubtful whether the car manufacturers take account of the ambitious objectives and the high quality requirements when they state that ARN's calculation of recycling and dismantling costs is too high. It seems very unlikely that 'excess amounts' would enable car dismantling companies to buy car wrecks in Germany. In any case, no contributions are paid for dismantling non-Netherlands cars.

- (68) With respect to the comments submitted on behalf of waste disposal companies, the Netherlands authorities hold that these comments should not be accepted as the consultant has not proven to have any interest in the case. They mention as well that the Netherlands competition authority (NMa) has not revised its positive decision following receipt of the documents submitted. According to the Netherlands authorities the background of the comments must be that since 1999 new regulations have introduced competition into the oil collecting sector, which has enabled ARN to conclude a

contract with a company on significantly more advantageous terms than before.

6. ASSESSMENT

6.1. State resources and on effects on trade

- (69) In *PreussenElektra* ⁽¹⁸⁾, the Court of Justice ruled that an obligation imposed on private electricity supply undertakings to purchase electricity produced from renewable energy sources at fixed minimum prices does not involve any direct or indirect transfer of State resources to undertakings which produce that type of electricity. However, the ARN system differs from such a system. There is an intermediary organisation responsible for the management of the resources and a fund to which the charges are paid. The proceeds of the charge are to be used only for the collection and recycling of the materials; distribution of profits to the participating companies is prohibited. Because of these characteristics, the charge is comparable to a parafiscal charge. On various occasions the Court of Justice has ruled that the use of parafiscal charges in favour of certain undertakings constituted State aid ⁽¹⁹⁾.
- (70) However, in the present case manufacturers and importers may obtain exemption if they ensure disposal of the car wrecks in at least an equivalent way to disposal under the system that is financed from the proceeds of the charge (see recital 10). Manufacturers and importers are free to process car wrecks through their own resources, to set up their own systems or to affiliate themselves to other systems. These options are real, at any rate for car manufacturers and large importers. The Commission therefore regards the Netherlands authorities' decision to declare the charge generally binding as imposing an obligation to produce results rather than as an obligation to contribute to the ARN system. The Commission considers that the charge is voluntary or at least optional in character, and the proceeds of the charge do not therefore constitute state resources.
- (71) The absence of State resources means that there is no State aid within the meaning of Article 87(1) of the Treaty. However, in the following paragraphs, it is made clear that, even if the proceeds of the charge did constitute State resources, the Commission would conclude that the system does not involve State aid, since it does not favour certain undertakings or the production of certain goods.

⁽¹⁸⁾ See footnote 13, paragraphs 59 to 61 of the Judgment.

⁽¹⁹⁾ For example, in Case 78/76 *Steinike & Weinlig v Germany* [1977] ECR 595. In that Judgment, the Court held:

'(21) The prohibition contained in Article 92(1) covers all aid granted by a Member State or through State resources without it being necessary to make a distinction whether the aid is granted directly by the State or by public or private bodies established or appointed by it to administer the aid. In applying Article 92 regard must primarily be had to the effects of the aid on the undertakings or producers favoured and not the status of the institutions entrusted with the distribution and administration of the aid.'

(22) A measure adopted by the public authority and favouring certain undertakings or products does not lose the character of a gratuitous advantage by the fact that it is wholly or partially financed by contributions imposed by the public authority and levied on the undertakings concerned.'

- (72) As far as the effect on trade between Member States is concerned, the Commission cannot accept the Netherlands authorities' and ARN's arguments. Trade in car wrecks may be very limited, but it exists. Moreover, a substantial number of companies that participate in the system are also active in the spare parts market. Spare parts are internationally traded, and indeed increasingly so. Therefore, any aid for dismantling activities must be expected to affect trade between Member States. Furthermore, the existence of the system possibly has an effect on trade in cars.

6.2. Car manufacturers and importers

- (73) Article 5(4) of the car wrecks Directive stipulates that Member States shall take the necessary measures to ensure that producers and professional importers meet all, or a significant part of, the costs of the implementation of this measure [...] ⁽²⁰⁾. This is in line with the principle of producer responsibility and the 'polluter pays' principle. In fact, the Netherlands system is based on these principles. However, in the Netherlands system the cost of dismantling and recycling car wrecks is financed from the proceeds of a charge that is declared generally binding by the Government. Viewed in isolation, this favours car manufacturers and importers. However, the Commission can make allowance for the contribution arrangements under which it is primarily the car manufacturers and importers themselves who finance the recycling system. They are thus not relieved of a normal company cost. In the area of recycling, the charge has a very specific and unique purpose, there being a direct and compelling link between the charge and the payment, both of which relate to precisely the same good, at different moments of its economic lifetime. In these circumstances, the effect of the arrangements is merely to oblige undertakings selling cars to internalise all of the true environmental costs associated with their activities, without any other financial intervention from the Member State being necessary.
- (74) One car manufacturer commented that it would like to see a return on its investments in 'design for recycling' in the form of differentiation of the treatment cost of its products. However, it cannot be deduced from this that the system contains an aid element for those car manu-

facturers that do not invest similar amounts in 'design for recycling'. In the notification, ARN explained that it did not choose to determine different levies for different types of cars as the calculations would be difficult and based on poor information. Moreover, the consequences of 'design for recycling' will have an impact on the car wrecks system only after some years.

- (75) The Commission therefore expects that via the system each car manufacturer or importer will pay at least a significant part of the costs referred to in Article 5(4) of the car wrecks Directive and concludes that there is no State aid for car manufacturers and importers, even if State resources were involved.

6.3. Undertakings involved in packaging, collecting and recycling

- (76) Following the initiation of the Article 88(2) procedure, no comments were received concerning the openness of the tender procedures used by ARN. The Commission therefore assumes that these procedures ensure that the remuneration is reduced to the necessary minimum. The Netherlands authorities do not intervene in any way to inflate the payments or overcompensate the undertakings concerned. The terms of the tenders seem transparent and non-discriminatory, the conditions imposed seem objectively justifiable and do not seem to give rise to any de facto discrimination.
- (77) Even if the public tenders are sufficiently transparent and non-discriminatory, they are insufficient, in themselves, to allow the conclusion to be drawn that no State aid is involved, because the premiums are effectively filling the gap between the cost of dismantling and the price to be obtained for the recycled materials in the market. However, it is the responsibility of the car manufacturers and importers, in accordance with the 'polluter pays' principle, as agreed among themselves and as confirmed by the order declaring the agreement generally binding and by the car wrecks Directive, to ensure that the activities for which the remuneration is paid are carried out. Therefore, the effect of the arrangements is that the undertakings involved in packaging, collecting and recycling are effectively performing a service primarily for the car manufacturers and importers, as opposed to the

⁽²⁰⁾ 'This measure' refers to the first subparagraph of Article 5(4) concerning the delivery of the vehicle to an authorised treatment facility without any cost for the last holder and/or owner as a result of the vehicle's having no or a negative market failure. This implies that any commercial deficit resulting from dismantling and recycling cannot be passed on to the last owner or holder of the car. The second subparagraph of Article 5(4) relates to the costs of these commercial deficits.

Member State or consumers. The Commission therefore concludes that there is no State aid for these undertakings, even if the proceeds of the charge were deemed to be State resources.

- (78) The comments by the three associations involved in PUR foam recycling point to the effects of the contribution for dismantling PUR (EUR 2,86 per kg). The facts presented by the Netherlands authorities indicate, however, that the effect of the relatively small additional supply of inferior waste PUR foam must be limited. Moreover, any such general effect of the system remains a typical result of regulations requiring all environmental costs related to selling cars to be internalised by the car industry as a whole.

6.4. Dismantling companies

- (79) The Commission has assessed the new report submitted by ARN presenting new calculations on the cost of car dismantling companies and agrees with the general picture. It is shown in particular that: 1. the actual cost prices of dismantling car wrecks are significantly higher than indicated in the 1999 report; 2. the 'reference cost price' of dismantling an average car wreck is well above the average contribution that is paid out; and 3. cost differences are much smaller than was concluded in the 1999 report. Only in one case is the cost price below the average contribution paid to the relevant company, but the gap is relatively small. Furthermore, the Commission makes allowance for the need to have a sufficient number of participating dismantling companies. Finally, ARN and the Netherlands authorities have shown that the differences among car wrecks and among dismantling companies present difficulties for tendering procedures. The Commission does not rule it out that it may still be possible to apply such procedures, but agrees that it is unlikely that they would result in lower dismantling contributions, even in the case of the more efficient dismantling companies. Under these circumstances, the Commission can regard the dismantling contributions as reflecting market prices for the services of the car dismantling companies. Consequently, there is no overcompensation to these companies.

- (80) The absence of overcompensation, viewed in isolation, is not sufficient to allow the conclusion to be drawn that no State aid is involved, because the premiums are effectively filling the gap between the cost of dismantling and the price to be obtained for the recycled materials in the market. As described in recital 77, however, it is the responsibility of the car manufacturers and importers, in accordance with the 'polluter pays' principle, as agreed among themselves and as confirmed by the order declaring the agreement generally binding and by the car wrecks Directive, to ensure that the activities for which

the remuneration is paid are carried out. Therefore, the effect of the arrangements is that the dismantling companies are effectively performing a service primarily for the car manufacturers and importers, as opposed to the Member States or consumers. The Commission therefore concludes that there is no State aid for these undertakings, even if the proceeds of the charge were deemed to be State resources.

- (81) Any waste disposal system for car wrecks necessarily involves choices for one or another technology with a view to reusing, recovering or recycle a specific material. ARN's and the Netherlands authorities objectives, favouring selective dismantling over combined shredder/separation technologies, may involve a relatively large workload for dismantling companies. This fact, however, does not alter the nature of the contributions, which are a market reward for services rendered and which, for the reasons stated above, do not constitute State aid.

6.5. The expenses for professionalisation and pilot projects relating to recycling

- (82) Research studies on the efficiency of the ARN system and on the efficiency of dismantling are primarily of importance for ARN and the functioning of the system. They do not directly benefit dismantling or recycling companies or car manufacturers. Therefore, the Commission agrees with the Netherlands authorities that, even if the budgetary resources were deemed to be State resources, these studies do not constitute State aid, as they do not favour specific companies or specific activities within the meaning of Article 87(1) of the Treaty. The same conclusion also holds for ARN's internal costs under this budget line in as far as they relate to activities that are also connected with the efficiency of the system.
- (83) From their description it becomes clear that the feasibility studies and pilot projects on dismantling and recycling of new materials/car parts also primarily serve the interests of the system and do not confer specific benefits on the participants in the system or on the companies carrying out the research. No new technologies are being tested; the work solely concerns investigation of potential application of existing technologies for specific materials/car parts. The dissemination of results is restricted only when the interests of ARN or of third parties that participate in the research so require. ARN awards research contracts to firms according to market conditions, with specific advantages for the participating firms being ruled out. Therefore, these expenses do not constitute State aid within the meaning of Article 87(1) of the Treaty, even if the budgetary resources were deemed to be State resources.

6.6. Infringements of other Treaty provisions

- (84) As the Commission takes the view that the system does not result in State aid, it is not entitled to decide, under the Article 88(2) procedure, whether other provisions of Community law are infringed.

7. CONCLUSIONS

- (85) The Commission concludes that the waste disposal system for car wrecks does not involve State aid. No State resources are involved, since the obligation imposed under the Law on Environmental Management and the declaration that the system is generally binding must be regarded as an obligation to produce results. The decision to pay the charge is voluntary, or at least optional. Furthermore, the measure does not constitute State aid even if the proceeds of the charge were deemed to be State resources, since it does not favour specific companies. Car manufacturers actually pay at least a significant part of the cost of the system, while the contributions for car dismantling companies must be viewed as a market remuneration for the services they provide, despite some divergence observed in cost prices. There is no evidence that the management of the system by ARN has provided specific advantages for other participants in the system. Finally, the Commission has found that the budget for professionalisation and pilot projects is used entirely in the interests of the system,

without conferring specific advantages on the companies involved in the research. As the Commission concludes that the system does not involve State aid, it is not entitled, within the framework of the Article 88(2) procedure, to decide on possible infringements of other Treaty provisions,

HAS ADOPTED THIS DECISION:

Article 1

The waste disposal system for car wrecks declared generally binding by the Netherlands authorities, as notified to the Commission, does not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 October 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 4 March 2002

following a request by Austria applying for the special regime provided for in Article 3 of Directive 93/38/EEC

(notified under document number C(2002) 684)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/205/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽¹⁾, as last amended by Directive 98/4/EC of the European Parliament and of the Council ⁽²⁾, and in particular Article 3(4) thereof,

Having regard to Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons ⁽³⁾, and in particular Article 12 thereof,

Having regard to the request submitted by Austria on 6 September 2000,

After consulting the Advisory Committee for Public contracts,

Whereas:

(1) Pursuant to Article 3 of Directive 93/38/EEC, a Member State may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels is not to be considered to be an activity defined in Article 2(2)(b)(i) of that Directive and that entities are not to be considered as operating under special or exclusive rights within the meaning of Article 2(3)(b) by virtue of carrying on one or more of those activities, provided that a number of precise conditions laid down in its paragraphs 1 and 3 are satisfied with respect to the relevant national provisions concerning such activities

and that, pursuant to its paragraph 2, any Member State requesting such a decision ensures that entities observe the principles of non-discrimination and competitive procurement in awarding contracts and communicate to the Commission information relating to the award of such contracts.

- (2) Member States, which have complied with the provisions of Directive 94/22/EC, shall be considered to satisfy the conditions laid down in Article 3(1) of Directive 93/38/EEC.
- (3) By letter dated 6 September 2000 ⁽⁴⁾, Austria submitted to the Commission a request pursuant to Article 3 of Directive 93/38/EEC. That request did not cover the exploitation of geographical areas for the purpose of exploring for or extracting coal or other solid fuels.
- (4) By letter dated 11 December 2000, the Commission requested Austria to submit the laws, regulations and administrative provisions necessary for the legal analysis of the request and to provide information on whether individual concessions or authorisations had been granted before the date on which it had implemented Directive 93/38/EEC and if on that date other entities were free to seek authorisations for the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels, on a non-discriminatory basis and in the light of objective criteria;
- (5) By letter dated 20 March 2001, Austria sent the Commission the relevant documents and answered the questions raised by the Commission.
- (6) By adopting the Berggesetz 1975 ⁽⁵⁾, replaced as of 1 January 1999 ⁽⁶⁾ by the Mineralrohstoffgesetz ⁽⁷⁾, Austria has complied with Directive 94/22/EC.
- (7) With reference to Article 3(3) of Directive 94/22/EC a notice was published on 12 September 1995 in the *Official Journal of the European Communities* ⁽⁸⁾ declaring that the whole territory of Austria is available on a permanent basis in the sense of the Article provided that there are no existing prospection, production and storage contracts relating to hydrocarbons, or existing mining rights which also include hydrocarbons.

⁽¹⁾ OJ L 199, 9.8.1993, p. 84.

⁽²⁾ OJ L 101, 1.4.1998, p. 1.

⁽³⁾ OJ L 164, 30.6.1994, p. 3.

⁽⁴⁾ The request was originally based on section 86 of the Bundesvergabe-gesetz 1997.

⁽⁵⁾ BGBl. 259/1975.

⁽⁶⁾ BGBl. I 38/1999.

⁽⁷⁾ The provisions concerning the prospection and production of oil and gas are — as they are of relevance for the present situation — unchanged in relation to the Berggesetz 1975.

⁽⁸⁾ OJ C 237, 12.9.1995, p. 16.

- (8) The 'Bundesgesetz 1997 amending the Bundesvergabegesetz 1993' ⁽¹⁾, (hereinafter the 'Bundesvergabegesetz 1997') which entered into force on 1 January 1997, implemented Directive 93/38/EEC into Austrian law at federal level. Section 86 of the Bundesvergabegesetz 1997 repeats the terms of Article 3(2) of Directive 93/38/EEC and guarantees compliance with the principles of non-discrimination and competitive procurement by entities carrying out exploration or extraction, in particular as regards the information they make available to enterprises concerning their intentions with respect to the award of contracts, and compliance with the obligation to transmit to the Commission information on the award of such contracts. It further provides that compliance with Article 3(1) of Directive 93/38/EEC through the corresponding provisions in Section 86(2)(1 to 5) Bundesvergabegesetz 1997 is presumed for enterprises which are granted the right to exploit geographical areas for the purpose of exploring for or extracting oil or gas on the basis of Section 68 and following of the Mineralrohstoffgesetz.
- (9) On 1 July 1994, five contracts for the exploration, production and storage of hydrocarbons existed between the Republic of Austria and the OMV AG and three such contracts existed between the Republic of Austria and the Rohöl-Aufsuchungs AG (RAG), to all of which the provisions of the Berggesetz 1975 applied.
- (10) On the basis of the Allgemeine Berggesetz 1854, limited authorisations were granted for production of oil and gas. These authorisations concern mineral raw materials (mining rights) and were granted before the implementation of the Bitumengesetz on 31 August 1938 or on the basis of interim provisions laid down in this law. The production of oil and gas by the RAG, the Van Sickle GesmbH and the OMV in the Land Niederösterreich is based on such authorizations,

HAS ADOPTED THIS DECISION:

Article 1

From 4 March 2002 the exploitation of geographical areas for the purpose of exploring for or extracting oil or gas shall not be considered in Austria as an activity defined in Article 2(2)(b)(i) of Directive 93/38/EEC.

Entities carrying on such an activity shall not be considered in Austria as operating under special or exclusive rights within the meaning of Article 2(3)(b) of the Directive.

Article 2

1. This Decision is taken on the basis of the provisions adopted by Austria as of 4 March 2002 in order to implement Directive 94/22/EC and Article 3 of Directive 93/38/EEC and communicated to the Commission.

2. Austria shall notify to the Commission any laws, regulations or administrative provisions amending the rules referred to in paragraph 1 as soon as they are adopted in order to enable it to assess if it is appropriate to amend, withdraw or maintain this Decision.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 4 March 2002.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

⁽¹⁾ BGBl. I 56/1997.

COMMISSION DECISION

of 11 March 2002

on financial aid from the Community for the operation of certain Community reference laboratories in the field of veterinary public health (biological hazards) for the year 2002*(notified under document number C(2002) 898)***(Only the Spanish, German, English, French and Dutch texts are authentic)**

(2002/206/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

encephalopathies ⁽¹⁰⁾, as last amended by Regulation (EC) No 1326/2001 ⁽¹¹⁾.

Having regard to the Treaty establishing the European Community,

(2) The work programmes and corresponding budget estimates submitted by the Community reference laboratories for 2002 have been assessed by the Commission.

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽¹⁾, as last amended by Decision 2001/572/EC ⁽²⁾, and in particular Article 28(2) thereof,

(3) Community assistance must be conditional on those functions and duties being carried out by the laboratory concerned.

Whereas:

(4) For budgetary reasons, Community assistance is granted for a period of one year.

(1) Community financial aid should be granted to the Community reference laboratories designated to carry out the functions and duties laid down in the following Directives, Decisions and Regulation:

(5) As provided for in Article 3(2) of Council Regulation EC No 1258/1999 ⁽¹²⁾, the veterinary and plant health measures undertaken in accordance with Community rules are financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund. For financial control purposes, Articles 8 and 9 of Regulation EC No 1258/1999 apply.

— Council Directive 92/46/EEC of 16 June 1992 laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products ⁽³⁾, as last amended by Directive 96/23/EC ⁽⁴⁾,

(6) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

— Council Directive 92/117/EEC of 17 December 1992 concerning measures for protection against certain zoonoses and specified zoonotic agents in animals and products of animal origin in order to prevent outbreaks of food-borne infections and intoxications ⁽⁵⁾, as last amended by Directive 1999/72/EC ⁽⁶⁾,

HAS ADOPTED THIS DECISION:

— Council Decision 93/383/EEC of 14 June 1993 on reference laboratories for the monitoring of marine biotoxins ⁽⁷⁾, as last amended by Decision 1999/312/EC ⁽⁸⁾,

Article 1

— Council Decision 1999/313/EC of 29 April 1999 on reference laboratories for monitoring bacteriological and viral contamination of bivalve molluscs ⁽⁹⁾,

1. The Community hereby grants financial assistance to France for the functions and duties to be carried out by the Laboratoire d'études et de recherches sur l'hygiène et la qualité des aliments, of the Agence française de sécurité sanitaire des aliments (formerly the Laboratoire central d'hygiène alimentaire), Maisons-Alfort, France, for the analysis and testing of milk and milk products referred to in Chapter II of Annex D to Directive 92/46/EEC.

— Regulation (EC) No 999/2001 of the European Parliament and of the Council 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform

2. The financial assistance is hereby set at a maximum of EUR 146 000 for the period 1 January 2002 to 31 December 2002.

⁽¹⁾ OJ L 224, 18.8.1990, p. 19.

⁽²⁾ OJ L 203, 28.7.2001, p. 16.

⁽³⁾ OJ L 268, 14.9.1992, p. 1.

⁽⁴⁾ OJ L 125, 23.5.1996, p. 10.

⁽⁵⁾ OJ L 62, 15.3.1993, p. 38.

⁽⁶⁾ OJ L 210, 10.8.1999, p. 12.

⁽⁷⁾ OJ L 166, 8.7.1993, p. 31.

⁽⁸⁾ OJ L 120, 8.5.1999, p. 37.

⁽⁹⁾ OJ L 120, 8.5.1999, p. 40.

⁽¹⁰⁾ OJ L 147, 31.5.2001, p. 1.

⁽¹¹⁾ OJ L 177, 30.6.2001, p. 60.

⁽¹²⁾ OJ L 160, 26.6.1999, p. 103.

Article 2

1. The Community hereby grants financial assistance to Germany for the functions and duties to be carried out by the Bundesinstitut für gesundheitlichen Verbraucherschutz und Veterinärmedizin (formerly the Institut für Veterinärmedizin) Berlin, for the epidemiology of zoonoses referred to in Chapter II of Annex IV to Directive 92/117/EEC.

2. The financial assistance is hereby set at a maximum of EUR 143 000 for the period 1 January 2002 to 31 December 2002.

Article 3

1. The Community hereby grants financial assistance to the Netherlands for the functions and duties to be carried out by the Rijksinstituut voor Volksgezondheid en Milieuhygiëne, Bilthoven, in respect of salmonella referred to in Chapter II of Annex IV to Directive 92/117/EEC.

2. The financial assistance is hereby set at a maximum of EUR 146 000 for the period 1 January 2002 to 31 December 2002.

Article 4

1. The Community hereby grants financial assistance to Spain for the functions and duties to be carried out by the Laboratorio de biotoxinas marinas del Area de Sanidad, Vigo, for the control of marine biotoxins referred to in Article 5 of Decision 93/383/EEC.

2. The financial assistance is hereby set at a maximum of EUR 90 000 for the period 1 January 2002 to 31 December 2002.

Article 5

1. The Community hereby grants financial assistance to the United Kingdom for the functions and duties to be carried out by the laboratory of the Centre for Environment, Fisheries and Aquaculture Science, Weymouth, for the monitoring of bacteriological and viral contamination of bivalve molluscs referred to in Article 4 of Decision 1999/313/EC.

2. The financial assistance is hereby set at a maximum of EUR 110 000 for the period 1 January 2002 to 31 December 2002.

Article 6

1. The Community hereby grants financial assistance to the United Kingdom for the functions and duties to be carried out by the laboratory of the Veterinary Laboratories Agency, Addlestone, for the monitoring of transmissible spongiform Encephalopathies referred to in Chapter B of Annex X to Regulation (EC) No 999/2001.

2. The financial assistance is hereby set at a maximum of EUR 426 000 for the period 1 January 2002 to 31 December 2002.

Article 7

The Community's financial assistance shall be paid as follows:

- (a) an advance of 70 % of the amount of the assistance may be paid on application by the recipient Member State;
- (b) the balance shall be paid, on presentation by the recipient Member State of supporting documents and a technical report, which must be supplied no later than three months after the end of the period for which financial assistance has been granted.

The financial assistance is granted on condition that the work programme submitted by the Community reference laboratory for the period concerned is actually carried out and that the authorities provide all necessary information within the deadline fixed.

If the deadline is not respected, the Community financial assistance shall be reduced by 25 % on 1 May, 50 % on 1 June, 75 % on 1 July and 100 % on 1 September.

Article 8

This Decision is addressed to the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Kingdom of the Netherlands and the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 11 March 2002.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION
of 11 March 2002
on the inventory of wine production potential presented by Portugal (the Azores and Madeira)
pursuant to Council Regulation (EC) No 1493/1999

(notified under document number C(2002) 902)

(Only the Portuguese text is authentic)

(2002/207/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 2585/2001 ⁽²⁾, and in particular Article 23(4) thereof,

Whereas:

- (1) Regulation (EC) No 1493/1999 provides for the presentation of an inventory of wine production potential. Access to the regularisation of unlawfully planted areas, the increase in planting rights and support for restructuring and conversion is subject to prior presentation of this inventory.
- (2) Article 19 of Commission Regulation (EC) No 1227/2000 of 31 May 2000 laying down detailed rules for the application of Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine, as regards production potential ⁽³⁾ sets out details of the information to be included in the inventory.
- (3) By letters of 6 August 2001 and 4 November 2001, Portugal sent the Commission the information referred to in Article 16 of Regulation (EC) No 1493/1999. Examination of this information shows that Portugal has compiled the inventory for the Azores and Madeira.

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

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

HAS ADOPTED THIS DECISION:

Article 1

The Commission notes that Portugal has compiled the inventory referred to in Article 16 of Regulation (EC) No 1493/1999 for the Azores and Madeira.

Article 2

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 11 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 10.

⁽³⁾ OJ L 143, 16.6.2000, p. 1.

COMMISSION DECISION
of 11 March 2002
on marking and use of pigmeat in application of Article 11 of Council Directive 2001/89/EC
concerning Germany

(notified under document number C(2002) 984)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/208/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽¹⁾, and in particular Article 11(1)(f) thereof,

Whereas:

- (1) In January and February 2002 outbreaks of classical swine fever in Rhineland-Palatinate were declared by the veterinary authorities of Germany.
- (2) In accordance with Articles 9, 10 and 11 of Directive 2001/89/EC protection and surveillance zones were immediately established around outbreak sites in Germany.
- (3) The provisions for the use of a health mark on fresh meat are given in Council Directive 64/433/EEC of 26 June 1964 on health conditions for the production and marketing of fresh meat ⁽²⁾, as last amended by Directive 95/23/EC ⁽³⁾.
- (4) In accordance with Article 11(1)(f) of Directive 2001/89/EC, Germany has submitted a request for the adoption of a derogation concerning marking and use of pigmeat coming from pigs kept on holdings situated in the surveillance zones established in Rhineland-Palatinate and slaughtered, subject to a specific authorisation issued by the competent authority.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health (section Animal health and Welfare),

HAS ADOPTED THIS DECISION:

Article 1

Germany is authorised to apply the mark described in Article 3(1)(A)(e) of Directive 64/433/EEC to pigmeat obtained from pigs originating from holdings situated in the surveillance zone

established in Rhineland-Palatinate before 5 March 2002 in accordance with the provisions of Articles 9 and 11 of Directive 2001/89/EC on condition that the pigs in question:

- (a) originate from a surveillance zone:
 - where no outbreaks of classical swine fever have been detected in the previous 21 days and where at least 21 days have elapsed after the completion of the preliminary cleaning and disinfection of the infected holdings,
 - established around a protection zone where clinical examinations for classical swine fever have been carried out in all pig holdings after the detection of classical swine fever, with negative results;
- (b) originate from a holding:
 - which has been subject to protection measures established in accordance with the provisions of Article 11 of Directive 2001/89/EC,
 - to which, following the epidemiological inquiry, no contact has been established with an infected holding,
 - which has been subject to regular inspections by a veterinarian after the establishment of the zone. The inspection has included all pigs kept on the holding;
- (c) have been included in a programme for monitoring body temperature and clinical examination. The programme shall be carried out as given in Annex I;
- (d) have been slaughtered within 12 hours of arrival at the slaughterhouse.

Article 2

Germany shall ensure that a certificate as given in Annex II is issued in respect of the pigmeat referred to in Article 1.

Article 3

Pigmeat which complies with the conditions of Article 1 and enters into intra-Community trade must be accompanied by the certificate referred to in Article 2.

Article 4

Germany shall ensure that abattoirs designated to receive the pigs referred to in Article 1 do not, on the same day, accept pigs for slaughter other than the pigs in question.

⁽¹⁾ OJ L 365, 1.12.2001, p. 5.

⁽²⁾ OJ L 121, 29.7.1964, p. 2012/64.

⁽³⁾ OJ L 243, 11.10.1995, p. 7.

Article 5

Germany shall provide Member States and the Commission with:

- (a) the name and location of slaughterhouses designated to receive pigs for slaughter referred to in Article 1, before the slaughtering of these pigs; and,
- (b) after the slaughtering of these pigs, on a weekly basis, a report which contains information on:
 - number of pigs slaughtered at the designated slaughterhouses,
 - identification system and movement controls applied to slaughter pigs,
 - instructions issued concerning the application of the programme for monitoring body temperature referred to in Annex I.

Article 6

This Decision is applicable until 15 April 2002.

Article 7

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 11 March 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

MONITORING OF BODY TEMPERATURE

The programme for monitoring body temperature and clinical examination referred to in Article 1(c) shall include the following:

1. Within the 24-hour period before loading a consignment of pigs intended for slaughter, the competent veterinary authority shall ensure that the body temperature of a number of pigs of the said consignment is monitored by an official veterinarian inserting a thermometer into the rectum. The number of pigs to be monitored for temperature shall be as given below:

Number of pigs in consignment	Number of pigs to be monitored
0-25	all
26-30	26
31-40	31
41-50	35
51-100	45
101-200	51
200 +	60

At the time of examination, the following information shall be recorded for each pig on a table issued by the competent veterinary authorities: number of eartag, time of examination and temperature.

In cases where the examination shows a temperature of 40 °C or above, the official veterinarian shall immediately be informed. A disease investigation shall be initiated and take into account the provisions of Article 4 of Directive 2001/89/EC introducing Community measures for the control of classical swine fever.

2. Shortly (0-3 hours) before loading of the consignment examined as described under point 1, a clinical examination shall be carried out by an official veterinarian designated by the competent veterinary authorities.
3. At the time of loading of the consignment of pigs examined as described under point 1 and point 2, the official veterinarian shall issue a health document, which shall accompany the consignment to the designated slaughterhouse.
4. At the slaughterhouse of designation the results of the temperature monitoring shall be made available to the veterinarian who performs the *ante-mortem* examination.

ANNEX II

CERTIFICATE

for fresh meat referred to in Article 1 of Commission Decision 2002/208/EC

No ⁽¹⁾:

Place of loading:

Ministry:

Department:

I. Identification of meat

Meat of pigs

Nature of cuts:

Number of cuts or packages:

Net weight:

II. Origin of meat

Address and veterinary approval number of the approved slaughterhouse:

.....

.....

III. Destination of meat

The meat will be sent from :

(place of loading)

to:

(place of destination)

by the following means of transport ⁽²⁾:

.....

Name and address of consignee:

.....

IV. Health attestation

I, the undersigned official veterinarian, certify that the meat described above was obtained under the conditions governing production and control laid down in Council Directive 64/433/EEC and is in conformity with the provisions of Commission Decision 2002/208/EC on marking and use of pigmeat in application of Article 11(1)(f) of Directive 2001/89/EC.

Done at, on

.....

(name and signature of the official veterinarian)

⁽¹⁾ Serial No issued by the official veterinarian.

⁽²⁾ In the case of rail trucks and lorries, state the registration number and in the case of boats name and, where necessary, the number of the container.

COMMISSION DECISION

of 11 March 2002

updating the conditions for the granting of authorisation for the removal of pigs from holdings located within the protection and surveillance zones established in Spain in relation to classical swine fever and establishing conditions for the marking and use of pigmeat in application of Article 11 of Council Directive 2001/89/EC

*(notified under document number C(2002) 985)***(Only the Spanish text is authentic)****(Text with EEA relevance)**

(2002/209/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever ⁽¹⁾, and in particular Article 11(1)(f), Article 25(3) and Article 29(4) thereof,

Whereas:

- (1) In the last three months outbreaks of classical swine fever were declared in the Comarca of Osona, in the Province of Barcelona in Catalonia by the veterinary authorities of Spain.
- (2) In accordance with Articles 9, 10 and 11 of Directive 2001/89/EC protection and surveillance zones were immediately established around outbreak sites in Spain.
- (3) In relation to these outbreaks of disease, the Commission adopted: (i) Decision 2001/925/EC ⁽²⁾, as last amended by Decision 2002/162/EC ⁽³⁾, concerning certain protection measures relating to classical swine fever in Spain; (ii) Decision 2002/33/EC ⁽⁴⁾, as last amended by Decision 2002/162/EC, on the use of two slaughterhouses, in accordance with Article 10(1)(b) of Directive 2001/89/EC, by Spain; and (iii) Decision 2002/41/EC ⁽⁵⁾, as last amended by Decision 2002/162/EC, concerning certain further detailed conditions for the granting of authorisation for the removal of pigs from the holdings located within the protection and surveillance zones established in Spain in relation to classical swine fever.
- (4) The provisions for the use of a health mark on fresh meat are given in Council Directive 64/433/EEC ⁽⁶⁾ on health conditions for the production and marketing of fresh meat, as last amended by Directive 95/23/EC ⁽⁷⁾.

- (5) In accordance with Article 11(1)(f) of Directive 2001/89/EC, Spain has submitted a request for the adoption of a derogation concerning the marking and use of pigmeat coming from pigs kept on holdings situated in the surveillance zones established in the Comarca of Osona and slaughtered in accordance with a specific authorisation issued by the competent authority.
- (6) In the light of the Spanish request and of the evolution in the epidemiological situation, is appropriate to update the conditions for the granting of authorisation for the removal of pigs from holdings located in the protection and surveillance zones established in Spain in relation to classical swine fever and to introduce conditions on the marking and use of pigmeat in application of Article 11 of Directive 2001/89/EC. For the sake of clarity it is appropriate to repeal Decision 2001/41/EC.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health (section Animal Health and Welfare),

HAS ADOPTED THIS DECISION:

Article 1

1. Spain is authorised to apply the mark described in Article 3(1)(A)(e) of Directive 64/433/EEC to pigmeat obtained from pigs originating from holdings situated in the surveillance zones established before 5 March 2002 in the Comarca of Osona in accordance with the provisions of Articles 9 and 11 of Directive 2001/89/EC on condition that the pigs in question:

- (a) originate from a surveillance zone:
 - where no outbreaks of classical swine fever have been detected in the previous 21 days and where at least 21 days have elapsed after the completion of the preliminary cleaning and disinfection of the infected holdings,

⁽¹⁾ OJ L 365, 1.12.2001, p. 5.

⁽²⁾ OJ L 339, 21.12.2001, p. 56.

⁽³⁾ OJ L 53, 23.2.2002, p. 45.

⁽⁴⁾ OJ L 13, 16.1.2002, p. 13.

⁽⁵⁾ OJ L 19, 22.1.2002, p. 47.

⁽⁶⁾ OJ L 121, 29.7.1964, p. 2012/64.

⁽⁷⁾ OJ L 243, 11.10.1995, p. 7.

- established around a protection zone where clinical examinations for classical swine fever have been carried out in all pig holdings after the detection of classical swine fever, with negative results;
- (b) originate from a holding:
- which has been subject to protection measures established in accordance with the provisions of Article 11 of Directive 2001/89/EC,
 - to which, following the epidemiological inquiry, no contact has been established with an infected holding,
 - which has been subject to regular veterinary inspections, that have included all pigs kept on the holding, after the establishment of the zone;
- (c) have been included in a programme for monitoring body temperature and clinical examination. The programme shall be carried out as given in Annex I;
- (d) have been slaughtered within 12 hours of arrival at the slaughterhouse.

2. However, notwithstanding paragraph 1(a), first indent, for the surveillance zone established around the outbreaks confirmed on 22 February 2002 in the Municipality of Tona, the waiting periods concerning the absence of detection of a new outbreak, and following the completion of cleaning and disinfection, shall be fixed at 30 days.

Article 2

Spain shall ensure that a certificate as given in Annex II is issued in respect of the pigmeat referred to in Article 1.

Article 3

Pigmeat which complies with the conditions of Article 1 and enters into intra-Community trade must be accompanied by the certificate referred to in Article 2.

Article 4

Spain shall ensure that abattoirs designated to receive the pigs referred to in Article 1 do not, on the same day, accept pigs for slaughter other than the pigs in question.

Article 5

Spain shall provide Member States and the Commission with:

- (a) the name and location of slaughterhouses designated to receive pigs for slaughter referred to in Article 1, before the slaughtering of these pigs; and,
- (b) after the slaughtering of these pigs, on a weekly basis, a report which contains information on:

- the number of pigs slaughtered at the designated slaughterhouses,
- the identification system and movement controls applied to slaughter pigs,
- the instructions issued concerning the application of the programme for monitoring body temperature referred to in Annex I.

Article 6

Whenever the provisions of Article 1(1) cannot be applied, Spain may grant authorisation for the removal of pigs from holdings located in the classical swine fever protection and surveillance zones established in the Comarca of Osona, to be moved to slaughterhouses in accordance with Article 10(2) and Article 11(2) of Directive 2001/89/EC, provided that, in addition to the measures laid down in Article 10(3) of the said Directive, the following conditions are fulfilled:

- (a) the pigs shall be moved only from holdings which:
 - do not contain any pigs suspected to be infected with classical swine fever virus, or
 - have not been recognised as contact holding in accordance with Article 7(1) of Directive 2001/89/EC;
- (b) the pigs shall be moved to one of the slaughterhouses referred to in Decision 2002/33/EC. The fresh meat of these pigs shall be processed or marked and treated in accordance with Article 10(3)(f), fourth indent of Directive 2001/89/EC;
- (c) before authorisation is given to move the pigs, the clinical examination to be carried out by an official veterinarian shall be carried out within the 24-hour period prior to moving the pigs and in accordance with the procedures laid down in part I of Annex III.
- (d) samples for serological or virological tests from the pigs shall be taken at slaughter in accordance with the procedures laid down in part II of Annex III.

Article 7

Spain shall ensure that abattoirs designated to receive the pigs referred to in Article 6 do not, on the same day, accept pigs for slaughter other than the pigs in question.

Article 8

Decision 2002/41/EC is hereby repealed.

Article 9

This Decision is applicable until 30 April 2002.

Article 10

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 11 March 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

MONITORING OF BODY TEMPERATURE

The programme for monitoring body temperature and clinical examination referred to in Article 1(c) shall include the following:

1. Within the 24-hour period before loading a consignment of pigs intended for slaughter, the competent veterinary authority shall ensure that the body temperature of a number of pigs of the said consignment is monitored by an official veterinarian inserting a thermometer into the rectum. The number of pigs to be monitored for temperature shall be as given below:

Number of pigs in consignment	Number of pigs to be monitored
0-25	all
26-30	26
31-40	31
41-50	35
51-100	45
101-200	51
200 +	60

At the time of examination, the following information shall be recorded for each pig on a table issued by the competent veterinary authorities: number of eartag, time of examination and temperature.

In cases where the examination shows a temperature of 40 °C or above, the official veterinarian shall immediately be informed. A disease investigation shall be initiated and take into account the provisions of Article 4 of Directive 2001/89/EC introducing Community measures for the control of classical swine fever.

2. Shortly (0-3 hours) before loading of the consignment examined as described under point 1, a clinical examination shall be carried out by an official veterinarian designated by the competent veterinary authorities.
3. At the time of loading of the consignment of pigs examined as described under point 1 and point 2, the official veterinarian shall issue a health document, which shall accompany the consignment to the designated slaughterhouse.
4. At the slaughterhouse of designation the results of the temperature monitoring shall be made available to the veterinarian who performs the *ante-mortem* examination.

ANNEX II

CERTIFICATE

for fresh meat referred to in Article 1 of Commission Decision 2002/209/EC

No ⁽¹⁾:

Place of loading:

Ministry:

Department:

I. Identification of meat

Meat of pigs

Nature of cuts:

Number of cuts or packages:

Net weight:

II. Origin of meat

Address and veterinary approval number of the approved slaughterhouse:

.....

.....

III. Destination of meat

The meat will be sent from :

(place of loading)

to:

(place of destination)

by the following means of transport ⁽²⁾:

.....

Name and address of consignee:

.....

IV. Health attestation

I, the undersigned official veterinarian, certify that the meat described above was obtained under the conditions governing production and control laid down in Council Directive 64/433/EEC and is in conformity with the provisions of Decision 2002/209/EC on marking and use of pigmeat in application of Article 11(1)(f) of Directive 2001/89/EC.

Done at

.....
(name and signature of the official veterinarian)

⁽¹⁾ Serial No issued by the official veterinarian.

⁽²⁾ In the case of rail trucks and lorries, state the registration number and in the case of boats name and, where necessary, the number of the container.

ANNEX III

PART I

PROCEDURES FOR THE CLINICAL EXAMINATION OF PIGS

The clinical examination must be in accordance with the following procedures:

- (a) a check of the production and health records of the holding must be carried out, if these records are available;
- (b) an inspection in all premises of the holding must be carried out;
- (c) the clinical examination must be carried out in all premises in which the pigs to be moved are kept;
- (d) it must include the taking of body temperature. The minimum number of the pigs to be checked must allow for the detection of fever if it occurs at a prevalence of 20 % with 95 % confidence in the premise where the pigs to be moved are kept. However, in case of breeding sows or boars, the minimum number of pigs to be checked must allow for the detection of fever if it occurs at a prevalence of 5 % with 95 % confidence in the premise where the pigs to be moved are kept. The checking of temperature must primarily concern the following pigs or group of pigs:
 - sick or anorexic pigs,
 - pigs recently recovered from disease,
 - pigs recently introduced in the holding or for which any contact with a potential source of classical swine fever virus has been identified,
 - pigs already sampled and serologically tested for classical swine fever, in case the results of these tests do not allow to rule out classical swine fever.

PART II

PROCEDURES FOR THE SAMPLING AND TESTING OF PIGS AT SLAUGHTER

Blood samples for serological tests or blood or tonsils samples for virological tests must be taken from the pigs proceeding from each premise of the holding from which they have been moved.

The minimum number of samples to be taken must allow for the detection of 10 % seroprevalence or virus prevalence with 95 % confidence in each premise.

The type of samples to be taken and the test to be used will be in accordance with the instructions of the competent authority, which will take into account the range of tests that can be performed, the sensitivity of these tests and the epidemiological situation.

In case clinical signs or post-mortem lesions suggesting classical swine fever are detected when the pigs are slaughtered or killed, the competent authority shall ensure that further appropriate sampling and virological testing are immediately carried out.
