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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1269/2002
of 12 July 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 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 12 July 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	83,4
	999	83,4
0707 00 05	052	83,4
	999	83,4
0709 90 70	052	74,2
	999	74,2
0805 50 10	388	59,1
	524	73,9
	528	56,8
	999	63,3
0808 10 20, 0808 10 50, 0808 10 90	064	143,9
	388	90,2
	400	111,1
	404	89,4
	508	83,5
	512	90,3
	524	54,7
	528	80,9
	720	141,5
	804	100,9
	999	98,6
	388	100,3
0808 20 50	512	83,8
	528	94,3
	800	65,2
	804	118,3
	999	92,4
0809 10 00	052	182,7
	064	160,1
	999	171,4
0809 20 95	052	330,6
	060	140,2
	061	238,7
	400	252,0
	999	240,4
0809 40 05	064	85,9
	624	217,9
	999	151,9

⁽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 1270/2002**of 12 July 2002****opening tendering procedure No 43/2002 EC for the sale of wine alcohol for new industrial uses**

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⁾,

Having regard to Commission Regulation (EC) No 1623/2000 of 25 July 2000 laying down detailed rules for implementing Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms ⁽³⁾, as last amended by Regulation (EC) No 720/2001 ⁽⁴⁾, and in particular Article 80 thereof,

Whereas:

- (1) Regulation (EC) No 1623/2000 lays down, *inter alia*, the detailed rules for disposing of stocks of alcohol arising from distillation under Articles 27, 28 and 30 of Regulation (EC) No 1493/1999 held by intervention agencies.
- (2) Tendering procedures should be organised for the sale of wine alcohol for new industrial uses with a view to reducing the stocks of wine alcohol in the Community and enabling small-scale industrial projects to be carried out and such alcohol to be processed into goods intended for export for industrial uses. The wine alcohol of Community origin in storage in the Member States consists of quantities produced from distillation under Articles 27, 28 and 30 of Regulation (EC) No 1493/1999.
- (3) Since the adoption of Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽⁵⁾, the prices offered in tenders and securities must be expressed in euro and payments must be made in euro.
- (4) Minimum prices should be fixed for the submission of tenders, broken down according to the type of end-use.
- (5) The Management Committee for Wine has not issued an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Tendering procedure No 43/2002 EC is hereby opened for the sale of wine alcohol for new industrial uses. The alcohol

concerned has been produced from distillation under Articles 27, 28 and 30 of Regulation (EC) No 1493/1999 and is held by the French intervention agency.

The volume put up for sale is 100 000 hectolitres of alcohol at 100 % vol. The vat numbers, places of storage and the volume of alcohol at 100 % vol. contained in each vat are detailed in the Annex hereto.

Article 2

The sale shall be conducted in accordance with Articles 79, 81, 82, 83, 84, 85, 95, 96, 97, 100 and 101 of Regulation (EC) No 1623/2000 and Article 2 of Regulation (EC) No 2799/98.

Article 3

Tenders must be submitted to the intervention agency holding the alcohol concerned:

ONIVINS-Libourne, Délégation nationale, 17 avenue de la Ballastière, boîte postale 231, F-33505 Libourne Cedex (tel. (33-5) 57 55 20 00; telex: 57 20 25; fax (33-5) 57 55 20 59)

or sent by registered mail to that address.

Tenders shall be submitted in a sealed double envelope, the inside envelope marked: 'Tender under procedure No 43/2002 EC for new industrial uses', the outer envelope bearing the address of the intervention agency concerned.

Tenders must reach the intervention agency concerned not later than 12 noon Brussels time on 2 August 2002.

All tenders must be accompanied by proof that a tendering security of EUR 4 per hectolitre of alcohol at 100 % vol has been lodged with the intervention agency concerned.

Article 4

The minimum prices which may be offered are EUR 8 per hectolitre of alcohol at 100 % vol intended for the manufacture of baker's yeast, EUR 26 per hectolitre of alcohol at 100 % vol intended for the manufacture of amine- and chloral-type chemical products for export, EUR 35 per hectolitre of alcohol at 100 % vol intended for the manufacture of eau de Cologne for export and EUR 10 per hectolitre of alcohol at 100 % vol intended for other industrial uses.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 10.

⁽³⁾ OJ L 194, 31.7.2000, p. 45.

⁽⁴⁾ OJ L 112, 27.4.2002, p. 3.

⁽⁵⁾ OJ L 349, 24.12.1998, p. 1.

Article 5

The formalities for sampling shall be as set out in Article 98 of Regulation (EC) No 1623/2000. The price of samples shall be EUR 10 per litre.

The intervention agency shall provide all the necessary information on the characteristics of the alcohol put up for sale.

Article 6

The performance guarantee shall be EUR 30 per hectolitre of alcohol at 100 % vol.

Article 7

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

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

INVITATION TO TENDER No 43/2002 EC FOR THE SALE OF ALCOHOL FOR NEW INDUSTRIAL USES

Place of storage, volume and characteristics of the alcohol put up for sale

Member State	Location	Vat No	Volume in hectolitres of alcohol at 100 % vol	Regulation (EC) No 1493/1999, Article	Type of alcohol	Alcoholic strength (in % vol)
France	Onivins-Longuefuye F-53200 Longuefuye	1	15 870	28	brut	+ 92 %
		1	6 560	30	brut	+ 92 %
		2	22 490	28	brut	+ 92 %
		4	22 440	27	brut	+ 92 %
		21	7 980	27	brut	+ 92 %
		25	12 490	30	brut	+ 92 %
		24	12 170	27	brut	+ 92 %
	Total		100 000			

COMMISSION REGULATION (EC) No 1271/2002

of 12 July 2002

fixing the actual production of olive oil and the unit amount of the production aid for the marketing year 2000/01

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1513/2001 ⁽²⁾,

Having regard to Council Regulation (EEC) No 2261/84 of 17 July 1984 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations ⁽³⁾, as last amended by Regulation (EC) No 1639/98 ⁽⁴⁾, and in particular Article 17a(2) thereof,

Whereas:

- (1) Article 5 of Regulation No 136/66/EEC provides that the unit production aid must be reduced in each Member State where actual production exceeds the guaranteed national quantity referred to in paragraph 3 of that Article. With a view to assessing the extent of the overrun in Spain, France, Greece, Italy and Portugal, account should be taken of the estimates for the production of table olives processed into olive oil, expressed as olive oil equivalent using the relevant coefficients in Commission Decisions 2001/650/EC ⁽⁵⁾, 2001/649/EC ⁽⁶⁾, 2001/670/EC ⁽⁷⁾, 2001/648/EC ⁽⁸⁾ and 2001/658/EC ⁽⁹⁾.
- (2) Article 17a of Regulation (EEC) No 2261/84 provides that, in order to determine the unit amount of the production aid for olive oil that can be paid in advance, the estimated production for the marketing year concerned should be determined. That amount must be fixed at a level that rules out any risk of undue payment to olive growers. The amount also applies to table olives, expressed as olive-oil equivalent. For the marketing year 2001/02, the estimated production and the unit amount of the production aid that can be paid in advance were fixed in Commission Regulation (EC) No 1980/2001 ⁽¹⁰⁾.
- (3) Pursuant to Article 17a(2) of Regulation (EEC) No 2261/84, the actual production for which entitlement to aid is recognised must be determined no later than eight months after the end of the marketing year. To that end,

in accordance with Article 14(4) of Commission Regulation (EC) No 2366/98 ⁽¹¹⁾, as last amended by Regulation (EC) No 2070/2001 ⁽¹²⁾, the individual Member States concerned must inform the Commission by no later than 15 May following each marketing year of the quantity on which the aid is payable in that Member State. According to that information, the quantity on which the aid is payable for the marketing year 2000/01 is 540 864 tonnes for Italy, 2 247 tonnes for France, 479 066 tonnes for Greece, 1 074 970 tonnes for Spain and 25 444 tonnes for Portugal.

- (4) Confirmation by the Member States that aid is payable on those quantities implies that the controls referred to in Regulations (EEC) No 2261/84 and (EC) No 2366/98 have been carried out. However, fixing actual production on the basis of information from the Member States on the quantities on which aid is payable does not prejudice the conclusions that may be drawn from verification of the accuracy of that information under the accounts clearance procedure.
- (5) Taking account of the actual production figures, the unit amount of the production aid provided for in the second indent of Article 17a(2) of Regulation (EEC) No 2261/84 payable on the eligible quantities of actual production should also be fixed.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the marketing year 2000/01, the actual production to be used to calculate the aid for olive oil as referred to in the first indent of Article 17a(2) of Regulation (EEC) No 2261/84 shall be:

- 1 074 970 tonnes for Spain,
- 2 247 tonnes for France,
- 479 066 tonnes for Greece,
- 540 864 tonnes for Italy,
- 25 444 tonnes for Portugal.

⁽¹⁾ OJ L 172, 30.9.1966, p. 3025/66.

⁽²⁾ OJ L 201, 26.7.2001, p. 4.

⁽³⁾ OJ L 208, 3.8.1984, p. 3.

⁽⁴⁾ OJ L 210, 28.7.1998, p. 38.

⁽⁵⁾ OJ L 229, 25.8.2001, p. 20.

⁽⁶⁾ OJ L 229, 25.8.2001, p. 16.

⁽⁷⁾ OJ L 235, 4.9.2001, p. 16.

⁽⁸⁾ OJ L 229, 25.8.2001, p. 12.

⁽⁹⁾ OJ L 231, 29.8.2001, p. 16.

⁽¹⁰⁾ OJ L 270, 11.10.2001, p. 15.

⁽¹¹⁾ OJ L 293, 31.10.1998, p. 50.

⁽¹²⁾ OJ L 280, 24.10.2001, p. 3.

2. For the marketing year 2000/01, the unit amount of the production aid referred to in the second indent of Article 17a(2) of Regulation (EEC) No 2261/84 payable on the eligible quantities of actual production shall be:

- 93,91 EUR/100 kg for Spain,
- 130,40 EUR/100 kg for France,
- 114,76 EUR/100 kg for Greece,

- 130,40 EUR/100 kg for Italy,
- 130,40 EUR/100 kg for Portugal.

Article 2

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

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1272/2002**of 12 July 2002****amending the codes and descriptions of certain products listed in the Annex to Council Regulation (EEC) No 827/68 on the common organisation of the market in certain products listed in Annex II to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 234/79 of 5 February 1979 on the procedure for adjusting the Common Customs Tariff nomenclature used for agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 3290/94 ⁽²⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff ⁽³⁾, as last amended by Commission Regulation (EC) No 969/2002 ⁽⁴⁾, contains the Combined Nomenclature currently in force.
- (2) Some of the codes and descriptions in the Annex to Council Regulation (EEC) No 827/68 ⁽⁵⁾, as last amended by Regulation (EC) No 195/96 ⁽⁶⁾, no longer correspond to those in the Combined Nomenclature. The Annex to

Regulation (EEC) No 827/68 should therefore be amended. For ease of readability, the Annex to that Regulation should be replaced by a new, updated Annex.

- (3) The measures provided for in this Regulation are in accordance with the opinion of all the Management Committees concerned,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 827/68 is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 34, 9.2.1979, p. 2.

⁽²⁾ OJ L 349, 31.12.1994, p. 105.

⁽³⁾ OJ L 256, 7.9.1987, p. 1.

⁽⁴⁾ OJ L 149, 7.6.2002, p. 20.

⁽⁵⁾ OJ L 151, 30.6.1968, p. 16.

⁽⁶⁾ OJ L 26, 2.2.1996, p. 13.

ANNEX

‘ANNEX

CN code	Description
ex 0101	Live horses, asses, mules and hinnies:
0101 10	– Pure-bred breeding animals:
0101 10 10	– – Horses ^(a)
0101 10 90	– – Other
0101 90	– Other:
	– – Horses:
0101 90 19	– – – Other than for slaughter
0101 90 30	– – Asses
0101 90 90	– – Mules and hinnies
ex 0102	Live bovine animals:
ex 0102 90	– Other than pure-bred breeding animals:
0102 90 90	– – Other than domestic species
ex 0103	Live swine:
0103 10 00	– Pure-bred breeding animals ^(b)
	– Other:
ex 0103 91	– – Weighing less than 50 kg:
0103 91 90	– – – Other than domestic species
ex 0103 92	– – Weighing 50 kg or more
0103 92 90	– – Other than domestic species
0106 00	Other live animals
ex 0203	Meat of swine, fresh, chilled or frozen:
	– fresh or chilled:
ex 0203 11	– – Carcases and half-carcases:
0203 11 90	– – – Other than of domestic swine
ex 0203 12	– – Hams, shoulders and cuts thereof, with bone in:
0203 12 90	– – – Other than of domestic swine
ex 0203 19	– – Other:
0203 19 90	– – – Other than of domestic swine
	– – frozen
ex 0203 21	– – Carcases and half-carcases:
0203 21 90	– – – Other than of domestic swine
ex 0203 22	– – Hams, shoulders and cuts thereof, with bone in:
0203 22 90	– – – Other than of domestic swine
ex 0203 29	– – Other:
0203 29 90	– – – Other than of domestic swine
ex 0205 00	Meat of horses, asses, mules or hinnies, fresh, chilled or frozen:
0205 00 90	– Of asses, mules or hinnies
ex 0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled or frozen:
ex 0206 10	– Of bovine animals, fresh or chilled
0206 10 10	– – For the manufacture of pharmaceutical products ^(c)
	– Of bovine animals, frozen:
ex 0206 22 00	– – Livers:
	– – – For the manufacture of pharmaceutical products

CN code	Description
ex 0206 29	-- Other:
0206 29 10	--- For the manufacture of pharmaceutical products (c)
ex 0206 30	- Of swine, fresh or chilled:
	-- Of domestic swine:
ex 0206 30 20	--- Livers:
	---- For the manufacture of pharmaceutical products
ex 0206 30 30	--- Other:
	---- For the manufacture of pharmaceutical products
0206 30 80	-- Other
	- Of swine, frozen:
ex 0206 41	-- Livers:
ex 0206 41 20	--- Of domestic swine:
	---- For the manufacture of pharmaceutical products
0206 41 80	--- Other
ex 0206 49	-- Other:
ex 0206 49 20	--- Of domestic swine:
	---- For the manufacture of pharmaceutical products
0206 49 80	--- Other
ex 0206 80	- Other, fresh or chilled:
0206 80 10	-- For the manufacture of pharmaceutical products (c)
	-- Other:
0206 80 91	--- Of horses, asses, mules and hinnies
ex 0206 90	- Other, frozen:
0206 90 10	-- For the manufacture of pharmaceutical products (c)
	-- Other:
0206 90 91	--- Of horses, asses, mules and hinnies
0208	Other meat and edible meat offal, fresh, chilled or frozen
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:
	- Meat of swine:
ex 0210 11	-- Hams, shoulders and cuts thereof, with bone in:
0210 11 90	--- Other than of domestic swine
ex 0210 12	-- Bellies (streaky) and cuts thereof:
0210 12 90	--- Other than of domestic swine
ex 0210 19	-- Other:
0210 19 90	--- Other than of domestic swine
	- Other, including edible flours and meals of meat or meat offal:
0210 91 00	-- Of primates
0210 92 00	-- Of whales, dolphins and porpoises (mammals of the order <i>Cetacea</i>); of manatees and dugongs (mammals of the order <i>Sirenia</i>)
0210 93 00	-- Of reptiles (including snakes and turtles)

CN code	Description
ex 0210 99	-- Other:
	---- Meat:
0210 99 31	----- Of reindeer
0210 99 39	----- Other
	---- Offal:
	----- Other than of domestic swine, bovine animals, sheep and goats
0210 99 80	----- Other than poultry livers
ex 0407 00	Birds' eggs, in shell, fresh, preserved or cooked:
0407 00 90	- Other than of farmyard poultry
ex 0408	Birds' eggs, not in shell, and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter:
	- Egg yolks:
ex 0408 11	-- Dried:
0408 11 20	---- Unfit for human consumption ^(d)
ex 0408 19	-- Other:
0408 19 20	---- Unfit for human consumption ^(d)
	- Other:
ex 0408 91	-- Dried:
0408 91 20	---- Unfit for human consumption ^(d)
ex 0408 99	-- Other:
0408 99 20	---- Unfit for human consumption ^(d)
0410 00 00	Edible products of animal origin, not elsewhere specified or included
0504 00 00	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof, fresh, chilled, frozen, salted, in brine, dried or smoked:
ex 0511	Animal products not elsewhere specified or included; dead animals of Chapter 1 or 3, unfit for human consumption:
0511 10 00	- Bovine semen
	- Other:
0511 91	-- Products of fish or crustaceans, molluscs or other aquatic invertebrates; dead animals of Chapter 3
ex 0511 99	-- Other:
0511 99 90	--- Other than sinews or tendons, parings and similar waste of raw hides or skins
ex 0709	Other vegetables, fresh or chilled:
ex 0709 60	- Fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> :
	-- other:
0709 60 91	--- Of the genus <i>Capsicum</i> , for the manufacture of capsin or capsicum oleoresin dyes ^(e)
0709 60 95	--- For the industrial manufacture of essential oils or resinoids ^(e)
0709 60 99	--- Other
ex 0710	Vegetables (uncooked or cooked by steaming or boiling in water), frozen:
ex 0710 80	- Other vegetables:
	-- Fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> :
0710 80 59	--- Other than sweet peppers
ex 0711	Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for human consumption:

CN code	Description
ex 0711 90	– Other vegetables; mixtures of vegetables: -- Vegetables:
0711 90 10	--- Fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> , excluding sweet peppers
0713	Dried leguminous vegetables, shelled, whether or not skinned or split:
ex 0713 10	– Peas (<i>Pisum sativum</i>):
0713 10 90	-- Other than for sowing
ex 0713 20 00	– Chickpeas: -- Other than for sowing
	– Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.):
ex 0713 31 00	-- Beans of the species <i>Vigna mungo</i> (L) Hepper or <i>Vigna radiata</i> (L) Wilczek: --- Other than for sowing
ex 0713 32 00	-- Small red (Adzuki) beans (<i>Phaseolus</i> or <i>Vigna angularis</i>): --- Other than for sowing
ex 0713 33	-- Kidney beans, including white pea beans (<i>Phaseolus vulgaris</i>):
0713 33 90	--- Other than for sowing
ex 0713 39 00	-- Other: --- Other than for sowing
ex 0713 40 00	– Lentils: --- Other than for sowing
ex 0713 50 00	– Broad beans (<i>Vicia faba</i> var. <i>major</i> and horse beans (<i>Vicia faba</i> var. <i>equina</i> and <i>Vicia faba</i> var. <i>minor</i>): -- Other than for sowing
ex 0713 90	– Other:
0713 90 90	-- Other than for sowing
0801	Coconuts, Brazil nuts and cashew nuts, fresh or dried, whether or not shelled or peeled:
0802	Other nuts, fresh or dried, whether or not shelled or peeled:
ex 0802 90	– Other:
ex 0802 90 20	-- Areca (or betel), and cola
ex 0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried:
0804 10 00	– Dates
0902	Tea, whether or not flavoured
ex 0904	Pepper of the genus <i>Piper</i> ; dried or crushed or ground fruits of the genus <i>Capsicum</i> or of the genus <i>Pimenta</i> , excluding sweet peppers falling within subheading 0904 20 10
0905 00 00	Vanilla
0906	Cinnamon and cinnamon-tree flowers
0907 00 00	Cloves (whole fruit, cloves and stems)
0908	Nutmeg, mace and cardamoms
0909	Seeds of anise, badian, fennel, coriander, cumin or caraway; juniper berries
0910	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices
ex 1106	Flour and meal of the dried leguminous vegetables of heading 0713, of sago or of roots or tubers of heading 0714 or of the products of Chapter 8:
1106 10 00	– Of the dried leguminous vegetables of heading 0713
ex 1106 30	– Of the products of Chapter 8:
1106 30 90	-- Other

CN code	Description
ex 1108	Starches; inulin:
1108 20 00	– Inulin
1211	Plants and parts of plants (including seeds and fruits) of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered
ex 1212	Locust beans, seaweeds and other algae, sugar beet and sugar cane, fresh, chilled, frozen or dried, whether or not ground; fruit stones and kernels and other vegetable products (including unroasted chicory roots of the variety <i>Cichorium intybus sativum</i>) of a kind used primarily for human consumption, not elsewhere specified or included:
ex 1212 20 00	– Seaweeds and other algae used primarily in pharmacy or for human consumption
1212 30 00	– Apricot, peach (including nectarine) or plum stones and kernels
	– Other:
ex 1212 99	– – Other than sugar beet and sugar cane:
ex 1212 99 80	– – – Other, excluding chicory root
1213 00 00	Cereal straw and husks, unprepared, whether or not chopped, ground, pressed or in the form of pellets
ex 1214	Swedes, mangolds, fodder roots, hay, lucerne (alfalfa), clover, sainfoin, forage kale, lupines, vetches and similar forage products, whether or not in the form of pellets:
ex 1214 90	– Other:
1214 90 10	– – Mangolds, swedes and other fodder roots
	– – Other:
ex 1214 90 91 and ex 1214 90 99	– – – In the form of pellets and other, excluding:
	– Lucerne, sainfoin, clover, lupines, vetches and similar fodder products artificially heat-dried, except hay and fodder kale and products containing hay
	– Lucerne, sainfoin, clover, lupines and vetches otherwise dried and ground
ex 1502 00	Fats of bovine animals, sheep or goats, other than those of heading 1503):
ex 1502 00 10	– For industrial uses other than the manufacture of products for human consumption, excluding fats obtained from bones and waste (°)
1503 00	Lard stearin, lard oil, oleostearin, oleo oil and tallow oil, not emulsified or mixed or otherwise prepared:
ex 1602	Other prepared or preserved meat, meat offal or blood:
	– Of swine:
ex 1602 41	– – Hams and cuts thereof:
1602 41 90	– – – Other than of domestic swine
ex 1602 42	– – Shoulders and cuts thereof:
1602 42 90	– – – Other than of domestic swine
ex 1602 49	– – Other, including mixtures:
1602 49 90	– – – Other than of domestic swine
ex 1602 90	– Other, including preparations of blood of any animal:
	– – Other than preparations of blood of any animal:
1602 90 31	– – – Of game or rabbit
1602 90 41	– – – Of reindeer
	– – – Other:
	– – – – Other than containing the meat or meat offal of domestic swine:
	– – – – – Other than containing bovine meat or meat offal:
1602 90 98	– – – – – Other than of sheep or goats
1603 00	Extracts and juices of meat, fish or crustaceans, molluscs or other aquatic invertebrates
1801 00 00	Cocoa beans, whole or broken, raw or roasted
1802 00 00	Cocoa shells, husks, skins and other cocoa waste

CN code	Description
ex 2001	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:
ex 2001 90	– Other:
2001 90 20	– – Fruits of the genus <i>Capsicum</i> other than sweet peppers or pimentos
ex 2005	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006:
ex 2005 90	– Other vegetables and mixtures of vegetables:
2005 90 10	– – Fruits of the genus <i>Capsicum</i> other than sweet peppers or pimentos
ex 2206	Other fermented beverages (for example, cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:
2206 00 31 to 2206 00 89	– Other than piquette
ex 2301	Flours, meals and pellets, of meat or meat offal, of fish or of crustaceans, molluscs or other aquatic invertebrates, unfit for human consumption; greaves:
2301 10 00	– Flours, meals and pellets, of meat or meat offal; greaves
ex 2302	Bran, sharps and other residues, whether or not in the form of pellets, derived from the sifting, milling or other working of cereals or of leguminous plants:
2302 50 00	– Of leguminous plants
ex 2307 00	Wine lees; argol:
2307 00 90	– Argol
ex 2308 00	Vegetable materials and vegetable waste, vegetable residues and by-products, whether or not in the form of pellets, of a kind used in animal feeding, not elsewhere specified or included:
2308 00 90	– – Other than grape marc, acorns and horse-chestnuts, pomace or marc of fruit, other than grapes
ex 2309	Preparations of a kind used in animal feeding:
ex 2309 10	– Dog or cat food, put up for retail sale:
2309 10 90	– – Other than containing starch, glucose or glucose syrup, maltodextrine or maltodextrine syrup falling within subheadings 1702 30 51 to 1702 30 99, 1702 40 90, 1702 90 50 and 2106 90 55, or milk products
ex 2309 90	– Other:
2309 90 10	– – Fish or marine mammal solubles
	– – Other:
ex 2309 90 91 to 2309 90 97	– – – Other than containing starch, glucose, glucose syrup, maltodextrine or maltodextrine syrup falling within subheadings 1702 30 51 to 1702 30 99, 1702 40 90, 1702 90 50 and 2106 90 55, or milk products, excluding
	– Protein concentrates obtained from lucerne juice and grass juice
	– Dehydrated products obtained exclusively from solid residues and juice resulting from the preparation of the concentrates referred to in the first indent

(*) Entry under this subheading is subject to the conditions laid down in the relevant Community provisions (see Council Directive 94/28/EC (OJ L 178, 12.7.1994, p. 66); Commission Decision 93/623/EEC (OJ L 298, 3.12.1993, p. 45)).

(*) Entry under this subheading is subject to conditions laid down in the relevant Community provisions (see Council Directive 88/661/EEC (OJ L 382, 31.12.1988, p. 36); Council Directive 94/28/EC; Commission Decision 96/510/EC (OJ L 210, 20.8.1996, p. 53)).

(*) Entry under this subheading is subject to conditions laid down in the relevant Community provisions (see Articles 291 to 300 of Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 1) and subsequent amendments).

(*) Entry under this subheading is subject to conditions laid down in Section IIF of the preliminary provisions of the Combined Nomenclature (Annex I to Regulation (EEC) No 2658/87).

COMMISSION REGULATION (EC) No 1273/2002
of 12 July 2002
concerning the issue of licences for the import of garlic

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 565/2002 of 2 April 2002 establishing the method for managing the tariff quotas and introducing a system of certificates of origin for garlic imported from third countries ⁽¹⁾,

Whereas:

- (1) Article 8(2) of Regulation (EC) No 565/2002 provides that if quantities covered by applications for licences exceed the quantities available, the Commission is to fix a simple reduction percentage and suspend the issue of such licences covered by subsequent applications.
- (2) Quantities applied for on 8 and 9 July 2002 under Article 5(2) of Regulation (EC) No 565/2002 for products originating in China exceed the quantities available. The extent to which licences can be issued, and whether the issue of those licences should be suspended for any subsequent applications, should therefore be determined,

Article 1

Import licences covered by applications under Article 3(1), of Regulation (EC) No 565/2002 for products originating in China on 8 and 9 July 2002 and forwarded to the Commission on 10 July 2002 shall be issued at the rate of:

- 26,083 % of the quantity applied for, for traditional importers,
- 1,075 % of the quantity applied for, for new importers.

Article 2

The issue of import licences relating to the quarter running from 1 September 2002 to 30 November 2002 covered by applications under Regulation (EC) No 565/2002 for products originating in China is hereby suspended for applications lodged after 9 July 2002. Applications for the quarter running from 1 December 2002 to 28 February 2003 may be lodged from 7 October 2002.

Article 3

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 86, 3.4.2002, p. 11.

COMMISSION REGULATION (EC) No 1274/2002
of 12 July 2002
concerning the issue of licences for the import of garlic

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 565/2002 of 2 April 2002 establishing the method for managing the tariff quotas and introducing a system of certificates of origin for garlic imported from third countries ⁽¹⁾,

Whereas:

- (1) Article 8(2) of Regulation (EC) No 565/2002 provides that if quantities covered by applications for licences exceed the quantities available, the Commission is to fix a simple reduction percentage and suspend the issue of such licences covered by subsequent applications.
- (2) Quantities applied for on 8 and 9 July 2002 under Article 5(2) of Regulation (EC) No 565/2002 for products originating in all third countries other than China and Argentina exceed the quantities available. The extent to which licences can be issued, and whether the issue of those licences should be suspended for any subsequent applications, should therefore be determined,

Article 1

Import licences covered by applications under Article 3(1), of Regulation (EC) No 565/2002 for products originating in all third countries other than China and Argentina on 8 and 9 July 2002 and forwarded to the Commission on 10 July 2002 shall be issued at the rate of:

- 100 % of the quantity applied for, for traditional importers,
- 7,275 % of the quantity applied for, for new importers.

Article 2

The issue of import licences relating to the quarter running from 1 September 2002 to 30 November 2002 covered by applications under Regulation (EC) No 565/2002 for products originating in all third countries other than China and Argentina is hereby suspended for applications lodged after 9 July 2002. Applications for the quarter running from 1 December 2002 to 28 February 2003 may be lodged from 7 October 2002.

Article 3

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 86, 3.4.2002, p. 11.

COMMISSION REGULATION (EC) No 1275/2002
of 12 July 2002
fixing the export refunds on pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, as last amended by Regulation (EC) No 1365/2000 ⁽²⁾, and in particular the second paragraph of Article 13(3) thereof,

Whereas:

(1) Article 13 of Regulation (EEC) No 2759/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for these products within the Community may be covered by an export refund.

(2) It follows from applying these rules and criteria to the present situation on the market in pigmeat that the refund should be fixed as set out below.

(3) In the case of products falling within CN code 0210 19 81, the refund should be limited to an amount which takes account of the qualitative characteristics of each of the products falling within these codes and of the foreseeable trend of production costs on the world market. It is important that the Community should continue to take part in international trade in the case of certain typical Italian products falling within CN code 0210 19 81.

(4) Because of the conditions of competition in certain third countries, which are traditionally importers of products falling within CN codes 1601 00 and 1602, the refund for these products should be fixed so as to take this situation into account. Steps should be taken to ensure that the refund is granted only for the net weight of the edible substances, to the exclusion of the net weight of the bones possibly contained in the said preparations.

(5) Article 13 of Regulation (EEC) No 2759/75 provides that the world market situation or the specific requirements

of certain markets may make it necessary to vary the refund on the products listed in Article 1(1) of Regulation (EEC) No 2759/75 according to destination.

(6) The refunds should be fixed taking account of the amendments to the refund nomenclature established by Commission Regulation (EEC) No 3846/87 ⁽³⁾, as last amended by Regulation (EC) No 1007/2002 ⁽⁴⁾.

(7) Refunds should be granted only on products that are allowed to circulate freely within the Community. Therefore, to be eligible for a refund, products should be required to bear the health mark laid down in Council Directive 64/433/EEC ⁽⁵⁾, as last amended by Directive 95/23/EC ⁽⁶⁾, Council Directive 94/65/EC ⁽⁷⁾ and Council Directive 77/99/EEC ⁽⁸⁾, as last amended by Directive 97/76/EC ⁽⁹⁾.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Pigmeat,

HAS ADOPTED THIS REGULATION:

Article 1

The list of products on which the export refund specified in Article 13 of Regulation (EEC) No 2759/75 is granted and the amount of the refund shall be as set out in the Annex hereto.

The products concerned must comply with the relevant provisions on health marks laid down in:

- Chapter XI of Annex I to Directive 64/433/EEC,
- Chapter VI of Annex I to Directive 94/65/EC,
- Chapter VI of Annex B to Directive 77/99/EEC.

Article 2

This Regulation shall enter into force on 15 July 2002.

⁽³⁾ OJ L 366, 24.12.1987, p. 1.

⁽⁴⁾ OJ L 153, 13.6.2002, p. 8.

⁽⁵⁾ OJ L 121, 29.7.1964, p. 2012/64.

⁽⁶⁾ OJ L 243, 11.10.1995, p. 7.

⁽⁷⁾ OJ L 368, 31.12.1994, p. 10.

⁽⁸⁾ OJ L 26, 31.1.1977, p. 85.

⁽⁹⁾ OJ L 10, 16.1.1998, p. 25.

⁽¹⁾ OJ L 282, 1.11.1975, p. 1.

⁽²⁾ OJ L 156, 29.6.2000, p. 5.

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 12 July 2002 fixing the export refunds on pigmeat

Product code	Destination	Unit of measurement	Amount of refund
0210 11 31 9110	P05	EUR/100 kg	61,50
0210 11 31 9910	P05	EUR/100 kg	61,50
0210 19 81 9100	P05	EUR/100 kg	65,00
0210 19 81 9300	P05	EUR/100 kg	51,50
1601 00 91 9120	P05	EUR/100 kg	18,50
1601 00 99 9110	P05	EUR/100 kg	14,00
1602 41 10 9110	P05	EUR/100 kg	27,50
1602 41 10 9130	P05	EUR/100 kg	16,50
1602 42 10 9110	P05	EUR/100 kg	22,00
1602 42 10 9130	P05	EUR/100 kg	16,50
1602 49 19 9130	P05	EUR/100 kg	16,50

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 27.3.2002, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6).

The other destinations are defined as follows:

P05 All destinations except the Czech Republic, the Slovak Republic, Hungary, Poland, Bulgaria, Latvia, Estonia, Lithuania.

COMMISSION REGULATION (EC) No 1276/2002**of 12 July 2002****fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 101st individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽³⁾, as last amended by Regulation (EC) No 635/2000 ⁽⁴⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price

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

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices and the maximum aid and processing securities applying for the 101st individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 350, 20.12.1997, p. 3.

⁽⁴⁾ OJ L 76, 25.3.2000, p. 9.

ANNEX

to the Commission Regulation of 12 July 2002 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 101st individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		85	81	85	81
	Butter < 82 %		83	79	—	—
	Concentrated butter		105	101	105	101
	Cream		—	—	36	34
Processing security	Butter		94	—	94	—
	Concentrated butter		116	—	116	—
	Cream		—	—	40	—

COMMISSION REGULATION (EC) No 1277/2002**of 12 July 2002****fixing the maximum purchasing price for butter for the 54th invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 13 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EC) No 1614/2001 ⁽⁴⁾, provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the intervention price applicable and that it may also be decided not to proceed with the invitation to tender.

- (2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 54th invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 9 July 2002, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 333, 24.12.1999, p. 11.

⁽⁴⁾ OJ L 214, 8.8.2001, p. 20.

COMMISSION REGULATION (EC) No 1278/2002**of 12 July 2002****fixing the maximum buying-in price for skimmed-milk powder for the second invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 214/2001**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 17 of Commission Regulation (EC) No 214/2001 of 12 January 2001 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in skimmed-milk powder ⁽³⁾ provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed by reference to the intervention price applicable and that it may also be decided to make no award under the round.

- (2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the second invitation to tender issued under Regulation (EC) No 214/2001, for which tenders had to be submitted not later than 9 July 2002, the maximum buying-in price shall be EUR 200,38/100 kg.

Article 2

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 37, 7.2.2001, p. 100.

COMMISSION REGULATION (EC) No 1279/2002**of 12 July 2002****fixing the maximum aid for concentrated butter for the 273rd special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽³⁾, as last amended by Regulation (EC) No 124/1999 ⁽⁴⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

- (2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 273rd special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

- | | |
|---------------------|-----------------|
| — maximum aid: | EUR 105/100 kg, |
| — end-use security: | EUR 116/100 kg. |

Article 2

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 45, 21.2.1990, p. 8.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 1280/2002
of 12 July 2002
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 509/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EC) No 1614/2001 ⁽⁴⁾, and in particular Article 2 thereof,

Whereas:

- (1) Article 2 of Regulation (EC) No 2771/1999 lays down that buying-in by invitation to tender is to be opened or suspended by the Commission in a Member State, as appropriate, once it is observed that, for two weeks in succession, the market price in that Member State is below or equal to or above 92 % of the intervention price.

- (2) Commission Regulation (EC) No 756/2002 suspending the buying-in of butter in certain Member States ⁽⁵⁾ establishes the most recent list of Member States in which intervention is suspended. This list must be adjusted as a result of the market prices communicated by Sweden under Article 8 of Regulation (EC) No 2771/1999. In the interests of clarity, the list in question should be replaced and Regulation (EC) No 756/2002 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

Buying-in of butter by invitation to tender as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby suspended in Denmark, Greece and Austria.

Article 2

Regulation (EC) No 756/2002 is hereby repealed.

Article 3

This Regulation shall enter into force on 13 July 2002.

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

Done at Brussels, 12 July 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 79, 22.3.2002, p. 15.

⁽³⁾ OJ L 333, 24.12.1999, p. 11.

⁽⁴⁾ OJ L 214, 8.8.2001, p. 20.

⁽⁵⁾ OJ L 116, 3.5.2002, p. 4.

II

(Acts whose publication is not obligatory)

CONFERENCE OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES

DECISION BY THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

of 25 June 2002

on the provisional application of the Internal Agreement between Representatives of the Member States, meeting within the Council, on the financing and administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which part Four of the EC Treaty applies

(2002/579/EC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN COMMUNITY, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership signed in Cotonou (Benin) on 23 June 2000, hereafter referred to as the 'ACP-EC Agreement',

Whereas:

- (1) The ACP-EC Agreement will not enter into force until the constitutional requirements of each Member State have been completed in accordance with Article 93 thereof.
- (2) The ACP-EC Committee of Ambassadors took a Decision on 28 February whereby transitional measures applicable until 1 August 2000 were adopted.
- (3) In accordance with Article 366(3) of the Fourth ACP-EC Convention, as amended by the agreement signed in Mauritius on 4 November 1995, the ACP-EC Council of Ministers adopted through Decision No 1/2000 ⁽¹⁾ transitional measures to cover the period between 2 August 2000 until 1 June 2002.
- (4) By Decision No 1/2002, the ACP-EC Council of Ministers amended the abovementioned Decision No 1/2000 by extending its applicability until the ACP-EC Agreement enters into force.
- (5) In accordance with Article 6 of Decision No 1/2000, the Member States and Community will be required to take

the steps appropriate to each of them with regard to the implementation of the transitional measures.

- (6) The Representatives of the Governments of the Member States, meeting within the Council, have reached a consensus concerning an Internal Agreement on the financing and administration of Community aid to the ACP States that corresponds to the provisions on programming and implementation of the Agreement. This Agreement will not enter into force before adoption by each Member State in accordance with its own constitutional requirements.
- (7) By Decision of 3 October 2000, the Representatives of the Governments of the Member States decided that certain provisions of the Internal Agreement be applied on a provisional basis until 1 June 2002.
- (8) The same provisions of the Internal Agreement should continue to be applied on a provisional basis until its entry into force,

HAVE DECIDED AS FOLLOWS:

Article 1

The following provisions of the Internal Agreement relating to the 9th European Development Fund shall continue to be applied provisionally as of the date of adoption of this Decision:

1. Articles 14, 15, 16, 19(1), 19(2), 19(3) and 19(4) relating to the implementation of the programming process;

⁽¹⁾ OJ L 195, 1.8.2000, p. 46.

2. Articles 21 to 27 for the purposes of the implementation of the programming process;
3. Articles 29 and 30 for the purposes of the preparation of the functioning of the Investment Facility, and
4. Article 31 for the purposes of the adoption of the Financial Regulation.

Article 2

This Decision shall remain in force until the entry into force of the Internal Agreement.

It shall be published in the *Official Journal of the European Communities*.

Done at Luxembourg, 25 June 2002.

The President

J. MATAS I PALOU

COUNCIL

COUNCIL DECISION

of 18 June 2002

amending Decision 97/788/EC as regards the period of validity

(2002/580/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/457/EEC of 29 September 1970 on the common catalogue of varieties of agricultural plant species ⁽¹⁾, and in particular Article 21(1)(b) thereof,

Having regard to Council Directive 70/458/EEC of 29 September 1970 on the marketing of vegetable seed ⁽²⁾, and in particular Article 32(1)(b) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Council Decision 97/788/EC of 17 November 1997 on the equivalence of checks on practices for the maintenance of varieties carried out in third countries ⁽³⁾ determined that the official checks on practices for the maintenance of varieties carried out in certain third countries afford the same guarantees as those carried out by the Member States. That Decision expired in the case of certain third countries on 30 June 1999, and in the case of other third countries it will expire on 30 June 2002.
- (2) It appears that the checks carried out in the third countries in accordance with Decision 97/788/EC continue to afford the same guarantees as those carried out by the Member States.

- (3) Decision 97/788/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 3 of Decision 97/788/EC shall be replaced by the following:

'Article 3

This Decision shall apply from 1 July 1997 to 30 June 1999 and from 18 June 2002 to 30 June 2005 in the case of the Republic of Korea and the Federal Republic of Yugoslavia and from 1 July 1997 to 30 June 2005 in the case of the other third countries listed in the Annex.'

Article 2

This Decision is addressed to the Member States.

Done at Luxembourg, 18 June 2002.

For the Council

The President

F. ÁLVAREZ-CASCOS FERNÁNDEZ

⁽¹⁾ OJ L 225, 12.10.1970, p. 1. Directive as last amended by Commission Directive 2002/8/EC (OJ L 37, 7.2.2002, p. 7).

⁽²⁾ OJ L 225, 12.10.1970, p. 7. Directive as last amended by Directive 2002/8/EC.

⁽³⁾ OJ L 322, 25.11.1997, p. 39.

COMMISSION

COMMISSION DECISION

of 11 December 2001

on the tax measures for banks and banking foundations implemented by Italy

(notified under document number C(2001) 3955)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2002/581/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 the provisions cited above and having regard to their comments ⁽¹⁾,

Whereas:

(2) By letter dated 25 October 2000, the Commission informed the Italian Government that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the measure.

(4) The Commission received comments from interested parties. On 18 June 2001 it forwarded them to the Italian authorities, who were given the opportunity to react; their comments were received by letter dated 25 July 2001.

I. PROCEDURE

(1) By letter dated 24 March 1999, the Commission, after receiving a Parliamentary question on the subject, requested the Italian authorities to supply information in order to assess the scope and effects of Law No 461 of 23 December 1998 ('Law 461/98'). By letters dated 24 June and 2 July 1999, the Italian authorities provided the Commission with information on the Law and on the related Legislative Decree No 153 of 17 May 1999 ('Decree 153/99'). After examining the information received, the Commission advised the Italian authorities by letter dated 23 March 2000 that the aforementioned Law and Decree were likely to contain aid elements and requested them to halt any measures implementing them. By letter dated 12 April 2000, the Italian authorities informed the Commission that they had suspended the implementation of the two instruments. Further information was supplied to the Commission by letter of 14 June 2000.

II. DETAILED DESCRIPTION OF THE AID

(5) Law 461/98 and Decree 153/99 introduce tax advantages for the consolidation of the banking sector:

1. the reduction to 12,5 % of the rate of income tax (IRPEG) for banks which merge or engage in similar restructuring, for five years after the operation, provided that the profits are placed in a special reserve which may not be distributed for a period of three years. The profits which may be placed in the special reserve may not exceed 1,2 % of the difference between the sum of credits and debits of the post-merger bank and the sum of credits and debits of the largest pre-merger bank (Article 22(1) and Article 23(1) of Decree 153/99);

⁽¹⁾ OJ C 44, 10.2.2001, p. 2.

⁽²⁾ See footnote 1.

2. tax neutrality for transactions in which goods and holdings in ancillary activities transferred to banks pursuant to Law No 218 of 30 July 1990 are returned to the transferring institution (Article 16(3) of Decree 153/99);
 3. the imposition of a fixed amount replacing the indirect taxes normally due in connection with the operations cited above in (1) and (2) (Article 24(1) and Article 16(5) of Decree 153/99);
 4. tax neutrality with respect to the local tax due on the increase in the value of property at the time of change in ownership, in connection with the operations cited above in (1) and (2) (Article 24(1) and Article 16(5) of Decree 153/99);
 5. exemption from tax for the transfer to banking foundations of banks' holdings in the capital of the Banca d'Italia (Article 27(2) of Decree 153/99).
- (6) Law 461/98 and Decree 153/99 also introduce tax advantages for banking foundations. The measures concerning banking foundations will not be dealt with in the present decision.
- (7) Decree 153/99 grants tax benefits in relation to merger operations carried out in the years 1998-2004. Since the implementation of the measures was suspended in 2000, the tax savings should concern only operations completed in 1998, 1999 and 2000. However, should it in fact transpire that operations carried out after the suspension also benefited from the measure, these should be treated in the same way as operations carried out before the suspension, particularly when this decision is executed.
- (8) On the basis of the 76 operations carried out in 1998, 1999 and 2000, the Italian authorities put at ITL 5 358 billion (EUR 2 767 million) the maximum theoretical amount of tax benefits that beneficiaries of the measure referred to in paragraph 5(1) above might have claimed over the specified five-year period. This estimate does not include tax benefits granted through measures indicated in paragraph 5(2) to (5).
- (9) Formerly State-owned banks in Italy, which did not take the form of public limited companies, were gradually converted, and finally obliged by law to convert in 1993, into public limited companies. Their shares were either placed on the market or held by non-profit institutions referred to as 'banking foundations'. Law No 218 of 30 July 1990 introduced special tax rules by which the banking foundations that owned or controlled the newly created banks could transfer certain assets to those banks. The measures indicated in paragraph 5(2) and (5) refer to those same assets and define the conditions under which they might be returned to the transferring institution (i.e. the banking foundation).
- (10) The Commission provisionally considered that aid granted by Law 461/98 and Decree 153/99 in connection with bank mergers was likely to be incompatible with the common market in the light of Article 87, for the following reasons:
- Law 461/98 and Decree 153/99 grant tax advantages for bank mergers that favour certain undertakings, notably those carrying out merger operations, enabling them to grow in size and benefit from economies of scale at a lower cost. Being confined to the banking sector, this constitutes a sectoral scheme which falls within the scope of Article 87(1) of the Treaty;
 - The advantage is granted by forgoing tax revenues, i.e. through State resources. The aid affects trade between Member States since it makes it easier for Italian banks to expand abroad and more difficult for foreign banks to enter Italy;
 - The aid to banks is not within the *de minimis* limit. The Italian authorities state that the tax advantages for banks are justified by the fact that they are necessary for the consolidation and modernisation of the banking sector. The Commission had doubts as to whether or not this might make it possible to consider the aid to be compatible on the basis of Article 87(3)(c). The Treaty gives the Commission sole competence for checking that aid projects meet such a compatibility criterion and this is why it requires prior notification. In addition, the aid does not satisfy the conditions laid down by the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽³⁾. The measures in question are also likely to constitute operating aid in so far as they are not linked to the carrying-out of specific projects and reduce a firm's current expenditure; the Commission was unable to assess the precise volume involved when it carried out its *ex ante* examination.
- On these grounds, the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty.
- ### III. COMMENTS FROM INTERESTED PARTIES
- (11) The Commission has received a number of comments from beneficiaries of the aid, most of them being similar to those made by the Italian authorities.
- (12) It was argued mainly that, even in the event that the Commission considered the measures as incompatible aid, there would be grounds for ruling out the recovery of the aid because of the legitimate expectations of the recipients.

⁽³⁾ OJ C 288, 9.10.1999, p. 2.

(13) These expectations would be justified by the fact that the Commission did not call into question Law No 218 of 30 July 1990, which granted similar benefits. In fact, in its notice pursuant to Article 88(3) in the case of aid granted by Italy to Banco di Napoli ⁽⁴⁾ the Commission took the view that: 'By allowing the assets to be revalued under a partial tax-exemption system and providing for the recapitalisation of certain public banks that have always been undercapitalised [...] in order to comply with the minimum capital levels laid down in the new Community Directives on banking, the "Amato" Law made it possible to replace an unlimited State guarantee for public banks with limited capital injections. This was the first step towards treating public and private banks in the same way, thus limiting distortion of competition. [...] Consequently, it must be concluded that the capital contributions to the bank provided for under the "Amato" Law do not constitute State aid within the meaning of Article 92(1) of the EC Treaty'.

(14) The operations had also been cleared by the Banca d'Italia, which is the relevant competition authority for the credit sector.

(15) The recovery of the aid would also run counter to the proportionality principle. Merger operations were carried out on the basis of the tax incentive; recovery could produce financial instability for the beneficiaries and would alter the conditions on which they had based their merger decisions.

IV. COMMENTS FROM ITALY

(16) In its response to the initiation of the procedure, the Italian Government stated that the banking system in Italy has been subject since 1936 to strict public control and direct Government intervention in the management of a large majority of banks. Banks had been divided into different institutional categories, with different operational limits ('specialisation principle'). This had adversely affected the efficiency and competitiveness of the system. For this reason the authorities took several steps from the early 1980s onwards to abandon the specialisation principle, privatise State-owned banks and encourage an increase in the average size of Italian banks. Law No 218 of 30 July 1990 had previously granted tax advantages to banks similar to those being considered in this decision. Law 461/98 and Decree 153/99 should be seen as part of the same process aimed at modernising the banking sector.

(17) While this process was taking place, the Italian Government also undertook a general reform of the taxation

system. The general reform involved the introduction in 1997 of the 'Dual Income Tax' (DIT) ⁽⁵⁾ and of the 'Imposta Regionale sulle Attività Produttive' (IRAP) ⁽⁶⁾. Those two taxes were applied to banks at less favourable conditions than to other economic sectors by way of compensation for the other more specific tax advantages envisaged for banks.

(18) Accordingly, the measures do not represent a derogation from the normal tax rules but, rather, special and temporary measures justified by the process of consolidation of the banking sector. The Italian authorities submit that the Court of First Instance has ruled that a special system of levies which does not constitute a derogation from the tax arrangements generally applied to other activities has to be evaluated solely in the context of the special tax arrangements applicable to the sector ⁽⁷⁾. It is therefore legitimate for the Italian legislator to seek to adapt the tax system to the specific characteristics of the banking sector where this does not imply a decrease in the general tax burden, as in the present case, with respect to the rest of the economy.

(19) The Italian authorities also reckon that rules on State aid cannot hinder an improvement in the general fairness and consistency of the system where it could be demonstrated that the initial situation was penalising certain undertakings or sectors. They add figures showing that banks contribute 20 % of overall company tax revenues while accounting for only 5 % of the country's value added. Other figures support the claim that the banking sector is subject to a higher tax burden. While a reduction of the tax burden could have been achieved by granting banks the same taxation rules as other sectors, the Government decided instead to offer incentives for the consolidation of the sector.

(20) The measures should be considered to be of a general nature. All banks, including Italian branches of foreign banks, are eligible for the tax breaks. As for the difference in treatment with respect to other sectors, this is justified by the nature and general scheme of the system. The banking sector is subject to very specific regulation and, as a result, banks constitute a peculiar category of taxpayers. Banks are subject to many additional obligations with respect to other undertakings. As a result, a difference in tax treatment is objectively justified and is typical of this sector ⁽⁸⁾.

⁽⁴⁾ Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and interested parties concerning aid granted to Banco di Napoli (Case C 40/96; OJ C 328, 1.11.1996, p. 23).

⁽⁵⁾ Legislative Decree No 466 of 18 December 1997.

⁽⁶⁾ Legislative Decree No 446 of 15 December 1997.

⁽⁷⁾ Case T-67/94 *Ladbroke Racing Ltd v Commission* [1998] ECR II-1.

⁽⁸⁾ Case T-55/99 *Confederación Española de Transporte de Mercancías (CETM) v Commission* [2000] ECR II-3207.

- (21) The measures in paragraph 5(2) and (5) and, to some extent, in paragraphs 5(3) and (4) concern goods and holdings in ancillary activities transferred to banks pursuant to Law No 218 of 30 July 1990. At the time of the conversion of the public banks into public limited companies owned by banking foundations, operators had to assign those assets to the banks instead of the foundations, in order to avoid taxation on revaluation of assets. In the case of the holdings in the capital of Banca d'Italia, the choice of placing them in the foundation was not even available. According to Law 141 of 7 March 1938, the newly created foundations were not among the institutions eligible to be shareholders of the Banca d'Italia. Decree 153/99 modified those rules and allowed foundations to hold shares in the Banca d'Italia. These assets, while increasing the capital of the banks, do not contribute to their activity and therefore lower their profitability indices. The measures in question merely provide for a tax-exempted transfer of these assets to the foundations in order not to penalise banks for the consequences of the privatisation process.
- (22) The measures in question do not distort competition. There is no distortion of competition among banks operating in Italy, including those of other Member States. There is no distortion between banks operating in Italy and banks operating abroad since the initial situation is very unfavourable to those established in Italy.
- (23) The measures do not affect trade between Member States. They would not make it easier for Italian banks to expand abroad and more difficult for foreign banks to enter Italy. On the contrary, foreign banks may participate in mergers in Italy and benefit from the tax breaks.
- (24) The measures do not involve the use of State resources. The tax advantage is not automatic but conditional upon the implementation of specific operations. As for measures in paragraph 5(2), (3), (4) and (5), where those operations would have involved a tax burden, it is unlikely that they would have taken place in the absence of the tax benefit. As for measures in paragraph 5(1), the temporary reduction in company tax would be compensated in the long term by the likely increase in the profitability of the interested banks and by the taxation of that increase.
- (25) In the rejected hypothesis that the measures constituted aid, it would be compatible under Article 87(3)(b). Consolidation of the banking system is part of the important Community project of introducing the euro and of creating a single internal market in banking services. It is also important to consolidate the banking sector in order to avoid a possible generalised crisis in the system, an initial symptom of which was evidenced by the financial difficulties of Banco di Sicilia and Banco di Napoli.
- (26) The description of the measures as 'operating' aid is not correct. The tax advantages are granted only in relation to a specific and well-identified project, such as a merger. The amount of aid is determined on the basis of objective and transparent parameters. The measures do not reduce current expenditure but, rather, outlays related to operations of an exceptional nature.
- (27) The tax measures would also qualify for compatibility under Article 87(3)(c) since they are intended to facilitate the development of banking activity without adversely affecting trade to an extent contrary to the common interest. The possibilities of resorting to Article 87(3)(c) are not exhausted by the circumstances indicated in the Community guidelines on State aid for rescuing and restructuring firms in difficulty. The Commission has recognised on other occasions that consolidation of the banking sector is inevitable in the present circumstances.
- (28) If the Commission does not accept the above general argument in favour of compatibility under Article 87(3)(c), it then has to verify case by case, i.e. by looking at each individual beneficiary of the measures, whether the conditions for applying Article 87(3)(c) are met.
- (29) The subject of the Commission's analysis is an aid scheme, i.e. an instrument by which a Member State offers tax advantages to any financial institution that fulfils the conditions laid down in the scheme. The Member State in question did not grant advantages on an individual basis and did not notify each individual case to the Commission. Consequently, given the very nature of the measure, the Commission has to undertake a general and abstract examination of the scheme, both as regards the question of aid and as regards the question of compatibility; it is competent to undertake such an examination pursuant to the Treaty, Regulation (EC) No 659/1999 and the case law of the Court⁽⁹⁾. It is not examining the scheme's application in each of the 76

V. ASSESSMENT OF THE AID

⁽⁹⁾ Case 248/84 *Germany v Commission* [1987] ECR 4013, paragraphs 17-18; Case C-47/91 *Italy v Commission* [1994] ECR I-4635, paragraphs 20-21; Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 48; Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines v Commission* [2000] ECR I-8855, at paragraph 51.

merger operations referred to or in an unknown number of asset transfers between banks and banking foundations.

(30) The scheme itself was conceived and implemented by the Member State with a view to achieving a specific and clearly expressed effect: consolidation of the Italian banking sector. Thus, all of the elements necessary to assess whether the scheme involves State aid and whether it is compatible with the common market are to be found in the scheme itself. In addition, in view of the specific circumstances of the case, the assessment of aid granted under the scheme would probably not change in an individual case. Indeed, because of their nature, the beneficiaries will normally be considered to be undertakings within the meaning of Article 87(1) of the EC Treaty. As a consequence of the openness of the Community banking sector, the advantages given to a specific bank are bound to affect trade between Member States and to distort competition. In addition, in the light of the requirements laid down (notably, the prior existence of a restructuring plan), it is unlikely that any of the specific operations rank as restructuring of an undertaking in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁰⁾. It is even less likely that the advantages not related to new investments can exceptionally be considered as compatible under the Guidelines on national regional aid⁽¹¹⁾. In this respect, it could be added that consolidation operations are rarely confined to banks active only in areas eligible for regional aid. Finally, no other element suggests that individual aid might be considered to be compatible on any other ground.

(31) The Commission notes that Italy has asked it to analyse each individual case of aid. However, it does not consider that, for this reason alone, it is obliged to do that at this stage of these proceedings. In its view, any such request would have to be accompanied at least by all the information necessary for the Commission to conduct an assessment of each individual case, i.e. all the information that should normally be provided to the Commission in the context of a complete notification of an individual aid pursuant to Article 88(3). The Italian authorities were aware of the Commission's doubts concerning the scheme. If they considered that some particular cases, because of their specific features, should have been assessed on an individual basis, they were under a duty to inform the Commission of these features and to provide all the information needed for an individual assessment.

(32) The Commission acknowledges that the peculiar nature of banking could, in principle, justify the introduction of

specific tax rules for the sector. However, the measures under examination do not represent an adaptation of the general system to the distinctive features of banking, but, rather, ad hoc aid having the effect of improving the competitiveness of certain undertakings, i.e. the merging banks, and only in relation to certain operations. The fact that the banking sector might be in need of restructuring at a particular time is an extrinsic factor bearing no relation to the normal operation of the tax system in the banking sector; therefore, it does not imply that it is in the nature or general scheme of the system that banking should benefit from more favourable rules on mergers. For these reasons, it cannot be accepted that the measures in question are justified by the nature or general scheme of the system. They represent a derogation from the normal tax rules. 'According to the case-law of the Court, aid in the form of an aid programme may concern a whole economic sector and still be covered by Article 92(1) of the Treaty (now Article 87(1)) and a measure designed to give the undertakings of a particular industrial sector a partial reduction of the financial charges arising from the normal application of the general social security system, without there being any justification for this exemption on the basis of the nature or general scheme of this system, must be regarded as aid'⁽¹²⁾. It is equally well established that the tax nature of the measure in question cannot suffice to shield it from application of Article 87(1) of the Treaty⁽¹³⁾.

(33) The measures confer an advantage on banks, enabling them to grow in size and benefit from economies of scale at a lower cost. This advantage is selective in nature. It is also selective vis-à-vis banks within the sector since it is confined to those companies involved in merger or consolidation operations. Moreover, the aid measure described in paragraph 5(1) is not neutral with respect to the relative size of the companies involved. If, for simplicity's sake, we consider an acquisition involving two banks, the tax benefits will be directly proportional to the size (sum of credits and debts) of the smaller one. Accordingly, if the purchasing bank is smaller than the purchased bank, its tax advantage will be lower than the one accruing to a hypothetical larger buyer of the same bank. This might place smaller buyers at a disadvantage with respect to larger ones.

(34) In addition, to the extent that smaller buyers are placed at a disadvantage and since the tax benefit applies to Community banks only as regards the branches established in Italy, which tend to be rather limited in size, there may be an element of selectivity not only within the sector but also between foreign and Italian banks.

⁽¹⁰⁾ OJ C 288, 9.10.1999. Since some of the aid was granted after 9 October 1999, these guidelines apply by virtue of point 7.5, paragraph 101.

⁽¹¹⁾ OJ C 74, 10.3.1998, p. 9.

⁽¹²⁾ Case C-75/97 *Kingdom of Belgium v Commission* ('Maribel bis/ter' scheme) [1999] ECR I-3671, paragraph 33.

⁽¹³⁾ Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13.

The fact that the aid is available also to branches of foreign banks does not seem sufficient to eliminate the bias in favour of mergers between Italian operators.

- (35) Even if the aid covered all banking operators without differentiating between them, the measures would still constitute aid to the sector. Merger operations having the same expected profitability might not be carried out in other sectors that do not benefit from the aid. These selectivity elements do not disappear in cases where the banking sector is generally subject to a heavier tax burden. If the bias in the tax system is justified by the nature of the business, it does not call for compensation; otherwise, it is the bias itself that should be corrected. A selective measure might be justified by the specificity of the activity covered by it, but not by the presence of other selective measures.
- (36) Moreover, the measures allow banks to acquire holdings in other undertakings more cheaply when these are owned by other banks involved in the operation. As indicated in the reply of the Italian authorities, the operations might also concern different companies, e.g. financial or insurance companies, although the tax breaks are granted only to the banks involved and in proportion to the size of banking business.
- (37) The same considerations which apply to the measure in paragraph 5(1), with the exception of the non-neutrality with respect to the relative size of the participants, also apply *mutatis mutandis* to the other tax benefits described in paragraph 5(2), (3) and (4). In addition, they apply only to banks involved in merger or consolidation operations or in transfers of assets and also represent aid to the sector. Similar operations performed in other sectors do not benefit from the same tax rules. Accordingly, the measures are not of a general nature and confer a selective advantage upon the beneficiaries.
- (38) Somewhat different considerations have to be made with respect to the measure in paragraph 5(5) concerning the holdings in the capital of the Banca d'Italia. In this case, it might be argued that a tax exemption on the transfer of assets does not represent a derogation from the general taxation rules since the initial placement of the holdings with the bank was a temporary operation for which there was no alternative at the time and did not reflect a business choice of the operators.
- (39) The reasoning in paragraph 38, however, would not apply if the holdings in Banca d'Italia were obtained free of charge and sold to the foundations or had been revalued. If the placement of the holdings in the bank has to be seen as a mere temporary operation, with the preferred solution of assigning the asset to the founda-

tion not being available, then the bank should derive no benefit with respect to the hypothetical situation in which the holdings were originally placed in the foundation. In other words, the bank should not be penalised by taxes on an operation that offsets a non-voluntary transfer. Nor should it benefit from a tax exemption on an operation that allows the bank to convert into cash the value of those holdings or increases the bank's capital. It is therefore considered that a tax exemption on the transfer of shares of Banca d'Italia constitutes aid only to the extent that the joint operation of assigning the shares to the bank and transferring them to the foundations has no impact on the bank's balance sheet.

- (40) The situation regarding the shares of Banca d'Italia is different from that of the other assets that could have been placed either in the bank or in the foundation. The choice was made at the time, taking into account the different implications of the two options in terms of the capital structure and tax liabilities of the two institutions. Further transfers are not aimed at correcting a previous non-voluntary transfer but are the result of a business decision: as such, they do not justify special tax treatment. Moreover, the tax exemption on the transfer of these assets from the bank to the foundations represents a selective advantage to those operators who originally opted in favour of placing assets in the bank in order to avoid the tax on capital gains.
- (41) The line of reasoning in paragraph 34 suggests that there could be an effect on trade between Member States. Generally speaking, aid that benefits undertakings in a sector exposed to cross-border trade would be regarded as affecting such trade. As the Court of Justice has observed, 'when State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid' ⁽¹⁴⁾. In this respect, there is no doubt that for many years financial services and providers or consumers of financial services have actually and potentially, directly and indirectly, crossed frontiers between Member States. The liberalisation of financial services and the integration of the financial market have had the effect of greatly increasing the sensitivity of intra-Community trade to distortions of competition. Aid granted to credit undertakings offering financial services in competition with other European credit establishments is certainly likely to distort intra-Community trade. This tendency is heightened by the introduction of the single currency and the complete opening-up of markets, which increase competitive pressures between Community countries. It should also be

⁽¹⁴⁾ Case 730/79 *Philip Morris Holland v Commission* [1980] ECR 2671, paragraph 11.

borne in mind that, although banks can carry out their activities, which consist essentially in collecting deposits and granting loans, on a cross-border basis, they often encounter obstacles when expanding abroad. Such obstacles are frequently due to the fact that local banks are well established, which makes it more costly for foreign competitors to enter the market. As liberalisation will increasingly offer banks the opportunity to provide their services in other Member States, any aid granted to them, whether international or domestic, is likely to hamper them in so doing. Aid aimed at ensuring the survival of even local banks that would otherwise have been forced out of the market owing to their low profitability and competitiveness is thus liable to distort competition in the Community since it makes it more difficult for foreign banks to enter the Italian market. Even aid of a small amount and/or to small banking operators may affect trade between Member States. As stated by the Court of Justice, even aid of a relatively small amount is liable to affect trade between Member States where there is strong competition in the sector in question ⁽¹⁵⁾.

(42) The advantage is granted by forgoing tax revenues, i.e. through State resources. The Court of Justice has consistently held that 'A measure whereby the public authorities grant to certain undertakings a tax exemption which, although not involving a transfer of state resources, places the persons to whom the exemption applies in a more favourable financial position than other taxpayers constitutes State aid within the meaning of Article 92(1) of the Treaty' ⁽¹⁶⁾. The argument that the operations would not have taken place in the absence of the measures, with the aid increasing state revenues, cannot be accepted. First of all, it cannot be ruled out that operations of the type covered by the scheme would have taken place anyway. Secondly, such an assertion would imply that the normal tax rules, applying to mergers in other sectors, are designed to discourage merger operations rather than raise revenues. The fact that, overall, an aid scheme increases the number or the amount of taxable operations and therefore creates additional revenue for the State is not relevant in this context.

(43) For the above reasons, the measures in question constitute State aid.

(44) The aid to banks is generally outside the *de minimis* limit. It cannot be ruled out, however, that in certain individual cases some of the measures, particularly those indicated

at paragraph 5(2), (3), (4) and (5), might fall within the *de minimis* thresholds. In those cases, the measures would be deemed to fall outside the scope of Article 87(1) of the Treaty.

(45) The aid is not compatible under Article 87(2). It is not aid having a social character that is granted to individual consumers, aid to make good the damage caused by natural disasters or exceptional occurrences or aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany. Nor is the aid compatible under Article 87(3)(d) (aid to promote culture and heritage conservation) or (e) (such other categories of aid as may be specified by decision of the Council). Nor has the Member State invoked any of these derogations. Furthermore, the aid is not compatible under Article 87(3)(b). The strengthening of the Italian banking system cannot be considered a 'project of common European interest' since it will benefit mostly the economic operators of one Member State and not the Community as a whole and since it will not promote a concrete, precise and well-defined project; nor does it 'remedy a serious disturbance in the economy of a Member State' since there is no evidence that the Italian banking system was suffering from a systemic crisis.

(46) The aid extends across the whole territory of the Member State and cannot therefore be considered to be compatible under Article 87(3)(a) or (c) (as far as the development of certain regions is concerned). In addition, with respect to the ranking of the aid as 'operating' aid, this category, for the purposes of assessment under the relevant regional guidelines, embraces all types of expenditure not related to 'initial investment', i.e. investment in fixed capital relating to the setting-up of a new establishment, the extension of an existing establishment or the starting-up of an activity involving a fundamental change in the product or production process of an existing establishment ⁽¹⁷⁾. Accordingly, even if the measure concerned expenditure linked to a specific merger or acquisition project in an assisted region, it would still be assessed as operating aid and normally prohibited.

(47) As for compatibility under Article 87(3)(c) (as far as the development of certain economic activities is concerned), the conditions for applying the Community guidelines on state aid for rescuing and restructuring firms in difficulty ⁽¹⁸⁾ are not met. The scheme is not limited to SMEs. The aid was not notified individually to the Commission

⁽¹⁵⁾ Case C-303/88 *Italy v Commission* [1991] ECR I-1433, paragraph 27.

⁽¹⁶⁾ Case C-6/97 *Italian Republic v Commission* [1999] ECR I-2981, paragraph 16.

⁽¹⁷⁾ See Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9) and in particular points 4.1, 4.4, 4.15.

⁽¹⁸⁾ OJ C 288 of 9.10.1999. Since some of the aid was granted after 9 October 1999, these guidelines apply by virtue of point 7.5, paragraph 101.

and no restructuring plan was submitted either. The banks that benefit from the aid are normally not in difficulty and the aid is not intended to restore their long-term viability. The guidelines require that measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors. In the present case the aid is intended instead to strengthen the position of the beneficiaries with regard to competitors which do not benefit from the measures. As far as aid to SMEs is concerned, the Commission notes that the scheme applies to undertakings other than SMEs and that the advantages do not qualify as investment aid or as aid to expenditure that can otherwise be considered to be compatible. No further feature of the scheme allows the Commission to consider it as compatible for other reasons under Article 87(3)(c). Moreover, this provision requires that the aid 'does not adversely affect trading conditions to an extent contrary to the common interest', a condition which, in the Commission's view, is not met in the present case. Indeed, with respect to previous measures ⁽¹⁹⁾ that may have made it easier for public banks to adopt the status of public limited companies, thereby placing them on a more even playing field with other banking institutions (see also the considerations in paragraphs 51 to 54), the present measures have mainly the effect of improving the competitiveness of the beneficiaries in a sector where international competition is strong.

(48) Apart from possible *de minimis* aid, there appear to be no other circumstances in which the measures in question would be deemed compatible in individual cases. In any event, those cases should have been notified individually to the Commission under Article 88(3). In addition, the Italian State has not provided sufficient information justifying compatibility in individual cases.

(49) In accordance with Article 14 of Regulation (EC) No 659/99 ⁽²⁰⁾, where negative decisions are taken in respect of unlawful aid, the Commission must decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. The Commission need not require recovery of the aid if this would be contrary to a general principle of Community law.

(50) The Commission considers that no general principle of Community law stands in the way of recovery. In particular, as to legitimate expectations, the Court of Justice stated that: 'in view of the mandatory nature of the supervision of State aid by the Commission under Article 87 of the Treaty, undertakings to which an aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in

compliance with the procedure laid down in that article. A diligent operator should normally be able to determine whether that procedure has been followed' ⁽²¹⁾. The aid in question was granted without prior notification.

(51) As regards the fact that the Commission did not call into question Law No 218 of 30 July 1990, it should be noted that the Law was not notified by the Italian Government. The Commission assessed only certain aspects of the Law in connection with individual cases ⁽²²⁾: in particular, it was the capital injection that was the subject of the Commission's appraisal, an element not present in the measures at issue here. It was considered that the capital injection granted by Law 218/90 provided for the recapitalisation of certain public banks. This operation and the other advantages linked to it made it possible to replace an unlimited state guarantee for public banks with limited capital injections. It was in the interests of competition that public banks and bodies should be transformed into public limited companies and that there should be equal treatment of public and private banks.

(52) The above justification, however, would not apply in the present case. As pointed out in the reply of the Italian authorities, public banks, with very few exceptions, had already converted to public limited companies by the end of 1992. Such conversion was later made compulsory by Law No 489 of 26 November 1993.

(53) Moreover, the fact that the Commission did not at the time call into question the other measures, which are perhaps more similar to the ones implemented by Decree 153/99, does not mean that it should consider those latter measures favourably. A tax exemption on the transfer of assets from a banking foundation to the related banking institution does not necessarily have to be assessed in the same way as a similar transfer from the banking institution back to the foundation. Indeed, the one-off transfer of ancillary assets to the banking institution could have had the effect of facilitating the conversion of public banks into public limited companies; the return of those assets to the foundations, possibly revalued under tax exemption, has the purpose (and effect) of improving the profitability indicators of the bank.

⁽²¹⁾ Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51.

⁽²²⁾ Commission Decision of 20 May 1992 concerning the recapitalisation of two main Sicilian banks (OJ C 160, 26.6.1992, p. 8) and Commission notice pursuant to Article 93(2) of the EC Treaty concerning aid granted by Italy to Banco di Napoli (OJ C 328, 1.11.1996, p. 23). See also Commission Decisions of 29 July 1998 giving conditional approval to the aid granted by Italy to Banco di Napoli (OJ L 116, p. 36) and of 10 November 1999 conditionally approving the aid granted by Italy to the public banks Banco di Sicilia and Sicilcassa (OJ L 256, 10.10.2000, p. 21).

⁽¹⁹⁾ In particular, Law No 218 of 30 July 1990.

⁽²⁰⁾ OJ L 83, 27.3.1999, p. 1.

- (54) Lastly, even if Law 218/90 had the same mechanism and effects as the measures in question, something which the Commission does not accept, it would still remain an ad hoc measure. As such, it could be justified, in principle, by the specific circumstances relating to its introduction, but similar measures could not be considered compatible at all times with the common market.
- (55) Regarding the fact that the operations had been cleared by the Banca d'Italia, which is the relevant competition authority for the credit sector in Italy, it should be noted that the Banca d'Italia has no competence over state aid aspects.
- (56) For the above reasons, the beneficiaries of the aid could not entertain a legitimate expectation that the measures were compatible with the common market. In deciding to carry out an aided merger operation, a diligent operator should have taken into account the possibility that the aid might be declared incompatible. If the tax advantage represented a *sine qua non* for the profitability of the merger, a prudent operator would not have carried out the operation. For those reasons, it cannot be claimed that the recovery of the aid would run counter to the proportionality principle.
- (57) The aid to be recovered must include interest which, in accordance with the Commission's practice, is to be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.
- exemption for the transfer to banking foundations of banks' holdings in the capital of the Banca d'Italia (Article 27(2) of Decree 153/99), to the extent that the joint operation of assigning the shares to the bank and transferring them to the foundations has no impact on the bank's balance sheet.
- (60) The aid benefits undertakings that operate in a sector characterised by cross-border activity; the aid is, therefore, deemed to affect that trade.
- (61) The aid to banks generally falls outside the *de minimis* limit and is not compatible under Article 87(3).
- (62) The Commission finds that the State aid is incompatible with the common market and requires the Member State to recover it. It also considers that there are no grounds for the beneficiaries of the aid to entertain a legitimate expectation that the measures were compatible with the common market.
- (63) This decision concerns the aid scheme and must be implemented immediately, including by recovering all individual aid granted under the scheme. The Commission also recalls that a decision on an aid scheme does not prejudice the possibility that individual aid may be considered, in whole or in part, compatible with the common market on its own merits in the context of a future Commission decision or by virtue of the exemption regulations. However, in the light of the foregoing considerations, possible compatibility of individual aid appears extremely unlikely in the circumstances of the present case,

VI. CONCLUSION

HAS ADOPTED THIS DECISION:

- (58) The Commission finds that Italy has unlawfully implemented Law 461/98 and Decree 153/99 in breach of Article 88(3) of the Treaty. The legislative measures confer an advantage on banks, enabling them to grow in size and benefit from economies of scale at lower cost. Law 461/98 and Decree 153/99 also introduce tax advantages for banking foundations. The measures applicable to banking foundations are not the subject of the present decision and will be dealt with separately.
- (59) The advantage is granted by forgoing tax revenues, i.e. through State resources. The aid granted to banks is selective. It discriminates within the sector and with respect to other sectors. The measures in question do not represent an adaptation of the general system to the distinctive features of the banking sector but, rather, ad hoc aid having the effect of improving the competitiveness of certain undertakings, i.e. the merging banks. The measure is not justified by the nature and general scheme of the system, with the sole exception of the tax

Article 1

Without prejudice to Article 2, the State aid to banks which Italy has granted under Law No 461 of 23 December 1998 and Legislative Decree No 153 of 17 May 1999, and in particular on the basis of Articles 16(3) and (5), 22(1), 23(1), 24(1) and 27(2) of Legislative Decree No 153 of 17 May 1999, is incompatible with the common market.

Article 2

The advantages provided for in Article 27(2) of Legislative Decree No 153 of 17 May 1999 do not constitute state aid in so far as the joint operation of assigning the shares in the capital of the Banca d'Italia to the bank and transferring them to the foundation has no impact on the bank's balance sheet.

Article 3

Italy shall withdraw the scheme referred to in Article 1.

Article 4

1. Italy shall take all necessary measures to recover from the beneficiaries the aid granted under the scheme referred to in Article 1 and unlawfully made available to the beneficiaries.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective implementation of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 5

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 December 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 24 April 2002

authorising the United Kingdom to grant aid to four coal production units for 2001

(notified under document number C(2002) 1447)

(only the English text is authentic)

(Text with EEA relevance)

(2002/582/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽¹⁾, and in particular Article 9(4) thereof,

Whereas:

I

- (1) By letter of 13 February 2002, the United Kingdom notified the Commission, in accordance with Article 9(1) of Decision No 3632/93/ECSC, of financial aid which it intends to grant to the coal industry for 2001.
- (2) In the light of the information submitted by the United Kingdom, the Commission is required to take a decision on operating aid amounting to GBP 4 055 520 to cover the operating losses of four production units for the period from 1 January 2001 to 31 December 2001.
- (3) The financial measures are covered by Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on these measures pursuant to Article 9(4) of that Decision. The Commission's approval is subject to compliance with the general objectives and criteria laid down in Article 2 and the specific criteria set out in Article 3 of Decision No 3632/93/ECSC and, more generally, to the aid's being compatible with the proper functioning of the common market. In addition, in its assessment, the Commission is required to check, in accordance with Article 9(6) of that Decision, whether the measures notified are in conformity with the plan for modernisation, rationalisation and restructuring of the United Kingdom coal industry approved by the Commission by Decision 2001/114/ECSC ⁽²⁾, and Decision 2001/597/ECSC ⁽³⁾ (hereinafter 'the restructuring plan').

II

- (4) The sum of GBP 4 055 520 which the United Kingdom is proposing to grant to the coal industry under Article 3

of Decision No 3632/93/ECSC is intended to cover the difference between the production cost and the selling price of coal freely agreed between the contracting parties in the light of the conditions prevailing on the world market for coal of similar quality from third countries.

- (5) The aid is intended for the following units:
 - (a) GBP 739 000 for the North East Surface Mines production unit of H.J. Banks and Co., Ltd;
 - (b) GBP 832 000 for the Central Surface Mines production unit of H.J. Banks and Co. Ltd;
 - (c) GBP 1 157 520 for the Hatfield Colliery production unit of Coalpower Ltd;
 - (d) GBP 1 327 000 for the Ayrshire Coalfields production unit of LAW Mining Ltd.
- (6) The Commission has already authorised the United Kingdom to grant operating aid to North East Surface Mines and Central Surface Mines pursuant to Article 3 of Decision No 3632/93/ECSC amounting to GBP 703 000 and GBP 661 000 respectively for the period from 17 April 2000 to 31 December 2000 by Decision 2001/597/ECSC. In accordance with Article 2 of Decision No 3632/93/ECSC, the Commission was of the opinion that the aid which the United Kingdom proposed to grant was intended to improve the economic viability of the production units concerned by reducing their production costs. In accordance with the restructuring plan, the aid should help to make those production units viable enabling them to continue their activities beyond 2002 without the need for public subsidy.

- (7) The information transmitted by the United Kingdom in its letter of 13 February 2002 confirms the analysis and conclusions in Decision 2001/597/ECSC. The reduction in the production costs of North East Surface Mines and Central Surface Mines will make it possible to achieve economic viability of those mines in 2002. Production costs should be respectively GBP 0.89/GJ and GBP 1.02/GJ in 2002.

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ L 43, 14.2.2001, p. 27.

⁽³⁾ OJ L 210, 3.8.2001, p. 32.

(8) The Commission has already authorised the United Kingdom to grant operating aid to Hatfield Colliery pursuant to Article 3 of Decision No 3632/93/ECSC amounting to GBP 3 932 000 for the period from 17 April 2000 to 31 December 2000 by Decision 2001/340/ECSC⁽¹⁾ and GBP 3 807 000 for 2001 by Decision No 2001/683/ECSC⁽²⁾. In accordance with Article 3(2) of Decision No 3632/93/ECSC, the Commission was of the opinion that the aid which the United Kingdom proposed to grant was intended to improve the economic viability of the production unit concerned by reducing its production costs.

(9) In August 2001, Hatfield Coal Company announced that it had put its Hatfield Colliery into liquidation. In spite of good prospects of a long-term reduction in production costs which had been considered realistic by an independent technical expert and could have guaranteed the future of the production unit, the company was forced to cease its activities following a breaking-off of negotiations with the financial institution which was to provide investment cover. In accordance with the conditions for granting aid set out in the restructuring plan, the United Kingdom authorities therefore requested reimbursement of the aid which had been granted to Hatfield Colliery.

(10) On 5 October 2001, the Hatfield Colliery unit was bought out by Coalpower Ltd. The putting of Hatfield Colliery into liquidation as a result of financial difficulties did not call into question the economic viability of the coalfields. Coalpower Ltd therefore drew up a new investment plan for the mine to optimise production. This investment plan and the production plans were evaluated by an independent expert at the request of the United Kingdom authorities. This expert expressed the opinion that once production had been restored to its optimum level, the strategy presented by Coalpower should ensure the economic viability of Hatfield Colliery from 2003. Production costs should be reduced significantly. At 1999 prices, they should fall to GBP [...] (*) in 2003, below the level of GBP 1,15/GJ considered to be the economic viability threshold for the coal industry in the United Kingdom.

(11) Hatfield Colliery resumed its activities in November 2001. 208 workers were taken on again. 58 000 tonnes of coal were extracted in November and December 2001.

(12) In October 2001, the United Kingdom authorities paid Coalpower Ltd aid amounting to GBP 951 750. This constituted the balance of the aid of GBP 3 807 000 that the Commission had authorised for Hatfield Colliery for 2001 by Decision 2001/683/ECSC and which had not been paid to Hatfield Coal Company when it went into liquidation.

(13) The additional aid of GBP 1 157 520 that the United Kingdom authorities are asking the Commission to authorise will enable Hatfield Colliery to cover all oper-

ating losses for 2001. This sum is necessary given on the one hand the low revenue in 2001 due to the fact that production did not resume until November and on the other the considerable costs involved in restarting production.

(14) As regards Ayrshire Coalfields, the aid proposed should also enable that production unit to improve its economic viability by reducing its production costs. According to estimates, production costs should be GBP [...] in 2003, well below the level of GBP 1,15/GJ considered to be the economic viability threshold for the United Kingdom coal industry.

III

(15) In accordance with Article 3(2) of Decision No 3632/93/ECSC, the aid which the United Kingdom proposes to grant for 2001 is intended to improve the economic viability of the production units concerned by reducing their production costs.

(16) In accordance with the first indent of Article 3(1) of Decision No 3632/93/ECSC, the aid per tonne as notified does not exceed, for each production unit, the difference between production costs and foreseeable revenue for 2001.

(17) The modernisation, rationalisation and restructuring measures carried out at each production unit, and more specifically the temporary nature of the financial aid necessary for such measures, will moreover allow the aid to be depressive, in accordance with the first indent of Article 2(1) of Decision No 3632/93/ECSC.

(18) At the request of the United Kingdom authorities, an independent expert has compiled technical reports examining the potential of modernisation, rationalisation and restructuring measures planned for the various production units to achieve the objective of economic viability. In drawing up his report, the expert took account of the geological and technical operating conditions and the quality of the coal produced by the production units. The reports conclude that the various measures envisaged were consistent and realistic in terms of attaining economic viability.

(19) An auditor has certified, for each production unit, that the financial data notified by the United Kingdom are an accurate reflection of the accounts of the company. The auditor has also stated that the forecasts were drawn up using the same accounting standards as were in use before the period covered by the aid.

(20) The Commission notes that the aid notified on 13 February 2002, when added to the amounts of aid already authorised by the Commission under the restructuring plan for the United Kingdom coal industry, remains below the ceiling of GBP 170 000 000 laid down by that restructuring plan.

⁽¹⁾ OJ L 122, 3.5.2001, p. 23.

⁽²⁾ OJ L 241, 11.9.2001, p. 10.

(*) Confidential information.

- (21) In view of the above and on the basis of the information provided by the United Kingdom, the aid proposed for 2001 for the North East Surface Mines, Central Surface Mines, Hatfield Colliery and Ayrshire Coalfields production units is compatible with Decision No 3632/93/ECSC, and in particular with Articles 2 and 3 thereof.

IV

- (22) The United Kingdom is required to ensure that the aid does not cause any distortion of competition and does not discriminate between coal producers, buyers or consumers in the Community.
- (23) In accordance with the third indent of Article 3(1) of Decision No 3632/93/ECSC and with the provisions of Decision 2001/114/ECSC, the United Kingdom will take all measures necessary to ensure that the amount of the aid granted to each production unit does not cause delivered prices for Community coal to be lower than those for coal of a similar quality from third countries.
- (24) Moreover, in accordance with Article 2(2) of Decision No 3632/93/ECSC, the aid must be entered in the United Kingdom's national, regional and local public budgets or comply with strictly equivalent mechanisms.
- (25) In accordance with the second indent of Article 3(1) and with Article 9(2) and (3) of Decision No 3632/93/ECSC, the Commission has to check that the aid authorised is used only for the purposes stipulated in Article 3 of that Decision. At the latest by 30 September 2002, the United Kingdom should notify the amount of aid actually paid for 2001 and declare any changes made to the amounts originally notified. Any information required to ascertain that the criteria laid down in Article 3 of the Decision have been complied with should be provided together with this annual statement.
- (26) The United Kingdom is required to justify any departures from the restructuring plan and from the economic and financial forecasts notified to the Commission on 13 February 2002. In particular, should it turn out that the conditions laid down in Article 3(2) of Decision No

3632/93/ECSC cannot be met, the United Kingdom is to propose to the Commission the requisite corrective measures,

HAS ADOPTED THIS DECISION:

Article 1

The United Kingdom is authorised, in the framework of Article 3 of Decision No 3632/93/ECSC, to grant operating aid of GBP 4 055 520 to the North East Surface Mines, Central Surface Mines, Hatfield Colliery and Ayrshire Coalfields production units for 2001.

Article 2

The United Kingdom shall ensure that the authorised aid is used only for the purposes declared in its notification of 13 February 2002 and that any expenditure on an item covered by this Decision which is cancelled, overestimated or misused is reimbursed.

Article 3

Without prejudice to the obligations laid down in Article 9(1), (2) and (3) of Decision No 3632/93/ECSC, the United Kingdom shall, by 30 September 2002 at the latest, communicate the amount of aid actually paid for 2001.

Article 4

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

Done at Brussels, 24 April 2002.

For the Commission
Loyola DE PALACIO
Vice-President

COMMISSION DECISION

of 22 May 2002

on the granting by Spain of aid to the undertaking Hunosa in 1998, 1999, 2000 and 2001

(notified under document number C(2002) 1895)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/583/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Coal and Steel Community,

Having regard to Commission Decision No 3632/93/ECSC of 28 December 1993 establishing Community rules for State aid to the coal industry ⁽¹⁾, and in particular Article 2(1) and Article 9 thereof,

Whereas:

I

(1) By letters of 19 and 21 March 2001, Spain notified the Commission, pursuant to Article 9(1) of Decision No 3632/93/ECSC, of the financial support which it intended to grant to the undertaking Hulleras del Norte SA (Hunosa) in 2001.

(2) By letter of 30 March 2001, the Commission invited Spain, pursuant to Article 88 of the ECSC Treaty, to submit its comments about the situation as regards the installations of the former undertaking Minas de Lieres SA and their operating results from 1998 to 2000. The installations in question had been covered by closure measures financed by State aid and were subsequently reopened by Hunosa as the 'Pozo Siero' production unit. Spain replied by letters of 14 May and 14 August 2001. The Commission requested further information by letters of 13 September 2001, 14 December 2001 and 13 February 2002. Spain replied to the Commission by letters of 9 January and 8 March 2002.

(3) By Decision No 2002/241/ECSC of 11 December 2001 on the granting by Spain of aid to the coal industry in 2001 ⁽²⁾, the Commission authorised part of the aid which Spain was planning to grant to Hunosa production units other than the Pozo Siero installations taken over from Minas de Lieres SA. Pursuant to Decision No 3632/93/ECSC, the Commission must rule on the following remaining measures:

(a) aid of EUR 36 060 726,26 (ESP 6 000 million) to cover operating losses by Hunosa production units;

(b) aid of EUR 28 818 530,41 (ESP 4 795 million) to cover the technical costs of closing down mining installations as a result of the measures to reduce the activity of the coal industry.

(4) The financial measures proposed by Spain for Hunosa fall within the provisions of Article 1 of Decision No 3632/93/ECSC. The Commission must therefore take a decision on these measures in accordance with Article 9(4) of the Decision. The Commission's assessment will be based on the compliance of the measures with the general criteria and objectives laid down in Article 2 and with the specific criteria established by Article 4 of the Decision, and on their compatibility with the proper functioning of the common market. Additionally, in accordance with Article 9(6) of the Decision, the Commission when conducting its assessment must check whether the measures conform with the activity-reduction plan which the Commission approved for Hunosa in its Decision 98/637/ECSC ⁽³⁾.

II

(5) By Decisions No 94/1072/ECSC ⁽⁴⁾ and 98/637/ECSC, the Commission gave an opinion as to the conformity of the 1994-1997 and 1998-2001 phases of the activity-reduction plan for Hunosa notified by Spain with the general and specific objectives of Decision No 3632/93/ECSC.

(6) The Commission found that its request to Spain in Decision No 98/637/ECSC that 'the mines taken over by Hunosa from Minas de Lieres SA will have to close down definitively by 31 December 1999' had not been complied with by the date set. By letter dated 30 March 2001, the Commission started a pre-litigation procedure before a letter of formal notice in order to examine whether failure to comply with this closure date was the reason for paying aid to cover production costs between 1 January 1998 and the closure date.

⁽¹⁾ OJ L 329, 30.12.1993, p. 12.

⁽²⁾ OJ L 82, 26.3.2002, p. 11.

⁽³⁾ OJ L 303, 13.11.1998, p. 57.

⁽⁴⁾ OJ L 385, 31.12.1994, p. 31.

- (7) By Decision No 2002/241/ECSC the Commission announced that it would decide at a later date on the aid which Hunosa could have allocated to the installations taken over from Minas de Lieres SA. The Commission considered that this aid could total EUR 36 060 726,26 (ESP 6 000 million) for reduction of activity pursuant to Article 4 of Decision No 3632/93/ECSC plus EUR 28 818 531,41 (ESP 4 795 million) to cover the technical costs of closing down mining installations pursuant to Article 5 of Decision No 3632/93/ECSC.
- (8) Hunosa is covered by a closure plan of the kind provided for in Articles 4 and 8 of Decision No 3632/93/ECSC, postponement of which beyond the expiry of the Decision is justified on exceptional social and regional grounds. Hunosa is receiving aid for reduction of activity under Article 4 of Decision No 3632/93/ECSC, subject to progressive, continuous reduction of activity entailing a significant reduction in capacity before Decision No 3632/93/ECSC expires.
- (9) Over the period from 1994 to 2001, when Decision No 3632/93/ECSC was in force, Hunosa's production capacity fell by 42 % from 3,1 million tonnes in 1993 to 1,8 million tonnes in 2001. Its workforce shrunk by 53 % from 13 153 workers at the end of 1993 to 6 151 at the end of 2001. Production costs held steady at around EUR 300 per tonne of coal equivalent (tce) compared with a selling price of EUR 56 per tce for imported coal supplies to Spanish power stations. These trends must be set in the context of the 46 % reduction in production capacity in the Community from 152,5 million tonnes in 1993 to 82,44 million tonnes in 2001. The number of workers employed in the industry in the Community fell by 50 % from 175 263 at the end of 1993 to 87 800 at the end of 2001. Average production costs in the Community stand at EUR 115 per tce. In this context, Hunosa has continued to take on new workers and has closed a small number of production units. At the same time, it has reopened the installations taken over from Minas de Lieres SA, which had been closed down in 1992 and 1993 under a programme for which State aid was granted.
- (10) The Commission considers that although Hunosa applied an activity-reduction plan of the kind provided for by Decision No 3632/93/ECSC from 1994 to 2001, it also adopted various measures which rendered the reductions in activity over the period in question insignificant in the context of the restructuring efforts undertaken in the Community.
- (11) The Commission must examine whether Hunosa's failure to comply with the special conditions laid down for the installations taken over from Minas de Lieres SA constitutes an abuse of aid which would call into question the compatibility of aid previously granted under Decision No 3632/93/ECSC.
- (12) By letter of 14 May 2001, Spain sent the Commission information about the situation as regards the installations taken over from Minas de Lieres SA by Hunosa. In its letter, Spain enclosed a report from Hunosa stating that in 1998, 1999 and 2000 it produced 33 000 tce, 54 000 tce and 52 000 tce respectively at these installations and that it received no State aid to cover the operating losses. The Commission considered that Hunosa's operating losses during the period 1998 to 2000 at the installations taken over from Minas de Lieres SA were higher than those notified since Hunosa did not include the cost of labour and capital services in its notification. After estimating that the operating losses for 1998, 1999 and 2000 and those foreseeable for 2001 could add up to ESP 6 000 million, the Commission asked Spain for additional information by letter of 10 September 2001.
- (13) By letter of 9 January 2002, Spain notified the Commission of Hunosa's production costs at the installations taken over from Minas de Lieres SA (Pozo Siero production unit). Operating losses at Pozo Siero in 1998, 1999, 2000 and the first half of 2001 stood at EUR 6 899 618,96 (ESP 1 148 million), EUR 7 079 922,59 (ESP 1 178 million), EUR 5 529 311,36 (ESP 920 million) and EUR 528 890,65 (ESP 88 million) respectively, a total of EUR 20 037 743,56 (ESP 3 334 million). Spain stated that on 30 June 2001 Hunosa had ceased production at the installations taken over from Minas de Lieres SA in order to proceed with the safety and environmental protection work prior to definitive closure of the mine.
- (14) Hunosa's failure to comply with the conditions laid down by the Commission for the installations taken over from Minas de Lieres SA constitutes an abuse of aid which calls into question the compatibility of the aid granted in 1998, 1999 and 2000 with Decision No 3632/93/ECSC. The aid totalling EUR 19 508 852,91 (ESP 3 246 million) for reduction of activity granted to Hunosa by Spain in 1998, 1999 and 2000 to cover operating losses at the Pozo Siero production unit (taken over from Minas de Lieres SA) is incompatible with Decision No 3632/93/ECSC and, in particular, Article 4 thereof and, therefore, incompatible with the proper functioning of the common market.
- (15) The aid totalling EUR 528 890,65 (ESP 88 million) which Spain plans to grant to Hunosa to cover operating losses at Pozo Siero in 2001 is likewise incompatible with Decision No 3632/93/ECSC and, in particular, Article 4 thereof and, therefore, incompatible with the proper functioning of the common market.

III

- (16) The aid for 2001, totalling EUR 35 531 835,61 (ESP 5 912 million), is intended to cover operating losses at other production units operated by Hunosa and is compatible with Article 4 of Decision No 3632/93/ECSC and with the proper functioning of the common market.
- (17) The aid paid by Spain to Hunosa to cover operating losses at the Pozo Siero production unit (taken over from Minas de Lieres SA) must be considered to be an unjustified cash advance and, as such, must be liable to charges at the market rate payable by the recipient. The interest will be calculated from the date of payment of the aid to the undertaking which received it.

IV

- (18) Spain had already granted aid in 1992 and 1993 for closure of the installations of the former Minas de Lieres SA and, for that reason, may grant no further aid for the same purpose. By letter of 9 January 2002, Spain notified the Commission that during the second half of 2001 closure of the installations taken over from Minas de Lieres SA will generate technical costs totalling EUR 3 696 224,44 (ESP 615 million) for Hunosa. The aid to cover these costs is incompatible with Decision No 3632/93/ECSC and, in particular, with Article 5 thereof.
- (19) By letter of 8 March 2002 in reply to the letter of 13 February 2002 from the Commission, Spain stated that in 2001 the exceptional intrinsic depreciation resulting from the closure of other Hunosa production units (excluding the costs of closure of the installations taken over from Minas de Lieres SA) gave rise to exceptional costs totalling EUR 56 332 864,54 (ESP 9 373 million). In Decision No 2002/241/ECSC the Commission had authorised Spain to pay Hunosa EUR 31 210 558,58 (ESP 5 193 million). The balance of EUR 25 122 305,96 (ESP 4 180 million) covers the costs of closing production units other than the installations taken over from Minas de Lieres SA and is compatible with Decision No 3632/93/ECSC and, in particular, with Article 5 thereof. This aid is therefore compatible with the proper functioning of the common market.

V

- (20) Spain must ensure that the aid granted to current production under this Decision does not give rise to any discrimination between coal producers, between purchasers or between users on the Community coal market.
- (21) Spain must ensure that, within the framework of the provisions of Article 86 of the ECSC Treaty, the aid is limited to that which is strictly necessary in the light of the social and regional considerations which characterise

the decline of the Community's coal industry. In particular, Spain must ensure that aid granted to undertakings under Article 5 of Decision No 3632/93/ECSC to cover the technical costs of closure is used exclusively for the purposes listed in the Annex to the Decision and that the closure of capacity for which the aid is intended is definitive and is carried out in optimum conditions in terms of safety and environmental protection.

- (22) In accordance with Article 9(5) of Decision No 3632/93/ECSC, any payment made by Spain to Hunosa in anticipation of authorisation from the Commission in excess of the aid authorised for this undertaking in 2001 will have to be repaid in full, by the undertaking which received it, within one month of notification of this Decision to Spain. This amount will be liable to charges at the market rate payable by Hunosa.
- (23) In accordance with the second indent of Article 3(1) and with Article 9(2) and (3) of Decision No 3632/93/ECSC, the Commission must verify that the aid authorised for current production responds exclusively to the objectives stated in Article 4 of the Decision. Spain must notify the Commission, no later than 30 June 2002, of the amount of aid actually paid during 2001, and declare any corrections made to the amounts originally notified. When submitting this annual statement of aid paid, Spain must also supply all the information necessary for verification of the criteria set out in the relevant Articles.
- (24) In approving the aid, the Commission has recognised the need to soften, as far as possible, the social and regional impact of the restructuring of the coal industry, given the economic and social situation surrounding the mines affected.
- (25) On the basis of the information provided by Spain, the aid and measures justified above for the coal industry are compatible with the objectives of Decision No 3632/93/ECSC and with the proper functioning of the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Spain to Hulleras del Norte SA (Hunosa) to cover operating losses at the installations of the former undertaking Minas de Lieres SA (Pozo Siero) in 1998, 1999, 2000 and 2001, totalling EUR 6 899 618,96 (ESP 1 148 million), EUR 7 079 922,59 (ESP 1 178 million), EUR 5 529 311,36 (ESP 920 million) and EUR 528 890,65 (ESP 88 million) respectively, and the aid to cover the exceptional costs resulting from closure of these installations in 2001, totalling EUR 3 696 224,44 (ESP 615 million), is incompatible with the common market.

Article 2

1. Spain shall adopt all necessary measures to recover from Hunosa the aid for 1998, 1999 and 2000 mentioned in Article 1, totalling EUR 19 508 852,91 (ESP 3 246 million), which was placed at Hunosa's disposal unlawfully.

2. Recovery shall take place without delay, in accordance with the procedures laid down by national law, provided they allow immediate, effective implementation of this Decision. The aid to be recovered shall be liable to interest payable from the date on which it was placed at the disposal of the recipient to the date of recovery thereof.

Article 3

Spain is hereby authorised to pay the following aid to Hunosa in respect of 2001:

- (a) aid for the reduction of activity of EUR 35 531 835,61 (ESP 5 912 million) under Article 4 of Decision No 3632/93/ECSC;
- (b) aid of EUR 25 122 305,96 (ESP 4180 million) to cover the exceptional technical costs of closing down mining installations as a result of the measures to reduce the activity of the Spanish coal industry.

Article 4

In accordance with Article 86 of the ECSC Treaty, Spain shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations resulting from this Decision. It shall ensure that the aid authorised is used for the purposes

intended and that any unspent, overestimated or incorrectly used aid for any item covered by this Decision is repaid to it.

Article 5

In accordance with Article 9(5) of Decision No 3632/93/ECSC, any payment made by Spain to Hunosa in anticipation of authorisation from the Commission in excess of the aid authorised for this undertaking in 2001 shall be repaid in full, by the undertaking which received it, within one month of notification of this Decision to Spain. This amount shall be liable to charges at the market rate payable by Hunosa.

Article 6

Spain shall notify the Commission, by 30 June 2002 at the latest, of the amount of aid actually paid to Hunosa in respect of 2001.

Article 7

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 22 May 2002.

For the Commission
Loyola DE PALACIO
Vice-President

CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1132/2002 of 27 June 2002 fixing the export refunds on products processed from cereals and rice**

(Official Journal of the European Communities L 169 of 28 June 2002)

On page 32, in the Annex, the following note should be inserted at the foot of the table:

‘C16: All destinations except for Estonia, Hungary, Latvia and Lithuania.’
