

Official Journal

of the European Communities

ISSN 0378-6978

L 12

Volume 46

17 January 2003

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 66/2003
of 16 January 2003
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 1947/2002 ⁽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 17 January 2003.

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

Done at Brussels, 16 January 2003.

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

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 16 January 2003 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	70,2
	204	44,5
	212	104,8
	999	73,2
0707 00 05	052	137,6
	220	166,2
	628	139,2
	999	147,7
0709 10 00	220	84,8
	999	84,8
0709 90 70	052	136,3
	204	145,7
	999	141,0
0805 10 10, 0805 10 30, 0805 10 50	052	46,6
	204	52,4
	212	53,9
	220	42,2
	999	48,8
0805 20 10	204	85,0
	999	85,0
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	61,1
	204	60,4
	220	54,6
	464	142,2
	624	77,6
	999	79,2
0805 50 10	052	64,4
	220	80,7
	600	88,2
	999	77,8
0808 10 20, 0808 10 50, 0808 10 90	060	42,4
	400	96,6
	404	105,6
	720	130,2
	999	93,7
0808 20 50	400	116,6
	528	82,9
	999	99,8

⁽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 67/2003**of 16 January 2003****on the issue of import licences for rice originating in the ACP States and the overseas countries and territories against applications submitted in the first five working days of January 2003 pursuant to Regulation (EC) No 2603/97**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 ⁽¹⁾,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (Overseas Association Decision) ⁽²⁾,

Having regard to Commission Regulation (EC) No 2603/97 of 16 December 1997 laying down the detailed rules of application for the import of rice from the ACP States and for the import of rice from the overseas countries and territories (OCT) ⁽³⁾, as last amended by Regulation (EC) No 2300/2002 ⁽⁴⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Pursuant to Article 9(2) of Regulation (EC) No 2603/97, the Commission must decide within 10 days of the final date for notification by the Member States the extent to which applications can be granted and must fix the available quantities for the following tranche.

- (2) Examination of the quantities for which applications have been submitted shows that licences for the January 2003 tranche should be issued for the quantities applied for reduced, where appropriate, by the percentages set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

1. Import licences for rice against applications submitted during the first five working days of January 2003 pursuant to Regulation (EC) No 2603/97 and notified to the Commission shall be issued for the quantities applied for reduced, where appropriate, by the percentages set out in the Annex hereto.

2. The available quantities for the subsequent tranche are set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 348, 21.12.2002, p. 5.

⁽²⁾ OJ L 314, 30.11.2001, p. 1.

⁽³⁾ OJ L 351, 23.12.1997, p. 22.

⁽⁴⁾ OJ L 348, 21.12.2002, p. 74.

ANNEX

Reduction percentages to be applied to quantities applied for under the tranche for January 2003 and quantities available for the following tranche

Origin/Product	Reduction percentage		Quantity available for the tranche for May 2003 (tonnes)	
	Netherlands Antilles and Aruba	Least developed OCTs	Netherlands Antilles and Aruba	Least developed OCTs
OCT (Article 6) — CN code 1006	48,4643	—	—	797,768

Origin/Product	Reduction percentage	Quantity available for the tranche for May 2003 (tonnes)
ACP (Article 2(1)) — CN codes 1006 10 21 to 1006 10 98, 1006 20 and 1006 30	71,5742	—
ACP (Article 3) — CN code 1006 40 00	91,2057	—

COMMISSION REGULATION (EC) No 68/2003**of 16 January 2003****concerning the use of information from sources other than statistical surveys and the time limits for the communication of the results for the 2003 survey on the structure of agricultural holdings**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 571/88 of 29 February 1988 on the organisation of Community surveys on the structure of agricultural holdings ⁽¹⁾, as last amended by Commission Regulation (EC) No 143/2002 ⁽²⁾, and in particular Article 8(2) and point 5 of Annex II,

Whereas:

- (1) In accordance with Article 8(2) of Council Regulation (EEC) No 571/88, certain Member States have asked to be authorised by the Commission to use information that is already available from sources other than statistical surveys for certain characteristics.
- (2) The results of the structure survey are of great importance for the common agricultural policy. It is necessary to maintain a high quality of information and therefore the use of data from sources other than statistical surveys can only be accepted if these data are as reliable as those from statistical surveys.
- (3) Time limits for the communication of individual survey data from the 2003 surveys on the structure of agricultural holdings shall be established by the Commission, taking into account the fact that the timetable for carrying out the survey work differs between Member States.
- (4) The importance of the structure survey results for the common agricultural policy and the growing demand for up-to-date data mean that the survey data need to be processed and communicated to the Commission (Eurostat) as quickly as possible.

- (5) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee for Agricultural Statistics,

HAS ADOPTED THIS REGULATION:

Article 1

1. Denmark, Germany, the Netherlands, Austria, Sweden, and the United Kingdom are authorised to use information already available from sources other than statistical surveys for the 2003 surveys on the structure of agricultural holdings. The sources to be used are listed in Annex I to the present Regulation.

2. The Member States referred to in paragraph 1 shall take the necessary measures to ensure that this information is of at least equal quality to information obtained from statistical surveys.

Article 2

Within the time limits set out in Annex II, Member States shall communicate validated individual survey data from the 2003 surveys on the structure of agricultural holdings.

Article 3

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

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 56, 2.3.1988, p. 1.

⁽²⁾ OJ L 24, 26.1.2002, p. 16.

ANNEX I

Sources other than statistical surveys that are authorised for use in the 2003 surveys on the structure of agricultural holdings:

Denmark	Integrated Administration and Control System
Germany	Integrated Administration and Control System
Netherlands	Integrated Administration and Control System National Farm Register ⁽¹⁾
Austria	Integrated Administration and Control System System for the identification and registration of bovine animals
Sweden	Integrated Administration and Control System System for the identification and registration of bovine animals
United Kingdom:	Integrated Administration and Control System System for the identification and registration of bovine animals Organic Farming Register

⁽¹⁾ Set up under national legislation.

The Integrated Administration and Control System is set up in accordance with Council Regulation (EEC) No 3508/92 ⁽²⁾ and Commission Regulation (EEC) No 3887/92 of 23 December 1992 ⁽³⁾.

The Centralised Bovine Register is set up in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽⁴⁾.

The Organic Farming Register is set up in accordance with Council Regulation (EEC) 2092/91 ⁽⁵⁾.

⁽²⁾ OJ L 355, 5.12.1992, p. 1.

⁽³⁾ OJ L 391, 31.12.1992, p. 36.

⁽⁴⁾ OJ L 204, 11.8.2000, p. 1.

⁽⁵⁾ OJ L 198, 22.7.1991, p. 1.

ANNEX II

Time limits for communicating the validated individual survey data to Eurostat:

Member State	Survey period	Time limit
Belgium	May 2003	31.8.2004
Denmark	May 2003	31.8.2004
Germany	May to June 2003	31.12.2004
Greece	November to December 2003	31.12.2004
Spain	October to December 2003	31.12.2004
France	October to December 2003	31.12.2004
Ireland	June to August 2003	31.8.2004
Italy	October to December 2003	31.12.2004
Luxembourg	May to June 2003	31.8.2004
Netherlands	April to June 2003	31.8.2004
Austria	December 2003	31.12.2004
Portugal	November 2003 to February 2004	31.12.2004
Finland	May and November 2003	31.8.2004
Sweden	June 2003	31.8.2004
United Kingdom	February to October 2003	31.8.2004

COMMISSION REGULATION (EC) No 69/2003**of 16 January 2003****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular Article 13(2) thereof,

Whereas:

- (1) Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1163/2002 ⁽⁴⁾, as amended by Regulation (EC) No 1324/2002 ⁽⁵⁾.
- (3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EEC) No 1766/92, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

⁽⁵⁾ OJ L 194, 23.7.2002, p. 26.

ANNEX

to the Commission Regulation of 16 January 2003 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 15 9130	C09	EUR/t	12,80
1001 10 00 9400	—	EUR/t	—	1101 00 15 9150	C09	EUR/t	11,80
1001 90 91 9000	—	EUR/t	—	1101 00 15 9170	C09	EUR/t	10,90
1001 90 99 9000	C05	EUR/t	0	1101 00 15 9180	C09	EUR/t	10,20
1002 00 00 9000	C06	EUR/t	0	1101 00 15 9190	—	EUR/t	—
1003 00 10 9000	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1003 00 90 9000	C07	EUR/t	0	1102 10 00 9500	C10	EUR/t	28,75
1004 00 00 9200	—	EUR/t	—	1102 10 00 9700	C10	EUR/t	22,75
1004 00 00 9400	C06	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1005 10 90 9000	—	EUR/t	—	1103 11 10 9200	C11	EUR/t	0 ⁽¹⁾
1005 90 00 9000	C08	EUR/t	0	1103 11 10 9400	C11	EUR/t	0 ⁽¹⁾
1007 00 90 9000	—	EUR/t	—	1103 11 10 9900	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—	1103 11 90 9200	C11	EUR/t	0 ⁽¹⁾
1101 00 11 9000	—	EUR/t	—	1103 11 90 9800	—	EUR/t	—
1101 00 15 9100	C09	EUR/t	13,70				

⁽¹⁾ No refund is granted when this product contains compressed meal.

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The other destinations are as follows:

C05 All destinations except for Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland, the Czech Republic, Romania, Slovakia and Slovenia.

C06 All destinations except for Bulgaria, Estonia, Hungary, Latvia, Lithuania, the Czech Republic, Slovakia and Slovenia.

C07 All destinations except for Bulgaria, Estonia, Hungary, Latvia, the Czech Republic, Slovakia and Slovenia.

C08 All destinations except for Bulgaria, Estonia, Hungary, the Czech Republic, Romania, Slovakia and Slovenia.

C09 All destinations except for Estonia, Hungary, Latvia, Lithuania, Poland and Romania.

C10 All destinations except for Bulgaria, Estonia, Hungary, Latvia, Lithuania, Poland and Slovenia.

C12 All destinations except for Estonia, Hungary, Latvia, Lithuania and Romania.

COMMISSION REGULATION (EC) No 70/2003
of 16 January 2003
fixing the export refunds on malt

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1666/2000 ⁽²⁾, and in particular the third subparagraph of Article 13(2) thereof,

Whereas:

- (1) Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1163/2002 ⁽⁴⁾, as amended by Regulation (EC) No 1324/2002 ⁽⁵⁾.
- (3) The refund applicable in the case of malts must be calculated with amount taken of the quantity of cereals required to manufacture the products in question. The said quantities are laid down in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying these rules to the present situation on markets in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on malt listed in Article 1(1)(c) of Regulation (EEC) No 1766/92 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

⁽⁵⁾ OJ L 194, 23.7.2002, p. 26.

ANNEX

to the Commission Regulation of 16 January 2003 fixing the export refunds on malt

Product code	Destination	Unit of measurement	Amount of refunds
1107 10 19 9000	C12	EUR/t	0,00
1107 10 99 9000	C13	EUR/t	0,00
1107 20 00 9000	C12	EUR/t	0,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, 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 as follows:

C12 All destinations except for Bulgaria, Estonia, Hungary, Lithuania, the Czech Republic, Romania and Slovenia.

C13 All destinations except for Bulgaria, Estonia, Hungary, Lithuania, the Czech Republic, Romania, Slovakia and Slovenia.

COMMISSION REGULATION (EC) No 71/2003**of 16 January 2003****fixing the maximum export refund on barley in connection with the invitation to tender issued in Regulation (EC) No 901/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1163/2002 ⁽⁴⁾, as amended by Regulation (EC) No 1324/2002 ⁽⁵⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of barley to all third countries except for the United States of America, Canada, Estonia and Latvia was opened pursuant to Commission Regulation (EC) No 901/2002 ⁽⁶⁾, as amended by Regulation (EC) No 1230/2002 ⁽⁷⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in

Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 January 2003, pursuant to the invitation to tender issued in Regulation (EC) No 901/2002, the maximum refund on exportation of barley shall be EUR 12,94/t.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

⁽⁵⁾ OJ L 194, 23.7.2002, p. 26.

⁽⁶⁾ OJ L 142, 31.5.2002, p. 17.

⁽⁷⁾ OJ L 180, 10.7.2002, p. 3.

COMMISSION REGULATION (EC) No 72/2003**of 16 January 2003****concerning tenders notified in response to the invitation to tender for the export of rye issued in Regulation (EC) No 900/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1163/2002 ⁽⁴⁾, as amended by Regulation (EC) No 1324/2002 ⁽⁵⁾, and in particular Article 7 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of rye to all third countries excluding Hungary, Estonia, Lithuania and Latvia was opened pursuant to Commission Regulation (EC) No 900/2002 ⁽⁶⁾, as last amended by Regulation (EC) No 2330/2002 ⁽⁷⁾.

(2) Article 7 of Regulation (EC) No 1501/95 allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award.

(3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95 a maximum refund should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 10 to 16 January 2003 in response to the invitation to tender for the refund for the export of rye issued in Regulation (EC) No 900/2002.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

⁽⁵⁾ OJ L 194, 23.7.2002, p. 26.

⁽⁶⁾ OJ L 142, 31.5.2002, p. 14.

⁽⁷⁾ OJ L 349, 24.12.2002, p. 18.

COMMISSION REGULATION (EC) No 73/2003**of 16 January 2003****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 899/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1163/2002 ⁽⁴⁾, as amended by Regulation (EC) No 1324/2002 ⁽⁵⁾, and in particular Article 4 thereof,

Whereas:

- (1) An invitation to tender for the refund on exportation of common wheat to all third countries with the exclusion of Poland, Estonia, Lithuania and Latvia was opened pursuant to Commission Regulation (EC) No 899/2002 ⁽⁶⁾, as last amended by Regulation (EC) No 2331/2002 ⁽⁷⁾.
- (2) Article 7 of Regulation (EC) No 1501/95 provides that the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in

Article 23 of Regulation (EEC) No 1766/92, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95. In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

- (3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed at the amount specified in Article 1.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 10 to 16 January 2003, pursuant to the invitation to tender issued in Regulation (EC) No 899/2002, the maximum refund on exportation of common wheat shall be EUR 10,00/t.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 170, 29.6.2002, p. 46.

⁽⁵⁾ OJ L 194, 23.7.2002, p. 26.

⁽⁶⁾ OJ L 142, 31.5.2002, p. 11.

⁽⁷⁾ OJ L 349, 24.12.2002, p. 19.

COMMISSION REGULATION (EC) No 74/2003**of 16 January 2003****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽³⁾, and in particular Article 1(2) and Article 3(1) thereof,

Whereas:

- (1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁴⁾. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.
- (4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.
- (6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.
- (7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 2003.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 16 January 2003.

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

ANNEX

to the Commission Regulation of 16 January 2003 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,17	—	0,04
1703 90 00 ⁽¹⁾	10,45	—	0

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 75/2003**of 16 January 2003****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of Regulation (EC) No 1260/2001. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽³⁾. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination.
- (5) In special cases, the amount of the refund may be fixed by other legal instruments.
- (6) The refund must be fixed every two weeks. It may be altered in the intervening period.
- (7) It follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto.
- (8) Regulation (EC) No 1260/2001 does not make provision to continue the compensation system for storage costs from 1 July 2001. This should accordingly be taken into account when fixing the refunds granted when the export occurs after 30 September 2001.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 16 January 2003 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	40,80 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	40,55 ⁽¹⁾
1701 12 90 9100	A00	EUR/100 kg	40,80 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	40,55 ⁽¹⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4435
1701 99 10 9100	A00	EUR/100 kg	44,35
1701 99 10 9910	A00	EUR/100 kg	44,08
1701 99 10 9950	A00	EUR/100 kg	44,08
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4435

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 28(4) of Council Regulation (EC) No 1260/2001.

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, 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).

COMMISSION REGULATION (EC) No 76/2003**of 16 January 2003****fixing the maximum export refund for white sugar for the 21st partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1331/2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular Article 27(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1331/2002 of 23 July 2002 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, for the 2002/2003 marketing year, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1331/2002 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

- (3) Following an examination of the tenders submitted in response to the 21st partial invitation to tender, the provisions set out in Article 1 should be adopted.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 21st partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1331/2002 the maximum amount of the export refund is fixed at 47,140 EUR/100 kg.

Article 2

This Regulation shall enter into force on 17 January 2003.

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

Done at Brussels, 16 January 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 195, 24.7.2002, p. 6.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 May 2002

authorising RAG Aktiengesellschaft to acquire control of Saarbergwerke AG and Preussag Anthrazit GmbH

(Case COMP/ECSC.1350 — RAG/Saarbergwerke/Preussag Anthrazit II)

(notified under document number C(2002) 1436)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/36/ECSC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

to separate the sale of coal mined in Germany from the sale of imported coal.

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 66(2) thereof,

- (3) In the meantime, the merger had been completed. In fulfilment of the commitments, SCI had been sold to an independent French buyer.

Having regard to the notification submitted by the parties by letter dated 13 November 1997,

- (4) On 31 January 2001, in *RJB Mining v Commission* ⁽¹⁾, the Court of First Instance annulled the Commission decision of 29 July 1998 in its entirety. The Court found that the Commission had not assessed whether the total assets of SBW transferred to RAG corresponded to the price paid of DEM 2 or whether State resources had been implicitly transferred to RAG. In the present case, although the Commission was not required to assess the legality of the supposed aid, namely the aid inherent in the merger, in a formal preliminary decision, it could not — according to the Court's judgment — in its analysis of the competitive situation under Article 66(2) of the ECSC Treaty, refrain from assessing whether, and if so to what extent, the financial and thus the commercial strength of the merged entity was strengthened by the financial support provided by that supposed aid in the form of the low purchase price ⁽²⁾.

Whereas:

- (1) By letter dated 13 November 1997, RAG Aktiengesellschaft, Essen, ('RAG') notified the Commission under Article 66(1) of the ECSC Treaty that it intended to acquire the entire share capital of Saarbergwerke AG, Saarbrücken, ('SBW') and Preussag Anthrazit GmbH, Ibbenbüren, ('Preussag'). The purpose of the transaction was to bring about a merger between the last three remaining German hard coal mining companies. The purchase price for SBW was DEM 2, of which DEM 1 was to be paid to Germany and DEM 1 to the Saarland in their capacity as previous owners.

- (2) By decision of 29 July 1998 (Case COMP/ECSC.1252 — RAG/Saarbergwerke/Preussag Anthrazit) ('decision of 29 July 1998'), the Commission authorised under Article 66 of the ECSC Treaty RAG's takeover of SBW and Preussag after RAG gave a commitment to sell SBW's coal import business, Saarberg Coal International GmbH ('SCI'), and

- (5) On 8 November 2001, the parties submitted all relevant information for a renewed assessment of the notified merger.

⁽¹⁾ Case T-156/98 [2001] ECR II-337.

⁽²⁾ Germany and RAG have lodged an appeal against this judgment before the Court of Justice.

I. THE PARTIES

- (6) Prior to the merger, RAG was active primarily in the extraction and marketing of coal and in the processing of coking coal into blast furnace coke. It also held shares in a number of international mining companies and had interests in the fields of power generation, chemicals and plastics, waste treatment and environmental services, mining technology and real estate.
- (7) At the time of the merger in 1998, the shares in RAG were held by four shareholders (partly through joint ventures with co-proprietors): VEBA AG, VEW AG, Thyssen-Krupp-Stahl AG and ARBED SA. RAG's current shareholders are E.ON AG, the successor to VEBA (37,1 %), RWE AG in succession to VEW (30,2 %), Thyssen-Krupp-Stahl (12,7 %), Montan-Verwaltungsgesellschaft mbH, a joint venture between E.ON and Thyssen-Krupp-Stahl (10 %), and Verwaltungsgesellschaft RAG Beteiligung mbH, a joint venture between ARBED SA and RAG itself (10 %).
- (8) SBW carried on business primarily in the following fields: coal extraction in Germany, coke production, power generation, distance heating, environmental protection, trading and services (in particular the marketing and trading of coal and the transport and distribution of oil) and rubber. It was owned 74 % by Germany and 26 % by the Saarland.
- (9) Preussag was likewise active in the extraction and marketing of coal products; its other activities related to heat generation and water supply. The company operated a mine at Ibbenbüren. It was wholly owned by the Preussag AG group.

II. THE TRANSACTION

- (10) The notified transaction is part of an agreement, commonly known as the 'coal compromise' (Kohlekompromiss), reached on 13 March 1997 between the Federal Republic of Germany, the *Land* of North-Rhine Westphalia, the Saarland, the German mining and power station workers' union (*deutsche Industriegewerkschaft Bergbau und Energie*) and the abovementioned three companies ('the coal compromise'). Under the agreement, the mining businesses of the three companies RAG, SBW and Preussag were to be merged to form a single company, Deutsche Steinkohle AG, controlled by RAG. According to the information provided by the parties and by Germany, the aim was that, as a result of the merger and the State aid that had been promised, the politically desirable process of adjustment in the German coal industry would take place under socially acceptable conditions and a lastingly viable, efficient mining industry would be ensured beyond 2005. Under

the coal compromise, of the 17 pits still in operation in 1997, 10 or 11, producing some 30 million tonnes of coal a year and employing around 36 000 people, were to be retained in the long term.

- (11) Under the coal compromise, Germany, in parallel with the purchase by RAG of the shares in SBW held by the Federal Government and the Saarland, earmarked a total of DEM 2,5 billion of aid for future pit closures. As of 1998, this aid was lumped together with the funds from Germany and the *Land* of North-Rhine Westphalia for promoting the sale of domestic power station coal and coking coal, subject to an overall ceiling. State aid for the German coalmining industry, which in 1997 totalled DEM 10,5 billion, was then to be gradually reduced to a total of DEM 5,5 billion by 2005. In addition to the contributions from Germany and the *Land* of North-Rhine Westphalia, since 2001 DEM [...] (*) is being provided each year out of the earnings from RAG's non-coal activities. [...]*. Disbursement of the additional federal resources will be conditional on RAG actually acquiring the shareholdings of Germany and the Saarland in SBW.

III. CONCENTRATION, COMPETENCE OF THE COMMISSION

- (12) In its decision of 29 July 1998 the Commission established that, by acquiring the entire share capital of SBW and Preussag, RAG would be able to exercise sole control over those undertakings. In the meantime, the merger plan had been executed in accordance with the notification. It can therefore be said that the notified transaction constitutes an acquisition of control within the meaning of Article 1 of High Authority Decision No 24/54 of 6 May 1954 laying down in implementation of Article 66(1) of the Treaty a regulation on what constitutes control of an undertaking⁽¹⁾, and accordingly brings about a concentration within the meaning of Article 66(1) of the ECSC Treaty.
- (13) The Commission also established in its decision of 29 July 1998 that, as a result of their involvement in the extraction of and trade in hard coal and hard coal products, RAG, SBW and Preussag are to be considered undertakings within the meaning of Article 80 of the ECSC Treaty, read in conjunction with Annex I thereto. To the extent that the parties also sell coal to domestic consumers and small craft industries, pursuant to Article 80 the transaction does not fall under the ECSC Treaty. As regards the effects in the domestic consumer and small craft industry sector and the non-mining activities of the parties to the merger, the transaction was notified to the German Federal Cartel Office and exempted in early 1998.

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

(1) OJ 9, 11.5.1954, p. 345/54.

- (14) The Commission established further that the proposed merger requires prior authorisation inasmuch as the annual output of the undertakings involved (approximately 48 million tonnes of hard coal) exceeds the maximum amount referred to in Article 1(1)(a) of High Authority Decision No 25/67 of 22 June 1967 laying down in implementation of Article 66(3) of the Treaty a regulation concerning exemption from prior authorisation ⁽¹⁾, as last amended by Commission Decision No 3654/91/ECSC ⁽²⁾. This aspect of the Commission decision was not contested. The question of the Commission's competence therefore does not need to be examined anew. The criterion to be adopted in this respect is the time of the original notification ⁽³⁾.

IV. ASSESSMENT UNDER ARTICLE 66(2)

- (15) After the Court of First Instance annulled the Commission decision of 29 July 1998 on 31 January 2001, a renewed competition assessment was needed in the light of the Court's judgment. For this renewed assessment, unlike in the case of the question whether the notified merger falls within the scope of merger control under the ECSC Treaty, the criterion to be adopted is not the time of the original notification. Instead, the decisive factor is the position at the time of the decision ⁽⁴⁾. The Commission must therefore assess whether the merger, in the shape of the notification as supplemented in the meantime on the basis of the current market position of the parties and in the light of any increase in RAG's financial strength, gives the parties the power within the meaning of Article 66(2) of the ECSC Treaty

- (a) to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market affected by the merger, or
- (b) to evade the rules of competition instituted under the Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.

A. GERMAN POLICY ON COAL: GENERAL BACKGROUND

- (16) In the past, the sale of coal to German power generators and steelmakers was governed by specific agreements known as the Century Contract (*Jahrhundertvertrag*) and the Steelworks Agreement (*Hüttenvertrag*), which contained extensive rules on State aid, imports and

procurement obligations. The Century Contract and the Law on tariff quotas for solid fuels (*Zollkontingentgesetz*) expired on 31 December 1995. The Steelworks Agreement was terminated in 1999.

- (17) The conditions under which the coal industry operates in Germany are now based essentially on the coal compromise. Under the coal compromise, there is to be an overall ceiling for aid to mining. Aid will be granted only towards using coal in power generation and steel making. Germany has given assurances that the aid will be limited to the amount absolutely necessary and is intended only for output supplied to the power industry and the Community's coal and steel industry. Under the coal compromise, aid for coal supplied to the power industry can compensate for the difference between production costs in German mines and the average price for imports into Germany. The average price for imported coal is determined each year, and the actual selling price is calculated on the basis of that import price, which includes transport costs. In the case of sales to the steel industry, the aid compensates for the difference between the average price for imported coal in the Community and actual production costs. In both cases the absolute amount of aid is limited.

- (18) Under the coal compromise, domestic output was originally to be cut from approximately 47,9 million tonnes in 1996 to approximately 30 million tonnes in 2005. From a total of DEM 10,5 billion in 1997, State aid to the coal industry was set to fall to a total of DEM 5,5 billion in 2005. In 2000 the coal compromise was revised. Output is now to be reduced from as early as 2002 to less than 29 million tonnes. In 2000 output came to approximately [30 to 40]* million tonnes. For 2000 operating aid of DEM 3,8 billion (2001: DEM 3,8 billion), aid for the reduction of activity of DEM 3,1 billion (2001: DEM 1,9 billion), aid to maintain an underground labour force of DEM 71 million (2001: DEM 67 million) and aid to cover exceptional costs of DEM 2,1 billion (2001: DEM 2,7 billion) is provided for ⁽⁵⁾. The structure of the aid has changed substantially compared with 1999. The share of total aid accounted for by sales subsidies, which in 1999 still came to 91 %, fell in 2001 to 66 %. By contrast, the share of aid accounted for by aid to cover exceptional costs unconnected with day-to-day mining operations increased. The reduction in aid is set to continue until 2005 at least.

⁽¹⁾ OJ 154, 14.7.1967, p. 11.

⁽²⁾ OJ L 348, 17.12.1991, p. 12.

⁽³⁾ See Case No IV/M.308 Kali+Salz/MDK/Treuhand, OJ C 275, 3.9.1998, paragraph. 9.

⁽⁴⁾ See Case No IV/M.308 Kali+Salz/MDK/Treuhand, loc. cit., paragraph 10.

⁽⁵⁾ See Commission decision of 21.12.2000 on German aid to the coal industry for 2000 and 2001, OJ L 127, 9.5.2001, p. 55.

- (19) The German steel industry was subject to extensive procurement obligations in respect of domestic coking coal under the Steelworks Agreement, which was first concluded when RAG was established in 1969. The agreement was authorised by the Commission under Article 65 of the ECSC Treaty until the end of 1997 by means of Decision 89/248/ECSC of 30 March 1989 authorising the agreements on supplies of solid fuels to six steelworks by Ruhrkohle AG ⁽¹⁾. It was amended for 1998, the exclusive procurement obligations in particular being either discontinued or scaled down. The Commission closed the proceeding under Article 65 of the ECSC Treaty in respect of the 1998 Steelworks Agreement by administrative letter ⁽²⁾. The agreement was terminated in 1999 and replaced by bilateral agreements between RAG and the individual steel producers. These agreements, which are not to run beyond 2005, no longer contain any exclusivity clauses, procurement obligations dependent on total requirements or most-favoured-nation clauses.

B. RELEVANT PRODUCT MARKETS

- (20) In its decision of 29 July 1998, the Commission established that basically the merger concerned the sale of coal and coal products. It based this finding on the following arguments:
- (21) Coal is sold to industrial customers (power generators, steel manufacturers and other industrial customers) and to private households and small businesses. The household and small-business sector is not covered by the ECSC Treaty and was therefore not affected by the decision.
- (22) Most of the coal used by industry (including steel manufacturers and power generators) is supplied direct to the final consumer by the mining companies or the importer. The wholesale trade is of no significance in these market segments and its role requires no further discussion in this Decision.
- (23) For large users it is impossible to replace coal by other fuels in the short term. Power stations are adapted to a particular energy source, and it is not possible to substitute other sources of energy, such as natural gas, for coal in the short term. In the steel industry, coke serves a special metallurgical purpose, which cannot be satisfied by using other raw materials.
- (24) It is of course possible to divide sales of coal to industrial customers into three separate categories: power generators, steelmaking and other industry (sugar mills, cement works, papermaking). However, since all three types of

sales are affected by the same factors, it is not necessary to consider each one separately in order to assess the present case.

- (25) Since the decision of 29 July 1998 no changes have occurred that would require a different assessment. The sale of coal and coal products is therefore regarded as the relevant product market in this decision as well.

C. RELEVANT GEOGRAPHIC MARKET

- (26) In its decision of 29 July 1998, the Commission assumed that Germany was the relevant geographic market for the sale of coal and coal products. The decisive factor was that because domestic coal was heavily subsidised (see section A, recital 16 et seq.) the entire output was sold in Germany, thereby meeting a considerable proportion of the total German demand for coal products. In addition, for the German customer, German coal has certain advantages over imported coal: the geographical proximity of the mines and hence the fact that users need to carry smaller stocks, homogeneous product characteristics, and the fact that the users' installations are geared to using domestic coal. There is also strong political and social pressure in Germany to buy German coal. This created the expectation that German coal was always preferred by the customer as long as its price, as a result of the aid, was on a par with the average price of coal imported into Germany.
- (27) Accordingly, subsidised coal accounted in 1977 for [65 to 75 %]* of the total sales of coal products in Germany, of which [90 to 100 %]* went to power generation and steelmaking. Given the sales conditions described, which meant that in Germany there were only very limited opportunities for competing importers, the Commission concluded in its decision of 29 July 1998 that Germany was a separate relevant geographic market.
- (28) The aid scheme also means that German coal is not exported from Germany. The direct consequence of the aid for domestic coal is that German coal producers can only align sales to German power generators and German steel makers on the average price of coal imported into Germany. But since the absolute amount of aid is limited, so is the possibility of selling German coal at the world market price. Given that the difference between the German subsidised price and the world market price (approximately DEM [120 to 250]* per tonne) is still considerable, there is no incentive to sell more German coal, i.e. over and above the subsidised quantities, abroad.

⁽¹⁾ OJ L 101, 13.4.1989, p. 35.

⁽²⁾ Proceeding COMP/E-3/36.779 RAG Hüttenvertrag, letter of 8.11.2000.

(29) From the updated information supplied by the parties for 1998 to 2001 it is clear, however, that subsidised coal in Germany accounted for a diminishing proportion of the total German market. In 1997 imports accounted for about [25 to 35 %]* of the total market, but by 2000, according to the parties, this share had risen to some [40 to 50 %]*. This proportion can be expected to increase, since the existing subsidy rules provide for a further significant decline in current production and sales until at least 2005.

(30) It can be seen from the above that the market for coal and coal products in Germany still has specific features which distinguish it as far as competition is concerned from other geographical regions. On the other hand there are indications that the German coal market is becoming more international. Ultimately, however, the precise definition of the relevant market for the purposes of this decision can be left unsettled, since, even if it is assumed that the market continues to be restricted to Germany, the merger does not give rise to any reservations.

D. ASSESSMENT OF THE EFFECT ON COMPETITION

(31) In its decision of 29 July 1998 the Commission based its reservations (which were allayed by the commitments given by the parties) in particular on the risk that, as a result of the merger, the parties' advantageous position at that time regarding the sale of subsidised German coal might be transferred to the open market. In view of the current market situation, and various structural changes that have taken place since the Commission's decision of 29 July 1998, there is now, in the Commission's view, no reason for such reservations (see section 1 below, recital 32 et seq.). Further, even a possible influx of financial resources in the context of the low selling price for SBW would not be sufficient to justify any reservations on competition grounds (see section 2 below, recital 47 et seq.).

1. POSITION OF THE PARTIES AS REGARDS THE SALE OF COAL IN GERMANY

(a) *The position of RAG with regard to the merger*

(1) Domestic (German) coal

(32) By acquiring control of SBW and Preussag, RAG became the only German coal producer. It must be remembered however that, for the reasons mentioned (recital 16 et seq.), sales of German coal follow the (declining) level of aid, since the amount of German coal that can be sold

depends on the aid available. Accordingly, the parties' sales of domestic coal have fallen considerably, from 67,6 million tonnes in 1994 to 32,7 million tonnes in 2001. This trend will continue, since it follows the predicted decline in aid. The merger between RAG and SBW does not alter this: because of the higher production costs it is impossible for German coal to compete with imports without aid, so that the merger has no effect on the production and sale of German coal.

(2) Total market/imported coal

(33) In Germany, as in the Community, coal consumption fell steadily in recent years, and it can be assumed that this trend will continue (the Verein Deutscher Steinkohleimporteure forecasts, for instance, that demand in Germany will be 60 million tonnes in 2010). This is due particularly to the preference for other – more environmentally friendly and cheaper – sources of energy and the decline of German steel production. In a market where the volume is falling, the parties' share of the total market, consisting of domestic and imported coal, has shrunk since 1994 (see Table 1). RAG, SBW and Preussag together sold 70,8 million tonnes of coal in 1994, but only 43,6 million tonnes in 2001.

Table 1

Sales of coal in Germany

[...]*

(34) As regards market share, the parties still have a strong position on the total market, but their shares have clearly declined. When looking at market share, it has to be remembered that SBW's import business is not affected (any longer) by the merger, since it was disposed of by RAG in 1999. The trend of the parties' position in recent years does not include SBW's import business, therefore, the aim being specifically to highlight what has happened to those parts of the business currently involved in the merger. In 1994 the parties had [80 to 90 %]* of the total market (approximately [80 to 90 %]*, excluding SBW's imports), but only [80 to 90 %]* (approximately [70 to 80 %]*, excluding SBW's imports) in 1997, and [60 to 70 %]* in 2001. This indicates that RAG has not succeeded in completely offsetting its losses in German coal by increasing its share of imported coal.

Table 2

Parties' share of the total market

[...]*

Source: The parties.

- (35) Taking imported coal separately, the parties succeeded in increasing their absolute sales of imported coal from [...] million tonnes ([...] million tonnes excluding SBW's imports) in 1994 to [...] million tonnes in 2001. However, this increase in absolute quantities reflects the competitive position of the parties only to a limited extent, since it was associated with the rise in imported coal's share of the total market. The parties' share of the imported coal market did indeed go up from 1994 ([10 to 20 %]*, or [10 to 20 %]* excluding SBW's imports) to 1997 ([30 to 40 %]*, or [30 to 40 %]*, i.e. in the period preceding the merger. After the merger, however, as Table 3 shows, it remained stable with slight fluctuations between 1997 ([30 to 40 %]*, or [30 to 40 %]* and 2001 ([25 to 35 %]*, and latterly shows a downward trend. RAG, therefore, was unable to defend its slight increases in market share in 1999 and 2000. It should also be pointed out that RAG meets only a small portion of its imports into Germany from its own sources of production and must buy most of its imports from other producers. Thus it has no perceptible advantage as regards access to sources of supply compared with its competitors in the import field.

Table 3

Parties' share of the imported coal segment

[...]*

Source: The parties.

- (36) It will be seen therefore that the parties have not succeeded after the merger in offsetting the decline in their sales of domestic coal by increasing their import business. Furthermore, the merger did not lead to a perceptible, sustained expansion of the parties' position in the import coal sector; rather, their current market share is again below the level which they had before the merger. Given this trend, it is not expected that there will be a clear strengthening of the merged company within the period under consideration.

(b) Position of competitors and other competitive conditions

- (37) Current market conditions, which are distinguished by certain structural changes that have occurred on the German coal market since the decision of 29 July 1998, indicate that RAG's competitive position will not be strengthened.

- (38) One important structural change has been the increasing share of imports in the total market. In 2001 imports accounted for about 50 %, compared with about 44 % in the previous year. Imports in the power station and coking coal sector in 2001 exceeded domestic production for the first time: 35 million tonnes approximately as against 33 million tonnes. The volume of imports has increased by [10 to 20 %]* a year on average, albeit with significant fluctuations (+[0 to 10 %]* in 1995; + [15 to 25 %]* in 1997 and + [0 to 10 %]* in 1999). Coal imports are forecast to increase further, since the steadily falling total volume of aid entails a corresponding fall in sales of German coal. These sales are clearly falling faster than the gentle decline in total demand in Germany. The safe sales position that RAG had on the domestic coal market compared with its competitors is therefore increasingly less significant for the total market. This automatically reduces any possibility that RAG might have of transferring its position as regards domestic coal to the imported coal sector.

- (39) In addition, it should again be pointed out that RAG, by meeting the commitment to sell in the decision of 29 July 1998, has separated itself from the import business of SBW (SCI). There is thus no overlapping of the parties in the field of imports — an area which is important for competition. The merger has not resulted in the combination of the parties' import activities, and there has been no addition of market shares. SCI operates in today's market as an independent competitor with stable market shares.

- (40) The third factor is that, in recent years, there has been a clear structural strengthening of competitors in the imported coal sector, which is exposing RAG to stiffer competition and has already led to the decline of the parties' shares of the import market. Imports are the result of direct sales by foreign coal producers and sales through German coal importers. RAG's largest competitors for imported coal are either international producers or firms which are associated with coal customers in Germany. The RWE energy group, one of the largest customers for power station coal, is RAG's largest competitor in the import field, with a share of some [25 to 35 %]* in 2001 (RAG: [25 to 35 %]*. RWE has strengthened and expanded its position, in particular through the takeover in recent years of SSM Coal (Netherlands) and Rheinbraun Brennstoff GmbH. Other competitors include Glencore, BHP-Billiton and Rio Tinto, which are among the largest coal producers in the world; to date they have a combined market share of [5 to 15 %]*. SCI — SBW's coal importing business, which was sold to a French dealer — has shares of about [0 to 10 %]*. The parties estimate that independent dealers have a share of about [5 to 15 %]* of the coal import market in Germany.

- (41) Since the decision of 29 July 1998 there has also been a structural strengthening of international coal producers, which has led to new market entries in Germany. Thus, the Australian producer, BHP, and the South African firm Billiton have merged to become the world's largest coal producer. BHP-Billiton entered the German market in 1999 and today has a [0 to 10 %]* share of the imported coal sector. In 2000, Rio Tinto (UK), likewise one of the largest coal producers in the world, penetrated the German imported coal market and in 2000 and 2001 sold some [...] tonnes of coal in Germany, which amounts to a [0 to 10 %]* share of German coal imports.
- (42) The German coal market has hardly any barriers to entry. The transport and storage infrastructure is freely accessible and available. RAG does have some activities in the logistics field, but it is not very important in this sector and there are many other suppliers. Furthermore, own transport or storage capacity is not essential to operation on the market. The dealer requires only skilled labour, a telephone and a PC in order to enter the market. Coal is a not very differentiated 'commodity' product. Its quality is laid down in ISO standards and there is no possibility for differentiation between product qualities or brands. The main relevant factor of competition, therefore, is price.
- (43) Trends and market conditions indicate therefore that in the imported coal sector RAG is confronted by a growing number of strong, international competitors who are exerting considerable pressure on its market position. The level of market entries in recent years suggests that, as coal imports into Germany increase, new competitors will enter the German market.
- (44) There have been substantial changes on the demand side as well. Firstly, various steel industry mergers resulted in international groups with bundled purchaser power, such as Thyssen-Krupp-Stahl in 1998, or the amalgamation of Usinor, Arbed and Aceralia to form Arcelor in November 2001. Secondly, as a result of increasing liberalisation in recent years, competition in the power generation market has increased considerably. In this new competitive environment, it is essential for power station operators to procure cheaper coal and make use of even the smallest price differentials. Greater competitive pressure among customers thus reinforces the potential of RAG's low-cost competitors. The greater price sensitivity of large customers also means that the current terms on which RAG's customers obtain their long-term supplies of domestic coal no longer provide it with leverage over the imported coal sector, since in that sector price is increasingly becoming the decisive factor of competition.
- (45) Lastly, it should be pointed out that the long-term anticompetitive procurement obligations of the power and steel industries, which were contained in the Century Contract and the Steelworks Agreement have since been revoked. RAG's contracts with its customers no longer contain any procurement obligations that are consequent on the total requirement, or on exclusive dealing or most-favoured-nation clauses. Today's contracts with the steel and power industries usually expire in one year or less and contain normal market-supply conditions as regards price and quantity.
- (c) ***Conclusion: No danger of competition being distorted under current market conditions***
- (46) In short, therefore, given current market conditions and subject to the examination of the effects of a possible financial strengthening of RAG (see section 2, recital 47 et seq.), it cannot be assumed that RAG within the meaning of the first indent of Article 66(2) of the ECSC Treaty might determine prices, control or restrict production or distribution, or hinder effective competition in a substantial part of the markets affected by the merger. Under these conditions, which have changed since 1998, there is likewise no risk that RAG within the meaning of the second indent of Article 66(2) might evade the rules of competition instituted under the ECSC Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets. This applies both to an independent German coal market and to a market that is more extensively defined in geographical terms. If an international coal market is assumed, the parties' market shares would clearly be smaller, since their activities are focused on Germany and other competitors would have to be taken into consideration. On such a wider market, even less competitive importance would ultimately attach to RAG's special position in relation to German coal.

2. POSSIBLE INCREASE IN RAG'S FINANCIAL STRENGTH

(47) In *RJB Mining v Commission* the Court of First Instance pointed out that the Commission had not examined during the merger proceedings whether the total assets transferred from SBW corresponded to the price paid of DEM 2 or whether there had been an implicit transfer of State resources to RAG. Consequently, the Commission could not have assessed in its merger decision of 29 July 1998 whether and, if so, to what extent the purchase price of DEM 2 strengthened the financial and thus the commercial strength of RAG. Accordingly, the following questions must be examined below:

- (a) whether the financial and commercial strength of RAG was increased by the merger, and
- (b) whether any financial strengthening of RAG raises competition policy problems under Article 66(2) of the ECSC Treaty.

(48) For the sake of completeness, however, it should be noted at the outset that the financial support which RAG receives from Germany to bring the price of German coal into line with the price of imported coal and for the closure of production sites is not such as to strengthen the commercial strength of RAG in a manner that is significant from a competition point of view. Both the production cost subsidies and the subsidies for the closure of production sites merely cover at most the costs actually borne by RAG.

(a) ***Increase in the financial and commercial strength of RAG***

(49) The Court of First Instance did not in its judgment provide any criteria for determining how any discrepancy between the purchase price and the actual value of SBW and any resulting increase in RAG's financial strength should be established. One possible and appropriate approach in the present case (among a number of conceivable approaches) is, for the purposes of determining whether there was any financial strengthening of RAG, to investigate the effects the merger actually had on RAG's consolidated balance sheet. This allows retrospective insight to be gained into the financial effects of the merger⁽¹⁾, and makes it possible, particularly in conjunction with the risks for SBW's coal sector, to determine at least a maximum value (under a worst-case scenario) for any financial inflow, which is sufficient for analysis in the present case.

(50) Accordingly, the Commission asked the auditing company BDO to carry out a study of the effects of the merger on RAG's consolidated balance sheet. The study shows that, as a result of the takeover of SBW, RAG achieved an accounting gain from the merger of DEM [0 to 500]* million. This value corresponds to the accounting net value of SBW's equity capital at the time of the takeover (DEM [0 to 500]* million) minus the

purchase price (DEM 2) and minus the transaction taxes directly associated with the takeover (DEM [...] million).

(51) The gain from the merger contrasts in RAG's consolidated balance sheet on 31 December 1998 with depreciations of SBW's assets amounting to DEM [...] million. By far the largest depreciations related to power stations (DEM [...] million) and the stock of solid fuels (DEM [...] million). In the case of the power stations, the main item was the advance depreciation of SBW's energy procurement costs, which were above the market price. As far as the partial depreciation of the value of the stock of solid fuels is concerned, the stock, which had hitherto been valued at list prices, was brought down in value to the level of the world market price.

(52) The study thus comes to the conclusion that the (negative) impact of the merger on RAG's equity capital as actually shown in RAG's consolidated balance sheet as at 31 December 1998 amounted to minus DEM [0 to 500]* million.

(53) As regards future earnings developments, the study points to the possibility that the depreciations affecting the power stations could at least in part be offset at a later date by future earnings from power station holdings. The same applies to the depreciations of solid fuel stocks, where the possibility exists of subsidised purchase of the stocks which had been devalued to the world market price. Finally, the study points to a theoretical possibility of at least partial utilisation of SBW's corporation and trade tax loss carryovers by RAG, though reference is also made to the uncertainty of the partial non-recognition of the deductibility of the loss carryovers by the German tax authorities.

(54) According to the study, however, it is not to be expected that the abovementioned factors that might possibly have a positive impact on earnings will result in the merger having a significant, positive overall impact on RAG's financial strength.

(55) On the basis of the study, it is assumed that the accounting gain of DEM [0 to 500]* million shown in the merged balance sheet, corresponding to the net value of SBW's equity capital at the time of the merger excluding depreciations, can, applying a hypothetical worst-case scenario, be regarded as the maximum value of the increase in RAG's financial strength that is relevant from a competition point of view.

⁽¹⁾ In contrast to estimates of the 'value as a going concern' according to the conventional procedure for evaluating an undertaking (e.g. earning capacity value method, discounted cash flow method), which, particularly for an objective sector such as coal production, involves substantial subjective assessments of risks and future developments, and consequently is subject to considerable uncertainties. It should be mentioned in this context, however, that the studies available to the Commission, which were drawn up in accordance with the conventional procedures for assessing the value of undertakings, come up with substantially smaller assessments of value (see recital 60).

(56) It is not necessary to assess the depreciations carried out by RAG in assessing the present case, since, even assuming the full value *without* depreciation, no competition problems pursuant to Article 66(2) of the ECSC Treaty arise. On the basis of the study, it can be assumed that there is no need for any *upward* revaluation in SBW's assets.

- (57) As regards the availability of the financial strength, it can be assumed that the net value of the equity capital would be available directly following the merger in the form of liquid resources. This would then correspond to the premise that SBW's realisation value is equivalent to its book value. It would of course be more realistic to assume only gradual, annual availability of the increased financial strength resulting from the increased earning power, or only indirect availability through a possible increase in RAG's credit standing. However, there is no need to analyse this aspect, since, even assuming full, direct liquid availability of the book values, no competition problems pursuant to Article 66(2) of the ECSC Treaty arise.
- (58) It should be emphasised once again at this point that the method described in paragraphs 49 et seq. represents a hypothetical approach to determining a maximum value. An assessment of the risks of SBW's business activity was deliberately not carried out, since it would necessarily involve assessing assumptions to be made on the probability of the risks materialising. This too is not necessary, since, even assuming the hypothetical maximum value, no competition problems arise. It should, however, be noted in this context that a revaluation of the possible increase in financial strength on the basis of risk assessment may lead to a substantially smaller value. On the other hand, any higher value than the maximum value determined under the worst-case scenario can be ruled out by the Commission.
- (59) The assumption of a maximum estimated increase in financial strength of DEM [0 to 500]* million is, moreover, in line with other studies on SBW's corporate value commissioned by RAG and Germany. The studies which RAG commissioned [...] in 2000 both ruled out a positive corporate value for SBW.
- (60) An initial report drawn up by the management consultancy Roland Berger in January 1996 at the request of the German Government is ultimately uninformative as regards the questions being looked at here. Germany commissioned the report two years prior to the merger in order to examine SBW's recovery strategy. Its purpose was not to assess corporate value or a price at which the company might be sold. The report identifies a positive 'restructuring value' of SBW's holdings *outside* the coal industry. In a letter sent to the Commission in April 2000, however, Roland Berger explained that such value could on no account be regarded as the probable sales value of such holdings. Implementation of these restructuring measures — which were geared to SBW continuing on a stand-alone basis — never took place and, according to Roland Berger, could have been achieved only on the basis of substantial investment.
- (61) A second report drawn up by [...] in March 1996, which had also been commissioned by Germany, was aimed at assessing possible cross-company solutions for the German coal industry and does not have anything to say on assessing the value of the company as a whole. The third [...] report, dating from July 1998, updated the value estimates for SBW and indicates that, while there is a positive value for the portfolio of holdings outside the coal industry, this is offset by a much higher negative value for the coal-related sector.
- (b) **Competitive impact of a possible increase in financial strength**
- (62) Assuming a maximum increase in financial strength amounting to DEM [0 to 500]* million, this would not be sufficient to increase RAG's commercial strength to such an extent as to enable it to engage in anti-competitive conduct within the meaning of Article 66(2) of the ECSC Treaty.
- (63) In the first place, the maximum increase in financial strength resulting from the merger is equivalent to less than [5 to 15 %]* of RAG's total equity capital according to the balance sheet as at 31 December 1999.
- (64) Furthermore, RAG's total financial strength including the possible increase is no greater than the financial strength of RAG's main competitors in the German imported-coal sector. The relevant balance sheet figures of its main competitors, RWE Trading, Glencore International, BHP Billiton plc and Rio Tinto plc, are broadly similar to or greater than the figures for RAG.
- (65) An increase in RAG's financial strength would have no impact on the competitive situation as regards German coal production. The possibility can be ruled out that an increase in RAG's financial strength would be used to subsidise additional home-produced coal. The subsidising of the domestic production of coal is closely linked to production ceilings. Any exceeding of these ceilings would inevitably result in a decrease in subsidies per tonne of domestic coal, so that in practical terms there would be no economic advantage for RAG. It must also be borne in mind that the production costs of domestic coal are much greater than the price of imported coal, so that substantial funds would be necessary per tonne of coal in order to make such coal saleable in Germany or internationally. The assumed maximum financial inflow could be used only once to bring a volume of some [...] million tonnes of German coal (whose production costs amount to some DEM [...] per tonne more than the imported coal price) down to a saleable price level. This is equivalent to only [0 to 10 %]* of the total market volume.

- (66) Furthermore, the assumed maximum increase in financial strength would not result in any negative competitive impact on the import business in Germany. Coal is a product with low value added, and the decisive factor for customers is to have a low price for the required quality. All RAG could attempt to do on the basis of its increased financial strength in order to impede competition on the German imported-coal market would be to:
- stop actual or potential competition by buying up efficient coalmines outside Germany, or
 - eliminate actual or potential competitors by offering imported coal at below the competitive price level.
- (67) The possibility that RAG could significantly stop competition by purchasing coalmines outside Germany can be ruled out. The maximum increase in RAG's financial strength that can be assumed could result only in acquisitions of limited size which would only marginally increase RAG's worldwide market position. RAG currently produces [100 to 150]* million tonnes a year in its German and foreign coalmines compared with an annual worldwide production total of 3 400 million tonnes. The removal of a sufficient number of actual or potential competitors in the German coal market is consequently not realistic.
- (68) Nor can it be assumed that there would be a significant and lasting restriction of competition as a result of the elimination of actual competitors if RAG were, on the basis of its increased financial strength, to offer imported coal at below the competitive price level.
- (69) Such behaviour would not have any long-term impact mainly because of the financial strength of RAG's competitors, the low entry barriers for German coal imports and the increased financial requirements resulting from the increased amounts of imported coal.
- (70) As mentioned in recital 64, the joint financial strength of RAG and SBW is comparable to, but at all events not significantly greater than, the financial strength of RAG's main competitors. It can therefore be assumed that RAG's competitors are in a position to counter low-price strategies on the part of RAG effectively and on a sufficiently long-term basis.
- (71) German coal production has fallen by almost 40 % since 1995 (from 53 million tonnes in 1995 to 32,7 million tonnes in 2001). Overall German coal consumption has declined during the same period (see Table 1 in recital 33). The resulting increase in the share of imported coal in the overall German coal market not only makes it more attractive for coal importers to enter the German coal market. It also means that RAG would have to expend substantial and increasing resources in order to supply the increasing demand with subsidised imported coal.
- (72) As explained, market entry barriers for the German coal market are low. Investment strength is of little importance for the imported-coal business, since the main factor determining commercial success is a skilled and experienced workforce. Even assuming that RAG could, by setting prices below cost, squeeze competitors out of the market in the short term, such competitors could easily return to the market as soon as RAG increased its prices again. Consequently, losses incurred during the period when competitors are squeezed out of the market through below-cost prices could not be subsequently recovered by means of higher prices. The possibility must therefore be ruled out that RAG would pursue such a strategy. There would at least be no lasting weakening of competition, since, even if squeezing-out proved successful in the short term, the low market entry barriers would make it possible for competitors to re-enter the German coal market as soon as RAG increased its prices to a level above the competitive price and to undo RAG's initial market share gains by charging lower prices.
- (73) It was also noted that developments in recent years have resulted in greater price sensitivity on the part of RAG's main customers, severely restricting RAG's scope for price increases above the level of international competitive prices (following a hypothetical squeezing-out of competitors from the German market). Competition between RAG's main customers, the coal-fired power station operators (responsible for some [75 to 85 %]* of total German coal consumption) has grown much stronger in recent years with the ongoing liberalisation and internationalisation of the electricity sector. Consequently, the possibility can be ruled out that German electricity producers would accept coal at higher prices than those charged to their foreign competitors by international coal producers. Similarly, German steel producers will hardly accept prices above the competitive level since they too are faced with increasingly intensive competition.
- (74) Lastly, it must be borne in mind that downward subsidisation of coal imports into Germany by RAG in order to squeeze out competitors would have negative repercussions on the sale of German-produced coal at RAG's expense. The total amount of subsidies is set for each year. Subsidies are granted only in order to offset the difference between RAG's production costs and the average price of coal imported into Germany. Consequently, any significant 'artificial' reduction of the price of imported coal would also increase the necessary amount of subsidy per tonne of German coal and would therefore, in view of the ceiling on the volume of subsidies, reduce the amount of domestic coal that could be sold. Any market share gains by RAG in imported coal would thus be eroded by sales losses in domestic coal.

(c) **Summary on the increase in financial strength**

- (75) It must therefore be concluded that, even on the basis of a hypothetical maximum value, determined on the basis of several worst-case assumptions, the increase in financial strength resulting from the merger would not be such as to strengthen RAG commercially to such an extent that it would be able to engage in anti-competitive behaviour within the meaning of Article 66(2) of the ECSC Treaty. It must be borne in mind here that an assessment of the possible increase in financial strength that includes full assessment of the risks involved in SWB's business activities may result in a substantially lower value.

V. CONCLUSION

- (76) It is clear from the above considerations that the proposed merger notified does not give the undertakings concerned the power within the meaning of Article 66(2) ECSC to determine prices, to control or restrict production or distribution or to hinder effective competition in a substantial part of the market, or to evade the rules of competition instituted under the ECSC Treaty, in particular by establishing an artificially privileged position involving a substantial advantage in access to supplies or markets.
- (77) Since the conditions laid down in Article 66(2) of the ECSC Treaty are fulfilled, the notified merger can be authorised.

- (78) This Decision concerns only the application of Article 66 of the ECSC Treaty and is without prejudice to any Commission decision concerning the application of other provisions of the EC Treaty or of the ECSC Treaty and the relevant secondary law, in particular the application of the provisions on the control of State aid,

HAS ADOPTED THIS DECISION:

Article 1

The acquisition by RAG Aktiengesellschaft of exclusive control of Saarbergwerke AG and Preussag Anthrazit GmbH is hereby authorised under Article 66(2) of the ECSC Treaty.

Article 2

This Decision is addressed to:

RAG Aktiengesellschaft
Rellinghauser Straße 1-11
D-45128 Essen.

Done at Brussels, 7 May 2002.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 16 January 2003
concerning guidance on a provisional reference method for the sampling and measurement of
PM_{2.5} under Directive 1999/30/EC
(notified under document number C(2003) 10)
(Text with EEA relevance)
(2003/37/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air ⁽¹⁾, as amended by Commission Decision 2001/744/EC ⁽²⁾, and in particular Article 7(5), third subparagraph, thereof,

Whereas:

- (1) Limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air are laid down in Directive 1999/30/EC.
- (2) A reference method for sampling and measurement of PM_{2.5} is currently being standardised by the European Committee for Standardisation (CEN). In absence of the reference method, guidance on a provisional reference method for sampling and measurement of PM_{2.5} has to be provided by the Commission in accordance with the procedure laid down in Section V of Annex IX to Directive 1999/30/EC.
- (3) Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management ⁽³⁾ provides that the Commission shall be assisted by the Committee referred to in Article 12 of the Directive, composed of the representatives of Member States and chaired by the representative of the Commission, and that the Commission shall take the utmost account of the opinion delivered by the Committee.

- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee instituted by Article 12(2) of Council Directive 96/62/EC,

HAS ADOPTED THIS DECISION:

Article 1

The guidance on a provisional reference method for sampling and measurement of PM_{2.5} referred to in Section V of Annex IX to Directive 1999/30/EC is provided by means of the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 16 January 2003.

For the Commission
Margot WALLSTRÖM
Member of the Commission

⁽¹⁾ OJ L 163, 29.6.1999, p. 41.

⁽²⁾ OJ L 278, 23.10.2001, p. 35.

⁽³⁾ OJ L 296, 21.11.1996, p. 55.

ANNEX

GUIDANCE ON PM_{2.5} MEASUREMENT UNDER DIRECTIVE 1999/30/EC

The purpose of this document is to give recommendations to air quality managers and network operators on the selection of PM_{2.5} measurement devices required by the first Daughter Directive on air pollution for fine particles. These recommendations do not apply to other possible applications with different measurement objectives, as for example in the case of research activities, or in the case of indicative measurements.

Background and CEN standardisation work

Directive 1999/30/EC states in Article 5 that 'Member States shall ensure that measuring stations to supply data on concentration of PM_{2.5} are installed and operated. Each Member State shall choose the number and the siting of the stations at which PM_{2.5} is to be measured as representative of concentrations of PM_{2.5} within that Member State. Where possible sampling points for PM_{2.5} shall be co-located with sampling points for PM₁₀.' Article 7 further mentions that 'The provisional reference method for the sampling and measurement of PM_{2.5} shall be laid down in Section V of Annex IX.' Annex IX finally asks for the preparation of a guideline to be developed by the European Commission in consultation with the committee referred to in Article 12 of Directive 96/62/EC.

DG Environment has given a mandate to CEN to develop a standard European reference method for the measurement of PM_{2.5}. This method is based on the gravimetric determination of the PM_{2.5} fraction of particles in air, sampled at ambient conditions. CEN TC 264/WG 15 started its work in 2000. The first two field validation campaigns (Madrid, Duisburg) have been completed; two more campaigns are currently on-going (Vredepeel, Vienna). Four further campaigns in Sweden, England, Greece and Italy are at the planning stage. The validation work is expected to be concluded by 2003. The final CEN standard method will therefore not be available before 2004.

CEN WG 15 is currently testing various candidate devices based on the gravimetric determination method and equipped with different inlet types from European manufacturers as well as the United States Federal Reference sampler:

- MINI-WRAC, single filter sampler, from Fraunhofer Institute for Toxicology and Aerosol Research (FhG-ITA), Germany,
- RAAS 2.5-1, single filter sampler, from ESM Andersen, United States of America,
- Partisol plus -SCC, sequential sampler, from Rupprecht and Patashnick, United States of America,
- Partisol FRM, single filter sampler, from Rupprecht and Patashnick, United States of America,
- SEQ 47/50, sequential sampler, from Leckel Company, Germany,
- HVS-DHA 80, sequential sampler, from Digital, Switzerland.

In addition, CEN is also testing a number of automated measurement devices, based on the beta ray attenuation method and the tapered element oscillating microbalance (TEOM), for equivalency with the reference gravimetric method:

- ADAM, beta ray attenuation, sequential, from OPSIS, Sweden,
- FH 62 I-R, beta ray attenuation, filter tape, from ESM Andersen Company, United States of America,
- BAM 1020, beta ray attenuation, filter tape, from Met One, United States of America,
- TEOM SES, sharp cut cyclone, from Rupprecht and Patashnick, United States of America.

Problems in mass concentration measurements of PM_{2.5}

Several problems, partially known from previous experiences with PM₁₀ measurements, have to be taken into consideration when determining PM_{2.5} mass concentrations. Preliminary inter-comparison studies carried out in a number of Member States have shown significant differences between the results of manual PM_{2.5} samplers, ranging up to ±30 %. Reasons for the observed differences between the samplers are complex and can be divided into:

- artefacts on the filter, e.g. evaporative losses during sampling or conditioning of the filter,
- artefacts in the size fractionating inlet, e.g. poor design, changes of the cut-off due to poor volume flow control and particle deposition on the impaction plate,
- artefacts due to the sampling system set-up; e.g. particle deposition in the sampling tube (especially for long or curved tubes).

It has to be noted that the chemical composition of PM_{2.5} is significantly different from that of PM₁₀ especially the semi-volatile particulate matter (e.g. ammonium nitrate, organic compounds) is enriched in the fine PM_{2.5} size fraction. The particulate matter in the size range between PM₁₀ and PM_{2.5} mainly consists of inert components such as silica, metal oxides, etc. Hence the problems with losses of semi-volatile matter already observed when sampling PM₁₀ may be even more pronounced for PM_{2.5} measurements.

Losses will essentially depend on the composition of the aerosols and the presence of volatile particulate matter, as well as on the difference between ambient and sampling temperatures. The losses may therefore present important seasonal and geographical variations. As an example of this, losses close to 0 % were reported in Scandinavia during a spring episode (aerosols from road sanding), whereas losses up to 70 % were observed in Central Europe during a winter episode (aerosols with high ammonium nitrate content).

With this background it can be anticipated that any heating of the sampling system will show significantly lower $PM_{2.5}$ mass concentrations than a system kept under ambient conditions.

Recommendations for monitoring $PM_{2.5}$

In the absence of conclusions from the CEN standardisation activities, the following recommendations for $PM_{2.5}$ can be given:

Regarding the measurement method:

The mandate given by the Commission to CEN specified that the measurement method to be standardised is based on the gravimetric determination of the $PM_{2.5}$ mass fraction of particulate matter collected on a filter under ambient conditions. Other methods, such as the beta ray attenuation method and the tapered element oscillating microbalance (TEOM), are currently tested for equivalence with the gravimetric method by CEN WG 15. Methods such as those based on optical methods (particle counting or nephelometry) are not considered for possible use under the directive.

Regarding the $PM_{2.5}$ specific inlet:

Currently there are two main inlet designs available and in use for monitoring and research purposes: the impactor type inlet and the sharp cut-cyclone type. Various inlets of both types are currently under testing e.g. within the framework of CEN WG 15. The size fractionation efficiency of the inlet shall be as follows: 50 % of the particles with an aerodynamic diameter of 2,5 μm have to be collected on the filter.

Regarding the instruments:

Theory and former experience gained in the PM_{10} validation work suggests that the use of devices whereby the sampling probe and/or filter is heated during collection should be avoided for the measurement of $PM_{2.5}$. In order to limit as far as possible the losses of volatile particles, instruments sampling as close as possible to ambient temperature should be preferred for $PM_{2.5}$.

Considering the incomplete manner and the lack of coherence of the results obtained thus far from the various studies, it is impossible for the present to select candidate instruments for the monitoring of $PM_{2.5}$. When it comes to the selection of a particular measurement device, a careful approach is recommended. Preference should be given to an approach that does not entail important resource investment and that allows for the adaptation of the measurement requirements to future developments (e.g. the forthcoming European standard method on $PM_{2.5}$ measurements, technical developments by instrument manufacturers, the upcoming regulation on heavy metals).

When reporting $PM_{2.5}$ data, it is essential to document fully the measurement methodology that was used to generate the data.
