

Official Journal

of the European Union

L 84

Volume 49

23 March 2006

English edition

Legislation

Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 469/2006 of 22 March 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ Commission Regulation (EC) No 470/2006 of 22 March 2006 amending Regulation (EC) No 1063/2005 as regards the quantity covered by the standing invitation to tender for the export of common wheat held by the Czech intervention agency 3

★ Commission Regulation (EC) No 471/2006 of 22 March 2006 derogating for 2006 from Regulation (EC) No 1445/95 as regards the dates of issue of export licences in the beef and veal sector 4

★ Commission Regulation (EC) No 472/2006 of 22 March 2006 derogating for 2006 from Regulation (EC) No 1518/2003 regarding the date of issue of export licences in the pigmeat sector 6

★ Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council ⁽¹⁾ 8

★ Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council ⁽¹⁾ 14

Commission Regulation (EC) No 475/2006 of 22 March 2006 on granting of import licences for cane sugar for the purposes of certain tariff quotas and preferential agreements 29

★ Commission Regulation (EC) No 476/2006 of 21 March 2006 establishing unit values for the determination of the customs value of certain perishable goods 31

⁽¹⁾ Text with EEA relevance

(Continued overleaf)

Commission

2006/237/EC:

★ **Commission Decision of 22 June 2005 on the aid measures implemented by the Netherlands for AVR for dealing with hazardous waste** (*notified under document number C(2005) 1789*) ⁽¹⁾ 37

Corrigenda

★ **Corrigendum to Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000 (OJ L 307, 24.11.2003)** 60

★ **Corrigendum to Commission Regulation (EC) No 1048/2005 of 13 June 2005 amending Regulation (EC) No 2032/2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 178, 9.7.2005)** 61



⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 469/2006
of 22 March 2006
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⁾, 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 23 March 2006.

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

Done at Brussels, 22 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 22 March 2006 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	94,2
	204	53,3
	212	102,0
	624	101,8
	999	87,8
0707 00 05	052	134,8
	999	134,8
0709 10 00	624	103,6
	999	103,6
0709 90 70	052	110,8
	204	48,5
	999	79,7
0805 10 20	052	71,7
	204	42,8
	212	53,8
	220	43,2
	400	60,8
	448	37,8
	624	57,1
0805 50 10	999	52,5
	052	42,2
	624	73,8
0808 10 80	999	58,0
	388	77,0
	400	121,8
	404	103,9
	508	82,7
	512	84,8
	524	62,5
	528	88,1
	720	82,6
0808 20 50	999	87,9
	388	80,8
	512	73,3
	524	58,2
	528	83,8
	720	122,5
	999	83,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 470/2006**of 22 March 2006****amending Regulation (EC) No 1063/2005 as regards the quantity covered by the standing invitation to tender for the export of common wheat held by the Czech intervention agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 6 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1063/2005 ⁽²⁾ opened a standing invitation to tender for the export of 275 911 tonnes of common wheat held by the Czech intervention agency.
- (2) The Czech Republic has informed the Commission of its intervention agency's intention to increase by 120 000 tonnes the quantity put out to tender for export. In view of the quantities available and the market situation, the request made by the Czech Republic should be granted.
- (3) Regulation (EC) No 1063/2005 should therefore be amended.

- (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

Article 2 of Regulation (EC) No 1063/2005 is amended as follows:

'Article 2

The invitation to tender shall cover a maximum of 395 911 tonnes of common wheat for export to third countries with the exception of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Former Yugoslav Republic of Macedonia, Liechtenstein, Romania, Serbia and Montenegro (*) and Switzerland.

(*) Including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.'

Article 2

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

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

Done at Brussels, 22 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 174, 7.7.2005, p. 36. Regulation as amended by Regulation (EC) No 1535/2005 (OJ L 247, 23.9.2005, p. 3).

COMMISSION REGULATION (EC) No 471/2006**of 22 March 2006****derogating for 2006 from Regulation (EC) No 1445/95 as regards the dates of issue of export
licences in the beef and veal sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 29(2) thereof,

Whereas:

- (1) Article 10(1) of Commission Regulation (EC) No 1445/95 of 26 June 1995 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 ⁽²⁾ provides that export licences are to be issued on the fifth working day following that on which the application is lodged, provided that the Commission has not taken any specific action during that period.
- (2) In view of the public holidays in 2006 and the irregular appearance of the *Official Journal of the European Union* during those holidays, the abovementioned period of five working days will be too short to guarantee proper administration of the market and should therefore be extended.

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

HAS ADOPTED THIS REGULATION:

Article 1

By way of derogation from Article 10(1) of Regulation (EC) No 1445/95, for 2006 licences for which applications are lodged during the periods set out in the Annex to this Regulation shall be issued on the corresponding dates indicated in that Annex.

The derogation shall apply provided that no specific action referred to in Article 10(2) of Regulation (EC) No 1445/95 has been taken prior to those dates of issue.

Article 2

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

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

Done at Brussels, 22 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 143, 27.6.1995, p. 35. Regulation as last amended by Regulation (EC) No 1118/2004 (OJ L 217, 17.6.2004, p. 10).

ANNEX

Period for submission of licence applications	Date of issue
from 10 to 13 April 2006	21 April 2006
from 22 to 24 May 2006	1 June 2006
from 17 to 18 July 2006	26 July 2006
from 30 to 31 October 2006	8 November 2006
21 December 2006	29 December 2006
from 28 to 29 December 2006	8 January 2007

COMMISSION REGULATION (EC) No 472/2006**of 22 March 2006****derogating for 2006 from Regulation (EC) No 1518/2003 regarding the date of issue of export licences in the pigmeat sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, and in particular Article 8(2) thereof,

Whereas:

(1) Article 3(3) of Commission Regulation (EC) No 1518/2003 of 28 August 2003 laying down detailed rules for implementing the system of export licences in the pigmeat sector ⁽²⁾ provides that export licences are to be issued on the Wednesday following the week in which the licence applications have been lodged, provided that no special measures have since been taken by the Commission.

(2) In view of the public holidays in 2006 and the irregular publication of the *Official Journal of the European Union* during those holidays, the period between the submission of applications and the day on which the licences are to

be issued will be too brief to guarantee proper administration of the market and so should be extended.

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

HAS ADOPTED THIS REGULATION:

Article 1

Notwithstanding Article 3(3) of Regulation (EC) No 1518/2003, licences shall be delivered for 2006 on the dates set out in the Annex to this Regulation.

This derogation shall apply provided that none of the special measures referred to in Article 3(4) of Regulation (EC) No 1518/2003 have been taken before the dates of issue in question.

Article 2

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

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

Done at Brussels, 22 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 1. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 217, 29.8.2003, p. 35. Regulation as last amended by Regulation (EC) No 1361/2004 (OJ L 253, 29.7.2004, p. 9).

ANNEX

Period for submission of licence applications	Dates of issue
from 10 to 14 April 2006	20 April 2006
from 24 to 28 April 2006	4 May 2006
from 1 to 5 May 2006	11 May 2006
from 29 May to 2 June 2006	8 June 2006
from 7 to 11 August 2006	17 August 2006
from 23 to 27 October 2006	3 November 2006
from 18 to 22 December 2006	28 December 2006
from 25 to 29 December 2006	5 January 2007

COMMISSION REGULATION (EC) No 473/2006**of 22 March 2006****laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 2111/2005 of the European Parliament and the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC ⁽¹⁾, (hereinafter referred to as 'the basic Regulation'), and in particular Article 8 thereof,

Whereas:

- (1) Chapter II of the basic Regulation lays down procedures for updating the Community list of air carriers which are subject to an operating ban within the Community as well as procedures allowing the Member States, in certain circumstances, to adopt exceptional measures imposing operating bans within their territory.
- (2) It is appropriate to adopt certain implementing measures in order to provide detailed rules in respect of these procedures.
- (3) In particular, it is appropriate to specify the information to be provided by the Member States when they request the Commission to adopt a decision under Article 4(2) of the basic Regulation to update the Community list by imposing a new operating ban, lifting an existing ban or modifying the attached conditions.
- (4) It is necessary to lay down conditions for the exercise of the rights of defence of the carriers subject to the decisions adopted by the Commission in order to update the Community list.
- (5) In the context of updating the list, the basic Regulation requires the Commission to take due account of the need for decisions to be taken swiftly and, where appropriate, provide a procedure for urgent cases.

(6) The Commission should receive adequate information on any operating ban imposed by the Member States as exceptional measures under Articles 6(1) and 6(2) of the basic Regulation.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Air Safety Committee ⁽²⁾,

HAS ADOPTED THIS REGULATION:

*Article 1***Subject matter**

This Regulation lays down detailed rules in respect of the procedures referred to in Chapter II of the basic Regulation.

*Article 2***Requests by Member States to update the Community list**

1. A Member State that requests the Commission to update the Community list in accordance with Article 4(2) of the basic Regulation shall provide to the Commission the information indicated in Annex A to this Regulation.

2. The requests mentioned in paragraph 1 shall be addressed in writing to the Secretariat General of the Commission. In addition, the information described in Annex A shall be communicated simultaneously to the competent services of the Directorate General for Energy and Transport of the Commission electronically. If no suitable electronic procedure is available, the same information shall be provided by the fastest practicable alternative means.

3. The Commission shall inform the other Member States through their representatives in the Air Safety Committee in accordance with the procedures provided in the Committee's internal rules, as well as the European Aviation Safety Agency.

⁽¹⁾ OJ L 344, 27.12.2005, p. 15.

⁽²⁾ Established by Article 12 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation (OJ L 373, 31.12.1991, p. 4).

*Article 3***Joint consultation with the authorities with responsibility for regulatory oversight of the air carrier concerned**

1. A Member State that is considering making a request to the Commission under Article 4(2) of the basic Regulation shall invite the Commission and the other Member States to participate in any consultations with the authorities with responsibility for regulatory oversight of the air carrier concerned.

2. The adoption of the decisions referred to in Article 4(2) and 5 of the basic Regulation shall be preceded, when appropriate and practicable, by consultations with the authorities with responsibility for regulatory oversight over the air carrier concerned. Whenever possible, consultations shall be held jointly by the Commission and the Member States.

3. In cases where urgency so requires, joint consultations may be held only after the adoption of the decisions referred in paragraph 2. In that case, the Authority concerned shall be informed that a decision is about to be adopted under Article 4(2) or Article 5(1).

4. Joint consultations may be conducted through correspondence and take place during on-site visits in order to permit the collection of evidence, where appropriate.

*Article 4***Exercise of carriers' right of defence**

1. When the Commission is considering whether to adopt a decision under Article 4(2) or Article 5 of the basic Regulation, it shall disclose to the air carrier concerned the essential facts and considerations which form the basis for such decision. The air carrier concerned shall be given an opportunity to submit written comments to the Commission within 10 working days from the date of disclosure.

2. The Commission shall inform the other Member States through their representatives in the Air Safety Committee in accordance with the procedures provided in the Committee's internal rules. If it so requests, the air carrier shall be permitted to present its position orally before a decision is reached. Where appropriate the oral presentation should be made to the Air Safety Committee. During the audition, the air carrier can be assisted by the authorities with responsibility for its regulatory oversight if it so requests.

3. In cases of urgency, the Commission shall not be required to comply with paragraph 1 before adopting a provisional measure in accordance with Article 5(1) of the basic Regulation.

4. When the Commission adopts a decision under Article 4(2) or Article 5 of the basic Regulation, it shall immediately inform the carrier and the authorities with responsibility for regulatory oversight over the air carrier concerned.

*Article 5***Enforcement**

Member States shall inform the Commission of any measures taken to implement the decisions adopted by the Commission under Articles 4(2) or 5 of the basic Regulation.

*Article 6***Exceptional measures adopted by a Member State**

1. When a Member State has subjected an air carrier to an immediate operating ban in its territory as permitted by Article 6(1) of the basic Regulation, it shall immediately inform the Commission of the fact and communicate the information mentioned in Annex B.

2. When a Member State has maintained or imposed an operating ban on an air carrier in its territory as permitted by Article 6(2) of the basic Regulation it shall immediately inform the Commission and communicate the information mentioned in Annex C.

3. The information mentioned in paragraphs 1 and 2 shall be addressed in writing to the Secretariat General of the Commission. In addition, the information described in Annex B or C shall be communicated simultaneously to the competent services of the Directorate General for Energy and Transport of the Commission electronically. If no suitable electronic procedure is available, the same information shall be provided by the fastest practicable alternative means.

4. The Commission shall inform the other Member States through their representatives in the Air Safety Committee in accordance with the procedures provided in the Committee's internal rules.

*Article 7***Entry into force**

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

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

Done at Brussels, 22 March 2006.

For the Commission

Jacques BARROT

Vice-President

ANNEX A

Information to be provided by a Member State making a request under Article 4(2) of the basic regulation

A Member State which requests under Article 4(2) of the Basic regulation the updating of the Community list shall provide the following information to the Commission:

Member State making the request

- Name and function of official contact
- E-mail or telephone of official contact.

Carrier(s) and aircraft

- Concerned carrier(s), including legal entity name (indicated on AOC or equivalent) trading name (if different), AOC number (if available), ICAO airline designation number (if known) and full contact details
- Name(s) and full contact details of the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned
- Details of the aircraft type(s), State(s) of registry, registration number(s) and, if available, construction serial numbers of the aircraft affected.

Decision requested

- Type of decision requested: imposition of operating ban, removal of an operating ban or modification of the conditions of an operating ban
- Scope of the requested decision (specific carrier(s) or all carriers subject to a particular overseeing authority, specific aircraft or type(s) of aircraft).

Request for the imposition of an operating ban

- Detailed description of the safety concern (eg inspection results) which led to the request for a total or partial ban (related in order to each of the relevant common criteria in the Annex to the basic Regulation)
- Broad description of recommended condition(s) allowing the proposed ban to be cancelled/waived for use as the basis for preparing a corrective action plan in consultation with the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned.

Request for the lifting of an operating ban or the modification of attached conditions

- Date and details of agreed corrective action plan, if applicable
- Evidence of subsequent compliance with the agreed corrective plan, if applicable
- Explicit written endorsement by the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned that the corrective action plan has been implemented.

Publicity

- Information on whether the Member State has made public its request.
-

ANNEX B

Communication by a Member State of exceptional measures taken under article 6(1) of the basic Regulation to impose an operating ban in its territory

A Member State reporting that an air carrier has been made subject to an operating ban in its territory in accordance with Article 6(1) of the basic Regulation shall provide the following information to the Commission:

Member State making the report

- Name and function of the official contact
- E-mail or telephone of the official contact.

Carrier(s) and aircraft

- Concerned carrier(s), including legal entity name (indicated on AOC or equivalent) trading name (if different), AOC number (if available), ICAO airline designation number (if known) and full contact details
- Name(s) and full contact details of the authority or authorities with responsibility for regulatory oversight of the air carrier(s) concerned
- Details of the aircraft type(s), State(s) of registry, registration number (s) and, if available construction serial number(s) of the aircraft affected.

Decision

- Date, time and duration of decision
- Description of decision to refuse, suspend, revoke or impose restrictions on an operating authorisation or technical permission
- Scope of the decision (specific carrier(s) or all carriers subject to a particular overseeing authority, specific aircraft or type(s) of aircraft)
- Description of condition(s) allowing the refusal, suspension, revocation or restrictions of the operating authorisation or technical permission delivered by the Member State to be cancelled/waived.

Safety concern

- Detailed description of safety concern (i.e. inspection results) which lead to total or partial ban decision (related to the order of each of the common criteria in the Annex to the basic Regulation).

Publicity

- Information on whether the Member State has made its ban public.
-

ANNEX C

Communication by a Member State of exceptional measures taken as permitted by article 6(2) of the basic Regulation to maintain or impose an operating ban in its territory when the Commission has decided not to include similar measures in the Community list

A Member State reporting that an operating ban on an air carrier in its territory has been maintained or imposed as permitted by Article 6(2) of the basic Regulation shall provide the following information to the Commission:

Member State making the report

- Name and function of the official contact
- E-mail or telephone of the official contact.

Carrier(s) and aircraft

- Concerned carrier(s), including legal entity name (indicated on AOC or equivalent) trading name (if different), AOC number (if available), ICAO airline designation number (if known).

Reference to the Commission decision

- date of and reference to any relevant Commission documents
- date of Commission/Air Safety Committee decision.

Safety problem specifically affecting the Member State

COMMISSION REGULATION (EC) No 474/2006**of 22 March 2006****establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council****(Text with EEA relevance)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

make an oral presentation to the Commission within 10 working days and to the Air Safety Committee ⁽²⁾.

Having regard to the Treaty establishing the European Community,

- (5) The common criteria for consideration of an operating ban for safety reasons at Community level are set out in the Annex to the basic Regulation.

Having regard to Regulation (EC) No 2111/2005 of the European Parliament and the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/CE ⁽¹⁾, and in particular Article 3 thereof,

Air Bangladesh

- (6) There is verified evidence of serious safety deficiencies on the part of Air Bangladesh with regard to a certain aircraft of its fleet. These deficiencies have been identified during ramp inspections performed by Germany under the SAFA programme ⁽³⁾.

Whereas:

- (1) Chapter II of Regulation (EC) No 2111/2005 (hereinafter referred to as 'the basic Regulation') lays down procedures for establishing the Community list of air carriers which are subject to an operating ban within the Community as well as procedures allowing the Member States, in certain circumstances, to adopt exceptional measures imposing operating bans within their territory.

- (7) Air Bangladesh did not respond adequately and timely to an enquiry by the civil aviation authority of Germany regarding the safety aspect of its operation showing a lack of transparency or communication, as demonstrated by its lack of reply to correspondence from this Member State. To date Germany had no opportunity to verify whether the safety deficiencies have been corrected.

- (2) In accordance with Article 3(3) of the basic Regulation, each Member State communicated to the Commission the identity of the air carriers that are subject to an operating ban in its territory, together with the reasons which led to the adoption of such bans and any other relevant information.

- (8) The authorities of Bangladesh with responsibility for regulatory oversight of Air Bangladesh have not exercised an adequate oversight on one specific aircraft used by this carrier in accordance with their obligations under the Chicago Convention.

- (3) The Commission informed all air carriers concerned either directly or, when this was not practicable, through the authorities responsible for their regulatory oversight, indicating the essential facts and considerations which would form the basis for a decision to impose them an operating ban within the Community.

- (9) Therefore, on the basis of the common criteria, it is assessed that Air Bangladesh should be submitted to a strict operational restriction and included in Annex B.

- (4) In accordance with Article 7 of the basic Regulation, opportunity was given by the Commission to the air carriers concerned to consult the documents provided by Member States, to submit written comments and to

Air Koryo

- (10) There is verified evidence of serious safety deficiencies on the part of Air Koryo. These deficiencies have been identified by France and Germany, during ramp inspections performed under the SAFA programme ⁽⁴⁾.

⁽¹⁾ OJ L 344, 27.12.2005, p. 15.

⁽²⁾ Established by Article 12 of Council Regulation (EEC) No 3922/91 of 16 December 1991 on the harmonization of technical requirements and administrative procedures in the field of civil aviation (OJ L 373, 31.12.1991, p. 4).

⁽³⁾ LBA-D-2005-0003
LBA-D-2005-0004
LBA-D-2005-0004

⁽⁴⁾ DGAC/F 2000-210
No ref. for another SAFA inspection performed by Germany.

- (11) Persistent failure by Air Koryo to address deficiencies previously communicated by France was identified during other ramp inspections performed under the SAFA programme ⁽⁵⁾.
- (12) Substantiated and serious incident-related information communicated by France indicates latent systemic safety deficiencies on the part of Air Koryo.
- (13) Air Koryo demonstrated a lack of ability to address these safety deficiencies.
- (14) Air Koryo did not respond adequately and timely to an enquiry by the civil aviation authority of France regarding the safety aspect of its operation showing a lack of transparency or communication, as demonstrated by the absence of reply to a request by that Member State.
- (15) The corrective action plan presented by Air Koryo in response to France's request was not adequate and sufficient to correct the identified serious safety deficiencies.
- (16) The authorities of the Democratic People Republic of Korea with responsibility for regulatory oversight of Air Koryo have not exercised an adequate oversight on this carrier in accordance with their obligations under the Chicago Convention.
- (17) Therefore, on the basis of the common criteria, it is assessed that Air Koryo does not meet the relevant safety standards.

Ariana Afghan Airlines

- (18) There is verified evidence of serious safety deficiencies on the part of certain aircraft operated by Ariana Afghan Airlines. These deficiencies have been identified by Germany, during ramp inspections performed under the SAFA programme ⁽⁶⁾.
- (19) Ariana Afghan Airlines demonstrated a lack of ability to address these safety deficiencies.
- (20) Ariana Afghan Airlines did not respond adequately and timely to an enquiry by the civil aviation authority of Germany regarding the safety aspect of its operation showing a lack of communication, as demonstrated by the absence of adequate response to correspondence from this Member State.

- (21) The competent authorities of Afghanistan, where the aircraft used by Ariana Afghan Airlines is registered, have not exercised a fully adequate oversight of the aircraft used by this carrier in accordance with their obligations under the Chicago Convention.
- (22) Therefore, on the basis of the common criteria, it is assessed that Ariana Afghan does not meet the relevant safety standards for all the aircraft it operates, with the exception of A310 registration number F-GYYY which is registered in France and subject to the oversight of the French authorities.

BGB Air

- (23) There is verified evidence of serious safety deficiencies on the part of BGB Air. These deficiencies have been identified by Italy, during ramp inspections performed under the SAFA programme ⁽⁷⁾.
- (24) BGB Air demonstrated a lack of ability or willingness to address safety deficiencies as demonstrated by the submission of a self-assessment with ICAO Standards on the basis of the Foreign Operator Check List provided by Italy, which was found not to be in conformity with the subsequent findings of SAFA inspections.
- (25) BGB Air did not respond adequately to an enquiry by the civil aviation authority of Italy, regarding the safety aspect of its operation showing a lack of transparency or communication, as demonstrated by the absence of reply to some correspondence sent by this Member State.
- (26) There is no evidence of the implementation of an adequate corrective action plan presented by BGB Air to correct the serious safety deficiencies in response to the request from Italy.
- (27) The authorities of Kazakhstan with responsibility for regulatory oversight of BGB Air did not fully cooperate with the civil aviation authority of Italy when concerns about the safety of the operation of BGB Air certified in that state were raised, as demonstrated by the absence of reply to the correspondence sent by this Member State.
- (28) Therefore, on the basis of the common criteria, it is assessed that BGB Air does not meet the relevant safety standards.

⁽⁵⁾ DGAC/F-2000-895

⁽⁶⁾ LBA-D-2004-269
LBA-D-2004-341
LBA-D-2004-374
LBA-D-2004-597

⁽⁷⁾ ENAC-IT-2005-237

Buraq Air

- (29) There is verified evidence of serious safety deficiencies on the part of Buraq Air concerning its cargo operations. These deficiencies have been identified by Sweden and the Netherlands, during ramp inspections performed under the SAFA programme ⁽⁸⁾.
- (30) Buraq Air did not respond adequately and timely to an enquiry by the civil aviation authority of Germany regarding the safety aspect of its Cargo operations showing a lack of transparency or communication, as demonstrated by a lack of response to correspondence from this Member State.
- (31) The authorities of Libya with responsibility for regulatory oversight of Buraq Air have not exercised an adequate oversight on the Cargo operations of this carrier in accordance with their obligations under the Chicago Convention.
- (32) Therefore, on the basis of the common criteria, it is assessed that Buraq Air should be subject to strict operational restrictions and included in Annex B.

Air Service Comores

- (33) There is verified evidence of serious safety deficiencies on the part of Air Service Comores. These deficiencies have been identified by a Member State, France, during a ramp inspection performed under the SAFA programme ⁽⁹⁾.
- (34) There is no evidence of the implementation of an adequate corrective action plan presented by Air Service Comores to correct the identified serious safety deficiencies in response to the request from France.
- (35) The authorities with responsibility for regulatory oversight of Air Service Comores have shown a lack of ability to address safety deficiencies.
- (36) The authorities with responsibility for regulatory oversight of Comores did not cooperate in due time with the civil aviation authority of France when concerns about the safety of the operation of a carrier licensed or certified in that state were raised.
- (37) Therefore, on the basis of the common criteria, it is assessed that Air Service Comores does not meet the relevant safety standards.

GST Aero Air Company

- (38) There is verified evidence of serious safety deficiencies on the part of GST Aero Air Company. These deficiencies have been identified by Italy, during ramp inspections performed under the SAFA programme ⁽¹⁰⁾.
- (39) GST Aero Air Company demonstrated a lack of ability or willingness to address safety deficiencies.
- (40) GST Aero Air Company did not respond adequately and timely to an enquiry by the civil aviation authority of Italy regarding the safety aspect of its operation showing a lack of transparency or communication as demonstrated by the absence of reply to the correspondence sent by this Member State.
- (41) There is no evidence of the implementation of an adequate corrective action plan presented by GST Aero Air Company to correct the serious safety deficiencies in response to Italy's request.
- (42) The authorities of Kazakhstan with responsibility for regulatory oversight of GST Aero Air Company did not fully cooperate with the civil aviation authority of Italy when concerns about the safety of the operation of a carrier licensed or certified in that state were raised, as demonstrated by the limited reply to the correspondence sent by Italy.

- (43) Therefore, on the basis of the common criteria, it is assessed that GST Aero Air Company does not meet the relevant safety standards.

Phoenix Aviation

- (44) The authorities with responsibility for regulatory oversight of Kirghizstan have shown an insufficient ability to implement and enforce the relevant safety standards with regard to Phoenix Aviation. While Phoenix Aviation's Air Operator's Certificate was issued by Kyrgyzstan, there is evidence showing that the airline has its principal place of business in the United Arab Emirates (UAE), contrary to the requirements of Annex 6 to the Chicago Convention. The US National Transportation Safety Board's Factual Report ⁽¹¹⁾ into an accident involving Kam Air flight 904, which was operated by Phoenix Aviation, states that Phoenix Aviation has its headquarters in the UAE.

⁽⁸⁾ LFV-S-2004-2004-52

CAA-NL-2005-47

⁽⁹⁾ DGAC/F-2005-1222

⁽¹⁰⁾ ENAC-IT-2005-170

ENAC-IT-2005-370

⁽¹¹⁾ Factual Aviation Report, USA-National Transportation Safety Board, 2 March 2005, (NTSB ID: DCA05RA033).

- (45) Therefore, on the basis of the common criteria, it is assessed that Phoenix Aviation does not meet the relevant safety standards.

Phuket Airlines

- (46) There is verified evidence of serious safety deficiencies on the part of Phuket Airlines. These deficiencies have been identified by Member States, the United Kingdom and the Netherlands, during ramp inspections performed under the SAFA programme ⁽¹²⁾.
- (47) Phuket Airlines demonstrated a lack of ability to address timely and adequately these safety deficiencies.
- (48) The authorities with responsibility for regulatory oversight of Thailand did not fully cooperate with the civil aviation authority of the Netherlands when concerns about the safety of Phuket Airlines certified in that state were raised as demonstrated by the lack of pertinent responses to the correspondence from this Member State.
- (49) Therefore, on the basis of the common criteria, it is assessed that Phuket Airlines does not meet the relevant safety standards.

Reem Air

- (50) There is verified evidence of serious safety deficiencies on the part of Reem Air. These deficiencies have been initially identified by the Netherlands, during ramp inspections performed under the SAFA programme ⁽¹³⁾.
- (51) Persistent failure by Reem Air to address deficiencies was confirmed by the Netherlands, during subsequent ramp inspections on one specific aircraft performed under the SAFA programme ⁽¹⁴⁾.

⁽¹²⁾ CAA-UK-2005-40
CAA-UK-2005-41
CAA-UK-2005-42
CAA-UK-2005-46
CAA-UK-2005-47
CAA-UK-2005-48
CAA-NL-2005-49
CAA-NL-2005-51
CAA-NL-2005-54
CAA-NL-2005-55
CAA-NL-2005-56

⁽¹³⁾ CAA-NL-2005-119
CAA-NL-2005-122
CAA-NL-2005-128
CAA-NL-2005-171
CAA-NL-2005-176
CAA-NL-2005-177
CAA-NL-2005-191
CAA-NL-2005-195
CAA-NL-2005-196
⁽¹⁴⁾ CAA-NL-2005-230
CAA-NL-2005-234
CAA-NL-2005-235

- (52) Reem Air demonstrated a lack of ability or willingness to address safety deficiencies.

- (53) Reem Air did not respond adequately and timely to an enquiry by the civil aviation authority of the Netherlands regarding the safety aspect of its operation showing a lack of transparency or communication as demonstrated by the absence of reply to the correspondence sent by this Member State.

- (54) There is no evidence of the implementation of an adequate corrective action plan presented by Reem Air to correct the identified serious safety deficiencies in response to the request from the Netherlands.

- (55) The authorities of Kirghizstan with responsibility for regulatory oversight of Reem Air have not exercised an adequate oversight on this carrier in accordance with their obligations under the Chicago Convention, as demonstrated by the persistence of serious safety deficiencies. In addition, information provided to the Commission by Reem Air during the hearing granted to this company evidences that, while Reem Air Operator's Certificate was issued by Kyrgyzstan, this airline has its principal place of business in the United Arab Emirates (UAE), contrary to the requirements of Annex 6 to the Chicago Convention.

- (56) Therefore, on the basis of the common criteria, it is assessed that Reem Air does not meet the relevant safety standards.

Silverback Cargo Freighters

- (57) There is verified evidence of serious safety deficiencies on the part of Silverback Cargo Freighters. These deficiencies have been identified by Belgium during a ramp inspection performed under the SAFA programme ⁽¹⁵⁾.

- (58) Silverback Cargo Freighters which equally assures the maintenance (A&B checks) of its own aircraft, did not respond adequately to an enquiry by the civil aviation authority of this Member State regarding the safety aspect of its operation showing a lack of transparency or communication as demonstrated by the lack of pertinent response to requests made by this Member State.

- (59) Therefore, on the basis of the common criteria, it is assessed that Silverback Cargo Freighters does not meet the relevant safety standards.

⁽¹⁵⁾ BCAA-2005-36

Air carriers from the Democratic Republic of Congo

- (60) In spite of its efforts, the civil aviation authorities of the Democratic Republic of Congo ('DRC') have persistent difficulties to implement and enforce the relevant safety standards, as demonstrated by the ICAO-USOAP — Audit Summary Report of the Directorate of Civil Aviation of the Democratic Republic of Congo (Kinshasa, 11-18 June 2001). In particular, no system for the certification of Air Operators is currently in place.
- (61) The authorities of the DRC with responsibility for regulatory oversight have consequently shown a lack of ability to carry out adequate safety oversight.
- (62) An operating ban is imposed on Central Air Express because of substantiated deficiencies related to international safety standards, and its lack of cooperation with a Member State.
- (63) Belgium⁽¹⁶⁾ and Hewa Bora Airways (HBA) have provided information showing that, in the case of HBA, the deficiencies observed in the past by the Belgian authorities have been significantly corrected with respect to certain aircraft. Belgium has further informed the Commission that it intends to conduct systematic ramp inspections of HBA. In view of this, it is considered that this air carrier should be allowed to continue its current operations.
- (64) Therefore, on the basis of the common criteria, it is assessed that all air carriers certified in the Democratic Republic of Congo (RDC) should be included in Annex A with the exception of Hewa Bora Airways (HBA) which should be included in Annex B.

Air carriers from Equatorial Guinea

- (65) The authorities with responsibility for regulatory oversight of Equatorial Guinea did not fully cooperate with the civil aviation authority of the United Kingdom (UK) when concerns about the safety of the operation of carriers licensed or certified in that state were raised. The UK wrote to the Director General of Civil Aviation in Equatorial Guinea on 27 March 2002⁽¹⁷⁾ seeking clarification on the following points:
- a significant increase in the number of aircraft registered in Equatorial Guinea and suggestions that the Aircraft Registration Bureau (ARB) or a similar organisation might be managing the register,

- the fact that a number of operators holding an Air Operator Certificate (AOC) issued by Equatorial Guinea did not have their principal place of business in Equatorial Guinea.

The letter also advised the Director General of Civil Aviation that the UK would not be in a position to allow further commercial operations to its territory by Equatorial Guinea airlines until the UK authorities were satisfied that these airlines were receiving satisfactory oversight. Equatorial Guinea did not reply to this letter.

- (66) The authorities with responsibility for regulatory oversight of Equatorial Guinea have shown an insufficient ability to implement and enforce the relevant safety standards, in particular as demonstrated by audits and related corrective action plans established under ICAO's Universal Safety Oversight Audit Programme. Such a USOAP audit of Equatorial Guinea took place in May 2001 whereby the audit report⁽¹⁸⁾ indicated that the Civil Aviation Authority did not, at the time of the audit, have the ability to provide adequate oversight to its airlines and ensure that they operate in accordance with ICAO standards. These audit findings namely included:
- lack of an organisation capable of undertaking safety oversight activities, in particular a lack of specialised staff in the areas of licensing, aircraft operations or airworthiness,
 - inability to identify the number of aircraft on the register or the number of valid certificates of airworthiness issued,

- failure to establish a structured system for the certification and supervision of air operators,
- failure to adopt aeronautical operations regulations,
- failure to perform surveillance on authorised operators,
- failure to implement a system for performing the basic duties of an airworthiness inspection agency.

⁽¹⁶⁾ SAFA ramp inspection performed by the Authorities of Belgium on March 11, 2006 in Brussels.

⁽¹⁷⁾ Correspondence between the UK Department of Transport and DGCA-Equatorial Guinea on the 'Aircraft Register of Equatorial Guinea' (27 March 2002).

⁽¹⁸⁾ ICAO-USOAP Summary Report — Audit of the Directorate of Civil Aviation of the Republic of Equatorial Guinea (Malabo, 14-18 May 2001).

Furthermore the Directorate General of Civil Aviation of Equatorial Guinea has never up to date submitted to ICAO an action plan to address these audit findings ⁽¹⁹⁾ and consequently an audit follow up mission has not taken place.

- (67) The authorities with responsibility for regulatory oversight of Equatorial Guinea have shown an insufficient ability to implement and enforce the relevant safety standards in accordance with their obligations under the Chicago Convention. In fact, some holders of Air Operator Certificate (AOC) issued by Equatorial Guinea do not have their principal place of business in Equatorial Guinea, contrary to the requirements of Annex 6 to the Chicago Convention ⁽²⁰⁾.
- (68) The authorities of Equatorial Guinea with responsibility for regulatory oversight of the following air carriers have shown a lack of ability to carry out adequate safety oversight on these carriers: Air Consul SA, Avirex Guinée Equatoriale, COAGE — Compagnie Aeree de Guinée Equatorial, Ecuato Guineana de Aviación, Ecuatorial Cargo, GEASA — Guinea Ecuatorial Airlines SA, GETRA — Guinea Ecuatorial de Transportes Aéreos, Jetline Inc., King Transavia Cargo, Prompt Air GE SA, UTAGE — Unión de Transporte Aéreo de Guinea Ecuatorial.
- (69) Therefore, on the basis of the common criteria, it is assessed that all air carriers certified in Equatorial Guinea should be subject to an operating ban and included in Annex A.

Air carriers from Liberia

- (70) There is verified evidence of serious safety deficiencies on the part of International Air Services certified in Liberia. These deficiencies have been identified by France, during ramp inspections performed under the SAFA programme ⁽²¹⁾.
- (71) The authorities with responsibility for regulatory oversight of Liberia did not fully cooperate with the civil aviation authority of the United Kingdom (UK) when informed of serious safety deficiencies identified during a ramp inspection of a Liberian-registered aircraft carried out by the UK civil aviation authority on 5 March 1996 ⁽²²⁾. Concerns about the safety of the

operation of carriers licensed or certified in Liberia were promptly raised when on 12 March 1996 the Liberian DCA was advised by the UK civil aviation authority that all requests for permits for Liberian registered aircraft to operate commercial services to the UK would be refused until the Liberian authorities could demonstrate the existence of an effective regulatory system to ensure the airworthiness of aircraft on the Liberian register. No response was ever received from the Liberian authorities. Likewise, the Liberian authorities did not fully cooperate with the civil aviation authority of France by declining to reply when the latter Member State raised concerns about the safety of the operation of a carrier licensed or certified in Liberia.

- (72) The authorities with responsibility for regulatory oversight of Liberia have shown an insufficient ability to implement and enforce the relevant safety standards. The Government of Liberia itself admitted in 1996 ⁽²³⁾ that it was unable to maintain regulatory control over Liberian registered aircraft because of the civil conflict. While the Comprehensive Peace Agreement was signed in 2003 and the UN and the National Transitional Government of Liberia are slowly putting in place measures to improve security, it is unlikely that the Government's ability to regulate its register has improved since 1996. ICAO has not yet carried out a USOAP audit of Liberia because of the security situation.
- (73) The authorities of Liberia with responsibility for regulatory oversight of the following air carriers have shown a lack of ability to carry out adequate safety oversight on these carriers: International Air Services Inc., Satgur Air Transport Corp., Weasua Air Transport Co. Ltd.

- (74) Therefore, on the basis of the common criteria, it is assessed that all air carriers certified in Liberia should be subject to an operating ban and included in Annex A.

Air carriers from Sierra Leone

- (75) There is verified evidence of serious safety deficiencies on the part of Air Universal Ltd. These deficiencies have been identified by Sweden during a ramp inspection performed under the SAFA programme ⁽²⁴⁾.

⁽¹⁹⁾ ICAO Council working paper C-WP/12471.

⁽²⁰⁾ Correspondence between the UK Department of Transport and ECAC on the 'Issue of Aircraft Documentation by Non-Approved Companies' (6 August 2003).

⁽²¹⁾ DGAC/F-2004 Nos 315, 316

⁽²²⁾ UK-CAA Regulation Group — Aircraft Survey Report, 5 March 1996 (Office code: 223).

⁽²³⁾ Correspondence between the Transport Ministry of Liberia and UK DGCA on the 'inability, due to the Liberian Civil conflict, to maintain regulatory control over Liberian registered aircraft', 28 August 1996.

⁽²⁴⁾ LFV-S-04-0037

- (76) The authorities with responsibility for regulatory oversight of Sierra Leone did not fully cooperate with the civil aviation authority of Sweden when concerns about the safety of the operation of Air Universal Ltd. certified in that state were raised, as demonstrated by the lack of response to the correspondence from this Member State.
- (77) The operating authorisation or technical permission of any carrier under the oversight of Sierra Leone has previously been refused or revoked by the United Kingdom.
- (78) While the Air Operator's Certificate of Air Universal Ltd was issued by Sierra Leone, evidence shows that the airline has currently its principal place of business in Jordan, contrary to the requirements of Annex 6 to the Chicago Convention.
- (79) The authorities of Sierra Leone with responsibility for regulatory oversight of Air Universal Ltd have not exercised an adequate oversight on this carrier in accordance with their obligations under the Chicago Convention.
- (80) Therefore, on the basis of the common criteria, it is assessed that Air Universal Ltd. does not meet the relevant safety standards.
- (81) There is verified evidence of serious safety deficiencies on the part of air carriers certified in Sierra Leone. These deficiencies have been identified by three Member States, the UK, Malta and Sweden, during ramp inspections performed under the SAFA programme ⁽²⁵⁾.
- (82) The authorities with responsibility for regulatory oversight of Sierra Leone did not fully cooperate with the civil aviation authorities of Sweden and of Malta when concerns about the safety of the operation of Air Universal Ltd certified in that state were raised as demonstrated by the lack of response to the correspondence from this Member State.
- (83) The authorities with responsibility for regulatory oversight of Sierra Leone have shown an insufficient ability to implement and enforce the relevant safety standards in accordance with their obligations under the Chicago Convention. Sierra Leone lacks an appropriate system in place to oversee its operators or the aircraft, and does not have the technical capability or resources to undertake such a task. Some holders of Air Operator Certificate (AOC) issued by Sierra Leone did not have their principal place of business in Sierra Leone, contrary to the requirements of Annex 6 to the Chicago Convention.
- (84) The corrective action plan presented by Sierra Leone is considered inappropriate (or insufficient) to correct the identified serious safety deficiencies. The Civil Aviation Authority of Sierra Leone has contracted a private company, International Aviation Surveyors (IAS), to conduct certain oversight activities on its behalf. However, the arrangements entered into between the two parties in a Memorandum of Understanding ⁽²⁶⁾ do not provide an adequate oversight system for aircraft on the Sierra Leone register. In particular:
- The aircraft/airlines covered by the MoU were not based in Sierra Leone and the IAS personnel were based in neither Sierra Leone nor the country in which the airlines were based.
 - IAS did not appear to have any enforcement powers.
 - IAS assumed responsibility for routine inspections of the airlines concerned but the level of inspection activity was not specified.
 - The MoU gave IAS a contractual relationship with the airlines concerned.
 - The MoU did not appear to adequately address the supervision of flight operations.

⁽²⁵⁾ CAA-UK-2003-103
CAA-UK-2003-111
CAA-UK-2003-136
CAA-UK-2003-198
CAA-MA-2003-4
LFV-S-2004-37

⁽²⁶⁾ Memorandum of Understanding between DCA Sierra Leone and 'FAST International Aviation Surveyors on the inspection, surveillance and provision of regulatory services to extra-regional air operators' (IAS/SL DCA MOA 201101).

(85) The authorities of Sierra Leone with responsibility for regulatory oversight of the following air carriers have shown a lack of ability to carry out adequate safety oversight on these carriers: Aerolift Co. Ltd, Afrik Air Links, Air Leone Ltd, Air Rum Ltd, Air Salone Ltd, Air Universal Ltd, Destiny Air Services Ltd, First Line Air (SL) Ltd, Heavylift Cargo, Paramount Airlines Ltd, Star Air Ltd, Teebah Airways, West Coast Airways Ltd.

(86) Therefore, on the basis of the common criteria, it is assessed that all air carriers certified in Sierra Leone should be subject to an operating ban and included in Annex A.

Air carriers from Swaziland

(87) There is verified evidence of serious safety deficiencies on the part of Jet Africa, an air carrier certified in Swaziland. These deficiencies have been identified by the Netherlands during a ramp inspection performed under the SAFA programme ⁽²⁷⁾.

(88) Jet Africa did not respond adequately and timely to an enquiry by the civil aviation authority of the Netherlands regarding the safety aspect of its operation showing a lack of transparency or communication as demonstrated by the absence of reply to the correspondence sent by this Member State.

(89) There is no evidence of a corrective action plan presented by Jet Africa to correct the serious safety deficiencies in response to the Netherlands request.

(90) The authorities with responsibility for regulatory oversight of Swaziland have shown an insufficient ability to implement and enforce the relevant safety standards, in particular as demonstrated by a USOAP audit which took place in March 1999. The audit report ⁽²⁸⁾ concluded that at the time of the audit, Swaziland was not capable of satisfactorily undertaking safety oversight related responsibilities in respect of its airlines and aircraft register. It also noted that it was not possible to determine the actual number of aircraft on the register as it was not properly maintained. Neither was it possible for the audit team to determine the actual number of personnel licences issued by Swaziland that were still valid, as records were not being maintained. A USOAP audit follow up mission has not taken place because Swaziland has not provided ICAO with information on the progress it has made in implementing the action plan to address the audit findings.

(91) The authorities of Swaziland with responsibility for regulatory oversight of the following air carriers have shown a lack of ability to carry out adequate safety oversight on these carriers: Aero Africa (Pty) Ltd, African International Airways (Pty) Ltd, Airlink Swaziland Ltd, Northeast Airlines (Pty) Ltd, Scan Air Charter Ltd, Swazi Express Airways, Jet Africa.

(92) Therefore, on the basis of the common criteria, it is assessed that all air carriers certified in Swaziland should be subject to an operating ban and included in Annex A.

General considerations concerning the carriers included in the list

(93) Since it would not compromise safety, all air carriers mentioned above can be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

(94) The Community list has to be updated regularly and as soon as it is required, in order to take into account the evolution of safety in relation to the air carriers concerned and on the basis of further evidence of remedial actions undertaken.

Air carriers not included in the list

(95) In light of the evidence provided by Tuninter and the authorities of Tunisia with responsibility for its regulatory oversight and further confirmation by Italy, it is considered that there is substantiated evidence that the safety deficiencies observed during two on-site inspections by the Italian authorities have been corrected by this carrier.

(96) On the basis of the information provided by Germany, it is considered that there is no longer substantiated evidence of a lack of ability or willingness of the authorities of Tajikistan with responsibility for regulatory oversight of air carriers certified in this State.

(97) On the basis of the information provided to Belgium showing that the deficiencies which led to a national ban on I.C.T.T.P.W. and South Airlines have been fully remedied, it is considered that there is no substantiated evidence of persisting serious safety deficiencies on the part of these air carriers.

⁽²⁷⁾ CAA/NL-2004-98

⁽²⁸⁾ ICAO-USOAP Summary Report — Audit of the Directorate of Civil Aviation of Swaziland, (Mbabane, 9-12 March 1999).

- (98) On the basis of the information provided by Germany showing that the specific aircraft which led to the imposition of a operational restriction on Atlant Soyuz is no more part of its fleet, it is considered that there is no substantiated evidence of persisting serious safety deficiencies on the part of this air carrier.
- (99) On the basis of the information available at this stage, it is considered that there is no substantiated evidence of non-corrected serious safety deficiencies on the part of Air Mauritanie. Nevertheless, the ability of the authorities of Mauritania with responsibility for regulatory oversight of this air carrier needs to be further assessed. To this end, an evaluation of the authorities of Mauritania with responsibility for regulatory oversight of this air carrier and the undertakings under its responsibility should be conducted within 2 months by the Commission with the assistance of the authorities of any interested Member States.
- (100) The measures provided for in this Regulation are in accordance with the opinion of the Air Safety Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of the basic Regulation.

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

Done at Brussels, 22 March 2006.

Article 2

Operating bans

1. The air carriers listed in Annex A are subject to a ban within the Community for all their operations.
2. The air carriers listed in Annex B are subject to operational restrictions within the Community. The operational restrictions consist of a prohibition on the use of the specific aircraft or specific aircraft types mentioned in Annex B.

Article 3

Enforcement

Member States shall inform the Commission of any measures taken under Articles 3(1) of the basic Regulation to enforce, within their territory, the operating bans included in the Community list in respect of the air carriers that are the subject of those bans.

Article 4

Entry into force

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

For the Commission

Jacques BARROT

Vice-President

ANNEX A

LIST OF AIR CARRIERS OF WHICH ALL OPERATIONS ARE SUBJECT TO A BAN WITHIN THE COMMUNITY ⁽¹⁾

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
Air Koryo	Unknown	KOR	Democratic People Republic of Korea (DPRK)
Air Service Comores	Unknown	Unknown	Comores
Ariana Afghan Airlines ⁽¹⁾	009	AFG	Afghanistan
BGB Air	AK-0194-04	Unknown	Kazakhstan
GST Aero Air Company	AK 0203-04	BMK	Kazakhstan
Phoenix Aviation	02	PHG	Kyrgyzstan
Phuket Airlines	07/2544	VAP	Thailand
Reem Air	07	REK	Kyrgyzstan
Silverback Cargo Freighters	Unknown	VRB	Rwanda
All air carriers certified by the authorities with responsibility for regulatory oversight of Democratic Republic of Congo (RDC), including,	Unknown	Unknown	Democratic Republic of Congo (RDC)
Africa One	409/CAB/MIN/TC/017/2005	CFR	Democratic Republic of Congo (RDC)
AFRICAN COMPANY AIRLINES	409/CAB/MIN/TC/017/2005	Unknown	Democratic Republic of Congo (RDC)
AIGLE AVIATION	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
AIR BOYOMA	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
AIR KASAI	409/CAB/MIN/TC/010/2005	Unknown	Democratic Republic of Congo (RDC)
AIR NAVETTE	409/CAB/MIN/TC/015/2005	Unknown	Democratic Republic of Congo (RDC)
AIR TROPQUES s.p.r.l.	409/CAB/MIN/TC/007/2005	Unknown	Democratic Republic of Congo (RDC)
ATO — Air Transport Office	Unknown	Unknown	Democratic Republic of Congo (RDC)
BLUE AIRLINES	409/CAB/MIN/TC/038/2005	BUL	Democratic Republic of Congo (RDC)
BUSINESS AVIATION s.p.r.l.	409/CAB/MIN/TC/012/2005	Unknown	Democratic Republic of Congo (RDC)

⁽¹⁾ Air carriers listed in Annex A could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
BUTEMBO AIRLINES	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
CAA — Compagnie Africaine d'Aviation	409/CAB/MIN/TC/016/2005	Unknown	Democratic Republic of Congo (RDC)
CARGO BULL AVIATION	409/CAB/MIN/TC/032/2005	Unknown	Democratic Republic of Congo (RDC)
CENTRAL AIR EXPRESS	409/CAB/MIN/TC/011/2005	CAX	Democratic Republic of Congo (RDC)
CETRACA AVIATION SERVICE	409/CAB/MIN/TC/037/2005	Unknown	Democratic Republic of Congo (RDC)
CHC STELAVIA	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
COMAIR	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
COMPAGNIE AFRICAINE D'AVIATION	409/CAB/MIN/TC/016/2005	Unknown	Democratic Republic of Congo (RDC)
C0-ZA AIRWAYS	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
DAS AIRLINES	Unknown	RKC	Democratic Republic of Congo (RDC)
DOREN AIRCARGO	409/CAB/MIN/TC/0168/2005	Unknown	Democratic Republic of Congo (RDC)
ENTERPRISE WORLD AIRWAYS	409/CAB/MIN/TC/031/2005	EWS	Democratic Republic of Congo (RDC)
FILAIR	409/CAB/MIN/TC/014/2005	Unknown	Democratic Republic of Congo (RDC)
FREE AIRLINES	409/CAB/MIN/TC/MNL/CM/014/2005	Unknown	Democratic Republic of Congo (RDC)
GALAXY CORPORATION	409/CAB/MIN/TC/0002/MNL/CM/014/2005	Unknown	Democratic Republic of Congo (RDC)
GR AVIATION	409/CAB/MIN/TC/0403/TW/TK/2005	Unknown	Democratic Republic of Congo (RDC)
GLOBAL AIRWAYS	409/CAB/MIN/TC/029/2005	BSP	Democratic Republic of Congo (RDC)
GOMA EXPRESS	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
GREAT LAKE BUSINESS COMPANY	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
I.T.A.B. — International Trans Air Business	409/CAB/MIN/TC/0022/2005	Unknown	Democratic Republic of Congo (RDC)

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
JETAIR — Jet Aero Services, s.p.r.l.	Unknown	Unknown	Democratic Republic of Congo (RDC)
KINSHASA AIRWAYS, s.p.r.l	Unknown	KNS	Democratic Republic of Congo (RDC)
KIVU AIR	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
LAC — Lignes Aériennes Congolaises	Unknown	LCG	Democratic Republic of Congo (RDC)
MALU AVIATION	409/CAB/MIN/TC/013/2005	Unknown	Democratic Republic of Congo (RDC)
Malila Airlift	409/CAB/MIN/TC/008/2005	Unknown	Democratic Republic of Congo (RDC)
MANGO MAT	Ministerial signature	Unknown	Democratic Republic of Congo (RDC)
RWABIKA 'BUSHI EXPRESS'	Unknown	Unknown	Democratic Republic of Congo (RDC)
SAFARI LOGISTICS	409/CAB/MIN/TC/0760/V/KK//2005	Unknown	Democratic Republic of Congo (RDC)
SERVICES AIR	409/CAB/MIN/TC/034/2005	Unknown	Democratic Republic of Congo (RDC)
TEMBO AIR SERVICES	409/CAB/VC-MIN/TC/0405/2006	Unknown	Democratic Republic of Congo (RDC)
THOM'S AIRWAYS	409/CAB/MIN/TC/0033/2005	Unknown	Democratic Republic of Congo (RDC)
TMK AIR COMMUTER	409/CAB/MIN/TC/020/2005	Unknown	Democratic Republic of Congo (RDC)
TRACEP	Unknown	Unknown	Democratic Republic of Congo (RDC)
TRANS AIR CARGO SERVICES	409/CAB/MIN/TC/035/2005	Unknown	Democratic Republic of Congo (RDC)
TRANSPORTS AERIENNES CONGOLAIS (TRACO)	409/CAB/MIN/TC/034/2005	Unknown	Democratic Republic of Congo (RDC)
UHURU AIRLINES	409/CAB/MIN/TC/039/2005	Unknown	Democratic Republic of Congo (RDC)
VIRUNGA AIR CHARTER	409/CAB/MIN/TC/018/2005	Unknown	Democratic Republic of Congo (RDC)
WALTAIR AVIATION	409/CAB/MIN/TC/036/2005	Unknown	Democratic Republic of Congo (RDC)
WIMBI DIRI AIRWAYS	409/CAB/MIN/TC/005/2005	Unknown	Democratic Republic of Congo (RDC)

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
All air carriers certified by the authorities with responsibility for regulatory oversight of Equatorial Guinea, including	Unknown	Unknown	Equatorial Guinea
Air Consul SA	Unknown	RCS	Equatorial Guinea
Avirex Guinee Equatoriale	Unknown	AXG	Equatorial Guinea
COAGE — Compagnie Aeree de Guinee Equatorial	Unknown	COG	Equatorial Guinea
Ecuato Guineana de Aviacion	Unknown	ECV	Equatorial Guinea
Ecuatorial Cargo	Unknown	EQC	Equatorial Guinea
GEASA — Guinea Ecuatorial Airlines SA	Unknown	GEA	Equatorial Guinea
GETRA — Guinea Ecuatorial de Transportes Aereos	Unknown	GET	Equatorial Guinea
Jetline Inc.	Unknown	JLE	Equatorial Guinea
KNG Transavia Cargo	Unknown	VCG	Equatorial Guinea
Prompt Air GE SA	Unknown	POM	Equatorial Guinea
UTAGE — Union de Transport Aereo de Guinea Ecuatorial	Unknown	UTG	Equatorial Guinea
All air carriers certified by the authorities with responsibility for regulatory oversight of Liberia, including	Unknown	Unknown	Liberia
International Air Services	Unknown	IAX	Liberia
SATGUR AIR TRANSPORT, Corp.	Unknown	TGR	Liberia
WEASUA AIR TRANSPORT, Co. Ltd	Unknown	WTC	Liberia
All air carriers certified by the authorities with responsibility for regulatory oversight of Sierra Leone, including	Unknown	Unknown	Sierra Leone
AEROLIFT, Co. Ltd	Unknown	LFT	Sierra Leone
AFRIK AIR LINKS	Unknown	AFK	Sierra Leone
AIR LEONE, Ltd	Unknown	RLL	Sierra Leone
AIR RUM, Ltd	Unknown	RUM	Sierra Leone
AIR SALONE, Ltd	Unknown	RNE	Sierra Leone

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number or Operating Licence Number	ICAO airline designation number	State of the Operator
AIR UNIVERSAL, Ltd	00007	UVS	Sierra Leone
DESTINY AIR SERVICES, Ltd	Unknown	DTY	Sierra Leone
FIRST LINE AIR (SL), Ltd	Unknown	FIR	Sierra Leone
HEAVYLIFT CARGO	Unknown	Unknown	Sierra Leone
PARAMOUNT AIRLINES, Ltd	Unknown	PRR	Sierra Leone
STAR AIR, Ltd	Unknown	SIM	Sierra Leone
TEEBAH AIRWAYS	Unknown	Unknown	Sierra Leone
WEST COAST AIRWAYS Ltd	Unknown	WCA	Sierra Leone
All air carriers certified by the authorities with responsibility for regulatory oversight of Swaziland, including	Unknown	Unknown	Swaziland
AFRICAN INTERNATIONAL AIRWAYS, (Pty) Ltd	Unknown	AIA	Swaziland
AIRLINK SWAZILAND, Ltd	Unknown	SZL	Swaziland
Jet Africa	Unknown	OSW	Swaziland
NORTHEAST AIRLINES, (Pty) Ltd	Unknown	NEY	Swaziland
SCAN AIR CHARTER, Ltd	Unknown	Unknown	Swaziland
SWAZI EXPRESS AIRWAYS	Unknown	SWX	Swaziland

(¹) The operating ban on Ariana Afghan Airlines applies to all aircraft operated by this air carrier except the following one: A310 registration number F-GYYY.

ANNEX B

**LIST OF AIR CARRIERS OF WHICH OPERATIONS ARE SUBJECT TO OPERATIONAL RESTRICTIONS
WITHIN THE COMMUNITY ⁽¹⁾**

Name of the legal entity of the air carrier as indicated on its AOC (and its trading name, if different)	Air Operator Certificate (AOC) Number	ICAO airline designation number	State of the Operator	Aircraft type	Registration number(s) and, when available, construction serial number(s)	State of registry
Air Bangladesh	17	BGD	Bangladesh	B747-269B	S2-ADT	Bangladesh
Buraq Air	002/01	BRQ	Libya	IL-76	— UN-76007 (cons. No 0003426765) — 5 ^a -DNA (cons. No 0023439140) — 5A-DMQ (cons. No 73479392) — UN-76008 (cons. No 0033448404)	Lybia
Buraq Air	002/01	BRQ	Libya	Let L-410	5A-DMT (cons. No 871928)	Lybia
HBA ⁽¹⁾	416/dac/tc/sec/087/2005	ALX	Democratic Republic of Congo (RDC)	All fleet with the exception of: L-101	All fleet with the exception of: 9Q-CHC (cons. No 193H-1206)	Democratic Republic of Congo (RDC)

⁽¹⁾ Hewa Bora Airways is only allowed to use the specific aircraft mentioned for its current operations within the European Community.

⁽¹⁾ Air carriers listed in Annex B could be permitted to exercise traffic rights by using wet-leased aircraft of an air carrier which is not subject to an operating ban, provided that the relevant safety standards are complied with.

COMMISSION REGULATION (EC) No 475/2006**of 22 March 2006****on granting of import licences for cane sugar for the purposes of certain tariff quotas and preferential agreements**

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⁾,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations ⁽²⁾,

Having regard to Commission Regulation (EC) No 1159/2003 of 30 June 2003 laying down detailed rules of application for the 2003/04, 2004/05 and 2005/06 marketing years for the import of cane sugar under certain tariff quotas and preferential agreements and amending Regulations (EC) No 1464/95 and (EC) No 779/96 ⁽³⁾, and in particular Article 5(3) thereof,

Whereas:

- (1) Article 9 of Regulation (EC) No 1159/2003 stipulates how the delivery obligations at zero duty of products of CN code 1701, expressed in white sugar equivalent, are to be determined for imports originating in signatory countries to the ACP Protocol and the Agreement with India.
- (2) Article 16 of Regulation (EC) No 1159/2003 stipulates how the zero duty tariff quotas for products of CN code 1701 11 10, expressed in white sugar equivalent, are to be determined for imports originating in signatory

countries to the ACP Protocol and the Agreement with India.

- (3) Article 22 of Regulation (EC) No 1159/2003 opens tariff quotas at a duty of EUR 98 per tonne for products of CN code 1701 11 10 for imports originating in Brazil, Cuba and other third countries.
- (4) In the week of 13 to 17 March 2006 applications were presented to the competent authorities in line with Article 5(1) of Regulation (EC) No 1159/2003 for import licences for a total quantity exceeding a country's delivery obligation quantity of ACP-India preferential sugar determined pursuant to Article 9 of that Regulation.
- (5) In these circumstances the Commission must set reduction coefficients to be used so that licences are issued for quantities scaled down in proportion to the total available and must indicate that the limit in question has been reached,

HAS ADOPTED THIS REGULATION:

Article 1

In the case of import licence applications presented from 13 to 17 March 2006 in line with Article 5(1) of Regulation (EC) No 1159/2003 licences shall be issued for the quantities indicated in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 March 2006.

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

Done at Brussels, 22 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 987/2005 (OJ L 167, 29.6.2005, p. 12).

⁽²⁾ OJ L 146, 20.6.1996, p. 1.

⁽³⁾ OJ L 162, 1.7.2003, p. 25. Regulation as last amended by Regulation (EC) No 568/2005 (OJ L 97, 15.4.2005, p. 9).

ANNEX

ACP-INDIA preferential sugar**Title II of Regulation (EC) No 1159/2003****2005/06 marketing year**

Country	Week of 13.3.2006-17.3.2006: percentage of requested quantity to be granted	Limit
Barbados	100	reached
Belize	100	
Congo	100	
Fiji	100	
Guyana	100	
India	100	
Côte d'Ivoire	100	
Jamaica	100	
Kenya	100	
Madagascar	100	
Malawi	59,6537	
Mauritius	100	
Mozambique	100	
Saint Kitts and Nevis	100	
Swaziland	0	
Tanzania	100	reached
Trinidad and Tobago	100	
Zambia	100	
Zimbabwe	100	

Special preferential sugar**Title III of Regulation (EC) No 1159/2003****2005/06 marketing year**

Country	Week of 13.3.2006-17.3.2006: percentage of requested quantity to be granted	Limit
India	0	reached
ACP	100	

CXL concessions sugar**Title IV of Regulation (EC) No 1159/2003****2005/06 marketing year**

Country	Week of 13.3.2006-17.3.2006: percentage of requested quantity to be granted	Limit
Brazil	0	reached
Cuba	100	
Other third countries	0	reached

COMMISSION REGULATION (EC) No 476/2006**of 21 March 2006****establishing unit values for the determination of the customs value of certain perishable goods**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾,

Having regard to Commission Regulation (EEC) No 2454/93 ⁽²⁾ laying down provisions for the implementation of Regulation (EEC) No 2913/92, and in particular Article 173(1) thereof,

Whereas:

- (1) Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation.

- (2) The result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173(2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173(1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 March 2006.

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

Done at Brussels, 21 March 2006.

For the Commission

Günter VERHEUGEN

Vice-President

⁽¹⁾ OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 648/2005 (OJ L 117, 4.5.2005, p. 13).

⁽²⁾ OJ L 253, 11.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 883/2005 (OJ L 148, 11.6.2005, p. 5).

ANNEX

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
1.10	New potatoes 0701 90 50	40,08	23,06	1 144,09	299,08	627,17	10 387,56
		138,40	27,90	17,21	153,79	9 601,13	1 496,31
		374,36	27,84				
1.30	Onions (other than seed) 0703 10 19	45,11	25,95	1 287,57	336,59	705,82	11 690,26
		155,76	31,40	19,37	173,07	10 805,20	1 683,96
		421,31	31,33				
1.40	Garlic 0703 20 00	176,06	101,29	5 025,18	1 313,66	2 754,69	45 625,04
		607,89	122,55	75,58	675,48	42 170,81	6 572,19
		1 644,30	122,27				
1.50	Leeks ex 0703 90 00	75,26	43,30	2 148,16	561,56	1 177,57	19 503,76
		259,86	52,39	32,31	288,75	18 027,15	2 809,47
		702,90	52,27				
1.60	Cauliflowers 0704 10 00	—	—	—	—	—	—
1.80	White cabbages and red cabbages 0704 90 10	46,72	26,88	1 333,53	348,61	731,01	12 107,49
		161,31	32,52	20,06	179,25	11 190,84	1 744,06
		436,35	32,45				
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. convar. <i>botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	—	—	—	—	—	—
		—	—	—	—	—	—
		—	—				
1.100	Chinese cabbage ex 0704 90 90	97,14	55,88	2 772,67	724,82	1 519,91	25 173,83
		335,40	67,62	41,70	372,70	23 267,94	3 626,24
		907,25	67,46				
1.110	Cabbage lettuce (head lettuce) 0705 11 00	—	—	—	—	—	—
1.130	Carrots ex 0706 10 00	40,79	23,47	1 164,27	304,36	638,22	10 570,73
		140,84	28,39	17,51	156,50	9 770,43	1 522,69
		380,96	28,33				
1.140	Radishes ex 0706 90 90	75,69	43,54	2 160,42	564,77	1 184,29	19 615,06
		261,34	52,69	32,49	290,40	18 130,03	2 825,51
		706,91	52,57				
1.160	Peas (<i>Pisum sativum</i>) 0708 10 00	335,80	193,19	9 584,86	2 505,64	5 254,20	87 023,68
		1 159,47	233,75	144,16	1 288,38	80 435,20	12 535,57
		3 136,28	233,22				

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
1.170	Beans:						
1.170.1	— Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 00	183,01 631,91 1 709,29	105,29 127,40 127,10	5 223,79 78,57	1 365,58 702,17	2 863,56 43 837,56	47 428,31 6 831,95
1.170.2	— Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>compressus</i> Savi) ex 0708 20 00	202,00 697,47 1 886,60	116,21 140,61 140,29	5 765,69 86,72	1 507,24 775,01	3 160,61 48 385,06	52 348,30 7 540,66
1.180	Broad beans ex 0708 90 00	—	—	—	—	—	—
1.190	Globe artichokes 0709 10 00	—	—	—	—	—	—
1.200	Asparagus:						
1.200.1	— green ex 0709 20 00	283,28 978,10 2 645,69	162,97 197,19 196,74	8 085,57 121,61	2 113,70 1 086,85	4 432,32 67 853,29	73 411,18 10 574,72
1.200.2	— other ex 0709 20 00	498,42 1 720,95 4 655,06	286,74 346,95 346,15	14 226,44 213,97	3 719,02 1 912,29	7 798,60 119 386,85	129 165,88 18 606,07
1.210	Aubergines (eggplants) 0709 30 00	149,51 516,22 1 396,34	86,01 104,07 103,83	4 267,38 64,18	1 115,56 573,61	2 339,28 35 811,46	38 744,79 5 581,10
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	64,31 222,05 600,63	37,00 44,77 44,66	1 835,59 27,61	479,85 246,74	1 006,23 15 404,08	16 665,83 2 400,68
1.230	Chantarelles 0709 59 10	334,34 1 154,41 3 122,60	192,35 232,73 232,20	9 543,07 143,53	2 494,71 1 282,76	5 231,28 80 084,46	86 644,21 12 480,91
1.240	Sweet peppers 0709 60 10	177,10 611,48 1 654,01	101,88 123,28 122,99	5 054,87 76,03	1 321,43 679,47	2 770,96 42 420,00	45 894,64 6 611,02
1.250	Fennel 0709 90 50	—	—	—	—	—	—
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	117,16 404,53 1 094,22	67,40 81,55 81,37	3 344,09 50,30	874,20 449,51	1 833,15 28 063,24	30 361,91 4 373,57
2.10	Chestnuts (<i>Castanea</i> spp.) fresh ex 0802 40 00	—	—	—	—	—	—
2.30	Pineapples, fresh ex 0804 30 00	61,76 213,26 576,85	35,53 42,99 42,90	1 762,93 26,52	460,86 236,97	966,40 14 794,31	16 006,11 2 305,65

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
2.40	Avocados, fresh ex 0804 40 00	165,20 570,41 1 542,93	95,04 115,00 114,73	4 715,40 70,92	1 232,68 633,84	2 584,87 39 571,19	42 812,49 6 167,05
2.50	Guavas and mangoes, fresh ex 0804 50	—	—	—	—	—	—
2.60	Sweet oranges, fresh:						
2.60.1	— Sanguines and semi-sanguines ex 0805 10 20	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamoutis, ovalis, trovita and hamlins ex 0805 10 20	— — —	— — —	— — —	— — —	— — —	— — —
2.60.3	— Others ex 0805 10 20	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsumas), fresh; clementines, wilkins and similar citrus hybrids, fresh:						
2.70.1	— Clementines ex 0805 20 10	141,64 489,06 1 322,87	81,49 98,60 98,37	4 042,87 60,81	1 056,87 543,44	2 216,21 33 927,39	36 706,39 5 287,48
2.70.2	— Monreales and satsumas ex 0805 20 30	130,26 449,76 1 216,58	74,94 90,67 90,47	3 718,01 55,92	971,95 499,77	2 038,13 31 201,18	33 756,88 4 862,61
2.70.3	— Mandarines and wilkins ex 0805 20 50	75,41 260,36 704,27	43,38 52,49 52,37	2 152,34 32,37	562,66 289,31	1 179,86 18 062,19	19 541,67 2 814,94
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	54,22 187,19 506,35	31,19 37,74 37,65	1 547,46 23,27	404,53 208,01	848,28 12 986,17	14 049,87 2 023,85
2.85	Limes (<i>Citrus aurantifolia</i> , <i>Citrus latifolia</i>), fresh 0805 50 90	79,86 275,75 745,90	45,95 55,59 55,47	2 279,56 34,29	595,91 306,41	1 249,60 19 129,85	20 696,78 2 981,33
2.90	Grapefruit, fresh:						
2.90.1	— white ex 0805 40 00	78,85 272,26 736,44	45,36 54,89 54,76	2 250,65 33,85	588,36 302,53	1 233,75 18 887,20	20 434,26 2 943,51
2.90.2	— pink ex 0805 40 00	80,62 278,38 753,00	46,38 56,12 55,99	2 301,26 34,61	601,59 309,33	1 261,49 19 311,91	20 893,76 3 009,70

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
2.100	Table grapes 0806 10 10	154,83 534,60 1 446,06	89,07 107,78 107,53	4 419,35 66,47	1 155,29 594,04	2 422,58 37 086,77	40 124,56 5 779,86
2.110	Water melons 0807 11 00	51,85 179,03 484,26	29,83 36,09 36,01	1 479,95 22,26	386,88 198,93	811,28 12 419,63	13 436,93 1 935,56
2.120	Melons (other than water melons):						
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onte- niente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	59,86 206,70 559,11	34,44 41,67 41,58	1 708,72 25,70	446,69 229,68	936,68 14 339,37	15 513,91 2 234,75
2.120.2	— Other ex 0807 19 00	60,83 210,04 568,14	35,00 42,34 42,25	1 736,32 26,12	453,90 233,39	951,81 14 570,99	15 764,51 2 270,84
2.140	Pears						
2.140.1	— Pears — nashi (<i>Pyrus pyrifolia</i>), Pears — Ya (<i>Pyrus bretschneideri</i>) ex 0808 20 50	— — —	— — —	— —	— —	— —	— —
2.140.2	— Other ex 0808 20 50	— — —	— — —	— —	— —	— —	— —
2.150	Apricots 0809 10 00	149,08 514,74 1 392,35	85,77 103,77 103,54	4 255,19 64,00	1 112,38 571,98	2 332,60 35 709,13	38 634,08 5 565,16
2.160	Cherries 0809 20 05 0809 20 95	137,39 474,38 1 283,17	79,04 95,64 95,42	3 921,52 58,98	1 025,15 527,12	2 149,69 32 909,03	35 604,62 5 128,77
2.170	Peaches 0809 30 90	128,47 443,58 1 199,86	73,91 89,43 89,22	3 666,92 55,15	958,59 492,90	2 010,12 30 772,42	33 293,00 4 795,79
2.180	Nectarines ex 0809 30 10	153,26 529,16 1 431,36	88,17 106,68 106,44	4 374,41 65,79	1 143,54 588,00	2 397,95 36 709,58	39 716,47 5 721,07
2.190	Plums 0809 40 05	223,25 770,82 2 085,02	128,43 155,40 155,04	6 372,08 95,84	1 665,76 856,52	3 493,03 53 473,87	57 853,94 8 333,74
2.200	Strawberries 0810 10 00	179,40 619,42 1 675,49	103,21 124,88 124,59	5 120,51 77,01	1 338,58 688,29	2 806,94 42 970,77	46 490,53 6 696,86

Code	Description	Amount of unit values per 100 kg					
	Species, varieties, CN code	EUR LTL SEK	CYP LVL GBP	CZK MTL	DKK PLN	EEK SIT	HUF SKK
2.205	Raspberries 0810 20 10	828,71 2 861,37 7 739,83	476,76 576,87 575,54	23 653,91 355,77	6 183,51 3 179,52	12 966,51 198 501,22	214 760,53 30 935,79
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	1 053,49 3 637,48 9 839,14	606,07 733,33 731,65	30 069,64 452,26	7 860,69 4 041,91	16 483,47 252 341,43	273 010,82 39 326,62
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 00	178,63 616,77 1 668,33	102,77 124,34 124,06	5 098,64 76,69	1 332,87 685,35	2 794,95 42 787,24	46 291,96 6 668,26
2.230	Pomegranates ex 0810 90 95	384,47 1 327,50 3 590,80	221,19 267,63 267,01	10 973,93 165,05	2 868,76 1 475,10	6 015,65 92 092,10	99 635,40 14 352,27
2.240	Khakis (including sharon fruit) ex 0810 90 95	181,58 626,96 1 695,89	104,46 126,40 126,11	5 182,86 77,95	1 354,88 696,67	2 841,12 43 494,07	47 056,69 6 778,41
2.250	Lychees ex 0810 90	—	—	—	—	—	—

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 June 2005

on the aid measures implemented by the Netherlands for AVR for dealing with hazardous waste

(notified under document number C(2005) 1789)

(Only the Dutch version is authentic)

(Text with EEA relevance)

(2006/237/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

service of general economic interest ('SGEI') within the meaning of Article 86(2) of the Treaty. The case was registered under No N 43/2003.

(2) The Commission requested additional information by letters of 7 February 2003 (D/50847) and 22 April 2003 (D/52566). The Netherlands submitted that information by letters of 24 March 2003 (registered as received on 28 March 2003 under No A/32279) and 19 June 2003 (registered as received on 25 June under No A/34394). Representatives of the Netherlands and of the Commission met on 21 May 2003. Two competitors submitted a joint complaint on the aid by letter of 2 May 2003 (registered as received on 5 May under No A/33155). By letter of 20 May 2003 (registered as received the same day under No A/33548), they informed the Commission that a subsidiary of one of them supported the complaint as well.

(3) By decision C(2003)1763 of 24 June 2003, the Commission initiated the Article 88(2) procedure in respect of the notified measure. The case was registered as aid measure No C 43/2003. This decision was sent to the Netherlands by letter of 26 June 2003 (D/230250). It was published in the *Official Journal of the European Union* dated 20 August 2003 ⁽²⁾. The Commission received comments from four interested parties (registered under Nos A/36309, A/36463, A/36645, A/36679, A/36870, A/37077, A/37480 and A/37569), including from the two competitors that had submitted the complaint in May, also on behalf of another company belonging to the group to which one of the two original competitors belongs (hereinafter these four entities together are referred to as 'the two joint competitors'). The

1. PROCEDURE

(1) By letter of 7 January 2003 (registered as received on 10 January under No A/30189), the Netherlands notified operating aid for AVR Nutsbedrijf Gevaarlijk Afval B.V. (hereinafter 'AVR Nuts') for treating hazardous waste in the Netherlands with a view to disposal. The bulk of the aid was for the incineration of such waste in two rotating drum furnaces ('RDFs'). The Netherlands invoked Article 86(2) of the Treaty and asked the Commission to decide that the measure does not constitute state aid within the meaning of Article 87(1) of the Treaty since it represents appropriate compensation for the obligation to provide a

⁽¹⁾ OJ C 196, 20.8.2003, p. 5, and OJ C 250, 9.10.2004, p. 6.

⁽²⁾ See footnote 1.

Commission forwarded these comments to the Netherlands by letters of 1 October 2003 (D/56129), 29 October 2003 (D/56898), 7 November 2003 (D/57120) and 12 November 2003 (D/57185). These letters also contained some further questions from the Commission.

- (4) By letter of 13 August 2003 (registered as received on 14 August 2003 under No A/35706), the two joint competitors informed the Commission that part of the aid had been paid to AVR Nuts and they asked the Commission to take an injunction decision to suspend further payments and a decision ordering the Netherlands to provisionally recover the aid pursuant to Article 11 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽³⁾. As requested by the Commission on 20 August 2003 (D/55321), the Netherlands confirmed by letter of 25 September 2003 (registered as received on 30 September under No A/36690) that, as regards 2002 and the first quarter of 2003, the notified aid had been paid to AVR Nuts. By letter of 20 October 2003 (D/56735), the Commission informed the two joint competitors that it did not intend to take the decisions requested. The two joint competitors restated their request by letters of 14 November 2003 (registered as received on 17 November under No A/37909) and of 1 December 2003 (registered as received on 2 December under No A/38325). The letter of 1 December and the Commission's reply of 24 November 2003 (D/57541) confirming its position actually crossed in the post.

- (5) After requesting an extension (letter of 14 July 2003, registered as received on 18 July under No A/35109 and letter of 29 October 2003, registered as received on 5 November under No A/37568) that was granted by letter of 23 July 2003 (D/54737), the Netherlands commented on the Commission's decision by letter of 18 December 2003 (registered as received on 8 January 2004 under No A/30088). It gave its observations on the comments from interested parties by letters of 23 December 2003 (registered as received on 8 January 2004 under No A/30090), 23 January 2004 (registered as received on 29 January under No A/30621), 25 February 2004 (registered as received on 27 February under No A/31451) and 23 April 2004 (registered as received on 30 April under No A/33118). By means of the last two letters, the Netherlands also informed the Commission of ongoing developments at AVR Nuts. Since the mounting deficits would require increasing amounts of aid, it was decided to close one of the two RDFs with effect from 1 July 2004. Closure of the second RDF was still under consideration. It transpired that the original aid contract contained provisions to the

effect that the Netherlands would grant some compensation for the costs of closure.

- (6) In view of the new information, the Commission adopted on 14 July 2004 decision C(2004) 2640 fin extending the Article 88(2) procedure to the compensation for the costs of the (possible) closure of the RDFs. On 16 July this decision was sent to the Netherlands, which asked for an extension of the deadline for comments and for a meeting to be convened to discuss the ongoing developments (letter of 30 July 2003, registered as received on 4 August under A/35996). A meeting between representatives of the Netherlands and of the Commission took place on 23 August 2004. Another meeting between representatives of the Commission and of the two joint competitors took place on 26 August 2004. For the rest, the law firm represented yet another competitor. The Netherlands commented on the Commission's decision by letter of 10 September 2004 (registered as received on 17 September under No A/36999). By letter of 30 September 2004 (D/56902), the Commission requested further information which the Netherlands provided by letter of 22 October 2004 (registered as received on 27 October under No A/38271). In that letter, the Netherlands confirmed that further aid had been paid to the recipient for the remainder of 2003, the first three quarters of 2004 and the closure of one of the installations.
- (7) The decision to extend the procedure was published in the Official Journal of 9 October 2004⁽⁴⁾. The Commission received comments from the two joint competitors (letters of 16 and 19 November 2004, registered under Nos A/38860 and A/38978). It forwarded these comments to the Netherlands by letter of 22 November 2004 (D/58307). The Netherlands made observations on these comments and answered the Commission's questions by letters of 22 December 2004 (registered as received on 5 January 2005 under No A/30171) and 12 January 2005 (registered as received on 17 January under No A/30525). In these letters, the Netherlands informed the Commission not only of the decision to close the remaining RDF but also of the corresponding compensation for the costs of closure.
- (8) Lastly, the two joint competitors confirmed their opposition to the aid by letters of 25 April 2005 (registered as received the same day under No A/33476) and 2 May 2005 (registered as received on 12 May under No A/33884). Following these letters, yet another meeting

⁽³⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁴⁾ See footnote 1.

between representatives of the Commission and of the two joint competitors took place on 26 May. Again, the law firm also represented the same third competitor (hereinafter this competitor together with the other two are referred to as the 'three joint competitors'). At the meeting, a document was presented suggesting that further aid for 2004 had been paid to AVR Nuts.

2. DETAILED DESCRIPTION OF THE MEASURE

2.1 Background and objective

(9) Article 5(1) of Council Directive 75/442/EEC of 15 July 1975 on waste⁽⁵⁾ stipulates that 'Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialized installations for certain types of waste.' Article 5(2) of the Directive stipulates that 'the network must also enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.'

(10) In the early 1990s, with a view to meeting these objectives, a special landfill site ('C2 depot') and several RDFs began operations in the Netherlands. The C2 depot is used for the appropriate disposal of hazardous waste that cannot be incinerated ('C2 waste'). The RDFs are used for the appropriate disposal of hazardous waste that, despite a low calorific value, can still be incinerated⁽⁶⁾ ('RDF waste'). This incineration requires co-fuelling and, in practice, the most cost-efficient fuel is hazardous waste with a high calorific value.

(11) In accordance with Article 8(3) of Directive 75/442/EEC and Article 4(3) of Council Regulation (EEC) No 259/93

on the supervision and control of shipments of waste within, into and out of the European Community⁽⁷⁾, Member States may prohibit export of 'waste for disposal'. It is only after various controls have been carried out that such waste may be traded. However, Member States are not generally allowed to prohibit the exportation to other Member States of 'waste for recovery'⁽⁸⁾. The concepts of 'waste for disposal' and 'waste for recovery' have been clarified in various judgments by the Court of Justice of the European Communities⁽⁹⁾. As a result, compared with the interpretation given to date by the Netherlands, a smaller amount of hazardous waste qualifies as waste for disposal while a larger amount qualifies as waste for recovery. The distinction does not depend on the calorific value of the waste, but rather on the primary objective of the installation in which the waste is treated and on the nature of the waste.

(12) C2 waste and RDF waste are supplied by companies in all sectors of the economy. Important sectors include metalworking, business and public services, the (petro-) chemical industry, transport and mining. Most of the waste is handled by specialised intermediaries that typically offer a service covering the various types of waste produced by a company, i.e. C2 and RDF waste, other hazardous waste and non-hazardous waste. Such services are, of course, largely tied to the place where the waste is produced, but the more specific types of waste are transported over longer distances. Several large industrial waste companies operate internationally, with establishments in various countries.

(13) In recent years, the options for putting hazardous waste to effective use have increased. More and more of it is being used in the cement industry (in particular in Belgium) or for filling abandoned mines (in particular in Germany). The Court's strict interpretation of 'waste for disposal' has facilitated this development. At the same time, producers have further reduced the amounts of waste they generate. Within legal limits they can, at least to some extent, blend some of it with less hazardous waste, thereby reducing the costs of disposal or recovery. As a result, the supply of RDF waste fell from about 80 000/100 000 tonnes in 1995 to about 34 000 tonnes in 2002, compared with an anticipated figure of some 38 500 tonnes. In mid-2004 AVR estimated that only 16 000 tonnes of RDF waste

⁽⁵⁾ OJ L 195, 25.7.1975, p. 39; as subsequently amended by Regulation (EC) No 1882/2003 of the European Parliament and the Council (OJ L 284, 31.10.2003, p. 1).

⁽⁶⁾ The concession agreement defines RDF waste as follows: that part of the waste streams the incineration of which is regarded as disposal, i.e. hazardous waste with a calorific value of less than 11,5 MJ/kg ($\leq 1\%$ chlorine) or 15 MJ/kg ($> 1\%$ chlorine), packaged hazardous waste, specific hospital waste and waste containing PCBs.

⁽⁷⁾ OJ L 30, 6.2.1993, p. 1; as subsequently amended by Commission Regulation (EC) No 2557/2001 (OJ L 349, 31.12.2001, p. 1).

⁽⁸⁾ See, in particular, Case C-203/96 *Chemische Afvalstoffen Dusseldorp B.V. and Others v Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer* [1998] ECR I-4075.

⁽⁹⁾ See, in particular, Case C-288/00 *Commission v Germany* [2003] ECR I-1439.

would be offered to it annually ⁽¹⁰⁾. The supply of C2 waste decreased from about 6 000 tonnes in 2000 to 4 000 tonnes in 2002. Exports of hazardous waste produced in the Netherlands have increased to some 36 000 tonnes, of which some 4 000 tonnes is RDF waste, resulting in overcapacity as regards disposal facilities. This has become a wider phenomenon affecting, for example, the United Kingdom, Germany and Belgium.

2.2 Recipient

(14) The C2 depot and the various RDFs were originally set up by AVR Chemie C.V. ('AVR Chemie'), which is owned 30 % by the State and 70 % by Holding AVR Bedrijven N.V. ('AVR-Holding' or 'AVR' in short). AVR is a major player on the Dutch waste market. It is currently 100 %-owned by Rotterdam municipality, which has though recently announced its intention to sell its shares in AVR. As from the mid-1990s, AVR Chemie incurred losses (€10,9 million in 2000 and €7,2 million in 2001). For this reason, AVR wished to close down the three RDFs operating at that time. The Netherlands, however, reached an agreement on a restructuring. AVR Chemie was split up and AVR Nuts was created in order to continue with the disposal of C2 and RDF waste after the closure of one of the three RDFs. AVR-Industrial Waste Services Rotterdam B.V. ('AVR IW') was set up to take over the remaining activities on the (hazardous) waste markets, on which AVR wanted to remain active for its own commercial reasons. Both are wholly owned by AVR. AVR Chemie's only remaining activity is renting out the facilities to AVR Nuts. AVR Nuts and AVR IW cooperate closely. A service contract stipulates that most of AVR Nuts' management and commercial functions are carried out by AVR IW.

(15) The capacity of the two RDFs for which AVR has a permit is 100 000 tonnes of hazardous waste per year. The theoretically available capacity is 80-85 % of the permitted capacity. AVR treated 84 880 tonnes of hazardous waste (both RDF and other) in 2001, 81 274 tonnes in 2002 and 78 297 tonnes in 2003. Incineration of RDF waste requires more or less the same quantity of other hazardous waste as fuel. The actual volume of RDF waste treated in the RDFs is estimated at 19 000 tonnes for 2002 and 23 000 tonnes for 2003. Certain types of RDF waste can also be disposed of in municipal waste incinerators, which operate at a lower temperature.

(16) AVR Nuts is obliged to keep separate accounts in accordance with Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings ⁽¹¹⁾.

2.3 The aid

2.3.1 The operating deficits

(17) The aid and the activities for which it is granted are defined in a concession decision by the Minister for Housing, Spatial Planning and the Environment (VROM) dated 3 July 2002 and in a concession agreement between the Netherlands, AVR Holding, AVR Nuts, AVR IW and a number of other subsidiaries signed on 10 July 2002. By virtue of the decision, the State 'grants AVR Nuts the exclusive right for a period of 5 years to operate the C2 depot and deal with hazardous waste in the RDFs subject to the obligation to offer the services of these installations as services of general economic interest to the public on reasonable, transparent and non-discriminatory conditions and against socially acceptable tariffs, in compliance with the conditions and provisions laid down in greater detail in the concession agreement.' The agreement determines in detail the conditions for AVR Nuts' operations. It was to run from 1 January 2002 to 31 December 2006.

(18) The aid amounts to 100 % of the predetermined operating deficit, which is calculated on the basis of a methodology laid down by an independent accountant. In the event of a predetermined operating surplus, 70 % of it would be used to pay back the aid granted previously. The predetermined deficits for 2002 and 2003 amounted to €1,5 million and €2,8 million respectively. Annex I to this decision provides a summary of the methodology and its application for 2002, 2003 and 2004. Most of the aid concerns the RDFs. For the C2 depot, the predetermined deficit amounted to €0.37 million in 2003, for example.

(19) In accordance with the service contract, AVR IW carries out most of AVR Nuts' administrative and operational functions. For this, it receives compensation the amount of which is included in the predetermined deficit on the basis of 'activity-based costing'. In practice, this meant that, for the years 2002-04, an average of 30 % of AVR's overheads was allocated to AVR Nuts.

⁽¹⁰⁾ Source: *Toekomst verbranden specifiek gevaarlijk afval*, AOO-2004-12, prepared by the Afval Overleg Orgaan, July 2004, www.aoo.nl.

⁽¹¹⁾ OJ L 195, 29.7.1980, p. 35, as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

- (20) One additional cost element which is included in the predetermined budget and for which AVR Nuts receives aid that it passes on to AVR IW concerns waste acquisition. Given the important weight of fixed costs, active acquisition of waste was considered necessary to maximise capacity utilisation and thus to minimise operating costs. The predetermined and actual costs are presented in Table 1 below.

Table 1

Predetermined and actual acquisition costs

	2002	2003	2004
Predetermined additional costs	514 000	532 000	550 000
Predetermined start-up costs - international acquisition	400 000	400 000	—
Total predetermined costs	914 000	932 000	550 000
Actual costs	875 000	900 000	930 000

- (21) At the outset, the deficit was expected to increase to €3,8 million in 2006, but market and operating conditions proved to be much more difficult than anticipated, with little hope for improvement. For the period 2002-03, in addition to the predetermined deficit, AVR Nuts incurred losses of €12 million. The predetermined deficits for 2004 and thereafter were expected to be much higher than foreseen and, indeed, the predetermined deficit for 2004 amounted to €8,898 million⁽¹²⁾. The calculation took account of the decision to close the RDFs.

2.3.2 Compensation for closure costs

- (22) In view of the mounting operating deficits, the Netherlands, as already indicated in points 5 and 7, reconsidered its policy. At the end of 2003, it was decided to close one of the two RDFs with effect from 1 July 2004. In the summer of 2004, it was decided to close the second one with effect from 1 January 2005. For the remaining years, the predetermined losses for accepting C2 waste were, as expected, small.

⁽¹²⁾ The aid is, however, reduced by €75 000 for each month that the Province of South Holland allows 'peakshaving of CO emissions'. When the operating deficit was established, this was not yet known. The amount represents the expected monthly cost saving where peakshaving is allowed.

- (23) The concession agreement provided that the State would compensate AVR financially for the remaining book value of investments carried out in favour of AVR-Nuts during the period covered by the agreement with the approval of the State but not yet written off. Applying this clause in advance, the Dutch authorities calculated compensation of €8 670 108 for the costs of closing down the first RDF. This amount concerns various investments which were written off to the extent of 50 % if they concerned both RDFs or to the extent of 100 % if they were made specifically for the RDF that was being closed down. The main items in this amount are €1,9 million for investments in fire safety, €3,3 million for a homogenisation plant, €1,5 million for replacing coke funnels and €0,5 million for a drum end and Stefferson ring. For the closure of the second RDF, the calculation includes €11 151 000 for the remaining book value of the installations and tangible fixed assets. This amount includes the other 50 % of the remaining book value of the above investments carried out with the approval of the State and 100 % of the remaining book value of the investments carried out with the approval of the State but concerning only the second RDF. This latter item includes notably the investment in the general overhaul of the remaining RDF, which was carried out during 2004. The overall cost was €3 273 000, which was more than expected. With the benefit of hindsight, this turned out to be an unfortunate investment.

- (24) Since the Netherlands was, in principle, also required by the concession agreement to compensate for the budget deficits up to and including 2006, the State had to negotiate with AVR on compensation for the additional costs of closing down the second RDF with effect from 1 January 2004, instead of the original date on which the agreement would have expired. The compensation thus includes the following additional amounts:

— €1,7 million to compensate for the negative impact in 2004 resulting from the fact that customers would need (gradually) to shift their waste streams to other facilities;

— €5,843 million for recurrent fixed costs in the period 2005-06 ('doorlopende vaste kosten'), i.e. costs related, for example, to ICT infrastructure, office space rental, security contracts, and costs of common facilities such as a canteen. AVR had calculated a higher amount of €8,208 million;

— €7,868 million for the additional redundancy costs attributable to the early closure of the remaining RDF. This amount is calculated as the difference between the estimated redundancy costs in the event of immediate closure and those in the event of closure at the end of the aid contract, i.e. two years later. The accepted amount is based on a detailed estimate that concerns some 244 workers and takes account of the fact that most of them can be redeployed internally;

— other costs, such as the remaining book value of certain assets of other AVR companies acquired in order to provide the services stipulated in the service contract, the costs of site management and the cost of forgoing the contributions ('dekkingsbijdrage') that AVR IW would have received if the contract had been extended into 2005 and 2006, the non-budgeted costs of closure, and the costs of buying out multiannual contracts. AVR had put these costs at €29,567 million in total, which included, for example, an amount of €11,716 million for the additional losses incurred by AVR Nuts in 2002 and 2003. In their negotiations, the State and AVR agreed on an amount of only €1,238 million.

Table 2

Overview of compensation paid to AVR

Predetermined budget deficit 2002	1 500 000
Predetermined budget deficit 2003	2 800 000
Predetermined budget deficit 2004	8 898 000
Compensation for remaining book value first RDF	8 670 108
Compensation for remaining book value second RDF	11 151 000
Compensation for additional closure costs	
– additional operating costs 2004	1 750 000
– recurrent fixed costs 2005-06	5 843 000
– additional redundancy costs	7 868 000
– other	1 238 000
	16 699 000
Total aid	49 718 108

- (27) The Netherlands acknowledged that aid totalling €19 543 608 had been paid to AVR. The compensation for the closure of the second RDF has been paid into a blocked account.

2.3.3 The guarantee for removal and follow-up costs

- (28) The concession agreement also contains a guarantee by the State that, if AVR Chemie is wound up, the State will pay a maximum of 30 % of the removal and follow-up costs of dismantling and decontaminating the installations. This percentage corresponds to the State's holding in AVR Chemie.

2.4 Operational aspects

- (29) Prior to the concession agreement, the gate fees charged by AVR Chemie had been increased to a level of NLG 700/tonne (€317,6). Increasing fees even further would, according to the Netherlands, lead to practices such as mixing hazardous waste with other waste streams and illegal landfill, and this would not be conducive to reducing the operating deficit. The fees are high in comparison with those in neighbouring Member States, this being possible thanks to the Dutch policy of prohibiting exports of waste for disposal. The objective of the aid measures was to maintain the fees unchanged, not to reduce them. To this end, the concession agreement contains an annex laying down the structure and coverage of the fees and the method of calculating them. The Dutch authorities have control over the level of the fees as the predetermined budget deficit requires their approval beforehand and the fees are, of course, a crucial element in the calculation.

- (25) In those negotiations, the Netherlands was assisted by an independent accountant whose report was made available to the Commission. Altogether, the agreed compensation for closure of the second RDF amounted to €27,850 million. This is significantly lower than the sum of AVR's own estimates, viz. €58,544 million (or €46 828 million when the additional losses incurred by AVR Nuts in 2002 and 2003 are excluded). The Netherlands explained that, if the remaining RDF had continued operating until the end of 2006, the sum of the estimated operating deficits for 2005 and 2006 and the compensation for the costs of closure at the end of 2006 would have amounted to €31 million. The agreement on early closure therefore reduced the cost to the State.
- (26) This compensation for closure brings the total amount of aid for the period 2002-04 to €49 718 108 (see overview in Table 2).

(30) Gate fees for high-calorific hazardous waste used as fuel are much lower than those for RDF waste. AVR Nuts 'buys' the former at market rates, i.e. fees that would be charged in the event of treatment, say, in foreign RDFs or in the cement industry.

(31) Fixed costs are very high compared with variable costs so, in order to minimise its losses, AVR Nuts seeks to maximise capacity utilisation. Therefore, the gate fees charged to suppliers of hazardous waste are reduced when the annual volume supplied increases. These 'staggered rebates' are fixed in advance and apply when RDF waste is offered together with at least 75 % of the same volume of high-calorific waste.

(32) All fees are fixed in advance for the entire concession period⁽¹³⁾ and apply equally to AVR's competitors and AVR IW. As from the start of the concession agreement, the fees for C2 and RDF waste were publicly available to any supplier. As from early 2004, this was also the case for high-calorific hazardous waste.

(33) In order to be able to plan capacity utilisation, AVR IW asks suppliers each year to indicate how much waste they plan to supply and gate fees are calculated during the year on the basis of the corresponding staggered rebate. If the actual volume supplied at the end of year is higher or lower than indicated, a repayment is made or an additional charge calculated to take account of the appropriate staggered rebate based on actual supply. The agreements generally did not contain an obligation to supply the quantity indicated in advance.

3. REASONS FOR INITIATING THE ARTICLE 88(2) PROCEDURE

(34) In its decision to initiate the Article 88(2) procedure, the Commission expressed the following doubts.

(35) First, the Commission doubted whether AVR Nuts' activities could properly be regarded as an SGEI within the meaning of Article 86(2) of the Treaty as it was not clear, for example, whether AVR would be the only company capable of offering such services on the same or similar conditions. It also doubted whether the Netherlands had followed the appropriate procedure in selecting AVR Nuts. Furthermore, it doubted whether infringement of the 'polluter pays' principle was avoided under all circumstances as producers of the waste concerned must pay gate fees at a level that can be considered as a normal cost.

(36) Second, the Commission expressed doubts regarding possible overcompensation that could spill over into other segments of the waste market. It was concerned that overcompensation may also stem from the fact that the aid was based on an *ex ante* calculation, allowing AVR Nuts to keep part of any positive difference between actual and predetermined profits or losses.

(37) Third, if the measure were to be assessed under Article 87, the Commission doubted whether the Community guidelines on state aid for environmental protection⁽¹⁴⁾ (the 'guidelines on environmental aid') would provide justification for finding the aid compatible with the common market.

(38) In its decision to extend the Article 88(2) procedure, the Commission explained that it had similar doubts as regards the much higher amount of aid for 2004 and the compensation for the untimely closure of the RDFs.

4. COMMENTS FROM INTERESTED PARTIES

(39) Four interested parties sent in their comments following the Commission's decision to initiate the Article 88(2) procedure.

(40) The first of them argued that the measure would distort competition on the Irish market as it would enable AVR to charge prices below cost and significantly below normal market prices on the Irish market through its 50 % shareholding in a joint venture with the Irish company Safeway Warehousing/South Coast Transport.

(41) The second interested party also pointed to the unfair competitive advantage enjoyed by the AVR/Safeway joint venture. Large quantities of hazardous waste are imported from Ireland. This interested party maintained too that the measure would distort competition on the international market for 'turnkey clean-up' operations of PCBs, pesticides and other hazardous organic waste.

(42) The third interested party, Edelchemie, was concerned about the domestic market. It had developed its own technology for treating photographic and galvanic waste (ECO option) and recovering valuable materials from this waste (including precious metals and obsidian). The measures to assist AVR would not only harm its business but would also stifle technological development. Edelchemie's comments concern AVR Nuts, AVR Chemie and its predecessors as from 1963, providing details on Dutch hazardous waste policy over the years.

⁽¹³⁾ For high-calorific hazardous waste, there were initially a few exceptions due to ongoing contracts.

⁽¹⁴⁾ OJ C 37, 3.2.2001, p. 3.

- (43) Lastly, the three joint competitors drew attention to the domestic market for RDF waste. Equivalent capacity to AVR's RDFs would exist both in the Netherlands and in other Member States. The expansion of AVR's activities would have created overcapacity on the Dutch market for RDF waste and the data on RDF waste would not give a complete and correct picture. In the mid-1990s AVR closed one of its RDFs and, even then, the supply of hazardous waste could be expected to decline further. In view of those expectations, it had been appropriate to close one of the two remaining RDFs. At the meeting on 26 May 2005, a representative stated literally that 'The right decision [in 2002] had been to close down one RDF'. Moreover, AVR would abuse its dominant position by charging high fees, by requiring that the RDFs be supplied at the same time with high-calorific waste and because the fee structure would not be transparent and publicly available. It would, furthermore, enable AVR IW to charge fees for certain types of RDF waste and subsequently to treat this waste in the grate incinerators of the municipal waste incinerators, and this would result in lower operating costs as these furnaces can operate at a lower temperature.
- (44) The measure would constitute incompatible operating aid. The service would not constitute an SGEI and the four criteria resulting from the *Altmark* judgment and which determine whether or not compensation constitutes state aid⁽¹⁵⁾ would not be fulfilled. For the Commission to approve (part of) the aid, various conditions would have to be met to prevent cross-subsidisation, tying practices and price discrimination. In addition, the Netherlands should not be allowed to extend the measure by another ten years.
- (45) The two joint competitors also sent in comments following the Commission's decision to extend the procedure. They restated all the elements of their first submission and provided additional documents to demonstrate the existence of cross-subsidisation. In addition, the following issues were raised.
- (46) First, it was surprising that, despite the closure of one of the RDFs, the predetermined operating deficit was so much higher than initially foreseen. If the fourth *Altmark* criterion (efficiency) had been respected, the operating deficit should have fallen.
- (47) Second, they objected to the aid as compensation for closing down the RDFs. There was no countervailing
- obligation on AVR. This compensation should not be referred to as an indemnification and was not justified, among other things because the investments were made with a view to maintaining operations for 10 years, whereas they have been used for less than 3 years. They questioned as well the details of the calculations, in particular the amount to be written off, the redundancy costs and the recurrent fixed costs. The total amount was very high, much higher than the amount of €2 million referred to in Article 21(2) of the concession agreement. Furthermore, in a parliamentary document, it was stated that 'when establishing the compensation to be paid to AVR for closure of the RDF, an agreement was reached on an outstanding claim of the Ministry for Housing, Spatial Planning and the Environment on AVR in connection with dioxine pollution of the Lickebaertpolder'. As a consequence, the Ministry received an amount of €2,5 million that was not expected for 2004. The three joint competitors were concerned that settling this dispute may have 'polluted' the calculation of the compensation. It gave them the feeling that 'things are being covered up'.
- (48) Third, they objected to other advantages conferred on AVR by Article 21(5) of the concession agreement, in particular payment by the State of 30 % of the costs of removal and decontamination of the installations in the event of AVR-Chemie's being wound up. In the light of the state aid rules, the State should never have taken on such obligations.
- (49) Fourth, no SGEI would exist, especially since such a service was not necessary in the light of the various alternatives that existed such as pyrolysis, treatment in the cement industry, disposal in salt mines or treatment in energy plants and foreign RDFs. The activities concerned would be defined as an SGEI only when they proved to be loss-making. The concession agreement had been concluded merely with a view to financing the investments in the RDFs for which AVR Nuts had obtained an exclusive right. Furthermore, the two joint competitors doubted whether the aid guaranteed affordable prices for the service since AVR's gate fees were higher than those in neighbouring countries. The high fees would be explained by AVR's practices of tying and cross-subsidisation with respect to high-calorific waste used as fuel. They would not be transparent or publicly available. The profits would be booked with AVR IW, the losses with AVR Nuts. This enabled AVR IW to charge higher gate fees for RDF waste. Furthermore, AVR would refuse to accept RDF waste if not accompanied by high-calorific waste, thereby not complying with its obligations under the concession agreement by not providing the service to all customers. Finally, unlike with other alternatives, the quality of the service would be neither maintained nor improved.

⁽¹⁵⁾ Case C-280/00 *Altmark Trans GmbH, Regierungspraesidium Magdeburg/Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747.

- (50) Fifth, the aid would not respect the *Altmark* criteria. There had been no public tender procedure for granting the concession and the aid would not be established on the basis of the costs of an average, well-managed undertaking. Nor would it be established on the basis of criteria laid down in an objective and transparent way, it would be higher than necessary and it would spill over into other markets. RDFs abroad would be able to charge lower tariffs without state aid. Cheaper alternative disposal methods had not been taken into account either. Furthermore, AVR would be allowed to retain some of the profits if it operated more efficiently than expected.
- (51) Finally, the two joint competitors remarked that the Dutch authorities intended to continue to infringe the state aid rules since, in the case of a negative decision by the Commission, they would discuss it with AVR and look for a solution to the financial problems this might cause for AVR.

5. COMMENTS FROM THE NETHERLANDS

5.1 The applicable legislation

- (52) Since Community legislation allows Member States to prohibit the exportation of waste for disposal, the aid would not distort competition between Member States.

5.2 Service of general economic interest

- (53) The Netherlands argued that the aid is granted exclusively for an SGEI carried out by AVR Nuts. A public invitation to tender was not considered appropriate as AVR Nuts was the only company in the Netherlands able and willing to deal with *all* the C2 and RDF waste concerned. The concession, however, was published in the *Staatscourant*, following which any interested party had the possibility to lodge an appeal. No appeals were lodged. Furthermore, before the decision to close the RDFs, the Dutch authorities had already made the necessary arrangements for organising a public tender procedure for a prolongation.
- (54) The measure would comply with the *Altmark* criteria and should therefore not be regarded as state aid. Taking the predetermined deficits, for example, the State was assisted by an independent accountancy firm. The measure would not infringe the 'polluter pays' principle as the fees are higher than those in neighbouring Member States.

- (55) It would be absolutely wrong for AVR Nuts to accept only RDF waste when offered in combination with high-calorific waste. It also has been explicitly stated that the fees charged to other AVR companies for treating other waste should be the same as those charged to third parties⁽¹⁶⁾. The Netherlands asked an accountancy firm for advice on the possibilities of increasing transparency with regard to the agreements between AVR Nuts and AVR IW. The recommendations given were accepted and implemented.
- (56) As regards AVR Nuts' results, the Netherlands noted that the calculation of the operating deficit did not take into account any profit margin. In the unexpected event of a predetermined operating surplus, the profit would be limited to only 30 % of the surplus until such time as all previous aid had been repaid.

5.3 Comments on the comments from interested parties

The Irish market

- (57) The Netherlands noted that the comments did not demonstrate how aid could affect the cost price of the joint venture between AVR and Safeways. That company would have to pay the same fees for treatment in Rotterdam as those charged to domestic suppliers of waste. Moreover, only one third of the waste collected by the joint venture would be treated in Rotterdam and only a small part of that would be C2 and RDF waste as defined in the concession agreement. Competitive prices might be explained by various other factors: 1. Safeway is the only company in Ireland operating transfer station where waste is efficiently sorted and separated before being sent to the most appropriate treatment facility; 2. there is a direct link with the transport company Southcoast, and this gives rise to logistic advantages and cost savings; and 3. in Ireland the level of fees used to be relatively high on account of the absence of competition.

The market for turnkey clean-up projects

- (58) For the treatment of waste resulting from turnkey clean-up projects, AVR would charge higher fees than it charges domestic suppliers. The average fee for all waste flows from other countries would be somewhat higher than the average fee charged domestically. Furthermore, lower fees would not result in higher aid as the aid depends on the predetermined operating deficit.

⁽¹⁶⁾ Article 5.3 of the Concession Agreement and Article 5.2 of the Service Agreement for AVR companies (Annex 7.2.A to the Concession Agreement).

Domestic competition and alternatives to the RDFs

- (59) When the concession agreement was signed, both RDFs were operating at full capacity. Full capacity utilisation was expected in view of plentiful stocks. The current overcapacity was probably caused not by any increase in the market share of competitors but instead by increased reuse of the waste, e.g. after legally permitted dilution with other types of waste.
- (60) As regards pyrolysis, the Netherlands noted that AVR's fees were higher than those charged by the only company in the Netherlands with pyrolysis plants.

Payment of part of the notified measure

- (61) The Netherlands explained that part of the aid was paid because of the financial difficulties of AVR Nuts, in the light of the *Altmark* judgment and in view of the time necessary to conclude the formal investigation procedure under Article 88(2) of the Treaty.

Edelchemie

- (62) The Netherlands noted that Edelchemie was working primarily in the field of photographic hazardous waste, which, for reasons of efficiency, cannot be dealt with by AVR. The company has various facilities of which the pyrolysis furnace would be most relevant for this case. However, the technology would not be suitable for all types of RDF waste, in contrast to AVR's installations. The environmental permit allows treatment in this furnace of not more than 10 000 tonnes, which would be completely insufficient for hazardous waste streams in the Netherlands. Since AVR would not deal with photographic waste and would charge market fees, the Netherlands do not see how the aid could damage Edelchemie's interests. Technological development is encouraged by, for example, specific incentive programmes and by requiring use of the best available techniques when environmental permits are granted. These permits are valid for five years. Any aid granted previously would fall outside the ten-year limit laid down in Article 15 of Regulation (EC) No 659/1999 and, as the installations are written off over ten years, calculation of AVR's expected operating deficits would not be affected in any event.

Alleged overcompensation

- (63) The Netherlands maintained that there has been no overcompensation, either in favour of AVR Nuts or in favour

of AVR IW. The latter served as an intermediary but could not, and did not, exploit this position to obtain overcompensation. For example, the waste supplied by AVR Nuts' competitors, even when, on paper, it was received by AVR IW on behalf of AVR Nuts, was not taken into account in calculating the staggered rebates on the tariffs for the waste acquired by AVR IW itself. Such waste was delivered directly to the RDFs, not to AVR IW's site, as this would not be worth the additional logistical costs.

- (64) The aid to compensate for the costs of acquiring waste is appropriate. Active acquisition of RDF waste would be necessary as the possibility of diluting such waste or adjusting the packaging, after which the waste would not longer qualify as RDF waste, has been used increasingly. Without acquisition of such waste, AVR Nuts would see its market share reduced, losing it to alternative treatment options, particularly abroad. This would reduce capacity utilisation and increase losses. The compensation granted to AVR IW for the costs of acquiring high-calorific hazardous waste was explained by the need to have sufficient quantities of such waste available as fuel. The allocation of acquisition costs between AVR Nuts and AVR IW is based on this. With the closure of the RDFs, the seven jobs that correspond to the costs charged will be lost. This would prove that these seven jobs constitute additional acquisition costs incurred only in the interests of AVR Nuts.
- (65) The Dutch authorities submitted a study on the future development of alternatives for the disposal and recovery of the waste concerned in the Netherlands and in neighbouring countries (see point 13 above). The study shows that sufficient alternatives are planned in the future to guarantee safe and appropriate disposal and recovery of such waste.
- (66) The Netherlands also submitted an economic analysis of the concession agreement and potential overcompensation that had been carried out by a consultancy at AVR's request. The analysis noted firstly that AVR's main competitors all had the possibility of benefiting from higher staggered rebates but apparently preferred to supply part of the waste they acquired to alternative disposal or recovery facilities abroad. Secondly, the actual compensation to be granted by the Netherlands for the closure of the RDFs was significantly lower than AVR's own cost calculation of €45 million and the calculation of almost €40 million made by an independent accountant of these same costs. The main difference stemmed from the different cost calculations for redundancies.

(67) The Netherlands provided the detailed calculation of the budget deficit for 2004. It was higher than in previous years despite the closure of one RDF since the market conditions had worsened and, in particular, the fees received for high-calorific hazardous waste had decreased.

(68) The payment for dismantling and follow-up in the event of the liquidation of AVR Chemie will have to be discussed between the State and AVR as the State owns 30 % of AVR Chemie. The possibility of a negative decision by the Commission on the notified aid will, of course, also have to be discussed, and solutions will be sought, but not without taking into account the Commission's views.

6. ASSESSMENT

6.1 Existence of state aid

(69) Article 87(1) of the Treaty provides that 'any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

(70) The operating aid and the compensation for the costs of closing down the RDFs for AVR Nuts that are described in points 17-27 are granted by the State and financed directly from state resources. They are selective in nature as they affect in the first place AVR, AVR Nuts and AVR IW. These are undertakings offering their services on the markets in waste for disposal and waste for recovery. The same applies to any payment by the State of the removal and follow-up costs, for which the State has given a guarantee of up to 30 %.

(71) The measures must be regarded as affecting trade between Member States. The markets in waste for disposal and waste for recovery are inextricably linked and, despite the regulatory framework for and strict controls on waste for disposal, trade between Member States is common on both markets. By way of illustration, following the announcement of the closure of the RDFs, the number of applications for permits to export waste to other Member States increased significantly. The Commission deduces from this that the aid

towards the continued operation of the RDFs has had a restrictive effect on trade between Member States.

(72) The measures do not favour the suppliers of hazardous waste. The gate fees for high-calorific waste used as fuel were set at market levels compared with the fees practiced in the Netherlands and neighbouring countries. The gate fees for C2 and RDF waste were set, for policy reasons, at socially acceptable levels that were, however, higher than those practiced in neighbouring countries. This was possible given the export restrictions on waste for disposal. Raising the fees was not a feasible and realistic option under normal market conditions since more waste would be exported, mixed into other waste streams or disposed of legally or illegally, and this would not therefore increase AVR Nuts' revenues. As a matter of fact, with the closure of the RDFs, it became easier for suppliers to benefit from the lower gate fees in Belgium and Germany. Without the aid, the RDFs would have been closed earlier and the possibilities of exporting waste for disposal in conformity with Regulation (EC) No 259/93 would have improved earlier. This is confirmed by the price and volume movements following the closure of the second RDF. For these reasons, the Commission considers that the measure has not spared the suppliers of hazardous waste the costs that would normally be included in their budget.

(73) Without prejudice to the assessment of the measure on the basis of Article 86(2) of the Treaty, the Commission finds that the fourth criterion resulting from the *Altmark* judgment is not met. Firstly, AVR Nuts was not selected following a public tender procedure, and publication of the concession decision in the *Staatscourant*, after which interested parties could raise objections for a period of six weeks, cannot be the substitute for an open and transparent tender procedure. Secondly, the level of compensation was not determined on the basis of the costs which an average, well-managed undertaking adequately provided with waste treatment capacity would have incurred. As a matter of fact, given the unique position of the C2 depot and the RDFs in the country, such an average undertaking does not seem to exist in the Netherlands. The predetermined budget deficit reflects, if anything, the particular conditions under which AVR Nuts operates these installations and the costs of similar installations abroad have not been taken into account. It is clear that AVR's treatment capacity was not appropriate: overcapacity led to under-utilisation of the RDFs and ultimately to closure. This is reflected in the aid measures, in particular the deficit for 2004 and the compensation for closure. Under the circumstances, the measures must be regarded as conferring a selective advantage on AVR Nuts and not simply as providing compensation that other companies in a similar situation could have received under similar conditions if they had been entrusted with the performance of this service obligation.

(74) A selective benefit flows not only from the operating deficits and the compensation for the costs of closure, but also from the state guarantee for 30 % of the removal and follow-up costs incurred. The fact that these costs correspond to the State's shareholding in AVR Chemie do not alter the state aid character of the measure since, as a silent partner in AVR Chemie, the State would be responsible only to the extent of its shareholding, and not for additional claims that may exceed that amount. The guarantee seems rather to result from the State's policy objective of avoiding a situation in which, after the liquidation of AVR Nuts and AVR Chemie, no other company could be held liable for the appropriate removal and follow-up. The guarantee may have conferred benefits for the entire duration of the concession agreement since, without the guarantee, a company would (have to) build up the necessary reserves during the operational lifetime of the installations in order to be able to cope with the removal and follow-up costs without aid.

(75) Consequently, the notified measures constitute state aid within the meaning of Article 87(1) of the Treaty.

(76) The Commission regrets that the Netherlands has implemented a significant part of the aid in question in breach of Article 88(3) of the Treaty.

6.2 Assessment on the basis of Article 86(2) of the Treaty

Classification as an SGEI

(77) Member States are free to define what they regard as services of general economic interest on the basis of the specific features of the activities. This definition can only be subject to control for manifest error⁽¹⁷⁾. In its 2003 Green Paper and its 2004 White Paper on services of general interest⁽¹⁸⁾, the Commission outlines the guiding principles of its approach. Section 3.4 of the White Paper stipulates that 'in line with the Union's policy on sustainable development, due consideration has to be taken also of the role of services of general interest for the protection of the environment and of the specific characteristics of services of general interest directly related to the environmental field, such as the water and waste sectors.' This is in line with the case law of the Court, which ruled that 'the management of a particular waste may properly be considered to be capable of forming the subject of a service of general

economic interest, particularly where the service is designed to deal with an environmental problem'⁽¹⁹⁾.

(78) For the following reasons, the Commission agrees with the Netherlands that the service as defined in the concession decision and the concession agreement constitutes an SGEI.

(79) First, there is an obvious public interest in appropriate treatment when hazardous waste is disposed of. There is as well a public and Community interest in ensuring the availability of sufficient domestic capacity for such disposal. In accordance with the objective laid down in Article 5(1) of Directive 75/442/EC, Member States should strive to become self-sufficient in the disposal of waste.

(80) Second, public intervention was necessary to safeguard this public interest. Since the RDFs were operated at a loss, without the aid AVR would have closed the RDFs and the C2 depot at the end of 2001.

(81) Third, the public interest was real. Between 2002 and 2004 significant quantities of RDF and C2 waste produced in the Netherlands were disposed of, although they were significantly below expectations on account, among other things, of the consequences of the ruling by the Court which clarified the definitions of 'waste for disposal' and 'waste for recovery'. The Netherlands responded to market developments by adapting the capacity to the new perceived needs and ultimately by abandoning its policy and closing down the only remaining RDF. This, however, is not incompatible with the public interest as regards the actual quantities of RDF and C2 waste disposed of. The quantities of waste for disposal might have been smaller if the Netherlands had applied the correct definitions from the outset, but it is unlikely that all RDF and C2 waste would have been used for recovery purposes. This is confirmed by the quantities of RDF and C2 waste offered to AVR Nuts in 2004 and by the quantities of RDF waste exported for disposal in RDFs abroad. The interested parties may have been right in maintaining that all hazardous waste produced in the Netherlands during that period could have been disposed of or recovered within the country or abroad even without AVR's RDFs. They failed,

⁽¹⁷⁾ Communication from the Commission on services of general interest in Europe (OJ C 17, 19.1.2001, p. 4, point 22).

⁽¹⁸⁾ Green Paper on services of general interest (COM(2003) 270 final, 21.5.2003) and White Paper on services of general interest (COM(2004) 374 final, 12.5.2004).

⁽¹⁹⁾ Case C 209/98 *Entreprenørforeningens Affalds/Miljøsektion (FFAD) v Københavns Kommune* ('Sydhavnens Sten&Co') [2000] ECR 3743, paragraph 75. An example where the Commission considered the management of a particular waste to be an SGEI can be found in the state aid field with regard to the collection of halons and CFCs (state aid No N 638/2002, OJ C 82, 5.4.2003, p. 18). See also in this connection Case C 240/83 *Procureur de la République v Association de défense des brûleurs d'huiles usagées* [1985] ECR 531.

however, to demonstrate that without AVR's RDFs no exports of waste for disposal abroad would have been necessary at all because of the absence of sufficient capacity. It is precisely in this connection that the Netherlands could legitimately base its policy on the desire to defend the public interest, in line with the objective of Article 5(1) of Directive 75/442/EC.

(82) Fourth, the measures do not infringe the 'polluter pays' principle. As concluded in point 72, the suppliers of waste are not spared the costs that should normally be included in their budget.

(83) Fifth, classification as an SGEI does not circumvent the rules that normally apply. The measure seeks to protect the environment since it ensured appropriate treatment of hazardous waste at a location near its source. The environmental aid guidelines contain rules on operating aid to promote waste management (Section E.3.1). These rules, however, were drawn up in the first place in respect of operating aid granted to companies that produce the waste concerned themselves.

(84) Sixth, by nature, the bulk of the RDF and C2 waste is supplied by companies, but collection systems exist for the safe and easy disposal of any hazardous waste from households. Some of the hazardous waste collected can then be disposed of in the RDFs. So the service for which the aid was granted was general in character and did not favour a limited number of users.

(85) The two joint competitors claim that there is no market failure to justify the SGEI. Moreover, in some Member States there were no RDFs at all. The objectives of Directive 75/442/EEC, i.e. self-sufficiency in waste disposal and waste disposal close to the source of the waste (proximity principle), may not correspond to a market outcome but are no less legitimate for that reason.

Precise definition and entrustment of the SGEI

(86) A public service mission needs to be clearly defined and must be explicitly entrusted through an act of public authority. In this case, the proper entrustment of the SGEI is clear from the concession decision and the concession agreement. The definition of the public service obligation in these documents is sufficiently

precise. It is strictly linked to the waste for the C2 depot and to the low-calorific waste to be incinerated in the RDFs. The aid measures to compensate for the costs of the SGEI are also described in sufficient detail. However, the following must be noted.

(87) First, there have been shortcomings as regards transparency. It may not always have been clear to competitors whether AVR IW acted on its own behalf or on behalf of AVR Nuts. In addition, the system of fees and rebates, in particular as regards high-calorific waste to fuel the RDFs, has not been sufficiently transparent from the outset. For AVR and the State, and for independent controllers, however, these issues were sufficiently clear from the concession agreement, and this made appropriate control possible.

(88) The Commission considers that the method described in Annex I is sufficiently transparent for control purposes, and deems sufficient the additional measures to increase transparency in the execution of the SGEI that were adopted pursuant to the comments received.

(89) Second, the concept of 'socially acceptable fees' for the disposal of RDF waste is rather vague at first sight. In practice, however, this has not caused a problem. The fees remained at the level to which they had been raised in the preceding years. In accordance with the 'polluter pays' principle, they were higher than the fees for disposal abroad. At the same time, neither the interested parties nor the Netherlands have argued that lower fees were necessary to avoid illegal practices that could be harmful to the environment. Apparently, the Netherlands regarded the fees as not being too high, given the agreement on the predetermined budget deficits, which were based on more precise assumptions regarding the fees to be applied.

Absence of overcompensation

(90) Overcompensation must be avoided for all aid elements in the system. In this respect, the Commission assesses the following elements separately: 1. the compensation for the budget deficits in 2002 and 2003; 2. the compensation for the budget deficits in 2004, 2005 and 2006; 3. the compensation for the costs of closure, which consists in (a) compensation for closure costs related to the agreed investments to the extent that they have not yet been written off, and (b) closure costs resulting from early closure of the RDFs; and 4. the aid contained in the guarantee.

- (91) As regards the 2002 and 2003 budget deficits, the Commission considers the methodology for calculating the expected deficits, which are to be granted as aid, to be appropriate and sufficiently restrictive. All the elements, apart from the compensation for acquisition costs (see points 108-113), are directly related to the fulfilment of the public service obligation. There is no reason to believe that cost elements have been artificially inflated and that the assistance of an independent consultant has helped the Netherlands to calculate the aid in a restrictive way. The methodology contains a more detailed analysis of AVR Nuts' opening balance sheet, which provides a sound basis for the estimates of AVR Nuts' costs and revenues in the new situation. Variable costs, direct fixed costs and costs charged by other AVR companies are estimated on the basis of detailed breakdowns. Investments and depreciation are duly taken into account by means of a detailed investment plan for 2002-16 and by writing off new investments over 7.24 years. This ensured that costs were not artificially inflated by individual investments or disproportionate depreciation. The comments from interested parties raised various issues, but no proof of overcompensation was provided. For 2002 and 2003, moreover, accidents and technical difficulties caused losses that exceeded the predetermined deficits by a total of €12 million. Any overcompensation in favour of AVR Nuts during that period is, therefore, ruled out.
- (92) For the years 2004-06, the aid is based on the same methodology and so the Commission does not *a priori* expect any overcompensation. The predetermined budget deficit in 2004 is based entirely on the same methodology and the increase in the predetermined deficit, despite the closure of one of the RDFs, is fully explained by the various cost elements of this methodology (see the figures in Annex I). Given the high losses in excess of the predetermined deficits for 2002 and 2003, it need not surprise anyone that the predetermined deficit for 2004 was higher. The closure of the first RDF, moreover, may have reduced the variable costs, but its impact on fixed costs, which account for a significant part of total costs, has been limited. Nevertheless, in line with the Commission's general policy, overcompensation for the cost of an SGEI should be excluded not only *ex ante*, but also *ex post*. The Commission, therefore, requests the Netherlands to verify the actual costs and to adjust the aid level if necessary in order to avoid a situation in which compensation would allow AVR Nuts to earn a profit margin on its activities higher than is normal for this type of activity in this sector.
- (93) The Commission accepts that aid can be granted as compensation for closure costs related to the agreed investments to the extent they have not yet been written off. Without sufficient guarantees, one cannot expect an operator to enter into a five-year service contract that requires substantial investments. Depreciation of the investments over the period corresponding to the duration of the agreement, i.e. five years, would have been just as unreasonable. It would have increased significantly the predetermined losses over that period and hence the level of aid. The relevant provisions in the concession agreement constitute a necessary and efficient corollary to the compensation system. The fact that those provisions were applied before the planned expiry of the concession agreement does not alter this assessment. On the basis of the information provided by the Netherlands, the Commission does not expect there to be any overcompensation for this element. A few aspects, however, are not sufficiently clear, viz. whether any proceeds from the sale of assets or any profits from continued use for other purposes will be properly taken into account. Consequently, for this element too, the Commission requests the Netherlands to verify the actual costs and to adjust the aid level if necessary.
- (94) The Commission can also accept that compensation is granted for additional costs resulting from the earlier-than-expected closure of the RDFs. A Member State cannot be obliged to continue with such a contract, especially if it thereby pays less than what it probably would have had to pay if the activities had been continued. The information provided by the Netherlands on these additional costs is relatively detailed. Various elements, however, are based on estimates which seem to present a rather wide margin of uncertainty. Moreover, only the costs necessarily linked to the SGEI and to the earlier-than-expected closure can be included, and it is not sufficiently clear from the information available whether this is indeed the case. Consequently, for this element as well, the Commission requests the Netherlands to verify the actual costs and to adjust the aid level if necessary.
- (95) Lastly, the Commission can accept that aid is granted through application of the guarantee covering 30 % of the costs of removal and decontamination. Had there not been a guarantee, the operating deficits and the operating aid would probably have been higher on account of the corresponding provisions that would have had to be made. The costs as such are directly linked to the original policy objective of offering the SGEI concerned in the Netherlands. The actual costs, however, are not yet known, so the Commission will require appropriate *ex post* control.

- (96) To sum up, the Commission finds no overcompensation for the operating deficits for 2002 and 2003 but can allow the remaining aid elements only on condition that the Netherlands ensures that there is no overcompensation *ex post* over the entire period, taking into account excess losses and profits for all the years covered by the concession agreement. The aid may allow AVR Nuts to earn a reasonable profit margin on the activities concerned. The risk for AVR under the agreement was limited since predetermined losses would be fully covered by the aid, but AVR remained largely exposed to the operating risk ⁽²⁰⁾, with the result that risk was not excluded, as indeed proved to be the case in practice. Given the market conditions and AVR Nuts' risk profile, the Commission can certainly accept a profit level equivalent to the rate of return on Dutch government bonds plus 2 percentage points. If, in practice, profit is found to exceed this threshold, the Netherlands must retroactively adjust the aid level and, in accordance with Article 88(3) of the Treaty, notify any aid that allows AVR Nuts to exceed the threshold. The *ex post* verification must adequately verify the absence of overcompensation. To this end, the Commission requires detailed monitoring reports which must address at least the issues specified in Annex II.

Proportionality and no distortion of trade contrary to the common interest

- (97) The Commission exercises control of proportionality so as to ensure that the means used to perform the general interest task do not lead to unnecessary distortions of trade. Specifically, it has to be ensured that any restrictions on the rules of the EC Treaty, especially restrictions on competition and limitations on the freedoms of the internal market, do not exceed what is necessary to guarantee effective fulfilment of the task.
- (98) The Commission considers that the measures adopted by the Netherlands comply for the most part with the proportionality requirement. It is difficult to imagine by which other means the Netherlands could have ensured the availability of sufficient domestic capacity for disposing of hazardous waste. None of the interested parties has argued that there were less distortive alternatives available to meet this objective. The following

aspects of the measure are considered to be proportionate as well.

- (99) Gate-fee system based on staggered rebates: Since the aim of this system is to maintain sufficient capacity for the proper disposal of RDF waste, the natural consequence is to aim for maximum capacity utilisation in order to minimise costs. As shown by the Netherlands, all suppliers could have applied for a refund, either directly or when supplying via intermediaries. The gate-fee system based on staggered rebates is justified. The system of non-discriminatory fees and staggered rebates for all suppliers, including AVR IW, has limited the distortion of competition resulting from the measure. Although there may have been some confusion in practice, the non-discriminatory nature of the system could have been clear to any interested party. The Netherlands has taken sufficient additional measures to increase transparency when there appeared to be some confusion. Setting the fee for high-calorific waste at the level of competing disposal alternatives limited the distortion of competition on the market for this waste. It must be noted that no company in the Netherlands had an obligation to supply RDF waste or high-calorific hazardous waste to AVR Nuts or AVR IW. In contrast, the concession agreement obliged AVR Nuts to accept any C2 and RDF waste offered to it, whether or not supplied together with high-calorific hazardous waste. In this respect, the Commission finds insufficient evidence that there was *prima facie* abuse of a dominant position by AVR Nuts and that the concession agreement certainly does not provide a basis for such abuse.
- (100) Compensation in the event of closure: The provisions in the concession agreement that concern – in the event of the agreement not being extended – the compensation for the remaining book value of the as yet undepreciated investments that AVR had made during the period covered by this agreement with the consent of the State must similarly be considered to be proportionate. Without such a guarantee, AVR's agreement could not reasonably be expected. The same applies to the guarantee by the State to cover a maximum of 30 % of the costs of removal and decontamination in the event of the installations being liquidated. Appropriate removal and decontamination are obviously in the public interest. Given its 30 % share in AVR Chemie, it is acceptable that the State should assume responsibility for its part, leaving the remainder for the other shareholder, AVR Holding.

⁽²⁰⁾ In addition, the concession agreement contains a provision for interim upward adjustment in the event of changed public policy measures or calamities beyond the influence of AVR. A similar provision allows downward adjustment of the aid in the event of a significantly smaller loss than that determined in advance.

- (101) Maintaining two RDFs at the outset: The Commission examined whether the Netherlands should have granted aid for maintaining only one RDF. The question is whether the contribution to the realisation of the objectives pursued by the Netherlands by maintaining the second RDF offsets the aid required and the unfavourable effects on competition resulting from this.
- (102) The Commission here acknowledges that the Netherlands could legitimately aim to have sufficient domestic capacity for the treatment of RDF waste in order to avoid a capacity shortfall which would oblige the State to allow the exportation of such waste. Some flexibility in the assessment is unavoidable as the flows of C2 and RDF waste that would result could not be predicted with certainty and because of the risks attaching to the availability of the installations. Such risks indeed materialised when, following a number of incidents, one of the RDFs was closed for some time in 2002. The available capacity in 2002 and 2003 was only 73 % and 75 % respectively of the permitted capacity of 100 000 tonnes and, for this reason, the Dutch authorities had to allow RDF waste to be exported, contrary to their policy aim.
- (103) When comparing expected quantities of RDF waste and the capacity of the two RDFs, the following must be noted. When the concession agreement was prepared in the period from end-2001 to mid-2002, the expected supply of RDF waste was put at around 38 500 tonnes per year. This estimate was based on past experience. Treatment requires at least the same volume of high-calorific waste. One RDF would clearly not have been sufficient for the proper treatment of this volume of waste. This figure is, however, open to criticism in three respects. First, part of the expected supply of RDF waste to AVR Nuts may have been the consequence of the restrictive application of the definition of 'waste for recovery' by the Netherlands up to the beginning of 2003. Second, interested parties have pointed to alternative domestic capacity for dealing with RDF waste. Third, the estimate would not take into account the possibility for AVR to treat part of the waste in its grate incinerators for municipal waste⁽²¹⁾. On the other hand, the estimate explicitly took account of ongoing developments at the time. In addition, the supply of RDF waste for export varies from year to year and depends on the situation on the international market. The situation varies as well for different categories of waste. Moreover, in early 2002 there was still a substantial stock of RDF waste, with the result that supply at the beginning of the period was guaranteed. Furthermore, had the Dutch authorities in 2002 based the estimated flow of RDF waste on the assumption that the definition of 'waste for recovery' would have been correctly applied, the estimate might have been lower, but it seems unlikely that, on the basis of the information available at the time, such an estimate would have been so low that they could have confidently decided that only one RDF would suffice. This is confirmed by the fact that in 2003, when the Court already had clarified the proper definition of 'waste for recovery', AVR's capacity problems still forced the Netherlands to allow actual exports of RDF waste. The actual decline in the flow of RDF waste to AVR is explained to a significant extent by factors other than the increase in exports. With respect to other capacity in the Netherlands, the Commission notes that a significant part of that capacity became available only in late 2003, after the required permits had been issued to the main competing pyrolysis installation. The interested parties have failed to demonstrate that the Dutch authorities should have taken into account back in 2002 sufficient alternative domestic capacity for treating all types of RDF waste produced in the Netherlands and delivered for disposal.
- (104) The decision to keep in operation two RDFs instead of one increased the level of aid, in particular because of the investments which appeared to be necessary and in respect of which compensation had subsequently to be paid because of the closure. Some of these investments had not, however, been foreseen at the time the concession agreement was signed. The effects on the predetermined operating deficits were relatively limited because of the relatively high proportion of fixed costs. The Commission expects the effects on competitors to remain relatively limited as well: there is no indication that keeping two RDFs in operation has resulted in larger quantities of RDF and other hazardous waste being incinerated. Using RDF capacity for other types of waste, for which no evidence has been provided, is relatively inefficient and cannot be reckoned to have had a strong negative effect on competitors.
- (105) Accordingly, it appears to the Commission that the original decision to keep two RDFs in operation can be considered to be proportionate and that the decisions to close the RDFs were not unreasonably overdue.
- (21) The three joint competitors pointed out in particular that Figure 3.2 on theoretical and actual availability and the supply of hazardous waste in the study 'Toekomst verbranden specifiek gevaarlijk afval' (annexed to their comments and also to the letter from the Netherlands) suggests an unduly high estimate for the supply of RDF waste because it would not take into account the possibility for AVR to treat part of the waste in its grate incinerators for municipal waste. AVR's practice is, however, explicitly described in paragraph 3.1.2 of that study.

(106) Involvement of AVR IW: AVR IW was responsible for much of AVR Nuts' administration and, at the same time, was a competitor for other suppliers of hazardous waste. In this way, it obtained information on intended and actual supplies of waste. As no single supplier was under an obligation to supply to AVR Nuts the quantities originally indicated and as the actual fees and discounts were ultimately based solely on actual volumes of waste supplied, it is difficult to see how AVR IW could have obtained a financial or strategic advantage by virtue of its central position. The Netherlands explained that AVR IW was unable to abuse this position and the Commission, on the basis of the comments from interested parties among other things, cannot come to this conclusion either. It may be true that AVR IW, on its own behalf, offered to treat waste at fees below those charged by AVR Nuts, but this cannot be attributed to the aid measures and could fall within the realm of competitive behaviour; any competitor was free to act in a similar manner. Similarly, even if AVR IW rerouted part of the RDF waste to its municipal waste incinerators, which has not been proved, this does not seem to have resulted in a disproportionate distortion since any supplier with knowledge of the waste could have earned similar margins by simply supplying such waste directly to other municipal waste incinerators operated by AVR or others. Moreover, as the aid was determined on the basis of a predetermined budget, the Commission expects AVR to have opted for efficient solutions, and not to have rerouted waste if this would have led to underutilisation of the installations and hence higher actual losses. In fact, such rerouting may well be regarded as efficient waste management in line with the Community principles.

accepted for this reason. In contrast, the compensation granted to AVR IW in respect of the acquisition of waste distorts competition in a disproportionate way as AVR IW is the sole recipient. Its competitors do not receive similar compensation for acquisition costs incurred by them. As regards high-calorific hazardous waste, had there been persistent shortages, the solution could have consisted in lowering the gate fees in a non-discriminatory fashion. As regards RDF waste, the compensation for acquisition costs must be considered as disproportionate too. It confers on AVR IW a discriminatory advantage for a specific activity that is in direct competition with other waste management companies. Such acquisition is not directly in the public interest that justifies the aid, and this is certainly the case with RDF waste acquired abroad. But, even in the case of RDF waste from Dutch sources, acquisition may encourage disposal in the Netherlands at the expense of recovery in the Netherlands or elsewhere. Under specific circumstances, this may be contrary to the principle of treatment near the source. Consequently, the amount of €2,4 million intended for acquisition, included in the aid to AVR Nuts, which was based on the predetermined budget, and transferred to AVR IW cannot be justified on the basis of Article 86(2) of the Treaty. The compatibility of this part of the measure with Article 87(2) and (3) is assessed in Section 6.3 below.

6.3 Assessment on the basis of Article 87 of the compensation for acquisition costs

(107) Technological development: The Commission does not expect the measures to have a pronounced adverse effect on the development of alternative disposal and recovery technologies. As explained by the Netherlands, other instruments exist for encouraging such developments. In 2003, for example, a permit was granted for an innovative pyrolysis installation. The fees charged by AVR were significantly higher than the fees charged by the operator of that installation and so the distortive effect of the aid must be considered to be limited in this respect.

(109) The Commission has examined whether the exemptions in Article 87(2) and (3) of the Treaty apply to the compensation for acquisition costs granted to AVR IW. The exemptions in Article 87(2) could serve as a basis for considering aid to be compatible with the common market. However, the aid (a) does not have a social character and is not granted to individual consumers, (b) does not make good the damage caused by natural disasters or exceptional occurrences and (c) is not required in order to compensate for the economic disadvantages caused by the division of Germany.

(108) Aid for the acquisition of waste: In contrast to the above aspects, the measures cannot be regarded as proportionate as regards the acquisition of waste as carried out by AVR IW and for which AVR Nuts pays compensation out of the aid it receives from the State. The Commission accepts that minimising the costs of the system requires maximising the volume of waste to be treated, especially the volume of RDF waste, for which the gate fees are highest. As indicated in point 99, the system of non-discriminatory staggered rebates can be

(110) Similarly, the exemptions in Article 87(3)(a), (b) and (d), which refer to aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, aid to promote projects of common European interest or to remedy a serious disturbance of the economy of a Member State, and aid to promote culture and heritage conservation, do not apply in the present case. The Netherlands has not attempted to justify the aid on any of these grounds.

- (111) As regards the first part of the exemption in Article 87(3)(c), namely aid to facilitate the development of certain economic activities, the Commission notes that the aid does not involve research and development, investment by small and medium-sized enterprises or the rescue or restructuring of AVR IW. Nor does the aid serve regional development purposes, and AVR IW is not located in an area where start-up investments are eligible for regional aid. Therefore, the aid cannot be declared compatible with the common market on the ground that it would facilitate the development of certain regions.
- (112) The Commission has examined whether the aid measure qualifies for exemption under Article 87(3)(c) on any other grounds and, in particular, whether the environmental aid guidelines apply to this case. Since the aid constitutes operating aid, the Commission has assessed it in the light of Section E.3.1 of those guidelines. The aid is, however, not shown to be absolutely necessary, nor is it strictly limited to compensating for extra production costs by comparison with market prices of the relevant products or services.
- (113) As none of the exemptions is applicable, the Commission concludes that this aid is incompatible with the common market and, in accordance with Article 14 of Regulation (EC) No 659/1999, should be recovered from the recipient, AVR IW, in conformity with the provisions set out in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²²⁾.
- (115) However, the compensation of €2 396 000 granted to AVR IW for the costs of acquiring waste cannot be found compatible since it cannot be regarded as proportionate compensation for the SGEI. Instead, it compensates AVR IW for costs that should normally be included in the budget of a waste treatment company. None of the exemptions from the prohibition on state aid in Article 87(1) of the Treaty is applicable. Consequently, this part of the aid must be recovered directly from AVR IW. To this end, the Commission requests the Netherlands to enjoin AVR IW to repay the aid with interest in line with the conditions laid down in this decision.
- (116) The Commission asks the Netherlands to provide the information requested using the questionnaire attached in Annex III to this decision, indicating clearly the measures planned and already taken to obtain immediate and effective recovery of the aid. It calls on the Netherlands to submit within two months of the notification of the decision all documents showing that recovery proceedings have been initiated against AVR IW (such as recovery orders),
- 7. CONCLUSION**

- (114) In conclusion, the Commission finds that the following measures constitute state aid for AVR Nuts: 1. the compensation for the budget deficits in 2002 and 2003; 2. the compensation for the budget deficits in 2004 and in the remaining period 2005-06; 3. the compensation for closure costs, which consists in (a) compensation for closure costs related to the agreed investments to the extent they have not yet been written off and (b) compensation for closure costs due to the early termination of the treatment of RDF waste; and 4. the aid contained in the guarantee. The aid, except for the part of it designed to compensate for the costs of acquiring waste, can be found compatible with the common market as it constitutes compensation for the costs of an SGEI within the meaning of Article 86(2) of the Treaty, on condition that the aid does not exceed the actual losses incurred during that period and that

HAS ADOPTED THIS DECISION:

Article 1

The compensation for operating deficits, the compensation for the costs of closing down the rotating drum furnaces and the state guarantee covering 30 % of the costs of removal and decontamination, which follow from the concession agreement between the Netherlands and AVR Nuts and which have been partially implemented by the Netherlands, constitute state aid within the meaning of Article 87(1) of the Treaty.

⁽²²⁾ OJ L 140, 30.4.2004, p. 1.

Article 2

Subject to the conditions set out in Article 3 of this decision, the state aid referred to in Article 1, with the exception of the aid referred to in Article 4 and granted to AVR IW, is compatible with the common market as it compensates the recipient for the costs of a service of general economic interest within the meaning of Article 86(2) of the Treaty.

Article 3

1. The aid for AVR Nuts shall not exceed the sum of the predetermined deficits, the actual additional losses incurred by AVR Nuts and a reasonable profit margin during the period covered by the concession agreement. If, in practice, the profit level over the period during which aid is granted proves to be higher than the rate of return on Dutch government bonds plus 2 percentage points, the Netherlands shall retroactively adjust the aid level.

2. The Netherlands shall submit a report on the application of the measures in 2004 and annual reports on the implementation of the guarantee for the costs of removal and decontamination and on the application of the measures for the C2 depot for the remaining duration. It shall submit an interim report on the verification of the compensation for closure costs by the spring of 2006 and a final report by the spring of 2007. These reports shall justify the compensation, taking due account of the issues raised in Annex II.

Article 4

The aid for AVR IW consisting in the compensation for acquisition costs amounting to €2 396 000 is incompatible with the common market.

Article 5

1. The Netherlands shall take all necessary measures to recover from the recipient, AVR IW, the aid referred to in Article 4.

2. Recovery shall be effected without delay and in accordance with the procedures of national law, provided that they allow the immediate and effective execution of the decision.

3. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery.

4. Interest shall be calculated in accordance with the provisions of Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

Article 6

1. The Netherlands shall inform the Commission, within two months of notification of this decision, of the measures already taken and planned to recover the aid referred to in Article 4. It shall provide this information using the questionnaire attached in Annex III to this decision.

2. The Netherlands shall also submit within two months of notification of this decision documents showing that recovery proceedings have been initiated against AVR IW.

Article 7

This decision is addressed to Kingdom of the Netherlands.

Done at Brussels, 22 June 2005.

For the Commission

Neelie KROES

Member of the Commission

ANNEX I

METHODOLOGY USED FOR DETERMINING THE OPERATING BUDGET DEFICITS

The methodology to determine the budget deficits in advance was developed by an independent consultant at the request of the Ministry for Housing, Spatial Planning and the Environment. It is dated 16 April 2002.

The methodology is based on a detailed assessment of the budgets for 2002 and subsequently makes extrapolations for 2003, taking into account all known factors that can be expected to affect the actual outcome for 2003. For later years, the same procedure would be followed, on each occasion for a two-year period. Owing to unexpected developments and the potential closure of the second RDF, AVR and the Dutch authorities agreed to have only a one-year budget for 2004.

The 2002 budget is based on estimated revenues, historical ratios for variable costs and estimates for other costs. The investment budget for 2002-16 and the specific investments planned for 2002 are also taken into account.

On basis of this budget, a forecasting model was built, including income statements, balance sheets and cash flow statements. The most important assumptions underlying the forecasting model are as follows:

- The scenario chosen assumes that approximately 85 000 tonnes can be processed annually (with some downtime due to recurring exceptional events being taken into account), resulting in estimated revenues of €30,5 million.
- Exceptional events are not accounted for separately in the model, it being assumed that they form part of the assumed recurring exceptional events.
- For depreciation and cost allocation, the estimates for 2003 differ from those for 2002. As of 2003, revenues and costs will rise by 3,5 %. An increase in efficiency is also taken into account.
- The old tangible fixed assets are valued at zero since they are not economically viable without the aid. They are not, therefore, included in the rental charged by AVR Chemie to AVR Nuts; this rental charge will include all AVR's other costs, excluding additions to the C2 provision (as this relates to the past) and including a 5 % mark-up for tax purposes.
- AVR Holding will provide AVR Chemie and AVR Nuts with substantial finance for which interest will be charged at a rate of 4,891 % (in 2002 and 2003).
- Cost allocations by AVR Holding are included; they total €4,3 million for 2002. For 2002 and 2003, these allocations include €400 000 for commercial costs which will not recur after 2003.
- A service contract lays down the conditions for the supply of services between AVR's various subsidiaries. Transfer prices are based mostly on cost prices calculated according to the activity-based costing method and also on market prices.
- No provisions are made for demolition costs since their payment is guaranteed by AVR (70 %) and the State (30 %).
- No provisions are made for personnel layoffs since the business continues and the financial exposures for any future layoffs remain at operator level. The State cannot be liable for any future layoff costs in the event of the activities of AVR Nuts being terminated. The State will never be held liable for severance payments that may be payable in the event of future layoffs resulting from the cessation of activities and/or the discontinuation of the agreement with AVR.
- AVR Holding is liable for negative results and for the effects of not meeting certain quality, safety and environmental requirements, account being taken of changing environmental requirements (one defined exception was made and this can be discussed with the State).

- There were special provisions for possible upward adjustment of the aid for three specific situations concerning: 1. the permissible temperature in the afterburning chamber; 2. potential economies from the use of secondary fuels for which an experiment was to be carried out; and 3. the legal question whether or not excise duty was to be paid on oil-containing waste.

Profit and loss	2002 predetermined	2003 predetermined	2003 actual	2004 predetermined
Revenue from RDF waste	29,3	30,4	22,8	15,9
Revenue from C2 waste	0,5	0,5	1,2	1,2
Revenue from steam	0,6	0,7	0,7	0,4
Total revenue	30,5	31,6	24,7	17,5
Materials and energy	3,8	3,9	3,0	2,4
Deposit of remaining materials	2,0	2,1	1,2	1,0
Processing/storage	2,0	2,1	1,8	0,5
Transport costs	0,2	0,2	0,3	0,2
Total variable costs	8,0	8,2	6,4	4,1
Personnel costs	3,8	4,0	4,2	3,6
Third-party personnel	0,3	0,3	0,7	0,4
Maintenance	7,8	8,1	7,0	6,0
Layoff provision	—	—	0,7	0,2
Operational provisions	—	—	—	—
General expenses	0,6	0,6	2,4	0,8
Total direct fixed costs	12,5	12,9	15,0	11,0
Costs charged by AVR Holding	4,3	4,0	2,8	3,6
Other indirect costs	5,4	5,6	3,9	3,8
Total indirect fixed costs	9,8	9,6	6,7	7,4
Rental charged by AVR Chemie	2,0	3,5	3,7	3,1
Depreciation	0,1	0,2	0,2	0,5
Interest costs	0,2	0,0	0,6	0,3
Operating deficit	1,6	2,9	7,8	8,9

Costs incurred by AVR Holding and partially included in the budget include costs for security, canteen, administration, common facilities, management and ICT. The costs charged by AVR Holding are based on detailed estimates.

ANNEX II

POINTS TO BE INCLUDED IN THE EX POST VERIFICATION OF THE ABSENCE OF OVERCOMPENSATION*Operating budget 2004, 2005 and 2006*

- Actual revenue and actual costs

Compensation for agreed investments not yet written off

- Verification of direct link to the SGEI for each of the investments
- Any proceeds from sales of the assets concerned and any benefits from continued use for other purposes

Compensation for costs due to earlier closure

- Actual cost of early dismissal: indication of the full or part-time employment of the person concerned in relation to the SGEI, actual payments for the employees concerned, actual duration of the payments for redeployment within or outside AVR
- Recurrent fixed costs: general RDF costs: verification whether failed coverage (*gemiste dekkingen*) is appropriate and has not been met by other means; verification of actual accounting, legal and banking cost; verification of actual costs for other elements
- Recurrent fixed costs: security, canteen, purchasing, administrative facilities at Professor Gerbrandyweg: actual costs of transporting electricity based on the actual date on which the facility with Eneco was ended or bought back; costs forgone of rent for offices, etc., taking account of any proceeds from actual re-use; verification whether failed coverage for purchasing function for restaurant, warehouse and security is appropriate and has not been met by other means
- Recurrent fixed costs: ICT infrastructure: verification whether missed coverage for ICT infrastructure has not been met by other means
- Recurrent fixed costs: personnel costs: actual costs of central telephone function and leased lines
- Recurrent fixed cost: rent/lease of equipment: actual missed coverage of specialised trucks and forklift trucks and actual proceeds from sales or alternative use within AVR
- Recurrent fixed cost: other overheads: actual costs and actual reduction in costs of maintenance and cleaning contracts
- Recurrent fixed costs

Guarantee

- Verification of actual removal and decontamination costs for the installations directly used for the SGEI

The verification includes a calculation showing that the aid does not lead to a higher rate of return than the return on Dutch government bonds plus 2 percentage points.

ANNEX III

**Information regarding the implementation of the Commission decision in Case C 43 2003 - Netherlands,
operating aid in favour of AVR for dealing with hazardous waste**

1. Calculation of the amount to be recovered

- 1.1 Please provide the following details on the amount of unlawful state aid that has been put at the disposal of the recipient:

Date(s) of payment (*)	Amount of aid (*)	Currency	Identity of recipient
			AVR IW

(*) Date(s) on which the aid or individual instalments of aid were put at the disposal of the recipient; if the measure consists of several instalments and reimbursements, use separate rows.

(*) Amount of aid put at the disposal of the recipient (in gross grant equivalent)

Comments:

- 1.2 Please explain in detail how the interest payable on the amount of aid to be recovered will be calculated.

2. Recovery measures planned and already taken

- 2.1 Please describe in detail what measures have been taken and what measures are planned to bring about an immediate and effective recovery of the aid. Please explain what alternative measures are available under national law to effect recovery. Where relevant, please indicate the legal basis for the measures taken/planned.

- 2.2 By what date will the recovery of the aid be completed?

3. Recovery already effected

- 3.1 Please provide the following details of aid that has been recovered from the recipient:

Date(s) (*)	Amount of aid repaid	Currency	Identify of recipient
			AVR IW

(*) Date(s) on which the aid was repaid.

- 3.2 Please attach supporting documents for the repayments shown in the table at point 3.1.

CORRIGENDA

Corrigendum to Commission Regulation (EC) No 2032/2003 of 4 November 2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market, and amending Regulation (EC) No 1896/2000

(Official Journal of the European Union L 307 of 24 November 2003)

On page 32, in Annex I, against the entry '5-chloro-2-(4-chlorophenoxy)-phenol', in the second column headed 'EC number':

for: '418-890-8',

read: '429-290-0'.

Corrigendum to Commission Regulation (EC) No 1048/2005 of 13 June 2005 amending Regulation (EC) No 2032/2003 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market

(Official Journal of the European Union L 178 of 9 July 2005)

1. On page 24, Annex II:

- (i) in the line concerning '5-Chloro-2-(4-chlorphenoxy)-phenol', the EC number is replaced by '429-290-0';
- (ii) on page 25, the line concerning 'Cyclohexylhydroxydiazene 1 oxide, potassium salt' is replaced by the following:

Name (EINECS and/or others)	EC number	CAS number	PT01	PT02	PT03	PT04	PT05	PT06	PT07	PT08	PT09	PT10	PT11	PT12	PT13	PT14	PT15	PT16	PT17	PT18	PT19	PT20	PT21	PT22	PT23
'Cyclohexylhydroxydiazene 1-oxide, potassium salt		66603-10-9						6	7	8	9	10	11	12	13'										

2. On page 31, in Annex IV:

in all lines concerning '5-Chloro-2-(4-chlorphenoxy)-phenol', the EC number is replaced by '429-290-0'.