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Contents

[1] Text with EEA relevance

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

II *Acts whose publication is not obligatory*

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 1287/2003
of 15 July 2003
on the harmonisation of gross national income at market prices (GNI Regulation)

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the Communities' own resources ([1]), and in particular Article 8(2) thereof,

Having regard to the proposal from the Commission ([2]),

Having regard to the opinion of the European Parliament ([3]),

Whereas:

(1) The increasing share of the Community's own resource based on the gross national product at market prices (hereinafter referred to as GNPmp) of the Member States, makes it necessary to further reinforce the comparability, reliability and exhaustiveness of this aggregate.

(2) These data are also an important analytical tool for the coordination of national economic policies and for various Community policies.

(3) For own resource purposes, Council Decision 2000/597/EC, Euratom states that GNPmp is equal to gross national income at market prices (hereinafter referred to as GNI) as provided by the Commission in application of the European system of national and regional accounts (hereinafter referred to as ESA 95) in accordance with Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community ([4]).

(4) GNI data must be comparable. These data can be comparable only if the relevant definitions and accounting rules of ESA 95 are complied with. For that purpose, the assessment procedures and the basic data actually used should permit the correct application of the definitions and accounting rules of ESA 95.

(5) The sources and methods used to compile GNI must be reliable. This means that sound techniques should be applied to robust and suitable basic statistics as much as possible.

(6) GNI data must be exhaustive. This means that they should take account also of the activities that are not reported in statistical surveys or to fiscal, social and other administrative authorities. Improved GNI coverage presupposes developing suitable statistical bases and assessment procedures and making adequate adjustments.

(7) In order to fulfil its mission of providing GNI data for own resource purposes, the Commission shall take measures aimed at improving the comparability, reliability and exhaustiveness of Member States' GNI.

(8) Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices ([5]) has set up a procedure to verify and assess the comparability, reliability and exhaustiveness of GNP within the GNP Committee in which Member States and the Commission cooperate closely. This procedure should be adjusted to take account of the use of ESA 95 GNI for the purposes of own resources.

(9) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([6]).

(10) The Statistical Programme Committee has been consulted in accordance with Article 3 of Council Decision 89/382/EEC, Euratom of 19 June 1989 establishing a Committee on the Statistical Programmes of the European Communities ([7]),

([1]) OJ L 253, 7.10.2000, p. 42.
([2]) OJ C 45 E, 25.2.2003, p. 61.
([3]) Opinion of 12 March 2003 (not yet published in the Official Journal).
([4]) OJ L 310, 30.11.1996, p. 1. Regulation as last amended by Regulation (EC) No 359/2002 of the European Parliament and of the Council (OJ L 58, 28.2.2002, p. 1).
([5]) OJ L 49, 21.2.1989, p. 26.
([6]) OJ L 184, 17.7.1999, p. 23.
([7]) OJ L 181, 28.6.1989, p. 47.

HAS ADOPTED THIS REGULATION:

Chapter I

Definition and calculation of gross national income at market prices

Article 1

1. Gross national income at market prices (GNI) and gross domestic product at market prices (GDP) shall be defined in accordance with the European system of national and regional accounts (ESA 95).

2. GDP is the final result of the production activity of resident producer units. It can be defined in three ways:

(a) GDP is the sum of gross value added of the various institutional sectors or the various industries plus taxes and less subsidies on products (which are not allocated to sectors and industries). It is also the balancing item in the total economy production account;

(b) GDP is the sum of final uses of goods and services by resident institutional units (actual final consumption and gross capital formation) plus exports and minus imports of goods and services;

(c) GDP is the sum of uses in the total economy generation of income account (compensation of employees, taxes on production and imports less subsidies, gross operating surplus and mixed income of the total economy).

3. GNI represents total primary income receivable by resident institutional units: compensation of employees, taxes on production and imports less subsidies, property income (receivable less payable), gross operating surplus and gross mixed income. GNI equals GDP minus primary income payable by resident units to non-resident units plus primary income receivable by resident units from the rest of the world.

Chapter II

Forwarding of GNI data and additional information

Article 2

1. Member States shall establish GNI in accordance with Article 1 in the context of regular national accounting.

2. Before 22 September each year, Member States shall provide the Commission (Eurostat), in the context of national accounting procedures, with figures for aggregate GNI and its components, according to the definitions referred to in Article 1. Totals for GDP and its components may be presented according to the three approaches mentioned in Article 1(2). The figures provided shall cover the preceding year and any changes made to the figures for previous years.

3. When they communicate the data referred to in paragraph 2, Member States shall transmit a report on the quality of GNI data to the Commission (Eurostat). The report shall supply the information necessary to show how the aggregate was reached, and in particular describe any significant changes in the procedures and basic statistics used and explain the revisions made to earlier GNI estimates. The content and format of this report shall follow the guidelines laid down by the Commission in accordance with the procedure referred to in Article 4(2).

Article 3

Member States shall provide the Commission (Eurostat), in accordance with the guidelines laid down by the latter and in accordance with the procedure referred to in Article 4(2), with an inventory of the procedures and basic statistics used to calculate GNI and its components according to ESA 95. Member States shall improve and update their inventory according to those guidelines.

Chapter III

Procedures and checks on the calculation of GNI

Article 4

1. The Commission shall be assisted by a committee, hereinafter referred to as the 'GNI Committee', composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3. The Committee shall adopt its rules of procedure.

Article 5

1. The Commission shall verify the sources and methods used by Member States to calculate GNI. Measures to make GNI data more comparable, reliable and exhaustive shall be adopted in accordance with the procedure referred to in Article 4(2).

2. The GNI Committee shall examine questions raised by its Chairman, either on his own initiative or at the request of the representative of a Member State, relating to the implementation of this Regulation, in particular with regard to:

(a) compliance each year with the definitions referred to in Article 1;

(b) the examination each year of the data forwarded under the terms of Article 2(2) and the information forwarded under the terms of Article 2(3) concerning the statistical sources and the procedures for calculating GNI and its components. This examination shall lead to a GNI Committee opinion on the appropriateness of Member States' GNI data for own resource purposes with respect to reliability, comparability and exhaustiveness. This opinion will indicate the main documents on which the examination is based. Reliability, comparability and exhaustiveness of GNI and its components must be assessed taking account of the cost-benefit principle.

In this context, the cost-benefit principle entails a judgment on the potential size and significance of specific activities or transactions based on whatever information is available. This information is often qualitative, though it may be quantitative in some cases. The Commission (Eurostat) examines the comparability in the treatment of similar cases in the Member States and reports to the GNI Committee on all cases where the cost-benefit principle is considered to apply. The application of this principle should avoid committing disproportionate resources to calculate insignificant items;

(c) expressing its views, without prejudice to Article 4, on Commission proposals aiming to improve GNI calculations, including interpreting ESA 95 definitions where necessary and quantifying the impact of these proposals on GNI.

3. The GNI Committee shall dedicate particular efforts to the improvement of Member States' GNI compilation practices and to the dissemination of best practices in this domain.

It shall also deal with questions relating to the revision of GNI data and the problem of the exhaustiveness of GNI.

It shall, if necessary, suggest to the Commission measures to make GNI data more comparable and more reliable.

Article 6

Without prejudice to the inspections provided for in Article 19 of Regulation (EC, Euratom) No 1150/2000 [1], joint GNI information visits may, where deemed appropriate, be carried out in Member States by the Commission's services and representatives from other Member States in consultation with the Member States visited. The participation of Member States in these visits is voluntary.

Chapter IV

Final provisions

Article 7

Before the end of 2005, the Commission shall submit a report on the application of this Regulation to the European Parliament and to the Council.

Article 8

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, 15 July 2003.

For the Council
The President
G. TREMONTI

[1] OJ L 130, 31.5.2000, p. 1.

COMMISSION REGULATION (EC) No 1288/2003

of 18 July 2003

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1947/2002 [2], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 July 2003.

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

Done at Brussels, 18 July 2003.

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

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 18 July 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	48,9
	096	56,8
	999	52,8
0707 00 05	052	75,2
	999	75,2
0709 90 70	052	75,7
	999	75,7
0805 50 10	052	51,2
	388	62,2
	524	61,6
	528	59,9
	999	58,7
0808 10 20, 0808 10 50, 0808 10 90	388	77,7
	400	92,3
	508	72,5
	512	74,5
	524	28,7
	528	67,9
	720	68,4
	804	107,1
	999	73,6
0808 20 50	388	87,7
	512	89,6
	528	69,8
	800	169,8
	999	104,2
0809 10 00	052	187,2
	064	139,2
	066	118,0
	094	127,0
	999	142,8
0809 20 95	052	286,9
	061	279,8
	400	266,1
	404	252,6
	999	271,4
0809 40 05	060	99,4
	064	106,2
	624	138,3
	999	114,6

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

COMMISSION REGULATION (EC) No 1289/2003
of 18 July 2003
suspending the buying-in of butter in certain Member States

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Commission Regulation (EC) No 806/2003 [2],

Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream [3], as last amended by Regulation (EC) No 359/2003 [4], and in particular Article 2 thereof,

Whereas:

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

(2) Commission Regulation (EC) No 1200/2003 suspending the buying-in of butter in certain Member States [5] establishes the most recent list of Member States in which intervention is suspended. This list must be adjusted as a result of the market prices communicated by Germany under Article 8 of Regulation (EC) No 2771/1999. In the interests of clarity, the list in question should be replaced and Regulation (EC) No 1200/2003 should be repealed,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

Regulation (EC) No 1200/2003 is hereby repealed.

Article 3

This Regulation shall enter into force on 19 July 2003.

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

Done at Brussels, 18 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 122, 16.5.2003, p. 1.
[3] OJ L 333, 24.12.1999, p. 11.
[4] OJ L 53, 28.2.2003, p. 17.
[5] OJ L 128, 24.5.2003, p. 3.

COMMISSION REGULATION (EC) No 1290/2003

of 18 July 2003

on a standing invitation to tender to determine levies and/or refunds on exports of white sugar for the 2003/04 marketing year

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [1], as amended by Commission Regulation (EC) No 680/2002 [2], and in particular Article 22(2), Article 27(5) and (15) and Article 33(3) thereof,

Whereas:

(1) In view of the situation on the Community and world sugar markets, a standing invitation to tender should be issued as soon as possible for the export of white sugar in respect of the 2003/04 marketing year which, having regard to possible fluctuations in world prices for sugar, must provide for the determination of export levies and/or export refunds.

(2) The general rules governing invitations to tender for the purpose of determining export refunds for sugar established by Article 28 of Regulation (EC) No 1260/2001 should be applied.

(3) In view of the specific nature of the operation, appropriate provisions should be laid down with regard to export licences issued in connection with the standing invitation to tender and there should be a derogation from Commission Regulation (EC) No 1464/95 of 27 June 1995 on special detailed rules for the application of the system of import and export licences in the sugar sector [3], as last amended by Regulation (EC) No 1159/2003 [4]. However, Commission Regulation (EC) No 1291/2000 of 9 June 2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [5], as last amended by Regulation (EC) No 325/2003 [6], and Commission Regulation (EEC) No 120/89 of 19 January 1989 laying down common detailed rules for the application of the export levies and charges on agricultural products [7], as last amended by Regulation (EC) No 2194/96 [8], must continue to apply.

(4) The Management Committee for Sugar has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. A standing invitation to tender shall be issued in order to determine export levies and/or export refunds on white sugar covered by CN code 1701 99 10 for all destinations excluding Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro [9] and the former Yugoslav Republic of Macedonia. During the period of validity of this standing invitation, partial invitations to tender shall be issued.

2. The standing invitation to tender shall be open until 29 July 2004.

Article 2

The standing invitation to tender and the partial invitations shall be conducted in accordance with Article 28 of Regulation (EC) No 1260/2001 and with this Regulation.

Article 3

1. The Member States shall establish a notice of invitation to tender. The notice of invitation to tender shall be published in the *Official Journal of the European Union*. Member States may also publish the notice, or have it published, elsewhere.

2. The notice shall indicate, in particular, the terms of the invitation to tender.

3. The notice may be amended during the period of validity of the standing invitation to tender. It shall be so amended if the terms of the invitation to tender are modified during that period.

Article 4

1. The period during which tenders may be submitted in response to the first partial invitation to tender:

(a) shall begin on 25 July 2003;

(b) shall end on Thursday 31 July 2003 at 10.00, Brussels local time.

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 144, 28.6.1995, p. 14.
[4] OJ L 162, 1.7.2003, p. 25.
[5] OJ L 152, 24.6.2000, p. 1.
[6] OJ L 47, 21.2.2003, p. 21.
[7] OJ L 16, 20.1.1989, p. 19.
[8] OJ L 293, 16.11.1996, p. 3.

[9] Including Kosovo as defined in United Nations Security Council Resolution 1244 of 10 June 1999.

2. The periods during which tenders may be submitted in response to the second and subsequent partial invitations:

(a) shall begin on the first working day following the end of the preceding period;

(b) shall end at 10.00, Brussels local time:

— on 14 and 28 August 2003,

— on 4, 11, 18 and 25 September 2003,

— on 2, 9, 16, 23 and 30 October 2003,

— on 6, 13 and 27 November 2003,

— on 11 and 23 December 2003,

— on 8 and 22 January 2004,

— on 5 and 19 February 2004,

— on 4 and 18 March 2004,

— on 1, 15 and 29 April 2004,

— on 13 and 27 May 2004,

— on 3, 10, 17 and 24 June 2004,

— on 1, 15 and 29 July 2004.

Article 5

1. Offers in connection with this tender:

(a) must be in writing and must be delivered by hand to the competent authority in a Member State, against a receipt; or

(b) must be addressed to that authority either by registered letter or telegram; or

(c) must be addressed to that authority by telex, fax or electronic mail, where the authority accepts such forms of communication.

2. An offer shall be valid only if the following conditions are met:

(a) the offer indicates:

(i) the reference of the invitation to tender;

(ii) the name and address of the tenderer;

(iii) the quantity of white sugar to be exported;

(iv) the amount of the export levy or, where applicable, of the export refund, per 100 kilograms of white sugar, expressed in euro to three decimal places;

(v) the amount of the security to be lodged covering the quantity of sugar indicated in (iii), expressed in the currency of the Member State in which the tender is submitted;

(b) the quantity to be exported is not less than 250 tonnes of white sugar;

(c) proof is furnished before expiry of the time limit for the submission of tenders that the tenderer has lodged the security indicated in the tender;

(d) the offer includes a declaration by the tenderer that if his tender is successful he will, within the period laid down in the second subparagraph of Article 12(2), apply for an export licence or licences in respect of the quantities of white sugar to be exported;

(e) the offer includes a declaration by the tenderer that if his tender is successful he will:

(i) where the obligation to export resulting from the export licence referred to in Article 12(2) is not fulfilled, supplement the security by payment of the amount referred to in Article 13(4);

(ii) within 30 days following the expiry of the export licence in question, notify the authority which issued the licence of the quantity or quantities in respect of which the licence was not used.

3. A tender may stipulate that it is to be regarded as having been submitted only if one or both of the following conditions is/are met:

(a) the minimum export levy or, where applicable, the maximum export refund is fixed on the day of the expiry of the period for the submission of the tenders in question;

(b) the tender, if successful, relates to all or a specified part of the tendered quantity.

4. A tender which is not submitted in accordance with paragraphs 1 and 2, or which contains conditions other than those indicated in the present invitation to tender, shall not be considered.

5. Once submitted, a tender may not be withdrawn.

Article 6

1. A security of EUR 11 per 100 kilograms of white sugar to be exported under this invitation to tender must be lodged by each tenderer.

Without prejudice to Article 13(4), where a tender is successful this security shall become the security for the export licence at the time of the application referred to in Article 12(2).

2. The security referred to in paragraph 1 may be lodged at the tenderer's choice, either in cash or in the form of a guarantee given by an establishment complying with criteria laid down by the Member State in which the tender is submitted.

3. Except in cases of *force majeure*, the security referred to in paragraph 1 shall be released:

(a) to unsuccessful tenderers in respect of the quantity for which no award has been made;

(b) to successful tenderers who have not applied for the relevant export licence within the period referred to in the second subparagraph of Article 12(2), to the extent of EUR 10 per 100 kilograms of white sugar;

(c) to successful tenderers for the quantity for which they have fulfilled, within the meaning of Articles 31(b) and 32(1)(b)(i) of Regulation (EC) No 1291/2000 the export obligation resulting from the licence referred to under Article 12(2) in accordance with the terms of Article 35 of that Regulation.

In the case referred to under (b) of the first subparagraph, the releasable part of the security shall be reduced, as applicable, by:

(a) the difference between the maximum amount of the export refund fixed for the partial invitation concerned and the maximum amount of the export refund fixed for the following partial invitation, when the latter amount is higher than the former;

(b) the difference between the minimum amount of the export levy fixed for the partial invitation concerned and the minimum amount of the export levy fixed for the following partial invitation, when the latter amount is lower than the former.

The part of the security or the security which is not released shall be forfeit in respect of the quantity of sugar for which the corresponding obligations have not been fulfilled.

4. In case of *force majeure*, the competent authority of the Member State concerned shall take such action for the release of the security as it considers necessary having regard to the circumstances invoked by the party concerned.

Article 7

1. Tenders shall be examined in private by the competent authority concerned. The persons present at the examination shall be under an obligation not to disclose any particulars relating thereto.

2. Tenders submitted shall be communicated to the Commission by the Member States without the tenderers being mentioned by name and must be received by the Commission within one hour and 30 minutes of the expiry of the deadline for the weekly submission of tenders stipulated in the notice of invitation to tender.

Where no tenders are submitted, the Member States shall notify the Commission of this within the same time limit.

Article 8

1. After the tenders received have been examined, a maximum quantity may be fixed for the partial invitation concerned.

2. A decision may be taken to make no award under a specific partial invitation to tender.

Article 9

1. In the light of the current state and foreseeable development of the Community and world sugar markets, there shall be fixed either:

(a) a minimum export levy, or

(b) a maximum export refund.

2. Without prejudice to Article 10, where a minimum export levy is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of levy equal to or greater than such minimum levy.

3. Without prejudice to Article 10, where a maximum export refund is fixed, a contract shall be awarded to every tenderer whose tender quotes a rate of refund equal to or less than such maximum refund and to every tenderer who has tendered for an export levy.

Article 10

1. Where a maximum quantity has been fixed for a partial invitation to tender and if a minimum export levy is fixed, a contract shall be awarded to the tenderer whose tender quotes the highest export levy; if the maximum quantity is not fully covered by that award, awards shall be made to other tenderers in descending order of export levies quoted until the entire maximum quantity has been accounted for.

Where a maximum quantity has been fixed for a partial invitation to tender and if a maximum export refund is fixed, contracts shall be awarded in accordance with the first subparagraph; if after such awards a quantity is still outstanding, or if there are no tenders quoting an export levy, awards shall be made to tenderers quoting an export refund in ascending order of export refunds quoted until the entire maximum quantity has been accounted for.

2. Where an award to a particular tenderer in accordance with paragraph 1 would result in the maximum quantity being exceeded, that award shall be limited to such quantity as is still available. Where two or more tenderers quote the same levy or the same refund and awards to all of them would result in the maximum quantity being exceeded, then the quantity available shall be awarded as follows:

(a) by division among the tenderers concerned in proportion to the total quantities in each of their tenders; or

(b) by apportionment among the tenderers concerned by reference to a maximum tonnage to be fixed for each of them; or

(c) by the drawing of lots.

Article 11

1. The competent authority of the Member State concerned shall immediately notify applicants of the result of their participation in the invitation to tender. In addition, that authority shall send successful tenderers a statement of award.

2. The statement of award shall indicate at least:

(a) the reference of the invitation to tender;

(b) the quantity of white sugar to be exported;

(c) the amount, expressed in euro, of the export levy to be charged, or where applicable of the export refund to be granted per 100 kilograms of white sugar of the quantity referred to in (b).

Article 12

1. Every successful tenderer shall have the right to receive, in the circumstances referred to in paragraph 2, an export licence covering the quantity awarded, indicating the export levy or refund quoted in the tender, as the case may be.

2. Every successful tenderer shall be obliged to lodge, in accordance with the relevant provisions of Regulation (EC) No 1291/2000, an application for an export licence in respect of the quantity that has been awarded to him, the application not being revocable in derogation from Article 12 of Regulation (EEC) No 120/89.

The application shall be lodged not later than:

(a) the last working day preceding the date of the partial invitation to tender to be held the following week;

(b) if no partial invitation to tender is due to be held that week, the last working day of the following week.

3. Every successful tenderer shall be obliged to export the tendered quantity and, if this obligation is not fulfilled, to pay, where necessary, the amount referred to in Article 13(4).

4. The rights and obligations referred to in paragraphs 1, 2 and 3 shall not be transferable.

Article 13

1. The period for the issue of export licences referred to in Article 9(1) of Regulation (EC) No 1464/95 shall not apply to the white sugar to be exported under this Regulation.

2. Export licences issued in connection with a partial invitation to tender shall be valid from the day of issue until the end of the fifth calendar month following that in which the partial invitation was issued.

However, export licences issued in respect of the partial invitations held from 1 May 2004 shall be valid only until 30 September 2004.

Should technical difficulties arise which prevent export being carried out by the expiry date referred to in the second subparagraph above, the competent authorities in the Member State which issued the export licence may, at the written request of the holder of that licence, extend its validity to 15 October 2004 at the latest, provided that export is not subject to the rules laid down in Articles 4 or 5 of Council Regulation (EEC) No 565/80 [1].

3. Export licences issued in respect of the partial invitations held between 31 July and 30 September 2003 shall be valid only from 1 October 2003.

4. Except in cases of *force majeure*, the holder of the licence shall pay the competent authority a specific amount in respect of the quantity for which the obligation to export resulting from the export licence referred to in Article 12(2) has not been fulfilled, if the security referred to in Article 6 is less than:

(a) the export levy indicated on the licence, less the levy referred to in the second subparagraph of Article 33(1) of Regulation (EC) No 1260/2001 in force on the last day of validity of the said licence;

(b) the sum of the export levy indicated on the licence and the refund referred to in Article 28(2) of Regulation (EC) No 1260/2001 in force on the last day of validity of the said licence;

(c) the export refund referred to in Article 28(2) of Regulation (EC) No 1260/2001 in force on the last day of validity of the licence, less the refund indicated on the said licence,

The amount to be paid referred to in the first paragraph shall be equal to the difference between the result of the valuation made under (a), (b) or (c), as the case may be, and the security referred to in Article 6(1).

Article 14

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

[1] OJ L 62, 7.3.1980, p. 5.

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

Done at Brussels, 18 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 1291/2003

of 18 July 2003

supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (Pane di Altamura)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs [1], as last amended by Commission Regulation (EC) No 806/2003 [2], and in particular Article 6(3) and (4) thereof,

Whereas:

(1) In accordance with Article 5 of Regulation (EEC) No 2081/92, Italy forwarded to the Commission an application for the registration of the name 'Pane di Altamura' as a protected designation of origin.

(2) The application was found, in accordance with Article 6(1) of that Regulation, to comply with the Regulation, most notably in that it includes all the particulars provided for in Article 4 of the Regulation.

(3) The Hellenic Republic sent the Commission a statement of objection within the meaning of Article 7 of Regulation (EEC) No 2081/92 as a result of the publication in the *Official Journal of the European Communities* [3] of the main elements relating to the application for registration of 'Pane di Altamura'. The objection related to non-compliance with the conditions referred to in Article 2 of the Regulation. In the case of a designation of origin, production, processing and preparation are to take place in the defined geographical area. However, in the case of 'Pane di Altamura', according to the product specification, the bread was made from raw material, semolina, produced by five different municipalities: Altamura, Gravina di Puglia, Poggiorsini, Spinazzola and Minervo Murge, while the area for processing into bread was restricted to the municipality of Altamura.

(4) The Portuguese Republic sent the Commission a statement of objection within the meaning of Article 7 of Regulation (EEC) No 2081/92 as a result of the publication in the *Official Journal of the European Communities* of the main elements relating to the application for registration of 'Pane di Altamura'. The objection related to the same arguments as those put forward by the Hellenic Republic. It was pointed out, in addition, that registration should have been applied for as a protected geographical indication and not as a protected designation of origin.

(5) The statements of objection from the Hellenic Republic and the Portuguese Republic were admissible within the meaning of Article 7(4) of the Regulation. The Commission asked the Member States concerned to seek agreement among themselves in accordance with their internal procedures.

(6) In its reply to the statements of objection of the Hellenic Republic and the Portuguese Republic, the Italian Republic stated it agreed with the comments made. It also pointed out that defining the area of production of the raw material and the milling area differently from the area of production of the bread was the result exclusively of a clerical error, and provided a reworded version of the paragraph defining the geographical area in the specification summary which states that the production area for 'Pane di Altamura' is the same as that for the raw material.

(7) The Hellenic Republic replied that it no longer had any objection to the registration of the name 'Pane di Altamura'.

(8) The Portuguese Republic replied that it maintained its objection to the registration of the name 'Pane di Altamura' as a protected designation of origin. It pointed out that it appeared inappropriate for the geographical name 'Altamura' to be used to refer to a product originating in the entire geographical area corresponding to the abovementioned five municipalities and that there was evidence in the summary statement that only the municipality of Altamura was famed for the production of the bread and not the entire region. For these reasons the name should, it seemed, have been registered as a protected geographical indication.

(9) The Italian Republic sent the Commission an application for registration of the name 'Pane di Altamura' as a designation of origin, modified in relation to the initial application. The geographical area of production of the bread covers the five abovementioned municipalities and coincides, therefore, with the geographical area of production of the raw material.

(10) Since no agreement has been reached between the Italian Republic and the Portuguese Republic within three months, the Commission must take a decision in accordance with the procedure laid down in Article 15.

[1] OJ L 208, 24.7.1992, p. 1.
[2] OJ L 122, 16.5.2003, p. 1.
[3] OJ C 156, 30.5.2001, p. 10.

(11) The Commission requested the opinion of the Scientific Committee for designations of origin, geographical indications and certificates of specific character. The Scientific Committee expressed the view that the 'characteristics presented in the application for Pane di Altamura refer both to the municipality of Altamura and to specific areas outside the municipality, where production, processing and preparation also take place. The particular geographical environment with its inherent natural and human factors, the quality of raw materials and production as well as the tradition going back to the Middle Ages could be presumed to be the same in the whole area included in the application'. The Scientific Committee found that the application fulfilled the requirements set out in Article 2(2)(a) of Regulation (EEC) No 2081/92. It added that the use of the geographical name of a municipality to designate a geographical area for a designation of origin which is different and defined for that purpose is quite frequent and legally acceptable where justified.

(12) The Commission has taken note of the advisory opinion of the Scientific Committee. It considers the explanations put forward by the Italian authorities admissible. Moreover, the formal analysis of the product specification relating to the name 'Pane di Altamura' has not revealed any obvious error of assessment.

(13) The name should therefore be entered in the Register of protected designations of origin and protected geographical indications and hence be protected throughout the Community as a protected designation of origin.

(14) Annex I to this Regulation supplements the Annex to Commission Regulation (EC) No 2400/96 [1], as last amended by Regulation (EC) No 1257/2003 [2].

(15) The measures provided for in this Regulation are in accordance with the opinion of the Regulatory Committee on Protected Geographical Indications and Protected Designations of Origin,

HAS ADOPTED THIS REGULATION:

Article 1

The name in Annex I to this Regulation is added to the Annex to Regulation (EC) No 2400/96 and entered in the 'Register of protected designation of origin and protected geographical indications' provided for in Article 6(3) of Regulation (EEC) No 2081/92 as a protected designation of origin (PDO).

The main elements in the product specification are set out in Annex II. They replace those published in the *Official Journal of the European Communities* (see footnote 3).

Article 2

This Regulation shall enter into force on the 20th 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, 18 July 2003.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 327, 17.12.1996, p. 11.
[2] OJ L 177, 16.7.2003, p. 3.

ANNEX I

FOODSTUFFS REFERRED TO IN ANNEX I TO REGULATION (EEC) No 2081/92

Bread, pastry, cakes, confectionery, biscuits and other baker's wares

ITALY

Pane di Altamura (PDO)

ANNEX II

COUNCIL REGULATION (EEC) No 2081/92

APPLICATION FOR REGISTRATION: ARTICLE 5

PDO(X) PGI ( )

National application No 5/2000

1. **Responsible department in the Member State**

Name:	Ministero delle Politiche Agricole e Forestali
Address:	Via XX Settembre 20, I-00187 Roma
Tel.:	(06) 481 99 68
Fax:	(06) 42 01 31 26

2. **Applicant group**

2.1. Name: Consorzio per la tutela del Pane di Altamura

2.2. Address: Corso Umberto I 5, I-70022 Altamura (BA)

2.3. Composition: Craft-trade bakers

3. **Type of product**

Bread — Class 2.4.

4. **Specification**

(Summary of requirements under Article 4(2))

4.1. *Name*

Pane di Altamura

4.2. *Description*

'Pane di Altamura' is a baker's product obtained from flour of durum-wheat semolina made by milling durum-wheat grain of the 'appulo', 'arcangelo', 'duilio' and 'simeto' varieties produced in the area defined in the rules of production, used on their own or in combination and making up at least 80 % of the total, provided they are produced in the defined area of production.

The product is produced by the traditional method, using sourdough leavening, sea salt and water.

On placing on the market, it must have the following characteristics:

— the loaves, having the characteristic aroma and weighing not less than 0,5 kg, come in two traditional forms; the first type, known locally as 'U sckuanète' (folded loaf), is a tall loaf formed by folding the dough from either side into the centre and is baked without the edges of the loaves coming into contact with each other; the second type, known locally as 'a cappidde de prèvete' (priest's hat), is lower and, on baking, the edges of the loaves do not touch each other.

— the crust must not be less than 3 mm thick; the texture of the crumb, which is a straw-yellow colour, has air-bubbles of uniform size; the moisture content must not exceed 33 %.

4.3. *Geographical area*

The defined geographical area of production of the grain and the ground semolina used comprises the municipalities of Altamura, Gravina di Puglia, Poggiorsini, Spinazzola and Minervino Murge in the province of Bari, as laid down in Article 5 of the rules of production and shown on the appended map.

The area of production of 'Pane di Altamura' coincides with the territory defined above, in which over the centuries production of the product which originated in the 16th century in the municipality of Altamura has come to be concentrated. The ovens for baking the bread must preferably be wood- or gas-fired, the heat being applied indirectly or directly, exceptions being allowed by law.

4.4. *Proof of origin*

The origin of 'Pane di Altamura' is linked to the peasant-farmer tradition of the area of production.

A staple of the inhabitants' diet in the uplands of the Murgia region, the bread was traditionally presented in large loaves (U sckuanète or folded loaf); the dough was mainly mixed and kneaded within the home before being prepared for the oven and baked in public ovens, with the attendant social and cultural implications arising from this link between the private and public spheres.

The baker marked the initials of the head of the family on the loaves with a wooden or iron stamp before putting them in the oven.

The main characteristic of the bread, which still applies today, was its long-lasting quality, a necessary criterion for food to sustain peasants and shepherds during the week or, more often, the fortnight they spent in isolated farms scattered through the uplands of the Murgia region. Their diet consisted almost wholly of bread seasoned with salt and oil and dipped in boiling water. Until the middle of last century the streets of Altamura resounded at first light with the baker's cry, telling the inhabitants that the fragrant bread had come out of the oven.

Although it concerns the Murgia region rather than Altamura, the first reference to the product's place of origin is found in Book I, V of Horace's Satires. Visiting the countryside where he had spent his youth in the spring of 37 BC, the Roman poet spoke of the bread, 'far the best bread to be had, so good that the wise traveller takes a supply of it for his onward journey'.

The traditional status of breadmaking in Altamura is confirmed in the city's municipal statutes of 1527 (Statuti Municipali della città fatti nell'anno 1527) and the Bollettino dell'Archivio-Biblioteca-Museo-Civico (1954, pp. 5 to 49) gives the relevant articles on the 'Dazio del forno' (oven duty), transcribed by G. De Gemmis.

'Le Carte di Altamura' (Codice Diplomatico Barese, 1935) contains documents relating to the levying of or exemption from duties, transcribed by A. Giannuzzi.

Another document dating back to 1420 exempted the clergy of Altamura from the duty on bread.

The custom of baking in public ovens derived from the prohibition on citizens 'of any station or condition' (di ogni stato o condizione) baking any type of bread or other baker's wares in their own homes, under penalty of a fine, the charge being equal to one third of the total cost of breadmaking.

The typical loaves baked traditionally for peasants, shepherds and their families therefore developed in an agricultural and sheep-rearing society and, they are still produced by Altamura's bakers: they are large loaves produced from durum-wheat flour, leavening, salt and water and involve a process in five stages: mixing and kneading the dough, giving it a form, leaving it to rise, shaping it and baking it in a wood-fired oven. These characteristics set it apart from all other types of bread.

Milling also took place entirely in Altamura, where at least 26 milling works were in operation in the early 17th century.

In conclusion, despite the changes and adaptations that have taken place, the bread currently baked in Altamura in the Murgia region may be regarded as descending directly from the bread of those peasants and shepherds according to a breadmaking tradition that has continued unbroken since the Middle Ages.

The origin of production of the PDO 'Pane di Altamura' is certified by the inspection body referred to in point 4.7, subject to compliance with many requirements to be met by the producers concerned throughout the production cycle.

When the PDO is granted, the rules of production provide for:

— lists of farmers producing durum wheat in the area concerned, to be presented to the relevant municipalities in the area defined in point 4.3,

— lists of millers processing grain of wheat producers in the abovementioned area into semolina and flour for breadmaking, to be presented to the relevant municipalities,

— a list of bakers producing 'Pane di Altamura' in accordance with the rules of production set out in point 4.5 below, to be presented to the municipality of Altamura.

The above lists must be submitted to the Apulia Region and to the body appointed or authorised to carry out inspection activities in accordance with Article 10 of Regulation (EEC) No 2081/92.

The inspection body will also ensure that the leavening, the quantities of ingredients and the composition of the dough used, the procedure and duration of kneading, the rising, shaping and reshaping of the loaves, the baking, withdrawal from the oven and the placing on the market of the bread with the relevant marks comply with the rules outlined in point 4.5 below.

The water to be used for the dough is certified by the body responsible for the aqueduct: it must be analysed once a year and must comply with the criteria set out in point 4.5 below and the certificates issued by the managing body must be published at the town hall of the municipality of Altamura.

The inspection body will also be responsible for ensuring that the wheat used for breadmaking meets the requirements in point 4.5.

4.5. *Method of production*

The wheat used for breadmaking must meet the following requirements:

	Unit requirements
Durum wheat	
Electrolytic weight ≥	78 kg/hl
Protein (tot N × 5,70) ≥	11 % of dry matter
Ash <	2,2 % of dry matter
Dry gluten ≥	9,0 % of dry matter
Durum wheat semolina	
Gluten index <	80
Yellow index ≥	20

The raw material consists of ground durum-wheat semolina produced by milling durum wheat of the 'appulo', 'arcangelo', 'duilio', 'simeto' varieties grown in the area defined in point 4.3, used on their own or in combination and making up at least 80 % of the total, the remainder being made up of other varieties grown in that area.

The chemical and physical characteristics of the grain and semolina must be certified and must meet the criteria set out above.

The flour must be produced by milling processes that are fully in line with those currently applied in the Altamura area as described below. The mills operating in the abovementioned area are equipped with sets of steel cylinders working at different, but progressively similar, speeds. They turn at around 300 revolutions per minute at an operating temperature of not more than 40 °C. Through its 'clapping' action, another set of cylinders breaks open most of the cells of the aleuronic layer of the grain and impregnates the durum-wheat semolina with valuable wheat-germ oil.

The mills processing the semolina are located in the area of production of the wheat defined in point 4.3.

'Pane di Altamura' bread is produced as follows:

Dough

1. The leaven is made by adding ingredients at least three times to increase the fermenting dough, i.e. water and durum-wheat meal (20 % of the durum-wheat flour used).

2. Quantities and composition of the mix: 100 kg durum-wheat flour requires 20 kg (20 %) leaven, 2 kg (2 %) sea salt and approximately 60 litres (60 %) water at a temperature of 18 °C.

3. Mixing should take 20 minutes, using a kneading machine with mechanical arms.

The water must comply with the following requirements:

— colourless and free of taste and smell,

— temperature of between 12 and 15 °C,

— ph of between 7 and 8,5,

— total hardness of between 14,5 and 15,5 GF,

— calcium content (Ca++) of between 46 and 55 mg/l,

— alkalinity ($CaCO_3$) of between 130 and 160 mg/l,

— no nitrous ions present,

— sodium content of less than 5 to 6 mg/l,

— potassium content of between 1,5 and 2,5 mg/l,

— faecal coliforms-enterococci-spores 0 nct/100 ml.

Rising and first period left to stand

Once kneading has been completed, the dough must be covered with a cotton cloth of a given thickness so it rises at an even temperature. The covered dough must be left to stand for at least 90 minutes.

Shaping and second period left to stand

Once the previous phase is over, the dough is weighed and shaped manually into loaves so it can develop a natural fibrous crust. It is left to stand for 30 minutes.

Further shaping and third period left to stand

The dough is shaped again and then left to stand for at least 15 minutes.

Placing in oven and baking

Before it is baked, each loaf (pagnotta) is turned over and pushed gently by hand into the oven. The oven should preferably be wood- or gas-fired and heated indirectly and it must reach a temperature of 250 °C. Ovens heated directly and used for baking 'Pane di Altamura' must be fired with oakwood.

The first phase of baking takes place with the oven door open. After 15 minutes, the door is closed and the bread is baked for a further 45 minutes.

Taking the bread out of the oven

The oven door is left open for at least five minutes to allow the steam to escape, so the bread can dry and become crusty. The loaves are then taken out and placed on wooden boards.

4.6. *Link*

The bread is considered 'unique' because it is made from the best durum wheat and is produced in an environment with special geographical and environmental features characteristic of the north-west Murgia region, using potable water normally consumed in the area.

The area concerned is the only part of Apulia where the structural, geomorphological and environmental characteristics are close to the original features. These factors are as follows:

— the area was never under the sea,

— karstic forms and systems are rare both on the surface and underground,

— autochthonous hydrography,

— on entering the underground water system, the average temperature of the water is 12 °C,

— a humid mesothermic Mediterranean climate,

— aseptic environment as a result of solid precipitation,

— permeability of soil $10^{-5} \div 10^{-6}$ cm/sec,

— the chemical composition of the soil.

Stretching over more than 44 000 hectares, Altamura is the most highly populated and economically important centre of the north-central Murgia region, which is the leading cereal-growing area of Apulia after the Capitanata; along with sheepfarming, cereal growing is traditionally the main productive activity of the region.

In the city of Altamura, which boasts a centuries-old breadmaking tradition, there are 35 bakeries with a daily bread output of around 60 tonnes; after 20 % has been put aside for local requirements, the remainder is sent to the main national markets.

Morphologically and structurally, the cereal-growing area lies on the Apulian plateau, which escaped from being covered by the sea and has always been above sea level since the end of the Mesozoic era to the present day, a peculiarity of the area since it is the only part of Apulia with characteristics that are similar to the original structural, geomorphological and environmental features.

The second environmental peculiarity stems from the fact that surface and underground karstic systems are rare and consequently have no, or only slight, influence on the present underground water network.

The third peculiarity stems from the area's autochthonous hydrography whereby the karstic water table is fed solely by a proportion of the rain that falls on it.

The average temperature of rainfall (around 12 °C) on entering the underground water system is peculiar to the area.

The climate in the area is characterised by dry summers and winters with low liquid and solid precipitation, the latter averaging 20 to 35 cm. This helps to maintain the environmentally aseptic conditions.

Half of the liquid precipitation, which averages 600 mm annually, is absorbed underground while the other half is taken up by the topsoil.

On account of the area's young, undeveloped karstic features, moisture that forms in rock fissures and its products of alteration are restored to the topsoil by capillary action in periods of drought: this phenomenon is a further feature peculiar to the area.

The geological, hydrological and meteorological parameters help make the natural environment in the area concerned unique.

4.7. *Inspection body*

Name: Bioagricoop — Scrl

Address: Via Fucini 10, I-40033 Casalecchio di Reno (Bologna)

4.8. *Labelling*

The finished product is packaged in a microporous thermoformable material with a label giving:

1. a list of the ingredients and the firm's name;
2. the sell-by date;
3. the mark.

Alternatively, it may be presented unwrapped, with simply a label in organic material setting out the above and the words 'Pane di Altamura'.

Labels must show the appended mark, which must be accompanied by the protected designation of origin.

The graphic symbol comprises a Samnite shield quartered two by two red and white and surmounted by a crown with the words 'Pane DOP di Altamura' in three horizontal lines across the centre of the oval field.

The printing specifications of the mark are given below:

— stippling: 100 % pantone 323 cv,

— Pane DOP di Altamura: Arial font, size 71,1 bold typeface, width of oval border 0,040,

— major axis of oval 17,5 cm,

— minor axis of oval 13 cm,

— the logo must not be smaller than 10 cm × 7 cm,

— yellow: 100 % pantone yellow cv,

— violet: 100 % pantone 228 cv,

— white: 100 % pantone trans. white cv,

— green: 100 % pantone 334 cv,

— red: 100 % pantone warm red cv,

— border of oval: 100 % pantone violet cv.

4.9. *National requirements*

EC No: G/IT/00136/2000.06.22

Date of receipt of the full application: 22.2.2001.

COMMISSION REGULATION (EC) No 1292/2003

of 18 July 2003

initiating a 'new exporter' review of Council Regulation (EC) No 2604/2000 imposing a definitive anti-dumping duty on imports of certain polyethylene terephtalate (PET) originating, *inter alia*, in Thailand, repealing the duty with regard to imports from one exporting exporter in this country and making these imports subject to registration

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 [1] of 22 December 1995 on protection against dumped imports from countries not members of the European Community (the Basic Regulation), as last amended by Council Regulation (EC) No 1972/2002 [2] and in particular Article 11(4),

After consulting the Advisory Committee,

Whereas:

A. REQUEST FOR A REVIEW

(1) The Commission has received an application for a 'new exporter' review pursuant to Article 11(4) of the Basic Regulation. The application was lodged by Indo Pet (Thailand) Ltd. (the applicant), an exporting producer in Thailand (the country concerned).

B. PRODUCT

(2) The product under review is polyethylene terephtalate (PET) with a coefficient of viscosity of 78 ml/g or higher, according to DIN (Deutsche Industrienorm) 53728 originating in Thailand (the product concerned), currently classifiable within CN code 3907 60 20. This CN code is given only for information.

C. EXISTING MEASURES

(3) The measures currently in force are a definitive anti-dumping duty imposed by Council Regulation (EC) No 2604/2000 [3] under which imports into the Community of the product concerned, are subject to a definitive anti-dumping duty of EUR 83,2 per tonne.

D. GROUNDS FOR THE REVIEW

(4) The applicant alleges that it did not export the product concerned to the Community during the period of investigation on which the anti-dumping measures were based, i.e. the period from 1 October 1998 to 30 September 1999 (the original investigation period) and that it is not related to any of the exporting producers of the product which are subject to the abovementioned anti-dumping measures.

(5) The applicant further alleges that they have begun exporting the product concerned to the Community after the end of the original investigation period.

E. PROCEDURE

(6) Community producers known to be concerned have been informed of the above application and have been given an opportunity to comment. No comments have been received.

(7) Having examined the evidence available, the Commission concludes that there is sufficient evidence to justify the initiation of a 'new exporter' review, pursuant to Article 11(4) of the Basic Regulation, with a view to determine the applicant's individual margin of dumping and, should dumping be found, the level of the duty to which their imports of the product concerned into the Community should be subject.

(a) *Questionnaires*

(8) In order to obtain the information it deems necessary for its investigation, the Commission will send a questionnaire to the applicant.

(b) *Collection of information and holding of hearings*

(9) All interested parties are hereby invited to make their views known in writing and to provide supporting evidence.

(10) Furthermore, the Commission may hear interested parties, provided that they make a request in writing showing that there are particular reasons why they should be heard.

F. REPEAL OF THE DUTY IN FORCE AND REGISTRATION OF IMPORTS

(11) Pursuant to Article 11(4) of the Basic Regulation, the anti-dumping duty in force should be repealed with regard to imports of the product concerned which are produced and sold for export to the Community by the applicant. At the same time, such imports should be made subject to registration in accordance with Article 14(5) of the Basic Regulation, in order to ensure that, should the review result in a finding of dumping in respect of the applicants, anti-dumping duties can be levied retroactively from the date of the initiation of this review. The amount of the applicant's possible future liabilities cannot be estimated at this stage of the proceeding.

[1] OJ L 56, 6.3.1996, p. 1.
[2] OJ L 305, 7.11.2002, p. 1.
[3] OJ L 301, 30.11.2000, p. 21.

G. **TIME LIMITS**

(12) In the interest of sound administration, time limits should be stated within which:

— interested parties may make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mention in paragraph E(a) of this Regulation or any other information to be taken into account during the investigation,

— interested parties may make a written request to be heard by the Commission.

H. **NON-COOPERATION**

(13) In cases in which any interested party refuses access to, or otherwise does not provide, the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made in accordance with Article 18 of the Basic Regulation, on the basis of the facts available.

(14) Where it is found that any interested party has supplied false or misleading information, the information shall be disregarded and use may be made of the facts available,

HAS ADOPTED THIS REGULATION:

Article 1

A review of Council Regulation (EC) No 2604/2000 is hereby initiated pursuant to Article 11(4) of Council Regulation (EC) No 384/96 in order to determine if and to what extent the imports of polyethylene terephtalate (PET) with a coefficient of viscosity of 78 ml/g or higher, according to DIN (Deutsche Industrienorm) 53728 falling within CN code 3907 60 20, produced and sold for export to the Community by Indo Pet (Thailand) Ltd. should be subject to the anti-dumping duty imposed by Council Regulation (EC) No 2604/2000.

Article 2

The anti-dumping duty imposed by Council Regulation (EC) No 2604/2000 is hereby repealed with regard to the imports identified in Article 1 of the present Regulation (TARIC additional code: A468).

Article 3

The customs authorities are hereby directed, pursuant to Article 14(5) of Council Regulation (EC) No 384/96, to take the appropriate steps to register the imports identified in Article 1 of this Regulation. Registration shall expire nine months following the date of entry into force of this Regulation.

Article 4

1. Interested parties, if their representations are to be taken into account during the investigation, must make themselves known to the Commission, present their views in writing and submit the replies to the questionnaire mentioned in paragraph E(a) of this Regulation or any other information, unless otherwise specified, within 40 days of the entry into force of this Regulation. Attention is drawn to the fact that the exercise of most procedural rights set out in the Basic Regulation depends on the party's making itself known within the aforementioned period.

Interested parties may also apply in writing to be heard by the Commission within the same 40-day time limit.

2. All submissions and requests made by interested parties must be made in writing (not in electronic format, unless otherwise specified), and must indicate the name, address, e-mail address, telephone and fax, and/or telex number of the interested party. All written submissions, questionnaire replies and correspondence provided by interested parties on a confidential basis shall be labelled as 'Limited [1]' and, in accordance with Article 19(2) of the basic Regulation, shall be accompanied by a non-confidential version, which will be labelled 'For inspection by interested parties'.

Any information relating to the matter, any request for a hearing should be sent to the following address:

European Commission
Directorate General for Trade
Directorate B
Office: J-79 5/16
B-1049 Brussels
Fax (32 2) 295 65 05
Telex COMEU B 21877.

Article 5

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

[1] This means that the document is for internal use only. It is protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document pursuant to Article 19 of Council Regulation (EC) No 384/96 (OJ L 56, 6.3.1996, p. 1) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-dumping Agreement).

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

Done at Brussels, 18 July 2003.

For the Commission
Pascal LAMY
Member of the Commission

COMMISSION REGULATION (EC) No 1293/2003
of 18 July 2003
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 [1],

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton [2], and in particular Article 4 thereof,

Whereas:

(1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 [3], as amended by Regulation (EC) No 1486/2002 [4]. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.

(2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

(3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 28,195/100 kg.

Article 2

This Regulation shall enter into force on 19 July 2003.

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

Done at Brussels, 18 July 2003.

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

[1] OJ L 148, 1.6.2001, p. 1.
[2] OJ L 148, 1.6.2001, p. 3.
[3] OJ L 210, 3.8.2001, p. 10.
[4] OJ L 223, 20.8.2002, p. 3.

COMMISSION REGULATION (EC) No 1294/2003

of 18 July 2003

applying a reduction coefficient to refund certificates for goods not covered by Annex I to the Treaty, as provided for by Article 8(5) of Regulation (EC) No 1520/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products [1], as last amended by Regulation (EC) No 2580/2000 [2],

Having regard to Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty and the criteria for fixing the amount of such refunds [3], as last amended by Regulation (EC) No 740/2003 [4], and in particular Article 8(5),

Whereas:

(1) The total amount of applications for refund certificates valid from 1 August 2003 exceeds the maximum referred to in Article 8(4) of Regulation (EC) No 1520/2000.

(2) A reduction coefficient shall be calculated on the basis of Article 8(3) and (4) of Regulation (EC) No 1520/2000. Such coefficient should therefore be applied to amounts requested in the form of refund certificates valid from 1 August 2003 as established in Article 8(6) of Regulation (EC) No 1520/2000,

HAS ADOPTED THIS REGULATION:

Article 1

The amounts for applications of refund certificates valid from 1 August 2003 are subject to a reduction coefficient of 0,957.

Article 2

This Regulation shall enter into force on 19 July 2003.

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

Done at Brussels, 18 July 2003.

For the Commission
Erkki LIIKANEN
Member of the Commission

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[1] OJ L 318, 20.12.1993, p. 18.
[2] OJ L 298, 25.11.2000, p. 5.
[3] OJ L 177, 15.7.2000, p. 1.
[4] OJ L 106, 29.4.2003, p. 12.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 6 June 2003

concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters

(2003/516/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 24 and 38 thereof,

Whereas:

(1) The Member States of the European Union cooperate in criminal matters with the United States of America on the basis of bilateral agreements, conventions, treaties, national law and arrangements.

(2) The European Union is determined to improve this cooperation in order to be able to combat, in particular, transnational crime and terrorism in a more effective way.

(3) The Council decided on 26 April 2002 to authorise the Presidency, assisted by the Commission, to enter into negotiations with the United States of America, and the Presidency negotiated two Agreements on international cooperation in criminal matters, one on mutual legal assistance and one on extradition, with the United States of America.

(4) The Agreements should be signed on behalf of the European Union, subject to their subsequent conclusion. The European Union will, at the time of the signature make the following declaration:

'The European Union states that it is in a process of development of an area of freedom, security and justice, which may have consequences that affect the Agreements with the United States. These developments will be considered carefully by the Union in particular as regards Article 10(2) of the Extradition Agreement. The Union will wish to consult with the United States in order to find solutions to any developments affecting the Agreements, including, if needed, through revision of the Agreements. The Union states that Article 10 does not constitute a precedent for negotiations with third states.'

(5) The Agreements foresee in their Article 3(2) that written instruments be exchanged between the United States of America and the Member States of the Union on the application of bilateral treaties. Article 3(3) of the Agreement on mutual legal assistance provides a similar obligation for those Member States that do not have a bilateral mutual legal assistance treaty with the United States. With a view to the drawing up of such written instruments the Member States should coordinate their action within the Council,

HAS DECIDED AS FOLLOWS:

Article 1

1. The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreements on behalf of the European Union, subject to their later conclusion.

2. The text of the Agreements and the accompanying Explanatory Notes, the latter recording an understanding between the European Union and the United States of America, are annexed to this Decision.

Article 2

1. The Member States shall take the necessary steps with a view to the drawing up of written instruments between them and the United States of America as contemplated in Article 3(2) of the Agreement on Extradition and Article 3(2) and (3) of the Agreement on Mutual Legal Assistance.

2. The Member States shall coordinate their actions pursuant to paragraph 1 within the Council.

Article 3

In case of extension of the territorial application of the Agreements in accordance with Article 20(1)(b), second indent, of the Agreement on Extradition or Article 16(1)(b), second indent, of the Agreement on Mutual Legal Assistance, the Council shall decide by unanimity on behalf of the European Union.

Article 4

This Decision and its annexes shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 6 June 2003.

For the Council

The President

M. CHRISOCHOÏDIS

AGREEMENT

on extradition between the European Union and the United States of America

CONTENTS

THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA,

DESIRING further to facilitate cooperation between the European Union Member States and the United States of America,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide for the right to a fair trial to an extradited person, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to the extradition of offenders,

HAVE AGREED AS FOLLOWS:

Article 1

Object and Purpose

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation in the context of applicable extradition relations between the Member States and the United States of America governing extradition of offenders.

Article 2

Definitions

1. 'Contracting Parties' shall mean the European Union and the United States of America.

2. 'Member State' shall mean a Member State of the European Union.

3. 'Ministry of Justice' shall, for the United States of America, mean the United States Department of Justice; and for a Member State, its Ministry of Justice, except that with respect to a Member State in which functions described in Articles 3, 5, 6, 8 or 12 are carried out by its Prosecutor General, that body may be designated to carry out such function in lieu of the Ministry of Justice in accordance with Article 19, unless the United States and the Member State concerned agree to designate another body.

Article 3

Scope of application of this Agreement in relation to bilateral extradition treaties with Member States

1. The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral extradition treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:

(a) Article 4 shall be applied in place of bilateral treaty provisions that authorise extradition exclusively with respect to a list of specified criminal offences;

(b) Article 5 shall be applied in place of bilateral treaty provisions governing transmission, certification, authentication or legalisation of an extradition request and supporting documents transmitted by the requesting State;

(c) Article 6 shall be applied in the absence of bilateral treaty provisions authorising direct transmission of provisional arrest requests between the United States Department of Justice and the Ministry of Justice of the Member State concerned;

(d) Article 7 shall be applied in addition to bilateral treaty provisions governing transmission of extradition requests;

(e) Article 8 shall be applied in the absence of bilateral treaty provisions governing the submission of supplementary information; where bilateral treaty provisions do not specify the channel to be used, paragraph 2 of that Article shall also be applied;

(f) Article 9 shall be applied in the absence of bilateral treaty provisions authorising temporary surrender of persons being proceeded against or serving a sentence in the requested State;

(g) Article 10 shall be applied, except as otherwise specified therein, in place of, or in the absence of, bilateral treaty provisions pertaining to decision on several requests for extradition of the same person;

(h) Article 11 shall be applied in the absence of bilateral treaty provisions authorising waiver of extradition or simplified extradition procedures;

(i) Article 12 shall be applied in the absence of bilateral treaty provisions governing transit; where bilateral treaty provisions do not specify the procedure governing unscheduled landing of aircraft, paragraph 3 of that Article shall also be applied;

(j) Article 13 may be applied by the requested State in place of, or in the absence of, bilateral treaty provisions governing capital punishment;

(k) Article 14 shall be applied in the absence of bilateral treaty provisions governing treatment of sensitive information in a request.

2. (a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral extradition treaty in force with the United States of America.

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement and having bilateral extradition treaties with the United States of America, take the measures referred to in subparagraph (a).

(c) The Contracting Parties shall endeavour to complete the process described in subparagraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.

3. If the process described in paragraph 2(b) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between that new Member State and the United States of America as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

Article 4

Extraditable offences

1. An offence shall be an extraditable offence if it is punishable under the laws of the requesting and requested States by deprivation of liberty for a maximum period of more than one year or by a more severe penalty. An offence shall also be an extraditable offence if it consists of an attempt or conspiracy to commit, or participation in the commission of, an extraditable offence. Where the request is for enforcement of the sentence of a person convicted of an extraditable offence, the deprivation of liberty remaining to be served must be at least four months.

2. If extradition is granted for an extraditable offence, it shall also be granted for any other offence specified in the request if the latter offence is punishable by one year's deprivation of liberty or less, provided that all other requirements for extradition are met.

3. For the purposes of this Article, an offence shall be considered an extraditable offence:

(a) regardless of whether the laws in the requesting and requested States place the offence within the same category of offences or describe the offence by the same terminology;

(b) regardless of whether the offence is one for which United States federal law requires the showing of such matters as interstate transportation, or use of the mails or of other facilities affecting interstate or foreign commerce, such matters being merely for the purpose of establishing jurisdiction in a United States federal court; and

(c) in criminal cases relating to taxes, customs duties, currency control and the import or export of commodities, regardless of whether the laws of the requesting and requested States provide for the same kinds of taxes, customs duties, or controls on currency or on the import or export of the same kinds of commodities.

4. If the offence has been committed outside the territory of the requesting State, extradition shall be granted, subject to the other applicable requirements for extradition, if the laws of the requested State provide for the punishment of an offence committed outside its territory in similar circumstances. If the laws of the requested State do not provide for the punishment of an offence committed outside its territory in similar circumstances, the executive authority of the requested State, at its discretion, may grant extradition provided that all other applicable requirements for extradition are met.

Article 5

Transmission and authentication of documents

1. Requests for extradition and supporting documents shall be transmitted through the diplomatic channel, which shall include transmission as provided for in Article 7.

2. Documents that bear the certificate or seal of the Ministry of Justice, or Ministry or Department responsible for foreign affairs, of the requesting State shall be admissible in extradition proceedings in the requested State without further certification, authentication, or other legalisation.

Article 6

Transmission of requests for provisional arrest

Requests for provisional arrest may be made directly between the Ministries of Justice of the requesting and requested States, as an alternative to the diplomatic channel. The facilities of the International Criminal Police Organisation (Interpol) may also be used to transmit such a request.

Article 7

Transmission of documents following provisional arrest

1. If the person whose extradition is sought is held under provisional arrest by the requested State, the requesting State may satisfy its obligation to transmit its request for extradition and supporting documents through the diplomatic channel pursuant to Article 5(1), by submitting the request and documents to the Embassy of the requested State located in the requesting State. In that case, the date of receipt of such request by the Embassy shall be considered to be the date of receipt by the requested State for purposes of applying the time limit that must be met under the applicable extradition treaty to enable the person's continued detention.

2. Where a Member State on the date of signature of this Agreement, due to the established jurisprudence of its domestic legal system applicable at such date, cannot apply the measures referred to in paragraph 1, this Article shall not apply to it, until such time as that Member State and the United States of America, by exchange of diplomatic note, agree otherwise.

Article 8

Supplemental information

1. The requested State may require the requesting State to furnish additional information within such reasonable length of time as it specifies, if it considers that the information furnished in support of the request for extradition is not sufficient to fulfil the requirements of the applicable extradition treaty.

2. Such supplementary information may be requested and furnished directly between the Ministries of Justice of the States concerned.

Article 9

Temporary surrender

1. If a request for extradition is granted in the case of a person who is being proceeded against or is serving a sentence in the requested State, the requested State may temporarily surrender the person sought to the requesting State for the purpose of prosecution.

2. The person so surrendered shall be kept in custody in the requesting State and shall be returned to the requested State at the conclusion of the proceedings against that person, in accordance with the conditions to be determined by mutual agreement of the requesting and requested States. The time spent in custody in the territory of the requesting State pending prosecution in that State may be deducted from the time remaining to be served in the requested State.

Article 10

Requests for extradition or surrender made by several States

1. If the requested State receives requests from the requesting State and from any other State or States for the extradition of the same person, either for the same offence or for different offences, the executive authority of the requested State shall determine to which State, if any, it will surrender the person.

2. If a requested Member State receives an extradition request from the United States of America and a request for surrender pursuant to the European arrest warrant for the same person, either for the same offence or for different offences, the competent authority of the requested Member State shall determine to which State, if any, it will surrender the person. For this purpose, the competent authority shall be the requested Member State's executive authority if, under the bilateral extradition treaty in force between the United States and the Member State, decisions on competing requests are made by that authority; if not so provided in the bilateral extradition treaty, the competent authority shall be designated by the Member State concerned pursuant to Article 19.

3. In making its decision under paragraphs 1 and 2, the requested State shall consider all of the relevant factors, including, but not limited to, factors already set forth in the applicable extradition treaty, and, where not already so set forth, the following:

(a) whether the requests were made pursuant to a treaty;

(b) the places where each of the offences was committed;

(c) the respective interests of the requesting States;

(d) the seriousness of the offences;

(e) the nationality of the victim;

(f) the possibility of any subsequent extradition between the requesting States; and

(g) the chronological order in which the requests were received from the requesting States.

Article 11

Simplified extradition procedures

If the person sought consents to be surrendered to the requesting State, the requested State may, in accordance with the principles and procedures provided for under its legal system, surrender the person as expeditiously as possible without further proceedings. The consent of the person sought may include agreement to waiver of protection of the rule of specialty.

Article 12

Transit

1. A Member State may authorise transportation through its territory of a person surrendered to the United States of America by a third State, or by the United States of America to a third State. The United States of America may authorise transportation through its territory of a person surrendered to a Member State by a third State, or by a Member State to a third State.

2. A request for transit shall be made through the diplomatic channel or directly between the United States Department of Justice and the Ministry of Justice of the Member State concerned. The facilities of Interpol may also be used to transmit such a request. The request shall contain a description of the person being transported and a brief statement of the facts of the case. A person in transit shall be detained in custody during the period of transit.

3. Authorisation is not required when air transportation is used and no landing is scheduled on the territory of the transit State. If an unscheduled landing does occur, the State in which the unscheduled landing occurs may require a request for transit pursuant to paragraph 2. All measures necessary to prevent the person from absconding shall be taken until transit is effected, as long as the request for transit is received within 96 hours of the unscheduled landing.

Article 13

Capital punishment

Where the offence for which extradition is sought is punishable by death under the laws in the requesting State and not punishable by death under the laws in the requested State, the requested State may grant extradition on the condition that the death penalty shall not be imposed on the person sought, or if for procedural reasons such condition cannot be complied with by the requesting State, on condition that the death penalty if imposed shall not be carried out. If the requesting State accepts extradition subject to conditions pursuant to this Article, it shall comply with the conditions. If the requesting State does not accept the conditions, the request for extradition may be denied.

Article 14

Sensitive information in a request

Where the requesting State contemplates the submission of particularly sensitive information in support of its request for extradition, it may consult the requested State to determine the extent to which the information can be protected by the requested State. If the requested State cannot protect the information in the manner sought by the requesting State, the requesting State shall determine whether the information shall nonetheless be submitted.

Article 15

Consultations

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

Article 16

Temporal application

1. This Agreement shall apply to offences committed before as well as after it enters into force.

2. This Agreement shall apply to requests for extradition made after its entry into force. Nevertheless, Articles 4 and 9 shall apply to requests pending in a requested State at the time this Agreement enters into force.

Article 17

Non-derogation

1. This Agreement is without prejudice to the invocation by the requested State of grounds for refusal relating to a matter not governed by this Agreement that is available pursuant to a bilateral extradition treaty in force between a Member State and the United States of America.

2. Where the constitutional principles of, or final judicial decisions binding upon, the requested State may pose an impediment to fulfilment of its obligation to extradite, and resolution of the matter is not provided for in this Agreement or the applicable bilateral treaty, consultations shall take place between the requested and requesting States.

Article 18

Future bilateral extradition treaties with Member States

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between a Member State and the United States of America consistent with this Agreement.

Article 19

Designation and notification

The European Union shall notify the United States of America of any designation pursuant to Article 2(3) and Article 10(2), prior to the exchange of written instruments described in Article 3(2) between the Member States and the United States of America.

Article 20

Territorial application

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union to:

— Member States,

— territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by exchange of diplomatic note between the Contracting Parties, duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and the United States of America.

Article 21

Review

The Contracting Parties agree to carry out a common review of this Agreement as necessary, and in any event no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement, including Article 10.

Article 22

Entry into force and termination

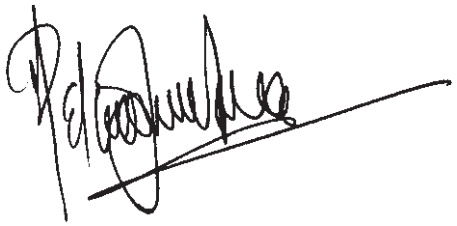
1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(2) have been completed.

2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement

Done at Washington DC on the twenty-fifth day of June in the year two thousand and three in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Por la Unión Europea
For Den Europæiske Union
Für die Europäische Union
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Voor de Europese Unie
Pela União Europeia
Euroopan unionin puolesta
På Europeiska unionens vägnar



Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
For the United States of America
Pour les États-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar

Explanatory Note on the Agreement on Extradition between the European Union and the United States of America

This Explanatory Note reflects understandings regarding the application of certain provisions of the Agreement on Extradition between the European Union and the United States of America (hereinafter 'the Agreement') agreed between the Contracting Parties.

On Article 10

Article 10 is not intended to affect the obligations of States Parties to the Rome Statute of the International Criminal Court, nor to affect the rights of the United States of America as a non-Party with regard to the International Criminal Court.

On Article 18

Article 18 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on extradition between a Member State and the United States of America consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for either one or more Member States or the United States of America, such difficulty should in the first place be resolved, if possible, through consultations between the Member State or Member States concerned and the United States of America, or, if appropriate, through the consultation procedures set out in this Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between the Member State or Member States and the United States of America to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

AGREEMENT

on mutual legal assistance between the European Union and the United States of America

CONTENTS

THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA,

DESIRING further to facilitate cooperation between the European Union Member States and the United States of America,

DESIRING to combat crime in a more effective way as a means of protecting their respective democratic societies and common values,

HAVING DUE REGARD for rights of individuals and the rule of law,

MINDFUL of the guarantees under their respective legal systems which provide an accused person with the right to a fair trial, including the right to adjudication by an impartial tribunal established pursuant to law,

DESIRING to conclude an Agreement relating to mutual legal assistance in criminal matters,

HAVE AGREED AS FOLLOWS:

Article 1

Object and purpose

The Contracting Parties undertake, in accordance with the provisions of this Agreement, to provide for enhancements to cooperation and mutual legal assistance.

Article 2

Definitions

1. 'Contracting Parties' shall mean the European Union and the United States of America.

2. 'Member State' shall mean a Member State of the European Union.

Article 3

Scope of application of this Agreement in relation to bilateral mutual legal assistance treaties with Member States and in the absence thereof

1. The European Union, pursuant to the Treaty on European Union, and the United States of America shall ensure that the provisions of this Agreement are applied in relation to bilateral mutual legal assistance treaties between the Member States and the United States of America, in force at the time of the entry into force of this Agreement, under the following terms:

(a) Article 4 shall be applied to provide for identification of financial accounts and transactions in addition to any authority already provided under bilateral treaty provisions;

(b) Article 5 shall be applied to authorise the formation and activities of joint investigative teams in addition to any authority already provided under bilateral treaty provisions;

(c) Article 6 shall be applied to authorise the taking of testimony of a person located in the requested State by use of video transmission technology between the requesting and requested States in addition to any authority already provided under bilateral treaty provisions;

(d) Article 7 shall be applied to provide for the use of expedited means of communication in addition to any authority already provided under bilateral treaty provisions;

(e) Article 8 shall be applied to authorise the providing of mutual legal assistance to the administrative authorities concerned, in addition to any authority already provided under bilateral treaty provisions;

(f) subject to Article 9(4) and (5), Article 9 shall be applied in place of, or in the absence of bilateral treaty provisions governing limitations on use of information or evidence provided to the requesting State, and governing the conditioning or refusal of assistance on data protection grounds;

(g) Article 10 shall be applied in the absence of bilateral treaty provisions pertaining to the circumstances under which a requesting State may seek the confidentiality of its request.

2. (a) The European Union, pursuant to the Treaty on European Union, shall ensure that each Member State acknowledges, in a written instrument between such Member State and the United States of America, the application, in the manner set forth in this Article, of its bilateral mutual legal assistance treaty in force with the United States of America.

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, and having bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (a).

(c) The Contracting Parties shall endeavour to complete the process described in subparagraph (b) prior to the scheduled accession of a new Member State, or as soon as possible thereafter. The European Union shall notify the United States of America of the date of accession of new Member States.

3. (a) The European Union, pursuant to the Treaty on European Union, and the United States of America shall also ensure that the provisions of this Agreement are applied in the absence of a bilateral mutual legal assistance treaty in force between a Member State and the United States of America.

(b) The European Union, pursuant to the Treaty on European Union, shall ensure that such Member State acknowledges, in a written instrument between such Member State and the United States of America, the application of the provisions of this Agreement.

(c) The European Union, pursuant to the Treaty on European Union, shall ensure that new Member States acceding to the European Union after the entry into force of this Agreement, which do not have bilateral mutual legal assistance treaties with the United States of America, take the measures referred to in subparagraph (b).

4. If the process described in paragraph 2(b) and 3(c) is not completed by the date of accession, the provisions of this Agreement shall apply in the relations between the United States of America and that new Member State as from the date on which they have notified each other and the European Union of the completion of their internal procedures for that purpose.

5. The Contracting Parties agree that this Agreement is intended solely for mutual legal assistance between the States concerned. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request, nor expand or limit rights otherwise available under domestic law.

Article 4

Identification of bank information

1. (a) Upon request of the requesting State, the requested State shall, in accordance with the terms of this Article, promptly ascertain if the banks located in its territory possess information on whether an identified natural or legal person suspected of or charged with a criminal offence is the holder of a bank account or accounts. The requested State shall promptly communicate the results of its enquiries to the requesting State.

(b) The actions described in subparagraph (a) may also be taken for the purpose of identifying:

(i) information regarding natural or legal persons convicted of or otherwise involved in a criminal offence;

(ii) information in the possession of non-bank financial institutions; or

(iii) financial transactions unrelated to accounts.

2. A request for information described in paragraph 1 shall include:

(a) the identity of the natural or legal person relevant to locating such accounts or transactions; and

(b) sufficient information to enable the competent authority of the requested State to:

(i) reasonably suspect that the natural or legal person concerned has engaged in a criminal offence and that banks or non-bank financial institutions in the territory of the requested State may have the information requested; and

(ii) conclude that the information sought relates to the criminal investigation or proceeding;

(c) to the extent possible, information concerning which bank or non-bank financial institution may be involved, and other information the availability of which may aid in reducing the breadth of the enquiry.

3. Requests for assistance under this Article shall be transmitted between:

(a) central authorities responsible for mutual legal assistance in Member States, or national authorities of Member States responsible for investigation or prosecution of criminal offences as designated pursuant to Article 15(2); and

(b) national authorities of the United States responsible for investigation or prosecution of criminal offences, as designated pursuant to Article 15(2).

The Contracting Parties may, following the entry into force of this Agreement, agree by Exchange of Diplomatic Note to modify the channels through which requests under this Article are made.

4. (a) Subject to subparagraph (b), a State may, pursuant to Article 15, limit its obligation to provide assistance under this Article to:

(i) offences punishable under the laws of both the requested and requesting States;

(ii) offences punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State; or

(iii) designated serious offences punishable under the laws of both the requested and requesting States.

(b) A State which limits its obligation pursuant to subparagraph (a)(ii) or (iii) shall, at a minimum, enable identification of accounts associated with terrorist activity and the laundering of proceeds generated from a comprehensive range of serious criminal activities, punishable under the laws of both the requesting and requested States.

5. Assistance may not be refused under this Article on grounds of bank secrecy.

6. The requested State shall respond to a request for production of the records concerning the accounts or transactions identified pursuant to this Article, in accordance with the provisions of the applicable mutual legal assistance treaty in force between the States concerned, or in the absence thereof, in accordance with the requirements of its domestic law.

7. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, including on banks or by operation of the channels of communications foreseen in this Article, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

Article 5

Joint investigative teams

1. The Contracting Parties shall, to the extent they have not already done so, take such measures as may be necessary to enable joint investigative teams to be established and operated in the respective territories of each Member State and the United States of America for the purpose of facilitating criminal investigations or prosecutions involving one or more Member States and the United States of America where deemed appropriate by the Member State concerned and the United States of America.

2. The procedures under which the team is to operate, such as its composition, duration, location, organisation, functions, purpose, and terms of participation of team members of a State in investigative activities taking place in another State's territory shall be as agreed between the competent authorities responsible for the investigation or prosecution of criminal offences, as determined by the respective States concerned.

3. The competent authorities determined by the respective States concerned shall communicate directly for the purposes of the establishment and operation of such team except that where the exceptional complexity, broad scope, or other circumstances involved are deemed to require more central coordination as to some or all aspects, the States may agree upon other appropriate channels of communications to that end.

4. Where the joint investigative team needs investigative measures to be taken in one of the States setting up the team, a member of the team of that State may request its own competent authorities to take those measures without the other States having to submit a request for mutual legal assistance. The required legal standard for obtaining the measure in that State shall be the standard applicable to its domestic investigative activities.

Article 6

Video conferencing

1. The Contracting Parties shall take such measures as may be necessary to enable the use of video transmission technology between each Member State and the United States of America for taking testimony in a proceeding for which mutual legal assistance is available of a witness or expert located in a requested State, to the extent such assistance is not currently available. To the extent not specifically set forth in this Article, the modalities governing such procedure shall be as provided under the applicable mutual legal assistance treaty in force between the States concerned, or the law of the requested State, as applicable.

2. Unless otherwise agreed by the requesting and requested States, the requesting State shall bear the costs associated with establishing and servicing the video transmission. Other costs arising in the course of providing assistance (including costs associated with travel of participants in the requested State) shall be borne in accordance with the applicable provisions of the mutual legal assistance treaty in force between the States concerned, or where there is no such treaty, as agreed upon by the requesting and requested States.

3. The requesting and requested States may consult in order to facilitate resolution of legal, technical or logistical issues that may arise in the execution of the request.

4. Without prejudice to any jurisdiction under the law of the requesting State, making an intentionally false statement or other misconduct of the witness or expert during the course of the video conference shall be punishable in the requested State in the same manner as if it had been committed in the course of its domestic proceedings.

5. This Article is without prejudice to the use of other means for obtaining of testimony in the requested State available under applicable treaty or law.

6. This Article is without prejudice to application of provisions of bilateral mutual legal assistance agreements between Member States and the United States of America that require or permit the use of video conferencing technology for purposes other than those described in paragraph 1, including for purposes of identification of persons or objects, or taking of investigative statements. Where not already provided for under applicable treaty or law, a State may permit the use of video conferencing technology in such instances.

Article 7

Expedited transmission of requests

Requests for mutual legal assistance, and communications related thereto, may be made by expedited means of communications, including fax or e-mail, with formal confirmation to follow where required by the requested State. The requested State may respond to the request by any such expedited means of communication.

Article 8

Mutual legal assistance to administrative authorities

1. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place.

2. (a) Requests for assistance under this Article shall be transmitted between the central authorities designated pursuant to the bilateral mutual legal assistance treaty in force between the States concerned, or between such other authorities as may be agreed by the central authorities.

(b) In the absence of a treaty, requests shall be transmitted between the United States Department of Justice and the Ministry of Justice or, pursuant to Article 15(1), comparable Ministry of the Member State concerned responsible for transmission of mutual legal assistance requests, or between such other authorities as may be agreed by the Department of Justice and such Ministry.

3. The Contracting Parties shall take measures to avoid the imposition of extraordinary burdens on requested States through application of this Article. Where extraordinary burdens on a requested State nonetheless result, the Contracting Parties shall immediately consult with a view to facilitating the application of this Article, including the taking of such measures as may be required to reduce pending and future burdens.

Article 9

Limitations on use to protect personal and other data

1. The requesting State may use any evidence or information obtained from the requested State:

(a) for the purpose of its criminal investigations and proceedings;

(b) for preventing an immediate and serious threat to its public security;

(c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 8;

(d) for any other purpose, if the information or evidence has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(e) for any other purpose, only with the prior consent of the requested State.

2. (a) This Article shall not prejudice the ability of the requested State to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the requested State may require the requesting State to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the requesting State for processing personal data may not be imposed by the requested State as a condition under subparagraph (a) to providing evidence or information.

3. Where, following disclosure to the requesting State, the requested State becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the requested State may consult with the requesting State to determine the extent to which the evidence and information can be protected.

4. A requested State may apply the use limitation provision of the applicable bilateral mutual legal assistance treaty in lieu of this Article, where doing so will result in less restriction on the use of information and evidence than provided for in this Article.

5. Where a bilateral mutual legal assistance treaty in force between a Member State and the United States of America on the date of signature of this Agreement, permits limitation of the obligation to provide assistance with respect to certain tax offences, the Member State concerned may indicate, in its exchange of written instruments with the United States of America described in Article 3(2), that, with respect to such offences, it will continue to apply the use limitation provision of that treaty.

Article 10

Requesting State's request for confidentiality

The requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the requesting State. If the request cannot be executed without breaching the requested confidentiality, the central authority of the requested State shall so inform the requesting State, which shall then determine whether the request should nevertheless be executed.

Article 11

Consultations

The Contracting Parties shall, as appropriate, consult to enable the most effective use to be made of this Agreement, including to facilitate the resolution of any dispute regarding the interpretation or application of this Agreement.

Article 12

Temporal application

1. This Agreement shall apply to offences committed before as well as after it enters into force.

2. This Agreement shall apply to requests for mutual legal assistance made after its entry into force. Nevertheless, Articles 6 and 7 shall apply to requests pending in a requested State at the time this Agreement enters into force.

Article 13

Non-derogation

Subject to Article 4(5) and Article 9(2)(b), this Agreement is without prejudice to the invocation by the requested State of grounds for refusal of assistance available pursuant to a bilateral mutual legal assistance treaty, or, in the absence of a treaty, its applicable legal principles, including where execution of the request would prejudice its sovereignty, security, ordre public or other essential interests.

Article 14

Future bilateral mutual legal assistance treaties with Member States

This Agreement shall not preclude the conclusion, after its entry into force, of bilateral Agreements between a Member State and the United States of America consistent with this Agreement.

Article 15

Designations and notifications

1. Where a Ministry other than the Ministry of Justice has been designated under Article 8(2)(b), the European Union shall notify the United States of America of such designation prior to the exchange of written instruments described in Article 3(3) between the Member States and the United States of America.

2. The Contracting Parties, on the basis of consultations between them on which national authorities responsible for the investigation and prosecution of offences to designate pursuant to Article 4(3), shall notify each other of the national authorities so designated prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America. The European Union shall, for Member States having no mutual legal assistance treaty with the United States of America, notify the United States of America prior to such exchange of the identity of the central authorities under Article 4(3).

3. The Contracting Parties shall notify each other of any limitations invoked under Article 4(4) prior to the exchange of written instruments described in Article 3(2) and (3) between the Member States and the United States of America.

Article 16

Territorial application

1. This Agreement shall apply:

(a) to the United States of America;

(b) in relation to the European Union, to:

— Member States,

— territories for whose external relations a Member State has responsibility, or countries that are not Member States for whom a Member State has other duties with respect to external relations, where agreed upon by exchange of diplomatic note between the Contracting Parties, duly confirmed by the relevant Member State.

2. The application of this Agreement to any territory or country in respect of which extension has been made in accordance with subparagraph (b) of paragraph 1 may be terminated by either Contracting Party giving six months' written notice to the other Contracting Party through the diplomatic channel, where duly confirmed between the relevant Member State and the United States of America.

Article 17

Review

The Contracting Parties agree to carry out a common review of this Agreement no later than five years after its entry into force. The review shall address in particular the practical implementation of the Agreement and may also include issues such as the consequences of further development of the European Union relating to the subject matter of this Agreement.

Article 18

Entry into force and termination

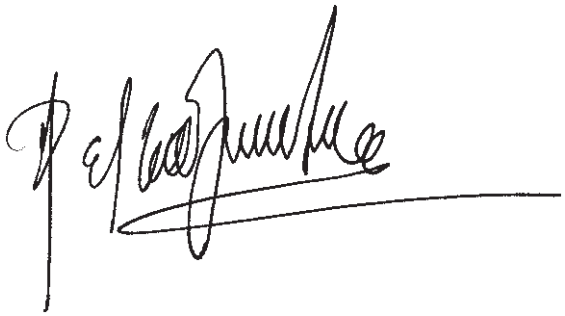
1. This Agreement shall enter into force on the first day following the third month after the date on which the Contracting Parties have exchanged instruments indicating that they have completed their internal procedures for this purpose. These instruments shall also indicate that the steps specified in Article 3(2) and (3) have been completed.

2. Either Contracting Party may terminate this Agreement at any time by giving written notice to the other Party, and such termination shall be effective six months after the date of such notice.

In witness whereof the undersigned Plenipotentiaries have signed this Agreement

Done at Washington D.C. on the twenty-fifth day of June in the year two thousand and three in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish languages, each text being equally authentic.

Por la Unión Europea
For Den Europæiske Union
Für die Europäische Union
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Per l'Unione europea
Voor de Europese Unie
Pela União Europeia
Euroopan unionin puolesta
På Europeiska unionens vägnar



Por los Estados Unidos de América
For Amerikas Forenede Stater
Für die Vereinigten Staaten von Amerika
Για τις Ηνωμένες Πολιτείες της Αμερικής
For the United States of America
Pour les États-Unis d'Amérique
Per gli Stati Uniti d'America
Voor de Verenigde Staten van Amerika
Pelos Estados Unidos da América
Amerikan yhdysvaltojen puolesta
På Amerikas förenta staters vägnar

Explanatory Note on the Agreement on Mutual Legal Assistance between the European Union and the United States of America

This note reflects understandings regarding the application of certain provisions of the Agreement on Mutual Legal Assistance between the European Union and the United States of America (hereinafter 'the Agreement') agreed between the Contracting Parties.

On Article 8

With respect to the mutual legal assistance to administrative authorities under Article 8(1), the first sentence of Article 8(1) imposes an obligation to afford mutual legal assistance to requesting United States of America federal administrative authorities and to requesting national administrative authorities of Member States. Under the second sentence of that paragraph mutual legal assistance may also be made available to other, that is non-federal or local, administrative authorities. This provision however, is available at the discretion of the requested State.

The Contracting Parties agree that under the first sentence of Article 8(1) mutual legal assistance will be made available to a requesting administrative authority that is, at the time of making the request, conducting investigations or proceedings in contemplation of criminal prosecution or referral of the investigated conduct to the competent prosecuting authorities, within the terms of its statutory mandate, as further described immediately below. The fact that, at the time of making the request referral for criminal prosecution is being contemplated does not exclude that, other sanctions than criminal ones may be pursued by that authority. Thus, mutual legal assistance obtained under Article 8(1) may lead the requesting administrative authority to the conclusion that pursuance of criminal proceedings or criminal referral would not be appropriate. These possible consequences do not affect the obligation upon the Contracting Parties to provide assistance under this Article.

However, the requesting administrative authority may not use Article 8(1) to request assistance where criminal prosecution or referral is not being contemplated, or for matters in which the conduct under investigation is not subject to criminal sanction or referral under the laws of the requesting State.

The European Union recalls that the subject matter of the Agreement for its part falls under the provisions on police and judicial cooperation in criminal matters set out in Title VI of the Treaty on European Union and that the Agreement has been concluded within the scope of these provisions.

On Article 9

Article 9(2)(b) is meant to ensure that refusal of assistance on data protection grounds may be invoked only in exceptional cases. Such a situation could arise if, upon balancing the important interests involved in the particular case (on the one hand, public interests, including the sound administration of justice and, on the other hand, privacy interests), furnishing the specific data sought by the requesting State would raise difficulties so fundamental as to be considered by the requested State to fall within the essential interests grounds for refusal. A broad, categorical, or systematic application of data protection principles by the requested State to refuse cooperation is therefore precluded. Thus, the fact the requesting and requested States have different systems of protecting the privacy of data (such as that the requesting State does not have the equivalent of a specialised data protection authority) or have different means of protecting personal data (such as that the requesting State uses means other than the process of deletion to protect the privacy or the accuracy of the personal data received by law enforcement authorities), may as such not be imposed as additional conditions under Article 9(2a).

On Article 14

Article 14 provides that the Agreement shall not preclude the conclusion, after its entry into force, of bilateral agreements on mutual legal assistance between a Member State and the United States of America consistent with the Agreement.

Should any measures set forth in the Agreement create an operational difficulty for the United States of America and one or more Member States, such difficulty should in the first place be resolved, if possible, through consultations between the Member State or Member States concerned and the United States of America, or, if appropriate, through the consultation procedures set out in the Agreement. Where it is not possible to address such operational difficulty through consultations alone, it would be consistent with the Agreement for future bilateral agreements between a Member State and the United States of America to provide an operationally feasible alternative mechanism that would satisfy the objectives of the specific provision with respect to which the difficulty has arisen.

COUNCIL DECISION

of 15 July 2003

on the statistical data to be used for the adjustment of the key for subscription to the capital of the European Central Bank

(2003/517/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 107(6) thereof and Article 29.2 of the Protocol on the Statute of the European System of Central Banks (ESCB) and of the European Central Bank (ECB) annexed thereto (hereinafter referred to as 'the Statute'),

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the European Central Bank [3],

Whereas:

(1) Pursuant to Decision 98/382/EC [4], the Council adopted rules on the statistical data to be used for the determination of the initial subscription key to the ECB's capital.

(2) According to Article 29.3 of the Statute, the weighting of the national central banks in the key for subscription of the ECB's capital is to be adjusted every five years.

(3) Upon one or more countries becoming Member States of the European Union, their national central banks will become members of the European System of Central Banks (ESCB) and subscribers to the ECB's capital. The weighting of the national central banks in the key for subscription of the ECB's capital needs to be adjusted accordingly.

(4) It is necessary to lay down rules for the provision of the statistical data to be used for the adjustments of the weighting of the national central banks in the key for subscription of the ECB's capital.

(5) The nature of, and sources for, the data to be used and the method of calculation of the weighting of the national central banks in the key for subscription of the ECB's capital should be defined.

(6) Council Regulation (EC) No 2223/96/EC of 25 June 1996 on the European system of national and regional accounts in the Community [5] provides for a methodology on common standards, definitions, classifications and accounting rules intended to be used for compiling accounts and tables on comparable bases for the purpose of the Community and provides for a programme for transmitting for Community purposes the accounts and tables compiled according to that Regulation on precise dates. That Regulation takes account of the most recent standards and developments in statistical methodology and the definitions therein should therefore be used for the purposes of this Decision.

(7) Since the key for the ECB capital subscription determines the respective shares of the national central banks in the capital of the ECB and in the pooling of external reserves, as well as their voting weights in the ECB Governing Council for all decisions to be taken by weighted votes (in accordance with Article 10.3 of the Statute) and the distribution among them of the monetary income of the ESCB, it is important that the calculation of their weighting in this key is carried out in an accurate manner. The Commission should therefore consult the relevant committees on the data on population and on gross domestic product at current market prices,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

The statistical data to be used for the adjustment of the weighting of the national central banks in the key for subscription of the capital of the European Central Bank (ECB) shall be provided by the Commission in accordance with the rules laid down in this Decision.

Article 2

Population

1. 'Population' shall mean the total population as defined in Regulation (EC) No 2223/96 compiled as an average of the year and rounded to the nearest thousand people.

[1] Proposal of 14 March 2003 (not yet published in the Official Journal).
[2] Opinion delivered on 3 July 2003 (not yet published in the Official Journal).
[3] OJ C 102, 29.4.2003, p. 11.
[4] OJ L 171, 17.6.1998, p. 33.
[5] OJ L 310, 30.11.1996, p. 1. Regulation as last amended by Regulation (EC) No 359/2002 of the European Parliament and of the Council (OJ L 58, 28.2.2002, p. 1).

2. For the adjustment of the weightings assigned to the national central banks in accordance with Article 29.3 of the Statute, the data on population shall be taken for the penultimate year preceding the year in which the key is adjusted.

Article 3

Gross domestic product at current market prices

1. 'Gross domestic product at market prices' shall mean the gross domestic product at current market prices as defined in Regulation (EC) No 2223/96 for a calendar year and expressed in the national currency with the highest precision available to permit the compilation of the shares with the required accuracy.

2. For the adjustment of the weightings assigned to the national central banks in accordance with Article 29.3 of the Statute, the data on gross domestic product at current market prices shall be taken for the five years preceding the penultimate year before the year in which the key is adjusted.

Article 4

Exchange rates

1. The annual exchange rate for conversion of the gross domestic product at current market prices shall be the arithmetic mean of the daily exchange rates for all working days in a calendar year.

2. The daily exchange rates shall be the ecu reference rates before 1999 as compiled by the Commission. They will be the euro reference rates from 1999 onwards as compiled by the ECB.

Article 5

Calculation and accuracy

1. The share of a Member State in the population of the Community shall be its share in the sum of the population of the Member States, expressed as a percentage.

2. The share of a Member State in GDP at current market prices of the Community shall be its share in the sum of GDP at current market prices of the Member States over five years, expressed as a percentage.

3. The weighting of a national central bank in the key for the subscription of the ECB's capital shall be the arithmetic mean of the shares of the Member State concerned in the population and in GDP at current market prices of the Community.

4. The various steps of calculation shall use sufficient digits to ensure their accuracy. The weighting of the national central banks in the key for the subscription of the ECB's capital shall be expressed to four decimal places.

Article 6

Information of Committees

As regards data on population, the Commission shall inform the Statistical Programme Committee set up by Article 1 of Council Decision 89/382/EEC, Euratom of 19 June 1989 establishing a Committee on the Statistical Programmes of the European Communities [1].

As regards data on GDP at current market prices, the Commission shall inform the Committee set up by Article 6 of Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices [2].

Article 7

New Member States

Upon one or more countries becoming Member States and their respective national central banks becoming part of the ESCB, the reference periods to be used for the statistical data on population and gross domestic product at current market prices shall be identical to those applied for the latest quinquennial adjustment as defined in Articles 29.1 and 29.3 of the Statute.

Article 8

Provision of the data

The data on population, gross domestic product at current market prices and the annual exchange rates referred to in this Decision shall be provided by the Commission to the ECB for all Member States separately not later than two months before the date on which the adjustment of weighting of the national central banks in the key for subscription of the capital of the ECB takes effect.

Done at Brussels, 15 July 2003.

For the Council

The President

G. TREMONTI

[1] OJ L 181, 28.6.1989, p. 47.
[2] OJ L 49, 21.2.1989, p. 26.

COUNCIL RECOMMENDATION
of 15 July 2003
on the appointment of the President of the European Central Bank

(2003/518/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 112(2)(b) and Article 122(4) thereof, and to Articles 11.2 and 43.3 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank,

HEREBY RECOMMENDS:

that Mr Jean-Claude Trichet be appointed President of the European Central Bank for a term of office of eight years with effect from 1 November 2003.

This recommendation shall be submitted for decision to the Heads of State or Government of the Member States which have adopted the euro, after consulting the European Parliament and the Governing Council of the European Central Bank.

This recommendation shall be published in the *Official Journal of the European Union*.

Done at Brussels, 15 July 2003.

For the Council
The President
G. TREMONTI

COMMISSION

COMMISSION DECISION

of 5 March 2003

on the aid scheme which Italy (the Region of Sicily) is planning to implement for the internationalisation of enterprises

(notified under document number C(2003) 650)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/519/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the Treaty [1],

Having called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

1. PROCEDURE

(1) By letter from the Italian Permanent Representation to the European Union dated 10 May 2001, registered by the Commission on 14 May 2001 under A/33813, the Italian authorities notified the aid scheme in question pursuant to Article 88(3) of the Treaty.

(2) By letter SG (2002) D/228170 of 15 January 2002, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the scheme.

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

(4) The Commission received no comments on the scheme either from Italy or from interested parties. The only letter from the Italian authorities was dated 10 January 2003 and related exclusively to one aspect of the decision to initiate the procedure (point 38, concerning the *de minimis* rule).

2. DETAILED DESCRIPTION OF THE AID

2.1. Title and legal basis

(5) The aid would be granted by the Region of Sicily under the scheme set up by Article 26 of Regional Law No 32 of 23 December 2000 laying down provisions for implementing the Regional Operational Programme (POR) 2000-2006 for Sicily [3] (Regional Law 32/2000) and the Decree of 22 June 2001 [4]. Articles 13 and 15 of Regional Law 32/2000 contain general provisions applicable to the scheme, while Article 198 suspends its implementation pending the adoption of a decision by the Commission on completion of the notification procedure.

2.2. Objective of the scheme

(6) The scheme is intended to promote the internationalisation of the regional economy by granting aid to independent or affiliated SMEs, consortia of SMEs and companies set up by consortia of SMEs operating in the Region of Sicily.

2.3. Scope

(7) In order to attain the objectives pursued, the scheme makes provision for the following forms of aid:

— contributions to investment costs of projects designed to secure a permanent presence on one or more foreign markets (exhibition centres, showrooms, agents' offices);

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 132, 4.6.2002, p. 11.
[3] *Gazzetta ufficiale della Regione siciliana*, No 61, 23.12.2000.
[4] *Gazzetta ufficiale della Regione siciliana*, Part I, No 37, 27.7.2001.

— contributions to the establishment and start-up of consortia of SMEs to carry out cooperation projects as part of promotional activities on an international scale.

(8) The Decree of 22 June 2001 provides for other aid to be granted in accordance with Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid [5].

(9) As regards the aid referred to in the first indent of recital 7 above, the Decree of 22 June 2001 stipulates that expenditure falling within the definition of investment (including intangible investments) given in the relevant Community legislation is eligible for assistance: expenditure on the purchase or rental of premises, on the purchase of equipment and on intangible investments. On the form submitted with the notification (prior to the amendments made in the course of the investigation), the Italian authorities quoted quality certification, environmental protection, technical innovation and the purchase of management software as examples of intangible investments. Tangible investment is defined in Article 13 of Regional Law 32/2000, which also provides that:

— expenditure on intangible investments and studies and consultancy work may not exceed 25 % of eligible expenditure,

— replacement investments are excluded,

— the recipient must undertake to maintain the investment for a period of five years,

— aid to intangible investment is granted on condition that the recipient undertakes to use it exclusively in its own establishment for a period of five years,

— requests for aid must be submitted before implementation of the project begins.

(10) As far as the aid referred to in the second indent of recital 7 above is concerned, the Decree of 22 June 2001 stipulates that all expenditure involved in the establishment, start-up and operation of the consortium for a period of five years is eligible for assistance: the legal costs of setting up the consortium and the overheads and staff costs incurred during start-up and operation and on which the success of the initiative directly depends. The following items of expenditure are specified:

— staff costs and tax liabilities,

— rent for premises assigned to the activities of consortia or associations,

— purchase, including by means of leasing agreements, of movables (equipment and furniture),

— promotion and advertising of the products of the member firms and the services provided by the consortium.

(11) In the absence of clarifications from the Italian authorities, the Commission is unable to identify in more detail the assistance and eligible expenditure referred to in recitals 8 to 10 above.

2.4. **Budget and duration of the scheme**

(12) The scheme is to enter into force on completion of the notification procedure and operate until 31 December 2006. The annual budget has not been clearly specified. On the notification form submitted by letter of 26 September 2001, the Italian authorities indicated a budget of '… lire approximately 98 billion euros for the aid scheme referred to in Articles 26-36 and 39 of Regional Law 32/2000 …'. The Commission assumes that the amount is given in Italian lire. Furthermore, the notification in question relates only to the aid scheme set up by Article 26 of that law. Article 26(2) provides for a budget of not more than ITL 120 billion.

2.5. **Recipients**

(13) The scheme is open to individual and affiliated SMEs. Consortia of SMEs and companies set up by consortia of SMEs, including those in cooperative form, are also eligible. Aid recipients must be registered in the register of businesses kept by chambers of commerce and, in the case of craft businesses, in the register of craft businesses. For the definition of SMEs, the provisions governing the scheme refer to the Community rules. However, the Italian authorities have not made it clear whether this means the definition of SMEs given in Commission Recommendation 96/280/EC [6]. There are also doubts as to the definition of SMEs applied to consortia and companies set up by consortia.

[5] OJ L 10, 13.1.2001, p. 30.

[6] OJ L 107, 30.4.1996, p. 4. The same definition is reproduced in Annex I to Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33).

(14) In the original notification, the notification form stated that the scheme excluded activities related to the production, processing or marketing of the products listed in Annex I to the EC Treaty and to the transport, steel, shipbuilding, synthetic fibres and motor-vehicle sectors. Article 15 of Regional Law 32/2000 nevertheless provides that the provisions on aid laid down in the Law apply to those sectors. The most recent documents submitted and the notification form for the amended provisions do not state any more clearly whether the above sectors are excluded. There are also doubts as to whether aid for rescuing and restructuring firms in difficulty ([7]) and aid for the financial restructuring of firms in difficulty is excluded. There is likewise doubt regarding the exclusion of investments in fixed capital involving the takeover of an establishment which has closed or which would have closed had it not been taken over. These contradictory indications do not make it possible to determine whether or not the scheme applies to the above sectors, firms and establishments.

2.6. **Form and intensity of the aid**

(15) The scheme awards aid in the form of grants.

(16) For the contributions to investment costs of projects designed to secure a permanent presence on one or more foreign markets (exhibition centres, showrooms, agents' offices), the maximum intensities are 35 % net grant equivalent plus 15 percentage points gross grant equivalent.

(17) For the contributions to the establishment and start-up of consortia of SMEs to carry out cooperation projects as part of promotional activities on an international scale, the scheme provides for aid intensity that decreases over the first five years, with ceilings of 70 %, 60 %, 50 %, 40 % and 30 %.

3. **DOUBTS RAISED BY THE COMMISSION WHEN IT DECIDED TO INITIATE THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY**

(18) The doubts raised by the Commission when it decided to initiate the procedure laid down in Article 88(2) of the Treaty focused on two specific aspects: aid for internationalisation and operating aid.

(19) As regards the aid for internationalisation, in its preliminary assessment and on the basis of the information at its disposal, the Commission drew attention to the following points in particular ([8]):

— this aid appeared to be linked to the creation and operation of a distribution network or to other export-related current expenditure and as such was not compatible with the common market (see in particular Regulation (EC) No 70/2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ([9]));

— even if this aid could be regarded as investment aid, it did not qualify for the regional exemptions provided for in Article 87(3)(a) and (c). The regional exemptions could be granted only in respect of investments made within the areas eligible for regional aid. The Italian authorities considered that they could apply the intensities allowed for Sicily, as a region eligible for the exemption in Article 87(3)(a), by the Italian regional aid map ([10]), but the measure in question related to the creation of structures outside that region.

(20) As far as the operating aid is concerned, in its preliminary assessment and on the basis of the information at its disposal, the Commission drew attention to the following points in particular ([11]):

— the measure was limited in time, since it was to apply until 2006, and provided for decreasing maximum aid intensities;

— however, the Italian authorities had failed to demonstrate that the operating aid was proportional to the handicaps it sought to alleviate. Neither had they provided information clarifying the nature of the regional handicaps to be overcome. They had not even described or quantified those handicaps or shown that the aid was justified in terms of its contribution to regional development;

— operating aid intended to promote exports between Member States was not allowed ([12]).

([7]) As defined by the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

([8]) For further details, see points 28 to 30 of the decision to initiate the procedure (see footnote 2).

([9]) OJ L 10, 13.1.2001, p. 33.

([10]) OJ L 105, 20.4.2002, p. 1.

([11]) For further details, see points 31 to 36 of the decision to initiate the procedure (see footnote 2).

([12]) Point 4.17 of the Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9, as amended by the Commission communication published in OJ C 258, 9.9.2000, p. 5).

(21) In the decision initiating the procedure the Commission furthermore expressed doubts as to the compatibility with the common market of two more specific aspects of the scheme ([13]):

— the scheme required recipients to be registered in the register of businesses kept by chambers of commerce and, in the case of craft businesses, in the register of craft businesses. Such a requirement possibly infringed the Community rules on the right of establishment and the principle of non-discrimination on grounds of nationality (Article 12 of the Treaty);

— on the aid to be granted under the Decree of 22 June 2001 in accordance with the *de minimis* rule, the Commission noted that the provision at the end of Article 15(3) of Regional Law 32/2000, which formed an integral part of the notification, did not appear to take account of the three-year period referred to in Article 2(2) of Regulation (EC) No 69/2001 ([14]). Under that provision of the Regional Law, recipients had to declare any *de minimis* aid received after 1 January 2000. However, the reference period in Article 2(2) of Regulation No 69/2001 was mobile, as is indicated in recital 5 to the Regulation.

4. COMMENTS FROM THE ITALIAN AUTHORITIES

(22) The Italian authorities did not submit any comments on the planned aid scheme.

(23) They did, however, transmit clarifications concerning the provision on aid to be granted under the *de minimis* rule, i.e. the provision about which the Commission raised doubts in recital 38 of the Decision initiating the procedure.

(24) In that letter the Italian authorities stated that no aid had been granted and that, on completion of the administrative procedure for examining requests for aid, the regional authorities would pay out the aid in accordance with the indications given in recital 38 of the decision initiating the procedure and in compliance with Regulation (EC) No 69/2001 ([15]). The Italian authorities also stressed that the provision at the end of Article 15(3) of Regional Law 32/2000 did not provide for the grant of aid under the *de minimis* rule and was confined to organising the creation of a regional database.

([13]) For further details, see points 37 to 38 of the Decision to initiate the procedure (see footnote 2).
([14]) See footnote 5.
([15]) Ibid.

5. ASSESSMENT OF THE AID

5.1. Existence of aid within the meaning of Article 87(1) of the Treaty

(25) In order to assess whether the measures provided for in the scheme constitute State aid within the meaning of Article 87(1) of the Treaty, it has to be determined whether they confer an advantage on the recipients, whether that advantage derives from State resources, whether they distort competition and whether they are liable to affect trade between Member States.

(26) The first requirement for the applicability of Article 87(1) of the Treaty is that the measure must confer an advantage on certain specific undertakings. It has to be determined whether the recipients receive an economic advantage they would not have obtained under normal market conditions, or whether they avoid costs which they would normally have had to bear out of their own financial resources, and whether this advantage is conferred on a specific category of undertaking. The award of grants and contributions towards the operating costs of firms located in the Region of Sicily confers economic advantages on the recipients since it reduces the costs of carrying out eligible projects and relieves them of some of the current expenditure which they would normally have incurred. The scheme is available only to SMEs operating in the Region of Sicily, which are favoured since the aid is not granted to firms outside that area or to firms in Sicily which are not SMEs, consortia of SMEs or companies set up by consortia of SMEs.

(27) The second requirement for the applicability of Article 87 is that the aid must be granted by the State or out of State resources. In the present case the use of State resources is shown by the fact that the cost of the measure is borne by the public budget of a region.

(28) The third condition for the applicability of Article 87(1) of the Treaty is that the aid must distort or threaten to distort competition. The measures at issue here do threaten to distort competition, because they strengthen the financial position and freedom of action of the recipient firms as compared with competitors who do not qualify.

(29) The fourth condition for the applicability of Article 87(1) of the Treaty is that the aid must affect or be liable to affect intra-Community trade. It should be pointed out here that the scheme concerns the internationalisation of the regional economy and comprises measures intended precisely to assist undertakings in achieving that objective. The aid scheme under examination

therefore concerns undertakings carrying on their business in sectors exposed to international competition and can by definition be regarded as relating to economic operators involved in international trade.

(30) For the above reasons, the Commission finds that the scheme under examination constitutes State aid within the meaning of Article 87(1) of the Treaty which can therefore be considered to be compatible with the common market only if it qualifies for one of the exemptions laid down in the Treaty.

5.2. **Lawfulness of the scheme**

(31) Since under the suspensive clause (Article 198 of Regional Law 32/2000) the scheme has not yet entered into force, the Commission finds that the Italian authorities have complied with the obligation to notify laid down in Article 88(3) of the Treaty.

5.3. **Applicability of the exemptions**

(32) After determining that the measures under examination constitute State aid caught by Article 87(1) of the Treaty, the Commission has to consider whether they can be declared compatible with the common market in accordance with Article 87(2) and (3).

(33) The Commission takes the view that the aid does not qualify for the exemptions in Article 87(2): it is not aid having a social character of the kind referred to in Article 87(2)(a), nor is it aid intended to make good the damage caused by natural disasters or exceptional occurrences of the kind referred to in Article 87(2)(b), nor does it satisfy the tests of Article 87(2)(c). For obvious reasons the exemptions in Article 87(3)(b) and (d) are not applicable either. The Commission therefore has to consider whether it qualifies for exemption under Article 87(3)(a) and (c).

5.4. **Compatibility of the aid and doubts raised by the Commission**

(34) In the decision to initiate the formal investigation procedure, the Commission took the view that the aid in the form of contributions to investment costs of projects designed to secure a permanent presence on one or more foreign markets (exhibition centres, showrooms, agents' offices) ([16]) applied particularly to export-related activities. This aid appeared to be linked to the creation and operation of a distribution network or to other export-related current expenditure. Export aid is not compatible with Regulation (EC) No 70/2001 ([17]). The Commission has long been opposed to export aid ([18]). In point 242 of the Seventh Report on Competition Policy (1977), the Commission stated that export aids applied to intra-Community trade 'cannot qualify for derogation whatever their intensity, form, grounds or purpose'. The formal investigation procedure has not dispelled the Commission's doubts, and the possibility that the scheme under examination may constitute export aid incompatible with the common market cannot be ruled out. Clearly, aid towards the costs of studies and consultancy services could be compatible if it complies with the conditions laid down in Article 5 of Regulation (EC) No 70/2001. However, in the absence of specific commitments from Italy and clarifications and more precise definitions, the Commission cannot authorise such aid. In this particular respect, Italy is nevertheless free to implement the measure under the Exemption Regulation in accordance with the conditions laid down therein.

(35) During the preliminary examination phase, the Italian authorities disputed the classification of the measures as export aid on the grounds that they were not directly linked to the export of goods or to the creation or operation of distribution and marketing networks. But they did not adduce any evidence in support of these claims. They confined themselves to pointing out that the aid would have beneficial effects on regional development in Sicily and arguing that the scheme should be classed as regional aid. The Italian authorities also stated that they were prepared to exclude from the scheme any structure comprising a warehouse, store or distribution centre for goods and anything connected with marketing and distribution. Nevertheless, in the decision initiating the formal investigation procedure, the Commission also expressed doubts as to whether the scheme could be classed as investment aid for the purposes of Article 2 of Regulation (EC) No 70/2001. Its doubts have not been dispelled, and the question whether the measures can be classed as export aid or investment aid remains unresolved.

([16]) See the first indent of recital 7.
([17]) See footnote 9. See in particular Article 1(2)(b) of the Regulation and recital 16 thereto.
([18]) See Commission Decision 73/263/EEC of 25 July 1973 on the tax concessions granted, pursuant to Article 34 of French law No 65-566 of 12 July 1965 and to the circular of 24 March 1967, to French undertakings setting up businesses abroad (OJ L 253, 10.9.1973, p. 10).

(36) In the Decision to initiate the formal investigation procedure, the Commission furthermore took the view that, even if the aid could be classed as investment aid, it did not qualify for the regional exemptions in Article 87(3)(a) and (c). Those exemptions may be applied only to investments made within eligible areas. However, Article 4(1) of Regulation (EC) No 70/2001 provides that 'aid for investment […] inside or outside the Community shall be compatible with the common market within the meaning of Article 87(3) of the Treaty […]', and the Regulation therefore applies to investments outside eligible areas. Nevertheless, all the established conditions must be met. In particular, Article 4(2) provides that the gross aid intensity may not exceed 15 % in the case of small enterprises and 7,5 % in the case of medium-sized enterprises. Only where the investment is carried out in an assisted area does Article 4(3) allow the average intensity to reach the ceiling for regional investment aid. It follows that the aid ceilings envisaged by the Region of Sicily may be applied only where the investment is carried out inside that region. The Italian authorities took the view, however, that the intensities envisaged by the Region of Sicily could be applied since the region was recognised as eligible for the derogation in Article 87(3)(a) by the Italian regional aid map. But the scheme under examination relates to the creation of structures outside that region. During the formal investigation procedure the Italian authorities confined themselves to advancing questionable interpretations of Article 4 of Regulation (EC) No 70/2001 in support of their argument that the maximum intensities allowed for the Region of Sicily could be applied. The formal investigation has not dispelled the Commission's doubts, and the possibility that the scheme under examination may constitute investment aid incompatible with the common market cannot be ruled out.

(37) In the decision to initiate the formal investigation procedure, the Commission took the view that the aid in the form of contributions to the establishment and start-up of consortia of SMEs to carry out cooperation projects as part of promotional activities on an international scale ([19]) did not fulfil the conditions laid down in Regulation (EC) No 70/2001 and that the aid constituted operating aid. The acquisition of movables is an eligible cost for the purposes of aid for productive investments, even where it takes place outside the Community, provided that all the other conditions laid down in Regulation (EC) No 70/2001 are fulfilled. In the absence of specific commitments from Italy and clarifications and more precise definitions, the Commission cannot authorise aid for the acquisition of immovable property for productive investments. In this particular respect, Italy is nevertheless free to implement the measure under the Exemption Regulation in accordance with the conditions laid down therein. All the conditions laid down in that Regulation will nevertheless have to be met. This is the case, for example, of the aid intensities ([20]), on which the Commission has already stated its position ([21]).

(38) The Region of Sicily qualifies for exemption under Article 87(3)(a) of the Treaty in accordance with the abovementioned Italian regional aid map.

(39) In accordance with the guidelines on national regional aid, aid aimed at reducing a firm's current expenses (operating aid) is normally prohibited. Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a), provided that it is justified in terms of its contribution to regional development and its nature, and provided its level is proportional to the handicaps it seeks to alleviate. It is for the Member State to demonstrate the existence of any handicaps and gauge their importance. Operating aid must be limited in time and progressively reduced ([22]).

(40) The Commission noted that the measure was limited in time, since it was to apply until 2006, and provided for decreasing maximum aid intensities.

(41) The Commission nevertheless pointed out that the provisions governing the scheme did not make it clear whether the aid intensity was expressed in terms of gross or net grant equivalent and that the initial ceiling of 70 % appeared to be rather high. The Italian authorities had failed to explain how the nature and duration of the aid were such as to compensate for the handicaps it sought to alleviate, and they had not demonstrated that the operating aid was proportional to those handicaps. Neither had they provided information clarifying the nature of the regional handicaps to be overcome; they had not described or quantified those handicaps or shown that the aid was justified in terms of its contribution to regional development.

(42) The Commission also stressed that operating aid intended to promote exports between Member States was not allowed ([23]).

([19]) See the second indent of recital 7.

([20]) See recital 36.

([21]) See Commission Decision 97/257/EC of 5 June 1996 concerning guarantees of the *Land* Brandenburg (Germany) for investment projects in Poland (OJ L 102, 19.4.1997, p. 36); Commission Decision 97/240/EC of 5 June 1996 concerning aid that the Republic of Austria intends to grant under the ERP internationalisation scheme (OJ L 96, 11.4.1997, p. 15); and Commission Decision 97/241/EC of 5 June 1996 concerning aid that the Republic of Austria intends to grant pursuant to the ERP Eastern Europe programme (OJ L 96, 11.4.1997, p. 23).

([22]) Points 4.15 to 4.17 of the Guidelines on national regional aid (see footnote 12).

([23]) Point 4.17 of the Guidelines on national regional aid (see footnote 12).

(43) The formal investigation has not dispelled the Commission's doubts, and the possibility that the scheme under examination may constitute operating aid incompatible with the common market cannot be ruled out.

(44) In the Decision to initiate the formal investigation procedure, the Commission pointed out that the provision requiring recipients to be registered in the register of businesses kept by chambers of commerce and, in the case of craft businesses, in the register of craft businesses possibly infringed the Community rules on the right of establishment and the principle of non-discrimination on grounds of nationality (Article 12 of the Treaty). Those doubts have not been dispelled. In the absence of reactions and clarifications from Italy, the Commission is unable to reach a decision on this question. There is no need for it to do so, however, since the formal investigation procedure has led it to conclude that the aid scheme under examination is incompatible with the common market. It should also be stressed that, as indicated in the preceding points, if Italy were to decide to put certain measures into effect pursuant to Regulation (EC) No 70/2001, it would have to do so in compliance with the provisions of the Treaty.

(45) On the aid to be granted in accordance with the *de minimis* rule, the Commission takes note of the Italian authorities' statement that no aid has been granted and that they will comply with the provisions of Regulation (EC) No 69/2001 ([24]). Since the Italian authorities have made it clear that the provision at the end of Article 15(3) of Regional Law 32/2000 does not provide for the grant of aid under the *de minimis* rule and is confined to organising the creation of a regional database, no amendment of that provision is necessary.

6. **CONCLUSIONS**

(46) In the light of the assessment set out in section IV of this Decision, the Commission finds that the aid scheme to promote the internationalisation of enterprises in the Region of Sicily is incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to implement for the internationalisation of enterprises in the Region of Sicily pursuant to Article 26 of Sicilian Regional Law No 32 of 23 December 2000 and the Decree of 22 June 2001 ([25]) is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 5 March 2003.

For the Commission

Mario MONTI

Member of the Commission

([24]) See footnote 5.

([25]) See footnote 4.