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Legislation

Contents

(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.

Contents (continued)

II *Acts whose publication is not obligatory*

Commission

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, ECSC, EURATOM) No 490/2002

of 18 March 2002

amending the Conditions of Employment of Other Servants of the European Communities as regards the length of contracts of auxiliary staff

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 283 thereof,

Having regard to the Conditions of Employment of Other Servants of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/68 [1], and in particular Article 52 of the said Conditions of Employment,

Having regard to the proposal from the Commission, presented following consultations with the Staff Regulations Committee,

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

Having regard to the opinion of the Court of Justice [3],

Having regard to the opinion of the Court of Auditors [4],

Whereas:

(1) In all the institutions auxiliary staff are an indispensable tool providing rapid access to human resources, particularly to replace staff and temporary servants temporarily unable to carry out their duties (Article 3(b) of the Conditions of Employment of Other Servants of the European Communities). Auxiliary staff may also perform specific short-term tasks in accordance with the high standards laid down in the Staff Regulations. Auxiliary staff complement permanent officials in highly specialised areas where the expertise needed is not otherwise available.

(2) The possibility of extending the duration of an auxiliary contract constitutes a useful element of flexibility in the use of the institutions' human resources.

(3) The possibility of extending the duration of an auxiliary contract beyond one year is justified in order to allow the institutions to respond, when the interests of the service so require, to the need to ensure a certain continuity of service and/or benefit fully from the qualifications and training of the staff member concerned.

(4) Article 52 of the Conditions of Employment of Other Servants of the European Communities should therefore be amended in order to extend the maximum duration of contracts for auxiliary staff to three years,

HAS ADOPTED THIS REGULATION:

Article 1

Article 52(b) of the Conditions of Employment of Other Servants of the European Communities shall be replaced by the following: '(b) three years, in all other cases.'.

Article 2

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

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

Done at Brussels, 18 March 2002.

For the Council

The President

M. ARIAS CAÑETE

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[1] OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 2581/2001 (OJ L 345, 29.12.2001, p. 1).
[2] Opinion of 5 February 2002 (not yet published in the Official Journal).
[3] Opinion of 11 July 2001 (not yet published in the Official Journal).
[4] Opinion of 19 July 2001 (not yet published in the Official Journal).

COMMISSION REGULATION (EC) No 491/2002

of 19 March 2002

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 20 March 2002.

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

Done at Brussels, 19 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 19 March 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	213,3
	204	163,7
	212	174,9
	624	212,2
	999	191,0
0707 00 05	052	175,4
	204	36,9
	624	119,8
	999	110,7
0709 90 70	052	138,9
	204	65,8
	999	102,3
0805 10 10, 0805 10 30, 0805 10 50	052	66,7
	204	49,2
	212	44,8
	220	49,0
	421	29,6
	448	26,7
	600	63,2
	624	83,3
	999	51,6
0805 50 10	052	44,8
	600	48,4
	999	46,6
0808 10 20, 0808 10 50, 0808 10 90	060	42,4
	388	104,7
	400	122,4
	404	97,2
	508	88,5
	512	88,6
	528	93,3
	720	121,6
	728	131,3
	999	98,9
0808 20 50	388	86,6
	400	92,6
	512	80,1
	528	73,4
	999	83,2

(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 492/2002

of 19 March 2002

derogating from Regulation (EC) No 562/2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef and amending Regulation (EEC) No 1627/89 on the buying-in of beef by invitation to tender

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], as last amended by Commission Regulation (EC) No 2345/2001 [2], and in particular Article 47(8) thereof,

Whereas:

(1) Commission Regulation (EC) No 562/2000 [3], as last amended by Regulation (EC) No 1564/2001 [4], lays down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef. In particular, Articles 10 and 16(2) define the periods for submitting tenders and delivery respectively. In view of the dates on which the public holidays fall in the first and second quarter of 2002, it is necessary for practical reasons to cancel the second invitation to tender in March 2002 and to change the closing date for the delivery for the second tender of the second quarter of 2002. Therefore, Regulation (EC) No 562/2000 should be derogated from.

(2) Commission Regulation (EEC) No 1627/89 of 9 June 1989 [5] on the buying-in of beef by invitation to tender, as last amended by Regulation (EC) No 238/2002 [6], opens buying-in by invitation to tender in certain Member States or regions of a Member State for certain quality groups. Commission Regulation (EC) No 1209/2001 [7], as last amended by Regulation (EC) No 2579/2001 [8], introduced a number of derogations from Regulation (EC) No 562/2000 in order to deal with the exceptional situation on the market caused by events linked to bovine spongiform encephalopathy (BSE) and the subsequent outbreak of foot-and-mouth disease. In particular, additional products could be accepted into intervention. As this derogation no longer applies for tendering procedures during the second quarter of 2002, it is necessary to amend Regulation (EEC) No 1627/89 accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Notwithstanding the first sentence of Article 10 of Regulation (EC) No 562/2000, no submission of tenders shall take place on the fourth Tuesday of March 2002.

Article 2

1. The Annex to Regulation (EEC) No 1627/89 is replaced by the Annex to this Regulation.

2. Notwithstanding Article 16(2) of Regulation (EC) No 562/2000, the delivery period for the second tendering procedure in the second quarter of 2002 shall be 24 calendar days.

Article 3

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

Article 2 shall apply to tendering procedures opened during the second quarter of 2002.

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 315, 1.12.2001, p. 29.
[3] OJ L 68, 16.3.2000, p. 22.
[4] OJ L 208, 1.8.2001, p. 14.
[5] OJ L 159, 10.6.1989, p. 36.
[6] OJ L 39, 9.2.2002, p. 4.
[7] OJ L 165, 21.6.2001, p. 15.
[8] OJ L 344, 28.12.2001, p. 68.

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

Done at Brussels, 19 March 2002.

For the Commission
Franz FISCHLER
Member of the Commission

ANEXO — BILAG — ANHANG — ΠΑΡΑΡΤΗΜΑ — ANNEX — ANNEXE — ALLEGATO — BIJLAGE — ANEXO — LIITE — BILAGA

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1 del Reglamento (CEE) nº 1627/89

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1, i forordning (EØF) nr. 1627/89

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητος που αναφέρονται στο άρθρο 1 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 1627/89

Member States or regions of a Member State and quality groups referred to in Article 1(1) of Regulation (EEC) No 1627/89

États membres ou régions d'États membres et groupes de qualités visés à l'article 1er, paragraphe 1, du règlement (CEE) nº 1627/89

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1, del regolamento (CEE) n. 1627/89

In artikel 1, lid 1, van Verordening (EEG) nr. 1627/89 bedoelde lidstaten of gebieden van een lidstaat en kwaliteitsgroepen

Estados-Membros ou regiões de Estados-Membros e grupos de qualidades referidos no n.º 1 do artigo 1.º do Regulamento (CEE) n.º 1627/89

Jäsenvaltiot tai alueet ja asetuksen (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmät

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχές κράτους μέλους	Κατηγορία A			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lidstaat of gebied van een lidstaat	Categorie A			Categorie C		
Estados-Membros ou regiões de Estados-Membros	Categoria A			Categoria C		
Jäsenvaltiot tai alueet	Luokka A			Luokka C		
Medlemsstater eller regioner	Kategori A			Kategori C		
	U	R	O	U	R	O

COMMISSION REGULATION (EC) No 493/2002

of 19 March 2002

amending Council Regulation (EEC) No 2771/75 on the common organisation of the market in eggs and Council Regulation (EEC) No 2777/75 on the common organisation of the market in poultrymeat as regards the Combined Nomenclature codes of certain products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Commission Regulation (EC) No 2031/2001 of 6 August 2001 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff [3] amends the Combined Nomenclature for certain products.

(2) Annex I to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs [4], as last amended by Commission Regulation (EC) No 1516/96 [5], and Article 1(1) of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat [6], as last amended by Commission Regulation (EC) No 2916/95 [7], should consequently be amended.

(3) The amendments should apply from the date of application of Regulation (EC) No 2031/2001.

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

HAS ADOPTED THIS REGULATION:

Article 1

In Annex I to Regulation (EEC) No 2771/75, the line:

'1905 30 — Sweet biscuits; waffles and wafers'

is replaced by the following:

'1905 31 — Sweet biscuits'

and

'1905 32 — Waffles and wafers.'

Article 2

In Article 1(1) of Regulation (EEC) No 2777/75, CN codes '0210 90 71 and 0210 90 79' are replaced by CN codes '0210 99 71 and 0210 99 79'.

Article 3

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

It shall apply from 1 January 2002.

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

Done at Brussels, 19 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 34, 9.2.1979, p. 2.
[2] OJ L 349, 31.12.1994, p. 105.
[3] OJ L 279, 23.10.2001, p. 1.
[4] OJ L 282, 1.11.1975, p. 49.
[5] OJ L 189, 30.7.1996, p. 99.
[6] OJ L 282, 1.11.1975, p. 77.
[7] OJ L 305, 19.12.1995, p. 49.

COMMISSION REGULATION (EC) No 494/2002

of 19 March 2002

establishing additional technical measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e

THE COMMISSION THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms [1], as last amended by Regulation (EC) No 973/2001 [2], and in particular Article 45(1) thereof,

Whereas:

(1) In November 2000, the International Council for the Exploration of the Sea (ICES) indicated that the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES division VIII a, b, d, e is at serious risk of collapse.

(2) The majority of the stock inhabits ICES sub-areas V, VI, and VII and ICES divisions VIII a, b, d, e.

(3) Commission Regulation (EC) No 1162/2001 of 14 June 2001 establishing measures for the recovery of the stock of hake in ICES sub-areas III, IV, V, VI and VII and ICES divisions VIII a, b, d, e and associated conditions for the control of activities of fishing vessels [3] lays down a number of additional technical measures relevant to the recovery of this stock.

(4) Those technical measures will remain in force until 1 March 2002. However, by that date the revision of Regulation (EC) No 850/98 will not have been achieved. An interruption of the application of the measures would cause serious harm to the stock of hake.

(5) Therefore, immediate action is required to ensure that the measures laid down in Regulation (EC) No 1162/2001 continue to apply until the revision of Regulation (EC) No 850/98 is adopted by the Council.

(6) Fishing with beam trawls of mesh size less than 100 mm within areas otherwise restricted to fishing with other towed gears of mesh size of 100 mm or greater is unlikely to imperil the conservation of the hake stock since such fishing with beam trawls incurs a very low level of hake taken as by-catches. It is necessary, however, to ensure that low by-catch levels are not exceeded and to limit the time period and geographical area in which such fishing may take place.

(7) Article 2(2) of Regulation (EC) No 1162/2001 provides a derogation which is justified by the fact that the limit on the catches of hake would cause serious economic problems for small fishing vessels working on a daily basis. The derogation has negligible consequences regarding the conservation and recovery of the hake stock. It should therefore be maintained.

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

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to fishing vessels operating within ICES sub-areas V and VI and ICES divisions VII b, c, f, g, h, j, k and ICES divisions VIII a, b, d, e.

Article 2

1. Notwithstanding the conditions laid down in Article 4(4) and Article 15 of Regulation (EC) No 850/98, catches of hake (*Merluccius merluccius*) retained on board any vessel carrying any towed gear other than beam trawls of mesh size 55 to 99 mm may not be in excess of 20 % of the weight of the total catch of marine organisms retained on board and catches of hake retained on board any vessel carrying a beam trawl of mesh size range 55 to 99 mm may not be in excess of 5 % of the weight of the total catch of marine organisms retained on board.

2. The conditions of paragraph 1 shall not apply to any vessel of length less than 12 metres overall which returns to port within 24 hours of its most recent departure from port.

Article 3

It shall be prohibited to use:

(a) except in ICES sub-areas V and VI, any cod-end and/or extension piece of any towed net except beam trawls of mesh size greater than 55 mm which is not constructed of single-twine netting material of which no twine is of thickness greater than 6 mm or of double-twine netting material of which no twine is of thickness greater than 4 mm;

[1] OJ L 125, 27.4.1998, p. 1.
[2] OJ L 137, 19.5.2001, p. 1.
[3] OJ L 159, 14.6.2001, p. 4.

(b) any demersal towed net other than beam trawl incorporating a cod-end of mesh size range 70 to 89 mm having more than 120 meshes in any circumference of the said cod-end excluding the joinings and selvages;

(c) any demersal towed net which includes any individual quadrilateral mesh of which the bars of the mesh are not of approximately equal length;

(d) any demersal towed net to which a cod-end of mesh size less than 100 mm is attached by any means other than being sewn into that part of the net anterior to the cod-end.

Article 4

It shall be prohibited to carry on board or deploy any beam trawl of mesh size equal to or greater than 70 mm unless the entire upper half of the anterior part of such a net consists of a panel of netting material of which no individual mesh is of mesh size less than 180 mm attached:

— directly to the headline, or

— to no more than three rows of netting material of any mesh size attached directly to the headline.

The panel of netting shall extend towards the posterior of the net for at least the number of meshes determined by:

(a) dividing the length in metres of the beam of the net by 12;

(b) multiplying the result obtained in (a) by 5400;

(c) dividing the result obtained in (b) by the mesh size, in millimetres, of the smallest mesh in the panel;

(d) ignoring any decimal or other fractions in the result obtained in (c).

Article 5

1. For the purposes of paragraph 2, the following geographical areas are defined:

(a) the area enclosed by straight lines sequentially joining the following geographical coordinates and excluding any part of that area situated within the limit of 12 nautical miles calculated from the baselines of Ireland:

53°30′N, 11°00′W

53°30′N, 12°00′W

53°00′N, 12°00′W

51°00′N, 11°00′W

49°30′N, 11°00′W

49°30′N, 07°00′W

51°00′N, 07°00′W

51°00′N, 10°30′W

51°30′N, 11°00′W

53°30′N, 11°00′W;

(b) the area enclosed by straight lines sequentially joining the following geographical coordinates and excluding any part of that area situated within the limit of 12 nautical miles calculated from the baselines of France:

48°00′N, 06°00′W

48°00′N, 07°00′W

45°00′N, 02°00′W

44°00′N, 02°00′W

a point on the coast of France at 44°00′N

a point on the coast of France at 45°30′N

45°30′N, 02°00′W

45°45′N, 02°00′W

48°00′N, 06°00′W.

2. Within the areas defined in paragraph 1:

— it is prohibited to conduct any fishing activity using any towed net other than beam trawls of mesh size range 55 to 99 mm,

— it is prohibited to immerse, partially or wholly, or otherwise deploy for any purpose any towed net other than beam trawls which is of mesh size range 55 to 99 mm,

— all towed nets other than beam trawls of mesh size range 55 to 99 mm shall be lashed and stowed in accordance with the provisions laid down in Article 20(1) of Regulation (EEC) No 2847/93 of 1 October 1993 establishing a control system applicable to the common fisheries policy [1].

Within the area defined in paragraph 1(a):

— it is prohibited to conduct any fishing activity using any fixed gear of mesh size less than 120 mm,

— it is prohibited to immerse, partially or wholly or otherwise deploy for any purpose, any fixed gear of mesh size less than 120 mm,

— all fixed gears of mesh size less than 120 mm shall be lashed and stowed in accordance with the provisions laid down in Article 20(1) of Regulation (EEC) No 2847/93.

Within the area defined in paragraph 1(b):

— it is prohibited to conduct any fishing activity using any fixed gear of mesh size less than 100 mm,

— it is prohibited to immerse, partially or wholly or otherwise deploy for any purpose, any fixed gear of mesh size less than 100 mm,

— all fixed gears of mesh size less than 100 mm shall be lashed and stowed in accordance with the provisions laid down in Article 20(1) of Regulation (EEC) No 2847/93.

[1] OJ L 261, 20.10.1993, p. 1.

Article 6

1. Within the area defined in Article 5(1)(a), beam trawls of mesh size range 55 to 99 mm may be deployed or immersed partially or wholly only in that part of the area to the east of 07°30′W and only in the period April to October.

2. Within the area defined in Article 5(1)(b), beam trawls of mesh size range 55 to 99 mm may be deployed or immersed partially or wholly only in that part of the area to the south of 46°00′N and only in the period June to September.

3. Within those parts of the areas defined in Article 5(1)(a) or 5(1)(b) which lie outside the areas referred to in paragraphs 1 and 2, all beam trawls of mesh size range 55 to 99 mm shall be lashed and stowed in accordance with the provisions laid down in Article 20(1) of Regulation (EEC) No 2847/93.

Article 7

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

It shall be applicable from 1 March 2002.

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

Done at Brussels, 19 March 2002.

For the Commission

Franz FISCHLER

Member of the Commission

DIRECTIVE 2002/12/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 March 2002

amending Council Directive 79/267/EEC as regards the solvency margin requirements for life assurance undertakings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Article 55 thereof,

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

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The financial services action plan, as endorsed by the European Council meetings in Cologne on 3 and 4 June 1999 and in Lisbon on 23 and 24 March 2000, recognises the importance of the solvency margin for insurance undertakings to protect policyholders in the single market by ensuring that insurance undertakings have adequate capital requirements in relation to the nature of their risks.

(2) First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance [4] requires insurance undertakings to have solvency margins.

(3) The requirement that insurance undertakings establish, over and above the technical provisions to meet their underwriting liabilities, a solvency margin to act as a buffer against adverse business fluctuations is an important element in the system of prudential supervision for the protection of insured persons and policyholders.

(4) The existing solvency margin rules as established by Directive 79/267/EEC have been substantially unchanged by subsequent Community legislation and Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third life assurance Directive) [5] required the Commission to submit a report to the Insurance Committee set up by Council Directive 91/675/EEC [6] on the need for further harmonisation of the solvency margin.

(5) The Commission has prepared that report in the light of the recommendations of the report on the solvency of insurance undertakings prepared by the Conference of the Insurance Supervisory Authorities of the Member States of the European Union.

(6) While the report concluded that the simple, robust nature of the current system has operated satisfactorily and is based on sound principles benefiting from wide transparency, certain weaknesses have been identified in specific cases.

(7) There is a need to increase the existing minimum guarantee fund, in particular as a result of inflation in claim levels and operational expenses since that requirement was originally adopted.

(8) To improve the quality of the solvency margin, the possibility of including future profits in the available solvency margin should be limited and subject to conditions and should in any case cease after 2009.

(9) To avoid major and sharp increases in the amount of the minimum guarantee fund in the future, a mechanism should be established providing for its increase in line with the European index of consumer prices.

(10) In specific situations where policyholders' rights are threatened, there is a need for the competent authorities to be empowered to intervene at a sufficiently early stage, but in the exercise of those powers, competent authorities should inform the insurance undertakings of the reasons motivating such supervisory action, in accordance with the principles of sound administration and due process. As long as such a situation exists, the competent authorities should be prevented from certifying that the insurance undertaking has a sufficient solvency margin.

(11) In the light of market developments in the nature of reinsurance cover purchased by primary insurers, there is a need for the competent authorities to be empowered to decrease the reduction to the solvency margin requirement in certain circumstances.

[1] OJ C 96 E, 27.3.2001, p. 123.
[2] OJ C 193, 10.7.2001, p. 21.
[3] Opinion of the European Parliament of 4 July 2001 (not yet published in the Official Journal) and Decision of the Council of 14 February 2002.
[4] OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 95/26/EC of the European Parliament and of the Council (OJ L 168, 18.7.1995, p. 7).
[5] OJ L 360, 9.12.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).
[6] OJ L 374, 31.12.1991, p. 32.

(12) This Directive should lay down minimum standards for the solvency margin requirements and home Member States should be able to lay down stricter rules for insurance undertakings authorised by their own competent authorities.

(13) Directive 79/267/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 79/267/EEC

Directive 79/267/EEC is hereby amended as follows:

1. in Article 3, point 2 shall be replaced by the following:

'2. mutual associations, where:

— the articles of association contain provisions for calling up additional contributions or reducing their benefits or claiming assistance from other persons who have undertaken to provide it, and

— the annual contribution income for the activities covered by this Directive does not exceed EUR 5 million for three consecutive years. If this amount is exceeded for three consecutive years this Directive shall apply with effect from the fourth year.

Nevertheless, the provisions of this Article shall not prevent a mutual assurance undertaking from applying, or continuing, to be licensed under this Directive';

2. Articles 18, 19 and 20 shall be replaced by the following:

'*Article 18*

1. Each Member State shall require of every assurance undertaking whose head office is situated in its territory an adequate available solvency margin in respect of its entire business at all times which is at least equal to the requirements in this Directive.

2. The available solvency margin shall consist of the assets of the assurance undertaking free of any foreseeable liabilities, less any intangible items, including:

(a) the paid-up share capital or, in the case of a mutual assurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

(i) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the available solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);

(b) reserves (statutory and free) not corresponding to underwriting liabilities;

(c) the profit or loss brought forward after deduction of dividends to be paid;

(d) in so far as authorised under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to policy holders.

The available solvency margin shall be reduced by the amount of its own shares directly held by the assurance undertaking.

3. The available solvency margin may also consist of:

(a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided in the event of the bankruptcy or liquidation of the assurance undertaking, binding agreements exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

(i) only fully paid-up funds may be taken into account;

(ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the assurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing assurance undertaking and its available solvency margin will not fall below the required level;

(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically

required for early repayment. In the latter event the assurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the assurance undertaking's available solvency margin will not fall below the required level;

(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the assurance undertaking, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the assurance undertaking to defer the payment of interest on the loan;

(iii) the lender's claims on the assurance undertaking must rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the assurance undertaking to continue its business;

(v) only fully paid-up amounts may be taken into account.

4. Upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of:

(a) until 31 December 2009 an amount equal to 50 % of the undertaking's future profits, but not exceeding 25 % of the lesser of the available solvency margin and the required solvency margin. The amount of the future profits shall be obtained by multiplying the estimated annual profit by a factor which represents the average period left to run on policies. The factor used may not exceed 6. The estimated annual profit shall not exceed the arithmetical average of the profits made over the last five financial years in the activities listed in point 1 of Article 1.

Competent authorities may only agree to include such an amount for the available solvency margin:

(i) when an actuarial report is submitted to the competent authorities substantiating the likelihood of emergence of these profits in the future; and

(ii) in so far as that part of future profits emerging from hidden net reserves referred to in point (c) has not already been taken into account;

(b) where zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-zillmerised or partially zillmerised mathematical provision and a mathematical provision zillmerised at a rate equal to the loading for acquisition costs included in the premium. This figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance activities and the mathematical provisions for all policies for which zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;

(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;

(d) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available and required solvency margin.

5. 5. Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin, shall be adopted in accordance with the procedure laid down in Article 2 of Directive 91/675/EEC (*).

(*) OJ L 374, 31.12.1991, p. 32.

Article 19

1. Subject to Article 20, the required solvency margin shall be determined as laid down in paragraphs 2 to 7 according to the classes of assurance underwritten.

2. For the kinds of assurance referred to in Article 1(1)(a) and (b) other than assurances linked to investment funds and for the operations referred to in Article 1(3), the required solvency margin shall be equal to the sum of the following two results:

(a) first result:

a 4 % fraction of the mathematical provisions, relating to direct business and reinsurance acceptance gross of reinsurance cessions shall be multiplied by the ratio, for the last financial year, of the total mathematical provisions net of reinsurance cessions to the gross total mathematical provisions. That ratio may in no case be less than 85 %;

(b) second result:

for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the assurance undertaking shall be multiplied by the ratio, for the last financial year, of the total capital at risk retained as the undertaking's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance; that ratio may in no case be less than 50 %.

For temporary assurance on death of a maximum term of three years the fraction shall be 0,1 %. For such assurance of a term of more than three years but not more than five years the above fraction shall be 0,15 %.

3. For the supplementary insurance referred to in Article 1(1)(c), the required solvency margin shall be equal to the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive.

4. For permanent health insurance not subject to cancellation referred to in Article 1(1)(d), the required solvency margin shall be equal to:

(a) a 4 % fraction of the mathematical provisions, calculated in compliance with paragraph 2(a) of this Article; plus

(b) the required solvency margin for insurance undertakings as laid down in Article 16a of Directive 73/239/EEC, excluding the provisions of Article 17 of that Directive. However, the condition contained in Article 16a(6)(b) of that Directive that a provision be set up for increasing age may be substituted by a requirement that the business be conducted on a group basis.

5. For capital redemption operations referred to in Article 1(2)(b), the required solvency margin shall be equal to a 4 % fraction of the mathematical provisions calculated in compliance with paragraph 2(a) of this Article.

6. For tontines, referred to in Article 1(2)(a), the required solvency margin shall be equal to 1 % of their assets.

7. For assurances covered by Article 1(1)(a) and (b) linked to investment funds and for the operations referred to in Article 1(2)(c), (d) and (e), the required solvency margin shall be equal to the sum of the following:

(a) in so far as the assurance undertaking bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;

(b) in so far as the undertaking bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 2(a) of this Article;

(c) in so far as the undertaking bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the last financial year's net administrative expenses pertaining to such business;

(d) in so far as the assurance undertaking covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 2(b) of this Article.

Article 20

1. One third of the required solvency margin as specified in Article 19 shall constitute the guarantee fund. This fund shall consist of the items listed in Article 18(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(c).

2. The guarantee fund may not be less than a minimum of EUR 3 million.

Any Member State may provide for a reduction of one-quarter of the minimum guarantee fund in the case of mutual associations and mutual-type associations and tontines';

3. the following Article shall be inserted:

'*Article 20a*

1. The amount in euro as laid down in Article 20(2) shall be reviewed annually starting 20 September 2003, in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

The amount shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of this Directive and the review date and rounded up to a multiple of EUR 100 000.

If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place.

2. The Commission shall inform annually the European Parliament and the Council of the review and the adapted amount referred to in paragraph 1';

4. the following Article shall be inserted:

'*Article 24a*

1. Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those insurance undertakings where competent authorities consider that policyholders' rights are threatened. The financial recovery plan must as a minimum include particulars or proof concerning for the next three financial years:

(a) estimates of management expenses, in particular current general expenses and commissions;

(b) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover underwriting liabilities and the required solvency margin;

(e) the overall reinsurance policy.

2. Where policyholders' rights are threatened because the financial position of the undertaking is deteriorating, Member States shall ensure that the competent authorities have the power to oblige insurance undertakings to have a higher required solvency margin, in order to ensure that the insurance undertaking is able to fulfil the solvency requirements in the near future. The level of this higher required solvency margin shall be based on a financial recovery plan referred to in paragraph 1.

3. Member States shall ensure that the competent authorities have the power to revalue downwards all elements eligible for the available solvency margin, in particular, where there has been a significant change in the market value of these elements since the end of the last financial year.

4. Member States shall ensure that the competent authorities have the powers to decrease the reduction, based on reinsurance, to the solvency margin as determined in accordance with Article 19 where:

(a) the nature or quality of reinsurance contracts has changed significantly since the last financial year;

(b) there is no or an insignificant risk transfer under the reinsurance contracts.

5. If the competent authorities have required a financial recovery plan for the insurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 10(3)(2) of this Directive, Article 14(1)(a) of Council Directive 90/619/EEC (*) (second life assurance Directive) and Article 11(2) of Council Directive 92/96/EEC (**) (third life assurance Directive) as long as they consider that policyholders' rights are threatened within the meaning of paragraph 1.

(*) OJ L 330, 29.11.1990, p. 50. Directive as last amended by Directive 92/96/EEC (OJ L 360, 9.12.1992, p. 1).

(**) OJ L 360, 9.12.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).'

Article 2

Transitional period

1. Member States may allow assurance undertakings which at the entry into force of this Directive provide assurance in their territories in one or more of the classes referred to in the Annex to Directive 79/267/EEC, a period of five years, commencing with the date of entry into force of this Directive, in order to comply with the requirements set out in Article 1 of this Directive.

2. Member States may allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the required solvency margin, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 24 of Directive 79/267/EEC, submitted for the approval of the competent authorities, the measures which they propose to take for such purpose.

Article 3

Transposition

1. Member States shall adopt by 20 September 2003 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall provide that the measures referred to in paragraph 1 shall first apply to the supervision of accounts for financial years beginning on 1 January 2004 or during that calendar year.

3. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

4. Not later than 1 January 2007 the Commission shall submit to the European Parliament and the Council a report on the application of this Directive and, if necessary, on the need for further harmonisation. The report shall indicate how Member States have made use of the possibilities in this Directive and, in particular, whether the discretionary powers afforded to the national supervisory authorities have resulted in major supervisory differences in the single market.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 5 March 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	R. DE RATO Y FIGAREDO

DIRECTIVE 2002/13/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 March 2002

amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) and Article 55 thereof,

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

Having regard to the opinion of the Economic and Social Committee [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) The financial services action plan, as endorsed by the European Council meetings in Cologne on 3 and 4 June 1999 and in Lisbon on 23 and 24 March 2000, recognises the importance of the solvency margin for insurance undertakings to protect policyholders in the single market by ensuring that insurance undertakings have adequate capital requirements in relation to the nature of their risks.

(2) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance [4] requires insurance undertakings to have solvency margins.

(3) The requirement that insurance undertakings establish, over and above the technical provisions to meet their underwriting liabilities, a solvency margin to act as a buffer against adverse business fluctuations is an important element in the system of prudential supervision for the protection of insured persons and policyholders.

(4) The existing solvency margin rules as established by Directive 73/239/EEC have been substantially unchanged by subsequent Community legislation and Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) [5] required the Commission to submit a report to the Insurance Committee set up by Council Directive 91/675/EEC [6], on the need for further harmonisation of the solvency margin.

(5) The Commission has prepared that report in the light of the recommendations of the report on the solvency of insurance undertakings prepared by the Conference of the Insurance Supervisory Authorities of the Member States of the European Union.

(6) While the report concluded that the simple, robust nature of the current system has operated satisfactorily and is based on sound principles benefiting from wide transparency, certain weaknesses have been identified in specific cases, particularly for sensitive risk profiles.

(7) There is a need to simplify and increase the existing minimum guarantee funds, in particular as a result of inflation in claim levels and operational expenses since their original adoption. The thresholds above which the lower percentage rate applies for the determination of the solvency margin requirement on the premiums and claims basis should also be increased accordingly.

(8) To avoid major and sharp increases in the amount of the minimum guarantee funds and the thresholds in the future, a mechanism should be established providing for their increase in line with the European index of consumer prices.

(9) In specific situations where policyholders' rights are threatened, there is a need for the competent authorities to be empowered to intervene at a sufficiently early stage, but in the exercise of those powers, competent authorities should inform the insurance undertakings of the reasons motivating such supervisory action, in accordance with the principles of sound administration and due process. As long as such a situation exists, the competent authorities should be prevented from certifying that the insurance undertaking has a sufficient solvency margin.

(10) In the light of market developments in the nature of reinsurance cover purchased by primary insurers, there is a need for the competent authorities to be empowered to decrease the reduction to the solvency margin requirement in certain circumstances.

(11) Where an insurer substantially reduces or ceases the writing of new business, there is a need to establish an adequate solvency margin in respect of the residual liabilities for existing business as reflected by the level of technical provisions.

[1] OJ C 96 E, 27.3.2001, p. 129.
[2] OJ C 193, 10.7.2001, p. 16.
[3] Opinion of the European Parliament of 4 July 2001 (not yet published in the Official Journal) and Decision of the Council of 14 February 2002.
[4] OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).
[5] OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).
[6] OJ L 374, 31.12.1991, p. 32.

(12) For specific classes of non-life business which are subject to a particularly volatile risk profile, the existing solvency margin requirement should be substantially increased so that the required solvency margin is better matched to the true risk profile of the business.

(13) To reflect the impact of differing accounting and actuarial approaches, it is appropriate to make corresponding adjustments to the methodology for the calculation of the solvency margin requirement so that this is calculated in a coherent and consistent manner, thus placing insurance undertakings on an equal footing.

(14) This Directive should lay down minimum standards for the solvency margin requirements and home Member States should be able to lay down stricter rules for insurance undertakings authorised by their own competent authorities.

(15) Directive 73/239/EEC should be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 73/239/EEC

Directive 73/239/EEC is hereby amended as follows:

1. in Article 3, paragraph 1 shall be replaced by the following:

'1. This Directive shall not apply to mutual associations which fulfil all the following conditions:

(a) the articles of association must contain provisions for calling up additional contributions or reducing their benefits;

(b) their business does not cover liability risks unless these constitute ancillary cover within the meaning of point C of the Annex or credit and suretyship risks;

(c) the annual contribution income for the activities covered by this Directive must not exceed EUR 5 million; and

(d) at least half of the contribution income from the activities covered by this Directive must come from persons who are members of the mutual association.

This Directive shall not apply to undertakings which fulfil all the following conditions:

— the undertaking does not pursue any activity falling within the scope of this Directive other than the one described in class 18 in point A of the Annex,

— this activity is carried out exclusively on a local basis and consists only of benefits in kind, and

— the total annual income collected in respect of the activity of assistance to persons who get into difficulties does not exceed EUR 200 000.

Nevertheless, the provisions of this Article shall not prevent a mutual insurance undertaking from applying, or continuing, to be licensed under this Directive';

2. Article 16 shall be replaced by the following:

'Article 16

1. Each Member State shall require of every insurance undertaking whose head office is situated in its territory an adequate available solvency margin in respect of its entire business at all times, which is at least equal to the requirements in this Directive.

2. The available solvency margin shall consist of the assets of the insurance undertaking free of any foreseeable liabilities, less any intangible items, including:

(a) the paid-up share capital or, in the case of a mutual insurance undertaking, the effective initial fund plus any members' accounts which meet all the following criteria:

(i) the memorandum and articles of association must stipulate that payments may be made from these accounts to members only in so far as this does not cause the available solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);

(b) reserves (statutory and free) not corresponding to underwriting liabilities;

(c) the profit or loss brought forward after deduction of dividends to be paid.

The available solvency margin shall be reduced by the amount of own shares directly held by the insurance undertaking.

For those insurance undertakings which discount or reduce their technical provisions for claims outstanding to take account of investment income as permitted by Article 60(1)(g) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (*), the available solvency margin shall be reduced by the difference between the undiscounted technical provisions or technical provisions before deductions as disclosed in the notes on the accounts, and the discounted or technical provisions after deductions. This adjustment shall be made for all risks listed in point A of the Annex, except for risks listed under classes 1 and 2. For classes other than 1 and 2, no adjustment need be made in respect of the discounting of annuities included in technical provisions.

3. The available solvency margin may also consist of:

(a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided in the event of the bankruptcy or liquidation of the insurance undertaking, binding agreements exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following conditions:

(i) only fully paid-up funds may be taken into account;

(ii) for loans with a fixed maturity, the original maturity must be at least five years. No later than one year before the repayment date the insurance undertaking must submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing insurance undertaking and its available solvency margin will not fall below the required level;

(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the insurance undertaking must notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the insurance undertaking's available solvency margin will not fall below the required level;

(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the insurance undertaking, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue must enable the insurance undertaking to defer the payment of interest on the loan;

(iii) the lender's claims on the insurance undertaking must rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the insurance undertaking to continue its business;

(v) only fully paid-up amounts may be taken into account.

4. Upon application, with supporting evidence, by the undertaking to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of:

(a) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available solvency margin and the required solvency margin;

(b) in the case of mutual or mutual-type association with variable contributions, any claim which it has against its members by way of a call for supplementary contribution, within the financial year, up to one half of the difference between the maximum contributions and the contributions actually called in, and subject to a limit of 50 % of the lesser of the available solvency margin and the required solvency margin. The competent national authorities shall establish guidelines laying down the conditions under which supplementary contributions may be accepted;

(c) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature.

5. Amendments to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin, shall be adopted in accordance with the procedure laid down in Article 2 of Council Directive 91/675/EEC (**).

(*) OJ L 374, 31.12.1991, p. 7.
(**) OJ L 374, 31.12.1991, p. 32.';

3. the following Article shall be inserted:

'Article 16a

1. The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

In the case, however, of insurance undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.

2. Subject to Article 17, the amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4.

3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

Premiums or contributions in respect of the classes 11, 12 and 13 listed in point A of the Annex shall be increased by 50 %.

The premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the last financial year shall be aggregated.

To this sum there shall be added the amount of premiums accepted for all reinsurance in the last financial year.

From this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to EUR 50 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

With the approval of the competent authorities, statistical methods may be used to allocate the premiums or contributions in respect of the classes 11, 12 and 13.

4. The claims basis shall be calculated, as follows, using in respect of the classes 11, 12 and 13 listed in point A of the Annex, claims, provisions and recoveries increased by 50 %.

The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph 1 shall be aggregated.

To this sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the last financial year both for direct business and for reinsurance acceptances.

From this sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances. If the period of reference established in paragraph 1 equals seven years, the amount of provisions for claims outstanding established at the commencement of the sixth financial year preceding the last financial year for which there are accounts shall be deducted.

One-third, or one-seventh, of the amount so obtained, according to the period of reference established in paragraph 1, shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under reinsurance and the gross amount of claims; this ratio may in no case be less than 50 %.

With the approval of the competent authorities, statistical methods may be used to allocate the claims, provisions and recoveries in respect of the classes 11, 12 and 13. In the case of the risks listed under class 18 in point A of the Annex, the amount of claims paid used to calculate the claims basis shall be the costs borne by the insurance undertaking in respect of assistance given. Such costs shall be calculated in accordance with the national provisions of the home Member State.

5. If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least equal to the required solvency margin of the year before multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of reinsurance but the ratio may in no case be higher than 1.

6. The fractions applicable to the portions referred to in the sixth subparagraph of paragraph 3 and the sixth subparagraph of paragraph 4 shall each be reduced to a third in the case of health insurance practised on a similar technical basis to that of life assurance, if

(a) the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;

(b) a provision is set up for increasing age;

(c) an additional premium is collected in order to set up a safety margin of an appropriate amount;

(d) the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;

(e) the contract provides for the possibility of increasing premiums or reducing payments even for current contracts';

4. Article 17 shall be replaced by the following:

'*Article 17*

1. One third of the required solvency margin as specified in Article 16a shall constitute the guarantee fund. This fund shall consist of the items listed in Article 16(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(c).

2. The guarantee fund may not be less than EUR 2 million. Where, however, all or some of the risks included in one of the classes 10 to 15 listed in point A of the Annex are covered, it shall be EUR 3 million.

Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual associations and mutual-type associations';

5. the following Article shall be inserted:

'*Article 17a*

1. The amounts in euro as laid down in Article 16a (3) and (4) and Article 17(2) shall be reviewed annually starting 20 September 2003 in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that index over the period between the entry into force of this Directive and the review date and rounded up to a multiple of EUR 100 000.

If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place.

2. The Commission shall inform annually the European Parliament and the Council of the review and the adapted amounts referred to in paragraph 1;';

6. in Article 20(2), the term 'Article 16(3)' shall be replaced by the term 'Article 16a';

7. the following Article shall be inserted:

'*Article 20a*

1. Member States shall ensure that the competent authorities have the power to require a financial recovery plan for those insurance undertakings where competent authorities consider that policyholders' rights are threatened. The financial recovery plan shall as a minimum include particulars or proof concerning for the next three financial years:

(a) estimates of management expenses, in particular current general expenses and commissions;

(b) a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(c) a forecast balance sheet;

(d) estimates of the financial resources intended to cover underwriting liabilities and the required solvency margin;

(e) the overall reinsurance policy.

2. Where policyholders' rights are threatened because the financial position of the undertaking is deteriorating, Member States shall ensure that the competent authorities have the power to oblige insurance undertakings to have a higher required solvency margin, in order to ensure that the insurance undertaking is able to fulfil the solvency requirements in the near future. The level of this higher required solvency margin shall be based on the financial recovery plan referred to in paragraph 1.

3. Member States shall ensure that the competent authorities have the power to revalue downwards all elements eligible for the available solvency margin, in particular, where there has been a significant change in the market value of these elements since the end of the last financial year.

4. Member States shall ensure that the competent authorities have the power to decrease the reduction, based on reinsurance, to the solvency margin as determined in accordance with Article 16a where:

(a) the nature or quality of reinsurance contracts has changed significantly since the last financial year;

(b) there is no or an insignificant risk transfer under the reinsurance contracts.

5. If the competent authorities have required a financial recovery plan for the insurance undertaking in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 10(3), second subparagraph of this Directive, Article 16(1)(a) of Council Directive 88/357/EEC (second non-life insurance Directive) (*) and Article 12(2) of Council Directive 92/49/EEC (third non-life insurance Directive) (**), as long as they consider that policyholders rights are threatened within the meaning of paragraph 1.

(*) OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

(**) OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).'

Article 2

Transitional period

1. Member States may allow insurance undertakings which at the entry into force of this Directive provide insurance in their territories in one or more of classes referred to in the Annex to Directive 73/239/EEC, a period of five years, commencing with the date of entry into force of this Directive, in order to comply with the requirements set out in Article 1 of this Directive.

2. Member States may allow any undertakings referred to in paragraph 1, which upon the expiry of the five-year period have not fully established the required solvency margin, a further period not exceeding two years in which to do so provided that such undertakings have, in accordance with Article 20 of Directive 73/239/EEC, submitted for the approval of the competent authorities the measures which they propose to take for such purpose.

Article 3

Transposition

1. Member States shall adopt by 20 September 2003 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall provide that the measures referred to in paragraph 1 shall first apply to the supervision of accounts for financial years beginning on 1 January 2004 or during that calendar year.

3. Member States shall communicate to the Commission the main provisions of national law which they adopt in the field covered by this Directive.

4. Not later than 1 January 2007 the Commission shall submit to the European Parliament and the Council a report on the application of this Directive and, if necessary, on the need for further harmonisation. The report shall indicate how Member States have made use of the possibilities in this Directive, and, in particular, whether the discretionary powers afforded to the national supervisory authorities have resulted in major supervisory differences in the single market.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 5 March 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	R. DE RATO Y FIGAREDO

COMMISSION DIRECTIVE 2002/28/EC

of 19 March 2002

amending certain annexes to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], as last amended by Commission Directive 2001/33/EC [2] and in particular Article 14(c) thereof,

Having regard to the agreement of the Member States concerned,

Whereas:

(1) From information supplied by the United Kingdom based on updated surveys it appears that the protected zone recognised for *Dendroctonus micans* Kugelan in the United Kingdom should be modified.

(2) From information supplied by the United Kingdom on the presence of beet necrotic yellow vein virus it appears that it is no longer appropriate to maintain the protected zone for the whole of the United Kingdom in respect of beet necrotic yellow vein virus but should be restricted to Northern Ireland only.

(3) From information supplied by Italy the description of the protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al. should be modified to take into account the present distribution of the organism.

(4) The description of the protected zones relating to host plants of *Erwinia amylovora* (Burr.) Winsl. et al. as regards the special requirements to be met should be modified to take into account the present distribution of the organism.

(5) From information supplied by France on the presence of *Matsucoccus feytaudi* Duc. it appears that it is no longer appropriate to maintain the protected zone for this organism.

(6) Therefore, Directive 2000/29/EC should be amended accordingly.

(7) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes I, II, III and IV to Directive 2000/29/EC are amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 31 March 2002 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 April 2002.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

2. Member States shall immediately communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 March 2002.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 169, 10.7.2000, p. 1.
[2] OJ L 127, 9.5.2001, p. 42.

ANNEX

1. In Annex I, Part B(b)(1), in the right-hand column 'UK' is replaced by 'UK (Northern Ireland)'.

2. Annex II, Part B is amended as follows:

   (a) under heading (a), in point 3, the entry in the third column is replaced by the following:

   'EL, IRL, UK (Scotland, Northern Ireland, Jersey, England: the following counties, districts and unitary authorities: Barnsley, Bath and North East Somerset, Bedfordshire, Bournemouth, Bracknell Forest, Bradford, Bristol, Brighton and Hove, Buckinghamshire, Calderdale, Cambridgeshire, Cornwall, Cumbria, Darlington, Devon, Doncaster, Dorset, Durham, East Riding of Yorkshire, East Sussex, Essex, Gateshead, Greater London, Hampshire, Hartlepool, Hertfordshire, Kent, Kingston upon Hull, Kirklees, Leeds, Leicester City, Lincolnshire, Luton, Medway Council, Middlesbrough, Milton Keynes, Newbury, Newcastle upon Tyne, Norfolk, Northamptonshire, Northumberland, North Lincolnshire, North East Lincolnshire, North Tyneside, North West Somerset, Nottingham City, Nottinghamshire, Oxfordshire, Peterborough, Plymouth, Poole, Portsmouth, Reading, Redcar and Cleveland, Rotherham, Rutland, Sheffield, Slough, Somerset, Southend, Southampton, South Tyneside, Stockton-on-Tees, Suffolk, Sunderland, Surrey, Swindon, Thurrock, Torbay, Wakefield, West Sussex, Windsor and Maidenhead, Wokingham, York, the Isle of Man, the Isle of Wight, the Isles of Scilly, and the following parts of counties, districts and unitary authorities; Derby City: that part of the unitary authority which lies to the north of the northern boundary of the A52(T) road together with that part of the unitary authority which lies to the north of the northern boundary of the A6(T) road; Derbyshire: that part of the county which lies to the north of the northern boundary of the A52(T) road, and that part of the county which lies to the north of the northern boundary of the A6(T) road; Gloucestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Leicestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road, together with that part of the county which lies to the east of the eastern boundary of the B4114 road, and that part of the county which lies to the east of the eastern boundary of the M1 motorway; North Yorkshire: the whole county, except that part of the county which comprises the district of Craven; South Gloucestershire: that part of the unitary authority which lies to the south of the southern boundary of the M4 motorway; Staffordshire: that part of the county which lies to the east of the eastern boundary of the A52(T) road and that part of the county which lies to the east of the eastern boundary of the A523 road; Warwickshire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Wiltshire: that part of the county which lies to the south of the southern boundary of the M4 motorway, and that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road)';

   (b) under heading (a), point 7 is deleted;

   (c) under heading (b), in point 2, the entry in the third column is replaced by the following:

   'E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto: except the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes of Palù, Roverchiara, Legnago (the portion of the communal territory situated to the north east of the Transpolesana national road), Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)';

3. In Annex III, Part B(b)(1), the right-hand column is replaced by the following:

'E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes of Palù, Roverchiara, Legnago (the portion of the communal territory situated to the north east of the Transpolesana national road), Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)';

4. Annex IV, Part B is amended as follows:

   (a) in points 1, 7, and 14.1, the entry in the third column is replaced by the following:

   'EL, IRL, UK (Scotland, Northern Ireland, Jersey, England: the following counties, districts and unitary authorities: Barnsley, Bath and North East Somerset, Bedfordshire, Bournemouth, Bracknell Forest, Bradford, Bristol, Brighton and Hove, Buckinghamshire, Calderdale, Cambridgeshire, Cornwall, Cumbria, Darlington, Devon, Doncaster, Dorset, Durham, East Riding of Yorkshire, East Sussex, Essex, Gateshead, Greater London, Hampshire, Hartlepool, Hertfordshire, Kent, Kingston upon Hull, Kirklees, Leeds, Leicester City, Lincolnshire, Luton, Medway Council,

Middlesbrough, Milton Keynes, Newbury, Newcastle upon Tyne, Norfolk, Northamptonshire, Northumberland, North Lincolnshire, North East Lincolnshire, North Tyneside, North West Somerset, Nottingham City, Nottinghamshire, Oxfordshire, Peterborough, Plymouth, Poole, Portsmouth, Reading, Redcar and Cleveland, Rotherham, Rutland, Sheffield, Slough, Somerset, Southend, Southampton, South Tyneside, Stockton-on-Tees, Suffolk, Sunderland, Surrey, Swindon, Thurrock, Torbay, Wakefield, West Sussex, Windsor and Maidenhead, Wokingham, York, the Isle of Man, the Isle of Wight, the Isles of Scilly, and the following parts of counties, districts and unitary authorities; Derby City: that part of the unitary authority which lies to the north of the northern boundary of the A52(T) road together with that part of the unitary authority which lies to the north of the northern boundary of the A6(T) road; Derbyshire: that part of the county which lies to the north of the northern boundary of the A52(T) road, and that part of the county which lies to the north of the northern boundary of the A6(T) road; Gloucestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Leicestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road, together with that part of the county which lies to the east of the eastern boundary of the B4114 road, and that part of the county which lies to the east of the eastern boundary of the M1 motorway; North Yorkshire: the whole county, except that part of the county which comprises the district of Craven; South Gloucestershire: that part of the unitary authority which lies to the south of the southern boundary of the M4 motorway; Staffordshire: that part of the county which lies to the east of the eastern boundary of the A52(T) road and that part of the county which lies to the east of the eastern boundary of the A523 road; Warwickshire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Wiltshire: that part of the county which lies to the south of the southern boundary of the M4 motorway, and that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road)';

(b) points 6.2, 14.7 are deleted;

(c) in points 20.1, 20.2, 22, 23, 25.1, 25.2, 26, 27.1, 27.2, and 30 in the third column 'UK' is replaced by 'UK (Northern Ireland)';

(d) in point 21, the entry in the second column at (a) is replaced by the following:

'the plants originate in the protected zones E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes of Palù, Roverchiara, Legnago (the portion of the communal territory situated to the north east of the Transpolesana national road), Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands) or';

(e) in point 21, the entry in the third column is replaced by the following:

'E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes of Palù, Roverchiara, Legnago (the portion of the communal territory situated to the north east of the Transpolesana national road), Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)'.

COMMISSION DIRECTIVE 2002/29/EC

of 19 March 2002

amending Directive 2001/32/EC as regards certain protected zones exposed to particular plant health risks in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community [1], as last amended by Commission Directive 2001/33/EC [2], and in particular the first subparagraph of Article 2(1)(h) thereof,

Having regard to Commission Directive 2001/32/EC of 8 May 2001 recognising protected zones exposed to particular plant health risks in the Community and repealing Directive 92/76/EEC [3] and in particular Article 2 thereof,

Whereas:

(1) Under Directive 2001/32/EC, Ireland, Italy (Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Lombardia; Trentino-Alto Adige: autonomous province of Bolzano; Veneto), and Austria (Burgenland, Kärnten, Niederösterreich, Osttirol, Steiermark, Wien), were provisionally recognised as 'protected zones' in respect of *Erwinia amylovora* (Burr.) Winsl. et al. for a period expiring on 31 March 2002.

(2) Under Directive 2001/32/EC, the United Kingdom was provisionally recognised as a protected zone for beet necrotic yellow vein virus for a period expiring on 31 March 2002.

(3) From information supplied by Austria, Ireland and Italy it appears that the provisional recognition of the protected zones for those countries in respect of *Erwinia amylovora* (Burr.) Winsl. et al. should exceptionally be extended for a further period to enable the responsible official bodies of those countries to complete the information on the distribution of *Erwinia amylovora* (Burr.) Winsl. et al. and to complete efforts for the eradication of this harmful organism in the areas concerned.

(4) From information supplied by Italy it appears that the protected zone of Apulia should no longer be recognised as a permanent protected zone in respect of *Erwinia amylovora* (Burr.) Winsl. et al. but should now be provisionally recognised as a protected zone as regards *Erwinia amylovora* (Burr.) Winsl. et al. for a limited period expiring on 31 March 2003 to enable the responsible official bodies to complete the information on the distribution of *Erwinia amylovora* (Burr.) Winsl. et al. and to complete efforts for the eradication of this harmful organism within this protected zone.

(5) From information supplied by Italy it appears that some parts of the province of Veneto should no longer be recognised as protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al. because it appears to be widespread within those zones whilst the provisional recognition as protected zones for other zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al. should be extended exceptionally for a further limited period.

(6) From information supplied by the United Kingdom on the presence of beet necrotic yellow vein virus it appears that it is no longer appropriate to maintain the protected zone for the whole of the United Kingdom in respect of beet necrotic yellow vein virus but should be restricted to Northern Ireland only.

(7) Under Directive 2001/32/EC Sweden was recognised as a protected zone on a permanent basis in respect of beet necrotic yellow vein virus. From information supplied by Sweden on the presence of beet necrotic yellow vein virus it appears that Sweden should now be provisionally recognised as a protected zone as regards beet necrotic yellow vein virus for a limited period expiring on 31 March 2003 to enable the responsible official bodies to complete the information on the distribution of beet necrotic yellow vein virus and to complete efforts for the eradication of this harmful organism.

(8) The definition of the plants for which protected zones were recognised as regards *Citrus tristeza* virus should be modified.

(9) From information supplied by the United Kingdom based on updated surveys it appears that the protected zone recognised for *Dendroctonus micans* Kugelan in the United Kingdom should be modified.

(10) From information supplied by France based on updated surveys it appears that the protected zone recognised for *Matsucoccus feytaudi* Duc. in France should no longer be maintained.

(11) Directive 2001/32/EC should, therefore, be amended accordingly.

(12) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plant Health,

[1] OJ L 169, 10.7.2000, p. 1.
[2] OJ L 127, 9.5.2001, p. 42.
[3] OJ L 127, 9.5.2001, p. 38.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2001/32/EC is hereby amended as follows:

1. Article 1 is amended as follows:

   (a) the second paragraph is replaced by:

   'In the case of point (b)(2), for Ireland, for Italy (Puglia, Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Lombardia; Trentino-Alto Adige: autonomous province of Bolzano; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes of Palù, Roverchiara, Legnago (the portion of the communal territory situated to the north east of the Transpolesana national road), Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), and for Austria (Burgenland, Kärnten, Niederösterreich, Tirol (administrative district Lienz), Steiermark, Wien), the said zones are recognised until 31 March 2003';'

   (b) the third paragraph is replaced by:

   'In the case of point (d)(1), the said zone in Sweden is recognised until 31 March 2003';

2. the Annex is amended in accordance with the Annex to this Directive.

Article 2

Member States shall adopt and publish by 31 March 2002 at the latest the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply those provisions from 1 April 2002.

When Member States adopt those provisions, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 19 March 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

1. Under heading (a), in point 4, the entry in the right hand column is replaced by the following:

   'Greece, Ireland, United Kingdom (Scotland, Northern Ireland, Jersey, England: the following counties, districts and unitary authorities: Barnsley, Bath and North East Somerset, Bedfordshire, Bournemouth, Bracknell Forest, Bradford, Bristol, Brighton and Hove, Buckinghamshire, Calderdale, Cambridgeshire, Cornwall, Cumbria, Darlington, Devon, Doncaster, Dorset, Durham, East Riding of Yorkshire, East Sussex, Essex, Gateshead, Greater London, Hampshire, Hartlepool, Hertfordshire, Kent, Kingston upon Hull, Kirklees, Leeds, Leicester City, Lincolnshire, Luton, Medway Council, Middlesbrough, Milton Keynes, Newbury, Newcastle upon Tyne, Norfolk, Northamptonshire, Northumberland, North Lincolnshire, North East Lincolnshire, North Tyneside, North West Somerset, Nottingham City, Nottinghamshire, Oxfordshire, Peterborough, Plymouth, Poole, Portsmouth, Reading, Redcar and Cleveland, Rotherham, Rutland, Sheffield, Slough, Somerset, Southend, Southampton, South Tyneside, Stockton-on-Tees, Suffolk, Sunderland, Surrey, Swindon, Thurrock, Torbay, Wakefield, West Sussex, Windsor and Maidenhead, Wokingham, York, the Isle of Man, the Isle of Wight, the Isles of Scilly, and the following parts of counties, districts and unitary authorities; Derby City: that part of the unitary authority which lies to the north of the northern boundary of the A52(T) road together with that part of the unitary authority which lies to the north of the northern boundary of the A6(T) road; Derbyshire: that part of the county which lies to the north of the northern boundary of the A52(T) road, and that part of the county which lies to the north of the northern boundary of the A6(T) road; Gloucestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Leicestershire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road, together with that part of the county which lies to the east of the eastern boundary of the B4114 road, and that part of the county which lies to the east of the eastern boundary of the M1 motorway; North Yorkshire: the whole county, except that part of the county which comprises the district of Craven; South Gloucestershire: that part of the unitary authority which lies to the south of the southern boundary of the M4 motorway; Staffordshire: that part of the county which lies to the east of the eastern boundary of the A52(T) road and that part of the county which lies to the east of the eastern boundary of the A523 road; Warwickshire: that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road; Wiltshire: that part of the county which lies to the south of the southern boundary of the M4 motorway, and that part of the county which lies to the east of the eastern boundary of the Fosse Way Roman road)';

2. Under heading (a), point 14 is deleted.

3. Under heading (b), in point 2, the entry in the right hand column is replaced by the following:

   'Spain, France (Corsica), Ireland, Italy (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlí-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Tuscany; Trentino-Alto Adige: autonomous provinces of Bolzano and Trento; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago (the portion of the communal territory situated to the north east of the Transpolesana national road), Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), and for Austria (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), Portugal, Finland, United Kingdom (Northern Ireland, Isle of Man and Channel Islands)';

4. Under heading (d), in point 1, in the right hand column, 'United Kingdom' is replaced by: 'United Kingdom (Northern Ireland)'.

5. Under heading (d), in point 3, in the left-hand column, 'harmful to fruit of *Citrus* L., *Fortunella* Swingle, *Poncirus* Raf., and their hybrids, with leaves and peduncles' is deleted.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 November 2001

on the aid scheme which the Sardinia Region (Italy) is planning to implement for the restructuring of holdings in difficulty in the protected crops sector

(notified under document number C(2001) 3445)

(Only the Italian text is authentic)

(2002/229/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 called on interested parties to submit their comments pursuant to the provision cited above,

Whereas:

I. PROCEDURE

(1) By letter dated 12 January 1998, recorded as received on 15 January 1998, the Italian Permanent Representation to the European Union notified the Commission in accordance with Article 88(3) of the Treaty of an aid scheme for the restructuring of holdings in difficulty in the protected crops sector in Sardinia which was approved by Decision No 48/7 of 2 December 1997 of the Regional Executive. By letters dated 10 September 1998 and 16 November 1998, recorded as received on 15 September and 19 November 1998 respectively, the Italian Permanent Representation provided the Commission with further information.

(2) By letter of 1 February 1999, 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 aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments on the aid.

(4) The Commission received no comments from interested parties.

II. DESCRIPTION OF THE AID

(5) The scheme notified is the Regional plan for the restructuring of holdings in the protected crops sector — Decision No 48/7 of 2 December 1997 of the Regional Executive. It includes financial measures (repayment and rescheduling of debt), structural measures (investment) and technical assistance. The Region has earmarked a budget of ITL 60 billion (about EUR 30 million) for the scheme, under which individual holdings may receive up to ITL 600 million (about EUR 300 000).

(6) According to information submitted by the Region (see letter of 10 September 1998), the aid is a one-off measure, and the viability of the holdings concerned is expected to be restored within a three-year period. The duration of the various restructuring measures is, however: (a) 15 years in the case of the interest-rate subsidy in connection with debt rescheduling; (b) 'the time required for implementation' in the case of outright grants and investment; and (c) unlimited in the case of technical assistance.

(7) The recipients of the aid are agricultural holdings which are experiencing financial problems, in particular the holdings engaged in the primary production of protected crops, in other words floriculture and horticulture products.

[1] OJ C 187, 3.7.1999, p. 2.

Products concerned

(8) 'Protected agricultural crops' includes all agriculturally useful plant species cultivated under a structure designed to protect them from adverse weather conditions. The species concerned by the measures notified are:

— fruit and vegetables (table tomatoes (*camone* and medium-large), aubergines, peppers, cucumbers, courgettes, melons, watermelons, strawberries, green beans, lettuces, celery, radishes and rocket),

— herbs (parsley, basil, marjoram, thyme, oregano, etc.),

— mushrooms,

— cut flowers (carnations, chrysanthemums, gerberas, roses, snapdragons, gypsophila, statice, gladioli, irises, lilies, etc.),

— green and flowering pot plants,

— Mediterranean plants.

The firms concerned and the financial difficulties they are experiencing

(9) According to the information provided by the Italian authorities, the beneficiaries under the restructuring plan are mostly small businesses within the meaning of Article 2083 of the Italian Civil Code (some of them are civil partnerships (società semplici) and only a very small number are private limited companies (srl)). All operate in the primary production sector. Again according to the Italian authorities, the beneficiaries concerned are potentially efficient and productive, their technical insolvency being due to their inability to meet their debts because of losses arising from insufficient output and from difficulties in obtaining prompt payment for the produce marketed.

(10) The criteria for selecting beneficiaries under the plan take into account the characteristics of Sardinian farms and are concerned on the one hand with the actual difficulties experienced by the firms (substantial operating losses over several marketing years) and, on the other, with their inability to reduce their level of debt without public assistance (e. g. by disposing of part of the firm or personal assets).

(11) For the purposes of the first criterion (financial), a holding is deemed to be in difficulty if, in the last three marketing years, it has declared an average operating loss equivalent to 25 % or more of its actual income. The loss is calculated by comparing the operating result for the period concerned with the average income from the sale of its gross output (Article 2425 of the Civil Code), as follows: the estimated average farm expenditure for 1993/1994, 1994/1995 and 1995/1996 is compared with the income from the gross saleable production for those years. The income is determined on the basis of a statement by the holder in accordance with Law No 15 of 4 January 1968, 'Rules on administrative documents and the registration and certification of signatures', and in particular Articles 4 (Statement in lieu of a notarised document), 20 (Certification of signatures) and 26 (Penalties) thereof.

(12) The second criterion (property-related) consists in a comparison between the value of the firm's assets, and possibly the holder's personal assets, not including his principal residence, with the total verifiable debt to banks, social security institutions and private individuals which is repayable at 31 December 1996. A holder is considered to be in difficulty if his debts amount to 30 % or more of his assets as defined above. The capital of a firm means all its tangible property (land, greenhouses, buildings, machinery, etc.), based on a valuation by ERSAT (Ente Regionale di Sviluppo e Assistenza Tecnica in Agricoltura — Regional Agricultural Development and Technical Assistance Board) using the appropriate form. The capital is the average of the firm's worth (calculated in accordance with Article 2424 of the Civil Code) and what it would actually fetch on the market. The owner's personal assets are determined on the basis of an official statement by the person concerned in accordance with Law No 15 of 4 January 1968 (Rules on administrative documents and on the certification of signatures).

The extent of the difficulties which a firm is experiencing will take account of the type of holding. Consideration will accordingly be given:

(a) in the case of individuals, to personal assets and assets belonging to the firm, plus any assets relating to other business activities;

(b) in the case of partnerships, to assets belonging to the holder and the personal assets of each individual partner, plus any assets relating to other activities;

(c) in the case of limited companies, to company assets.

(13) By letter of 16 November 1998, the competent authorities replied as set out in points 14 to 20 below to a Commission letter of 19 October 1998 asking for the application of the above criteria to be clarified and illustrated by means of examples.

Financial difficulties of the firms

(14) '— [...] the operating result (profit or loss) of the firms is arrived at solely by comparing the income and expenditure for the year concerned. In particular the firm's expenditure [...] may not include all the investment made, only the share of depreciation for the year concerned.

Example: If, in the course of the year in question, a firm has invested ITL 50 million in equipment to be depreciated over a 10-year period, the cost of the investment for that year is ITL 5 million (share of total depreciation). This is accordingly the figure to be used under the heading "expenditure" when calculating the operating result (profit or loss). Thus, if a firm has made a profit of ITL 10 million and invested ITL 50 million, depreciated at a rate of ITL 5 million per year, that share of the depreciation has already contributed, under the heading expenditure, to the formation of the ITL 10 million profit,

— [...] The debt taken into consideration for the purpose of that indicator is not the overall debt (due or yet to fall due) of the firm, but that which was due at 31 December 1996, has not been repaid [...] and is regarded as constituting a level of short-term debt which cannot be sustained by the firm.

A holder is deemed to be in difficulty if his debts that have fallen due (and, obviously, have not been repaid) are equivalent to 30 % or more of the assets. This proportion is regarded as a level of short-term debt which he cannot sustain, making it essential to carry out financial restructuring,

More specifically:

— the criterion cannot but take into account past investment, up to the value of any repayments due, and not made, between 1 January 1992 and 31 December 1996,

— the level of debt taken into consideration is accordingly not the overall level of debt but that which has become due.

Example: A firm which has assets of ITL 100 million and has a total of ITL 30 million in (short-term) debts that have fallen due and a further ITL 50 million in (long-term) debts that have yet to fall due, has net assets of ITL 20 million.'

Restoration of viability

(15) 'The recipients of the aid must draw up a balance sheet. This will enable regional officers to verify the return to viability of the firms. It was felt that this should be a condition for qualifying for the aid because, as well as suffering from the handicaps referred to in the introduction to the plan, Sardinian farms tend to lack a business culture, as evidenced, *inter alia*, by a reluctance to adopt even a simple accounting system. The restructuring plan is designed in particular to make good this shortcoming.

The criteria for assessing the return to profitability of firms in difficulty were drawn up after comparing the net output per hectare before implementation of the plan, a figure which is clearly not sufficient to cover outgoings (in particular repayments and bank interest), with that expected afterwards, i.e. taking into account the measures proposed in the restructuring plan, measures which are expected to generate a level of gross saleable production that can fully cover expenditure.

As a result of the improvement the restructuring plan will bring about in the running of the farms in terms both of product quality and a choice of production that is in keeping with market requirements, the depreciation costs of machinery and equipment and repayments to banks will, after implementation of the plan, represent only 29,7 % of gross saleable production instead of the present 43 %.

The minimum profit after restructuring is expected to be 1,4 %.

Table 2

IMPACT OF COSTS ON REVENUE

Present system (output volume = 800 quintals)

(TTL million)

Costs		Income	Annual profit or loss	Value as % of income
Outgoings	75	176	– 55	43
Cultivation	72			41
Wages and salaries	84			48
Total	231	176	– 55	– 31,3

Outgoings comprise the fixed costs due to amortisation of plant and buildings, maintenance and repayments on loans.

Proposed system (output volume = 1 100 quintals)

(ITL million)

Costs		Income	Value as % of income
Outgoings	79	266,4	29,7
Cultivation	112		42,0
Wages and salaries	71,8		26,9
Total	262,8	266,4	98,6
Annual profit	3,6		1,4

Outgoings comprise the fixed costs due to amortisation of plant and buildings, maintenance and repayments on loans.

Comparison of present and proposed systems

(ITL million)

Headings	Present system	Proposed system	Absolute difference	Percentage difference
Income	176	266,4	90,4	+ 51,4
Costs	231	262,8	31,8	+ 13,8
Profit or loss	– 55	3,6	58,6	+ 93,4

The restructuring plan for holdings is essentially based on the following measures within the holding:

(A) identification of the volume of output required for restoration of viability; this is the volume corresponding to an average unit cost (K) that is at least equal to the market price (P).

In the example in Table 2, the volume required is 1 100 quintals per hectare, compared with the present output of 800 quintals per hectare. As K=Kt:Qt

(where K is the average unit cost, Kt the total cost and Qt total output),

under the present system, P<K

$$\frac{231\,000\,000\ (Kt)}{800\ (Qt)} = 288\,750\ (K)$$

$$\begin{matrix} P & & Qt \\ 176\,000\,000 : & 800 = & 220\,000 \text{ unit price} \end{matrix}$$

under the proposed system, P>K

$$\frac{262\,000\,800\ (Kt)}{1\,100\ (Qt)} = 238\,182\ (K)$$

P Qt
266 400 000 : 1 100 = 242 182 unit price.

The improvement in output volume and quality required to restore viability will be obtained by:

(a) introducing technological innovation (see recital 14), optimal use of production factors and more suitable production methods, e.g. higher output when demand is highest, and market returns best, for a particular product (from December to February for the "camone" tomato);

(b) protecting the crops against disease through the restructuring measures described at 14(a);

(c) switching from relatively unprofitable products to products with a wider market and a higher market value. In addition to guaranteeing that output will be placed on the market, the marketing organisations which beneficiaries will join under the plan will also identify high-demand products;

(d) reducing expenditure on wages and salaries thanks to cuts in the workforce either through the technological improvements introduced or through the transfer of grading and packaging to the marketing organisations.

In the example given, wages and salaries account for 48 % of expenditure under the present system and 26,9 % under the proposed system;

(e) cutting production costs by using, wherever possible, less expensive production techniques, e. g. the widely used pest control technique based on methyl bromide (sterilisation) would be replaced by another method (solarisation) which is not only cheaper but also more environmentally friendly.

Another external factor with a substantial impact on the restoration of viability is the growing demand for authentic typical products, which the marketing organisations are not at present in a position to satisfy from output. Lastly, technical assistance plays an important role in the short term by filling the gaps in farmers' skills, and in the longer term by helping farmers to acquire or consolidate the skills needed to run their holdings efficiently.'

Measures in the plans for restoration of viability

(16) 'The restructuring plan submitted by potential recipients on the forms provided by the authorities should specify:

— financial restructuring measures,

— small technological upgrading works,

— commitment to introduce farm accounts,

— commitment to join a production organisation and to adapt production to market demand [...],

— formal commitment to refrain from submitting land-improvement projects [...] for five or 10 years. (Five years where the holding has complete and efficient equipment over that period, and benefits only from the financial restructuring measure; 10 years if the holding also benefits from technological improvement measures. The normal period of effectiveness is 10 years).'

Beneficiaries will also receive, for an unlimited period, technical assistance provided by 'ATA technicians and agricultural advisers [...] paid by the Region's operational agency ERSAT (Regional Agricultural Development and Technical Assistance Board.'

Financial measures for restructuring

(17) In the letter of 10 September 1998, the authorities provided the following information on this measure:

'The credit institutions concerned by the restructuring plan for holdings in the greenhouse sector which are experiencing difficulties are private-sector banks [...]. As these banks will, in accordance with agreements reached, waive their right to interest on arrears both on debt due by 31 December 1996 and on that due at a later date, until such time as the beneficiary concludes a new contract (point 4.1(a) of the Plan), the contribution of the Region will consist of:

(a) a capital allowance on part of the principal of the debts of the beneficiaries towards credit institutions incurred from 1 January 1992 and due by 31 December 1996;

(b) an interest subsidy for multiannual loans (of up to 15 years), arising from the rescheduling of the outstanding debt of the holdings and comprising:

1 — outstanding debt as referred to in point (a);

2 — payments due after 31 December 1996 up to the date of the new loan;

3 — other outstanding payments that may fall due (outstanding capital repayments on agricultural loans, if any).

The aid referred to in (b), uprated to the date of conclusion of the contract, may not exceed 30 % of the reference rate fixed by the State for improvement loans (at present 6,50 %).

The total amount of the two forms of aid (grant and interest subsidy) may not exceed 75 % of the debt due by 31 December 1996, net of interest on arrears. In the case in point, as the only compressible cost is the regular redemption payment on the loan, which can be reduced through financial restructuring, the first step will be to compare the highest sustainable repayment for the holding (ITL 3 500/m²) with the repayment under the new redemption plan, making projections for the new loan on the basis of varying assumptions involving:

1. primarily the duration of the loan (which can vary from five to 15 years);

2. secondly the allowance on the principal of loans repayable on 31 December 1996.

The result of these two operations will show the exact amount of capital outstanding to be covered by a loan, and thus determine the new repayment, which should not exceed the highest sustainable repayment.

The figures obtained must then be brought into line with the other limits set by the plan, which are as follows:

— *maximum public aid* for financial restructuring: 75 % of the debt repayable on 31 December 1996, net of interest on arrears borne by the banks;

— *maximum public aid*, including structural aspects of assistance: ITL 600 million.'

Planned investment for restructuring

(18) According to the national authorities, the investment specified below 'is essential in that it is intended to limit or prevent the effects of adverse weather conditions, to protect plants from disease, to reduce production costs and improve the quality of the products (environmentally friendly production methods), thus enhancing their marketability by the marketing organisations. Given the precarious financial situation of the beneficiaries, it is planned to provide aid at a rate of 75 % of eligible expenditure.

The investment concerns holdings engaging in primary production and comprises the following:

a — *Installation of anti-insect netting: ITL 1 000/m²*

Anti-insect netting, placed on all glasshouse openings, is essential to keep out insects that are harmful to crops and carry viruses; the use of netting can cut infestation by tobacco whitefly, which is responsible for TYLCV infection, by about 90 %. Netting reduces the aeration of crops by about 50 %;

b — *Forced ventilation and climate control: ITL 1 200/m²*

After the operation referred to in point (a), it is essential to install a system of forced ventilation and climate control.

As anti-insect netting interferes with natural ventilation, forced ventilation and control of relative moisture content of air are needed to avoid serious crop problems due to fungal diseases such as botrytis, downy mildew, cladosporium, bacteria, and major plant diseases such as hyperhidrosis, fasciation of the stem, etc.;

c — *Removable insulation: ITL 6 500/m²*

It is essential to install removable insulation. This ensures output of worthwhile quality in the winter months and, in the process, achieves energy savings of 50 %;

d — *Warm-air ventilation: ITL 4 000/m²*

Warm-air ventilation equipment improves the circulation of warm air, enables air moisture content to be controlled and leads to a further 20 % improvement in energy saving;

e — *Drainage equipment: ITL 6 400/m²*

Without drainage, it is impossible to achieve rational irrigation and feeding on clay soil, especially in the autumn and winter;

f — *Outside works for fresh water collection: ITL 2 350/m²*

These works are restricted to greenhouse holdings in areas with no shared irrigation installation, and solely where groundwater is either inadequate or unsuitable.

Constructing water-collection reservoirs will help attenuate groundwater salination, one of the causes of lost output;

g — *Combined fertiliser and irrigation spraying control blocks: ITL 600/m²*

Ordinary single or double action pumps can be used on 10 % of the total area of the holding where the effectiveness of combined fertiliser and irrigation spraying needs to be improved (maximum rationalisation of combined fertiliser and irrigation spraying is essential to underpinning the income of the holding).'

Technical assistance for restructuring

(19) According to the Italian authorities, 'technical assistance, advisory services and vocational training provided by ERSAT as part of its national activities, [which] also include services provided by technicians and agricultural extension officers [...], involves:

— examining the state of the farm infrastructure,

— determining whether the crops cultivated are such as to enable the holding to repay its debt,

— determining whether the holding should change to other crops,

— determining which essential technological improvements should be introduced,

— providing specialised consultancy services over a three-year period (regarded as necessary for a lasting return to stable management),

— monitoring the return to normal management,

— vocational training.

All these services [...] are provided by employees of the Region and do not therefore involve any cost other than their normal remuneration.

However, it is also planned to use the services of self-employed "technicians" working on contract to ERSAT exclusively for highly specialised work, at a cost that cannot be determined at the moment but which is part of the normal operating costs of ERSAT.

The contracts concluded by the Region are governed by rules guaranteeing transparency of the operations concerned (e.g. publication in the Official Gazette of the Region and supervision by the Court of Auditors).'

Contribution of the Sardinia Region to the restructuring plan

(20) According to the competent authority 'the arrangements for the financial participation of the Sardinia Region will be as follows:

(a) repayment of the principal of loans repayable by 31 December 1996;

(b) payment of interest following the rescheduling of any outstanding debt due or still to fall due;

(c) capital grants towards (investment) measures under 4.2 of the plan (75 % of eligible expenditure).

The sum of a + b may not exceed 75 % of the debt due on 31 December 1996, net of the interest on arrears.

Technical assistance forms part of the ordinary activities of ERSAT and its cost is therefore not included in the restructuring plan.'

Contribution of the banks to the restructuring plan

(21) In its letter of 19 October 1998, the Commission requested that the competent authorities: provide the names of the banks that would waive their right to interest outstanding on the debts of potential beneficiaries; specify whether all the banks with claims on all potential beneficiaries would take part in the scheme; and indicate the amount of interest which these banks were forgoing. In their letter of 16 November 1998, the competent authorities specified, in reply to the Commission, that the banks concerned by the implementation of the plan were: Banca Nazionale del Lavoro; Cariplo; Banco di Sardegna; Istituto Bancario San Paolo di Torino; Monte dei Paschi di Siena; Istituto di Credito delle Casse Rurali e Artigiane; Banca Meliorconsorzio; Banco di Napoli; Credito Italiano; Banca Commerciale Italiana; and Banca di Sassari. The competent authorities further stated that the amount of interest on the debt of beneficiaries forgone by the banks would be determined on a case-by-case basis, and could not be ascertained or notified at that stage.

Contribution of the beneficiaries to the restructuring plan

(22) According to the authorities 'The following costs will be borne by beneficiaries:

— 25 % of eligible investment for measures under 4.2 of the plan (i. e. investment),

— the interest on rescheduled debt not covered by financing from the Region.

The capacity of the beneficiary to bear the relevant costs will be ensured by the new financial conditions and productive situation of the holding, which means that individual holdings may normally be expected to be in a position to pay these costs within the first three years of activity.

Beneficiaries must produce documentary evidence of expenditure incurred as follows:

(a) for the purchase of machinery and equipment: invoices;

(b) for labour input provided by the beneficiary or third parties: an itemised record based on unit prices laid down in the appropriate regional schedule of rates, periodically updated and approved by departmental order.'

Duration of aid and of measures planned under the restructuring plan

(23) According to the competent authorities, 'This is a one-off scheme that is not intended to be prolonged. The duration of the measure is one year, which is the time required to implement the plan (administration procedures and paperwork).

The different operations each have their own specific duration:

— interest subsidies will last for five to 15 years,

— grants for maintenance and improvements will be for the normal time required for technical completion,

— technical assistance, as specified above, is an institutional service and as such is of unlimited duration.

During the implementation of the plan, assistance will, as long as holdings have not achieved the desired results, be more concentrated and compulsory.'

Commitments entered into by the Italian authorities

(24) 'In implementing the plan notified, the Region undertakes to comply with the requirements laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty [2].

The Region also undertakes to send the Commission a detailed annual report on aid granted, as specified at 3.2.2 of the guidelines.'

Possible duplication of debt-repayment aid to the same beneficiaries

(25) By letter of 19 October 1998, the Commission asked the competent authorities to give assurances that none of the potential recipients of the aid provided for in the said measure had previously received any aid for restructuring, non-notified aid, or incompatible aid which Italy had been asked to recover. By letter dated 16 November 1998 the competent authorities replied to the Commission's questions as follows:

'1. the Region has never granted restructuring aid; 2. in authorising the rescheduling of loans, Regional Law No 4 of 19 January 1998, approved by the Commission on 3 June 1998, cancels for the beneficiaries of the plan the effects of previous rules, which are implicitly repealed; 3. The regional authorities affirm that, where it appears that an applicant has received incompatible aid which the authorities have been asked to recover but which has not yet been recovered, the amount of incompatible aid will be deducted from the aid granted under the plan.'

(26) The Commission initiated the procedure laid down in Article 88(2) of the Treaty because of its doubts regarding the compatibility of the measure with the common market. Those doubts concerned the following:

(a) *with regard to the financial difficulties of the firms:*

— since the majority of the firms concerned do not keep accounts (an undertaking to keep accounts is one of the requirements for receiving aid for restructuring), there was room for doubt as to the appropriateness of the criteria proposed by the Italian authorities for evaluating operating losses and the level of debt of the potential recipients (for example, there did not appear to be a clear distinction between short-term and long-term debts; moreover, the latter could conceivably be linked to investments to be depreciated in the context of any normal economic activity; and a firm the cost of whose investments was depreciated by annual instalments was not necessarily to be regarded as being in difficulty),

— according to the Italian authorities a firm would be regarded as being in difficulty if its debts which had fallen due but had not been repaid were equivalent to 30 % or more of its assets, but it was not specified whether or not these were net assets,

[2] OJ C 283, 19.9.1997, p. 2.

— in the light of the points set out in the first indent, it was a question of determining whether the debt criterion could indicate a serious level of debt and whether the operating loss criterion could point to the existence of a highly critical situation,

— the application of the abovementioned criteria appeared to be based in particular on certification by the recipients themselves;

(b) *with regard to restoration of viability:*

— the financial measures proposed (payment by the Region of the share of the principal which had fallen due on 31 December 1996; payment by the Region of an interest subsidy in connection with the rescheduling of the outstanding debt which had fallen due or was yet to fall due; waiving by the credit institutions of the interest payable on arrears) could merely constitute operating aid, especially since they did not appear to make it possible to calculate easily the debt to be repaid and the aid to be granted,

— the outright grant in respect of investment (75 % of eligible expenditure) appeared to be too high,

— the scheme notified did not provide for any reduction in capacity or the abandonment of unprofitable activities and there was no guarantee as to the existence of market outlets for the products concerned,

— there was a question as to whether a 50 % increase in profits thanks to the adoption of new cultivation techniques, the introduction of technological innovations and, where necessary, conversion to more profitable products could in fact restore viability within three years, especially since, as indicated in the preceding indent, there was no guaranteed market outlet for the products concerned;

(c) *with regard to avoidance of undue distortions of competition:*

— although the Commission had asked the Italian authorities to show, with the help of supporting documents, what effects aid intended to bring about an increase in profits of about 50 % would have on prices and what the outlets for the products concerned would be, the abovementioned authorities provided no documentation in support of their statements,

— the scheme made no provision for a reduction in capacity, even though such a reduction appeared to be necessary in the floriculture sector;

(d) *with regard to the principle whereby aid must be in proportion to the restructuring costs and benefits:*

— the ceiling of ITL 600 million (about EUR 300 000) per recipient holding seemed high, in view of the types of problems which had allegedly given rise to the debts,

— the fact that it was difficult to calculate the amount of debt to be repaid made it impossible to determine to what extent recipients would effectively be contributing to the restructuring,

— the waiving of interest on arrears by the credit institutions could also constitute State aid, since the possibility cannot be ruled out that some of them might be public institutions or institutions under public control;

(e) *with regard to the nature of the recipients:*

since the recipients could include limited companies, the Commission could not rule out the possibility that some firms covered by the measure might not meet all the requirements for being regarded as an SME which are set out at 3.2.4 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [3],

[3] See footnote 2.

(f) *with regard to a possible 'Deggendorf effect':*

the Commission had asked the competent authorities to ensure that none of the potential recipients of aid under the notified scheme had already received restructuring aid, non-notified aid or incompatible aid whose recovery had been requested; the competent authorities replied, by letter of 16 November 1998, that the Region had never granted restructuring aid and that the regional authorities could give an assurance that, where an applicant had received incompatible aid the recovery of which had been requested but had not yet taken place, the amount of incompatible aid would be deducted from the aid granted under the plan. On the basis of this reply, the Commission could not rule out the possibility that aid might be granted under the plan to recipients who had received incompatible aid whose recovery the Commission had requested. Now then, as established by the Court of Justice, failure to repay unlawful aid constitutes an essential factor which is lawfully taken into account when examining the compatibility of new aids ([4]).

III. COMMENTS BY THE ITALIAN AUTHORITIES, REACTION OF THE COMMISSION AND REPLY OF THE ITALIAN AUTHORITIES

(27) By letter dated 9 June 1999, recorded as received on 15 June 1999, the Italian authorities reacted to the doubts expressed by the Commission regarding the compatibility of the notified scheme with the common market.

With regard to the state of financial difficulty of the firms

(28) The Italian authorities stated first of all that the debts taken into consideration for determining the state of difficulty of the firms would be those brought about by an accumulation of instalments which had fallen due and had not been paid owing to the operating losses incurred over the years (regarded as short-term debts in that they had to be dealt with at once, failing which the firm would receive a formal notice), as well as verifiable debts towards insurance institutions and private individuals. Accordingly, these were debts resulting from the normal exercise of economic activities, such as investment by the holder which was to be depreciated in the long term.

(29) On the question of the assets, the Italian authorities stated in their letter of 9 June 1999 that the state of financial difficulty of the holdings was determined in particular by comparing the level of debt to the net assets. Under Article 2424 of the Italian Civil Code, the net assets of a holding are made up of its capital and its reserves ([5]). Accordingly, in its letter of 7 December 1999, the Commission asked the Italian authorities what contribution in terms of net assets the beneficiaries under the scheme would be required to make. In their letter of 8 February 2001, the Italian authorities replied that they planned to request a contribution only if this was absolutely essential to ensuring that the holding reached economic and financial equilibrium and did not compromise efficiency.

(30) Lastly, on the matter of self-certification in the absence of accounts which could determine operating losses and the level of debt, the Italian authorities claimed that this procedure was perfectly in keeping with the national legislation applicable ([6]), adding that severe penal sanctions were applicable in the event of a false declaration. Accordingly, in its letter of 7 December 1999 (ref. VI/051291), the Commission asked the Italian authorities whether they could undertake to have the statements of potential recipients under the scheme verified by a third party/independent body. In their letter of 8 February 2001, the Italian authorities communicated the text of the law referred to above, indicating that the administration is required to verify the declarations concerned, possibly by means of sample

([4]) Judgment of the Court of Justice in Case C-355/95 P. Textilwerbe Deggendorf GmbH (TWD) v Commission and Germany, ECR I-2549, paragraph 25 of the grounds of judgment.
([5]) Under this According, the constituent components of the net assets are, generally speaking, capital, the share-issue premium reserve, revaluation reserves, the legal reserve, the reserve in connection with portfolio shares, the statutory reserves, other reserves to be entered separately, deferred profits (or losses) and profits (or losses) for the financial year.
([6]) Law No 127 of 15 May 1997 on emergency measures for speeding up administrative work and decision-making and control procedures, and the detailed implementing rules concerned.

checks. In order to dispel the doubts the Commission still had regarding the random nature of the checks, the Italian authorities stated in that letter that the declarations of all potential recipients would be verified.

With regard to restoration of the potential recipients' viability

(31) In their letter of 8 February 2001, the Italian authorities undertook to reduce the rate of aid planned for investment in the recipient firms to 50 % in less-favoured areas and 40 % in other areas, in accordance with the provisions of the Community Guidelines for State aid in the agriculture sector ([7]). They also updated the information used for determining the production levels the firms in difficulty had to attain in order to return to viability, specifying the method of calculation (comparison between the average unit cost and the market price in the two cases envisaged — current and after implementation — after establishing the market price on the basis of the figures provided by a cooperative). According to that model, an increase in production means an increase in income.

With regard to the avoidance of undue distortions of competition

(32) In their letter of 9 June 1999, the Italian authorities stated that the restructuring scheme for firms in difficulty would not affect the formation of prices for the products concerned. In support of this statement, they put forward a graph showing the trend of prices of several varieties of products in 1997/1998. In their letter of 7 December 1999, the Commission departments asked on what data the claim that the restructuring measures would not affect the formation of prices was based. The graph provided did not in fact constitute sufficient proof, since the price trend concerned a period in which no aid had yet been paid. In their letter of 8 February 2001, the Italian authorities then replied that price formation would in no way be affected since demand for the products concerned by the scheme was generally stable.

(33) As regards market outlets (linked to the stability of demand referred to in recital 32), the Italian authorities claimed in their letter of 9 June 1999 that Sardinian products would benefit from promotional activities planned by the Ministry of Foreign Trade and the Ministry for Agricultural Policy with a view to increasing exports of quality fruit and vegetables to the rest of the Community, to central and eastern Europe and to the rest of the world. As they saw it, the floriculture sector did not feature any overcapacity and, in this connection, they referred to an MGP part-financed by the Commission which was aimed at developing flower-growing and restructuring the greenhouse sector. In their letter of 7 December 1999, the Commission departments concerned pointed out that the abovementioned measure was aimed at encouraging the disposal of floricultural products (cut flowers) precisely because the sector featured overcapacity. Accordingly, they again invited the Italian authorities to conform to 3.2.2(ii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, or to ask for the application of 3.2.5 thereof. Under the latter provision, the Commission can waive the application of the requirement of a reduction in capacity in a branch of the agricultural sector which is in surplus in the case of measures targeted on any particular category of products or operators, where the totality of decisions taken in favour of all beneficiaries over any consecutive 12-month period does not involve a quantity of product which exceeds 3 % of the total annual production of such products in that country (the geographical references can be transposed from the national to the regional level). In their letter of 8 February 2001, the Italian authorities did not react to these comments by the Commission, and referred to market research which pointed to the existence of market outlets for the productions concerned, but covered 1995-1997. The conclusions of that research were as follows:

— production and wholesale prices had been rising during the period under consideration,

— wholesale prices were generally higher than producer prices,

— wholesale prices varied less than producer prices,

— production under glass featured higher prices than did production in the open air.

([7]) OJ C 28, 1.2.2000, p. 2.

With regard to the principle that aid has to be in proportion to the restructuring costs and benefits

(34) With regard to the aid ceiling of ITL 600 million (about EUR 300 000) per holding and the difficulty in determining the recipients' actual contribution to the restructuring, given the problems involved in calculating the amount of debt which had fallen due, the Italian authorities again explained what the public aid in the framework of restructuring would consist of, stressing that the contribution the recipients were required to make (25 % at least) was more than appropriate: the latter still had to pay their non-banking debts (compulsory insurance, their employees' remuneration, amounts owed for the supply of goods needed for maintaining production, and debts towards public and private insurance institutions). The Italian authorities added that up to 20 % of the principal of the debt incurred between 1 January 1992 and 31 December 1996 could be cancelled by the Region, provided the maximum percentage of public aid towards the restructuring (75 %) was not exceeded.

(35) This differed from what had initially been communicated by the Italian authorities, since, as indicated in recital 17, the sum of the reduction in the principal and of the interest-rate subsidy on the multiannual loan (of up to 15 years) arising from the rescheduling of the residual debt of the firms was not to exceed 75 % of the debts which had matured on 31 December 1996. In the case of public aid within the framework of the restructuring of the firms, the Italian authorities widened the calculation base of the 75 % of aid to investments to be made in the framework of the restructuring.

(36) The Italian authorities were asked about this change in the base used for calculating the public aid; the definitive reply they gave was that the public regional aid would consist of:

(a) an outright grant for small-scale technological adjustment of the facilities needed for the restructuring of the holdings, the aid intensity being 50 % in less-favoured areas and 40 % elsewhere;

(b) cancellation of up to 20 % of the principal of the debt which had fallen due between 1 January 1992 and 31 December 1996;

(c) an interest-rate subsidy (of up to 30 % of the reference rate set by the central government for improvement loans) on the 15-year loan in connection with the rescheduling of the debt resulting from the residual debt referred to in (b), of the instalments which had fallen due in the period from 31 December 1996 until the date on which the new loan was contracted, as well as the debts which had yet to fall due.

The sum of (a), (b) and (c) may not be more than 75 % of the total cost of restructuring (in other words, than an amount which also includes the cost of the investments which form part of the restructuring plan).

(37) Regarding the waiving of the payment of interest on arrears by the credit institutions prepared to take part in the scheme, the Italian authorities explained, in their letter of 9 June 1999, that in the light of the assessment of the behaviour of the State-controlled banks in Commission Decision 97/81/EC on aid granted by the Austrian Government to Head Tyrolia Mares in the form of injections of capital ([8]), the operation did not constitute State aid. In the case referred to, however, the waiving of the payment of the interest on arrears was not regarded as State aid because the decision had been taken by all the banks taking part in the operation (in other words by public and private banks alike). In its letter of 7 December 1999, the Commission asked the Italian authorities to indicate which public and private banks were prepared to forgo the payment of interest on arrears, and to specify whether all the banks taking part in the restructuring were prepared to waive their right to the payment concerned. In their letter of 8 February 2001, the Italian authorities communicated the list requested. Attached to the letter were some statements made by a number of banks confirming that they were willing to forgo payment of the interest on arrears, plus a statement to the effect that the banks which did not wish to provide such written confirmation had nonetheless given their approval.

([8]) OJ L 25, 28.1.1997, p. 26.

Regarding the nature of the recipients

(38) In their letter of 19 June 1999, the Italian authorities confirmed that only small firms covered by 3.2.5(b) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty were eligible for the aid, in other words operators in the agriculture sector with no more than 10 annual work units. That group included limited companies which satisfied this criterion.

Regarding a possible Deggendorf effect

(39) In response to the comments by the Commission (see recital 26(f)), the Italian authorities undertook to ensure that no firm would receive aid which had received illegal or incompatible aid in the past and had not repaid it.

(40) By letter dated 14 September 2001, recorded as received on 17 September 2001, the Italian authorities asked that the Commission adopt a final decision within two months under Article 7(7) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([9]).

IV. **ASSESSMENT OF THE AID**

(41) Under Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. In the case at hand, the aid under scrutiny is likely to produce the effects described above. It encourages certain productions (fruit and vegetables and plants) and is likely to distort trade because of its relative size. For example, Italy, within which Sardinia constitutes a major production area, was the principal vegetable producer in the European Union in 1999, its output of 15 153 857 tonnes accounting for 28,7 % of total EU production (52 726 260 tonnes) ([10]). The aid thus falls within the scope of Article 87(1) of the Treaty and must qualify for exemption in order to be declared compatible with the common market.

(42) The exemptions applicable are described in the Community guidelines concerned. At present, aid for rescuing and restructuring firms in difficulty is governed by the Community guidelines adopted in 1999 ([11]). Under point 7.3 thereof, aid for rescuing and restructuring SMEs (individual aids or schemes) notified before 30 April 2000 must be assessed on the basis of the 1997 guidelines ([12]). Since the restructuring plan was notified on 12 January 1998, its compatibility with the common market must be assessed on the basis of the 1997 guidelines.

(43) By virtue of 1.1 and 2.3 of the 1997 guidelines (hereinafter the guidelines), State aid intended for rescuing and restructuring firms in difficulty falls within the scope of paragraph 1 of Article 87 (formerly Article 92) of the Treaty ([13]), because, by its very nature, it tends to distort competition and affect trade between Member States, shifting the burden of structural change on to other more efficient firms and encouraging a subsidy race.

([9]) OJ L 83, 27.3.1999, p. 1.
([10]) In 2000 Italy produced 16 308 854 tonnes of vegetables. Since figures are not yet available for all the Member States, it is not possible to determine the percentage of EU production this quantity represents. It should be noted, however, that according to the figures that are available, Italy is the only Member State whose production rose appreciably between 1999 and 2000.
([11]) OJ C 288, 9.10.1999, p. 2.
([12]) See footnote 2.
([13]) Paragraph 1 of the Article states that 'Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market'.

(44) As stipulated at 2.4 of the guidelines, 'The only basis for exempting aid for rescuing or restructuring firms in difficulty, apart from cases of natural disasters and exceptional occurrences which are exempted by Article 92(2)(b) of the Treaty [...] and, to the extent that Article 92(2)(c) is still applicable, aid in Germany that might be covered by this provision, is Article 92(3)(c) (, by virtue of which) the Commission has the power to authorise aid to facilitate the development of certain economic activities [...] where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In this case, since the notification was not intended to satisfy the requirements for application of the exemptions provided for in Article 87(2) of the Treaty, the only exemption which could be invoked in the framework of the assessment of the aid is that provided for in Article 87(3)(c) of the Treaty.

(45) A number of conditions have to be met for this exemption to apply. Since this case concerns an aid scheme, the first element to be checked is its scope. This poses a problem because, instead of notifying a scheme in accordance with the rules laid down and stating general principles which would enable individual restructuring plans to be examined at a later stage, the Italian authorities submitted a single restructuring scheme applicable to all potential recipients and featuring a degree of automatic application, and definitions, such that the possibility cannot be ruled out that some firms might be eligible which do not meet the requirements applicable. In this respect, the most problematic definition is that of 'firm in difficulty'.

Definition of firm in difficulty

(46) Point 2.1 of the guidelines lists the characteristics normally found in a firm in difficulty. The majority of them are of a type which increases in severity, viz. the level of losses or of debt. Since the criteria used by the Italian authorities are based on an average, they do not show the extent to which the situation of the companies concerned is worsening. For example, since the plan is established on the basis of an average, there is a possibility that the year following the two years chosen as a reference period will be positive, even though the average is still negative. Another important factor is that, in the case of the measures notified by the Italian authorities, losses have to be declared by the recipients themselves as required by Law No 127 of 15 May 1997 ([14]). The Commission has taken note of the undertaking given by the Italian authorities to go beyond what is stipulated in the Law, and have all the statements of the potential recipients under the scheme verified. Nevertheless, since the potential recipients do not appear to keep accounts, it is difficult to see on what basis verification could take place; this applies generally to the criteria used by the Italian authorities to define the state of difficulty of the firms in the sector concerned. In the absence of a valid control base, the Commission cannot, therefore, rule out the possibility that companies which are not really in difficulty might benefit from aid under the restructuring scheme, and it therefore takes the view that the given definition of firm in difficulty is unsuitable.

(47) In addition to the matter of the definition, for the exemption provided for in Article 87(3)(c) of the Treaty to apply in this case, a number of requirements set out at 3.2.2 of the guidelines must be met.

Restoration of viability

(48) The first of the requirements set out at 3.2.2 is that the restructuring plan must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. Moreover, the improvement in viability must mainly result from internal measures contained in the restructuring plan and may only be based on external factors such as price and demand increases over which the firm has no great influence, if the market assumptions made are generally acknowledged.

([14]) See footnote 6.

(49) In the case under scrutiny, the plan appears to be based in particular on the hypothesis that promotional campaigns conducted by the Ministry of Foreign Trade and the Ministry for Agricultural Policy will create outlets by encouraging exports of vegetables to the rest of the Community, to central and eastern Europe and to the rest of the world. There is, however, no guarantee that the campaigns will produce the expected results in terms of outlets. Moreover, regarding the period needed to restore viability, there is a clear contradiction between the stated aim of restoring the viability of the firms concerned within three years and the admission by the Italian authorities themselves that 'the normal period of effectiveness is 10 years'. In the context of the restructuring of companies, 10 years certainly cannot be regarded as a reasonable period.

(50) A second factor in the hypothesis of the Italian authorities is prices. The conclusions of the market survey point to a price increase in the period under consideration (1995-1997). The reference period chosen does not, however, make it possible to determine current price trends. The Italian authorities have on several occasions stated that the plan, which provides for increased profits based on a rise in production, would in no way affect the way in which the prices of the products concerned are formed. However, since the information provided invariably concerned the past, that claim could not be verified. It is hard to believe that marketing substantially larger quantities of products will have no effect on the formation of prices, especially in view of the considerable increase in production (of the order of 35 % to 40 %) mentioned by the Italian authorities. Accordingly, there are fears that the scheme may have an adverse effect on prices and that the reference level of production used by the Italian authorities for restoring the viability of the recipient holdings is unrealistic, both in terms of size and because it does not take account of the fact that prices might fall as a result of the marketing of larger quantities of products, thus casting doubt on the prospects for restoring the viability of the companies concerned.

Avoidance of undue distortions of competition

(51) Another requirement imposed on aid for restructuring is that measures are taken to offset as far as possible adverse effects on competitors. Such measures must bring about an irreversible reduction in or closure of capacity among recipients of the aid where there is structural overcapacity in the sector concerned. Where there is no structural overcapacity, the Commission does not normally require a reduction in capacity, but there must be evidence that the aid will be used only for restoring viability and will not enable the recipient to increase production capacity during the implementation of the restructuring plan, except to the extent necessary to restore viability, in other words without unduly distorting competition.

(52) On the matter of a possible reduction in capacity, the Italian authorities pointed out that all the beneficiaries under the scheme would be small agricultural enterprises within the meaning of 3.2.5(b) of the guidelines, in other words operators with no more than 10 annual work units. In this connection, the Italian authorities could, as the Commission had proposed, have asked for the application of the special provisions of the guidelines concerning the agricultural sector. Since they did not do so (see recital 33), the Commission had to assess the aid scheme in the light of the general conditions set out at 3.2.2.

(53) In the case at hand, the Commission notes, on the basis of the most recent information available, that irrespective of which point of the guidelines is applied in this respect, structural overcapacity no longer exists or appears to exist in the sectors of activity covered by the restructuring scheme. The Commission does not, therefore, deem it necessary to require a reduction in production capacity on the part of the recipients.

(54) In the absence of a request to reduce capacity, it is a question of demonstrating that the investment concerned is to be used only for restoring the viability of the firm, without distorting competition. In this respect, there is a major risk that the investment will distort competition, since it will be aimed at increasing production. The consequential impact on prices would directly affect the profits and, therefore, the activities of competing firms.

Aid in proportion to the restructuring costs and benefits

(55) One of the requirements to be met is that there should be proportionality between the costs and benefits of the restructuring. To ensure this proportionality, aid recipients normally have to make a significant contribution to the restructuring plan, using either their own resources or external commercial sources of financing. Given the Region's contribution towards the restructuring scheme (up to 75 % of the total), the Commission takes the view that the participation of the recipients towards the restructuring is not sufficiently significant. This is confirmed by the fact that when the Italian authorities were asked to provide additional information on contributions in the form of own funds by the recipients, they replied only that the parties concerned would be asked to contribute only if they had net assets and the contribution was absolutely essential to the financial balance of the firm and would not jeopardise its efficiency. Not only does this answer not shed any light on the effort that might be required of the firms concerned, it suggests that some of them might not be asked to contribute anything at all, thus testifying to a lack of proportionality between the contribution of the Region and that of the recipients.

(56) The disproportion between the two is accentuated by the amount of aid which may be paid to each recipient: ITL 600 million (about EUR 300 000), since, according to information provided by the Italian authorities themselves, the scheme is intended for small agricultural enterprises, in other words operators with no more than 10 annual work units.

(57) Moreover, still in the context of the assessment of this lack of proportionality, the Italian authorities claimed that the waiving, by the banks, of the payment of interest on arrears did not constitute State aid. In support of this argument, they referred to the Commission's assessment of the behaviour of the State-controlled banks in respect of the aid awarded by the Austrian Government to Head Tyrolia Mares (see recital 37). They then transmitted statements by four banks confirming that the latter were indeed willing to forgo payment of the interest on arrears, and added that the banks which did not feel able to provide such a written statement had nevertheless expressed their approval. The documents in question do not, however, prove there is an analogy between this case and that of the abovementioned Austrian company since, as indicated in recital 37 above, all the banks (in other words both the public and the private banks) would have had to waive their right to payment of the interest on arrears to justify the claim that the operation did not constitute State aid. In the case at hand, the statement by the Italian authorities that the banks which had not felt that they could confirm in writing that they were in agreement had nevertheless expressed approval does not constitute formal proof of the position of the banks concerned. Given that not all the banks had provided a written statement and it was therefore not possible to determine whether they were all willing to forgo payment of the interest on arrears, the Commission cannot rule out the possibility that public and private banks might not necessarily adopt the same position on this issue. In such a case the operation would constitute aid which would be impossible to quantify — because of the lack of information — and difficult to replace in the context of the restructuring since, when they drew up the plan, the Italian authorities started from the premiss that the operation did not constitute State aid and should not, therefore, be taken into account when calculating the 75 % of public aid.

(58) Lastly, with regard to the Deggendorf effect referred to in recitals 26(f) and 39, the undertaking given by the Italian authorities that no firm which had previously received, and had not repaid, illegal or incompatible aid would benefit under the scheme serves to dispel the doubts expressed by the Commission in this respect in the context of the procedure.

V. **CONCLUSIONS**

(59) Notwithstanding the explanations provided by the Italian authorities in response to the initiation of the procedure laid down in Article 88(2) of the Treaty, the Commission considers that the restructuring plan presented by the abovementioned authorities is based on an unsuitable definition of firms in difficulty, that the scenario of a return to viability of the firms concerned is unrealistic,

that there is a real risk of distortion of competition owing to the effects of the increase in capacity on prices and, therefore, on profits and on the activities of competitors, and that the aid is not in proportion to the costs and benefits of the restructuring. In the light of the above and in view of the fact that, in their letter of 14 September 2001, the Italian authorities asked the Commission, pursuant to Article 7(7) of Regulation (EC) No 659/1999, to adopt a final decision within two months on the basis of the information available, the Commission can only conclude that the aid scheme for restructuring which Sardinia is planning to implement does not qualify for exemption under Article 87(3)(c) of the Treaty and cannot, therefore, be declared compatible with the common market. Lastly, it should be noted that all the points set out above would have been equally valid had the scheme been assessed in the light of the 1999 Guidelines on State aid for rescuing and restructuring firms in difficulty,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme which the Sardinia Region (Italy) is planning to implement under the terms of the Decision No 48/7 of 2 December 1997 of the Regional Executive is incompatible with the common market.

The aid scheme 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, 13 November 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 15 March 2002

on financial aid from the Community for the operation of certain Community reference laboratories in the field of animal health and live animals 2002

(notified under document number C(2002) 1003)

(Only the Spanish, Danish, German, English, French and Swedish texts are authentic)

(2002/230/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Community financial aid should be granted to the Community reference laboratories designated by the Community to assist them in carrying out the functions and duties laid down in the following Directives and Decisions:

— Council Directive 2001/89/EC of 23 October 2001 on Community measures for the control of classical swine fever [3],

— Council Directive 92/66/EEC of 14 July 1992 introducing Community measures for the control of Newcastle disease [4], as last amended by the Act of Accession of Austria, Sweden and Finland,

— Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease [5], as last amended by Decision 95/1/EC, Euratom, ECSC [6],

— Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases [7],

— Council Directive 95/70/EC of 22 December 1995 introducing minimum Community measures for the control of certain diseases affecting bivalve molluscs [8],

— Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness [9], as last amended by the Act of Accession of Austria, Sweden and Finland,

— Council Directive 2000/75/EC of 20 November 2000 laying down specific provisions for the control and eradication of bluetongue [10],

— Council Decision 2000/258/EC of 20 March 2000 designating a specific institute responsible for elaborating criteria for standardising serological tests to control the efficiency of rabies vaccines [11],

— Council Decision 96/463/EC of 23 July 1996 designating the reference body responsible for collaborating in rendering uniform the testing methods and the assessment of the results for pure-bred breeding animals of the bovine species [12].

(2) The financial contribution from the Community shall be granted provided that the actions planned are efficiently carried out and that the authorities supply all the necessary information within the time limits laid down.

(3) For budgetary reasons, Community assistance should be granted for a period of one year.

(4) Pursuant to Article 3(2) of Council Regulation (EC) No 1258/1999 [13], veterinary and plant health measures undertaken in accordance with Community rules shall be financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund; for financial control purposes, Articles 8 and 9 of Regulation (EC) No 1258/1999 apply.

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

HAS ADOPTED THIS DECISION:

Article 1

1. For classical swine fever, the Community grants financial assistance to Germany for the functions and duties referred to in Annex IV to Directive 2001/89/EC, to be carried out by the Institut für Virologie der Tierärztlichen Hochschule, Hanover, Germany.

[1] OJ L 224, 18.8.1990, p. 19.
[2] OJ L 203, 28.7.2001, p. 16.
[3] OJ L 316, 1.12.2001, p. 5.
[4] OJ L 260, 5.9.1992, p. 1.
[5] OJ L 62, 15.3.1993, p. 69.
[6] OJ L 1, 1.1.1995, p. 1.
[7] OJ L 175, 19.7.1993, p. 23.
[8] OJ L 332, 30.12.1995, p. 33.
[9] OJ L 260, 5.9.1992, p. 1.
[10] OJ L 327, 22.12.2000, p. 74.
[11] OJ L 95, 15.4.2000, p. 40.
[12] OJ L 192, 2.8.1996, p. 19.
[13] OJ L 160, 26.6.1999, p. 103.

2. The Community's financial assistance shall amount to a maximum of EUR 185 000 for the period from 1 January to 31 December 2002.

Article 2

1. For Newcastle disease, the Community grants financial assistance to the United Kingdom for the functions and duties referred to in Annex V to Directive 92/66/EEC, to be carried out by the Central Veterinary Laboratory, Addlestone, United Kingdom.

2. The Community's financial assistance shall amount to a maximum of EUR 60 000 for the period from 1 January to 31 December 2002.

Article 3

1. For swine vesicular disease, the Community grants financial assistance to the United Kingdom for the functions and duties referred to in Annex III to Directive 92/119/EEC to be carried out by the Pirbright Laboratory, United Kingdom.

2. The Community's financial assistance shall amount to a maximum of EUR 95 000 for the period from 1 January to 31 December 2002.

Article 4

1. For fish diseases, the Community grants financial assistance to Denmark for the functions and duties referred to in Annex C to Directive 93/53/EEC, to be carried out by the Statens Veterinære Serumlaboratorium, Århus, Denmark.

2. The Community's financial assistance shall amount to a maximum of EUR 130 000 for the period from 1 January to 31 December 2002.

Article 5

1. For diseases of bivalve molluscs, the Community grants financial assistance to France for the functions and duties referred to in Annex B to Directive 95/70/EC, to be carried out by the IFREMER, La Tremblade, France.

2. The Community's financial assistance shall amount to a maximum of EUR 80 000 for the period from 1 January to 31 December 2002.

Article 6

1. For African horse sickness, the Community grants financial assistance to Spain for the functions and duties referred to in Annex I to Directive 92/35/EEC, to be carried out by the Laboratorio de sanidad y producción animal, Algete, Spain.

2. The Community's financial assistance shall amount to a maximum of EUR 40 000 for the period from 1 January to 31 December 2002.

Article 7

1. For bluetongue, the Community grants financial assistance to the United Kingdom for the functions and duties referred to in Annex II to Directive 2000/75/EC, to be carried out by the Pirbright Laboratory, United Kingdom.

2. The Community's financial assistance shall amount to a maximum of EUR 115 000 for the period from 1 January to 31 December 2002.

Article 8

1. For rabies serology, the Community grants financial assistance to France for the functions and duties referred to in Annex II to Decision 2000/258/EC, to be carried out by the laboratory of the A.F.S.S.A. Nancy, France.

2. The Community's financial assistance shall amount to a maximum of EUR 130 000 for the period from 1 January to 31 December 2002.

Article 9

1. For the assessment of the results of the methods of testing pure-bred breeding animals of the bovine species, and the harmonisation of the various methods of testing, the Community grants financial assistance to Sweden for the functions and duties referred to in Annex II to Decision 96/463/EC to be carried out by the Interbull Centre, Uppsala, Sweden.

2. The Community's financial assistance shall amount to a maximum of EUR 60 000 for the period from 1 January to 31 December 2002.

Article 10

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

(a) 70 % by way of an advance at the request of the recipient Member States;

(b) the balance following presentation of supporting documents and a technical report by the recipient Member State. Those documents must be presented at the latest three months after the end of the period for which financial assistance has been granted;

and provided that the actions planned are efficiently carried out and the authorities supply all the necessary information within the time limits laid down.

When the time limit is not observed, the financial contribution of the Community shall be reduced by 25 % on 1 May, 50 % on 1 June, 75 % on 1 July and 100 % on 1 September.

Article 11

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

Done at Brussels, 15 March 2002.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION

of 18 March 2002

establishing revised ecological criteria for the award of the Community eco-label to footwear and amending Decision 1999/179/EC

(notified under document number C(2002) 1015)

(Text with EEA relevance)

(2002/231/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme [1], and in particular Article 4 and Article 6(1) thereof,

Whereas:

(1) Under Regulation (EC) No 1980/2000 the Community eco-label may be awarded to a product possessing characteristics which enable it to contribute significantly to improvements in relation to key environmental aspects.

(2) Regulation (EC) No 1980/2000 provides that specific eco-label criteria are to be established according to product groups.

(3) It also provides that the review of the eco-label criteria, as well as of the assessment and verification requirements related to the criteria, is to take place in due time before the end of the period of validity of the criteria specified for each product group. That review is to result in a proposal for prolongation, withdrawal or revision.

(4) It is appropriate to revise the ecological criteria that were established by Commission Decision 1999/179/EC of 17 February 1999 establishing the ecological criteria for the award of the Community eco-label to footwear [2] in order to reflect the developments in the market. At the same time, the period of validity of that Decision as extended by Decision 2001/832/EC [3] should be modified.

(5) A new Commission Decision should be adopted establishing the specific ecological criteria for this product group, which will be valid for a period of five years.

(6) It is appropriate that, for a limited period of not more than 12 months, both the new criteria established by this Decision and the criteria established by Decision 1999/179/EC should be valid concurrently, in order to allow sufficient time for companies that have been awarded or that have applied for the award of the eco-label for their products, prior to the date of application of this Decision, to adapt those products to comply with the new criteria.

(7) The measures provided for in this Decision are based on the draft criteria developed by the European Union Eco-Labelling Board established under Article 13 of Regulation (EC) No 1980/2000.

(8) The measures provided for in this Decision are in accordance with the opinion of the committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

Article 1

In order to be awarded the Community eco-label under Regulation (EC) No 1980/2000, footwear must fall within the product group 'footwear' as defined in Article 2, and must comply with the ecological criteria set out in the Annex to this Decision.

Article 2

The product group 'footwear' shall comprise:

All articles of clothing designed to protect or cover the foot, with a fixed outer sole which comes into contact with the ground.

Article 3

For administrative purposes the code number assigned to the product group 'footwear' shall be '017'.

Article 4

Article 3 of Decision 1999/179/EC is replaced by the following:

'The product group definition and the specific ecological criteria for the product group shall be valid until 31 March 2003.'

[1] OJ L 237, 21.9.2000, p. 1.
[2] OJ L 57, 5.3.1999, p. 31.
[3] OJ L 310, 28.11.2001, p. 30.

Article 5

This Decision shall apply from 1 April 2002 until 31 March 2006. If on 31 March 2006 revised criteria have not been adopted, this Decision shall apply until 31 March 2007.

Producers of products falling within the product group 'footwear' which have already been awarded the eco-label before 1 April 2002 may continue to use that label until 31 March 2003.

Producers of products falling within the product group 'footwear' which have already applied for the award of the eco-label before 1 April 2002 may be awarded the eco-label under the terms Decision 1999/179/EC until 31 March 2003.

From 1 April 2002, new applications for the award of the eco-label for the product group 'footwear' shall satisfy the criteria set out in this Decision.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 18 March 2002.

For the Commission

Margot WALLSTRÖM

Member of the Commission

ANNEX

FRAMEWORK

The aims of the criteria

These criteria aim in particular at:

— limiting the levels of toxic residues,

— limiting the emissions of volatile organic compounds, and

— promoting a more durable product.

The criteria are set at levels that promote the labelling of footwear which has a lower environmental impact.

Assessment and verification requirements

The specific assessment and verification requirements are indicated within each criterion.

Where appropriate, test methods other than those indicated for each criterion may be used if their equivalence is accepted by the competent body assessing the application.

The functional unit is one pair of shoes. Requirements are based on shoe size 40 Paris point. For children's shoes the requirements apply for a size 32 Paris point (or the largest size in the case of maximum sizes smaller than 32 Paris point).

Where appropriate, competent bodies may require supporting documentation and may carry out independent verifications.

The competent bodies are recommended to take into account the implementation of recognised environmental management schemes, such as EMAS or ISO 14001, when assessing applications and monitoring compliance with the criteria (*note:* it is not required to implement such management schemes).

CRITERIA

1. Residues in the final product

(a) The average concentration of residues of Chromium (VI) in the final product shall not exceed 10 ppm and the residues of Arsenic, Cadmium and Lead shall not be detected in the final product (using the method specified below).

Assessment and verification: the applicant and/or his supplier(s) shall provide a test report, using the following test methods):

Cr(VI): CEN TC 309 WI 065 — 4.2 or DS/EN 420 or DIN 53314: 1996-04 (*note*: difficulties in measurement due to interferences may be encountered when analysing certain coloured leather);

Cd, Pb, As: CEN TC 309 WI 065 — 4.3 Sample preparation: (1) Separate the upper components from the bottom components. (2) Grind completely the upper components and the bottom components, keeping both separate. (3) Analyse a sample of each of these two preparations. (4) The substances in each of these two samples shall not be detectable.

(b) The amount of free and partially hydrolysable formaldehyde of the textile components of the footwear shall not exceed 75 ppm and of the leather components shall not exceed 150 ppm.

Assessment and verification: the applicant and/or his supplier(s) shall provide a test report, using the following test methods: Textiles: CEN TC 309 WI 065 — 4.4; Leather: CEN TC 309 WI 065 - 4.4.

2. Emissions from the production of material

(a) The waste water from leather tanning sites and from the textile industries shall be treated, either by an in-house or municipal waste water treatment plant/facility, so as to achieve a reduction of the COD content of at least 85 %.

Assessment and verification: the applicant shall provide a test report and complementary data, using the following test method: COD: ISO 6060 Water quality, determination of chemical oxygen demand.

(b) Tannery waste water after treatment shall contain less than 5 mg Chromium (III)/l.

Assessment and verification: the applicant shall provide a test report and complementary data, using the following test methods: ISO 9174 or EN 1233 or EN ISO 11885 for Cr.

3. **Use of harmful substances (up until purchase)**

(a) Pentachlorophenol (PCP) and Tetrachlorophenol (TCP) and its salts and esters shall not be used.

Assessment and verification: the applicant and/or his supplier(s) shall provide a declaration that the materials do not contain such chlorophenols. Should a verification of this declaration be carried out, the following test methods shall be used: CEN TC 309 WI 065 — 4.5: Textiles: limit value 0,05 ppm; Leather: limit value 5 ppm.

(b) No azo dyes shall be used that may cleave to any of the following aromatic amines:

4-aminodiphenyl	(92-67-1)
benzidine	(92-87-5)
4-chloro-o-toluidine	(95-69-2)
2-naphthylamine	(91-59-8)
o-amino-azotoluene	(97-56-3)
2-amino-4-nitrotoluene	(99-55-8)
p-chloroaniline	(106-47-8)
2,4- diaminoanisol	(615-05-4)
4,4′-diaminodiphenylmethane	(101-77-9)
3,3′-dichlorobenzidine	(91-94-1)
3,3′-dimethoxybenzidine	(119-90-4)
3,3′-dimethylbenzidine	(119-93-7)
3,3′-dimethyl-4,4′-diaminodiphenylmethane	(838-88-0)
p-cresidine	(120-71-8)
4,4′-methylene-bis-(2-chloraniline)	(101-14-4)
4,4′-oxydianiline	(101-80-4)
4,4′-thiodianiline	(139-65-1)
o-toluidine	(95-53-4)
2,4-diaminotoluene	(95-80-7)
2,4,5-trimethylaniline	(137-17-7)
4-aminoazobenzene	(60-09-3)
o-anisidine	(90-04-0)

Assessment and verification: the applicant and/or his supplier(s) shall provide a declaration that such azo dyes have not been used. Should a verification of this declaration be carried out, the following test method shall be used: CEN TC 309 WI 065 — 4.5:

Textiles: limit 30 ppm. (*note:* false positives are possible for 4-aminoazobenzene and confirmation is therefore recommended);

Leather: limit 30 ppm. (*note:* false positives are possible for 4-aminoazobenzene, 4-aminodiphenyl and 2-naphthylamine and confirmation is therefore recommended).

(c) The following N-Nitrosamines shall not be detected in rubber.

N-nitrosodimethylamine (NDMA)

N-nitrosodiethylamine (NDEA)

N-nitrosodipropylamine (NDPA)

N-nitrosodibutylamine (NDBA)

N-nitrosopiperidine (NPIP)

N-nitrosopyrrolidine (NPYR)

N-nitrosomorpholine (NMOR)

N-nitroso N-methyl N-phenylamine (NMPhA)

N-nitroso N-ethyl N-phenylamine (NEPhA)

Assessment and verification: the applicant shall provide a test report, using the following test method: EN 12868 (1999-12).

(d) C10-C13 chloralkanes shall not be used in leather, rubber or textile components.

Assessment and verification: the applicant and/or his supplier(s) shall provide a declaration that such chloralkanes have not been used.

4. **Use of volatile organic compounds (VOCs) during final assembly of shoes**

The total use of VOCs during final footwear production, for the following categories, shall not exceed on average:

General sports, school footwear, occupational, men's town, cold weather footwear: 25 gram VOC/pair,

Casual, women's town: 25 gram VOC/pair,

Fashion, infants, indoor: 20 gram VOC/pair.

VOCs are any organic compound having at 293,15 K a vapour pressure of 0,01 kPa or more, or having a corresponding volatility under the particular conditions of use.

Assessment and verification: the applicant shall provide a calculation of the total use of VOCs during final shoe production, together with supporting data, test results and documentation as appropriate, with the calculation made using CEN TC 309 WI 065 — 4.7.

Registration of purchased leather, adhesives, finishes and production of footwear during at least the last six months is required.

5. **Use of PVC**

The footwear shall not contain PVC. Recycled PVC may, however, be used in outsoles, where no use is made of DEHP (bis(2-ethylhexyl)phthalate), BBP (butylbenzylphthalate) or DBP (dibutylphthalate) in preparing the recycled PVC.

Assessment and verification: the applicant shall provide a declaration of compliance with this criterion.

6. **Energy Consumption**

The applicant is requested on a voluntary basis to provide detailed information on the energy consumption per pair of footwear.

Assessment and verification: the applicant is requested to provide the relevant information.

7. **Electric components**

The footwear shall not contain any electric or electronic components.

Assessment and verification: the applicant and/or his supplier(s) shall provide a corresponding declaration of compliance with this criterion.

8. **Packaging of the final product**

Where cardboard boxes are used for the final packaging of footwear, they shall be made from a minimum of 80 % recycled material.

Where plastic bags are used for the final packaging of footwear, they shall be made from recycled material.

Assessment and verification: a sample of the product packaging shall be provided on application, together with a corresponding declaration of compliance with this criterion.

9. **Information on the packaging**

(a) *User Instructions*

The following information (or equivalent text) shall be supplied with the product:

'These shoes have been treated to improve their water resistance. They do not require further treatment.' (This criterion is applicable only to footwear that has been water-resistant treated)

'Where possible repair your footwear rather than throw them away. This is less damaging to the environment.'

'When disposing of footwear, please use appropriate local recycling facilities where these are available.'

(b) *Information about the eco-label*

The following text (or equivalent text) shall appear on the packaging:

'For more information visit the EU Eco-label web-site: http://europa.eu.int/ecolabel'

Assessment and verification: the applicant shall provide a sample of the product packaging and of the information supplied with the product, together with a declaration of compliance with each part of this criterion.

10. **Information appearing on the eco-label**

Box 2 of the eco-label shall contain the following text:

— low air and water pollution,

— harmful substances avoided.

Assessment and verification: the applicant shall provide a sample of the product packaging showing the label, together with a declaration of compliance with this criterion.

11. **Parameters contributing to durability**

Occupational and safety footwear shall carry the EC mark (in accordance with Council Directive 89/686/EEC [1] of 21 December 1989 on the approximation of the laws of the Member States relating to personal protective equipment).

All other footwear shall meet the requirements indicated in the table below.

Assessment and verification: the applicant shall provide a test report corresponding to the parameters indicated in the table below, using test methods CEN TC 309 WI 065 — 4.9.

[1] OJ L 399, 30.12.1989, p. 18.

	General sports	School footwear	Casual	Men's town	Cold weather footwear	Women's town	Fashion	Infants	Indoor
Uppers flex resistance: (kc without visible damage)	Dry = 100 Wet = 20	Dry = 100 Wet = 20	Dry = 80 Wet = 20	Dry = 80 Wet = 20	Dry = 100 Wet = 20 – 20 °C = 30	Dry = 50 Wet = 10	Dry = 15	Dry = 15	Dry = 15
Uppers tear strength: (Average tear force, N)									
Leather	≥ 80	≥ 60	≥ 60	≥ 60	≥ 60	≥ 40	≥ 30	≥ 30	≥ 30
Other materials	≥ 40	≥ 40	≥ 40	≥ 40	≥ 40	≥ 40	≥ 30	≥ 30	≥ 30
Outsoles flex ressitance:									
Cut growth (mm)	≤ 4	≤ 4	≤ 5	≤ 6	≤ 6	≤ 8			
Nsc = no spontaneous crack	Nsc	Nsc	Nsc	Nsc	Nsc at – 10 °C	Nsc			
Outsoles abrasion resistance:									
D ≥ 0,9 g/cm³ (mm³)	≤ 200	≤ 250	≤ 200	≤ 350	≤ 200	≤ 400			≤ 450
D < 0,9 g/cm³ (mg)	≤ 150	≤ 170	≤ 150	≤ 200	≤ 150	≤ 250			≤ 300
Uppersole adhesion: (N/mm)	≥ 4,0	≥ 4,0	≥ 3,0	≥ 3,5	≥ 3,5	≥ 3,0	≥ 2,5	≥ 3,0	≥ 2,5
Outsoles tear strength (Average strength, N/mm)									
D ≥ 0,9 g/cm³	8	8	8	6	8	6	5	6	5
D < 0,9 g/cm³	6	6	6	4	6	4	4	5	4
Colour fastness of the inside of the footwear (lining or inner face of the upper). Grey scale on the felt after 50 cycles wet	≥ 2/3	≥ 2/3	≥ 2/3	≥ 2/3	≥ 2/3	≥ 2/3		≥ 2/3	≥ 2/3

In addition, specialist cold footwear shall meet the following requirements for water resistance:

Uppers: penetration time ≥ 240 min, absorption < 25 %.

Outsoles: penetration time ≥ 60 min and after 2 hours water absorption < 20 % (highly water resistant — applicable only to certain soling material).