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Contents

(1) Text with EEA relevance

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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.

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[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1/2003
of 16 December 2002
on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty
(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 83 thereof,

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

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

Having regard to the opinion of the European Economic and Social Committee ([3]),

Whereas:

(1) In order to establish a system which ensures that competition in the common market is not distorted, Articles 81 and 82 of the Treaty must be applied effectively and uniformly in the Community. Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 81 and 82 (*) of the Treaty ([4]), has allowed a Community competition policy to develop that has helped to disseminate a competition culture within the Community. In the light of experience, however, that Regulation should now be replaced by legislation designed to meet the challenges of an integrated market and a future enlargement of the Community.

(2) In particular, there is a need to rethink the arrangements for applying the exception from the prohibition on agreements, which restrict competition, laid down in Article 81(3) of the Treaty. Under Article 83(2)(b) of the Treaty, account must be taken in this regard of the need to ensure effective supervision, on the one hand, and to simplify administration to the greatest possible extent, on the other.

(3) The centralised scheme set up by Regulation No 17 no longer secures a balance between those two objectives. It hampers application of the Community competition rules by the courts and competition authorities of the Member States, and the system of notification it involves prevents the Commission from concentrating its resources on curbing the most serious infringements. It also imposes considerable costs on undertakings.

(4) The present system should therefore be replaced by a directly applicable exception system in which the competition authorities and courts of the Member States have the power to apply not only Article 81(1) and Article 82 of the Treaty, which have direct applicability by virtue of the case-law of the Court of Justice of the European Communities, but also Article 81(3) of the Treaty.

([1]) OJ C 365 E, 19.12.2000, p. 284.
([2]) OJ C 72 E, 21.3.2002, p. 305.
([3]) OJ C 155, 29.5.2001, p. 73.
(*) The title of Regulation No 17 has been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Articles 85 and 86 of the Treaty.
([4]) OJ 13, 21.2.1962, p. 204/62. Regulation as last amended by Regulation (EC) No 1216/1999 (OJ L 148, 15.6.1999, p. 5).

(5) In order to ensure an effective enforcement of the Community competition rules and at the same time the respect of fundamental rights of defence, this Regulation should regulate the burden of proof under Articles 81 and 82 of the Treaty. It should be for the party or the authority alleging an infringement of Article 81(1) and Article 82 of the Treaty to prove the existence thereof to the required legal standard. It should be for the undertaking or association of undertakings invoking the benefit of a defence against a finding of an infringement to demonstrate to the required legal standard that the conditions for applying such defence are satisfied. This Regulation affects neither national rules on the standard of proof nor obligations of competition authorities and courts of the Member States to ascertain the relevant facts of a case, provided that such rules and obligations are compatible with general principles of Community law.

(6) In order to ensure that the Community competition rules are applied effectively, the competition authorities of the Member States should be associated more closely with their application. To this end, they should be empowered to apply Community law.

(7) National courts have an essential part to play in applying the Community competition rules. When deciding disputes between private individuals, they protect the subjective rights under Community law, for example by awarding damages to the victims of infringements. The role of the national courts here complements that of the competition authorities of the Member States. They should therefore be allowed to apply Articles 81 and 82 of the Treaty in full.

(8) In order to ensure the effective enforcement of the Community competition rules and the proper functioning of the cooperation mechanisms contained in this Regulation, it is necessary to oblige the competition authorities and courts of the Member States to also apply Articles 81 and 82 of the Treaty where they apply national competition law to agreements and practices which may affect trade between Member States. In order to create a level playing field for agreements, decisions by associations of undertakings and concerted practices within the internal market, it is also necessary to determine pursuant to Article 83(2)(e) of the Treaty the relationship between national laws and Community competition law. To that effect it is necessary to provide that the application of national competition laws to agreements, decisions or concerted practices within the meaning of Article 81(1) of the Treaty may not lead to the prohibition of such agreements, decisions and concerted practices if they are not also prohibited under Community competition law. The notions of agreements, decisions and concerted practices are autonomous concepts of Community competition law covering the coordination of behaviour of undertakings on the market as interpreted by the Community Courts. Member States should not under this Regulation be precluded from adopting and applying on their territory stricter national competition laws which prohibit or impose sanctions on unilateral conduct engaged in by undertakings. These stricter national laws may include provisions which prohibit or impose sanctions on abusive behaviour toward economically dependent undertakings. Furthermore, this Regulation does not apply to national laws which impose criminal sanctions on natural persons except to the extent that such sanctions are the means whereby competition rules applying to undertakings are enforced.

(9) Articles 81 and 82 of the Treaty have as their objective the protection of competition on the market. This Regulation, which is adopted for the implementation of these Treaty provisions, does not preclude Member States from implementing on their territory national legislation, which protects other legitimate interests provided that such legislation is compatible with general principles and other provisions of Community law. In so far as such national legislation pursues predominantly an objective different from that of protecting competition on the market, the competition authorities and courts of the Member States may apply such legislation on their territory. Accordingly, Member States may under this Regulation implement on their territory national legislation that prohibits or imposes sanctions on acts of unfair trading practice, be they unilateral or contractual. Such legislation pursues a specific objective, irrespective of the actual or presumed effects of such acts on competition on the market. This is particularly the case of legislation which prohibits undertakings from imposing on their trading partners, obtaining or attempting to obtain from them terms and conditions that are unjustified, disproportionate or without consideration.

(10) Regulations such as 19/65/EEC [1], (EEC) No 2821/71 [2], (EEC) No 3976/87 [3], (EEC) No 1534/91 [4], or (EEC) No 479/92 [5] empower the Commission to apply Article 81(3) of the Treaty by Regulation to certain categories of agreements, decisions by associations of undertakings and concerted practices. In the areas defined by such Regulations, the Commission has adopted and may continue to adopt so called 'block' exemption Regulations by which it declares Article 81(1) of the Treaty inapplicable to categories of agreements, decisions and concerted practices. Where agreements, decisions and concerted practices to which such Regulations apply nonetheless have effects that are incompatible with Article 81(3) of the Treaty, the Commission and the competition authorities of the Member States should have the power to withdraw in a particular case the benefit of the block exemption Regulation.

(11) For it to ensure that the provisions of the Treaty are applied, the Commission should be able to address decisions to undertakings or associations of undertakings for the purpose of bringing to an end infringements of Articles 81 and 82 of the Treaty. Provided there is a legitimate interest in doing so, the Commission should also be able to adopt decisions which find that an infringement has been committed in the past even if it does not impose a fine. This Regulation should also make explicit provision for the Commission's power to adopt decisions ordering interim measures, which has been acknowledged by the Court of Justice.

(12) This Regulation should make explicit provision for the Commission's power to impose any remedy, whether behavioural or structural, which is necessary to bring the infringement effectively to an end, having regard to the principle of proportionality. Structural remedies should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. Changes to the structure of an undertaking as it existed before the infringement was committed would only be proportionate where there is a substantial risk of a lasting or repeated infringement that derives from the very structure of the undertaking.

(13) Where, in the course of proceedings which might lead to an agreement or practice being prohibited, undertakings offer the Commission commitments such as to meet its concerns, the Commission should be able to adopt decisions which make those commitments binding on the undertakings concerned. Commitment decisions should find that there are no longer grounds for action by the Commission without concluding whether or not there has been or still is an infringement. Commitment decisions are without prejudice to the powers of competition authorities and courts of the Member States to make such a finding and decide upon the case. Commitment decisions are not appropriate in cases where the Commission intends to impose a fine.

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[1] Council Regulation No 19/65/EEC of 2 March 1965 on the application of Article 81(3) (The titles of the Regulations have been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 85(3) of the Treaty) of the Treaty to certain categories of agreements and concerted practices (OJ 36, 6.3.1965, p. 533). Regulation as last amended by Regulation (EC) No 1215/1999 (OJ L 148, 15.6.1999, p. 1).

[2] Council Regulation (EEC) No 2821/71 of 20 December 1971 on the application of Article 81(3) (The titles of the Regulations have been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 85(3) of the Treaty) of the Treaty to categories of agreements, decisions and concerted practices (OJ L 285, 29.12.1971, p. 46). Regulation as last amended by the Act of Accession of 1994.

[3] Council Regulation (EEC) No 3976/87 of 14 December 1987 on the application of Article 81(3) (The titles of the Regulations have been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 85(3) of the Treaty) of the Treaty to certain categories of agreements and concerted practices in the air transport sector (OJ L 374, 31.12.1987, p. 9). Regulation as last amended by the Act of Accession of 1994.

[4] Council Regulation (EEC) No 1534/91 of 31 May 1991 on the application of Article 81(3) (The titles of the Regulations have been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 85(3) of the Treaty) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (OJ L 143, 7.6.1991, p. 1).

[5] Council Regulation (EEC) No 479/92 of 25 February 1992 on the application of Article 81(3) (The titles of the Regulations have been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Article 85(3) of the Treaty) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (Consortia) (OJ L 55, 29.2.1992, p. 3). Regulation amended by the Act of Accession of 1994.

(14) In exceptional cases where the public interest of the Community so requires, it may also be expedient for the Commission to adopt a decision of a declaratory nature finding that the prohibition in Article 81 or Article 82 of the Treaty does not apply, with a view to clarifying the law and ensuring its consistent application throughout the Community, in particular with regard to new types of agreements or practices that have not been settled in the existing case-law and administrative practice.

(15) The Commission and the competition authorities of the Member States should form together a network of public authorities applying the Community competition rules in close cooperation. For that purpose it is necessary to set up arrangements for information and consultation. Further modalities for the cooperation within the network will be laid down and revised by the Commission, in close cooperation with the Member States.

(16) Notwithstanding any national provision to the contrary, the exchange of information and the use of such information in evidence should be allowed between the members of the network even where the information is confidential. This information may be used for the application of Articles 81 and 82 of the Treaty as well as for the parallel application of national competition law, provided that the latter application relates to the same case and does not lead to a different outcome. When the information exchanged is used by the receiving authority to impose sanctions on undertakings, there should be no other limit to the use of the information than the obligation to use it for the purpose for which it was collected given the fact that the sanctions imposed on undertakings are of the same type in all systems. The rights of defence enjoyed by undertakings in the various systems can be considered as sufficiently equivalent. However, as regards natural persons, they may be subject to substantially different types of sanctions across the various systems. Where that is the case, it is necessary to ensure that information can only be used if it has been collected in a way which respects the same level of protection of the rights of defence of natural persons as provided for under the national rules of the receiving authority.

(17) If the competition rules are to be applied consistently and, at the same time, the network is to be managed in the best possible way, it is essential to retain the rule that the competition authorities of the Member States are automatically relieved of their competence if the Commission initiates its own proceedings. Where a competition authority of a Member State is already acting on a case and the Commission intends to initiate proceedings, it should endeavour to do so as soon as possible. Before initiating proceedings, the Commission should consult the national authority concerned.

(18) To ensure that cases are dealt with by the most appropriate authorities within the network, a general provision should be laid down allowing a competition authority to suspend or close a case on the ground that another authority is dealing with it or has already dealt with it, the objective being that each case should be handled by a single authority. This provision should not prevent the Commission from rejecting a complaint for lack of Community interest, as the case-law of the Court of Justice has acknowledged it may do, even if no other competition authority has indicated its intention of dealing with the case.

(19) The Advisory Committee on Restrictive Practices and Dominant Positions set up by Regulation No 17 has functioned in a very satisfactory manner. It will fit well into the new system of decentralised application. It is necessary, therefore, to build upon the rules laid down by Regulation No 17, while improving the effectiveness of the organisational arrangements. To this end, it would be expedient to allow opinions to be delivered by written procedure. The Advisory Committee should also be able to act as a forum for discussing cases that are being handled by the competition authorities of the Member States, so as to help safeguard the consistent application of the Community competition rules.

(20) The Advisory Committee should be composed of representatives of the competition authorities of the Member States. For meetings in which general issues are being discussed, Member States should be able to appoint an additional representative. This is without prejudice to members of the Committee being assisted by other experts from the Member States.

(21) Consistency in the application of the competition rules also requires that arrangements be established for cooperation between the courts of the Member States and the Commission. This is relevant for all courts of the Member States that apply Articles 81 and 82 of the Treaty, whether applying these rules in lawsuits between private parties, acting as public enforcers or as review courts. In particular, national courts should be able to ask the Commission for information or for its opinion on points concerning the application of Community competition law. The Commission and the competition authorities of the Member States should also be able to submit written or oral observations to courts called upon to apply Article 81 or Article 82 of the Treaty. These observations should be submitted within the framework of national procedural rules and practices including those safeguarding the rights of the parties. Steps should therefore be taken to ensure that the Commission and the competition authorities of the Member States are kept sufficiently well informed of proceedings before national courts.

(22) In order to ensure compliance with the principles of legal certainty and the uniform application of the Community competition rules in a system of parallel powers, conflicting decisions must be avoided. It is therefore necessary to clarify, in accordance with the case-law of the Court of Justice, the effects of Commission decisions and proceedings on courts and competition authorities of the Member States. Commitment decisions adopted by the Commission do not affect the power of the courts and the competition authorities of the Member States to apply Articles 81 and 82 of the Treaty.

(23) The Commission should be empowered throughout the Community to require such information to be supplied as is necessary to detect any agreement, decision or concerted practice prohibited by Article 81 of the Treaty or any abuse of a dominant position prohibited by Article 82 of the Treaty. When complying with a decision of the Commission, undertakings cannot be forced to admit that they have committed an infringement, but they are in any event obliged to answer factual questions and to provide documents, even if this information may be used to establish against them or against another undertaking the existence of an infringement.

(24) The Commission should also be empowered to undertake such inspections as are necessary to detect any agreement, decision or concerted practice prohibited by Article 81 of the Treaty or any abuse of a dominant position prohibited by Article 82 of the Treaty. The competition authorities of the Member States should cooperate actively in the exercise of these powers.

(25) The detection of infringements of the competition rules is growing ever more difficult, and, in order to protect competition effectively, the Commission's powers of investigation need to be supplemented. The Commission should in particular be empowered to interview any persons who may be in possession of useful information and to record the statements made. In the course of an inspection, officials authorised by the Commission should be empowered to affix seals for the period of time necessary for the inspection. Seals should normally not be affixed for more than 72 hours. Officials authorised by the Commission should also be empowered to ask for any information relevant to the subject matter and purpose of the inspection.

(26) Experience has shown that there are cases where business records are kept in the homes of directors or other people working for an undertaking. In order to safeguard the effectiveness of inspections, therefore, officials and other persons authorised by the Commission should be empowered to enter any premises where business records may be kept, including private homes. However, the exercise of this latter power should be subject to the authorisation of the judicial authority.

(27) Without prejudice to the case-law of the Court of Justice, it is useful to set out the scope of the control that the national judicial authority may carry out when it authorises, as foreseen by national law including as a precautionary measure, assistance from law enforcement authorities in order to overcome possible opposition on the part of the undertaking or the execution of the decision to carry out inspections in non-business premises. It results from the case-law that the national judicial authority may in particular ask the Commission for further information which it needs to carry out its control and in the absence of which it could refuse the authorisation. The case-law also confirms the competence of the national courts to control the application of national rules governing the implementation of coercive measures.

(28) In order to help the competition authorities of the Member States to apply Articles 81 and 82 of the Treaty effectively, it is expedient to enable them to assist one another by carrying out inspections and other fact-finding measures.

(29) Compliance with Articles 81 and 82 of the Treaty and the fulfilment of the obligations imposed on undertakings and associations of undertakings under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fine should also be laid down for infringements of the procedural rules.

(30) In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions on which the Commission may require payment of the fine from the members of the association where the association is not solvent. In doing so, the Commission should have regard to the relative size of the undertakings belonging to the association and in particular to the situation of small and medium-sized enterprises. Payment of the fine by one or several members of an association is without prejudice to rules of national law that provide for recovery of the amount paid from other members of the association.

(31) The rules on periods of limitation for the imposition of fines and periodic penalty payments were laid down in Council Regulation (EEC) No 2988/74 [1], which also concerns penalties in the field of transport. In a system of parallel powers, the acts, which may interrupt a limitation period, should include procedural steps taken independently by the competition authority of a Member State. To clarify the legal framework, Regulation (EEC) No 2988/74 should therefore be amended to prevent it applying to matters covered by this Regulation, and this Regulation should include provisions on periods of limitation.

(32) The undertakings concerned should be accorded the right to be heard by the Commission, third parties whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the undertakings concerned, in particular, the right of access to the file, it is essential that business secrets be protected. The confidentiality of information exchanged in the network should likewise be safeguarded.

(33) Since all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice in accordance with the Treaty, the Court of Justice should, in accordance with Article 229 thereof be given unlimited jurisdiction in respect of decisions by which the Commission imposes fines or periodic penalty payments.

(34) The principles laid down in Articles 81 and 82 of the Treaty, as they have been applied by Regulation No 17, have given a central role to the Community bodies. This central role should be retained, whilst associating the Member States more closely with the application of the Community competition rules. In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, this Regulation does not go beyond what is necessary in order to achieve its objective, which is to allow the Community competition rules to be applied effectively.

(35) In order to attain a proper enforcement of Community competition law, Member States should designate and empower authorities to apply Articles 81 and 82 of the Treaty as public enforcers. They should be able to designate administrative as well as judicial authorities to carry out the various functions conferred upon competition authorities in this Regulation. This Regulation recognises the wide variation which exists in the public enforcement systems of Member States. The effects of Article 11(6) of this Regulation should apply to all competition authorities. As an exception to this general rule, where a prosecuting authority brings a case before a separate judicial

[1] Council Regulation (EEC) No 2988/74 of 26 November 1974 concerning limitation periods in proceedings and the enforcement of sanctions under the rules of the European Economic Community relating to transport and competition (OJ L 319, 29.11.1974, p. 1).

authority, Article 11(6) should apply to the prosecuting authority subject to the conditions in Article 35(4) of this Regulation. Where these conditions are not fulfilled, the general rule should apply. In any case, Article 11(6) should not apply to courts insofar as they are acting as review courts.

(36) As the case-law has made it clear that the competition rules apply to transport, that sector should be made subject to the procedural provisions of this Regulation. Council Regulation No 141 of 26 November 1962 exempting transport from the application of Regulation No 17 [1] should therefore be repealed and Regulations (EEC) No 1017/68 [2], (EEC) No 4056/86 [3] and (EEC) No 3975/87 [4] should be amended in order to delete the specific procedural provisions they contain.

(37) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles.

(38) Legal certainty for undertakings operating under the Community competition rules contributes to the promotion of innovation and investment. Where cases give rise to genuine uncertainty because they present novel or unresolved questions for the application of these rules, individual undertakings may wish to seek informal guidance from the Commission. This Regulation is without prejudice to the ability of the Commission to issue such informal guidance,

HAS ADOPTED THIS REGULATION:

CHAPTER I

PRINCIPLES

Article 1

Application of Articles 81 and 82 of the Treaty

1. Agreements, decisions and concerted practices caught by Article 81(1) of the Treaty which do not satisfy the conditions of Article 81(3) of the Treaty shall be prohibited, no prior decision to that effect being required.

2. Agreements, decisions and concerted practices caught by Article 81(1) of the Treaty which satisfy the conditions of Article 81(3) of the Treaty shall not be prohibited, no prior decision to that effect being required.

3. The abuse of a dominant position referred to in Article 82 of the Treaty shall be prohibited, no prior decision to that effect being required.

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[1] OJ 124, 28.11.1962, p. 2751/62; Regulation as last amended by Regulation No 1002/67/EEC (OJ 306, 16.12.1967, p. 1).

[2] Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1). Regulation as last amended by the Act of Accession of 1994.

[3] Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 81 and 82 (The title of the Regulation has been adjusted to take account of the renumbering of the Articles of the EC Treaty, in accordance with Article 12 of the Treaty of Amsterdam; the original reference was to Articles 85 and 86 of the Treaty) of the Treaty to maritime transport (OJ L 378, 31.12.1986, p. 4). Regulation as last amended by the Act of Accession of 1994.

[4] Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ L 374, 31.12.1987, p. 1). Regulation as last amended by Regulation (EEC) No 2410/92 (OJ L 240, 24.8.1992, p. 18).

Article 2

Burden of proof

In any national or Community proceedings for the application of Articles 81 and 82 of the Treaty, the burden of proving an infringement of Article 81(1) or of Article 82 of the Treaty shall rest on the party or the authority alleging the infringement. The undertaking or association of undertakings claiming the benefit of Article 81(3) of the Treaty shall bear the burden of proving that the conditions of that paragraph are fulfilled.

Article 3

Relationship between Articles 81 and 82 of the Treaty and national competition laws

1. Where the competition authorities of the Member States or national courts apply national competition law to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 81(1) of the Treaty which may affect trade between Member States within the meaning of that provision, they shall also apply Article 81 of the Treaty to such agreements, decisions or concerted practices. Where the competition authorities of the Member States or national courts apply national competition law to any abuse prohibited by Article 82 of the Treaty, they shall also apply Article 82 of the Treaty.

2. The application of national competition law may not lead to the prohibition of agreements, decisions by associations of undertakings or concerted practices which may affect trade between Member States but which do not restrict competition within the meaning of Article 81(1) of the Treaty, or which fulfil the conditions of Article 81(3) of the Treaty or which are covered by a Regulation for the application of Article 81(3) of the Treaty. Member States shall not under this Regulation be precluded from adopting and applying on their territory stricter national laws which prohibit or sanction unilateral conduct engaged in by undertakings.

3. Without prejudice to general principles and other provisions of Community law, paragraphs 1 and 2 do not apply when the competition authorities and the courts of the Member States apply national merger control laws nor do they preclude the application of provisions of national law that predominantly pursue an objective different from that pursued by Articles 81 and 82 of the Treaty.

CHAPTER II

POWERS

Article 4

Powers of the Commission

For the purpose of applying Articles 81 and 82 of the Treaty, the Commission shall have the powers provided for by this Regulation.

Article 5

Powers of the competition authorities of the Member States

The competition authorities of the Member States shall have the power to apply Articles 81 and 82 of the Treaty in individual cases. For this purpose, acting on their own initiative or on a complaint, they may take the following decisions:

— requiring that an infringement be brought to an end,

— ordering interim measures,

— accepting commitments,

— imposing fines, periodic penalty payments or any other penalty provided for in their national law.

Where on the basis of the information in their possession the conditions for prohibition are not met they may likewise decide that there are no grounds for action on their part.

Article 6

Powers of the national courts

National courts shall have the power to apply Articles 81 and 82 of the Treaty.

CHAPTER III

COMMISSION DECISIONS

Article 7

Finding and termination of infringement

1. Where the Commission, acting on a complaint or on its own initiative, finds that there is an infringement of Article 81 or of Article 82 of the Treaty, it may by decision require the undertakings and associations of undertakings concerned to bring such infringement to an end. For this purpose, it may impose on them any behavioural or structural remedies which are proportionate to the infringement committed and necessary to bring the infringement effectively to an end. Structural remedies can only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. If the Commission has a legitimate interest in doing so, it may also find that an infringement has been committed in the past.

2. Those entitled to lodge a complaint for the purposes of paragraph 1 are natural or legal persons who can show a legitimate interest and Member States.

Article 8

Interim measures

1. In cases of urgency due to the risk of serious and irreparable damage to competition, the Commission, acting on its own initiative may by decision, on the basis of a *prima facie* finding of infringement, order interim measures.

2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

Article 9

Commitments

1. Where the Commission intends to adopt a decision requiring that an infringement be brought to an end and the undertakings concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment, the Commission may by decision make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission.

2. The Commission may, upon request or on its own initiative, reopen the proceedings:

(a) where there has been a material change in any of the facts on which the decision was based;

(b) where the undertakings concerned act contrary to their commitments; or

(c) where the decision was based on incomplete, incorrect or misleading information provided by the parties.

Article 10

Finding of inapplicability

Where the Community public interest relating to the application of Articles 81 and 82 of the Treaty so requires, the Commission, acting on its own initiative, may by decision find that Article 81 of the Treaty is not applicable to an agreement, a decision by an association of undertakings or a concerted practice, either because the conditions of Article 81(1) of the Treaty are not fulfilled, or because the conditions of Article 81(3) of the Treaty are satisfied.

The Commission may likewise make such a finding with reference to Article 82 of the Treaty.

CHAPTER IV

COOPERATION

Article 11

Cooperation between the Commission and the competition authorities of the Member States

1. The Commission and the competition authorities of the Member States shall apply the Community competition rules in close cooperation.

2. The Commission shall transmit to the competition authorities of the Member States copies of the most important documents it has collected with a view to applying Articles 7, 8, 9, 10 and Article 29(1). At the request of the competition authority of a Member State, the Commission shall provide it with a copy of other existing documents necessary for the assessment of the case.

3. The competition authorities of the Member States shall, when acting under Article 81 or Article 82 of the Treaty, inform the Commission in writing before or without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other Member States.

4. No later than 30 days before the adoption of a decision requiring that an infringement be brought to an end, accepting commitments or withdrawing the benefit of a block exemption Regulation, the competition authorities of the Member States shall inform the Commission. To that effect, they shall provide the Commission with a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action. This information may also be made available to the competition authorities of the other Member States. At the request of the Commission, the acting competition authority shall make available to the Commission other documents it holds which are necessary for the assessment of the case. The information supplied to the Commission may be made available to the competition authorities of the other Member States. National competition authorities may also exchange between themselves information necessary for the assessment of a case that they are dealing with under Article 81 or Article 82 of the Treaty.

5. The competition authorities of the Member States may consult the Commission on any case involving the application of Community law.

6. The initiation by the Commission of proceedings for the adoption of a decision under Chapter III shall relieve the competition authorities of the Member States of their competence to apply Articles 81 and 82 of the Treaty. If a competition authority of a Member State is already acting on a case, the Commission shall only initiate proceedings after consulting with that national competition authority.

Article 12

Exchange of information

1. For the purpose of applying Articles 81 and 82 of the Treaty the Commission and the competition authorities of the Member States shall have the power to provide one another with and use in evidence any matter of fact or of law, including confidential information.

2. Information exchanged shall only be used in evidence for the purpose of applying Article 81 or Article 82 of the Treaty and in respect of the subject-matter for which it was collected by the transmitting authority. However, where national competition law is applied in the same case and in parallel to Community competition law and does not lead to a different outcome, information exchanged under this Article may also be used for the application of national competition law.

3. Information exchanged pursuant to paragraph 1 can only be used in evidence to impose sanctions on natural persons where:

— the law of the transmitting authority foresees sanctions of a similar kind in relation to an infringement of Article 81 or Article 82 of the Treaty or, in the absence thereof,

— the information has been collected in a way which respects the same level of protection of the rights of defence of natural persons as provided for under the national rules of the receiving authority. However, in this case, the information exchanged cannot be used by the receiving authority to impose custodial sanctions.

Article 13

Suspension or termination of proceedings

1. Where competition authorities of two or more Member States have received a complaint or are acting on their own initiative under Article 81 or Article 82 of the Treaty against the same agreement, decision of an association or practice, the fact that one authority is dealing with the case shall be sufficient grounds for the others to suspend the proceedings before them or to reject the complaint. The Commission may likewise reject a complaint on the ground that a competition authority of a Member State is dealing with the case.

2. Where a competition authority of a Member State or the Commission has received a complaint against an agreement, decision of an association or practice which has already been dealt with by another competition authority, it may reject it.

Article 14

Advisory Committee

1. The Commission shall consult an Advisory Committee on Restrictive Practices and Dominant Positions prior to the taking of any decision under Articles 7, 8, 9, 10, 23, Article 24(2) and Article 29(1).

2. For the discussion of individual cases, the Advisory Committee shall be composed of representatives of the competition authorities of the Member States. For meetings in which issues other than individual cases are being discussed, an additional Member State representative competent in competition matters may be appointed. Representatives may, if unable to attend, be replaced by other representatives.

3. The consultation may take place at a meeting convened and chaired by the Commission, held not earlier than 14 days after dispatch of the notice convening it, together with a summary of the case, an indication of the most important documents and a preliminary draft decision. In respect of decisions pursuant to Article 8, the meeting may be held seven days after the dispatch of the operative part of a draft decision. Where the Commission dispatches a notice convening the meeting which gives a shorter period of notice than those specified above, the meeting may take place on the proposed date in the absence of an objection by any Member State. The Advisory Committee shall deliver a written opinion on the Commission's preliminary draft decision. It may deliver an opinion even if some members are absent and are not represented. At the request of one or several members, the positions stated in the opinion shall be reasoned.

4. Consultation may also take place by written procedure. However, if any Member State so requests, the Commission shall convene a meeting. In case of written procedure, the Commission shall determine a time-limit of not less than 14 days within which the Member States are to put forward their observations for circulation to all other Member States. In case of decisions to be taken pursuant to Article 8, the time-limit of 14 days is replaced by seven days. Where the Commission determines a time-limit for the written procedure which is shorter than those specified above, the proposed time-limit shall be applicable in the absence of an objection by any Member State.

5. The Commission shall take the utmost account of the opinion delivered by the Advisory Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

6. Where the Advisory Committee delivers a written opinion, this opinion shall be appended to the draft decision. If the Advisory Committee recommends publication of the opinion, the Commission shall carry out such publication taking into account the legitimate interest of undertakings in the protection of their business secrets.

7. At the request of a competition authority of a Member State, the Commission shall include on the agenda of the Advisory Committee cases that are being dealt with by a competition authority of a Member State under Article 81 or Article 82 of the Treaty. The Commission may also do so on its own initiative. In either case, the Commission shall inform the competition authority concerned.

A request may in particular be made by a competition authority of a Member State in respect of a case where the Commission intends to initiate proceedings with the effect of Article 11(6).

The Advisory Committee shall not issue opinions on cases dealt with by competition authorities of the Member States. The Advisory Committee may also discuss general issues of Community competition law.

Article 15

Cooperation with national courts

1. In proceedings for the application of Article 81 or Article 82 of the Treaty, courts of the Member States may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of the Community competition rules.

2. Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of Article 81 or Article 82 of the Treaty. Such copy shall be forwarded without delay after the full written judgment is notified to the parties.

3. Competition authorities of the Member States, acting on their own initiative, may submit written observations to the national courts of their Member State on issues relating to the application of Article 81 or Article 82 of the Treaty. With the permission of the court in question, they may also submit oral observations to the national courts of their Member State. Where the coherent application of Article 81 or Article 82 of the Treaty so requires, the Commission, acting on its own initiative, may submit written observations to courts of the Member States. With the permission of the court in question, it may also make oral observations.

For the purpose of the preparation of their observations only, the competition authorities of the Member States and the Commission may request the relevant court of the Member State to transmit or ensure the transmission to them of any documents necessary for the assessment of the case.

4. This Article is without prejudice to wider powers to make observations before courts conferred on competition authorities of the Member States under the law of their Member State.

Article 16

Uniform application of Community competition law

1. When national courts rule on agreements, decisions or practices under Article 81 or Article 82 of the Treaty which are already the subject of a Commission decision, they cannot take decisions running counter to the decision adopted by the Commission. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated. To that effect, the national court may assess whether it is necessary to stay its proceedings. This obligation is without prejudice to the rights and obligations under Article 234 of the Treaty.

2. When competition authorities of the Member States rule on agreements, decisions or practices under Article 81 or Article 82 of the Treaty which are already the subject of a Commission decision, they cannot take decisions which would run counter to the decision adopted by the Commission.

CHAPTER V

POWERS OF INVESTIGATION

Article 17

Investigations into sectors of the economy and into types of agreements

1. Where the trend of trade between Member States, the rigidity of prices or other circumstances suggest that competition may be restricted or distorted within the common market, the Commission may conduct its inquiry into a particular sector of the economy or into a particular type of agreements across various sectors. In the course of that inquiry, the Commission may request the undertakings or associations of undertakings concerned to supply the information necessary for giving effect to Articles 81 and 82 of the Treaty and may carry out any inspections necessary for that purpose.

The Commission may in particular request the undertakings or associations of undertakings concerned to communicate to it all agreements, decisions and concerted practices.

The Commission may publish a report on the results of its inquiry into particular sectors of the economy or particular types of agreements across various sectors and invite comments from interested parties.

2. Articles 14, 18, 19, 20, 22, 23 and 24 shall apply *mutatis mutandis*.

Article 18

Requests for information

1. In order to carry out the duties assigned to it by this Regulation, the Commission may, by simple request or by decision, require undertakings and associations of undertakings to provide all necessary information.

2. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 23 for supplying incorrect or misleading information.

3. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 23 and indicate or impose the penalties provided for in Article 24. It shall further indicate the right to have the decision reviewed by the Court of Justice.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the undertaking or the association of undertakings concerned. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. The Commission shall without delay forward a copy of the simple request or of the decision to the competition authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated and the competition authority of the Member State whose territory is affected.

6. At the request of the Commission the governments and competition authorities of the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

Article 19

Power to take statements

1. In order to carry out the duties assigned to it by this Regulation, the Commission may interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject-matter of an investigation.

2. Where an interview pursuant to paragraph 1 is conducted in the premises of an undertaking, the Commission shall inform the competition authority of the Member State in whose territory the interview takes place. If so requested by the competition authority of that Member State, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.

Article 20

The Commission's powers of inspection

1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct all necessary inspections of undertakings and associations of undertakings.

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered:

(a) to enter any premises, land and means of transport of undertakings and associations of undertakings;

(b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;

(c) to take or obtain in any form copies of or extracts from such books or records;

(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection;

(e) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.

3. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Article 23 in case the production of the required books or other records related to the business is incomplete or where the answers to questions asked under paragraph 2 of the present Article are incorrect or misleading. In good time before the inspection, the Commission shall give notice of the inspection to the competition authority of the Member State in whose territory it is to be conducted.

4. Undertakings and associations of undertakings are required to submit to inspections ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the penalties provided for in Articles 23 and 24 and the right to have the decision reviewed by the Court of Justice. The Commission shall take such decisions after consulting the competition authority of the Member State in whose territory the inspection is to be conducted.

5. Officials of as well as those authorised or appointed by the competition authority of the Member State in whose territory the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.

6. Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

7. If the assistance provided for in paragraph 6 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.

8. Where authorisation as referred to in paragraph 7 is applied for, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the Member State competition authority, for detailed explanations in particular on the grounds the Commission has for suspecting infringement of Articles 81 and 82 of the Treaty, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the Commission's file. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice.

Article 21

Inspection of other premises

1. If a reasonable suspicion exists that books or other records related to the business and to the subject-matter of the inspection, which may be relevant to prove a serious violation of Article 81 or Article 82 of the Treaty, are being kept in any other premises, land and means of transport, including the homes of directors, managers and other members of staff of the undertakings and associations of undertakings concerned, the Commission can by decision order an inspection to be conducted in such other premises, land and means of transport.

2. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin and indicate the right to have the decision reviewed by the Court of Justice. It shall in particular state the reasons that have led the Commission to conclude that a suspicion in the sense of paragraph 1 exists. The Commission shall take such decisions after consulting the competition authority of the Member State in whose territory the inspection is to be conducted.

3. A decision adopted pursuant to paragraph 1 cannot be executed without prior authorisation from the national judicial authority of the Member State concerned. The national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard in particular to the seriousness of the suspected infringement, to the importance of the evidence sought, to the involvement of the undertaking concerned and to the reasonable likelihood that business books and records relating to the subject matter of the inspection are kept in the premises for which the authorisation is requested. The national judicial authority may ask the Commission, directly or through the Member State competition authority, for detailed explanations on those elements which are necessary to allow its control of the proportionality of the coercive measures envisaged.

However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with information in the Commission's file. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice.

4. The officials and other accompanying persons authorised by the Commission to conduct an inspection ordered in accordance with paragraph 1 of this Article shall have the powers set out in Article 20(2)(a), (b) and (c). Article 20(5) and (6) shall apply *mutatis mutandis*.

Article 22

Investigations by competition authorities of Member States

1. The competition authority of a Member State may in its own territory carry out any inspection or other fact-finding measure under its national law on behalf and for the account of the competition authority of another Member State in order to establish whether there has been an infringement of Article 81 or Article 82 of the Treaty. Any exchange and use of the information collected shall be carried out in accordance with Article 12.

2. At the request of the Commission, the competition authorities of the Member States shall undertake the inspections which the Commission considers to be necessary under Article 20(1) or which it has ordered by decision pursuant to Article 20(4). The officials of the competition authorities of the Member States who are responsible for conducting these inspections as well as those authorised or appointed by them shall exercise their powers in accordance with their national law.

If so requested by the Commission or by the competition authority of the Member State in whose territory the inspection is to be conducted, officials and other accompanying persons authorised by the Commission may assist the officials of the authority concerned.

CHAPTER VI

PENALTIES

Article 23

Fines

1. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1 % of the total turnover in the preceding business year where, intentionally or negligently:

(a) they supply incorrect or misleading information in response to a request made pursuant to Article 17 or Article 18(2);

(b) in response to a request made by decision adopted pursuant to Article 17 or Article 18(3), they supply incorrect, incomplete or misleading information or do not supply information within the required time-limit;

(c) they produce the required books or other records related to the business in incomplete form during inspections under Article 20 or refuse to submit to inspections ordered by a decision adopted pursuant to Article 20(4);

(d) in response to a question asked in accordance with Article 20(2)(e),

— they give an incorrect or misleading answer,

— they fail to rectify within a time-limit set by the Commission an incorrect, incomplete or misleading answer given by a member of staff, or

— they fail or refuse to provide a complete answer on facts relating to the subject-matter and purpose of an inspection ordered by a decision adopted pursuant to Article 20(4);

(e) seals affixed in accordance with Article 20(2)(d) by officials or other accompanying persons authorised by the Commission have been broken.

2. The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

(a) they infringe Article 81 or Article 82 of the Treaty; or

(b) they contravene a decision ordering interim measures under Article 8; or

(c) they fail to comply with a commitment made binding by a decision pursuant to Article 9.

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10 % of its total turnover in the preceding business year.

Where the infringement of an association relates to the activities of its members, the fine shall not exceed 10 % of the sum of the total turnover of each member active on the market affected by the infringement of the association.

3. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

4. When a fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association is obliged to call for contributions from its members to cover the amount of the fine.

Where such contributions have not been made to the association within a time-limit fixed by the Commission, the Commission may require payment of the fine directly by any of the undertakings whose representatives were members of the decision-making bodies concerned of the association.

After the Commission has required payment under the second subparagraph, where necessary to ensure full payment of the fine, the Commission may require payment of the balance by any of the members of the association which were active on the market on which the infringement occurred.

However, the Commission shall not require payment under the second or the third subparagraph from undertakings which show that they have not implemented the infringing decision of the association and either were not aware of its existence or have actively distanced themselves from it before the Commission started investigating the case.

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10 % of its total turnover in the preceding business year.

5. Decisions taken pursuant to paragraphs 1 and 2 shall not be of a criminal law nature.

Article 24

Periodic penalty payments

1. The Commission may, by decision, impose on undertakings or associations of undertakings periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding business year per day and calculated from the date appointed by the decision, in order to compel them:

(a) to put an end to an infringement of Article 81 or Article 82 of the Treaty, in accordance with a decision taken pursuant to Article 7;

(b) to comply with a decision ordering interim measures taken pursuant to Article 8;

(c) to comply with a commitment made binding by a decision pursuant to Article 9;

(d) to supply complete and correct information which it has requested by decision taken pursuant to Article 17 or Article 18(3);

(e) to submit to an inspection which it has ordered by decision taken pursuant to Article 20(4).

2. Where the undertakings or associations of undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision. Article 23(4) shall apply correspondingly.

CHAPTER VII

LIMITATION PERIODS

Article 25

Limitation periods for the imposition of penalties

1. The powers conferred on the Commission by Articles 23 and 24 shall be subject to the following limitation periods:

(a) three years in the case of infringements of provisions concerning requests for information or the conduct of inspections;

(b) five years in the case of all other infringements.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

3. Any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:

(a) written requests for information by the Commission or by the competition authority of a Member State;

(b) written authorisations to conduct inspections issued to its officials by the Commission or by the competition authority of a Member State;

(c) the initiation of proceedings by the Commission or by the competition authority of a Member State;

(d) notification of the statement of objections of the Commission or of the competition authority of a Member State.

4. The interruption of the limitation period shall apply for all the undertakings or associations of undertakings which have participated in the infringement.

5. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 6.

6. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice.

Article 26

Limitation period for the enforcement of penalties

1. The power of the Commission to enforce decisions taken pursuant to Articles 23 and 24 shall be subject to a limitation period of five years.

2. Time shall begin to run on the day on which the decision becomes final.

3. The limitation period for the enforcement of penalties shall be interrupted:

(a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;

(b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.

4. Each interruption shall start time running afresh.

5. The limitation period for the enforcement of penalties shall be suspended for so long as:

(a) time to pay is allowed;

(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice.

CHAPTER VIII

HEARINGS AND PROFESSIONAL SECRECY

Article 27

Hearing of the parties, complainants and others

1. Before taking decisions as provided for in Articles 7, 8, 23 and Article 24(2), the Commission shall give the undertakings or associations of undertakings which are the subject of the proceedings conducted by the Commission the opportunity of being heard on the matters to which the Commission has taken objection. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment. Complainants shall be associated closely with the proceedings.

2. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission's file, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the competition authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the competition authorities of the Member States, or between the latter, including documents drawn up pursuant to Articles 11 and 14. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

3. If the Commission considers it necessary, it may also hear other natural or legal persons. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted. The competition authorities of the Member States may also ask the Commission to hear other natural or legal persons.

4. Where the Commission intends to adopt a decision pursuant to Article 9 or Article 10, it shall publish a concise summary of the case and the main content of the commitments or of the proposed course of action. Interested third parties may submit their observations within a time limit which is fixed by the Commission in its publication and which may not be less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 28

Professional secrecy

1. Without prejudice to Articles 12 and 15, information collected pursuant to Articles 17 to 22 shall be used only for the purpose for which it was acquired.

2. Without prejudice to the exchange and to the use of information foreseen in Articles 11, 12, 14, 15 and 27, the Commission and the competition authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities as well as officials and civil servants of other authorities of the Member States shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. This obligation also applies to all representatives and experts of Member States attending meetings of the Advisory Committee pursuant to Article 14.

CHAPTER IX

EXEMPTION REGULATIONS

Article 29

Withdrawal in individual cases

1. Where the Commission, empowered by a Council Regulation, such as Regulations 19/65/EEC, (EEC) No 2821/71, (EEC) No 3976/87, (EEC) No 1534/91 or (EEC) No 479/92, to apply Article 81(3) of the Treaty by regulation, has declared Article 81(1) of the Treaty inapplicable to certain categories of agreements, decisions by associations of undertakings or concerted practices, it may, acting on its own initiative or on a complaint, withdraw the benefit of such an exemption Regulation when it finds that in any particular case an agreement, decision or concerted practice to which the exemption Regulation applies has certain effects which are incompatible with Article 81(3) of the Treaty.

2. Where, in any particular case, agreements, decisions by associations of undertakings or concerted practices to which a Commission Regulation referred to in paragraph 1 applies have effects which are incompatible with Article 81(3) of the Treaty in the territory of a Member State, or in a part thereof, which has all the characteristics of a distinct geographic market, the competition authority of that Member State may withdraw the benefit of the Regulation in question in respect of that territory.

CHAPTER X

GENERAL PROVISIONS

Article 30

Publication of decisions

1. The Commission shall publish the decisions, which it takes pursuant to Articles 7 to 10, 23 and 24.

2. The publication shall state the names of the parties and the main content of the decision, including any penalties imposed. It shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 31

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Commission has fixed a fine or periodic penalty payment. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 32

Exclusions

This Regulation shall not apply to:

(a) international tramp vessel services as defined in Article 1(3)(a) of Regulation (EEC) No 4056/86;

(b) a maritime transport service that takes place exclusively between ports in one and the same Member State as foreseen in Article 1(2) of Regulation (EEC) No 4056/86;

(c) air transport between Community airports and third countries.

Article 33

Implementing provisions

1. The Commission shall be authorised to take such measures as may be appropriate in order to apply this Regulation. The measures may concern, *inter alia*:

(a) the form, content and other details of complaints lodged pursuant to Article 7 and the procedure for rejecting complaints;

(b) the practical arrangements for the exchange of information and consultations provided for in Article 11;

(c) the practical arrangements for the hearings provided for in Article 27.

2. Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time-limit it lays down, which may not be less than one month. Before publishing a draft measure and before adopting it, the Commission shall consult the Advisory Committee on Restrictive Practices and Dominant Positions.

CHAPTER XI

TRANSITIONAL, AMENDING AND FINAL PROVISIONS

Article 34

Transitional provisions

1. Applications made to the Commission under Article 2 of Regulation No 17, notifications made under Articles 4 and 5 of that Regulation and the corresponding applications and notifications made under Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 shall lapse as from the date of application of this Regulation.

2. Procedural steps taken under Regulation No 17 and Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 shall continue to have effect for the purposes of applying this Regulation.

Article 35

Designation of competition authorities of Member States

1. The Member States shall designate the competition authority or authorities responsible for the application of Articles 81 and 82 of the Treaty in such a way that the provisions of this regulation are effectively complied with. The measures necessary to empower those authorities to apply those Articles shall be taken before 1 May 2004. The authorities designated may include courts.

2. When enforcement of Community competition law is entrusted to national administrative and judicial authorities, the Member States may allocate different powers and functions to those different national authorities, whether administrative or judicial.

3. The effects of Article 11(6) apply to the authorities designated by the Member States including courts that exercise functions regarding the preparation and the adoption of the types of decisions foreseen in Article 5. The effects of Article 11(6) do not extend to courts insofar as they act as review courts in respect of the types of decisions foreseen in Article 5.

4. Notwithstanding paragraph 3, in the Member States where, for the adoption of certain types of decisions foreseen in Article 5, an authority brings an action before a judicial authority that is separate and different from the prosecuting authority and provided that the terms of this paragraph are complied with, the effects of Article 11(6) shall be limited to the authority prosecuting the case which shall withdraw its claim before the judicial authority when the Commission opens proceedings and this withdrawal shall bring the national proceedings effectively to an end.

Article 36

Amendment of Regulation (EEC) No 1017/68

Regulation (EEC) No 1017/68 is amended as follows:

1. Article 2 is repealed;

2. in Article 3(1), the words 'The prohibition laid down in Article 2' are replaced by the words 'The prohibition in Article 81(1) of the Treaty';

3. Article 4 is amended as follows:

   (a) In paragraph 1, the words 'The agreements, decisions and concerted practices referred to in Article 2' are replaced by the words 'Agreements, decisions and concerted practices pursuant to Article 81(1) of the Treaty';

   (b) Paragraph 2 is replaced by the following:

   '2. If the implementation of any agreement, decision or concerted practice covered by paragraph 1 has, in a given case, effects which are incompatible with the requirements of Article 81(3) of the Treaty, undertakings or associations of undertakings may be required to make such effects cease.'

4. Articles 5 to 29 are repealed with the exception of Article 13(3) which continues to apply to decisions adopted pursuant to Article 5 of Regulation (EEC) No 1017/68 prior to the date of application of this Regulation until the date of expiration of those decisions;

5. in Article 30, paragraphs 2, 3 and 4 are deleted.

Article 37

Amendment of Regulation (EEC) No 2988/74

In Regulation (EEC) No 2988/74, the following Article is inserted:

'*Article 7a*

Exclusion

This Regulation shall not apply to measures taken under Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (*).

(*) OJ L 1, 4.1.2003, p. 1.'

Article 38

Amendment of Regulation (EEC) No 4056/86

Regulation (EEC) No 4056/86 is amended as follows:

1. Article 7 is amended as follows:

   (a) Paragraph 1 is replaced by the following:

   '1. *Breach of an obligation*

   Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the exemption provided for in Article 3, the Commission may, in order to put an end to such breach and under the conditions laid down in Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (*) adopt a decision that either prohibits them from carrying out or requires them to perform certain specific acts, or withdraws the benefit of the block exemption which they enjoyed.

   (*) OJ L 1, 4.1.2003, p. 1.'

   (b) Paragraph 2 is amended as follows:

   (i) In point (a), the words 'under the conditions laid down in Section II' are replaced by the words 'under the conditions laid down in Regulation (EC) No 1/2003';

   (ii) The second sentence of the second subparagraph of point (c)(i) is replaced by the following:

   'At the same time it shall decide, in accordance with Article 9 of Regulation (EC) No 1/2003, whether to accept commitments offered by the undertakings concerned with a view, *inter alia*, to obtaining access to the market for non-conference lines.'

2. Article 8 is amended as follows:

   (a) Paragraph 1 is deleted.

   (b) In paragraph 2 the words 'pursuant to Article 10' are replaced by the words 'pursuant to Regulation (EC) No 1/2003'.

   (c) Paragraph 3 is deleted;

3. Article 9 is amended as follows:

   (a) In paragraph 1, the words 'Advisory Committee referred to in Article 15' are replaced by the words 'Advisory Committee referred to in Article 14 of Regulation (EC) No 1/2003';

   (b) In paragraph 2, the words 'Advisory Committee as referred to in Article 15' are replaced by the words 'Advisory Committee referred to in Article 14 of Regulation (EC) No 1/2003';

4. Articles 10 to 25 are repealed with the exception of Article 13(3) which continues to apply to decisions adopted pursuant to Article 81(3) of the Treaty prior to the date of application of this Regulation until the date of expiration of those decisions;

5. in Article 26, the words 'the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and the hearings provided for in Article 23(1) and (2)' are deleted.

Article 39

Amendment of Regulation (EEC) No 3975/87

Articles 3 to 19 of Regulation (EEC) No 3975/87 are repealed with the exception of Article 6(3) which continues to apply to decisions adopted pursuant to Article 81(3) of the Treaty prior to the date of application of this Regulation until the date of expiration of those decisions.

Article 40

Amendment of Regulations No 19/65/EEC, (EEC) No 2821/71 and (EEC) No 1534/91

Article 7 of Regulation No 19/65/EEC, Article 7 of Regulation (EEC) No 2821/71 and Article 7 of Regulation (EEC) No 1534/91 are repealed.

Article 41

Amendment of Regulation (EEC) No 3976/87

Regulation (EEC) No 3976/87 is amended as follows:

1. Article 6 is replaced by the following:

'*Article 6*

The Commission shall consult the Advisory Committee referred to in Article 14 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (*) before publishing a draft Regulation and before adopting a Regulation.

(*) OJ L 1, 4.1.2003, p. 1.'

2. Article 7 is repealed.

Article 42

Amendment of Regulation (EEC) No 479/92

Regulation (EEC) No 479/92 is amended as follows:

1. Article 5 is replaced by the following:

'*Article 5*

Before publishing the draft Regulation and before adopting the Regulation, the Commission shall consult the Advisory Committee referred to in Article 14 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (*).

(*) OJ L 1, 4.1.2003, p. 1.'

2. Article 6 is repealed.

Article 43

Repeal of Regulations No 17 and No 141

1. Regulation No 17 is repealed with the exception of Article 8(3) which continues to apply to decisions adopted pursuant to Article 81(3) of the Treaty prior to the date of application of this Regulation until the date of expiration of those decisions.

2. Regulation No 141 is repealed.

3. References to the repealed Regulations shall be construed as references to this Regulation.

Article 44

Report on the application of the present Regulation

Five years from the date of application of this Regulation, the Commission shall report to the European Parliament and the Council on the functioning of this Regulation, in particular on the application of Article 11(6) and Article 17.

On the basis of this report, the Commission shall assess whether it is appropriate to propose to the Council a revision of this Regulation.

Article 45

Entry into force

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

It shall apply from 1 May 2004.

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

Done at Brussels, 16 December 2002.

For the Council
The President
M. FISCHER BOEL

COUNCIL REGULATION (EC) No 2/2003

of 19 December 2002

amending Regulation (EC) No 2248/2001 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, and for applying the Interim Agreement between the European Community and the Republic of Croatia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council is in the process of concluding a Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, which was signed at Luxembourg on 29 October 2001 (hereinafter referred to as 'the Stabilisation and Association Agreement').

(2) Meanwhile on 29 October 2001 the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part [1] (hereinafter referred to as 'Interim Agreement'). The Interim Agreement entered into force on 1 March 2002 but applied provisionally from 1 January 2002.

(3) Regulation (EC) No 2248/2001 [2] lays down certain procedures for applying some provisions of these Agreements. It is, however, necessary to lay down procedures for applying certain additional provisions of these Agreements.

(4) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 December 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3].

(5) With regard to trade defence measures, it is appropriate to lay down specific provisions concerning the general rules provided for in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [4].

(6) This Regulation should continue to apply after entry into force of the Stabilisation and Association Agreement,

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 2248/2001 the following Articles shall be inserted:

'*Article 7a*

General safeguard clause and shortage clause

1. Where a Member State requests the Commission to take measures as provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it.

2. The Commission shall be assisted by the Advisory Committee established by Article 4 of Council Regulation (EC) No 3285/94 (*) (hereinafter referred to as "the Committee").

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

4. The Committee shall adopt its rules of procedure.

5. Where the Commission, at the request of a Member State or on its own initiative, finds that the conditions laid down in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement are fulfilled, it shall:

— inform the Member States forthwith if acting on its own initiative or, if it is responding to a Member State's request, within five working days of the date of receipt of that request,

— consult the Committee on the proposed measures,

— at the same time inform Croatia and shall notify it of the opening of the consultations within the Interim Committee, and thereafter the Stabilisation and Association Council as provided for in Article 25(4) and Article 26(3) of the Interim Agreement, and thereafter Article 38(4) and Article 39(3) of the Stabilisation and Association Agreement,

— at the same time provide the Interim Committee, and thereafter the Stabilisation and Association Council, with all the information necessary for these consultations as provided for in Article 25(3) and Article 26(3) of the Interim Agreement, and thereafter Article 38(3) and Article 39(3) of the Stabilisation and Association Agreement.

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[1] OJ L 330, 14.12.2001, p. 3.
[2] OJ L 304, 21.11.2001, p. 1.
[3] OJ L 184, 17.7.1999, p. 23.
[4] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

6. On the completion of the consultations, and if no other arrangement proves possible, the Commission, after consulting the Committee, may decide on appropriate measures provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement.

That Decision shall be notified forthwith to the Council; it shall also be notified to the Interim Committee, and thereafter the Stabilisation and Association Council.

That Decision shall be applicable immediately.

7. Any Member State may refer the Commission's Decision referred to in paragraph 6 to the Council within 10 working days of its notification.

The Council, acting by a qualified majority, may take a different decision within two months.

8. If the Commission decides not to take measures as provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement, it shall inform the Council accordingly within five working days of receipt of the request from the Member State.

Any Member State may refer that Decision of the Commission to the Council within 10 working days of its notification.

If the Council, acting by qualified majority, indicates its intention to adopt a different decision, the Commission shall inform Croatia thereof forthwith and shall notify it of the opening of the consultations within the Interim Committee, and thereafter the Stabilisation and Association Council, as provided for in Article 25(3) and (4) and Article 26(3) of the Interim Agreement, and thereafter Article 38(3) and (4) and Article 39(3) of the Stabilisation and Association Agreement.

9. The Council, acting by qualified majority, may take a different Decision within two months of the conclusion of the consultations with Croatia within the Interim Committee, and thereafter the Stabilisation and Association Council.

10. The consultations within the Interim Committee, and thereafter the Stabilisation and Association Council, shall be deemed to be completed 30 days after the notification referred to in paragraphs 5 and 8.

Article 7b

Exceptional and critical circumstances

1. Where exceptional and critical circumstances arise within the meaning of Article 25(4)(b) and Article 26(4) of the Interim Agreement, and thereafter Article 38(4)(b) and Article 39(4) of the Stabilisation and Association Agreement, the Commission may take immediate measures as provided for in Articles 25 and 26 of the Interim Agreement, and thereafter Articles 38 and 39 of the Stabilisation and Association Agreement.

If the Commission receives a request from a Member State, it shall take a Decision thereon within five working days of receipt of the request.

2. The Commission shall notify the Council of its Decision.

3. Any Member State may refer the Commission's Decision to the Council within 10 working days of receiving notification of that Decision.

The Council, acting by a qualified majority, may take a different Decision within two months.

Article 7c

Safeguard clause for agricultural and fisheries products

Notwithstanding the procedures set out in Articles 7a and 7b, necessary measures concerning agricultural and fisheries products on the basis of Articles 18 or 25 of the Interim Agreement, and thereafter Articles 31 or 38 of the Stabilisation and Association Agreement or on the basis of provisions in the Annexes covering these products as well as of Protocol 3, can be taken according to procedures provided for by the relevant rules establishing the common organisation of the agricultural markets or markets in fishery and aquaculture products, or in specific provisions adopted pursuant to Article 308 of the Treaty and applicable to products resulting from the processing of agricultural and fisheries products, provided that the conditions established pursuant to Article 18 of the Interim Agreement, and thereafter Article 31 of the Stabilisation and Association Agreement or Article 25(3), (4) and (5) of the Interim Agreement, and thereafter Article 38(3), (4) and (5) of the Stabilisation and Association Agreement are met.

Article 7d

Dumping

In the case of a practice which is liable to warrant application by the Community of the measures provided for in Article 24(1) of the Interim Agreement, and thereafter Article 37(1) of the Stabilisation and Association Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (**) and the procedure provided for in Article 24(2) of the Interim Agreement, and thereafter Article 37(2) of the Stabilisation and Association Agreement.

Article 7e

Competition

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 35 of the Interim Agreement, and thereafter Article 70 of the Stabilisation and Association Agreement, the Commission after examining the case, on its own initiative or at the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedures laid down in Article 133 of the Treaty, except in the cases of aid to which Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (***) applies, when measures shall be taken

according to the procedures laid down in that Regulation. Measures shall be taken only under the conditions set out in Article 35(9) of the Interim Agreement, and thereafter Article 70(9) of the Stabilisation and Association Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by Croatia on the basis of Article 35 of the Interim Agreement, and thereafter Article 70 of the Stabilisation and Association Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principle set out in the Interim Agreement, and thereafter the Stabilisation and Association Agreement. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 81, 82 and 87 of the Treaty.

Article 7f

Fraud or failure to provide administrative cooperation

1. For the purpose of interpreting Article 30 of the Interim Agreement, and thereafter Article 43 of the Stabilisation and Association Agreement, failure to provide administrative cooperation as required for the verification of evidence of origin shall mean, *inter alia*:

— the absence of administrative cooperation, such as the failure to provide names and addresses of customs or government authorities responsible for issuing and checking certificates of origin, or specimens of stamps used to authenticate the certificates, or the failure to update that information where appropriate,

— a repeated lack or inadequacy of action in verifying the originating status of products and the fulfilment of the other requirements of Protocol 4 of the Agreements and identifying or preventing contravention of the rules of origin,

— a repeated refusal or undue delay to carry out, at the request of the Commission, subsequent verification of the proof of origin and to communicate its results in time,

— a repeated refusal or undue delay to obtain the authorisation to conduct administrative and investigative cooperation missions in Croatia, in order to verify the authenticity of documents or the accuracy of information relevant for granting the preferential treatment granted under the Agreements, or to carry out or arrange for appropriate inquiries to identify or prevent contravention of the rules of origin,

— a repeated failure to comply with the provisions of Protocol 5 on mutual administrative assistance in customs matters insofar as it is relevant to the application of the trade provisions of the Interim Agreement, and thereafter the Stabilisation and Association Agreement.

2. Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 30 of the Interim Agreement, and thereafter Article 43 of the Stabilisation and Association Agreement, are fulfilled it shall:

— inform the Council,

— enter immediately into consultations with Croatia, to find an appropriate solution as provided for in those provisions.

In addition, it may:

— call on the Member States to take such precautionary measures as are necessary in order to safeguard the Community's financial interests,

— publish a notice in the *Official Journal of the European Communities* stating that there are grounds for reasonable doubts about the application of the provisions relevant to the application of Article 30 of the Interim Agreement, and thereafter of Article 43 of the Stabilisation and Association Agreement.

3. Pending a mutually satisfactory solution having been reached in the consultations referred to in paragraph 2, the Commission may decide on other appropriate measures it deems necessary in accordance with Article 30 of the Interim Agreement, and thereafter Article 43 of the Stabilisation and Association Agreement, as well as with the procedure referred to in paragraph 5.

4. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92 (****).

5. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

6. The Committee shall draw up its rules of procedure.

Article 7g

Notification

Notification to the Interim Committee and thereafter the Stabilisation and Association Council, as required by the Interim Agreement, and thereafter the Stabilisation and Association Agreement shall be the responsibility of the Commission, acting on behalf of the Community.

(*) OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2474/2000 (OJ L 286, 11.11.2000, p. 1).
(**) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).
(***) OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).
(****) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).'

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, 19 December 2002.

For the Council

The President

L. ESPERSEN

COUNCIL REGULATION (EC) No 3/2003

of 19 December 2002

amending Regulation (EC) No 153/2002 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, and for applying the Interim Agreement between the European Community and the Former Yugoslav Republic of Macedonia

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Council is in the process of concluding a Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, which was signed at Luxembourg on 9 April 2001 (hereinafter referred to as the 'Stabilisation and Association Agreement').

(2) Meanwhile on 9 April 2001 the Council concluded an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part [1], which provides for the early entry into force of the trade and trade-related provisions of the Stabilisation and Association Agreement (hereinafter referred to as 'Interim Agreement'). The Interim Agreement entered into force on 1 June 2001.

(3) Regulation (EC) No 153/2002 [2] lays down certain procedures for applying some provisions of these Agreements. It is, however, necessary to lay down procedures for applying certain additional provisions of these Agreements.

(4) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [3].

(5) With regard to trade defence measures, it is appropriate to lay down specific provisions concerning the general rules provided for in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [4].

(6) This Regulation should continue to apply after entry into force of the Stabilisation and Association Agreement,

[1] OJ L 124, 4.5.2001, p. 2.
[2] OJ L 25, 29.1.2002, p. 16.
[3] OJ L 184, 17.7.1999, p. 23.
[4] OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 153/2002 the following Articles shall be inserted:

'*Article 7a*

General safeguard clause and shortage clause

1. Where a Member State requests the Commission to take measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement, it shall provide the Commission, in support of its request, with the information needed to justify it.

2. The Commission shall be assisted by the Advisory Committee established by Article 4 of Council Regulation (EC) No 3285/94 (*) (hereinafter referred to as "the Committee").

3. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

4. The Committee shall adopt its rules of procedure.

5. Where the Commission, at the request of a Member State or on its own initiative, finds that the conditions laid down in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement are fulfilled, it shall:

— inform the Member States forthwith if acting on its own initiative or, if it is responding to a Member State's request, within five working days of the date of receipt of that request,

— consult the Committee on the proposed measures,

— at the same time inform the Former Yugoslav Republic of Macedonia and shall notify it of the opening of the consultations within the Cooperation Council, and thereafter the Stabilisation and Association Committee as provided for in Article 24(4) and Article 25(3) of the Interim Agreement, and thereafter Article 37(4) and Article 38(3) of the Stabilisation and Association Agreement,

— at the same time provide the Cooperation Council, and thereafter the Stabilisation and Association Committee with all the information necessary for these consultations as provided for in Article 24(3) and Article 25(3) of the Interim Agreement, and thereafter Article 37(3) and Article 38(3) of the Stabilisation and Association Agreement.

6. On the completion of the consultations and if no other arrangement proves possible, the Commission, after consulting the Committee, may decide on appropriate measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement.

That Decision shall be notified forthwith to the Council; it shall also be notified to the Cooperation Council, and thereafter the Stabilisation and Association Committee.

That Decision shall be applicable immediately.

7. Any Member State may refer the Commission's Decision referred to in paragraph 6 to the Council within 10 working days of its notification.

The Council, acting by a qualified majority, may take a different Decision within two months.

8. If the Commission decides not to take measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement, it shall inform the Council accordingly within five working days of receipt of the request from the Member State.

Any Member State may refer that Decision of the Commission to the Council within 10 working days of its notification.

If the Council, acting by qualified majority, indicates its intention to adopt a different Decision, the Commission shall inform the Former Yugoslav Republic of Macedonia thereof forthwith and shall notify it of the opening of the consultations within the Cooperation Council, and thereafter the Stabilisation and Association Committee as provided for in Article 24(3) and (4) and Article 25(3) of the Interim Agreement, and thereafter Article 37(3) and (4) and Article 38(3) of the Stabilisation and Association Agreement.

9. The Council, acting by qualified majority, may take a different Decision within two months of the conclusion of the consultations with the Former Yugoslav Republic of Macedonia within the Cooperation Council, and thereafter the Stabilisation and Association Committee.

10. The consultations within the Cooperation Council, and thereafter the Stabilisation and Association Committee shall be deemed to be completed 30 days after the notification referred to in paragraphs 5 and 8.

Article 7b

Exceptional and critical circumstances

1. Where exceptional and critical circumstances arise within the meaning of Article 24(4)(b) and Article 25(4) of the Interim Agreement, and thereafter Article 37(4)(b) and Article 38(4) of the Stabilisation and Association Agreement, the Commission may take immediate measures as provided for in Articles 24 and 25 of the Interim Agreement, and thereafter Articles 37 and 38 of the Stabilisation and Association Agreement.

If the Commission receives a request from a Member State, it shall take a Decision thereon within five working days of receipt of the request.

2. The Commission shall notify the Council of its Decision.

3. Any Member State may refer the Commission's Decision to the Council within 10 working days of receiving notification of the Decision.

The Council, acting by a qualified majority, may take a different Decision within two months.

Article 7c

Safeguard clause for agricultural and fisheries products

Notwithstanding the procedures set out in Articles 7a and 7b, necessary measures concerning agricultural and fisheries products on the basis of Articles 17 or 24 of the Interim Agreement, and thereafter Articles 30 or 37 of the Stabilisation and Association Agreement or on the basis of provisions in the Annexes covering these products as well as of Protocol 3, can be taken according to procedures provided for by the relevant rules establishing the common organisation of the agricultural markets or markets in fishery and aquaculture products, or in specific provisions adopted pursuant to Article 308 of the Treaty and applicable to products resulting from the processing of agricultural and fisheries products, provided that the conditions established pursuant to Article 17 of the Interim Agreement, and thereafter Article 30 of the Stabilisation and Association Agreement or Article 24(3), (4) and (5) of the Interim Agreement, and thereafter Article 37(3), (4) and (5) of the Stabilisation and Association Agreement are met.

Article 7d

Dumping

In the case of a practice which is liable to warrant application by the Community of the measures provided for in Article 23(1) of the Interim Agreement, and thereafter Article 36(1) of the Stabilisation and Association Agreement, the introduction of anti-dumping measures shall be decided upon in accordance with the provisions laid down in Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped import from countries not members of the European Community (**) and the procedure provided for in Article 23(2) of the Interim Agreement, and thereafter Article 36(2) of the Stabilisation and Association Agreement.

Article 7e

Competition

1. In the case of a practice that may justify application by the Community of the measures provided for in Article 33 of the Interim Agreement, and thereafter Article 69 of the Stabilisation and Association Agreement, the Commission after examining the case, on its own initiative or at the request of a Member State, shall decide whether such practice is compatible with the Agreement. Where necessary it shall propose the adoption of safeguard measures to the Council, which shall act in accordance with the procedures laid down in Article 133 of the Treaty, except in the cases of aid to which Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidised imports from countries not members of the European Community (***) applies, when measures shall be taken according to the procedures laid down in that Regulation.

Measures shall be taken only under the conditions set out in Article 33(5) of the Interim Agreement, and thereafter Article 69(5) of the Stabilisation and Association Agreement.

2. In the case of a practice that may cause measures to be applied to the Community by the Former Yugoslav Republic of Macedonia on the basis of Article 33 of the Interim Agreement, and thereafter Article 69 of the Stabilisation and Association Agreement, the Commission, after examining the case, shall decide whether the practice is compatible with the principle set out in the Interim Agreement, and thereafter the Stabilisation and Association Agreement. Where necessary, it shall take appropriate decisions on the basis of criteria which result from the application of Articles 81, 82 and 87 of the Treaty.

Article 7f

Fraud or failure to provide administrative cooperation

1. For the purpose of interpreting Article 29 of the Interim Agreement, and thereafter Article 42 of the Stabilisation and Association Agreement, failure to provide administrative cooperation as required for the verification of evidence of origin shall mean, *inter alia*:

— the absence of administrative cooperation, such as the failure to provide names and addresses of customs or government authorities responsible for issuing and checking certificates of origin, or specimens of stamps used to authenticate the certificates, or the failure to update that information where appropriate,

— a repeated lack or inadequacy of action in verifying the originating status of products and the fulfilment of the other requirements of Protocol 4 of the Agreements and identifying or preventing contravention of the rules of origin,

— a repeated refusal or undue delay to carry out, at the request of the Commission, subsequent verification of the proof of origin and to communicate its results in time,

— a repeated refusal or undue delay to obtain the authorisation to conduct administrative and investigative cooperation missions in the Former Yugoslav Republic of Macedonia, in order to verify the authenticity of documents or the accuracy of information relevant for granting the preferential treatment granted under the Agreements, or to carry out or arrange for appropriate inquiries to identify or prevent contravention of the rules of origin,

— a repeated failure to comply with the provisions of Protocol 5 on mutual administrative assistance in customs matters insofar as it is relevant to the application of the trade provisions of the Interim Agreement, and thereafter the Stabilisation and Association Agreement.

2. Where the Commission, on the basis of information provided by a Member State or on its own initiative, finds that the conditions laid down in Article 29 of the Interim Agreement, and thereafter Article 42 of the Stabilisation and Association Agreement, are fulfilled it shall:

— inform the Council,

— enter immediately into consultations with the Former Yugoslav Republic of Macedonia to find an appropriate solution as provided for in those provisions.

In addition, it may:

— call on the Member States to take such precautionary measures as are necessary in order to safeguard the Community's financial interests,

— publish a notice in the *Official Journal of the European Communities* stating that there are grounds for reasonable doubts about the application of the provisions relevant to the application of Article 29 of the Interim Agreement, and thereafter of Article 42 of the Stabilisation and Association Agreement.

3. Pending a mutually satisfactory solution having been reached in the consultations referred to in paragraph 2, the Commission may decide on other appropriate measures it deems necessary in accordance with Article 29 of the Interim Agreement, and thereafter Article 42 of the Stabilisation and Association Agreement, as well as with the procedure referred to in paragraph 5.

4. The Commission shall be assisted by the Customs Code Committee set up by Article 248a of Regulation (EEC) No 2913/92 (****).

5. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.

6. The Committee shall draw up its rules of procedure.

Article 7g

Notification

Notification to the Cooperation Council, and thereafter the Stabilisation and Association Council and the Stabilisation and Association Committee, respectively, as required by the Interim Agreement, and thereafter the Stabilisation and Association Agreement shall be the responsibility of the Commission, acting on behalf of the Community.

(*) OJ L 349, 31.12.1994, p. 53. Regulation as last amended by Regulation (EC) No 2474/2000 (OJ L 286, 11.11.2000, p. 1).

(**) OJ L 56, 6.3.1996, p. 1. Regulation as last amended by Regulation (EC) No 1972/2002 (OJ L 305, 7.11.2002, p. 1).

(***) OJ L 288, 21.10.1997, p. 1. Regulation as amended by Regulation (EC) No 1973/2002 (OJ L 305, 7.11.2002, p. 4).

(****) OJ L 302, 19.10.1992, p. 1. Regulation as last amended by Regulation (EC) No 2700/2000 (OJ L 311, 12.12.2000, p. 17).'

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, 19 December 2002.

For the Council

The President

L. ESPERSEN

COMMISSION REGULATION (EC) No 4/2003

of 3 January 2003

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 January 2003.

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

Done at Brussels, 3 January 2003.

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

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

ANNEX

to the Commission Regulation of 3 January 2003 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	50,6
	204	29,2
	999	39,9
0707 00 05	052	125,1
	999	125,1
0709 90 70	052	116,8
	204	41,9
	999	79,3
0805 10 10, 0805 10 30, 0805 10 50	052	50,5
	204	60,8
	999	55,6
0805 20 10	204	70,9
	999	70,9
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	66,8
	999	66,8
0805 50 10	052	69,4
	600	72,4
	999	70,9
0808 10 20, 0808 10 50, 0808 10 90	060	37,4
	400	99,3
	404	107,1
	720	124,1
	999	92,0
0808 20 50	052	157,0
	400	87,5
	999	122,3

(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 5/2003

of 27 December 2002

laying down detailed rules for the application in 2003 of the tariff quotas for beef and veal products originating in Croatia, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2007/2000 of 18 September 2000 introducing exceptional trade measures for countries and territories participating in or linked to the European Union's Stabilisation and Association process, amending Regulation (EC) No 2820/98, and repealing Regulations (EC) No 1763/1999 and (EC) No 6/2000 [1], as last amended by Commission Regulation (EC) No 2487/2001 [2], and in particular Article 4(2) and Article 6 thereof,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [3], as last amended by Commission Regulation (EC) No 2345/2001 [4], and in particular Article 32(1) thereof,

Having regard to Council Regulation (EC) No 2248/2001 of 19 November 2001 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part and for applying the Interim Agreement between the European Community and the Republic of Croatia [5], and in particular Article 2 thereof,

Having regard to Council Regulation (EC) No 153/2002 of 21 January 2002 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part, and for applying the Interim Agreement between the European Community and the Former Yugoslav Republic of Macedonia [6], and in particular Article 2 thereof,

Whereas:

(1) Article 4(2) of Regulation (EC) No 2007/2000 provides for an annual preferential tariff quota of 11 475 tonnes of 'baby beef', distributed among Bosnia and Herzegovina and the Federal Republic of Yugoslavia including Kosovo.

(2) The Interim Agreements with Croatia and the Former Yugoslav Republic of Macedonia, which were approved by Council Decision 2002/107/EC on the conclusion and the provisional application of an Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part [7], and by Council Decision 2001/330/EC on the conclusion of the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Former Yugoslav Republic of Macedonia, of the other part [8], lay down annual preferential tariff quotas of 9 400 tonnes and 1 650 tonnes respectively.

(3) For control purposes, Regulation (EC) No 2007/2000 makes imports under the quotas of 'baby beef' for Bosnia and Herzegovina and the Federal Republic of Yugoslavia including Kosovo subject to the presentation of a certificate of authenticity attesting that the goods originate from the issuing country and that they correspond exactly to the definition in Annex II to that Regulation. For the sake of harmonisation, imports under the quotas of 'baby beef' originating in Croatia and the Former Yugoslav Republic of Macedonia should also be made subject to the presentation of a certificate of authenticity attesting that the goods originate from the issuing country and that they correspond exactly to the definition in Annex III to the Interim Agreements with the Former Yugoslav Republic of Macedonia and with Croatia. A model should also be established for the certificates of authenticity and detailed rules laid down for their use.

(4) Kosovo, as defined by United Nations Security Council Resolution 1244 of 10 June 1999, is subject to an international civil administration by the United Nations Mission in Kosovo (UNMIK), which has also set up a separate customs service. There should therefore also be a specific certificate of authenticity for goods originating in the FRY/Kosovo.

(5) The quotas concerned should be managed through the use of import licences. To this end, Commission Regulation (EC) No 1291/2000 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products [9], as last amended by Regulation (EC) No 2299/2001 [10], and Commission Regulation (EC) No 1445/95 on rules of application for import and export licences in the beef and veal sector and repealing Regulation (EEC) No 2377/80 [11], as last amended by Regulation (EC) No 24/2001 [12], are applicable subject to this Regulation.

[1] OJ L 240, 23.9.2000, p. 1.
[2] OJ L 335, 19.12.2001, p. 9.
[3] OJ L 160, 26.6.1999, p. 21.
[4] OJ L 315, 1.12.2001, p. 29.
[5] OJ L 304, 21.11.2001, p. 1.
[6] OJ L 25, 29.1.2002, p. 16.
[7] OJ L 40, 12.2.2002, p. 9.
[8] OJ L 124, 4.5.2001, p. 1.
[9] OJ L 152, 24.6.2000, p. 1.
[10] OJ L 308, 27.11.2002, p. 19.
[11] OJ L 143, 27.6.1995, p. 35.
[12] OJ L 337, 20.12.2001, p. 18.

(6) In order to ensure proper management of imports of the products concerned, import licences should be issued subject to verification, in particular of entries on certificates of authenticity.

(7) 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

1. The following tariff quotas are hereby opened for the period 1 January to 31 December 2003:

— 9 400 tonnes of 'baby beef', expressed in carcase weight, originating in Croatia,

— 1 500 tonnes of 'baby beef', expressed in carcase weight, originating in Bosnia and Herzegovina,

— 1 650 tonnes of 'baby beef', expressed in carcase weight, originating in the Former Yugoslavia Republic of Macedonia,

— 9 975 tonnes of 'baby beef', expressed in carcase weight, originating in the Federal Republic of Yugoslavia including Kosovo.

The four quotas referred to in the first subparagraph shall bear the serial Nos 09.4503, 09.4504, 09.4505 and 09.4506 respectively.

For the purposes of attributing the said quotas, 100 kilograms live weight shall be equivalent to 50 kilograms carcase weight.

2. The customs duty applicable under the quotas referred to in paragraph 1 shall be 20 % of the *ad valorem* duty and 20 % of the specific duty as laid down in the Common Customs Tariff.

3. Importation under the quotas referred to in paragraph 1 shall be reserved for certain live animals and certain meat falling within CN codes:

— ex 0102 90 51, ex 0102 90 59, ex 0102 90 71 and ex 0102 90 79,

— ex 0201 10 00 andex 0201 20 20,

— ex 0201 20 30,

— ex 0201 20 50;

referred to in Annex II to Regulation (EC) No 2007/2000 and in Annex III to the Interim Agreements concluded with Croatia and the Former Yugoslav Republic of Macedonia.

4. All applications for imports under the quotas referred to in paragraph 1 shall be accompanied by a certificate of authenticity issued by the competent authorities of the exporting country or customs territory attesting that the goods originate in that country or customs territory and that they correspond to the definition given, as the case may be, in Annex II to Regulation (EC) No 2007/2000 or Annex III to the Interim Agreements referred to in paragraph 3.

Article 2

Imports of the quantities set out in Article 1 shall be subject to presentation, on release for free circulation, of an import licence issued in accordance with the following provisions:

(a) section 8 of licence applications and licences must show the country or customs territory of origin; licences shall carry with them an obligation to import from the country or customs territory indicated;

(b) section 20 of licence applications and licences shall show one of the following entries:

— «Baby beef» [Reglamento (CE) nº 5/2003]

— »Baby beef« (forordning (EF) nr. 5/2003)

— „Baby beef“ [Verordnung (EG) Nr. 5/2003]

— «Baby beef» [κανονισμός (ΕΚ) αριθ. 5/2003]

— 'Baby beef' (Regulation (EC) No 5/2003)

— «Baby beef» [règlement (CE) nº 5/2003]

— «Baby beef» [regolamento (CE) n. 5/2003]

— „Baby beef" (Verordening (EG) nr. 5/2003)

— «Baby beef» [Regulamento (CE) n.º 5/2003]

— "Baby beef" (asetus (EY) N:o 5/2003)

— "Baby beef" (förordning (EG) nr 5/2003)

(c) the original of the certificate of authenticity drawn up in accordance with Articles 3 and 4 plus a copy thereof shall be presented to the competent authority together with the application for the first import licence relating to the certificate of authenticity.

The original of the certificate of authenticity shall be kept by the abovementioned authority;

(d) certificates of authenticity may be used for the issue of more than one import licence for quantities not exceeding that shown on the certificate. Where more than one licence is issued in respect of a certificate, the competent authority shall endorse the certificate of authenticity to show the quantity attributed;

(e) the competent authorities may issue import licences only after they are satisfied that all the information on the certificate of authenticity corresponds to that received each week from the Commission on the subject. The licences shall be issued immediately thereafter.

Article 3

1. Certificates of authenticity as referred to in Article 2 shall be made out in one original and two copies, to be printed and completed in one of the official languages of the European Community, in accordance with the model in Annexes I, II, III, IV and V respectively for the exporting countries and the customs territory concerned; they may also be printed and completed in the official language or one of the official languages of the exporting country or customs territory.

The competent authorities of the Member State in which the import licence application is submitted may require a translation of the certificate to be provided.

2. The original and copies thereof may be typed or handwritten. In the latter case, they must be completed in black ink and in block capitals.

3. The certificate forms shall measure 210 × 297 mm. The paper used shall weigh not less than 40 g/m². The original shall be white, the first copy pink and the second copy yellow.

4. Each certificate shall have its own individual serial number followed by the name of the issuing country or customs territory.

The copies shall bear the same serial number and the same name as the original.

5. Certificates shall be valid only if they are duly endorsed by an issuing authority listed in Annex VI.

6. Certificates shall be deemed to have been duly endorsed if they state the date and place of issue and if they bear the stamp of the issuing authority and the signature of the person or persons empowered to sign them.

Article 4

1. The issuing authorities listed in Annex VI must:

(a) be recognised as such by the exporting country or customs territory concerned;

(b) undertake to verify entries on the certificates;

(c) undertake to forward to the Commission at least once per week any information enabling the entries on the certificates of authenticity to be verified, in particular with regard to the number of the certificate, the exporter, the consignee, the country of destination, the product (live animals/meat), the net weight and the date of signature.

2. The list in Annex V may be revised by the Commission where the requirement referred to in paragraph 1(a) is no longer met, where an issuing authority fails to fulfil one or more of the obligations incumbent on it or where a new issuing authority is designated.

Article 5

Certificates of authenticity and import licences shall be valid for three months from their respective dates of issue. However, their term of validity shall expire on 31 December 2003.

Article 6

The authorities of the exporting countries and the custom territory concerned shall communicate to the Commission specimens of the stamp imprints used by their issuing authorities and the names and signatures of the persons empowered to sign certificates of authenticity. The Commission shall communicate this information to the competent authorities of the Member States.

Article 7

Save as otherwise provided in this Regulation, Regulations (EC) Nos 1291/2000 and 1445/95 shall apply to importing operations under the quotas referred to in Article 1.

Article 8

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

It shall apply from 1 January 2003.

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

Done at Brussels, 27 December 2002.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="3">CERTIFICATE No 0000
Original
CROATIA</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="3">CERTIFICATE OF AUTHENTICITY
for exports to the European Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 5/2003)</td></tr>
<tr><td colspan="4">NOTES
A. This certificate shall be prepared in one original and two copies
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in ink and in block capitals</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ....., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ....., in accordance with the attached veterinary certificate of ....., originate in and come from the Republic of Croatia and correspond exactly to the definition contained in Annex III to the Interim Agreement set out in Council Decision 2002/107/EC (OJ L 40, 12.2.2001, p. 9)</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(Stamp of issuing body)</td><td colspan="2">.....
(Signature)</td></tr>
</table>

ANNEX II

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="3">CERTIFICATE No 0000
Original
BOSNIA and HERZEGOVINA</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="3">CERTIFICATE OF AUTHENTICITY
for exports to the European Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 5/2003)</td></tr>
<tr><td colspan="4">NOTES
A. This certificate shall be prepared in one original and two copies
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in ink and in block capitals</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ....., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ....., in accordance with the attached veterinary certificate of ....., originate in and come from the Republic of Bosnia and Herzegovina and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1)</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(Stamp of issuing body)</td><td colspan="2">.....
(Signature)</td></tr>
</table>

ANNEX III

<table>
<tr><td colspan="2">1. Consignor (full name and address)</td><td colspan="3">CERTIFICATE No 0000
Original
FORMER YUGOSLAV REPUBLIC OF MACEDONIA</td></tr>
<tr><td colspan="2">2. Consignee (full name and address)</td><td colspan="3">CERTIFICATE OF AUTHENTICITY
for exports to the European Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 5/2003)</td></tr>
<tr><td colspan="5">NOTES
A. This certificate shall be prepared in one original and two copies
B. The original and its two copies shall be typewritten or completed by hand; in the latter case, they must be completed in ink and in block capitals</td></tr>
<tr><td colspan="2">3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="5">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="5">8. I, the undersigned ....., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ....., in accordance with the attached veterinary certificate of ....., originate in and come from the Former Yugoslav Republic of Macedonia and correspond exactly to the definition contained in Annex III to the Interim Agreement set out in Council Decision 2001/330/EC (OJ L 124, 4.5.2001, p. 2).</td></tr>
<tr><td colspan="2" rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(Stamp of issuing body)</td><td colspan="2">.....
(Signature)</td></tr>
</table>

ANNEX IV

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="3">CERTIFICATE No 0000
Original
FEDERAL REPUBLIC OF YUGOSLAVIA (1)</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="3">CERTIFICATE OF AUTHENTICITY
for exports to the European Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 5/2003)</td></tr>
<tr><td colspan="4">NOTES
A. This certificate shall be prepared in one original and two copies
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in ink and in block capitals</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ....., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ....., in accordance with the attached veterinary certificate of ....., originate in and come from the Federal Republic of Yugoslavia and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1)</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(Stamp of issuing body)</td><td colspan="2">.....
(Signature)</td></tr>
</table>

(1) Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.

ANNEX V

<table>
<tr><td>1. Consignor (full name and address)</td><td colspan="3">CERTIFICATE No 0000
Original
INTERNATIONAL CIVIL ADMINISTRATION
OF THE UNITED NATIONS MISSION IN KOSOVO
(UNMIK)</td></tr>
<tr><td>2. Consignee (full name and address)</td><td colspan="3">CERTIFICATE OF AUTHENTICITY
for exports to the European Community of bovine animals and meat of bovine animals
(application of Regulation (EC) No 5/2003)</td></tr>
<tr><td colspan="4">NOTES
A. This certificate shall be prepared in one original and two copies
B. The original and its two copies shall be typewritten or completed by hand. In the latter case, they must be completed in ink and in block capitals</td></tr>
<tr><td>3. Marks, numbers, numbers and nature of packages or head of cattle; description of goods</td><td>4. Combined Nomenclature code</td><td>5. Gross weight (kg)</td><td>6. Net weight (kg)</td></tr>
<tr><td colspan="4">7. Net weight (kg) (in words)</td></tr>
<tr><td colspan="4">8. I, the undersigned ....., acting on behalf of the authorised issuing body (box 9) certify that the goods described above were subjected to health inspection at ....., in accordance with the attached veterinary certificate of ....., originate in and come from the Federal Republic of Yugoslavia/Kosovo and correspond exactly to the definition contained in Annex II to Council Regulation (EC) No 2007/2000 (OJ L 240, 23.9.2000, p. 1).</td></tr>
<tr><td rowspan="2">9. Authorised issuing body</td><td colspan="3">Place: Date:</td></tr>
<tr><td>(Stamp of issuing body)</td><td colspan="2">.....
(Signature)</td></tr>
</table>

ANNEX VI

Issuing authorities:

— Republic of Croatia: 'Euroinspekt', Zagreb, Croatia.

— Bosnia and Herzegovina:

— Former Yugoslav Republic of Macedonia:

— Federal Republic of Yugoslavia [1]: 'YU Institute for Meat Hygiene and Technology, Kacanskog 13, Belgrade, Yugoslavia'.

— Federal Republic of Yugoslavia/Kosovo:

[1] Not including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999.

COMMISSION REGULATION (EC) No 6/2003
of 30 December 2002
concerning the dissemination of statistics on the carriage of goods by road

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1172/98 of 25 May 1998 on statistical returns in respect of the carriage of goods by road [1], and in particular Articles 6 and 9 thereof,

Whereas:

(1) It is appropriate to exploit the statistical data on the carriage of goods by road, referred to in the Regulation (EC) No 1172/98, as fully as possibly while respecting the confidentiality of the individual data records.

(2) It is necessary to ensure a reasonable level of quality in the information disseminated and the maintenance of existing statistical series.

(3) It is necessary to make certain data available to Member States in order to complete the statistical coverage of road transport at national level.

(4) The measures provided for in this Regulation are in accordance with the opinion delivered by the Statistical Programme Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The individual data records transmitted to the Commission (Eurostat) by Member States in accordance with Regulation (EC) No 1172/98 shall be used to compile statistical tables containing aggregated values obtained by summation of the underlying data. The Commission (Eurostat) shall disseminate the resulting statistical tables in accordance with the provisions laid down in Articles 2 and 3.

Article 2

The dissemination shall be authorised for the statistical tables listed in the Annex.

Article 3

1. Dissemination of tables to users other than the national authorities of Member States shall be subject to the condition that each cell shall be based on at least 10 vehicle records depending on the variable tabulated. Where a cell is based on fewer than 10 vehicle records, it shall be aggregated with other cells, or replaced with a suitable flag. Tables referred to under point A of the Annex shall be excluded from this rule.

2. Tables including aggregated values based on fewer than 10 vehicle records may be supplied to national authorities responsible for Community transport statistics in Member States, on condition that the national authorities apply the condition set out in paragraph 1 to any tables disseminated to other users.

Article 4

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

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

Done at Brussels, 30 December 2002.

For the Commission
Pedro SOLBES MIRA
Member of the Commission

[1] OJ L 163, 6.6.1998, p. 1.

ANNEX

LIST OF TABLES FOR DISSEMINATION

A. **Continuity of existing tables**

In order to maintain continuity, the existing tables may be disseminated by the Commission (Eurostat).

B. **Main tables**

The following set of tables and subsets, may be disseminated.

Table	Description Note 1	Reference period	Units Note 2	Notes
B1	Summary of activity by type of operation and type of transport	Year, quarter	1 000 t Million tonne-km Vehicle-km	Note 3 Note 4
B2	Transport, by type of operation	Year, quarter	1 000 t Million tonne-km	Note 3
B3	Transport, by type of goods	Year	1 000 t Million tonne-km	
B4.1	International transport, by country of loading and unloading (total of all reporting countries)	Year	1 000 t Million tonne-km	
B4.2	As for table B4.1, but with additional breakdown by type of goods.	Year	1 000 t Million tonne-km	
B4.3	International transport, by country of loading and unloading (with breakdown by reporting country)	Year	1 000 t Million tonne-km	
B4.4	As for table B4.3, but with additional breakdown by type of goods.	Year	1 000 t Million tonne-km	
B5.1	Transport, by region of loading	Year	1 000 t Million tonne-km Movements	
B5.2	Transport, by region of unloading	Year	1 000 t Million tonne-km Movements	
B6.1	Transport, by distance class	Year	1 000 t Million tonne-km Million vehicle-km Movements	
B6.2	As for table B6.1, but with additional breakdown by type of goods.	Year	1 000 t Million tonne-km Million vehicle-km Movements	
B7	Transport, by axle configuration	Year	Million tonne-km Million vehicle-km Movements	
B8	Transport, by age of vehicle	Year	Million tonne-km Million vehicle-km Movements	

Table	Description Note 1	Reference period	Units Note 2	Notes
B9	Transport, by maximum permissible weight of vehicle	Year	Million tonne-km Million vehicle-km Movements	
B10	Transport, by load capacity of vehicle	Year	Million tonne-km Million vehicle-km Movements	
B11	Transport, by NACE branch	Year	Million tonne-km Million vehicle-km Movements	
B12	Vehicle movements, laden and empty	Year	Million vehicle-km Movements	
B13.1	Transit vehicle movements, by transit country, by loaded/empty and by maximum permissible weight of vehicle (total of all reporting countries)	Year, quarter	1 000 t Movements	
B13.2	Transit vehicle movements, by transit country (with breakdown by reporting country)	Year	1 000 t Movements	
B14	Transport of dangerous goods, by type of dangerous goods	Year	Million tonne-km Million vehicle-km Movements	
B15	Transport, by type of cargo	Year	Million tonne-km Million vehicle-km Movements	
Note 1	Except where otherwise stated, the tables include a breakdown by reporting country.			
Note 2	The following measures are calculated internally for all tables: 1 000 t Millon tonne-km Million vehicle-km (laden, empty) Movements (laden, empty) Number of vehicle records used to calculate the table cell This column indicates the measures that will normally be offered to users. Other measures and units may be disseminated if requested by users. According to users needs the tables may be based on journey related variables (information from A2 data sets) or on goods related operations (information from A3 data sets) (see Regulation (EC) 1172/98). Movements would therefore be labelled either as number of journeys or number of basic transport operations. Transit movements would be labelled as such.			
Note 3	Type of operation is broken down as follows: — National journey: places of loading and unloading both in reporting country — International journey: places of loading or unloading or both in countries other than the reporting country (= sum of four following categories) (of which) — outward (goods loaded in reporting country): journey starts in reporting country, ends elsewhere — inward (goods unloaded in reporting country): journey starts elsewhere, ends in reporting country — cross-trade: journey between two countries other than the reporting country — cabotage: journey between places within a country other than the reporting country.			
Note 4	The layout of this table is shown in section E of this Annex.			

C. **Tables on cabotage**

In order to provide information on cabotage equivalent to that available under Council Regulation (EC) 3118/93 [1], the following set of tables and subsets of these tables, may be disseminated:

	Description	Period	Unit
C1	Cabotage performed by hauliers from each reporting country, by reporting country	Year	tonne-km
C2	Cabotage performed by hauliers from all reporting countries, by country in which cabotage takes place	Year	tonne-km
C3	Cabotage by reporting country x country in which cabotage takes place	Year	tonne-km

D. **Tables for national authorities of Member States**

In order to enable the national authorities of Member States other than the reporting country to compile complete statistics on road transport operations on their national territory, the following aggregated data files may be supplied to national authorities:

	Description	Period	Aggregated on dimensions	Units [1]
D1	Transport operations at national level (laden journeys)	Year	— Reporting country — Country of loading — Country of unloading — Type of goods	Tonnes Tonne-km Vehicle-km Movements Number of vehicle records
D2	Transport operations at national level (empty journeys)	Year	— Reporting country — Country of origin — Country of destination	Vehicle-km Movements Number of vehicle records
D3	Transport operations at regional level (laden journeys)	Year	— Reporting country — Region of origin — Region of destination	Tonnes Tonne-km Vehicle-km Movements Number of vehicle records
D4	Transport operations at regional level (empty journeys)	Year	— Reporting country — Region of origin — Region of destination	Vehicle-km Movements Number of vehicle records
D5	Transit transport (laden and empty journeys)	Year	— Transit country — Reporting country — Laden/empty	Tonnes Movements Number of vehicle records

[1] Movements may refer either to number of journeys or to number of basis transport operations.

According to user needs the dimensions and units referred to in tables for national authorities of Member States may include additional variables covered by the data collection in accordance with Regulation (EC) 1172/98 subject to the agreement of Member States.

[1] OJ L 279, 12.11.1993, p. 1.

E. **Summary of activity by type of operation and type of transport**

Reporting country:

Year ……/Quarter ……

Type of operation	Own account			Hire or reward			Total		
	Tonnes	Tonne-kms	Vehicle kilo-metres	Tonnes	Tonne-kms	Vehicle kilo-metres	Tonnes	Tonne kms	Vehicle kilo-metres
Laden journey									
National journey									
International journey									
Goods loaded in reporting country									
Goods unloaded in reporting country									
Cross-trade									
Cabotage									
All international laden journeys									
All laden journeys									
Unladen journey									
National journey									
International journey									
All unladen journeys									

COMMISSION REGULATION (EC) No 7/2003
of 3 January 2003
fixing the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Commission Regulation (EC) No 509/2002 [2], and in particular Article 31(3) thereof,

Whereas:

(1) Article 31 of Regulation (EC) No 1255/1999 provides that the difference between prices in international trade for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund within the limits resulting from agreements concluded in accordance with Article 300 of the Treaty.

(2) Regulation (EC) No 1255/1999 provides that when the refunds on the products listed in Article 1 of the abovementioned Regulation, exported in the natural state, are being fixed, account must be taken of:

— the existing situation and the future trend with regard to prices and availabilities of milk and milk products on the Community market and prices for milk and milk products in international trade,

— marketing costs and the most favourable transport charges from Community markets to ports or other points of export in the Community, as well as costs incurred in placing the goods on the market of the country of destination,

— the aims of the common organisation of the market in milk and milk products which are to ensure equilibrium and the natural development of prices and trade on this market,

— the limits resulting from agreements concluded in accordance with Article 300 of the Treaty, and

— the need to avoid disturbances on the Community market, and

— the economic aspect of the proposed exports.

(3) Article 31(5) of Regulation (EC) No 1255/1999 provides that when prices within the Community are being determined account should be taken of the ruling prices which are most favourable for exportation, and that when prices in international trade are being determined particular account should be taken of:

(a) prices ruling on third country markets;

(b) the most favourable prices in third countries of destination for third country imports;

(c) producer prices recorded in exporting third countries, account being taken, where appropriate, of subsidies granted by those countries; and

(d) free-at-Community-frontier offer prices.

(4) Article 31(3) of Regulation (EC) No 1255/1999 provides that the world market situation or the specific requirements of certain markets may make it necessary to vary the refund on the products listed in Article 1 of the abovementioned Regulation according to destination.

(5) Article 31(3) of Regulation (EC) No 1255/1999 provides that the list of products on which export refunds are granted and the amount of such refunds should be fixed at least once every four weeks; the amount of the refund may, however, remain at the same level for more than four weeks.

(6) In accordance with Article 16 of Commission Regulation (EC) No 174/1999 of 26 January 1999 on specific detailed rules for the application of Council Regulation (EC) No 804/68 as regards export licences and export refunds on milk and milk products [3], as last amended by Regulation (EC) No 2279/2002 [4], the refund granted for milk products containing added sugar is equal to the sum of the two components; one is intended to take account of the quantity of milk products and is calculated by multiplying the basic amount by the milk products content in the product concerned; the other is intended to take account of the quantity of added sucrose and is calculated by multiplying the sucrose content of the entire product by the basic amount of the refund valid on the day of exportation for the products listed in Article 1(1)(d) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector [5], as amended by Commission Regulation (EC) No 680/2002 [6], however, this second component is applied only if the added sucrose has been produced using sugar beet or cane harvested in the Community.

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 79, 22.3.2002, p. 15.
[3] OJ L 20, 27.1.1999, p. 8.
[4] OJ L 347, 20.12.2002, p. 31.
[5] OJ L 178, 30.6.2001, p. 1.
[6] OJ L 104, 20.4.2002, p. 26.

(7) Commission Regulation (EEC) No 896/84 [1], as last amended by Regulation (EEC) No 222/88 [2], laid down additional provisions concerning the granting of refunds on the change from one milk year to another; those provisions provide for the possibility of varying refunds according to the date of manufacture of the products.

(8) For the calculation of the refund for processed cheese provision must be made where casein or caseinates are added for that quantity not to be taken into account.

(9) It follows from applying the rules set out above to the present situation on the market in milk and in particular to quotations or prices for milk products within the Community and on the world market that the refund should be as set out in the Annex to this Regulation.

(10) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds referred to in Article 31 of Regulation (EC) No 1255/1999 on products exported in the natural state shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 6 January 2003.

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

Done at Brussels, 3 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 91, 1.4.1984, p. 71.
[2] OJ L 28, 1.2.1988, p. 1.

ANNEX

to the Commission Regulation of 3 January 2003 fixing the export refunds on milk and milk products

Product code	Destination	Unit of measurement	Amount of refund
0401 10 10 9000	970	EUR/100 kg	2,212
0401 10 90 9000	970	EUR/100 kg	2,212
0401 20 11 9100	970	EUR/100 kg	2,212
0401 20 11 9500	970	EUR/100 kg	3,418
0401 20 19 9100	970	EUR/100 kg	2,212
0401 20 19 9500	970	EUR/100 kg	3,418
0401 20 91 9000	970	EUR/100 kg	4,325
0401 20 99 9000	970	EUR/100 kg	4,325
0401 30 11 9400	970	EUR/100 kg	9,981
0401 30 11 9700	970	EUR/100 kg	14,99
0401 30 19 9700	970	EUR/100 kg	14,99
0401 30 31 9100	L06	EUR/100 kg	36,41
0401 30 31 9400	L06	EUR/100 kg	56,88
0401 30 31 9700	L06	EUR/100 kg	62,73
0401 30 39 9100	L06	EUR/100 kg	36,41
0401 30 39 9400	L06	EUR/100 kg	56,88
0401 30 39 9700	L06	EUR/100 kg	62,73
0401 30 91 9100	L06	EUR/100 kg	71,49
0401 30 91 9500	L06	EUR/100 kg	105,07
0401 30 99 9100	L06	EUR/100 kg	71,49
0401 30 99 9500	L06	EUR/100 kg	105,07
0402 10 11 9000	L06	EUR/100 kg	44,00
0402 10 19 9000	L06	EUR/100 kg	44,00
0402 10 91 9000	L06	EUR/kg	0,4400
0402 10 99 9000	L06	EUR/kg	0,4400
0402 21 11 9200	L06	EUR/100 kg	44,00
0402 21 11 9300	L06	EUR/100 kg	83,62
0402 21 11 9500	L06	EUR/100 kg	87,27
0402 21 11 9900	L06	EUR/100 kg	93,00
0402 21 17 9000	L06	EUR/100 kg	44,00
0402 21 19 9300	L06	EUR/100 kg	83,62
0402 21 19 9500	L06	EUR/100 kg	87,27
0402 21 19 9900	L06	EUR/100 kg	93,00
0402 21 91 9100	L06	EUR/100 kg	93,58
0402 21 91 9200	L06	EUR/100 kg	94,13
0402 21 91 9350	L06	EUR/100 kg	95,10
0402 21 91 9500	L06	EUR/100 kg	102,21
0402 21 99 9100	L06	EUR/100 kg	93,58
0402 21 99 9200	L06	EUR/100 kg	94,13
0402 21 99 9300	L06	EUR/100 kg	95,10
0402 21 99 9400	L06	EUR/100 kg	100,37
0402 21 99 9500	L06	EUR/100 kg	102,21
0402 21 99 9600	L06	EUR/100 kg	109,41
0402 21 99 9700	L06	EUR/100 kg	113,49
0402 21 99 9900	L06	EUR/100 kg	118,21
0402 29 15 9200	L06	EUR/kg	0,4400
0402 29 15 9300	L06	EUR/kg	0,8362
0402 29 15 9500	L06	EUR/kg	0,8727
0402 29 15 9900	L06	EUR/kg	0,9300
0402 29 19 9300	L06	EUR/kg	0,8362
0402 29 19 9500	L06	EUR/kg	0,8727
0402 29 19 9900	L06	EUR/kg	0,9300
0402 29 91 9000	L06	EUR/kg	0,9358
0402 29 99 9100	L06	EUR/kg	0,9358
0402 29 99 9500	L06	EUR/kg	1,0037
0402 91 11 9370	L06	EUR/100 kg	6,804
0402 91 19 9370	L06	EUR/100 kg	6,804
0402 91 31 9300	L06	EUR/100 kg	8,058
0402 91 39 9300	L06	EUR/100 kg	8,058
0402 91 99 9000	L06	EUR/100 kg	43,93
0402 99 11 9350	L06	EUR/kg	0,1734
0402 99 19 9350	L06	EUR/kg	0,1734
0402 99 31 9150	L06	EUR/kg	0,1816
0402 99 31 9300	L06	EUR/kg	0,2629
0402 99 31 9500	L06	EUR/kg	0,4530
0402 99 39 9150	L06	EUR/kg	0,1816
0403 90 11 9000	L06	EUR/100 kg	43,390
0403 90 13 9200	L06	EUR/100 kg	43,39
0403 90 13 9300	L06	EUR/100 kg	82,87
0403 90 13 9500	L06	EUR/100 kg	86,49
0403 90 13 9900	L06	EUR/100 kg	92,17
0403 90 19 9000	L06	EUR/100 kg	92,74
0403 90 33 9400	L06	EUR/kg	0,8287
0403 90 33 9900	L06	EUR/kg	0,9217
0403 90 51 9100	970	EUR/100 kg	2,212
0403 90 59 9170	970	EUR/100 kg	14,99
0403 90 59 9310	L06	EUR/100 kg	36,41
0403 90 59 9340	L06	EUR/100 kg	53,28
0403 90 59 9370	L06	EUR/100 kg	53,28
0403 90 59 9510	L06	EUR/100 kg	53,28
0404 90 21 9120	L06	EUR/100 kg	37,53
0404 90 21 9160	L06	EUR/100 kg	44,00
0404 90 23 9120	L06	EUR/100 kg	44,00
0404 90 23 9130	L06	EUR/100 kg	83,62
0404 90 23 9140	L06	EUR/100 kg	87,27
0404 90 23 9150	L06	EUR/100 kg	93,00
0404 90 29 9110	L06	EUR/100 kg	93,58
0404 90 29 9115	L06	EUR/100 kg	94,13
0404 90 29 9125	L06	EUR/100 kg	95,10
0404 90 29 9140	L06	EUR/100 kg	102,21
0404 90 81 9100	L06	EUR/kg	0,4400
0404 90 83 9110	L06	EUR/kg	0,4400
0404 90 83 9130	L06	EUR/kg	0,8362
0404 90 83 9150	L06	EUR/kg	0,8727
0404 90 83 9170	L06	EUR/kg	0,9300
0404 90 83 9936	L06	EUR/kg	0,1734
0405 10 11 9500	L05	EUR/100 kg	180,49
0405 10 11 9700	L05	EUR/100 kg	185,00
0405 10 19 9500	L05	EUR/100 kg	180,49
0405 10 19 9700	L05	EUR/100 kg	185,00
0405 10 30 9100	L05	EUR/100 kg	180,49
0405 10 30 9300	L05	EUR/100 kg	185,00
0405 10 30 9700	L05	EUR/100 kg	185,00
0405 10 50 9300	L05	EUR/100 kg	185,00
0405 10 50 9500	L05	EUR/100 kg	180,49
0405 10 50 9700	L05	EUR/100 kg	185,00
0405 10 90 9000	L05	EUR/100 kg	191,78
0405 20 90 9500	L05	EUR/100 kg	169,22
0405 20 90 9700	L05	EUR/100 kg	175,98
0405 90 10 9000	L05	EUR/100 kg	235,07
0405 90 90 9000	L05	EUR/100 kg	185,00
0406 10 20 9100	A00	EUR/100 kg	—
0406 10 20 9230	L03	EUR/100 kg	—
	L04	EUR/100 kg	39,41
	400	EUR/100 kg	—
	A01	EUR/100 kg	39,41

Product code	Destination	Unit of measurement	Amount of refund
0406 10 20 9290	L03	EUR/100 kg	—
	L04	EUR/100 kg	36,66
	400	EUR/100 kg	—
	A01	EUR/100 kg	36,66
0406 10 20 9300	L03	EUR/100 kg	—
	L04	EUR/100 kg	16,09
	400	EUR/100 kg	—
	A01	EUR/100 kg	16,09
0406 10 20 9610	L03	EUR/100 kg	—
	L04	EUR/100 kg	53,46
	400	EUR/100 kg	—
	A01	EUR/100 kg	53,46
0406 10 20 9620	L03	EUR/100 kg	—
	L04	EUR/100 kg	54,22
	400	EUR/100 kg	—
	A01	EUR/100 kg	54,22
0406 10 20 9630	L03	EUR/100 kg	—
	L04	EUR/100 kg	60,52
	400	EUR/100 kg	—
	A01	EUR/100 kg	60,52
0406 10 20 9640	L03	EUR/100 kg	—
	L04	EUR/100 kg	88,94
	400	EUR/100 kg	—
	A01	EUR/100 kg	88,94
0406 10 20 9650	L03	EUR/100 kg	—
	L04	EUR/100 kg	74,11
	400	EUR/100 kg	—
	A01	EUR/100 kg	74,11
0406 10 20 9660	A00	EUR/100 kg	—
0406 10 20 9830	L03	EUR/100 kg	—
	L04	EUR/100 kg	27,49
	400	EUR/100 kg	—
	A01	EUR/100 kg	27,49
0406 10 20 9850	L03	EUR/100 kg	—
	L04	EUR/100 kg	33,33
	400	EUR/100 kg	—
	A01	EUR/100 kg	33,33
0406 10 20 9870	A00	EUR/100 kg	—
0406 10 20 9900	A00	EUR/100 kg	—
0406 20 90 9100	A00	EUR/100 kg	—
0406 20 90 9913	L03	EUR/100 kg	—
	L04	EUR/100 kg	61,46
	400	EUR/100 kg	17,96
	A01	EUR/100 kg	61,46
0406 20 90 9915	L03	EUR/100 kg	—
	L04	EUR/100 kg	81,13
	400	EUR/100 kg	23,93
	A01	EUR/100 kg	81,13
0406 20 90 9917	L03	EUR/100 kg	—
	L04	EUR/100 kg	86,20
	400	EUR/100 kg	25,44
	A01	EUR/100 kg	86,20
0406 20 90 9919	L03	EUR/100 kg	—
	L04	EUR/100 kg	96,33
	400	EUR/100 kg	28,38
	A01	EUR/100 kg	96,33
0406 20 90 9990	A00	EUR/100 kg	—
0406 30 31 9710	L03	EUR/100 kg	—
	L04	EUR/100 kg	8,10
	400	EUR/100 kg	—
	A01	EUR/100 kg	15,17
0406 30 31 9730	L03	EUR/100 kg	—
	L04	EUR/100 kg	11,87
	400	EUR/100 kg	—
	A01	EUR/100 kg	22,26
0406 30 31 9910	L03	EUR/100 kg	—
	L04	EUR/100 kg	8,10
	400	EUR/100 kg	—
	A01	EUR/100 kg	15,17
0406 30 31 9930	L03	EUR/100 kg	—
	L04	EUR/100 kg	11,87
	400	EUR/100 kg	—
	A01	EUR/100 kg	22,26
0406 30 31 9950	L03	EUR/100 kg	—
	L04	EUR/100 kg	17,26
	400	EUR/100 kg	—
	A01	EUR/100 kg	32,38
0406 30 39 9500	L03	EUR/100 kg	—
	L04	EUR/100 kg	11,87
	400	EUR/100 kg	—
	A01	EUR/100 kg	22,26
0406 30 39 9700	L03	EUR/100 kg	—
	L04	EUR/100 kg	17,26
	400	EUR/100 kg	—
	A01	EUR/100 kg	32,38
0406 30 39 9930	L03	EUR/100 kg	—
	L04	EUR/100 kg	17,26
	400	EUR/100 kg	—
	A01	EUR/100 kg	32,38
0406 30 39 9950	L03	EUR/100 kg	—
	L04	EUR/100 kg	19,53
	400	EUR/100 kg	—
	A01	EUR/100 kg	36,60
0406 30 90 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	20,48
	400	EUR/100 kg	—
	A01	EUR/100 kg	38,40
0406 40 50 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	94,14
	400	EUR/100 kg	—
	A01	EUR/100 kg	94,14
0406 40 90 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	96,66
	400	EUR/100 kg	—
	A01	EUR/100 kg	96,66
0406 90 13 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	106,29
	400	EUR/100 kg	34,20
	A01	EUR/100 kg	121,71
0406 90 15 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	109,84
	400	EUR/100 kg	35,25
	A01	EUR/100 kg	125,77
0406 90 17 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	109,84
	400	EUR/100 kg	35,25
	A01	EUR/100 kg	125,77
0406 90 21 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	107,63
	400	EUR/100 kg	25,29
	A01	EUR/100 kg	122,94
0406 90 23 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	94,51
	400	EUR/100 kg	—
	A01	EUR/100 kg	108,69
0406 90 25 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	93,89
	400	EUR/100 kg	—
	A01	EUR/100 kg	107,52

Product code	Destination	Unit of measurement	Amount of refund
0406 90 27 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	85,04
	400	EUR/100 kg	—
	A01	EUR/100 kg	97,38
0406 90 31 9119	L03	EUR/100 kg	—
	L04	EUR/100 kg	78,15
	400	EUR/100 kg	14,50
	A01	EUR/100 kg	89,64
0406 90 33 9119	L03	EUR/100 kg	—
	L04	EUR/100 kg	78,15
	400	EUR/100 kg	14,50
	A01	EUR/100 kg	89,64
0406 90 33 9919	L03	EUR/100 kg	—
	L04	EUR/100 kg	71,43
	400	EUR/100 kg	—
	A01	EUR/100 kg	82,21
0406 90 33 9951	L03	EUR/100 kg	—
	L04	EUR/100 kg	72,14
	400	EUR/100 kg	—
	A01	EUR/100 kg	82,27
0406 90 35 9190	L03	EUR/100 kg	—
	L04	EUR/100 kg	110,56
	400	EUR/100 kg	34,88
	A01	EUR/100 kg	127,15
0406 90 35 9990	L03	EUR/100 kg	—
	L04	EUR/100 kg	110,56
	400	EUR/100 kg	22,80
	A01	EUR/100 kg	127,15
0406 90 37 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	106,29
	400	EUR/100 kg	34,20
	A01	EUR/100 kg	121,71
0406 90 61 9000	L03	EUR/100 kg	—
	L04	EUR/100 kg	117,14
	400	EUR/100 kg	32,46
	A01	EUR/100 kg	135,59
0406 90 63 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	116,53
	400	EUR/100 kg	36,31
	A01	EUR/100 kg	134,46
0406 90 63 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	112,03
	400	EUR/100 kg	27,77
	A01	EUR/100 kg	129,88
0406 90 69 9100	A00	EUR/100 kg	—
0406 90 69 9910	L03	EUR/100 kg	—
	L04	EUR/100 kg	112,03
	400	EUR/100 kg	27,77
	A01	EUR/100 kg	129,88
0406 90 73 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	97,56
	400	EUR/100 kg	29,89
	A01	EUR/100 kg	111,82
0406 90 75 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	98,22
	400	EUR/100 kg	12,61
	A01	EUR/100 kg	113,03
0406 90 76 9300	L03	EUR/100 kg	—
	L04	EUR/100 kg	88,57
	400	EUR/100 kg	—
	A01	EUR/100 kg	101,43
0406 90 76 9400	L03	EUR/100 kg	—
	L04	EUR/100 kg	99,20
	400	EUR/100 kg	13,13
	A01	EUR/100 kg	113,61
0406 90 76 9500	L03	EUR/100 kg	—
	L04	EUR/100 kg	94,38
	400	EUR/100 kg	13,13
	A01	EUR/100 kg	107,15
0406 90 78 9100	L03	EUR/100 kg	—
	L04	EUR/100 kg	91,53
	400	EUR/100 kg	—
	A01	EUR/100 kg	106,96
0406 90 78 9300	L03	EUR/100 kg	—
	L04	EUR/100 kg	97,04
	400	EUR/100 kg	—
	A01	EUR/100 kg	110,84
0406 90 78 9500	L03	EUR/100 kg	—
	L04	EUR/100 kg	96,13
	400	EUR/100 kg	—
	A01	EUR/100 kg	109,15
0406 90 79 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	78,47
	400	EUR/100 kg	—
	A01	EUR/100 kg	90,23
0406 90 81 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	99,20
	400	EUR/100 kg	27,02
	A01	EUR/100 kg	113,61
0406 90 85 9930	L03	EUR/100 kg	—
	L04	EUR/100 kg	107,14
	400	EUR/100 kg	33,67
	A01	EUR/100 kg	123,32
0406 90 85 9970	L03	EUR/100 kg	—
	L04	EUR/100 kg	98,22
	400	EUR/100 kg	29,46
	A01	EUR/100 kg	113,03
0406 90 85 9999	A00	EUR/100 kg	—
0406 90 86 9100	A00	EUR/100 kg	—
0406 90 86 9200	L03	EUR/100 kg	—
	L04	EUR/100 kg	90,13
	400	EUR/100 kg	17,68
	A01	EUR/100 kg	106,94
0406 90 86 9300	L03	EUR/100 kg	—
	L04	EUR/100 kg	91,43
	400	EUR/100 kg	19,38
	A01	EUR/100 kg	108,06
0406 90 86 9400	L03	EUR/100 kg	—
	L04	EUR/100 kg	97,13
	400	EUR/100 kg	21,93
	A01	EUR/100 kg	113,61
0406 90 86 9900	L03	EUR/100 kg	—
	L04	EUR/100 kg	107,14
	400	EUR/100 kg	25,67
	A01	EUR/100 kg	123,32
0406 90 87 9100	A00	EUR/100 kg	—
0406 90 87 9200	L03	EUR/100 kg	—
	L04	EUR/100 kg	75,11
	400	EUR/100 kg	15,81
	A01	EUR/100 kg	89,10
0406 90 87 9300	L03	EUR/100 kg	—
	L04	EUR/100 kg	83,95
	400	EUR/100 kg	17,85
	A01	EUR/100 kg	99,25
0406 90 87 9400	L03	EUR/100 kg	—
	L04	EUR/100 kg	86,15
	400	EUR/100 kg	19,55
	A01	EUR/100 kg	100,75
0406 90 87 9951	L03	EUR/100 kg	—
	L04	EUR/100 kg	97,43
	400	EUR/100 kg	27,03
	A01	EUR/100 kg	111,58

Product code	Destination	Unit of measurement	Amount of refund
0406 90 87 9971	L03	EUR/100 kg	—
	L04	EUR/100 kg	97,43
	400	EUR/100 kg	21,93
	A01	EUR/100 kg	111,58
0406 90 87 9972	L03	EUR/100 kg	—
	L04	EUR/100 kg	41,51
	400	EUR/100 kg	—
	A01	EUR/100 kg	47,73
0406 90 87 9973	L03	EUR/100 kg	—
	L04	EUR/100 kg	95,66
	400	EUR/100 kg	15,39
	A01	EUR/100 kg	109,55
0406 90 87 9974	L03	EUR/100 kg	—
	L04	EUR/100 kg	103,82
	400	EUR/100 kg	15,39
	A01	EUR/100 kg	118,38
0406 90 87 9975	L03	EUR/100 kg	—
	L04	EUR/100 kg	105,90
	400	EUR/100 kg	20,40
	A01	EUR/100 kg	119,70
0406 90 87 9979	L03	EUR/100 kg	—
	L04	EUR/100 kg	94,51
	400	EUR/100 kg	15,39
	A01	EUR/100 kg	108,69
0406 90 88 9100	A00	EUR/100 kg	—
0406 90 88 9300	L03	EUR/100 kg	—
	L04	EUR/100 kg	74,16
	400	EUR/100 kg	19,38
	A01	EUR/100 kg	87,34

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

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

The other destinations are defined as follows:

L03 Ceuta, Melilla, Iceland, Norway, Switzerland, Liechtenstein, Andorra, Gibraltar, Holy See (often referred to as Vatican City), Malta, Turkey, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, Romania, Bulgaria, Canada, Cyprus, Australia and New Zealand,

L04 Albania, Slovenia, Croatia, Bosnia and Herzegovina, Yugoslavia and the Former Yugoslav Republic of Macedonia,

L05 all destinations except Poland, Estonia, Latvia, Lithuania, Hungary and the United States of America.

L06 all destinations except Estonia, Latvia, Lithuania, Hungary and the United States of America.

970 includes the exports referred to in Articles 36(1)(a) and (c) and 44(1)(a) and (b) of Commission Regulation (EC) No 800/1999 (OJ L 102, 17.4.1999, p. 11) and exports under contracts with armed forces stationed on the territory of a Member State which do not come under its flag.

COMMISSION REGULATION (EC) No 8/2003
of 3 January 2003
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ([3]), as last amended by Regulation (EC) No 597/2002 ([4]), and in particular Article 2(1) thereof,

Whereas:

(1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 2392/2002 ([5]).

(2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 2392/2002.

(3) Article 1 of Regulation (EC) No 2378/2002 provides for derogations from Regulation (EC) No 1249/96 regarding import duties in the cereals sector. Accordingly, the Annexes to Regulation (EC) No 2392/2002 should be amended to indicate the duties applicable where importation is not effected under a tariff quota,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to Regulation (EC) No 2392/2002 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 4 January 2003.

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

Done at Brussels, 3 January 2003.

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

([1]) OJ L 181, 1.7.1992, p. 21.
([2]) OJ L 193, 29.7.2000, p. 1.
([3]) OJ L 161, 29.6.1996, p. 125.
([4]) OJ L 91, 6.4.2002, p. 9.
([5]) OJ L 358, 31.12.2002, p. 139.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty [1] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing [2]	0,00
	medium quality [3]	95,00
	low quality [3]	95,00
1002 00 00	Rye	40,60
1003 00 10	Barley, seed	40,60
1003 00 90	Barley, other [4]	93,00
1005 10 90	Maize seed other than hybrid	31,86
1005 90 00	Maize other than seed [5]	31,86
1007 00 90	Grain sorghum other than hybrids for sowing	40,60

[1] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

[2] Importers are entitled to a flat-rate reduction of EUR 14 per tonne.

[3] Importers may take advantage of an import duty of EUR 12 per tonne under the tariff quota opened by Regulation (EC) No 2375/2002.

[4] Importers may take advantage of an import duty of EUR 8 per tonne under the tariff quota for malting barley opened by Regulation (EC) No 2377/2002 or an import duty of EUR 16 per tonne under the tariff quota for barley opened by Regulation (EC) No 2376/2002.

[5] The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 30 December 2002 to 2 January 2003)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	142,90	92,03	216,02 (***)	206,02 (***)	186,02 (***)	114,82 (***)
Gulf premium (EUR/t)	38,14	13,95	—	—	—	—
Great Lakes premium (EUR/t)	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).
(**) A discount of 30 EUR/t (Article 3 of Regulation (EC) No 2378/2002).
(***) Fob Gulf.

2. Freight/cost: Gulf of Mexico–Rotterdam: 14,69 EUR/t; Great Lakes–Rotterdam: 23,61 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

COMMISSION REGULATION (EC) No 9/2003

of 3 January 2003

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

(1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 [4]. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.

(2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.

(3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.

(4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

(5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.

(6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.

(7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.

(8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 January 2003.

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 141, 24.6.1995, p. 12.
[4] OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 3 January 2003.

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

ANNEX

to the Commission Regulation of 3 January 2003 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 (2)
1703 10 00 (1)	8,09	—	0,12
1703 90 00 (1)	10,53	—	0

(1) For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.
(2) This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 10/2003
of 3 January 2003
fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.

(2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.

(3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of Regulation (EC) No 1260/2001. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector [3]. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.

(4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for sugar according to destination.

(5) In special cases, the amount of the refund may be fixed by other legal instruments.

(6) The refund must be fixed every two weeks. It may be altered in the intervening period.

(7) It follows from applying the rules set out above to the present situation on the market in sugar and in particular to quotations or prices for sugar within the Community and on the world market that the refund should be as set out in the Annex hereto.

(8) Regulation (EC) No 1260/2001 does not make provision to continue the compensation system for storage costs from 1 July 2001. This should accordingly be taken into account when fixing the refunds granted when the export occurs after 30 September 2001.

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 4 January 2003.

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

Done at Brussels, 3 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 214, 8.9.1995, p. 16.

ANNEX

to the Commission Regulation of 3 January 2003 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	40,80 (1)
1701 11 90 9910	A00	EUR/100 kg	40,79 (1)
1701 12 90 9100	A00	EUR/100 kg	40,80 (1)
1701 12 90 9910	A00	EUR/100 kg	40,79 (1)
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4435
1701 99 10 9100	A00	EUR/100 kg	44,35
1701 99 10 9910	A00	EUR/100 kg	44,34
1701 99 10 9950	A00	EUR/100 kg	44,34
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4435

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

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

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

COMMISSION REGULATION (EC) No 11/2003

of 3 January 2003

fixing the maximum export refund for white sugar for the 20th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1331/2002

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Commission Regulation (EC) No 1331/2002 of 23 July 2002 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar [3], for the 2002/2003 marketing year, requires partial invitations to tender to be issued for the export of this sugar.

(2) Pursuant to Article 9(1) of Regulation (EC) No 1331/2002 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

(3) Following an examination of the tenders submitted in response to the 20th partial invitation to tender, the provisions set out in Article 1 should be adopted.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 20th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1331/2002 the maximum amount of the export refund is fixed at 47,426 EUR/100 kg.

Article 2

This Regulation shall enter into force on 4 January 2003.

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

Done at Brussels, 3 January 2003.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 178, 30.6.2001, p. 1.
[2] OJ L 104, 20.4.2002, p. 26.
[3] OJ L 195, 24.7.2002, p. 6.

COMMISSION REGULATION (EC) No 12/2003
of 3 January 2003
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

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

Whereas:

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 25,995/100 kg.

Article 2

This Regulation shall enter into force on 4 January 2003.

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

Done at Brussels, 3 January 2003.

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

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

DIRECTIVE 2002/91/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 16 December 2002
on the energy performance of buildings

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

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

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

Having regard to the opinion of the Committee of the Regions [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) Article 6 of the Treaty requires environmental protection requirements to be integrated into the definition and implementation of Community policies and actions.

(2) The natural resources, to the prudent and rational utilisation of which Article 174 of the Treaty refers, include oil products, natural gas and solid fuels, which are essential sources of energy but also the leading sources of carbon dioxide emissions.

(3) Increased energy efficiency constitutes an important part of the package of policies and measures needed to comply with the Kyoto Protocol and should appear in any policy package to meet further commitments.

(4) Demand management of energy is an important tool enabling the Community to influence the global energy market and hence the security of energy supply in the medium and long term.

(5) In its conclusions of 30 May 2000 and of 5 December 2000, the Council endorsed the Commission's action plan on energy efficiency and requested specific measures in the building sector.

(6) The residential and tertiary sector, the major part of which is buildings, accounts for more than 40 % of final energy consumption in the Community and is expanding, a trend which is bound to increase its energy consumption and hence also its carbon dioxide emissions.

(7) Council Directive 93/76/EEC of 13 September 1993 to limit carbon dioxide emissions by improving energy efficiency (SAVE) [5], which requires Member States to develop, implement and report on programmes in the field of energy efficiency in the building sector, is now starting to show some important benefits. However, a complementary legal instrument is needed to lay down more concrete actions with a view to achieving the great unrealised potential for energy savings and reducing the large differences between Member States' results in this sector.

(8) Council Directive 89/106/EEC of 21 December 1988 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products [6] requires construction works and their heating, cooling and ventilation installations to be designed and built in such a way that the amount of energy required in use will be low, having regard to the climatic conditions of the location and the occupants.

(9) The measures further to improve the energy performance of buildings should take into account climatic and local conditions as well as indoor climate environment and cost-effectiveness. They should not contravene other essential requirements concerning buildings such as accessibility, prudence and the intended use of the building.

(10) The energy performance of buildings should be calculated on the basis of a methodology, which may be differentiated at regional level, that includes, in addition to thermal insulation other factors that play an increasingly important role such as heating and air-conditioning installations, application of renewable energy sources and design of the building. A common approach to this process, carried out by qualified and/or accredited experts, whose independence is to be guaranteed on the basis of objective criteria, will contribute to a level playing field as regards efforts made in Member States to energy saving in the buildings sector and will introduce transparency for prospective owners or users with regard to the energy performance in the Community property market.

(11) The Commission intends further to develop standards such as EN 832 and prEN 13790, also including consideration of air-conditioning systems and lighting.

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[1] OJ C 213 E, 31.7.2001, p. 266 and OJ C 203 E, 27.8.2002, p. 69.
[2] OJ C 36, 8.2.2002, p. 20.
[3] OJ C 107, 3.5.2002, p. 76.
[4] Opinion of the European Parliament of 6 February 2002 (not yet published in the Official Journal), Council Common Position of 7 June 2002 (OJ C 197, 20.8.2002, p. 6) and decision of the European Parliament of 10 October 2002 (not yet published in the Official Journal).
[5] OJ L 237, 22.9.1993, p. 28.
[6] OJ L 40, 11.2.1989, p. 12. Directive as amended by Directive 93/68/EEC (OJ L 220, 30.8.1993, p.1).

(12) Buildings will have an impact on long-term energy consumption and new buildings should therefore meet minimum energy performance requirements tailored to the local climate. Best practice should in this respect be geared to the optimum use of factors relevant to enhancing energy performance. As the application of alternative energy supply systems is generally not explored to its full potential, the technical, environmental and economic feasibility of alternative energy supply systems should be considered; this can be carried out once, by the Member State, through a study which produces a list of energy conservation measures, for average local market conditions, meeting cost-effectiveness criteria. Before construction starts, specific studies may be requested if the measure, or measures, are deemed feasible.

(13) Major renovations of existing buildings above a certain size should be regarded as an opportunity to take cost-effective measures to enhance energy performance. Major renovations are cases such as those where the total cost of the renovation related to the building shell and/or energy installations such as heating, hot water supply, air-conditioning, ventilation and lighting is higher than 25 % of the value of the building, excluding the value of the land upon which the building is situated, or those where more than 25 % of the building shell undergoes renovation.

(14) However, the improvement of the overall energy performance of an existing building does not necessarily mean a total renovation of the building but could be confined to those parts that are most relevant for the energy performance of the building and are cost-effective.

(15) Renovation requirements for existing buildings should not be incompatible with the intended function, quality or character of the building. It should be possible to recover additional costs involved in such renovation within a reasonable period of time in relation to the expected technical lifetime of the investment by accrued energy savings.

(16) The certification process may be supported by programmes to facilitate equal access to improved energy performance; based upon agreements between organisations of stakeholders and a body appointed by the Member States; carried out by energy service companies which agree to commit themselves to undertake the identified investments. The schemes adopted should be supervised and followed up by Member States, which should also facilitate the use of incentive systems. To the extent possible, the certificate should describe the actual energy-performance situation of the building and may be revised accordingly. Public authority buildings and buildings frequently visited by the public should set an example by taking environmental and energy considerations into account and therefore should be subject to energy certification on a regular basis. The dissemination to the public of this information on energy performance should be enhanced by clearly displaying these energy certificates. Moreover, the displaying of officially recommended indoor temperatures, together with the actual measured temperature, should discourage the misuse of heating, air-conditioning and ventilation systems. This should contribute to avoiding unnecessary use of energy and to safeguarding comfortable indoor climatic conditions (thermal comfort) in relation to the outside temperature.

(17) Member States may also employ other means/measures, not provided for in this Directive, to encourage enhanced energy performance. Member States should encourage good energy management, taking into account the intensity of use of buildings.

(18) Recent years have seen a rise in the number of air-conditioning systems in southern European countries. This creates considerable problems at peak load times, increasing the cost of electricity and disrupting the energy balance in those countries. Priority should be given to strategies which enhance the thermal performance of buildings during the summer period. To this end there should be further development of passive cooling techniques, primarily those that improve indoor climatic conditions and the microclimate around buildings.

(19) Regular maintenance of boilers and of air-conditioning systems by qualified personnel contributes to maintaining their correct adjustment in accordance with the product specification and in that way will ensure optimal performance from an environmental, safety and energy point of view. An independent assessment of the total heating installation is appropriate whenever replacement could be considered on the basis of cost-effectiveness.

(20) The billing, to occupants of buildings, of the costs of heating, air-conditioning and hot water, calculated in proportion to actual consumption, could contribute towards energy saving in the residential sector. Occupants should be enabled to regulate their own consumption of heat and hot water, in so far as such measures are cost effective.

(21) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, general principles providing for a system of energy performance requirements and its objectives should be established at Community level, but the detailed implementation should be left to Member States, thus allowing each Member State to choose the regime which corresponds best to its particular situation. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

(22) Provision should be made for the possibility of rapidly adapting the methodology of calculation and of Member States regularly reviewing minimum requirements in the field of energy performance of buildings with regard to technical progress, *inter alia*, as concerns the insulation properties (or quality) of the construction material, and to future developments in standardisation.

(23) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1],

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective

The objective of this Directive is to promote the improvement of the energy performance of buildings within the Community, taking into account outdoor climatic and local conditions, as well as indoor climate requirements and cost-effectiveness.

This Directive lays down requirements as regards:

(a) the general framework for a methodology of calculation of the integrated energy performance of buildings;

(b) the application of minimum requirements on the energy performance of new buildings;

(c) the application of minimum requirements on the energy performance of large existing buildings that are subject to major renovation;

(d) energy certification of buildings; and

(e) regular inspection of boilers and of air-conditioning systems in buildings and in addition an assessment of the heating installation in which the boilers are more than 15 years old.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

1. 'building': a roofed construction having walls, for which energy is used to condition the indoor climate; a building may refer to the building as a whole or parts thereof that have been designed or altered to be used separately;

2. 'energy performance of a building': the amount of energy actually consumed or estimated to meet the different needs associated with a standardised use of the building, which may include, *inter alia*, heating, hot water heating, cooling, ventilation and lighting. This amount shall be reflected in one or more numeric indicators which have been calculated, taking into account insulation, technical and installation characteristics, design and positioning in relation to climatic aspects, solar exposure and influence of neighbouring structures, own-energy generation and other factors, including indoor climate, that influence the energy demand;

3. 'energy performance certificate of a building': a certificate recognised by the Member State or a legal person designated by it, which includes the energy performance of a building calculated according to a methodology based on the general framework set out in the Annex;

4. 'CHP' (combined heat and power): the simultaneous conversion of primary fuels into mechanical or electrical and thermal energy, meeting certain quality criteria of energy efficiency;

5. 'air-conditioning system': a combination of all components required to provide a form of air treatment in which temperature is controlled or can be lowered, possibly in combination with the control of ventilation, humidity and air cleanliness;

6. 'boiler': the combined boiler body and burner-unit designed to transmit to water the heat released from combustion;

7. 'effective rated output (expressed in kW)': the maximum calorific output specified and guaranteed by the manufacturer as being deliverable during continuous operation while complying with the useful efficiency indicated by the manufacturer;

8. 'heat pump': a device or installation that extracts heat at low temperature from air, water or earth and supplies the heat to the building.

Article 3

Adoption of a methodology

Member States shall apply a methodology, at national or regional level, of calculation of the energy performance of buildings on the basis of the general framework set out in the Annex. Parts 1 and 2 of this framework shall be adapted to technical progress in accordance with the procedure referred to in Article 14(2), taking into account standards or norms applied in Member State legislation.

This methodology shall be set at national or regional level.

The energy performance of a building shall be expressed in a transparent manner and may include a CO_2 emission indicator.

Article 4

Setting of energy performance requirements

1. Member States shall take the necessary measures to ensure that minimum energy performance requirements for buildings are set, based on the methodology referred to in Article 3. When setting requirements, Member States may differentiate between new and existing buildings and different categories of buildings. These requirements shall take account of general indoor climate conditions, in order to avoid possible negative effects such as inadequate ventilation, as well as local conditions and the designated function and the age of the building. These requirements shall be reviewed at regular intervals which should not be longer than five years and, if necessary, updated in order to reflect technical progress in the building sector.

[1] OJ L 184, 17.7.1999, p. 23.

2. The energy performance requirements shall be applied in accordance with Articles 5 and 6.

3. Member States may decide not to set or apply the requirements referred to in paragraph 1 for the following categories of buildings:

— buildings and monuments officially protected as part of a designated environment or because of their special architectural or historic merit, where compliance with the requirements would unacceptably alter their character or appearance,

— buildings used as places of worship and for religious activities,

— temporary buildings with a planned time of use of two years or less, industrial sites, workshops and non-residential agricultural buildings with low energy demand and non-residential agricultural buildings which are in use by a sector covered by a national sectoral agreement on energy performance,

— residential buildings which are intended to be used less than four months of the year,

— stand-alone buildings with a total useful floor area of less than 50 m^2.

Article 5

New buildings

Member States shall take the necessary measures to ensure that new buildings meet the minimum energy performance requirements referred to in Article 4.

For new buildings with a total useful floor area over 1 000 m^2, Member States shall ensure that the technical, environmental and economic feasibility of alternative systems such as:

— decentralised energy supply systems based on renewable energy,

— CHP,

— district or block heating or cooling, if available,

— heat pumps, under certain conditions,

is considered and is taken into account before construction starts.

Article 6

Existing buildings

Member States shall take the necessary measures to ensure that when buildings with a total useful floor area over 1 000 m^2 undergo major renovation, their energy performance is upgraded in order to meet minimum requirements in so far as this is technically, functionally and economically feasible. Member States shall derive these minimum energy performance requirements on the basis of the energy performance requirements set for buildings in accordance with Article 4. The requirements may be set either for the renovated building as a whole or for the renovated systems or components when these are part of a renovation to be carried out within a limited time period, with the abovementioned objective of improving the overall energy performance of the building.

Article 7

Energy performance certificate

1. Member States shall ensure that, when buildings are constructed, sold or rented out, an energy performance certificate is made available to the owner or by the owner to the prospective buyer or tenant, as the case might be. The validity of the certificate shall not exceed 10 years.

Certification for apartments or units designed for separate use in blocks may be based:

— on a common certification of the whole building for blocks with a common heating system, or

— on the assessment of another representative apartment in the same block.

Member States may exclude the categories referred to in Article 4(3) from the application of this paragraph.

2. The energy performance certificate for buildings shall include reference values such as current legal standards and benchmarks in order to make it possible for consumers to compare and assess the energy performance of the building. The certificate shall be accompanied by recommendations for the cost-effective improvement of the energy performance.

The objective of the certificates shall be limited to the provision of information and any effects of these certificates in terms of legal proceedings or otherwise shall be decided in accordance with national rules.

3. Member States shall take measures to ensure that for buildings with a total useful floor area over 1 000 m^2 occupied by public authorities and by institutions providing public services to a large number of persons and therefore frequently visited by these persons an energy certificate, not older than 10 years, is placed in a prominent place clearly visible to the public.

The range of recommended and current indoor temperatures and, when appropriate, other relevant climatic factors may also be clearly displayed.

Article 8

Inspection of boilers

With regard to reducing energy consumption and limiting carbon dioxide emissions, Member States shall either:

(a) lay down the necessary measures to establish a regular inspection of boilers fired by non-renewable liquid or solid fuel of an effective rated output of 20 kW to 100 kW. Such inspection may also be applied to boilers using other fuels.

Boilers of an effective rated output of more than 100 kW shall be inspected at least every two years. For gas boilers, this period may be extended to four years.

For heating installations with boilers of an effective rated output of more than 20 kW which are older than 15 years, Member States shall lay down the necessary measures to establish a one-off inspection of the whole heating installation. On the basis of this inspection, which shall include an assessment of the boiler efficiency and the boiler sizing compared to the heating requirements of the building, the experts shall provide advice to the users on the replacement of the boilers, other modifications to the heating system and on alternative solutions; or

(b) take steps to ensure the provision of advice to the users on the replacement of boilers, other modifications to the heating system and on alternative solutions which may include inspections to assess the efficiency and appropriate size of the boiler. The overall impact of this approach should be broadly equivalent to that arising from the provisions set out in (a). Member States that choose this option shall submit a report on the equivalence of their approach to the Commission every two years.

Article 9

Inspection of air-conditioning systems

With regard to reducing energy consumption and limiting carbon dioxide emissions, Member States shall lay down the necessary measures to establish a regular inspection of air-conditioning systems of an effective rated output of more than 12 kW.

This inspection shall include an assessment of the air-conditioning efficiency and the sizing compared to the cooling requirements of the building. Appropriate advice shall be provided to the users on possible improvement or replacement of the air-conditioning system and on alternative solutions.

Article 10

Independent experts

Member States shall ensure that the certification of buildings, the drafting of the accompanying recommendations and the inspection of boilers and air-conditioning systems are carried out in an independent manner by qualified and/or accredited experts, whether operating as sole traders or employed by public or private enterprise bodies.

Article 11

Review

The Commission, assisted by the Committee established by Article 14, shall evaluate this Directive in the light of experience gained during its application, and, if necessary, make proposals with respect to, *inter alia*:

(a) possible complementary measures referring to the renovations in buildings with a total useful floor area less than 1 000 m^2;

(b) general incentives for further energy efficiency measures in buildings.

Article 12

Information

Member States may take the necessary measures to inform the users of buildings as to the different methods and practices that serve to enhance energy performance. Upon Member States' request, the Commission shall assist Member States in staging the information campaigns concerned, which may be dealt with in Community programmes.

Article 13

Adaptation of the framework

Points 1 and 2 of the Annex shall be reviewed at regular intervals, which shall not be shorter than two years.

Any amendments necessary in order to adapt points 1 and 2 of the Annex to technical progress shall be adopted in accordance with the procedure referred to in Article 14(2).

Article 14

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

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

3. The Committee shall adopt its Rules of Procedure.

Article 15

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive at the latest on 4 January 2006. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, 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 reference is to be made.

2. Member States may, because of lack of qualified and/or accredited experts, have an additional period of three years to apply fully the provisions of Articles 7, 8 and 9. When making use of this option, Member States shall notify the Commission, providing the appropriate justification together with a time schedule with respect to the further implementation of this Directive.

Article 16

Entry into force

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

Article 17

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 16 December 2002.

For the European Parliament	*For the Council*
The President	*The President*
P. COX	M. FISCHER BOEL

ANNEX

General framework for the calculation of energy performance of buildings (Article 3)

1. The methodology of calculation of energy performances of buildings shall include at least the following aspects:
   (a) thermal characteristics of the building (shell and internal partitions, etc.). These characteristics may also include air-tightness;
   (b) heating installation and hot water supply, including their insulation characteristics;
   (c) air-conditioning installation;
   (d) ventilation;
   (e) built-in lighting installation (mainly the non-residential sector);
   (f) position and orientation of buildings, including outdoor climate;
   (g) passive solar systems and solar protection;
   (h) natural ventilation;
   (i) indoor climatic conditions, including the designed indoor climate.
2. The positive influence of the following aspects shall, where relevant in this calculation, be taken into account:
   (a) active solar systems and other heating and electricity systems based on renewable energy sources;
   (b) electricity produced by CHP;
   (c) district or block heating and cooling systems;
   (d) natural lighting.
3. For the purpose of this calculation buildings should be adequately classified into categories such as:
   (a) single-family houses of different types;
   (b) apartment blocks;
   (c) offices;
   (d) education buildings;
   (e) hospitals;
   (f) hotels and restaurants;
   (g) sports facilities;
   (h) wholesale and retail trade services buildings;
   (i) other types of energy-consuming buildings.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 December 2002

relating to national provisions on limiting the importation and placement on the market of certain NK fertilisers of high nitrogen content and containing chlorine notified by France pursuant to Article 95(5) of the EC Treaty

(notified under document number C(2002) 5113)

(Only the French text is authentic)

(Text with EEA relevance)

(2003/1/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 95(6) thereof,

Whereas:

I. FACTS

1. Community legislation

1.1. *Directive 76/116/EEC relating to fertilisers*

(1) Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers [1], as last amended by Directive 98/97/EC of the European Parliament and of the Council [2], aims to remove barriers to trade resulting from differences between Member States with regard to legislation on fertilisers. To achieve this, it has already established, at Community level, requirements that fertilisers must meet if they are to be placed on the market under the designation 'EC fertiliser' [3], such as provisions regarding designation, definition, composition, labelling and packaging of the most important straight and compound fertilisers in the Community.

(2) Annex I to Directive 76/116/EEC defines the designation of the type of EC fertiliser and the corresponding requirements, in particular with respect to its composition, that every fertiliser marked EC fertiliser must fulfil. Annex I classes EC fertilisers by category according to the content of the primary nutrients, i.e. nitrogen, phosphorus and potassium, with these three elements being represented by the letters N, P and K, respectively. In particular, it distinguishes between straight fertilisers, which contain only one of the three fundamental nutrients, and compound fertilisers, which contain two or three.

(3) Straight primary nutrient fertilisers include, in particular:

— in the list of nitrogenous fertilisers, ammonium nitrates, produced chemically, and which include as an essential component ammonium nitrate with an N-nutrient content of at least 20 %,

— in the list of potassium fertilisers, potassium chloride, which is obtained from crude potassium salts and which includes as an essential component potassium chloride with a K-nutrient content, measured as potassium oxide (K_2O), of at least 37 %.

(4) As for compound fertilisers with primary nutrients, which are products obtained chemically or by blending without addition of organic nutrients of animal or vegetable origin, they are subdivided into four subcategories according to their composition: NPK, NP, NK and PK fertilisers. Thus, NPK fertilisers must have a minimum total nutrient content of 20 %, with a minimum content for each of the nutrients of 3 % of nitrogen, 5 % of phosphorus measured as phosphorus pentoxide (P_2O_5) and 5 % of potassium measured as potassium oxide (K_2O), respectively. As for NK fertilisers, they must have a minimum total nutrient content of 18 %, with a minimum content for each of the nutrients of 3 % of nitrogen and 5 % of potassium measured as potassium oxide.

[1] OJ L 24, 30.1.1976, p. 21.
[2] OJ L 18, 23.1.1999, p. 60.
[3] The term 'EEC fertiliser' set out in Directive 76/116/EEC was replaced by the term 'EC fertiliser' by Directive 97/63/EC (OJ L 335, 6.12.1997, p. 15).

(5) Pursuant to Article 2, the designation 'EC fertiliser' can only be used for fertilisers belonging to one of the fertiliser types listed in Annex I and meeting the requirements laid down by Directive 76/116/EEC and Annexes I to III thereto.

(6) Article 7 introduces a free movement clause by stating: 'Without prejudice to the provisions of other Community directives, Member States may not on grounds of composition, identification, labelling or packaging, prohibit, restrict or hinder the marketing of fertilisers marked "EC fertiliser" which comply with the provisions of this Directive and the Annexes thereto.'

(7) Lastly, Article 8 concerns the official checks that Member States may carry out to ensure that fertilisers placed on the market under the description 'EC fertiliser' comply with the provisions of Directive 76/116/EEC and Annexes I and II thereto.

1.2. *Council Directive 80/876/EEC relating to straight ammonium nitrate fertilisers of high nitrogen content*

(8) Given the particular nature of straight ammonium nitrate fertilisers covered by Directive 76/116/EEC, and to the resulting requirements regarding public safety, health, and protection of workers, Council Directive 80/876/EEC of 15 July 1980 on the approximation of the laws of the Member States relating to straight ammonium nitrate fertilisers of high nitrogen content [4] laid down additional Community rules for these fertilisers. In the interest of public safety, the characteristics and properties distinguishing straight ammonium nitrate fertilisers of high nitrogen content from varieties of ammonium nitrate used in the manufacture of products used as explosives have been determined at Community level.

(9) Pursuant to its Article 1, Directive 80/876/EEC applies to straight ammonium nitrate fertilisers of high nitrogen content placed on the market in the Member States of the Community, without prejudice to the application of Directive 76/116/EEC. The term 'fertilisers' means ammonium nitrate-based products manufactured chemically for use as fertilisers and containing more than 28 % by weight of nitrogen, which may contain inorganic additives or inert substances such as ground limestone or ground dolomite, calcium sulphate, magnesium sulphate and kieserite, with it being specified that the other inorganic additives or inert substances which are used in the compounding of the fertiliser must not increase its sensitivity to heat or its tendency to detonate.

(10) Directive 80/876/EEC lays down that straight ammonium nitrate fertilisers of high nitrogen content should conform to certain characteristics to ensure that they are harmless. Annex I specifies the characteristics and limits for straight ammonium nitrate fertilisers of high nitrogen content, which include, among other things, the maximum chlorine content, which is set at 0,02 % by weight. Moreover, Member States may require that such fertilisers be subjected to the test of resistance to detonation described in Annex II before or after they are placed on the market.

2. **Recasting the Community legislation on fertilisers**

(11) On 14 September 2001, the Commission adopted a proposal for a regulation of the European Parliament and of the Council relating to fertilisers [5], which recasts Council and Commission Directives on the approximation of the laws of the Member States relating to fertilisers.

(12) The aim of this proposal is to simplify the legislation relating to fertilisers by incorporating in a single text in the form of a regulation, Directives 76/116/EEC, 80/876/EEC, 87/94/EEC and 77/535/EEC, together with the various amendments and adaptations to technical progress of these Directives. All the technical specifications have been included in the Annexes. Common provisions have been separated from specific provisions, the latter being ordered according to the main groups of fertilisers that are currently included in the legislation. The technical annexes have been compiled from the original Directives and rearranged, and some minor changes have been introduced, though without making any changes to technical specifications on nutrient contents.

(13) Title II of the proposal for a regulation, entitled 'Provisions applicable to specific types of fertilisers', includes a Chapter IV on ammonium nitrate fertilisers of high nitrogen content [6], which is largely based on the provisions of Directive 80/876/EEC, whose scope was partially expanded to cover compound ammonium nitrate fertilisers of high nitrogen content to take into account the new market situation. Under the old legislation, compounds would not have been subject to tests of resistance to detonation, which would have created a loophole that Member States wanted to avoid for safety reasons. As a result of this recasting, the test of resistance to detonation can now also be required by Member States for compound ammonium nitrate fertilisers of high nitrogen content.

(14) For this purpose, section 2 of Annex III to the proposal, which contains the technical provisions for ammonium nitrate fertilisers of high nitrogen content, describes the test of resistance to detonation for ammonium nitrate fertilisers of high nitrogen content which may be used for all ammonium nitrate fertilisers, straight and compound, of high nitrogen content. In contrast, section 1 of Annex III, which takes over the rules set out in Annex I to Directive 80/876/EEC only describes the characteristics of, and limits for, straight ammonium nitrate fertilisers of high nitrogen content.

[4] OJ L 250, 23.9.1980, p. 7.

[5] COM(2001) 508 final (OJ C 51 E, 26.2.2002, p. 1).

[6] See Articles 25 to 28 of the proposal for a regulation.

(15) The Member States have already had the opportunity to examine this proposal, and, on 30 September 2002, the Council came to unanimous political agreement with a view to adopting the common position [7]. As for the provisions which apply to ammonium nitrate fertilisers of high nitrogen content, the amendments put forward by the Member States were solely concerned with making the test of resistance to detonation obligatory for all fertilisers of high nitrogen content, with the person placing it on the market responsible for proving that the fertilisers had successfully passed this test of resistance to detonation, and adding an additional traceability requirement for which the person placing it on the market was also to be responsible. On the other hand, the text of Annex III was not changed.

3. **National provisions notified**

(16) France has notified new national provisions [8] intended to prohibit the importation and placement on the market of NK fertilisers with a nitrogen content resulting from ammonium nitrate of over 28 % by weight and chlorine content over 0,02 % by weight. A decree signed by the competent ministers is to make it obligatory to remove these fertilisers from the market, at the expense and under the responsibility of those who have them in their possession. The decree is accompanied by a memorandum concerning how to render such fertilisers inert.

(17) The notified decree, which bans the import and placement on the market of certain NK fertilisers of high nitrogen content and containing chlorine, is intended to suspend, in France, for a one-year period, the importation, placement on the market either free of charge or in return for a fee, and the holding for the purposes of sale or free distribution of NK fertilisers containing over 28 % by mass of nitrogen from ammonium nitrate and having a chlorine content of over 0,02 % (Article 1 of the draft decree).

(18) In addition to the ban, there will be a requirement for the person responsible for first placing these fertilisers on the French market to withdraw them from all places they are present under their responsibility and at their expense (Article 2 of the draft decree).

(19) Lastly, the notified decree states that products which have been withdrawn in this way cannot be placed on the French market again until they have been recognised as being in conformity with the legislation in force, following the addition of an inert charge which makes it possible to change the NK content (Article 3 of the draft decree).

(20) Moreover, in order to implement the provisions of Article 3, the regulatory framework will be complemented by a ministerial circular on rendering inert NK fertilisers with a nitrogen content resulting from ammonium nitrate of over 28 % and chlorine content over 0,02 %. The purpose of the circular will be to describe the procedures for rendering the fertilisers inert.

4. **Justifications put forward by France**

(21) Given the potential danger posed by certain fertilisers, the French authorities consider it necessary to introduce special provisions for NK fertilisers (nitrogen-potassium) of high nitrogen content (N) from ammonium nitrate (NH_4NO_3) and with a potassium (K) content, measured as potassium oxide (K_2O), of 5 %, with potassium in the form of potassium chloride (KCl). These national measures derogate from the provisions of Directive 76/116/EEC for NK fertilisers marked 'EC fertiliser'.

(22) The French authorities have put forward the reasons which led them to feel the introduction of the said provisions was desirable, arguing that, with regard to NK fertilisers, France is certainly in a situation which enables it to take advantage of the derogation allowed for under Article 95(5) of the EC Treaty. Their argument can be summed up as follows.

(23) To begin, the French authorities emphasise that, although Directive 76/116/EEC defines EC NK fertilisers, it does not specify the form under which the potassium can be included. From this, they infer that there is nothing to prohibit EC NK fertilisers being manufactured by mechanically blending a straight ammonium nitrate fertiliser of high nitrogen content, or even pure ammonium nitrate, i.e. a product with a nitrogen content resulting from ammonium nitrate of over 28 %, together with potassium chloride, a potassium salt.

(24) The French authorities then point out that, since 1995, a series of Council regulations [9] has established anti-dumping duties on imports of straight ammonium nitrate fertilisers of high nitrogen content originating in Russia, Ukraine and Poland. The French authorities state that some producers impacted by this measure came up with the idea of blending ammonium nitrate fertilisers of high nitrogen content with potassium chloride in such a way that the potassium content of the mixture, measured as potassium oxide, is at least equal to 5 %. As the French authorities note 'if the potassium content of the mixture was less than 5 %, the product could no longer be considered to be an EC NK fertiliser, but only a straight ammonium nitrate fertiliser of high nitrogen content, and would then have to pay anti-dumping duties' [10].

[7] Council Document No 12179/02.

[8] Following the notification, France adopted and published the planned measures. This measure is the subject of a separate procedure.

[9] The first of these regulations was Regulation (EC) No 2022/95 (OJ L 198, 23.8.1995, p. 1) imposing anti-dumping duties on ammonium nitrate originating in Russia. Currently, Regulation (EC) No 132/2001 (OJ L 23, 25.1.2001, p. 1) imposing anti-dumping duties on ammonium nitrate originating in Poland and Ukraine and Regulation (EC) No 658/2002 (OJ L 102, 18.4.2002, p. 1) imposing anti-dumping duties on ammonium nitrate originating in Russia are in force.

[10] See page 2 of the French argument.

(25) According to the French authorities, these NK fertilisers, which are in theory mixtures of straight ammonium nitrate fertilisers of high nitrogen content and potassium chloride, have two features: firstly, they do not require payment of anti-dumping duties and, secondly, they are not subject to the requirements of Directive 80/876/EEC. The French authorities are of the opinion that, as a result, there is nothing to prevent replacing this straight ammonium nitrate fertiliser of high nitrogen content with a product which does not comply with Directive 80/876/EEC, or even with pure ammonium nitrate, also known as technical-grade ammonium nitrate, which is used in the production of industrial explosives.

(26) The French authorities examined these fertilisers from two different perspectives: firstly, their theoretical and actual conformity with the specifications set by Community legislation, in order to determine whether these NK fertiliser mixtures can be designated 'EC fertilisers', and secondly, whether they are dangerous. This was determined, in particular, through the analysis by the Directorate-General for Competition, consumer affairs and fraud prevention (DGCCRF) ([11]) of samples taken from imported batches.

(27) Given the results of these analyses ([12]), the French authorities questioned the merits of the designation 'EC fertiliser 32-0-5' used for marketing these products. As for 'EC fertiliser 33-0-5', the designation under which some of these NK fertilisers arrive, the French authorities are of the opinion that the actual nitrogen content can never match the declared content, since the minimum nitrogen content of these fertilisers should be 35,449 %, even if a tolerance of ±1,1 % is applied, which, pursuant to Article 8(3) of Directive 76/116/EEC, cannot be done systematically. From this, they deduce that these products do not have the claimed nutrient content.

(28) Having made this observation, the French authorities addressed the problem of the potential danger of these NK fertilisers in the following words: 'In addition to the observed deviations between the stated nutrient content and the actual content, there is the problem of the potential danger posed by these products, particularly in terms of risk to the environment and in the workplace, issues which are not addressed at all by Directive 76/116/EEC. Following the catastrophe in Toulouse, and given the fact that ammonium nitrate is added to potassium chloride, determining whether such products might be dangerous is a real issue' ([13]).

(29) According to the French authorities, NK fertilisers may have slight explosive properties similar to those of certain straight nitrogen fertilisers, although this is only a risk with fertilisers which have a relatively high ammonium nitrate content ([14]). As these NK fertilisers have a high ammonium nitrate content, the French authorities are of the opinion that 'there is a risk of explosion which, although low, is definitely real given that the potassium is present in the form of potassium chloride' ([15]).

(30) On this subject, the French authorities point out that:

— it is well known that chlorine is a sensitising agent with regard to the decomposition of ammonium nitrate, which explains the 0,02 % limit by weight on chlorine content for straight ammonium nitrate fertilisers of high nitrogen content, pursuant to point 5 of Annex I to Directive 80/876/EEC,

— when this question was referred to the Committee on Explosive Substances ([16]) in 2001, it issued a recommendation ([17]) 'designating "NK fertilisers with an ammonium nitrate content of over 90 %, i.e. a total nitrogen content of over 28 %, with a high chloride content in the form of potassium chloride" as "accidental explosives"' ([18]),

— these mixtures of potassium chloride and ammonium nitrate may produce heat, generally without posing any safety problems ([19]),

— however, with chlorine acting as a catalyst, a reaction may occur, triggering a self-sustained decomposition which releases toxic smoke and poses a risk which should not be ignored ([20]), given the considerable amounts of ammonium nitrate in the mixtures.

([11]) One of the tasks entrusted to this body is to ensure that products placed on the market comply with the regulations in force.

([12]) In 2000 and 2001, in its Bordeaux laboratory, the DGCCRF analysed 126 samples of 'NK fertiliser 32-0-5' (the designation under which the large majority of these NK fertilisers is imported). Of these 126 samples, the nitrogen and potassium content of only three matched that stated by the importer, within the tolerances set by Directive 76/116/EEC. The average nitrogen content was 29,94 %, with actual content varying from 24,10 % to 33 %, with a standard deviation of 1,413 %. Average potassium content was 7,24 %, with actual content varying from 3,3 % to 21,3 %, with a standard deviation of 2,714 %. Lastly, the potassium content of 13 of the 126 samples was below 5 %, the minimum required content for compound EC NK fertilisers.

([13]) See page 8 of the French argument.

([14]) See Louis Médard, *Les explosifs occasionnels*, (translated as *Accidental Explosives*), Techniques et documentation, 1979, p. 664 (See recital 34 of this Decision).

([15]) See page 8 of the French argument.

([16]) The Committee on Explosive Substances was created by a 1961 decree and is made up of representatives from the various administrative bodies concerned and individuals appointed due to their competence in the field of explosives. One of its tasks is to draw up opinions or recommendations on any questions regarding explosive substances which are referred to it by the Minister for Industry.

([17]) The Committee on Explosive Substances' recommendation is attached to the French argument.

([18]) See page 9 of the French argument.

([19]) See Louis Médard, *op. cit.*, p. 665.

([20]) See Louis Médard, *op. cit.*, p. 664.

In the opinion of the French authorities, these risks of explosion and decomposition explain why the precautions taken when transporting NK fertilisers, either by land or by sea, are stricter than those which apply to the transport of straight ammonium nitrate fertilisers of high nitrogen content.

(31) The French authorities point out that, on this subject, Article 1(3) of Directive 80/876/EEC relating to straight ammonium nitrate fertilisers of high nitrogen content states that inorganic additives or inert substances, other than those mentioned in paragraph 2, which are used in the compounding of the fertiliser must not increase its sensitivity to heat or its tendency to detonate. The French authorities feel that, since potassium chloride cannot be considered to be an inert substance with regard to ammonium nitrate, given that mixing ammonium nitrate and potassium chloride can, under certain conditions, result in an exothermic reaction which may trigger self-sustained decomposition. From this, the French authorities conclude that 'although the products placed on the French market are unquestionably EC fertilisers, at least when they comply with the regulations, they also have the characteristic of being NK fertilisers, that is, compound fertilisers, with a nitrogen content resulting from ammonium nitrate of over 28 % and a stated chlorine content of 3,78 %' ([21]).

(32) The French authorities also note that the nitrogen content from ammonium nitrate of these NK fertilisers is significantly higher than that found in NK fertilisers marketed up to now. In their opinion, the lack of knowledge regarding these fertilisers, which did not exist when Directive 76/116/EEC was adopted, requires that a prudent approach be taken given the experience acquired since the mid-1950s, a time since when the nitrogen content from ammonium nitrate of compound fertilisers has increased considerably. Therefore, the French authorities are of the opinion that 'as the chlorine content of these straight fertilisers must be lower than 0,02 % by weight, it seems logical that the same upper limit should be set for the chlorine content of these NK fertilisers' ([22]).

(33) Within the framework of the procedure mentioned above ([23]), the French authorities submitted some additional observations concerning notification under Article 95(5) of the EC Treaty, which the Commission took into account in its assessment. The French authorities consider that Article L.255-1 of the farm laws, introduced by Law 79-595 of 13 July 1979 relating to the organisation of checks on fertilisers, allows them to prohibit the placement on the market of NK fertilisers marked 'EC fertilisers'. They concede that Directive 76/116/EEC undeniably includes harmonisation measures concerning in particular the composition, identification, labelling and packaging of fertilisers. However, the French authorities consider that there are no provisions in Community legislation as it currently stands regarding the intrinsic safety of all compound fertilisers marked 'EC fertiliser'. According to them, certain advertisements ([24]) make it clear that these NK fertilisers are no more than 'high-dosage ammonium nitrate based fertilisers' to which the required minimum amounts of potassium chloride have been added so that they may be marketed as 'EC fertilisers'. The French authorities state that, although the decision to ban these products was mainly based on safety concerns, the checks carried out by the authorities ([25]), which led them to question whether the ban truly related to EC fertilisers, were also a factor. The deviations observed between the stated nutrient content and the actual content caused the French authorities to conclude that these fertilisers did not meet the specifications described in Directive 76/116/EEC. They feel that it is difficult to maintain that the free movement clause in Article 7 of Directive 76/116/EEC should apply to these fertilisers simply because they are designated 'EC fertilisers'.

New scientific evidence concerning the protection of the environment or the working environment

(34) To support their request, in addition to the arguments repeated above, the French authorities provided a number of documents, more specifically, Chapter 25, entitled 'Ammonium Nitrate-based Fertilisers' of Louis Médard's *Les explosifs occasionnels*, Techniques et documentation, 1979, and the Committee on Explosive Substances' recommendation, without providing the additional scientific information which was the basis of this recommendation. They also refer to the scenarios looked at as part of the investigation of the explosion of the AZF Factory in Toulouse, without providing any documentation on it. Other than a number of theoretical calculations included in their argument, the French authorities did not provide any other documents or information concerning the risk posed by these NK fertilisers.

(35) The French authorities note that, as the compound fertilisers placed on the market up to the mid-1950s contained considerably less nitrogen, particularly in the form of nitrogen from ammonium nitrate, than those which have been manufactured since then, self-sustained decomposition was practically unknown. They point out that, from the mid-1950s, an increase in nitrogen content from ammonium nitrate initially led to spectacular accidents caused by the decomposition of compound fertilisers.

([21]) See page 14 of the French argument.
([22]) See page 14 of the French argument.
([23]) See footnote 8 of this Decision.
([24]) See recital 41 of this Decision and, in particular, footnote 32.
([25]) See, in particular, recital 27 of this Decision and footnote 12.

(36) According to the French authorities, 'nothing currently allows us to assert that these new NK fertilisers, which, first of all, contain over 80 % ammonium nitrate or ammonium nitrate fertiliser of high nitrogen content, and, second of all, at least 7,93 % potassium chloride, will not undergo complex reactions resulting in large-scale accidents' ([26]). They believe that this is even more likely, given that potassium chloride is not an inert substance with regard to ammonium nitrate, and that the analyses of the samples taken from these fertilisers have shown considerable differences between the stated nutrient content and the actual content.

(37) The French authorities also point out that it should not be forgotten that on 21 September 2001, an explosion at the Grande Paroisse factory in Toulouse, which manufactured technical-grade ammonium nitrate and straight ammonium nitrate fertilisers of high nitrogen content, killed 30 people, including 22 employees, and caused considerable environmental damage. 'This explosion occurred in a warehouse where non-compliant products of high nitrogen content from ammonium nitrate were mixed. This concerned, firstly, ammonium nitrate which could not be marketed as straight fertiliser since it did not meet the specifications of either Directive 80/876/EEC or the French standard NF U 42-001, and, secondly, technical-grade ammonium nitrate that did not meet the specifications set by the clients' ([27]). The French authorities point out that, not far from the explosion, a considerable amount of straight ammonium nitrate fertiliser of high nitrogen content suffered only material damage (broken and scattered sacks), while the product itself remained intact.

(38) The French authorities state that 'up to now, the causes of this explosion are still unknown, and no theories as to them have yet been definitively ruled out' ([28]). They specify that one of the theories put forward to explain the catastrophe is that waste containing chlorine was mistakenly placed in a warehouse used to store ammonium nitrate. In the opinion of the French authorities, 'it would therefore seem reasonable, as an application of the precautionary principle, to take measures to prevent the placement on the market of NK fertilisers which are mixtures of considerable quantities of ammonium nitrate or ammonium nitrate fertiliser of high nitrogen content with substances that increase the sensitivity to heat and tendency to detonate of ammonium nitrate' ([29]). They emphasise that, although it is measured as potassium oxide, the potassium is present in the form of a salt, potassium chloride, and that it is well known that potassium chloride is not inert with regard to ammonium nitrate.

Specific characteristics of the problem

(39) The French authorities feel that 'due to its size, the French market for straight ammonium nitrate fertilisers of high nitrogen content differs from the market in the other Member States of the Community. In fact, the French market alone accounts for 40 % of the total EU market for this type of fertiliser. Most of the fertiliser is imported, and imports from non-EU member countries account for 23,4 %' ([30]).

(40) Thus, over the last several years, the French authorities have witnessed considerable growth in imports of NK fertilisers with a stated nitrogen content resulting from ammonium nitrate of over 28 % and a stated potassium content, in the form of potassium chloride, and measured as potassium oxide, equal to 5 %. According to the figures provided by the French authorities, imports of these types of products were as follows: in 1997-1998: 0 tonnes; in 1998-1999: 20 000 tonnes; in 1999/2000: 40 000 tonnes; in 2000/2001: 88 000 tonnes; and in the 2001 calendar year alone, 76 000 tonnes were unloaded in French ports.

(41) The French authorities then point out that these NK fertilisers appeared on the French market shortly after anti-dumping duties on imports of ammonium nitrate were established ([31]), for the purpose of avoiding them, as can be seen from the advertising done by certain importers of ammonium nitrate-based fertilisers originating in Russia ([32]). According to the French authorities, 'the specialist press ([33]), which reflects the market, considers this product to be more of a variant of a straight ammonium nitrate fertiliser of high nitrogen content than a compound NK fertiliser' ([34]).

5. General information on the potential dangers posed by compound fertilisers of high nitrogen content (NPK fertilisers)

(42) The following information is taken from Chapter 25, 'Ammonium nitrate-based fertilisers', of Louis Médard's *Les explosifs occasionnels*, Techniques et documentation, 1979, which was included with the French authorities' notification to support their request for a derogation ([35]).

([26]) See page 15 of the French argument, where, with regard to this point, the French authorities refer to Louis Médard, *op. cit.*, p. 666.
([27]) See page 15 of the French argument.
([28]) See page 15 of the French argument.
([29]) See pages 15 and 16 of the French argument.
([30]) See page 3 of the French argument.
([31]) See recital 24 of this Decision.
([32]) The French authorities attached a web page of advertising from WCIB — France Appro Fertiliser and Pesticide World Market which includes among the items for sale: 'blend NPK fertilisers on basis of ammonium-nitrate 34,5 % with add of P or K in order to not pay anti-dumping duty. Standard formulation 32/00/05.'
([33]) The French authorities refer specifically to the following publications: "The FMB Fertiliser Europe Report", 16 February 2000, p. 2; "Fertiliser Europe", 22 January 2001, p. 2; "FMB Consultants", 11 January 2002, p. 2.
([34]) See page 4 of the French argument.
([35]) This book is a summary of work carried out on the subject. It should be pointed out that, when developing his arguments, Louis Médard uses 'NPK fertilisers' as a generic term, i.e. it covers the various types of compound fertilisers, with NK fertilisers thus treated as a subcategory of NPK fertilisers.

Nature of the potential dangers posed by NPK fertilisers

(43) According to Louis Médard, almost all solid NPK fertilisers contain ammonium nitrate and, depending on their composition and partly on their structure, they may pose the following dangers:

— fertilisers with a relatively high ammonium nitrate content may have slight explosive properties similar to those of certain straight nitrogen fertilisers,

— when heated sufficiently, certain NPK fertilisers may undergo nitrogen decomposition similar to that in warm NO_3NH_4 solutions. This is an autocatalytic reaction which, once it has been triggered, will affect all of the substance present. Chlorides favour decomposition,

— in many fertilisers which include both ammonium nitrate and a chloride in their composition, a special type of deflagration can be triggered if sufficient heat is applied to one point of the substance. This deflagration spreads very slowly from the point where it was started and is known as 'self-sustained decomposition', or alternatively 'cigar-burning' of the fertiliser. The catalytic reaction of the chloride ions in the fertiliser makes it easy to trigger the decomposition,

— certain fertilisers are liable to heat spontaneously while being stored, often by approximately 40 degrees from the ordinary temperature, and if the temperature reached is high enough, it may lead to the nitrogen decomposition referred to in the second indent ([36]).

Spontaneous heating of NPK fertilisers

(44) This phenomenon of spontaneous heating by 20 degrees to 30 degrees may occur in particular due to the presence of organic matter, for example, in phosphate deposits when the fertilisers are stored in large piles. This heating of fertilisers which contain organic matter should not be confused with the very moderate rise in temperature of approximately 10 degrees which may be seen with certain compound fertilisers which do not contain any organic matter. Such slight rises are caused by the formation of new salts as a result of the redistribution of anions and cations, and do not pose a danger ([37]).

Characteristics of 'cigar-burning' in NPK fertilisers

(45) 'Cigar-burning' may occur in NPK fertilisers which contain both chloride and ammonium nitrate (or salts which include nitrate ions and ammonium ions, such as KNO_3 and NH_4Cl). Moreover, in most NPK fertilisers, potassium is present in the form of potassium chloride. However, a different, insufficiently purified, potassium salt obtained from potassium chloride would provide chloride ions. No more than 0,5 % chloride is needed in a fertiliser for such decomposition to be possible. If a large, solid residue (skeleton) can form, this fosters the propagation of the decomposition. For this reason, cigar-burning is more likely with fertilisers that contain calcium phosphate then with those that contain ammonium phosphate.

([36]) See Louis Médard, *op. cit.*, p. 663 and 664.
([37]) See Louis Médard, *op. cit.*, p. 664 and 665.

(46) With fertilisers which form an unconfined mass, at one atmosphere of pressure, cigar-burning has the following characteristics, among others:

1. it is triggered by local heating, following a certain induction period. The temperature which must be reached to trigger the cigar-burning depends on the kind of fertiliser. If the source of heat has a low temperature (120° to 160°), it will require a considerable length of time, up to a few hours, to trigger the propagation of the decomposition. As a rule, the heating must concern a considerable amount of fertiliser. If it is restricted to an extremely small area, the resulting decomposition of the fertiliser will not be sufficient to propagate itself beyond the heated area;

2. for NPK fertilisers, the speed of the cigar-burning deflagration can vary from 3 cm/h to 150 cm/h;

3. the temperature profile at the deflagration front (which is approximately 1 dm wide) shows a preheating zone (often from 2 cm to 3 cm wide) where the temperature of the substance is raised to 120° to 135°, followed by a zone where the temperature increases rapidly (100° or more per mm), reaching a peak in temperature, beyond which the temperature gradually drops back;

4. certain trace elements, particularly copper, are remarkable catalysts ([38]);

5. sulphur contamination in NPK fertilisers has the effect of facilitating cigar-burning ([39]).

Deflagration dangers posed by NPK fertilisers

(47) The speed of unconfined deflagration of NPK fertilisers, which are susceptible to it, is still very low (100 to 1 000 times less than common pyrotechnic compositions). It does not, therefore, have any destructive mechanical effects. The damage caused by cigar-burning in NPK fertilisers results, above all, from the temperature reached by the substance, which is high enough to burn

([38]) With a copper content of only 0,01 % to 0,03 %, fertilisers which are not subject to cigar-burning without copper can propagate the deflagration at 6 cm/h to 10 cm/h. A fertiliser containing 0,3 % copper can reach speeds of 50 cm/h to 100 cm/h. This raises the question of whether it is wise to add copper to NPK fertilisers, with the exception of those which contain practically no chlorine. See Louis Médard, *op. cit.*, p. 669.
([39]) See Louis Médard, *op. cit.*, p. 667 to 669.

wood. The gases produced to do not have any particular combustive effect and, consequently, cannot increase the speed of development of fire ([40]).

Preventing the decomposition of NPK fertilisers

(48) According to Louis Médard, when storing fertilisers, it is crucial to avoid anything that might trigger decomposition. He states that studies of accidents ([41]) have revealed that the main triggers are: incandescent lamps left on in contact with the fertiliser; leaving the fertiliser in contact with a warm object undergoing a repair which involves the use of a flame, or subsequent to such a repair; using defective electrical equipment which allows hotspots to touch the fertiliser; and the presence of pipes containing hot liquids in the room or the ship's hold where the fertiliser was brought.

(49) Therefore, during both storage and transport, an effort should be made to ensure that none of the above sources of heat come into contact with the fertiliser, and also that any substances which might begin a fire be placed far away from the fertiliser, as the risk is less a function of the quantity of the combustible material than of its proximity to the fertiliser. Placing substances which might react dangerously or substances of which one is unsure of the composition near the fertiliser must also be avoided. Lastly, explosives must be strictly prohibited ([42]).

II. **PROCEDURE**

(50) In a letter dated 12 June 2002 and notified to the Commission on 19 June 2002, the French Permanent Representation to the European Union informed the Commission that, in accordance with Article 95(5) of the EC Treaty, France intended to introduce national provisions regarding certain NK fertilisers of high nitrogen content and containing chlorine beyond those provided for in Directive 76/116/EEC.

(51) For this purpose, the French authorities notified a draft decree banning the importation and placement on the market of certain NK fertilisers of high nitrogen content and containing chlorine, together with a draft circular on rendering such fertilisers inert and a document setting out the arguments in justification of their request for derogation.

(52) By a letter dated 31 July 2002, the Commission informed the French authorities that it had received the notification under Article 95(5) of the EC Treaty and that the six-month period for its examination pursuant to Article 95(6) had begun on 20 June 2002, the day after the notification was received.

(53) By a letter dated 2 August 2002, the Commission informed the other Member States of the request received from the French Republic. The Commission also published a notice regarding the request in the *Official Journal of the European Communities* ([43]) to inform the other parties concerned of the draft national measures that France intended to adopt ([44]).

III. **LEGAL ANALYSIS**

1. **Consideration of admissibility**

(54) The notification submitted by the French authorities on 19 June 2002 is intended to obtain approval for the introduction of new national provisions which are incompatible with Directive 76/116/EEC, a measure concerning the approximation of the laws, regulations and administrative provisions of the Member States, aiming at the establishment and operation of the internal market.

(55) Article 95(5) of the Treaty reads as follows: 'If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.'

(56) Directive 76/116/EEC covers fertilisers marked 'EC fertiliser'. Certain types of fertilisers, such as organic fertilisers, are still currently subject to national regulations, rather than Directive 76/116/EEC. This Directive harmonised at Community level the rules on the types of EC fertilisers listed in its Annex I. Therefore, EC fertilisers listed in Annex I to Directive 76/116/EEC are governed solely by the provisions of that Directive, particularly with regard to designation, definition, composition, labelling and packaging, and the free movement clause should therefore apply to them, provided that they comply with the requirements of Directive 76/116/EEC. Only straight ammonium nitrate fertilisers of high nitrogen content must, if they are to be placed on the market as fertilisers, also comply with the additional Community rules laid down in Directive 80/876/EEC.

([40]) See Louis Médard, *op. cit.*, p. 673.
([41]) In his book, Louis Médard describes the first accidents caused by self-sustained combustion of NPK fertilisers, prior to coming to the conclusion that these accidents demonstrate that many types of NPK fertilisers are subject to easily-triggered 'cigar-burning'. See Louis Médard, *op. cit.*, p. 666 and 667.
([42]) See Louis Médard, *op. cit.*, p. 674 and 675.
([43]) OJ C 188, 8.8.2002, p. 3.
([44]) In the meantime, France had introduced the notified national measures into its internal law, without waiting for the Commission to adopt a decision regarding the French request for a derogation. The Commission is examining this situation under a separate procedure.

(57) When comparing the provisions of Directive 76/116/EEC and the national measures notified, it emerges that the latter are more restrictive than those contained in the Directive in the following aspects:

1. the importation and placement on the market of NK fertilisers with a nitrogen content resulting from ammonium nitrate of over 28 % by weight and a chlorine content of over 0,02 % will be prohibited;

2. NK fertilisers with a nitrogen content resulting from ammonium nitrate of over 28 % and a chlorine content of over 0,02 % will be immediately withdrawn from the market.

(58) As required by Article 95(5) of the EC Treaty, France notified the Commission of the exact wording of the provisions going beyond those set out in Directive 76/116/EEC, including with the request an explanation of the reasons which, in its opinion, justify the introduction of those provisions.

(59) The notification submitted by France in order to obtain approval for the introduction of national provisions derogating from the provisions of Directive 76/116/EEC is therefore to be considered admissible under Article 95(5) of the EC Treaty.

2. **Assessment of merits**

(60) In accordance with Article 95 of the Treaty, the Commission must ensure that all the conditions enabling a Member State to avail itself of the possibilities of derogation provided for in this Article are fulfilled.

(61) The Commission must therefore assess whether the conditions provided for by Article 95(5) of the Treaty are met. This Article requires that when a Member State deems it necessary to introduce national provisions derogating from a harmonisation measure, that Member State should base the introduction on:

(a) new scientific evidence relating to the protection of the environment or the working environment;

(b) grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure.

(62) Moreover, under Article 95(6) of the EC Treaty, the Commission is either to approve or reject the draft national provisions in question after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States, and whether or not they shall constitute an obstacle to the functioning of the internal market.

2.1. *Evaluation of the position of France*

(63) First of all, the Commission feels it must point out that the national measures to which Article 95(5) of the EC Treaty applies are those which introduce additional requirements on the basis of the protection of the environment or the working environment, on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure.

(64) Therefore, the national provisions notified and the reasons given by the Member State are examined in light of the Community harmonisation measure from which they derogate, in this case, the provisions of Directive 76/116/EEC regarding NK fertilisers marked 'EC fertiliser', in so far as the draft decree imposes additional requirements on the placement on the market of EC NK fertilisers, particularly with regard to their composition, such as maximum nitrogen and chloride contents. Directive 76/116/EEC does not itself set any maximum limit on the nitrogen, potassium and chloride content of NK fertilisers. Annex I simply specifies, in the latter case, that the words 'low in chlorine' may be used only where the chlorine content does not exceed 2 %, and that guaranteeing a certain chlorine content is permitted. This clearly indicates that NK fertilisers may have a chlorine content of over 2 %. As a result, the national measures notified, which provide for banning NK fertilisers containing over 28 % by mass of nitrogen from ammonium nitrate and having a chlorine content of over 0,02 %, go beyond the Community provisions.

(65) The initial postulate is therefore that the NK fertilisers concerned by the draft decree meet the requirements of Directive 76/116/EEC, given that the designation 'EC fertiliser' can only be used for fertilisers belonging to one of the fertiliser types listed in Annex I and meeting the requirements laid down by the said Directive and Annexes I to III thereto. Member States may take all necessary measures to ensure that the designation 'EC fertiliser' can only be used for fertilisers belonging to one of the fertiliser types listed in Annex I and meeting the requirements laid down by the Directive. Moreover, Article 8 of Directive 76/116/EEC specifically provides for checks by Member States on the compliance of EC fertilisers with the requirements of the said Directive ([45]). The Commission therefore does not deny Member States the option of taking measures against fertilisers that do not meet the requirements of Directive 76/116/EEC. However, the Commission feels it must be pointed out that fertilisers with a total nutrient content ($N + K_2O$) of over 18 % by weight, as well as a nitrogen content of over 3 % and a potassium content of over 5 %, pursuant to Directive 76/116/EEC, fall within the definition of Community fertilisers designated 'EC NK fertilisers'. The free movement clause in Article 7 of Directive 76/116/EEC should therefore apply to them in so far as they comply with the requirements of Directive 76/116/EEC.

([45]) See recital 7 of this Decision.

(66) It should also be pointed out that, up to now, the Court's case-law has been consistent in requiring that the conditions of admissibility for a derogation from the fundamental rules of Community law must be interpreted restrictively. As the provision in question creates an exception to the principles of uniform application of Community law and the unity of the market, Article 95(5) of the EC Treaty must, as with all measures relating to derogations, be interpreted in such a way that its scope is not extended beyond the cases for which it formally provides. As Article 95 is precisely the expression of such a derogation, it must be interpreted strictly and only be applied under strict conditions with regard to all of the justification required.

2.1.1. The burden of proof

(67) It has to be noted that, in the light of the time frame established by Article 95(6) of the EC Treaty, the Commission, when examining whether the draft national measures notified under Article 95(5) are justified, has to take as a basis 'the grounds' put forward by the Member State. This means that, under the Treaty, the responsibility of proving that these measures are justified lies with the Member State making the request. Given the procedural framework established by Article 95 of the EC Treaty, including in particular a strict deadline for a Decision to be adopted, the Commission normally has to restrict itself to examining the relevance of the elements which are submitted by the requesting Member State, without having to seek possible justifications itself.

2.1.2. New scientific evidence concerning the protection of the environment or the working environment regarding a problem specific to France arising after the adoption of the harmonisation measure

(68) The French authorities believe the explanations they have provided ([46]) demonstrate that 'these fertilisers were placed on the French market only recently, and as the French market is unique, this problem is, in fact, specific to France and arose after the adoption of the harmonisation measure' ([47]).

(69) The French authorities argue that Directive 76/116/EEC does not specify the form in which the potassium should be included in NK fertilisers, which makes it possible to use potassium chloride ([48]). In addition, they imply that such NK fertilisers, which are the result of physically mixing straight ammonium nitrate fertilisers of high nitrogen content (also called 'high-dosage ammonium nitrate-based fertilisers') and adding potassium chloride, should really be considered straight fertilisers rather than compound EC fertilisers It is true that Directive 76/116/EEC does not give the form in which the potassium should be added to NK fertilisers or to any type of compound fertiliser ([49]). On the other hand, it does specify that compound fertilisers are products obtained chemically or by blending without addition of organic nutrients of animal or vegetable origin ([50]). Directive 76/116/EEC therefore also covers compound fertilisers produced by blending. Moreover, Louis Médard specified that compound fertilisers are sometimes produced by blending two or three straight fertilisers ([51]). The Commission therefore considers that if the NK fertilisers referred to in the national measures notified meet the requirements of Directive 76/116/EEC, they are considered to be compound NK fertilisers, and fall within the scope of the Community legislation.

(70) The French authorities provide data concerning the size of the French market for straight ammonium nitrate fertilisers of high nitrogen content and the proportion of it made up of imports from non-member countries. It therefore appears that they believe the appearance and growth in these NK fertilisers is a new problem that is specific to France. They state that the specialist press considers these ammonium nitrate NK fertilisers of high nitrogen content to be more a variant straight fertiliser ([52]) than a compound fertiliser. The Commission feels that three excerpts taken from journals cannot, on their own, be considered to be a reflection of the market. Moreover, contrary to the French authorities claim ([53]), reading these excerpts shows that the specialised press does actually distinguish between straight ammonium nitrate fertilisers (AN) and NK or NPK fertilisers ([54]). As a result, the characteristics of the French market for straight ammonium nitrate fertilisers of high nitrogen content cannot be deemed to show that there is a unique situation which justifies national derogations for certain compound fertilisers, unless it is accepted that the specific problem described is purely economic, and does not therefore have a direct link with the objectives of protecting the environment or the working environment.

([46]) The explanations of the specific problem which are included in the French argument are repeated in their entirety in recitals 39 to 41 of this Decision.
([47]) See page 14 of the French argument.
([48]) See recital 23 of this Decision.
([49]) It should be pointed out here that Directive 76/116/EEC does not specify the form in which nitrogen or phosphate should be included in compound fertilisers either.
([50]) See recital 4 of this Decision.
([51]) See Louis Médard, *op. cit.*, p. 653.
([52]) See recital 41 of this Decision.
([53]) See recital 41 of this Decision.
([54]) Thus, The FMB Fertiliser Europe Report dated 16 February 2000, p. 2, states that 'Traders have been importing a fair amount of blended Russian 32-0-5 but French customs are proving very tough on controlling the product with anything found to have less than 5 % K_2O deemed to be AN and therefore subject to the full anti-dumping duty'. As for Fertiliser Europe dated 22 January 2001, p. 2, it states that 'At Muuga, the MV Aleksey Afanasjev completed loading with 1 604 t AN in big bags and another 1 403 t of NK 32-0-5 in big bags.'

(71) Moreover, although it is true that this type of NK fertiliser only came on the market recently, following the adoption of the harmonisation measure, it is not limited to the French market. And France has not, in fact, demonstrated that these fertilisers were solely intended for the French market. The data provided by the French authorities do not make it possible to show that there is a problem specific to France as a result of the placement on the market of these NK fertilisers. No information concerning the existence and extent of similar events in the Member States has been provided. This would be needed to be able to assess the specific nature of the situation described by France. If the potential danger posed by these fertilisers, which was brought up by the French authorities as a way of justifying their national measures ([55]), is taken into account, one must also accept that the problem of transporting and storing such fertilisers is shared by all the Member States and can in no way be seen as a characteristic specific to France on which national derogations may be based.

(72) The introduction of national measures that are stricter than Community standards needs to be justified by new scientific evidence concerning the protection of the environment or the working environment, with the latter covering only non-economic reasons related to the safety, health and hygiene of workers.

(73) Whether the scientific evidence is new must be judged in light of developments in scientific knowledge. The purpose of Article 95(5) of the EC Treaty is to make it possible to use new scientific evidence to solve specific problems arising in Member States after harmonisation measures have been adopted.

(74) It is therefore up to the Member State which has stated there is a need for a derogation to provide new scientific evidence, such as an assessment of the risk for the environment or the working environment, or scientific information and studies or other research in progress, while taking into account the effects of the Community measures which have already been adopted.

(75) Taking this into consideration, it seems that the documentation and arguments put forward by the French authorities in support of their request for a derogation can in no way be considered to be new scientific evidence within the meaning of Article 95(5) of the EC Treaty.

(76) In light of the above ([56]), particularly the excerpts from Louis Médard's work included with the French notification, it is clear that, although NK fertilisers of high nitrogen content did only come on the French market recently, the potential danger of such types of fertiliser of high nitrogen content, notably their slight explosive properties and self-sustained decomposition, were nonetheless known before Directive 76/116/EEC was adopted, as the French authorities themselves concede ([57]). Furthermore, according to this scientific literature, the various types of NPK fertilisers which contain both chloride and ammonium nitrate, that is, NK fertilisers and NPK or NP fertilisers, are all subject to self-sustained decomposition ([58]). As for preventive measures, they have also been highlighted for some time, with the crucial point being the avoidance of anything that might trigger decomposition ([59]) when storing such products.

(77) As for the recommendation of the Committee on Explosive Substances referred to by France, the said Committee looked at the potential danger posed by NK fertilisers (nitrogen-potassium) with an ammonium nitrate content of over 90 %, i.e. a total nitrogen content of over 31,5 %, with a high chloride content in the form of potassium chloride, at its meetings of 23 January and 28 March 2001. In its recommendation, this committee expressed a desire to 'draw the attention of the competent authorities to this type of blend which, though it cannot be considered to be an explosive as generally understood, may occasionally have explosive properties' ([60]). Thus, contrary to what the French authorities maintain ([61]), the Committee on Explosive Substances did not call NK fertilisers with an ammonium nitrate content of over 90 % 'accidental explosives', but only recognised that they might occasionally have explosive properties. It should be noted that this observation is not new ([62]) and that no new scientific evidence has been provided in support of this conclusion.

([55]) See in particular recitals 4 and 7 of the notified draft decree, which state:
'under unsuitable conditions of storage or transport, in particular those which foster an increase in humidity, chlorine may react with ammonium nitrate at room temperature to form nitrogen trichloride compounds with potentially explosive properties;'
'such fertiliser blends are currently imported and placed on the market without any particular precautions being taken, particularly with regard to transport and storage.'

([56]) See, in particular, part I, section 5, of this Decision.
([57]) See recital 35 of this Decision.
([58]) See in particular recital 45 of this Decision. With regard to this, it should be pointed out that the products which may react spontaneously when blended with ammonium nitrate are nitrites, in a sufficiently high concentration, or products such as old wood saturated with ammonium nitrate, or sawdust or metal shavings thoroughly mixed with ammonium nitrate. Other products, such as chloride ions, are merely sensitising agents, i.e. they lower the decomposition temperature and/or the amount of energy required to trigger it, but do not trigger the decomposition themselves. Under no circumstances can these sensitising agents trigger decomposition.
([59]) See recital 48 of this Decision.
([60]) See recital 34 of this Decision.
([61]) See the second indent of recital 30 of this Decision.
([62]) It is already mentioned in Louis Médard's summary, where he describes the potential dangers of NPK fertilisers. He specifies that, 'the fertiliser may have slight explosive properties, similar to those of certain straight nitrogen fertilisers. This risk is only present in fertilisers which have a relatively high ammonium nitrate content.' See Louis Médard, *op. cit.*, p. 664.

(78) The Commission considers that the French authorities have extrapolated from the conclusions of the Committee on Explosive Substances. What the Committee on Explosive Substances in fact recommended was 'that very close attention should be paid to the correct classification of NK fertilisers (nitrogen-potassium) with an ammonium nitrate content of over 90 %, i.e. a total nitrogen content of over 31,5 %, with a high chloride content in the form of potassium chloride with regard to transport, and that the relevant transport regulations be strictly applied' ([63]). It expressed a desire that 'before any such product is imported or placed on the market, the person responsible for importing it or placing it on the market should be required to have samples taken from the product analysed so as to ensure that the product in question complies strictly with the regulations in force. More specifically, an analysis should be carried out by a well known laboratory established in the European Union to guarantee that samples taken recently from the product successfully passed the test of resistance to detonation described in Directive 87/94/EEC of 18 December 1986, as amended by Directive 88/126/EEC of 22 December 1987' ([64]). Therefore, its recommendations refer only to NK fertilisers where the content is over 31,5 % — not 28 %. Moreover, the Committee on Explosive Substances simply recommended that there be a suitable classification of these fertilisers for transport purposes, and in order to verify that they comply strictly with the regulations, in particular by submitting them to the test of resistance to detonation described in Directive 87/94/EEC. It should be noted that Directive 76/116/EEC does not require this test. Up to now, the test of resistance to detonation has only been required for straight fertilisers of high ammonium nitrate content pursuant to Directive 80/876/EEC.

(79) Moreover, the new scientific evidence required under Article 95(5) of the EC Treaty must relate to the protection of the environment or the working environment. However, in this case, the French authorities have not provided any new scientific evidence which specifically concerns the protection of the environment or the working environment. Moreover, examination of the recitals of the draft decree ([65]), which could have specified the justification for the notified measures, revealed that nothing was stated with regard to the requirements of protection of the environment and/or the working environment. Recitals 4 and 7 ([66]), in particular, emphasise that such fertiliser blends are currently imported and placed on the market without any particular precautions being taken, particularly with regard to transport and storage. This state of affairs presents a clear and immediate danger. It therefore appears that these concerns are related more to transport and storage of such fertilisers than they are to protection of the environment or the working environment. With regard to this, it should be noted that the French authorities have not demonstrated that there is a direct link between transport and storage, on the one hand, and protection of the environment or the working environment on the other. The Commission therefore considers that the concerns relating to transport and storage of fertilisers raised by France cannot be specifically regarded as protection of the environment or the working environment within the meaning of Article 95(5) of the EC Treaty.

(80) The only scientific evidence presented by France to support its request for derogation, particularly with regard to the potential danger of NK fertilisers, is excerpts from Louis Médard's 1979 book, which is a summary of work on the subject.

(81) The conclusion can therefore be drawn that the national measures notified are not justified, as France has not provided new scientific evidence relating to the protection of the environment or the working environment demonstrating the existence of a specific problem arising after the adoption of Directive 76/116/EEC, as required by Article 95(5) of the EC Treaty.

(82) As for the arguments drawn from the Toulouse catastrophe ([67]), which, in the view of the French authorities, justifies recourse to the precautionary principle, the Commission must point out that 'recourse to the precautionary principle presupposes that potentially dangerous effects deriving from a phenomenon, product or process have been identified, and that scientific evaluation does not allow the risk to be determined with sufficient certainty' ([68]). The precautionary principle places an obligation on Member States to provide new data which raises serious doubts with regard to health or the environment, and which, in accordance with the common rules on the burden of proof, is serious and conclusive evidence and, without setting aside scientific uncertainty, makes it possible to justify taking precautionary measures. Moreover, it follows from the Community courts' interpretation of the precautionary principle ([69]) that a preventive measure may be taken only if the risk, although the reality and extent thereof have not been 'fully' demonstrated by conclusive scientific evidence, appears nevertheless to be adequately backed up by the scientific data available at the time when the measure was taken. The grounds for a preventive measure cannot validly be a purely hypothetical approach to risk, based on mere hypotheses which have not yet been scientifically confirmed. The precautionary principle can therefore apply only in situations in which there is a risk, notably to human health and the environment, which, although it is not founded on mere hypotheses that have not been scientifically confirmed, has not yet been fully demonstrated.

([63]) See recital 34 of this Decision.
([64]) See recital 34 of this Decision.
([65]) Draft Decree notified to the Commission in accordance with Article 95(5) of the EC Treaty.
([66]) See recital 71 of this Decision and, more specifically, footnote 55.
([67]) See recitals 37 and 38 of this Decision.
([68]) See the Commission communication on recourse to the precautionary principle (COM(2000) 1 final, 2.2.2000).
([69]) See in particular the Court of First Instance's judgments of 11 September 2002 in Cases T-13/99 and T-70/99.

(83) To begin with, as the French authorities themselves recognise ([70]), the products involved in the Toulouse explosion were straight ammonium nitrate fertilisers of high nitrogen content which did not meet the requirements of Directive 80/876/EEC or technical-grade ammonium nitrates, whose explosive properties are well known, and not NK fertilisers which complied with the requirements of Directive 76/116/EEC. It is therefore not possible to draw any causal link between the latter EC fertilisers and this accident. Lastly, the French authorities state that, up to know, no theories as to the causes of this explosion have yet been definitively ruled out, as the causes of the explosion are still unknown ([71]). Lastly, the French authorities admit that the theory relating to the possible role of products containing chlorine in triggering the Toulouse explosion is based on waste containing chlorine being mistakenly placed in a warehouse used to store ammonium nitrate, and not on the presence of chlorine in the form of potassium chloride in the make-up of the fertilisers ([72]). The Commission considers that the allegations being made are too general and lack substance. They cannot even be considered scientific. As a result, it is the Commission's opinion that, in this case, there is no justification for applying the precautionary principle.

(84) As a theoretical point, the Commission feels it must mention that if measures are considered to be required, measures based on the precautionary principle must be justified with regard to the level of protection being sought. The Commission would like to point out that the legislation on fertilisers is currently under discussion, as it is being recast ([73]). This proposal has taken the new market situation into account, in particular by extending the requirement for a test of resistance to detonation to compound ammonium nitrate fertilisers of high nitrogen content. Taking the above into consideration, the Commission therefore feels that only a measure making the placement of such NK fertilisers on the market subject to a requirement to submit them to a test of resistance to detonation could have put the French concerns to rest. The national measures notified, which, in addition to prohibiting the importation and placement on the market of certain NK fertilisers, also lay down a requirement to withdraw those fertilisers from the market at the expense and under the responsibility of those who have them in their possession, seem unjustified, given the potential danger posed by these fertilisers when they comply with Community legislation and meet the definition of EC fertilisers.

([70]) See recital 37 of this Decision.
([71]) See recital 38 of this Decision.
([72]) See recital 38 of this Decision. Moreover, on this subject, reference should be made to the *'Rapport de la commission d'enquête interne sur l'explosion survenue le 21 septembre 2001 à l'usine Grande Paroisse de Toulouse - Point de la situation des travaux en cours à la date du 18 mars 2002'* (Report of the internal committee investigating the explosion which occurred on 21 September 2001 at the Grande Paroisse factory in Toulouse - Progress Report on work under way on 18 March 2002).
([73]) See part I, section 2, of this Decision.

2.1.3. Summary

(85) Article 95(5) of the EC Treaty requires that three conditions must be met if national derogations from Community harmonisation are to be introduced: the national derogations must be founded on new scientific evidence in the given sectors, there must be a problem specific to the State making the request, and the problem must have arisen after the adoption of the harmonisation measure.

(86) In this case, after having examined the scientific aspects in light of the French request, the Commission considers that France has not demonstrated, on the basis of new scientific evidence relating to the protection of the environment or the working environment, that there is a specific problem within its territory which arose following the adoption of Directive 76/116/EEC relating to fertilisers, and which makes it necessary to introduce the notified national measures. Moreover, the Commission considers that the precautionary principle, invoked by France, cannot justify the national measures notified derogating from Directive 76/116/EEC.

(87) Consequently, the request from France for introducing national measures aimed at prohibiting the importation and placement on the market in France certain NK fertilisers of high nitrogen content and containing chlorine does not fulfil all the conditions set out in Article 95(5).

2.2. *Absence of any arbitrary discrimination, any disguised restriction of trade between Member States or any obstacle to the functioning of the internal market*

(88) Under Article 95(6) of the EC Treaty, the Commission is either to approve or reject the draft national provisions in question after verifying whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States, and whether or not they shall constitute an obstacle to the functioning of the internal market.

(89) Since the request made by France does not fulfil the basic conditions set out in Article 95(5) (see part II, section 2.1, of this Decision), the Commission is not obliged to verify whether or not the notified national provisions are a means of arbitrary discrimination or disguised restriction on trade between Member States, and whether or not they constitute an obstacle to the functioning of the internal market.

IV. **CONCLUSION**

(90) In light of the elements which it had available to assess the merits of the justifications put forward for the national measures notified, and in light of the considerations set out above, the Commission considers that France's request for introducing national provisions derogating from Directive 76/116/EEC with regard to the

importation and placement on the market of certain NK fertilisers of high nitrogen content and containing chlorine, which meet the definition of EC fertilisers and the requirements of Directive 76/116/EEC, submitted on 19 June 2002:

— is admissible,

— does not fulfil all the conditions set out in Article 95(5) of the EC Treaty, as France did not provide new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to it.

(91) The Commission therefore has grounds to consider that the national provisions notified cannot be approved in accordance with Article 95(6) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The national provisions on limiting the importation and placement on the market of certain NK fertilisers of high nitrogen content and containing chlorine which meet the definition of EC fertilisers and the requirements of Directive 76/116/EEC notified by France pursuant to Article 95(5) of the EC Treaty are rejected.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 18 December 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission