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Contents

(1) Text with EEA relevance

(Continued overleaf)

EN

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

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

Contents (continued)

(1) Text with EEA relevance

EN

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2033/96

of 24 October 1996

amending Regulation (EC) No 1887/96 on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security [1], and in particular Article 24 (1) (b) thereof,

Whereas Commission Regulation (EC) No 1887/96 [2] issued an invitation to tender for the supply, as food aid, of vegetable oil; whereas some of the conditions specified in the Annex to that Regulation should be altered,

HAS ADOPTED THIS REGULATION:

Article 1

Forts lots C, D and E, point 21 of the Annex to Regulation (EC) No 1887/96 is replaced by the following:

'21. **In the case of a second invitation to tender:**

(a) deadline for the submission of tenders: 12 noon (Brussels time) on 29. 10. 1996

(b) period for making the goods available at the port of shipment: C: 2 — 15. 12. 1996; D: 16 — 29. 12. 1996; E: 30. 12. 1996 — 12. 1. 1997;

(c) deadline for the supply: —'.

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, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 166, 5. 7. 1996, p. 1.
[2] OJ No L 249, 1. 10. 1996, p. 24.

COMMISSION REGULATION (EC) No 2034/96

of 24 October 1996

amending Annexes I, II and III of Council Regulation (EEC) No 2377/90 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2377/90 of 26 June 1990 laying down a Community procedure for the establishment of maximum residue limits of veterinary medicinal products in foodstuffs of animal origin [1], as last amended by Commission Regulation (EC) No 2010/96 [2], and in particular Articles 6, 7 and 8 thereof,

Whereas, in accordance with Regulation (EEC) No 2377/90, maximum residue limits must be established progressively for all pharmacologically active substances which are used within the Community in veterinary medicinal products intended for administration to food-producing animals;

Whereas maximum residue limits should be established only after the examination within the Committee for Veterinary Medicinal Products of all the relevant information concerning the safety of residues of the substance concerned for the consumer of foodstuffs of animal origin and the impact of residues on the industrial processing of foodstuffs;

Whereas, in establishing maximum residue limits for residues of veterinary medicinal products in foodstuffs of animal origin, it is necessary to specify the animal species in which residues may be present, the levels which may be present in each of the relevant meat tissues obtained from the treated animal (target tissue) and the nature of the residue which is relevant for the monitoring of residues (marker residue);

Whereas, for the control of residues, as provided for in appropriate Community legislation, maximum residue limits should usually be established for the target tissues of liver or kidney; whereas, however, the liver and kidney are frequently removed from carcases moving in international trade, and maximum residue limits should therefore also always be established for muscle or fat tissues;

Whereas, in the case of veterinary medicinal products intended for use in laying birds, lactating animals or honey bees, maximum residue limits must also be established for eggs, milk or honey;

Whereas, penethamate (applicable to bovine tissues) should be inserted in Annex I to Regulation (EEC) No 2377/90;

Whereas, based on the currently authorized use in veterinary practice, boric acid and borates, polysulphated glycosaminoglycan, rifaximin and tau fluvalinate should be inserted into Annex II to Regulation (EEC) No 2377/90;

Whereas, some substances were previously evaluated through European Union procedures, such as the Scientific Committee for Food; whereas, some of these substances were considered to be acceptable for addition to human foodstuffs and granted an E number; whereas, their administration to food producing animals as part of veterinary medicinal products is unlikely to result in residues in food of animal origin either significantly different from the additive or in concentrations exceeding those of the additive where it has been added directly to the food; whereas, based on the currently authorized use in veterinary practice, those substances approved as additives in foodstuffs for human consumption, with a valid E number, should be included in Annex II of Regulation (EEC) No 2377/90;

Whereas, in order to allow for the completion of scientific studies, rifaximin (applicable to bovine milk) should be inserted in Annex III to Regulation (EEC) No 2377/90;

Whereas a period of 60 days should be allowed before the entry into force of this Regulation in order to allow Member States to make any adjustment which may be necessary to the authorizations to place the veterinary medicinal products concerned on the market which have been granted in accordance with Council Directive 81/851/EEC [3], as last amended by Directive 93/40/EEC [4] to take account of the provisions of this Regulation;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Veterinary Medicinal Products,

[1] OJ No L 224, 18. 8. 1990, p. 1.
[2] OJ No L 269, 22. 10. 1996, p. 5.
[3] OJ No L 317, 6. 11. 1981, p. 1.
[4] OJ No L 214, 24. 8. 1993, p. 31.

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I, II and III of Regulation (EEC) No 2377/90 are hereby amended as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on the 60th day following that of its publication in the *Official Journal of the European Communities.*

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

Done at Brussels, 24 October 1996.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

Regulation (EEC) No 2377/90 is amended as follows:

A. Annex I is modified as follows:

1. Anti-infectious agents

1.2. Antibiotics

1.2.1. Penicillins

Pharmacologically active substance(s)	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'1.2.1.7. Penethamate	Benzylpenicillin	Bovine	50 µg/kg	Kidney, liver, muscle, fat	
			4 µg/kg	Milk'	

B. Annex II is modified as follows:

1. Inorganic chemicals

Pharmacologically active substance(s)	Animal species	Other provisions
'1.8. Boric acid and borates	All food producing species'	

2. Organic compounds

Pharmacologically active substance(s)	Animal species	Other provisions
'2.34. Polysulphated glycosaminoglycan	Horses	
2.35. Rifaximin	Bovine	For intramammary use — except if the udder may be used as food for human consumption — and intrauterine use only
2.36. Tau fluvalinate	Honey bees'	

5. Substances used as food additives in foodstuffs for human consumption

Pharmacologically active substance(s)	Animal species	Other provisions
'5.1. Substances with an E number	All food producing species	Only substances approved as additives in foodstuffs for human consumption, with the exception of preservatives listed in part C of Annex III to Council Directive 95/2/CE (*)

(*) OJ No L 61, 18. 3. 1995, p. 1.'

C. Annex III is modified as follows:

1. Anti-infectious agents

1.2. Antibiotics

1.2.7. Naphtalene-ringed ansamycin

Pharmacologically active substance(s)	Marker residue	Animal species	MRLs	Target tissues	Other provisions
'1.2.7.1. Rifaximin	Rifaximin	Bovine	60 µg/kg	Milk	Provisional MRL expires on 1. 6. 1998'

COMMISSION REGULATION (EC) No 2035/96

of 24 October 1996

fixing the single reduction coefficient for the determination of the provisional quantity of bananas to be allocated to each operator in Categories A and B from the tariff quota for 1997

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organization of the market in bananas [1], as last amended by Commission Regulation (EC) No 3290/94 [2], and in particular Article 20 thereof,

Whereas pursuant to Article 6 of Commission Regulation (EEC) No 1442/93 of 10 June 1993 laying down detailed rules for the application of the arrangements for importing bananas into the Community [3], as last amended by Regulation (EC) No 1409/96 [4], depending on the annual tariff quota and the total reference quantities of operators as referred to in Articles 3 *et seq.* of the said Regulation, the Commission is to fix, where appropriate, a single reduction coefficient for each category of operators to be applied to operators' reference quantities to determine the quantity to be allocated to each for the year in question;

Whereas on 4 April 1995 the Commission transmitted a proposal to the Council for a Regulation adjusting Regulation (EEC) No 404/93 as regards the volume of the annual tariff quota for imports of bananas into the Community following the accession of Austria, Finland and Sweden; whereas, to date, the Council, despite the Commission's efforts, has not taken any decision on increasing the tariff quota on the basis of the abovementioned proposal;

Whereas, without prejudging the measures to be decided by the Council, the reference quantities of category A and B operators for 1997 should be determined provisionally so that import licences can be issued for the first quarters of the year; whereas the reduction coefficient should be calculated for each category of operators referred to in Article 6 of Regulation (EEC) No 1442/93 on the basis of a tariff quota of 2 200 000 tonnes and of the breakdown provided for in Article 19 (1) of Regulation (EEC) No 404/93;

Whereas the total figure for the reference quantities thus calculated in 2 433 274 tonnes for all category A operators and 1 403 126 tonnes for all category B operators;

Whereas the notifications made by the Member States pursuant to Article 5 (3) of Regulation (EEC) No 1442/93 concerning the total reference quantities calculated for the operators registered with them and the total quantities of bananas marketed in respect of each activity by those operators reveal that the same quantities marketed in respect of the same activity have been counted twice for different operators in several Member States;

Whereas the use of the abovementioned figures as notified by certain Member States would lead, having regard to the quantities counted twice, to the determination of an excessively high single reduction coefficient which would penalize certain categories of operator; whereas, to avoid unfair treatment of certain operators, which would be difficult to rectify, the reduction coefficient should be determined on the basis of the notifications by Member States minus the quantities counted twice as assessed by the Commission;

Whereas provision should be made for the immediate application of the rules laid down in this Regulation so that operators can benefit from them as soon as possible;

Whereas the Management Committee for Bananas has not issued an opinion within the time limit laid down by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The provisional quantity to be allocated to each operator in Categories A and B for the period from 1 January to 31 December 1997 within the tariff quota referred to in Articles 18 and 19 of Regulation (EEC) No 404/93 shall be calculated by applying to the operator's reference quantity, determined in accordance with Article 5 of Regulation (EEC) No 1442/93, the following single reduction coefficients:

— for each Category A operator: 0,601248,

— for each Category B operator: 0,470378.

[1] OJ No L 47, 25. 2. 1993, p. 1.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No L 142, 12. 6. 1993, p. 6.
[4] OJ No L 181, 20. 7. 1996, p. 13.

Article 2

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

The provisions of this Regulation shall apply without prejudice to any adjustments resulting from further checks or to any measures to be adopted for the application of subsequent Council decisions.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2036/96

of 24 October 1996

laying down a time limit for applications for reimbursement from importers importing products covered by CN code 2309 90 31 originating in Norway under a tariff quota in 1995

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 95/582/EC of 20 December 1995 on the conclusion of the Agreements in the form of Exchanges of Letters between the European Community, of the one part, and the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation, of the other part, concerning certain agricultural products [1], and in particular Article 2 thereof,

Whereas, under the Agreement concluded between the Community and the Kingdom of Norway, access is guaranteed from 1 January 1995 for all Community importers to the annual tariff quota of 1 177 tonnes of fish feed originating in Norway provided for in Annex II to the said Agreement; whereas a zero rate of customs duty applies to that quota;

Whereas Decision 95/582/EC provides for the opening of the said quota with retroactive effect; whereas detailed rules for the application of the quota are laid down by Commission Regulation (EC) No 306/96 [2]; whereas in 1995 some Community importers paid the full customs duty applicable to imports outside the quota when importing the said product from Norway; whereas some importers then applied for reimbursement of the duties paid, providing, in support, the customs documents relating to the imports in question;

Whereas the quantities thus imported exceed the quota; whereas a reducing factor must therefore be applied to reimbursements of the duties paid;

Whereas, in order to reimburse importers, the exact quantity of products imported under the quota in 1995 must be known; whereas all importers of the products in question should be asked to inform the competent authorities of the Member State in which the import licences were issued in 1995 within a reasonable time of the quantities of such imports and of the duties paid; whereas a time limit should also be fixed before which the Member States concerned must forward the above information to the Commission;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

1. Importers who, in 1995, imported into the Community products covered by CN code 2309 90 31 originating in Norway and who paid import duty thereon shall submit an application for reimbursement of the duties paid to the authorities competent for issuing the import licences in the Member State, together with supporting documents, by 15 November 1996.

Importers who have already submitted applications need not re-submit them.

2. Within 10 working days of the deadline laid down in the first subparagraph of paragraph 1, the competent authorities of the Member States concerned shall notify Unit VI-C-2 of the Directorate-General for Agriculture of the European Commission of the quantities of products imported and of the duties paid.

3. Applications submitted or forwarded after the time limits laid down shall be rejected.

Article 2

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

[1] OJ No L 327, 30. 12. 1995, p. 17.
[2] OJ No L 43, 21. 2. 1996, p. 1.

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

Done at Brussels, 24 October 1996.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 2037/96

of 24 October 1996

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 1890/96 [2], and in particular Article 4 (1) thereof,

Having regard to Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy [3], as last amended by Regulation (EC) No 150/95 [4], and in particular Article 3 (3) thereof,

Whereas 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;

Whereas, 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 25 October 1996.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 337, 24. 12. 1994, p. 66.
[2] OJ No L 249, 1. 10. 1996, p. 29.
[3] OJ No L 387, 31. 12. 1992, p. 1.
[4] OJ No L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 24 October 1996 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 40	204	51,0
	999	51,0
ex 0707 00 30	052	82,2
	999	82,2
0709 90 79	052	98,7
	999	98,7
0805 30 30	052	65,7
	388	66,4
	512	53,8
	524	71,8
	528	62,2
	600	59,8
	999	63,3
0806 10 40	052	95,3
	400	227,1
	999	161,2
0808 10 92, 0808 10 94, 0808 10 98	052	68,3
	060	62,6
	064	46,6
	400	70,5
	404	73,7
	804	94,2
	999	69,3
0808 20 57	052	73,6
	064	79,4
	999	76,5

(1) Country nomenclature as fixed by Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2038/96

of 24 October 1996

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 (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EC) No 1587/96 [2], and in particular Article 17 (3) thereof,

Whereas Article 17 of Regulation (EEC) No 804/68 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 228 of the Treaty;

Whereas Regulation (EEC) No 804/68 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 organization 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 228 of the Treaty, and

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

— the economic aspect of the proposed exports;

Whereas Article 17 (5) of Regulation (EEC) No 804/68 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;

Whereas Article 17 (3) of Regulation (EEC) No 804/68 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;

Whereas Article 17 (3) of Regulation (EEC) No 804/68 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; whereas the amount of the refund may, however, remain at the same level for more than four weeks;

Whereas, in accordance with Article 12 of Commission Regulation (EC) No 1466/95 of 27 June 1995 on specific detailed rules for the application of export refunds on milk and milk products [3], as last amended by Regulation (EC) No 1875/96 [4], the refund granted for milk products containing added sugar is equal to the sum of the two components, one of which is intended to take account of the quantity of milk products and the other is intended to take account of the quantity of added sucrose; whereas, however, the latter component is applied only if the added sucrose was produced from sugar beet or cane harvested in the Community; whereas, for products falling within CN codes ex 0402 99 11, ex 0402 99 19, ex 0404 90 51, ex 0404 90 53, ex 0404 90 91 and ex 0404 90 93, with a fat content by weight not exceeding 9,5 % and a non-fatty milk content in the dry matter equal to or greater than 15 % by weight, the former abovementioned component is fixed for 100 kilograms of the whole product; whereas, for the other products containing added sugar falling within CN codes 0402 and 0404, that component is calculated by multiplying the basic amount by the milk products content of the product concerned; whereas that basic amount is equal to the refund to be fixed for one kilogram of milk products contained in the whole product;

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 206, 16. 8. 1996, p. 21.
[3] OJ No L 144, 28. 6. 1995, p. 22.
[4] OJ No L 247, 28. 9. 1996, p. 36.

Whereas the second component is calculated by multiplying the sucrose content of the 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 (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EC) No 1599/96 [2];

Whereas the level of refund for cheeses is calculated for products intended for direct consumption; whereas the cheese rinds and cheese wastes are not products intended for this purpose; whereas, to avoid any confusion in interpretation, it should be specified that there will be no refund for cheeses of a free-at-frontier value less than ECU 230,00 per 100 kilograms;

Whereas Commission Regulation (EEC) No 896/84 [3], as last amended by Regulation (EEC) No 222/88 [4], laid down additional provisions concerning the granting of refunds on the change from one milk year to another; whereas those provisions provide for the possibility of varying refunds according to the date of manufacture of the products;

Whereas 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;

Whereas 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;

Whereas Council Regulation (EEC) No 990/93 [5], as amended by Regulation (EC) No 1380/95 [6] prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96 [7]; whereas account should be taken of this fact when fixing the refunds;

Whereas, with a view to better management of cheese exports in the light of the new constraints affecting subsidized exports, the refunds applying to some cheeses on export to certain destinations should be reduced;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

1. The export refunds referred to in Article 17 of Regulation (EEC) No 804/68 on products exported in the natural state shall be as set out in the Annex.

2. There shall be no refunds for exports to destination No 400 for products falling within CN codes 0401, 0402, 0403, 0404, 0405 and 2309.

3. There shall be no refunds for exports to destinations No 022, 024, 028, 043, 044, 045, 046, 052, 404, 600, 800 and 804 for products falling within CN code 0406.

Article 2

This Regulation shall enter into force on 25 October 1996.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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(1) OJ No L 177, 1. 7. 1981, p. 4.
(2) OJ No L 206, 16. 8. 1996, p. 43.
(3) OJ No L 91, 1. 4. 1984, p. 71.
(4) OJ No L 28, 1. 2. 1988, p. 1.
(5) OJ No L 102, 28. 4. 1993, p. 14.
(6) OJ No L 138, 21. 6. 1995, p. 1.
(7) OJ No L 65, 15. 3. 1996, p. 1.

ANNEX

to the Commission Regulation of 24 October 1996 fixing the export refunds on milk and milk products

(in ECU/100 kg net weight unless otherwise indicated)

Product code	Destination (*)	Amount of refund (**)
0401 10 10 000	+	4,748
0401 10 90 000	+	4,748
0401 20 11 100	+	4,748
0401 20 11 500	+	7,340
0401 20 19 100	+	4,748
0401 20 19 500	+	7,340
0401 20 91 100	+	9,775
0401 20 91 500	+	11,39
0401 20 99 100	+	9,775
0401 20 99 500	+	11,39
0401 30 11 100	+	14,62
0401 30 11 400	+	22,55
0401 30 11 700	+	33,87
0401 30 19 100	+	14,62
0401 30 19 400	+	22,55
0401 30 19 700	+	33,87
0401 30 31 100	+	40,34
0401 30 31 400	+	63,00
0401 30 31 700	+	69,47
0401 30 39 100	+	40,34
0401 30 39 400	+	63,00
0401 30 39 700	+	69,47
0401 30 91 100	+	79,18
0401 30 91 400	+	116,37
0401 30 91 700	+	135,80
0401 30 99 100	+	79,18
0401 30 99 400	+	116,37
0401 30 99 700	+	135,80
0402 10 11 000	+	63,00
0402 10 19 000	+	63,00
0402 10 91 000	+	0,6300
0402 10 99 000	+	0,6300
0402 21 11 200	+	63,00
0402 21 11 300	+	95,30
0402 21 11 500	+	100,40
0402 21 11 900	+	108,00
0402 21 17 000	+	63,00
0402 21 19 300	+	95,30
0402 21 19 500	+	100,40
0402 21 19 900	+	108,00
0402 21 91 100	+	108,78
0402 21 91 200	+	109,53
0402 21 91 300	+	110,88
0402 21 91 400	+	118,51
0402 21 91 500	+	121,15
0402 21 91 600	+	131,29
0402 21 91 700	+	137,24
0402 21 91 900	+	143,96
0402 21 99 100	+	108,78
0402 21 99 200	+	109,53
0402 21 99 300	+	110,88
0402 21 99 400	+	118,51
0402 21 99 500	+	121,15
0402 21 99 600	+	131,29
0402 21 99 700	+	137,24
0402 21 99 900	+	143,96
0402 29 15 200	+	0,6300
0402 29 15 300	+	0,9530
0402 29 15 500	+	1,0040
0402 29 15 900	+	1,0802
0402 29 19 200	+	0,6300
0402 29 19 300	+	0,9530
0402 29 19 500	+	1,0040
0402 29 19 900	+	1,0802
0402 29 91 100	+	1,0878
0402 29 91 500	+	1,1851
0402 29 99 100	+	1,0878
0402 29 99 500	+	1,1851
0402 91 11 110	+	4,748
0402 91 11 120	+	9,775
0402 91 11 310	+	14,00
0402 91 11 350	+	17,15
0402 91 11 370	+	20,85
0402 91 19 110	+	4,748
0402 91 19 120	+	9,775
0402 91 19 310	+	14,00
0402 91 19 350	+	17,15
0402 91 19 370	+	20,85
0402 91 31 100	+	19,31
0402 91 31 300	+	24,65
0402 91 39 100	+	19,31
0402 91 39 300	+	24,65
0402 91 51 000	+	22,55
0402 91 59 000	+	22,55
0402 91 91 000	+	79,18
0402 91 99 000	+	79,18
0402 99 11 110	+	0,0475
0402 99 11 130	+	0,0978
0402 99 11 150	+	0,1336
0402 99 11 310	+	16,14
0402 99 11 330	+	19,37
0402 99 11 350	+	25,75
0402 99 19 110	+	0,0475
0402 99 19 130	+	0,0978
0402 99 19 150	+	0,1336
0402 99 19 310	+	16,14
0402 99 19 330	+	19,37
0402 99 19 350	+	25,75
0402 99 31 110	+	0,2094
0402 99 31 150	+	26,81
0402 99 31 300	+	0,4034
0402 99 31 500	+	0,6947
0402 99 39 110	+	0,2094
0402 99 39 150	+	26,81
0402 99 39 300	+	0,4034

Product code	Destination (*)	Amount of refund (**)
0402 99 39 500	+	0,6947
0402 99 91 000	+	0,7918
0402 99 99 000	+	0,7918
0403 10 11 400	+	4,748
0403 10 11 800	+	7,340
0403 10 13 800	+	9,775
0403 10 19 800	+	14,62
0403 10 31 400	+	0,0475
0403 10 31 800	+	0,0734
0403 10 33 800	+	0,0978
0403 10 39 800	+	0,1462
0403 90 11 000	+	61,94
0403 90 13 200	+	61,94
0403 90 13 300	+	94,45
0403 90 13 500	+	99,50
0403 90 13 900	+	107,03
0403 90 19 000	+	107,83
0403 90 31 000	+	0,6194
0403 90 33 200	+	0,6194
0403 90 33 300	+	0,9445
0403 90 33 500	+	0,9950
0403 90 33 900	+	1,0703
0403 90 39 000	+	1,0783
0403 90 51 100	+	4,748
0403 90 51 300	+	7,340
0403 90 53 000	+	9,775
0403 90 59 110	+	14,62
0403 90 59 140	+	22,55
0403 90 59 170	+	33,87
0403 90 59 310	+	40,34
0403 90 59 340	+	63,00
0403 90 59 370	+	69,47
0403 90 59 510	+	79,18
0403 90 59 540	+	116,37
0403 90 59 570	+	135,80
0403 90 61 100	+	0,0475
0403 90 61 300	+	0,0734
0403 90 63 000	+	0,0978
0403 90 69 000	+	0,1462
0404 90 21 100	+	61,94
0404 90 21 910	+	4,748
0404 90 21 950	+	13,87
0404 90 23 120	+	61,94
0404 90 23 130	+	94,45
0404 90 23 140	+	99,50
0404 90 23 150	+	107,03
0404 90 23 911	+	4,748
0404 90 23 913	+	9,775
0404 90 23 915	+	14,62
0404 90 23 917	+	22,55
0404 90 23 919	+	33,87
0404 90 23 931	+	13,87
0404 90 23 933	+	17,00
0404 90 23 935	+	20,66
0404 90 23 937	+	24,43
0404 90 23 939	+	25,54
0404 90 29 110	+	107,83
0404 90 29 115	+	108,54
0404 90 29 120	+	109,89
0404 90 29 130	+	117,46
0404 90 29 135	+	120,05
0404 90 29 150	+	130,11
0404 90 29 160	+	136,02
0404 90 29 180	+	142,66
0404 90 81 100	+	0,6194
0404 90 81 910	+	0,0475
0404 90 81 950	+	16,00
0404 90 83 110	+	0,6194
0404 90 83 130	+	0,9445
0404 90 83 150	+	0,9950
0404 90 83 170	+	1,0703
0404 90 83 911	+	0,0475
0404 90 83 913	+	0,0978
0404 90 83 915	+	0,1462
0404 90 83 917	+	0,2255
0404 90 83 919	+	0,3387
0404 90 83 931	+	16,00
0404 90 83 933	+	19,20
0404 90 83 935	+	25,52
0404 90 83 937	+	26,55
0404 90 89 130	+	1,0783
0404 90 89 150	+	1,1746
0404 90 89 930	+	0,4843
0404 90 89 950	+	0,6947
0404 90 89 990	+	0,7918
0405 10 11 500	+	185,37
0405 10 11 700	+	190,00
0405 10 19 500	+	185,37
0405 10 19 700	+	190,00
0405 10 30 100	+	185,37
0405 10 30 300	+	190,00
0405 10 30 500	+	185,37
0405 10 30 700	+	190,00
0405 10 50 100	+	185,37
0405 10 50 300	+	190,00
0405 10 50 500	+	185,37
0405 10 50 700	+	190,00
0405 10 90 000	+	196,95
0405 20 90 500	+	173,78
0405 20 90 700	+	180,73
0405 90 10 000	+	240,00
0405 90 90 000	+	190,00
0406 10 20 100	+	—
0406 10 20 230	037	—
	039	—
	099	24,03
	400	24,72
	***	36,05
0406 10 20 290	037	—
	039	—
	099	22,36
	400	22,99
	***	33,54
0406 10 20 610	037	—
	039	—
	099	41,70
	400	50,04
	***	62,55

Product code	Destination (*)	Amount of refund (**)
0406 10 20 620	037	—
	039	—
	099	45,73
	400	54,87
	***	68,59
0406 10 20 630	037	—
	039	—
	099	51,63
	400	61,95
	***	77,44
0406 10 20 640	037	—
	039	—
	099	60,59
	400	72,70
	***	90,88
0406 10 20 650	037	—
	039	—
	099	63,07
	400	38,26
	***	94,61
0406 10 20 660	+	—
0406 10 20 810	037	—
	039	—
	099	9,820
	400	11,78
	***	14,73
0406 10 20 830	037	—
	039	—
	099	16,77
	400	20,12
	***	25,15
0406 10 20 850	037	—
	039	—
	099	20,33
	400	24,39
	***	30,49
0406 10 20 870	+	—
0406 10 20 900	+	—
0406 20 90 100	+	—
0406 20 90 913	037	—
	039	—
	099	39,59
	400	47,50
	***	59,38
0406 20 90 915	037	—
	039	—
	099	52,78
	400	63,34
	***	79,17
0406 20 90 917	037	—
	039	—
	099	56,07
	400	67,29
	***	84,11
0406 20 90 919	037	—
	039	—
	099	62,67
	400	75,21
	***	94,01
0406 20 90 990	+	—
0406 30 10 100	+	—
0406 30 10 150	037	—
	039	—
	099	5,885
	400	5,885
	***	8,824
0406 30 10 200	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 10 250	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 10 300	037	—
	039	—
	099	18,41
	400	18,41
	***	27,62
0406 30 10 350	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 10 400	037	—
	039	—
	099	18,41
	400	18,41
	***	27,62
0406 30 10 450	037	—
	039	—
	099	26,79
	400	26,79
	***	40,18
0406 30 10 500	+	—
0406 30 10 550	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 10 600	037	—
	039	—
	099	18,41
	400	18,41
	***	27,62
0406 30 10 650	037	—
	039	—
	099	26,79
	400	26,79
	***	40,18
0406 30 10 700	037	—
	039	—
	099	26,79
	400	26,79
	***	40,18

Product code	Destination (*)	Amount of refund (**)
0406 30 10 750	037	—
	039	—
	099	31,78
	400	31,78
	***	47,66
0406 30 10 800	037	—
	039	—
	099	31,78
	400	31,78
	***	47,66
0406 30 31 100	+	—
0406 30 31 300	037	—
	039	—
	099	5,885
	400	5,885
	***	8,824
0406 30 31 500	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 31 710	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 31 730	037	—
	039	—
	099	18,41
	400	18,41
	***	27,62
0406 30 31 910	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 31 930	037	—
	039	—
	099	18,41
	400	18,41
	***	27,62
0406 30 31 950	037	—
	039	—
	099	26,79
	400	26,79
	***	40,18
0406 30 39 100	+	—
0406 30 39 300	037	—
	039	—
	099	12,55
	400	12,55
	***	18,82
0406 30 39 500	037	—
	039	—
	099	18,41
	400	18,41
	***	27,62
0406 30 39 700	037	—
	039	—
	099	26,79
	400	26,79
	***	40,18
0406 30 39 930	037	—
	039	—
	099	26,79
	400	26,79
	***	40,18
0406 30 39 950	037	—
	039	—
	099	31,78
	400	31,78
	***	47,66
0406 30 90 000	037	—
	039	—
	099	31,78
	400	31,78
	***	47,66
0406 40 50 000	037	—
	039	—
	099	58,96
	400	49,60
	***	88,44
0406 40 90 000	037	—
	039	—
	099	58,96
	400	49,60
	***	88,44
0406 90 07 000	037	—
	039	—
	099	68,69
	400	97,72
	***	103,03
0406 90 08 100	037	—
	039	—
	099	72,30
	400	102,86
	***	108,45
0406 90 08 900	+	—
0406 90 09 100	037	—
	039	—
	099	68,69
	400	97,72
	***	103,03
0406 90 09 900	+	—
0406 90 12 000	037	—
	039	—
	099	68,69
	400	97,72
	***	103,03
0406 90 14 100	037	—
	039	—
	099	72,30
	400	102,86
	***	108,45
0406 90 14 900	+	—

Product code	Destination (*)	Amount of refund (**)
0406 90 16 100	037	—
	039	—
	099	68,69
	400	97,72
	***	103,03
0406 90 16 900	+	—
0406 90 21 900	037	—
	039	—
	099	70,69
	400	66,96
	***	106,04
0406 90 23 900	037	—
	039	—
	099	48,04
	400	27,93
	***	72,06
0406 90 25 900	037	—
	039	—
	099	58,34
	400	31,81
	***	87,51
0406 90 27 900	037	—
	039	—
	099	48,04
	400	27,93
	***	72,06
0406 90 31 119	037	—
	039	—
	099	45,07
	400	34,60
	***	67,61
0406 90 31 151	037	—
	039	—
	099	42,01
	400	32,34
	***	63,02
0406 90 31 159	+	—
0406 90 33 119	037	—
	039	—
	099	45,07
	400	34,60
	***	67,61
0406 90 33 151	037	—
	039	—
	099	42,01
	400	32,34
	***	63,02
0406 90 33 919	037	—
	039	—
	099	39,83
	400	30,57
	***	59,74
0406 90 33 951	037	—
	039	—
	099	39,08
	400	30,08
	***	58,62
0406 90 35 190	037	30,47
	039	30,47
	099	75,47
	400	79,25
	***	113,21
0406 90 35 990	037	—
	039	—
	099	57,56
	400	60,44
	***	86,34
0406 90 37 000	037	—
	039	—
	099	74,25
	400	102,86
	***	111,38
0406 90 61 000	037	42,75
	039	42,75
	099	82,02
	400	86,12
	***	123,03
0406 90 63 100	037	39,07
	039	39,07
	099	67,25
	400	100,88
	***	100,88
0406 90 63 900	037	31,07
	039	31,07
	099	46,62
	400	69,93
	***	69,93
0406 90 69 100	+	—
0406 90 69 910	037	—
	039	—
	099	51,51
	400	77,27
	***	77,27
0406 90 73 900	037	—
	039	—
	099	70,37
	400	73,89
	***	105,56
0406 90 75 900	037	—
	039	—
	099	58,71
	400	33,48
	***	88,06
0406 90 76 100	037	—
	039	—
	099	43,06
	400	27,27
	***	64,59
0406 90 76 300	037	—
	039	—
	099	52,73
	400	30,26
	***	79,09
0406 90 76 500	037	—
	039	—
	099	52,73
	400	34,92
	***	79,09

Product code	Destination (*)	Amount of refund (**)
0406 90 78 100	037	—
	039	—
	099	43,06
	400	27,27
	***	64,59
0406 90 78 300	037	—
	039	—
	099	52,73
	400	30,26
	***	79,09
0406 90 78 500	037	—
	039	—
	099	52,73
	400	34,92
	***	79,09
0406 90 79 900	037	—
	039	—
	099	53,45
	400	28,91
	***	80,17
0406 90 81 900	037	—
	039	—
	099	57,56
	400	60,44
	***	86,34
0406 90 85 910	037	30,47
	039	30,47
	099	75,47
	400	79,25
	***	113,21
0406 90 85 991	037	—
	039	—
	099	57,56
	400	60,44
	***	86,34
0406 90 85 995	037	—
	039	—
	099	59,92
	400	31,81
	***	89,88
0406 90 85 999	+	—
0406 90 86 100	+	—
0406 90 86 200	037	—
	039	—
	099	39,59
	400	41,57
	***	59,38
0406 90 86 300	037	—
	039	—
	099	43,39
	400	45,56
	***	65,08
0406 90 86 400	037	—
	039	—
	099	49,09
	400	51,54
	***	73,63
0406 90 86 900	037	—
	039	—
	099	57,63
	400	60,52
	***	86,45
0406 90 87 100	+	—
0406 90 87 200	037	—
	039	—
	099	36,61
	400	38,44
	***	54,92
0406 90 87 300	037	—
	039	—
	099	40,13
	400	42,13
	***	60,19
0406 90 87 400	037	—
	039	—
	099	45,41
	400	47,68
	***	68,11
0406 90 87 951	037	—
	039	—
	099	66,49
	400	69,82
	***	99,74
0406 90 87 971	037	—
	039	—
	099	55,36
	400	51,74
	***	83,04
0406 90 87 972	099	21,09
	400	20,55
	***	31,64
0406 90 87 979	037	—
	039	—
	099	55,36
	400	36,22
	***	83,04
0406 90 88 100	+	—
0406 90 88 200	037	—
	039	—
	099	39,59
	400	41,57
	***	59,38
0406 90 88 300	037	—
	039	—
	099	43,39
	400	45,56
	***	65,08

Product code	Destination (*)	Amount of refund (**)	Product code	Destination (*)	Amount of refund (**)
2309 10 15 010	+	—	2309 90 35 010	+	—
2309 10 15 100	+	—	2309 90 35 100	+	—
2309 10 15 200	+	—	2309 90 35 200	+	—
2309 10 15 300	+	—	2309 90 35 300	+	—
2309 10 15 400	+	—	2309 90 35 400	+	—
2309 10 15 500	+	—	2309 90 35 500	+	—
2309 10 15 700	+	—	2309 90 35 700	+	—
2309 10 19 010	+	—	2309 90 39 010	+	—
2309 10 19 100	+	—	2309 90 39 100	+	—
2309 10 19 200	+	—	2309 90 39 200	+	—
2309 10 19 300	+	—	2309 90 39 300	+	—
2309 10 19 400	+	—	2309 90 39 400	+	—
2309 10 19 500	+	—	2309 90 39 500	+	—
2309 10 19 600	+	—	2309 90 39 600	+	—
2309 10 19 700	+	—	2309 90 39 700	+	—
2309 10 19 800	+	—	2309 90 39 800	+	—
2309 10 70 010	+	—	2309 90 70 010	+	—
2309 10 70 100	+	14,58	2309 90 70 100	+	14,58
2309 10 70 200	+	19,44	2309 90 70 200	+	19,44
2309 10 70 300	+	24,30	2309 90 70 300	+	24,30
2309 10 70 500	+	29,16	2309 90 70 500	+	29,16
2309 10 70 600	+	34,02	2309 90 70 600	+	34,02
2309 10 70 700	+	38,88	2309 90 70 700	+	38,88
2309 10 70 800	+	42,77	2309 90 70 800	+	42,77

(*) The code numbers for the destinations are those set out in the Annex to Commission Regulation (EC) No 68/96 (OJ No L 14, 19. 1. 1996, p. 6).

However, '099' covers all destination codes from 053 to 096 inclusive.

For destinations other than those indicated for each 'product code', the amount of the refund applying is indicated by "".

Where no destination ('+') is indicated, the amount of the refund is applicable for exports to any destination other than those referred to in Article 1 (2) and (3).

(**) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 462/96 are observed.

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), as amended.

COMMISSION REGULATION (EC) No 2039/96

of 24 October 1996

fixing the export refunds on cereals and on wheat or rye flour, groats and meal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (2) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund;

Whereas the refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 95/96 [4];

Whereas, as far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture; whereas these quantities were fixed in Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas it follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto;

Whereas Council Regulation (EEC) No 990/93 [5], as amended by Regulation (EC) No 1380/95 [6], prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96 [7]; whereas account should be taken of this fact when fixing the refunds;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 25 October 1996.

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 126, 24. 5. 1996, p. 37.
[3] OJ No L 147, 30. 6. 1995, p. 7.
[4] OJ No L 18, 24. 1. 1996, p. 10.
[5] OJ No L 102, 28. 4. 1993, p. 14.
[6] OJ No L 138, 21. 6. 1995, p. 1.
[7] OJ No L 65, 15. 3. 1996, p. 1.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 24 October 1996 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

(ECU / tonne)

Product code	Destination (1)	Amount of refund (2)
0709 90 60 000	—	—
0712 90 19 000	—	—
1001 10 00 200	—	—
1001 10 00 400	—	—
1001 90 91 000	—	—
1001 90 99 000	01	0
1002 00 00 000	01	0
1003 00 10 000	—	—
1003 00 90 000	01	0
1004 00 00 200	—	—
1004 00 00 400	—	—
1005 10 90 000	—	—
1005 90 00 000	—	—
1007 00 90 000	—	—
1008 20 00 000	—	—
1101 00 11 000	—	—
1101 00 15 100	01	17,00
1101 00 15 130	01	16,50
1101 00 15 150	01	15,00
1101 00 15 170	01	14,00
1101 00 15 180	01	13,00
1101 00 15 190	—	—
1101 00 90 000	—	—
1102 10 00 500	01	41,00
1102 10 00 700	—	—
1102 10 00 900	—	—
1103 11 10 200	01	17,00 (3)
1103 11 10 400	—	— (3)
1103 11 10 900	—	—
1103 11 90 200	01	17,00 (3)
1103 11 90 800	—	—

(1) The destinations are identified as follows:
01 All third countries,

(2) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 462/96 are observed.

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

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 2040/96

of 24 October 1996

fixing the corrective amount applicable to the refund on cereals

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (8) thereof,

Whereas Article 13 (8) of Regulation (EEC) No 1766/92 provides that the export refund applicable to cereals on the day on which application for an export licence is made must be applied on request to exports to be effected during the period of validity of the export licence; whereas, in this case, a corrective amount may be applied to the refund;

Whereas Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the cereals and the measures to be taken in the event of disturbance on the market for cereals [3], as last amended by Regulation (EC) No 95/96 [4], allows for the fixing of a corrective amount for the products listed in Article 1 (1) (c) of Regulation (EEC) No 1766/92; whereas that corrective amount must be calculated taking account of the factors referred to in Article 1 of Regulation (EC) No 1501/95;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the corrective amount according to destination;

Whereas the corrective amount must be fixed at the same time as the refund and according to the same procedure; whereas it may be altered in the period between fixings;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 [5], as last amended by Regulation (EC) No 150/95 [6], are used to convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 [7], as last amended by Regulation (EC) No 1482/96 [8];

Whereas it follows from applying the provisions set out above that the corrective amount must be as set out in the Annex hereto;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The corrective amount referred to in Article 1 (1) (a), (b) and (c) of Regulation (EEC) No 1766/92 which is applicable to export refunds fixed in advance in respect of malt shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 25 October 1996.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 126, 24. 5. 1996, p. 37.
(3) OJ No L 147, 30. 6. 1995, p. 7.
(4) OJ No L 18, 24. 1. 1996, p. 10.
(5) OJ No L 387, 31. 12. 1992, p. 1.
(6) OJ No L 22, 31. 1. 1995, p. 1.
(7) OJ No L 108, 1. 5. 1993, p. 106.
(8) OJ No L 188, 27. 7. 1996, p. 22.

ANNEX

to the Commission Regulation of 24 October 1996 fixing the corrective amount applicable to the refund on cereals

(ECU/tonne)

Product code	Destination (1)	Current	1st period	2nd period	3rd period	4th period	5th period	6th period
		10	11	12	1	2	3	4
0709 90 60 000	—	—	—	—	—	—	—	—
0712 90 19 000	—	—	—	—	—	—	—	—
1001 10 00 200	—	—	—	—	—	—	—	—
1001 10 00 400	—	—	—	—	—	—	—	—
1001 90 91 000	—	—	—	—	—	—	—	—
1001 90 99 000	01	0	0	0	0	0	—	—
1002 00 00 000	01	0	0	0	0	0	—	—
1003 00 10 000	—	—	—	—	—	—	—	—
1003 00 90 000	01	0	0	0	0	0	—	—
1004 00 00 200	—	—	—	—	—	—	—	—
1004 00 00 400	01	0	0	0	0	0	—	—
1005 10 90 000	—	—	—	—	—	—	—	—
1005 90 00 000	—	—	—	—	—	—	—	—
1007 00 90 000	—	—	—	—	—	—	—	—
1008 20 00 000	—	—	—	—	—	—	—	—
1101 00 11 000	—	—	—	—	—	—	—	—
1101 00 15 100	01	0	0	0	0	0	—	—
1101 00 15 130	01	0	0	0	0	0	—	—
1101 00 15 150	01	0	0	0	0	0	—	—
1101 00 15 170	01	0	0	0	0	0	—	—
1101 00 15 180	01	0	0	0	0	0	—	—
1101 00 15 190	—	—	—	—	—	—	—	—
1101 00 90 000	—	—	—	—	—	—	—	—
1102 10 00 500	01	0	0	0	0	0	—	—
1102 10 00 700	—	—	—	—	—	—	—	—
1102 10 00 900	—	—	—	—	—	—	—	—
1103 11 10 200	01	0	0	0	0	0	—	—
1103 11 10 400	—	—	—	—	—	—	—	—
1103 11 10 900	—	—	—	—	—	—	—	—
1103 11 90 200	01	0	0	0	0	0	—	—
1103 11 90 800	—	—	—	—	—	—	—	—

(1) The destinations are identified as follows:
01 all third countries.

NB: The zones are those defined in amended Commission Regulation (EEC) No 2145/92 (OJ No L 214, 30. 7. 1992, p. 20).

COMMISSION REGULATION (EC) No 2041/96

of 24 October 1996

fixing production refunds on cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992, on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 7 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [3], and in particular Article 7 (2) thereof,

Having regard to Commission Regulation (EEC) No 1722/93 of 30 June 1993 laying down detailed rules for the arrangements concerning production refunds in the cereals and rice sectors [4], as last amended by Regulation (EC) No 1516/95 [5], and in particular Article 3 thereof,

Whereas Regulation (EEC) No 1722/93 establishes the conditions for granting the production refund; whereas the basis for the calculation is established in Article 3 of the said Regulation; whereas the refund thus calculated must be fixed once a month and may be altered if the price of maize and/or wheat and/or barley changes significantly;

Whereas the production refunds to be fixed in this Regulation should be adjusted by the coefficients listed in the Annex II to Regulation (EEC) No 1722/93 to establish the exact amount payable;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

1. The refund referred to in Article 3 (2) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from maize, wheat, potatoes, rice or broken rice, shall be ECU 19,12 per tonne.

2. The refund referred to in Article 3 (3) of Regulation (EEC) No 1722/93, expressed per tonne of starch extracted from barley and oats, shall be ECU 13,38 per tonne.

Article 2

This Regulation shall enter into force on 25 October 1996.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 126, 24. 5. 1996, p. 37.
[3] OJ No L 329, 30. 12. 1995, p. 18.
[4] OJ No L 159, 1. 7. 1993, p. 112.
[5] OJ No L 147, 30. 6. 1995, p. 49.

COMMISSION REGULATION (EC) No 2042/96

of 24 October 1996

fixing the export refunds on cereal-based compound feedingstuffs

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals [1], as last amended by Commission Regulation (EC) No 923/96 [2], and in particular Article 13 (3) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Regulation (EC) No 1517/95 of 29 June 1995 laying down detailed rules for the application of Regulation (EEC) No 1766/92 as regards the arrangements for the export and import of compound feedingstuffs based on cereals and amending Regulation (EC) No 1162/95 laying down special detailed rules for the application of the system of import and export licences for cereals and rice [3] in Article 2 lays down general rules for fixing the amount of such refunds;

Whereas that calculation must also take account of the cereal products content; whereas in the interest of simplification, the refund should be paid in respect of two categories of 'cereal products', namely for maize, the most commonly used cereal in exported compound feeds and maize products, and for 'other cereals', these being eligible cereal products excluding maize and maize products; whereas a refund should be granted in respect of the quantity of cereal products present in the compound feedingstuff;

Whereas furthermore, the amount of the refund must also take into account the possibilities and conditions for the sale of those products on the world market, the need to avoid disturbances on the Community market and the economic aspect of the export;

Whereas, however, in fixing the rate of refund it would seem advisable to base it at this time on the difference in the cost of raw inputs widely used in compound feedingstuffs as the Community and world markets, allowing more accurate account to be taken of the commercial conditions under which such products are exported;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas Council Regulation (EEC) No 990/93 [4], as amended by Regulation (EC) No 1380/95 [5], prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96 [6]; whereas account should be taken of this fact when fixing the refunds;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the compound feedingstuffs covered by Regulation (EEC) No 1766/92 and subject to Regulation (EC) No 1517/95 are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 25 October 1996.

[1] OJ No L 181, 1. 7. 1992, p. 21.
[2] OJ No L 126, 24. 5. 1996, p. 37.
[3] OJ No L 147, 30. 6. 1995, p. 51.
[4] OJ No L 102, 28. 4. 1993, p. 14.
[5] OJ No L 138, 21. 6. 1995, p. 1.
[6] OJ No L 65, 15. 3. 1996, p. 1.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 24 October 1996 fixing the export refunds on cereal-based compound feedingstuffs

Product code benefitting from export refund (1):

2309 10 11 000, 2309 10 13 000, 2309 10 31 000, 2309 10 33 000, 2309 10 51 000, 2309 10 53 000, 2309 90 31 000, 2309 90 33 000, 2309 90 41 000, 2309 90 43 000, 2309 90 51 000, 2309 90 53 000.

(ECU/tonne)

Cereal products (2)	Amount of refund (3)
Maize and maize products: CN codes 0709 90 60, 0712 90 19, 1005, 1102 20, 1103 13, 1103 29 40, 1104 19 50, 1104 23, 1904 10 10	36,65
Cereal products (2) excluding maize and maize products	17,84

(1) The product codes are defined in Sector 5 of the Annex to Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p 1), amended.

(2) For the purposes of the refund only the starch coming from cereal products is taken into account.

Cereal products means the products falling within subheadings 0709 90 60 and 0712 90 19, Chapter 10, and headings Nos 1101, 1102, 1103 and 1104 (excluding subheading 1104 30) and the cereals content of the products falling within subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature. The cereals content in products under subheadings 1904 10 10 and 1904 10 90 of the combined nomenclature is considered to be equal to the weight of this final product.

No refund is paid for cereals where the origin of the starch cannot be clearly established by analysis.

(3) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulations (EEC) No 990/93 and (EC) No 462/96 are observed.

COMMISSION REGULATION (EC) No 2043/96

of 24 October 1996

fixing the export refunds on products processed from cereals and rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organization of the market in cereals (1), as last amended by Commission Regulation (EC) No 923/96 (2), and in particular Article 13 (3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice (3), and in particular Article 13 (3) thereof,

Whereas Article 13 of Regulation (EEC) No 1766/92 and Article 13 of Regulation (EC) No 3072/95 provide that the difference between quotations or prices on the world market for the products listed in Article 1 of those Regulations and prices for those products within the Community may be covered by an export refund;

Whereas Article 13 of Regulation (EC) No 3072/95 provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals, rice and broken rice on the Community market on the one hand and prices for cereals, rice, broken rice and cereal products on the world market on the other; whereas the same Articles provide that it is also important to ensure equilibrium and the natural development of prices and trade on the markets in cereals and rice and, furthermore, to take into account the economic aspect of the proposed exports, and the need to avoid disturbances on the Community market;

Whereas Article 4 of Council Regulation (EC) No 1518/95 (4), as amended by Regulation (EC) No 2993/95 (5), on the import and export system for products processed from cereals and from rice defines the specific criteria to be taken into account when the refund on these products is being calculated;

Whereas the refund to be granted in respect of certain processed products should be graduated on the basis of the ash, crude fibre, tegument, protein, fat and starch content of the individual product concerned, this content being a particularly good indicator of the quantity of basic product actually incorporated in the processed product;

Whereas there is no need at present to fix an export refund for manioc, other tropical roots and tubers or flours obtained therefrom, given the economic aspect of potential exports and in particular the nature and origin of these products; whereas, for certain products processed from cereals, the insignificance of Community participation in world trade makes it unnecessary to fix an export refund at the present time;

Whereas the world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination;

Whereas the refund must be fixed once a month; whereas it may be altered in the intervening period;

Whereas Council Regulation (EEC) No 990/93 (6), as amended by Regulation (EC) No 1380/95 (7), prohibits trade between the European Community and the Federal Republic of Yugoslavia (Serbia and Montenegro); whereas this prohibition does not apply in certain situations as comprehensively listed in Articles 2, 4, 5 and 7 thereof and in Council Regulation (EC) No 462/96 (8); whereas account should be taken of this fact when fixing the refunds;

Whereas certain processed maize products may undergo a heat treatment following which a refund might be granted that does not correspond to the quality of the product; whereas it should therefore be specified that on these products, containing pregelatinized starch, no export refund is to be granted;

Whereas the Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (d) of Regulation (EEC) No 1766/92 and in Article 1 (1) (c) of Regulation (EC) No 3072/95 and subject to Regulation (EC) No 1518/95 are hereby fixed as shown in the Annex to this Regulation.

(1) OJ No L 181, 1. 7. 1992, p. 21.
(2) OJ No L 126, 24. 5. 1996, p. 37.
(3) OJ No L 329, 30. 12. 1995, p. 18.
(4) OJ No L 147, 30. 6. 1995, p. 55.
(5) OJ No L 312, 23. 12. 1995, p. 25.
(6) OJ No L 102, 28. 4. 1993, p. 14.
(7) OJ No L 138, 21. 6. 1995, p. 1.
(8) OJ No L 65, 15. 3. 1996, p. 1.

Article 2

This Regulation shall enter into force on 25 October 1996.

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

Done at Brussels, 24 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

to the Commission Regulation of 24 October 1996 fixing the export refunds on products processed from cereals and rice

(ECU/tonne)

Product code	Refund (1)
1102 20 10 200 (2)	51,31
1102 20 10 400 (2)	43,98
1102 20 90 200 (2)	43,98
1102 90 10 100	43,94
1102 90 10 900	29,88
1102 90 30 100	48,35
1103 12 00 100	48,35
1103 13 10 100 (2)	65,97
1103 13 10 300 (2)	51,31
1103 13 10 500 (2)	43,98
1103 13 90 100 (2)	43,98
1103 19 10 000	30,02
1103 19 30 100	45,40
1103 21 00 000	6,51
1103 29 20 000	29,88
1104 11 90 100	43,94
1104 12 90 100	53,72
1104 12 90 300	42,98
1104 19 10 000	6,51
1104 19 50 110	58,64
1104 19 50 130	47,65
1104 21 10 100	43,94
1104 21 30 100	43,94
1104 21 50 100	58,58
1104 21 50 300	46,86
1104 22 20 100	42,98
1104 22 30 100	45,66
1104 23 10 100	54,98
1104 23 10 300	42,15
1104 29 11 000	6,51
1104 29 51 000	6,38
1104 29 55 000	6,38
1104 30 10 000	1,60
1104 30 90 000	9,16
1107 10 11 000	11,36
1107 10 91 000	52,14
1108 11 00 200	12,76
1108 11 00 300	12,76
1108 12 00 200	58,64
1108 12 00 300	58,64
1108 13 00 200	58,64
1108 13 00 300	58,64
1108 19 10 200	70,22
1108 19 10 300	70,22
1109 00 00 100	0,00
1702 30 51 000 (3)	60,80
1702 30 59 000 (3)	46,54
1702 30 91 000	60,80
1702 30 99 000	46,54
1702 40 90 000	46,54
1702 90 50 100	60,80
1702 90 50 900	46,54
1702 90 75 000	63,71
1702 90 79 000	44,22
2106 90 55 000	46,54

(1) Refunds on exports to the Federal Republic of Yugoslavia (Serbia and Montenegro) may be granted only where the conditions laid down in amended Regulation (EEC) No 990/93 and Regulation (EC) No 462/96 are observed.

(2) No refund shall be granted on products given a heat treatment resulting in pregelatinization of the starch.

(3) Refunds are granted in accordance with Regulation (EEC) No 2730/75 (OJ No L 281, 1. 11. 1975, p. 20), amended.

NB: The product codes and the footnotes are defined in Commission Regulation (EEC) No 3846/87 (OJ No L 366, 24. 12. 1987, p. 1), amended.

COMMISSION DIRECTIVE 96/66/EC

of 14 October 1996

amending Council Directive 70/524/EEC concerning additives in feedingstuffs

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs (1), as last amended by Directive 96/51/EC (2), and in particular Article 7 thereof,

Whereas Directive 70/524/EEC provides for regular amendment of the content of its Annexes to take account of advances in scientific and technical knowledge; whereas the Annexes have been consolidated by Commission Directive 91/248/EEC (3);

Whereas new uses for additives belonging to the group Coccidiostats and other medicinal substances have been successfully tested in certain Member States; whereas the new uses should be authorized provisionally at national level pending their approval at Community level;

Whereas the Chernobyl accident caused radioactive caesium fallout which contaminated forage in certain regions of northern Europe; whereas, in order to protect human and animal health and introduce preventive measures to combat pollution by radioactive caesium nuclides, a new group of additives should be established, namely 'radionuclide binders'; whereas a new additive belonging to this group which allows absorption of caesium nuclides by animals to be substantially reduced has been successfully tested in certain Member States; whereas this new additive should be authorized provisionally at national level pending its approval at Community level;

Whereas the investigation of various additives currently listed in Annex II and therefore capable of authorization at national level has not yet been completed; whereas, therefore, the period of authorization of these substances should be extended for a specific period;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Feedingstuffs,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annexes to Directive 70/524/EEC are hereby amended as set out in the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions needed to comply with the Annex to this Directive by 31 March 1997 at the latest. They shall immediately inform the Commission thereof.

The provisions adopted by the Member States shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

2. Member States shall forward to the Commission the text of the main provisions of domestic law which they adopt in the subject area governed by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 14 October 1996.

For the Commission

Franz FISCHLER

Member of the Commission

(1) OJ No L 270, 14. 12. 1970, p. 1.
(2) OJ No L 235, 17. 9. 1996, p. 39.
(3) OJ No L 124, 18. 5. 1991, p. 1.

ANNEX

1. Annex I:

1.1. In the English-language version, in part A 'Antibiotics,' item E 716 'Salinomycin sodium' and in part D 'Coccidiostats and other medicinal substances' item E 766 'Salinomycin sodium', the text of column 'Chemical formula, description' is replaced each time by the following text:

$C_{42}H_{69}O_{11}Na$ (sodium salt of a polyether monocarboxylic acid produced by *Streptomyces albus*)

Elaiophylin content: less than 42 mg per kg of salinomycin sodium

17-epi-20-desoxy-salinomycin content: less than 40 g per kg of salinomycin sodium

2. In Annex II:

2.1. In part A 'Antibiotics':

2.1.1. under item 30 'Virginiamycin' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Sows';

2.1.2. under item 31 'Bacitracin zinc' the date '30. 11. 1996' in the column 'Period of authorization' is replaced each time by '30. 11. 1997' for the categories of animal 'Chickens for fattening' and 'Pigs';

2.1.3. under item 32 'Ardacin' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Chickens for fattening';

2.2. In part D 'Coccidiostats and other medicinal substances':

2.2.1. under item 25 'Halofuginone' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '12. 7. 1997' for the category of animal 'Chickens reared for laying';

2.2.2. (a) under item 26 'Salinomycin sodium' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Rabbits for fattening';

(b) item 26 'Salinomycin sodium' is completed as follows:

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorization
					mg/kg of complete feedingstuff			
			'Chickens reared for laying	12 weeks	30	50	Indicate in the instructions for use: — "Dangerous for equines" — "This feedingstuff contains an ionophore; simultaneous use with certain medicinal substances (e.g. tiamulin) can be contraindicated"	30. 11. 1997'

(c) in the English-language version, item 26 'Salinomycin sodium', the text of column 'Chemical formula, description' is replaced each time by the following text:

'$C_{42}H_{69}O_{11}Na$ (sodium salt of a polyether monocarboxylic acid produced by *Streptomyces albus*)
Elaiophylin content: less than 42 mg per kg of salinomycin sodium
17-epi-20-desoxy-salinomycin content: less than 40 g per kg of salinomycin sodium';

2.2.3. under item 27 'Diclazuril', the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Turkeys';

2.2.4. the following item is added:

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	Period of authorization
					mg/kg of complete feedingstuff			
'28	Maduramicin ammonium	$C_{47}H_{83}O_{17}N$ (Ammonium salt of a polyether monocarboxylic acid produced by *Actinomadura yumaensis*)	Turkeys	16 weeks	5	5	Use prohibited at least 5 days before slaughter Indicate in the instructions for use: — "Dangerous for equines" — "This feedingstuff contains an ionophore; simultaneous use with certain medicinal substances (e.g. tiamulin) can be contraindicated"	30. 11. 1997'

3. In part F 'Colouring matters, including pigments', under item 11 'Astaxanthin-rich *Phaffia rhodozyma*' the date '30. 11. 1996' in the colulmn 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Salmon, trout'.

4. In part L, 'Binders, anti-caking agents and coagulants':

4.1. under item 1 'Synthetic calcium aluminates' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '12. 7. 1997' for the category of animal 'Dairy cows, cattle for fattening, calves, lambs, kids';

4.2. under item 2 'Natrolite-phonolite' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997'.

5. In part N 'Enzymes', under item 1 '3-phytase (EC 3.1.3.8.)', the date '30. 11. 1996' in the column 'Period of authorization' is replaced each time by '30. 11. 1997' for the categories of animal 'Pigs (all categories of animals)' and 'Chickens (all categories of animals)'.

6. In part O 'Micro-organisms':

6.1. under item 1 '*Bacillus cereus* var. *toyoi* (CNCM I-1012/NCIB 40112)' the date '30. 11. 1996' in the column 'Period of authorization' is replaced each time by '30. 11. 1997' for the categories of animal 'Piglets', 'Pigs' and 'Sows';

6.2. under item 2 '*Bacillus licheniformis* (DSM 5749)/*Bacillus subtilis* (DSM 5750) [in a 1/1 ratio]' the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Piglets';

6.3. under item 3 '*Saccharomyces cerevisiae* (NCYC Sc 47)', the date '30. 11. 1996' in the column 'Period of authorization' is replaced by '30. 11. 1997' for the category of animal 'Cattle for fattening';

6.4. under item 4 '*Bacillus cereus* (ATCC 14893/CIP 5832)' the date '30. 11. 1996' in the column 'Period of authorization' is replaced each time by '30. 11. 1997' for the categories of animal 'Rabbits for fattening' and 'Breeding rabbits'.

7. The following group and item are added:

No	Additive	Chemical formula, description	Species or category of animal	Maximum age	Minimum content (mg/kg of complete feedingstuff)	Maximum content (mg/kg of complete feedingstuff)	Other provisions	Period of authorization
	'P. **Radionuclide binders**							
1.	Radioactive caesium binders (^{137}Cs and ^{134}Cs)							
1.1.	Ferric (III) ammonium hexacyanoferrate (II)	$NH_4Fe(III)[Fe(II)(CN)_6]$	Ruminants (domestic and wild)	—	50	500	Indicate in the instructions for use: "The quantity of Ferric (III) ammonium hexacyanoferrate (II) in the daily ration must be between 10 mg and 150 mg for 10 kg of body weight"	30. 11. 1997
			Calves prior to the start of rumination	—				30. 11. 1997
			Lambs prior to the start of rumination	—				30. 11. 1997
			Kids prior to the start of rumination	—				30. 11. 1997
			Pigs (domestic and wild)	—				30. 11. 1997'

COUNCIL DIRECTIVE 96/67/EC

of 15 October 1996

on access to the groundhandling market at Community airports

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 84 (2) thereof,

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

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189c of the Treaty (3),

(1) Whereas the Community has gradually introduced a common air transport policy with the aim of completing the internal market in accordance with Article 7a of the Treaty as a lasting contribution to promoting economic and social progress;

(2) Whereas the objective of Article 59 of the Treaty is to eliminate the restrictions on freedom to provide services in the Community; whereas, in accordance with Article 61 of the Treaty, that objective must be achieved within the framework of the common transport policy;

(3) Whereas through Council Regulations (EEC) No 2407/92 (4), (EEC) No 2408/92 (5) and (EEC) No 2409/92 (6) that objective has been attained with regard to air transport services as such;

(4) Whereas groundhandling services are essential to the proper functioning of air transport; whereas they make an essential contribution to the efficient use of air transport infrastructure;

(5) Whereas the opening-up of access to the groundhandling market should help reduce the operating costs of airline companies and improve the quality of service provided to airport users;

(6) Whereas in the light of the principle of subsidiarity it is essential that access to the groundhandling market should take place within a Community framework, while allowing Member States the possibility of taking into consideration the specific nature of the sector;

(7) Whereas in its communication of June 1994 entitled 'The way forward for civil aviation in Europe' the Commission indicated its intention of taking an initiative before the end of 1994 in order to achieve access to the groundhandling market at Community airports; whereas the Council, in its resolution of 24 October 1994 on the situation in European civil aviation (7), confirmed the need to take account of the imperatives linked to the situation of airports when opening up the market;

(8) Whereas, in its resolution of 14 February 1995 on European civil aviation (8), the European Parliament repeated its concern that account should be taken of the impact of access to the groundhandling market on employment and safety conditions at Community airports;

(9) Whereas free access to the groundhandling market is consistent with the efficient operation of Community airports;

(10) Whereas free access to the groundhandling market must be introduced gradually and be adapted to the requirements of the sector;

(11) Whereas for certain categories of groundhandling services access to the market and self-handling may come up against safety, security, capacity and available-space constraints; whereas it is therefore necessary to be able to limit the number of authorized suppliers of such categories of groundhandling services; whereas it should also be possible to limit self-handling; whereas, in that case, the criteria for limitation must be relevant, objective, transparent and non-discriminatory;

(12) Whereas if the number of suppliers of groundhandling services is limited effective competition will require that at least one of the suppliers should ultimately be independent of both the managing body of the airport and the dominant carrier;

(13) Whereas if airports are to function properly they must be able to reserve for themselves the management of certain infrastructures which for technical reasons as well as for reasons of profitability or environmental impact are difficult to divide or duplicate; whereas the centralized management of such infrastructures may not, however, constitute an obstacle to their use by suppliers of groundhandling services or by self-handling airport users;

(1) OJ No C 142, 8. 6. 1995, p. 7 and OJ No C 124, 27. 4. 1996, p. 19.
(2) OJ No C 301, 13. 11. 1995, p. 28.
(3) Opinion of the European Parliament of 16 November 1995 (OJ No C 323, 4. 12. 1995, p. 106), common position of the Council of 28 March 1996 (OJ No C 134, 6. 5. 1996, p. 30) and Decision of the European Parliament of 16 July 1996 (OJ No C 261, 9. 9. 1996).
(4) OJ No L 240, 24. 8. 1992, p. 1.
(5) OJ No L 240, 24. 8. 1992, p. 8. Regulation as amended by the 1994 Act of Accession.
(6) OJ No L 240, 24. 8. 1992, p. 15.
(7) OJ No C 309, 5. 11. 1994, p. 2.
(8) OJ No C 56, 6. 3. 1995, p. 28.

(14) Whereas in certain cases these constraints can be such that they may justify restrictions on market access or on self-handling to the extent that these restrictions are relevant, objective, transparent and non-discriminatory;

(15) Whereas the purpose of such exemptions must be to enable airport authorities to overcome or at least reduce these constraints; whereas these exemptions must be approved by the Commission, assisted by an advisory committee, and must be granted for a specific period;

(16) Whereas, if effective and fair competition is to be maintained where the number of suppliers of ground-handling services is limited, the latter need to be chosen according to a transparent and impartial procedure; whereas airport users should be consulted when it comes to selecting suppliers of ground-handling services, since they have a major interest in the quality and price of the ground-handling services which they require;

(17) Whereas it is therefore necessary to arrange for the representation of airport users and their consultation when authorized suppliers of ground-handling services are selected, by setting up a committee composed of their representatives;

(18) Whereas it is possible in certain circumstances and under specific conditions, in the context of selecting suppliers of ground-handling services at an airport, to extend the public service obligation to other airports in the same geographical region of the Member State concerned;

(19) Whereas the managing body of the airport may also supply ground-handling services and, through its decisions, may exercise considerable influence on competition between suppliers of ground-handling services; whereas it is therefore essential, in order to maintain fair competition, that airports be required to keep separate accounts for their infrastructure management and regulatory activities on the one hand and for the supply of ground-handling services on the other;

(20) Whereas an airport may not subsidize its ground-handling activities from the revenue it derives from its role as an airport authority;

(21) Whereas the same transparency requirements must apply to all suppliers wishing to offer ground-handling services to third parties;

(22) Whereas, in order to enable airports to fulfil their infrastructure management functions and to guarantee safety and security on the airport premises as well as to protect the environment and the social regulations in force, Member States must be able to make the supply of ground-handling services subject to approval; whereas the criteria for granting such approval must be objective, transparent and non-discriminatory;

(23) Whereas, for the same reasons, Member States must retain the power to lay down and enforce the necessary rules for the proper functioning of the airport infrastructure; whereas those rules must relate to the intended objective and must not in practice reduce market access or the freedom to self-handle to a level below that provided for in this Directive; whereas the rules must comply with the principles of objectivity, transparency and non-discrimination;

(24) Whereas Member States must retain the power to ensure an adequate level of social protection for the staff of undertakings providing ground-handling services;

(25) Whereas access to airport installations must be guaranteed to suppliers authorized to provide ground-handling services and to airport users authorized to self-handle, to the extent necessary for them to exercise their rights and to permit fair and genuine competition; whereas it must be possible however, for such access to give rise to the collection of a fee;

(26) Whereas it is justified that the rights recognized by this Directive should only apply to third-country suppliers of ground-handling services and third-country airport users subject to strict reciprocity; whereas where there is no such reciprocity the Member State should be able to suspend these rights with regard to those suppliers and users;

(27) Whereas arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation;

(28) Whereas this Directive does not affect the application of the rules of the Treaty; whereas in particular the Commission will continue to ensure compliance with these rules by exercising, when necessary, all the powers granted to it by Article 90 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Scope

1. This Directive applies to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic in the following circumstances:

(a) The provisions of Article 7 (1) relating to categories of ground-handling services other than those referred to in Article 7 (2) shall apply to any airport regardless of its volume of traffic as from 1 January 1998.

(b) The provisions relating to the categories of groundhandling services referred to in Article 7 (2) shall apply as from 1 January 1998 to airports whose annual traffic is not less than 1 million passenger movements or 25 000 tonnes of freight.

(c) The provisions relating to the categories of groundhandling services referred to in Article 6 shall apply as from 1 January 1999 to airports:

— whose annual traffic is not less than 3 million passenger movements or 75 000 tonnes of freight; or

— whose traffic has been not less than 2 million passenger movements or 50 000 tonnes of freight during the six-month period prior to 1 April or 1 October of the preceding year.

2. Without prejudice to paragraph 1, the provisions of this Directive shall apply as from 1 January 2001 to any airport located in the territory of a Member State, subject to the provisions of the Treaty, and open to commercial traffic, whose annual traffic is not less than 2 million passenger movements or 50 000 tonnes of freight.

3. Where an airport reaches one of the freight traffic thresholds referred to in this Article without reaching the corresponding passenger movement threshold, the provisions of this Directive shall not apply to categories of groundhandling services reserved exclusively for passengers.

4. The Commission shall publish, for information, in the *Official Journal of the European Communities* a list of the airports referred to in this Article. The list shall first be published within three months following the entry into force of this Directive, and thereafter annually.

Member States shall, before 1 July of each year, forward to the Commission the data required to compile the list.

5. Application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

6. Application of this Directive to Gibraltar airport shall be suspended until the arrangements in the joint declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.

Article 2

Definitions

For the purposes of this Directive:

(a) 'airport' means any area of land especially adapted for the landing, taking-off and manoeuvres of aircraft, including the ancillary installations which these operations may involve for the requirements of aircraft traffic and services including the installations needed to assist commercial air services;

(b) 'airport system' means two or more airports grouped together to serve the same city or conurbation, as referred to in Annex II to Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes;

(c) 'managing body of the airport' means a body which, in conjuntion with other activities or not as the case may be, has as its objective under national law or regulation the administration and management of the airport infrastructures, and the coordination and control of the activities of the different operators present in the airport or airport system concerned;

(d) 'airport user' means any natural or legal person responsible for the carriage of passengers, mail and/or freight by air from, or to the airport in question;

(e) 'groundhandling' means the services provided to airport users at airports as described in the Annex;

(f) 'self-handling' means a situation in which an airport user directly provides for himself one or more categories of groundhandling services and concludes no contract of any description with a third party for the provision of such services; for the purposes of this definition, among themselves airport users shall not be deemed to be third parties where:

— one holds a majority holding in the other; or

— a single body has a majority holding in each;

(g) 'supplier of groundhandling services' means any natural or legal person supplying third parties with one or more categories of groundhandling services.

Article 3

Managing body of the airport

1. Where an airport or airport system is managed and operated not by a single body but by several separate bodies, each of these bodies shall be considered part of the managing body of the airport for the purposes of this Directive.

2. Similarly, where only a single managing body is set up for several airports or airport systems, each of those airports or airport systems shall be considered separately for the purposes of this Directive.

3. If the managing bodies of airports are subject to the supervision or control of a national public authority, that authority shall be obliged, in the context of the legal obligations devolving upon it, to ensure that this Directive is applied.

Article 4

Separation of accounts

1. Where the managing body of an airport, the airport user or the supplier of groundhandling services provide groundhandling services, they must rigorously separate the accounts of their groundhandling activities from the accounts of their other activities, in accordance with current commercial practice.

2. An independent examiner appointed by the Member State must check that this separation of accounts is carried out.

The examiner shall also check the absence of financial flows between the activity of the managing body as airport authority and its groundhandling activity.

Article 5

Airport Users' Committee

1. Twelve months at the latest following the entry into force of this Directive, Member States shall ensure that, for each of the airports concerned, a committee of representatives of airport users or organizations representing airport users is set up.

2. All airport users shall have the right to be on this committee, or, if they so wish, to be represented on it by an organization appointed to that effect.

Article 6

Groundhandling for third parties

1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure free access by suppliers of groundhandling services to the market for the provision of groundhandling services to third parties.

Member States shall have the right to require that suppliers of groundhandling services be established within the Community.

2. Member States may limit the number of suppliers authorized to provide the following categories of groundhandling services:

— baggage handling,

— ramp handling,

— fuel and oil handling,

— freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft.

They may not, however, limit this number to fewer than two for each category of groundhandling service.

3. Moreover, as from 1 January 2001 at least one of the authorized suppliers may not be directly or indirectly controlled by:

— the managing body of the airport,

— any airport user who has carried more than 25 % of the passengers or freight recorded at the airport during the year preceding that in which those suppliers were selected,

— a body controlling or controlled directly or indirectly by that managing body or any such user.

However at 1 July 2000, a Member State may request that the obligation in this paragraph be deferred until 31 December 2002.

The Commission, assisted by the Committee referred to in Article 10, shall examine such request and may, having regard to the evolution of the sector and, in particular, the situation at airports comparable in terms of traffic volume and pattern, decide to grant the said request.

4. Where pursuant to paragraph 2 they restrict the number of authorized suppliers, Member States may not prevent an airport user, whatever part of the airport is allocated to him, from having, in respect of each category of groundhandling service subject to restriction, an effective choice between at least two suppliers of groundhandling services, under the conditions laid down in paragraphs 2 and 3.

Article 7

Self-handling

1. Member States shall take the necessary measures in accordance with the arrangements laid down in Article 1 to ensure the freedom to self-handle.

2. However, for the following categories of groundhandling services:

— baggage handling,

— ramp handling,

— fuel and oil handling,

— freight and mail handling as regards the physical handling of freight and mail, whether incoming, outgoing or being transferred, between the air terminal and the aircraft,

Member States may reserve the right to self-handle to no fewer than two airport users, provided they are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria.

Article 8

Centralized infrastructures

1. Notwithstanding the application of Articles 6 and 7, Member States may reserve for the managing body of the airport or for another body the management of the centralized infrastructures used for the supply of groundhandling services whose complexity, cost or environmental impact does not allow of division or duplication, such as baggage sorting, de-icing, water purification and fuel-distribution systems. They may make it compulsory for suppliers of groundhandling services and self-handling airport users to use these infrastructures.

2. Member States shall ensure that the management of these infrastructures is transparent, objective and non-discriminatory and, in particular, that it does not hinder the access of suppliers of groundhandling services or self-handling airport users within the limits provided for in this Directive.

Article 9

Exemptions

1. Where at an airport, specific constraints of available space or capacity, arising in particular from congestion and area utilization rate, make it impossible to open up the market and/or implement self-handling to the degree provided for in this Directive, the Member State in question may decide:

(a) to limit the number of suppliers for one or more categories of groundhandling services other than those referred to in Article 6 (2) in all or part of the airport; in this case the provisions of Article 6 (2) and (3) shall apply;

(b) to reserve to a single supplier one or more of the categories of groundhandling services referred to in Article 6 (2);

(c) to reserve self-handling to a limited number of airport users for categories of groundhandling services other than those referred to in Article 7 (2), provided that those users are chosen on the basis of relevant, objective, transparent and non-discriminatory criteria;

(d) to ban self-handling or to restrict it to a single airport user for the categories of groundhandling services referred to in Article 7 (2).

2. All exemptions decided pursuant to paragraph 1 must:

(a) specify the category or categories of groundhandling services for which the exemption is granted and the specific constraints of available space or capacity which justify it;

(b) be accompanied by a plan of appropriate measures to overcome the constraints.

Moreover, exemptions must not:

(i) unduly prejudice the aims of this Directive;

(ii) give rise to distortions of competition between suppliers of groundhandling services and/or self-handling airport users;

(iii) extend further than necessary.

3. Member States shall notify the Commission, at least three months before they enter into force, of any exemptions they grant on the basis of paragraph 1 and of the grounds which justify them.

The Commission shall publish a summary of the decisions of which it is notified in the *Official Journal of the European Communities* and shall invite interested parties to submit comments.

4. The Commission shall examine closely exemption decisions submitted by Member States. To that end the Commission shall make a detailed analysis of the situation and a study of the appropriate measures submitted by the Member State to check that the alleged constraints exist and that it is impossible to open up the market and/or implement self-handling to the degree provided for in this Directive.

5. Further to that examination and after consulting the Member State concerned, the Commission may approve the Member State's decision or oppose it if it deems that the alleged constraints have not been proved to exist or that they are not so severe as to justify the exemption. After consulting the Member State concerned the Commission may also require the Member State to amend the extent of the exemption or restrict it to those parts of an airport or airport system where the alleged constraints have been proved to exist.

The Commission's decision shall be taken no later than three months after notification by the Member State and shall be published in the *Official Journal of the European Communities*.

6. Exemptions granted by Member States pursuant to paragraph 1 may not exceed a duration of three years except for exemptions granted under paragraph 1 (b). Not later than three months before the end of that period the Member State must take a new decision on any request for exemption, which will also be subject to the procedure laid down in this Article.

Exemptions under paragraph 1 (b) may not exceed a duration of two years. However, a Member State may on the basis of the provisions of paragraph 1 request that this period be extended by a single period of two years. The Commission, assisted by the Committee referred to in Article 10, shall decide on such request.

Article 10

Advisory Committee

1. The Commission shall be assisted by an advisory committee made up of representatives of the Member States and chaired by the representative of the Commission.

2. The Committee shall advise the Commission on the application of Article 9.

3. The Committee may furthermore be consulted by the Commission on any other matter concerning the application of this Directive.

4. The Committee shall establish its own rules of procedure.

Article 11

Selection of suppliers

1. Member States shall take the necessary measures for the organization of a selection procedure for suppliers authorized to provide groundhandling services at an airport where their number is limited in the cases provided for in Article 6 (2) or Article 9. This procedure must comply with the following principles:

(a) In cases where Member States require the establishment of standard conditions or technical specifications to be met by the suppliers of groundhandling services, those conditions or specifications shall be established following consultation with the Airport Users' Committee. The selection criteria laid down in the standard conditions or technical specifications must be relevant, objective, transparent and non-discriminatory.

After having notified the Commission, the Member State concerned may include among the standard conditions or technical specifications with which suppliers of groundhandling services must comply a public service obligation in respect of airports serving peripheral or developing regions which are part of its territory, which have no commercial interest but which are of vital importance for the Member State concerned.

(b) An invitation to tender must be launched and published in the *Official Journal of the European Communities*, to which any interested supplier of groundhandling services may reply.

(c) Suppliers of groundhandling services shall be chosen:

(i) following consultation with the Airport Users' Committee by the managing body of the airport, provided the latter:

— does not provide similar groundhandling services; and

— has no direct or indirect control over any undertaking which provides such services; and

— has no involvement in any such undertaking;

(ii) in all other cases, by competent authorities of the Member States which are independent of the managing body of the airport concerned, and which shall first consult the Airport Users' Committee and that managing body.

(d) Suppliers of groundhandling services shall be selected for a maximum period of seven years.

(e) Where a supplier of groundhandling services ceases his activity before the end of the period for which he was selected, he shall be replaced on the basis of the same procedure.

2. Where the number of suppliers of groundhandling services is limited in accordance with Article 6 (2) or Article 9, the managing body of the airport may itself provide groundhandling services without being subject to the selection procedure laid down in paragraph 1. Similarly, it may, without submitting it to the said procedure, authorize an undertaking to provide groundhandling services at the airport in question:

— if it controls that undertaking directly or indirectly; or

— if the undertaking controls it directly or indirectly.

3. The managing body of the airport shall inform the Airport Users' Committee of decisions taken under this Article.

Article 12

Island airports

In the context of the selection of suppliers of groundhandling services at an airport as provided for in Article 11, a Member State may extend the obligation of public service to other airports in that Member State provided:

— those airports are located on islands in the same geographical region; and

— such airports each have a traffic volume of no less than 100 000 passenger movements per year; and

— such an extension is approved by the Commission with the assistance of the Committee referred to in Article 10.

Article 13

Consultations

Member States shall see to it that a compulsory consultation procedure relating to the application of this Directive is organized between the managing body of the airport, the Airport Users' Committee and the undertakings providing groundhandling services. This consultation shall cover, *inter alia*, the price of those groundhandling services for which an exemption has been granted pursuant to Article 9 (1) (b) and the organization of the provision of those services. Such consultation shall be organized at least once a year.

Article 14

Approval

1. Member States may make the groundhandling activity of a supplier of groundhandling services or a self-handling user at an airport conditional upon obtaining the approval of a public authority independent of the managing body of the airport.

The criteria for such approval must relate to a sound financial situation and sufficient insurance cover, to the security and safety of installations, of aircraft, of equipment and of persons, as well as to environmental protection and compliance with the relevant social legislation.

The criteria must comply with the following principles:

(a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;

(b) they must relate to the intended objective;

(c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive.

These criteria shall be made public and the supplier of groundhandling services or self-handling airport user shall be informed in advance of the procedure for obtaining approval.

2. The approval may be withheld or withdrawn only if the supplier of groundhandling services or self-handling airport user does not meet, for reasons of his own doing, the criteria referred to in paragraph 1.

The grounds for witholding or withdrawal must be communicated to the supplier or user concerned and to the managing body of the airport.

Article 15

Rules of conduct

A Member State may, where appropriate on a proposal from the managing body of the airport:

— prohibit a supplier of groundhandling services or an airport user from supplying groundhandling services or self-handling if that supplier or user fails to comply with the rules imposed upon him to ensure the proper functioning of the airport;

  Those rules must comply with the following principles:

  (a) they must be applied in a non-discriminatory manner to the various suppliers of groundhandling services and airport users;

  (b) they must relate to the intended objective;

  (c) they may not, in practice, reduce market access or the freedom to self-handle to a level below that provided for in this Directive;

— in particular require suppliers of groundhandling services at an airport to participate in a fair and non-discriminatory manner in carrying out the public service obligations laid down in national laws or rules, including the obligation to ensure continuous service.

Article 16

Access to installations

1. Member States shall take the necessary measures to ensure that suppliers of groundhandling services and airport users wishing to self-handle have access to airport installations to the extent necessary for them to carry out their activities. If the managing body of the airport or, where appropriate, the public authority or any other body which controls it places conditions upon such access, those conditions must be relevant, objective, transparent and non-discriminatory.

2. The space available for groundhandling at an airport must be divided among the various suppliers of groundhandling services and self-handling airport users, including new entrants in the field, to the extent necessary for the exercise of their rights and to allow effective and fair competition, on the basis of the relevant, objective, transparent and non-discriminatory rules and criteria.

3. Where access to airport installations gives rise to the collection of a fee, the latter shall be determined according to relevant, objective, transparent and non-discriminatory criteria.

Article 17

Safety and security

The provisions of this Directive in no way affect the rights and obligations of Member States in respect of law and order, safety and security at airports.

Article 18

Social and environmental protection

Without prejudice to the application of this Directive, and subject to the other provisions of Community law, Member States may take the necessary measures to ensure protection of the rights of workers and respect for the environment.

Article 19

Compliance with national provisions

A supplier of groundhandling services at an airport in a Member State shall be required to comply with the provisions of national law which are compatible with Community law.

Article 20

Reciprocity

1. Without prejudice to the international commitments of the Community, whenever it appears that a third country, with respect to access to the groundhandling or self-handling market:

(a) does not, *de jure* or *de facto*, grant suppliers of groundhandling services and self-handling airport users from a Member State treatment comparable to that granted by Member States to suppliers of groundhandling services and self-handling airport users from that country; or

(b) does not, *de jure* or *de facto*, grant suppliers of groundhandling services and self-handling airport users from a Member State national treatment; or

(c) grants suppliers of groundhandling services and self-handling airport users from other third countries more favourable treatment than suppliers of groundhandling services and self-handling airport users from a Member State;

a Member State may wholly or partially suspend the obligations arising from this Directive in respect of suppliers of groundhandling services and airport users from that third country, in accordance with Community law.

2. The Member State concerned shall inform the Commission of any withdrawal or suspension of rights or obligations.

Article 21

Right of appeal

Member States or, where appropriate, managing bodies of airports shall ensure that any party with a legitimate interest has the right to appeal against the decisions or individual measures taken pursuant to Articles 7 (2) and 11 to 16.

It must be possible to bring the appeal before a national court or a public authority other than the managing body of the airport concerned and, where appropriate, independent of the public authority controlling it.

Article 22

Information report and revision

Member States shall communicate to the Commission the information required by it to draw up a report on the application of this Directive.

The report, accompanied by any proposals for revision of the Directive, shall be drawn up not later than 31 December 2001.

Article 23

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of its publication in the *Official Journal of the European Communities*. 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. The methods of making such reference shall be laid down by Member States.

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

Article 24

Entry into force

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

Article 25

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 15 October 1996.

For the Council

The President

B. HOWLIN

ANNEX

LIST OF GROUNDHANDLING SERVICES

1. Ground administration and supervision comprise:

1.1. representation and liaison services with local authorities or any other entity, disbursements on behalf of the airport user and provision of office space for its representatives;

1.2. load control, messaging and telecommunications;

1.3. handling, storage and administration of unit load devices;

1.4. any other supervision services before, during or after the flight and any other administrative service requested by the airport user.

2. Passenger handling comprises any kind of assistance to arriving, departing, transfer or transit passengers, including checking tickets and travel documents, registering baggage and carrying it to the sorting area.

3. Baggage handling comprises handling baggage in the sorting area, sorting it, preparing it for departure, loading it on to and unloading it from the devices designed to move it from the aircraft to the sorting area and vice versa, as well as transporting baggage from the sorting area to the reclaim area.

4. Freight and mail handling comprises:

4.1. for freight: physical handling of export, transfer and import freight, handling of related documents, customs procedures and implementation of any security procedure agreed between the parties or required by the circumstances;

4.2. for mail: physical handling of incoming and outgoing mail, handling of related documents and implementation of any security procedure agreed between the parties or required by the circumstances.

5. Ramp handling comprises:

5.1. marshalling the aircraft on the ground at arrival and departure (*);

5.2. assistance to aircraft packing and provision of suitable devices (*);

5.3. communication between the aircraft and the air-side supplier of services (*);

5.4. the loading and unloading of the aircraft, including the provision and operation of suitable means, as well as the transport of crew and passengers between the aircraft and the terminal, and baggage transport between the aircraft and the terminal;

5.5. the provision and operation of appropriate units for engine starting;

5.6. the moving of the aircraft at arrival and departure, as well as the provision and operation of suitable devices;

5.7. the transport, loading on to and unloading from the aircraft of food and beverages.

6. Aircraft services comprise:

6.1. the external and internal cleaning of the aircraft, and the toilet and water services;

6.2. the cooling and heating of the cabin, the removal of snow and ice, the de-icing of the aircraft;

6.3. the rearrangement of the cabin with suitable cabin equipment, the storage of this equipment.

7. Fuel and oil handling comprises:

7.1. the organization and execution of fuelling and defuelling operations, including the storage of fuel and the control of the quality and quantity of fuel deliveries;

7.2. the replenishing of oil and other fluids.

8. Aircraft maintenance comprises:

8.1. routine services performed before flight;

8.2. non-routine services requested by the airport user;

8.3. the provision and administration of spare parts and suitable equipment;

8.4. the request for or reservation of a suitable parking and/or hangar space.

(*) Provided that these services are not provided by the air traffic service.

9. Flight operations and crew administration comprise:

9.1. preparation of the flight at the departure airport or at any other point;

9.2. in-flight assistance, including re-dispatching if needed;

9.3. post-flight activities;

9.4. crew administration.

10. Surface transport comprises:

10.1. the organization and execution of crew, passenger, baggage, freight and mail transport between different terminals of the same airport, but excluding the same transport between the aircraft and any other point within the perimeter of the same airport;

10.2. any special transport requested by the airport user.

11. Catering services comprise:

11.1. liaison with suppliers and administrative management;

11.2. storage of food and beverages and of the equipment needed for their preparation;

11.3. cleaning of this equipment;

11.4. preparation and delivery of equipment as well as of bar and food supplies.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 May 1996

concerning certain measures granted by Italy in favour of Breda Fucine Meridionali SpA

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/614/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 92 and 93 thereof,

Having regard to the Agreement on the European Economic Area, and in particular Articles 61 and 62 thereof,

Having given the interested parties notice to submit their comments, in accordance with the abovementioned provisions,

Whereas:

I

By letter dated 10 March 1995 the Commission informed the Italian Government of its decision to initiate the procedure pursuant to Article 93 (2) of the Treaty in respect of the aid received by Breda Fucine Meridionali (hereinafter referred to as 'BFM').

Following a formal complaint by a competitor of BFM, the Commission, by letter dated 17 October 1994, had asked the Italian authorities for information on the aid allegedly received by BFM.

According to the information received by the Commission:

— BFM was controlled by Finanziaria Ernesto Breda, which in turn was part of the EFIM group, a public holding company which went into liquidation in July 1992,

— Finanziaria Ernesto Breda was compulsorily wound up by a Decree of the Italian Minister for the Treasury of 11 March 1994. According to the Decree, the company was irreversibly insolvent, with liabilities of Lit 803 billion,

— BFM specialized, among other things, in the supply of railway equipment, and in particular steel crossing frogs, the same market as the one on which the firm which lodged the complaint operates. BFM's production of crossing frogs accounted for more than 40 % of its total output,

— BFM was falling into a deplorable financial situation. Information in the Commission's possession suggests that:

  — in 1992 BFM recorded losses had amounted to some Lit 27,6 billion on turnover of Lit 18,5 billion,

  — in 1993 its losses had risen to Lit 36 billion, while turnover had fallen to Lit 13,5 billion,

  — its debts reached Lit 88,7 billion in 1993, compared with share capital of Lit 17 billion, reduced to zero as a result of the firm's losses,

— in the period 1985 to 1994, Finanziaria Ernesto Breda and EFIM bailed out BFM several times by providing recapitalization funds, making good its losses and granting loans,

— BFM succeeded in remaining on the market and avoided being wound up, partly owing to an *ad hoc* provision contained in Article 7 (2) of Decree Law No 487 of 19 December 1992, converted into Law No 33 of 17 February 1993 (hereinafter referred to as 'Law No 33/1993') concerning the winding up of EFIM, which applies only to EFIM-controlled firms.

It is clear from the foregoing why the Commission encountered serious difficulties in determining whether the aid in question, in particular the recapitalization, the writing-off of losses and the loans granted by EFIM and Finanziaria Ernesto Breda, as well as the non-application to BFM of the general rules of the Italian Civil Code concerning the winding up and dissolving of companies, were compatible with the common market. The Commission none the less decided to initiate the procedure pursuant to Article 93 (2) of the EC Treaty in respect of the aid in question.

II

As part of the procedure, the Commission requested the Italian Government to submit its comments, other Member States and interested parties being invited to do so in a notice published in the *Official Journal of the European Communities* [1].

Comments following the initiation of the procedure were received from Manoir Industries SA (Manoir) by letter dated 21 November 1995 and from the German Government by letter dated 6 December 1995. The Commission forwarded the comments to the Italian authorities on 31 January 1996, asking them to send their reply, if any, within 15 days. No reply has been received to date.

In its comments, Manoir, a French competitor of BFM on the market for steel crossing frogs, made the following claims:

— BFM was able to stay in business solely because of the State aid it received, in particular the derogation from Italian Law No 33/1993 on bankruptcy and insolvency,

— from July 1992, BFM was able to suspend all payments to suppliers,

— BFM lost its capital several times, and its own resources are zero,

— BFM had been operating at a loss for several years,

— as a result, competition on the Community market for crossing frogs was severely distorted, with serious repercussions for Manoir which, being a privately owned company, was obliged to compete against BFM with its own, necessarily limited resources.

Manoir claimed, finally, that the aid in question did not qualify for exemption pursuant to Article 92 (3) of the Treaty and accordingly requested the Commission to seek repayment of the aid.

The comments from the German Government, which agrees with the Commission's decision to initiate the procedure, state that the assistance from the Italian Government through EFIM and Finanziaria Ernesto Breda would not have been provided by a private investor in normal market economy conditions, in view of BFM's debts which have only increased with time, and the financial situation of the firm, all of which indicates that the measures constitute State aid.

In its letter of 24 May 1995 the Italian Government, in response to the Commission's decision to initiate the procedure, made the following statements:

— in the period preceding the liquidation of the EFIM group (July 1992), BFM did not benefit from any guarantee scheme or measure,

— while EFIM was being wound up, the receiver paid BFM only the advances needed to pay its workers; as from 1992 and apart from the said advance, BFM did not receive any financing, either from Finanziaria Ernesto Breda or others, and the receiver appointed by the Italian Government to wind up the EFIM group consistently complied with the principle of a private investor in a market economy, without exception, the sole difference being that the liquidation of EFIM was governed by the Italian laws on EFIM,

— in the last few years, BFM's debts grew not as a result of the new loans granted but solely because of the financial charges accruing on previous debts, all the financing being granted at market rates,

— all the financing granted by the parent companies to BFM was essentially intended for productive investments which, at the time, could reasonably be expected to show a profit,

— even if the measures were to be regarded as constituting State aid, they should qualify for exemption pursuant to Article 92 (3) of the Treaty in view of (i) the situation and prospects of the firm, (ii) its sale to third parties, (iii) the location of the firm in the Mezzogiorno, in a region meeting the requirements of Article 92 (3) (a) of the Treaty,

[1] OJ No C 293, 8. 11. 1995, p. 8.

— BFM will become viable: in 1995, apart from its debts and financial charges, it achieved a profit, albeit a small one. It is expected to make a considerable profit in 1996,

— consequently, a negative decision seems unfair as it would entail the winding up of the firm without taking account of the efforts made to restructure it,

— Article 7 (2) of Law No 33/1933, which derogates from Articles 2446 and 2447 of the Civil Code with respect to EFIM, seeks to allow firms in the EFIM group to remain in operation only for the minimum time required to wind up the group.

III

The first task is to identify the Community rules applicable to the case in hand, taking account of the market liable to be adversely affected by the measures in question, namely the market for mangenese steel railway crossing frogs.

Whereas rails are covered by the ECSC Treaty, crossing frogs are covered by Articles 92 and 93 of the Treaty, as the distinction made in Chapter 73 of the combined nomenclature relating to articles of iron or steel (code 7302 30 00 — Switch blades, crossing frogs, point rods and other crossing pieces) makes clear. All BFM's other products are also covered by the EC Treaty.

Article 92 states that, save as otherwise provided for in the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

It is therefore necessary to determine whether the public resources allegedly granted to BFM constitute State aid, whether they affect trade between Member States and, lastly, whether they qualify for exemption pursuant to Article 92 (2) and (3) of the EC Treaty and may therefore, although constituing illegal aid as they were not notified to the Commission, be regarded as compatible with the common market.

IV

According to the case file, BFM which was established in the mid-60's and was never profitable, has incurred heavy losses in the last 10 years, according to the balance sheets in the Commission's possession. Its debts, which exceeded Lit 85 billion at the end of 1994, are currently five times its initial share capital of Lit 17 billion. In just the period from 1990 to 1994, it lost:

— in 1990: Lit 18 billion on turnover of Lit 14,6 billion,

— in 1991: Lit 14 billion on turnover of Lit 18,4 billion,

— in 1992: Lit 27,6 billion on turnover of Lit 19,9 billion,

— in 1993: Lit 36,1 billion on turnover of Lit 14,7 billion,

— in 1994: Lit 13,8 billion on turnover of Lit 20,6 billion.

In the period 1985 to 1994 to BFM received from EFIM and its subsidiary Finanziaria Ernesto Breda:

(a) capital injections of Lit 7 billion in 1986 and Lit 5 billion in 1987;

(b) debt write-offs of Lit 7,1 billion in 1985, Lit 11,2 billion in 1987, Lit 3,9 billion in 1988, Lit 11,6 billion in 1990, Lit 17 billion in 1991;

(c) financing from the parent companies in respect of which BFM currently owes Lit 57 billion to Finanziaria Ernesto Breda and Lit 6 billion to EFIM. In this connection, it should be noted that EFIM, in its letter of 20 February 1996 in which it requests the Commission to authorize the capital conversion of the abovementioned debts, acknowledges that BFM owes some Lit 63 billion to the parent companies.

In the light of the foregoing there are grounds for concluding that, prior to the entry into force in July 1992 of the *ad hoc* provisions referred to below in Chapter V, BFM succeeded in remaining on the market in question thanks to the public measures from which it benefited: on the one hand, the financing and on the other the capital injections and wiping out of losses by the two parent companies.

In order to determine whether the measures in question constitute State aid, the Commission considers (see communication to the Member States of 13 November 1993 [1]) that public enterprises may derive an advantage from being State controlled: this is the case if the State provides public funds in circumstances that go beyond its simple role as proprietor. If any public funds are made available to the public enterprise on more favourable terms than those on which a private investor would provide them to a private firm in the same financial and

[1] OJ No C 307, 13. 11. 1993, p. 3.

competitive position, or are provided by the State to a public enterprise but would not be provided by a private investor to a similar private firm in the same financial position, then the public enterprise is receiving an advantage not available to private enterprises from their proprietors and competition on the common market is distorted. In this respect, it matters little whether the aid to public enterprises is granted direct by the State or indirectly through holding companies or other public enterprises.

Furthermore, the Court of Justice of the European Communities has consistently held, since its judgments in Case C-303/88 [1] and in Case C-305/89 [2] that, in order to determine whether a public measure constitutes State aid, what must be assessed is the difference between the terms on which the funds were made available by the State to the public enterprise in question and the terms which a private investor would find acceptable in providing funds to a comparable private firm, under normal market economy conditions. In its judgment of 3 October 1991 in Case C-261/89, *Italy* v. *Commission* [3], the Court of Justice held that 'the fact that a financial contribution is intended for productive investment does not by itself preclude such a contribution from constituting an aid when, regard being had to the situation of the undertaking, it appears improbable that a private shareholder would have subscribed the capital in question.'

In the case in question, the contested measures, including the alleged grant of aid, the capital contributions and the making good of losses, enjoyed by a firm like BFM, which has never been profitable and which, under normal economic and legal conditions would have already been wound up after losses which wiped out its share capital, cannot be regarded as measures which a private investor operating under normal market economy conditions would have adopted in the normal course of business.

In other words, the measures taken by the public authorities in question constitute State aid inasmuch as, in similar circumstances and according to *id quod plerumque accidit,* a private investor, even one as large as EFIM or Finanziaria Ernesto Breda, would not have injected capital and provided such large-scale financing without requiring a restructuring plan showing a prospect of future viability. The case file, however, does not indicate that any restructuring of BFM was planned, or that this was the aim of the public measures in question.

In fact, it is highly likely that, under normal conditions — if BFM had been a private firm — its owner would long ago have sought a declaration of bankruptcy; it is hard to believe that a private operator would have allowed a firm to remain on the market that had losses exceeding turnover, had no restructuring plan and failed to bring him any financial benefits.

While the behaviour of a private investor which is to be compared with that of a public investor is not necessarily that of an ordinary investor who puts in capital with a view to securing a return in the fairly short term, it should at least be that of an investor who takes action to ensure the survival of a firm which, although experiencing temporary difficulties, will return to profitability. This is not the case with BFM, whose debts are so large as to rule out any prospect of profitability, even in the long term. No private investor operating under normal market economy conditions could, even with a view to the longer term and the future sale of the firm, continue to finance an enterprise in such debt for so long a period.

In view of the foregoing, the Commission concludes that the public measures in question constitute State aid within the meaning of Article 92 of the Treaty.

V

Article 7 (2) of Law No 33/1933 provides for the non-application to members of the EFIM group, which includes BFM, of the mandatory rules contained in Articles 2446 and 2447 of the Italian Civil Code which provide that firms with losses which reduce their share capital to less than the legal minimum (Lit 200 million) must be wound up. BFM managed to remain on the market and avoid being wound up, unlike a private firm in similar circumstances, by virtue of the *ad hoc* derogation from the general system provided for in Article 7. The application of these Articles of the Civil Code to BFM would probably have led to its bankruptcy and disappearance from the market.

This provision, which is not a general but a specific measure intended to benefit a specific firm, constitutes State aid as it enabled BFM to avoid repaying its public debts, its debts to public enterprises, and its debts towards public financial institutions. The provision in question would thus enable BFM to remain in operation without repaying State aid declared incompatible and without being wound up. As a result, this Decision would be deprived of its effectiveness.

[1] [1991] ECR I, p. 1433.
[2] [1991] ECR I, p. 1603.
[3] [1991] ECR I, p. 4437, at paragraph 9.

The special rules, introduced in July 1992, should have been terminated at the end of 1994. However, as in 1995, Italy extended to 1996 by a Ministerial Decree of 24 January 1996 the measure relating to a special scheme for the liquidation of EFIM in respect of several members of the group not yet sold or wound up, in this case BFM. From July 1992, therefore, the Italian Government protected and continues to protect BFM from possible bankruptcy or insolvency, completely altering the original assessment of the liquidation of EFIM, namely as a scheme used for the minimum time needed to sell its companies or wind them up.

It is clear that any extension of this scheme on behalf of BFM, in view of the serious distortions of competition on the common market that are involved, can be justified only for objectively valid reasons. The italian authorities, however, have not given any reasons for extending the special scheme apart from stating that time was needed to find a buyer. It is obvious that this justification is unacceptable as otherwise the Italian authorities could prolong the scheme in question *sine die* for as long as they liked until a purchaser was found.

The impossibility of finding a purchaser for BFM during all this time is further evidence of the deplorable financial situation in which BFM currently finds itself. It is so precarious that it has been impossible to sell the firm within a reasonable period.

Consequently, even the extension in respect of BFM of the effects of the provisions of the Law in question, namely Article 7 (2) of Law No 33/1993, extended by the Decree of 24 January 1996, should be regarded as State aid since, by artifially enabling BFM to remain on the market and hence giving it an edge over its competitors, it distorted competition on the relevant market.

The Commission also notes that the derogation provided for in Law No 33 enabled BFM to:

— benefit from a grant of Lit 2 710 million from the liquidator of EFIM to pay the wages of surplus workers,

— freeze the amount owed to suppliers, totalling Lit 9 941 million,

— suspend repayment of loans totalling Lit 6 609 million granted by the financial establishments Isveimer and IMI,

— suspend interest payments, totalling Lit 4 478 million, to banks from 17 July 1992.

It is clear that the specific measures adopted by Italy in derogation from ordinary law had the sole purpose of maintaining BFM artificially on the market from July 1992, enabling it to operate without meeting its financial obligations towards public enterprises.

VI

Article 92 (1) of the EC Treaty provides that any aid granted by Member States which affects trade between Member States is incompatible with the common market.

The geographical market for railway crossing frogs may be defined as the Community market. All the leading Community producers of crossing frogs are present throughout the Community and tender competitively for contracts awarded by the appropriate bodies in the Member States, thus exporting a large proportion of their output to other Member States.

Furthermore, according to the information available to the Commission, competition is intensified by the huge overcapacity on the market [1].

The Italian authorities have referred to the marginal nature of BFM's exports. In Case C-305/89, the Court stated in this connection that 'where an undertaking operates in a sector in which there is surplus production capacity and producers from various Member States compete, any aid which it may receive from the public authorities is liable to affect trade between the Member States and impair competition, inasmuch as its continuing presence on the market prevents competitors from increasing their market share and reduces their chances of increasing exports.' [2].

VII

Having concluded that the public measures which benefited BFM constitute State aid and that they adversely affected intra-Community trade, it must be decided whether the aid is compatible with the common market, even though it is unlawful for not having been notified to the Commission.

[1] The market for crossing frogs in Europe continues to suffer from overcapacity. In 1996 total estimated capacity in the Community (Manoir, BFM, Jadot, Jez Amurrio) is 8 400 crossing frogs, whereas maximum demand will probably total only 5 615 units.

[2] Paragraph 26.

Article 92 (2) and (3) refer to several types of aid which are or could be compatible with the common market. Article 92 (2) provides that aid having a social character, granted to individual consumers, and aid to make good the damage caused by natural disasters or exceptional occurrences are compatible with the common market.

That provision is not applicable to the aid in question as it is not aid of a social character granted to individual consumers and is not intended to make good the damage caused by natural disasters.

Among the possibly relevant provisions of Article 92 (3) invoked by the Italian authorities are subparagraphs (a) — aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and (c) — aid to facilitate the development of certain economic activities or of certain economic areas, where it does not adversely affect trading conditions to an extent contrary to the common interest.

As regards Article 92 (3) (a), it is clear that the aid in question was not granted under a public regional programme. Nor do the documents in the case indicate that the aid was granted to create jobs in an assisted area. On the contrary, close scrutiny reveals that the measures were specifically intended to facilitate the industrial survival of BFM, irrespective of the cost.

With regard to Article 92 (3) (c), the Italian authorities state that the measures in question allowed BFM to restructure and hence to return to profitability in the future. The Commission notes that the Italian authorities have not furnished any evidence in support of the claim that the aid was granted in connection with a restructuring plan. Furthermore, even if the public shareholders had considered adopting a restructuring plan, the fact is that any such plan would have been wrong and ill-advised. The documents in the case show that there was never any question of restructuring BFM and that a hypothetical restructuring was not the reason for the State aid grants, the latter having clearly been *ad hoc* measures designed to allow an enterprise to survive without reference to any economic logic or any form of restructuring.

It should also be pointed out that, contrary to the statements of the Italian authorities to the effect that the enteprise is profitable, BFM recorded losses in 1995 amounting to Lit 15 billion on turnover of Lit 28,1 billion; losses totalled Lit 27,6 billion in 1992, Lit 36,1 billion in 1993 and Lit 13,8 billion in 1994. At the same time, the profit-and-loss account, which does not take account of income and financial charges, showed negative balances of Lit 1 994 million in 1995, Lit 4 217 million in 1992, Lit 5 103 million in 1993 and a positive balance of Lit 87 million in 1994. In view of the foregoing, the Commission must conclude that the Italian statements relating to the viability of BFM are unfounded.

Lastly, it is hard to understand how the alleged viability of the firm constitutes, as the Italian authorities claim, a reason on a strictly operational level for the claim that the aid is compatible, without taking account of the financial burden which the firm would normally have to bear.

Nor does it seem compatible with Community law that an enterprise which would have disappeared without the aid grants and the special derogations from Italian law benefits from favourable treatment on the ground that its operating results are improving, and is kept on the market solely by virtue of illegal aid. This line of reasoning would give an illegal advantage to Member States that delay the abolition of aid measures as much as possible.

The Commission consequently concludes that the measures in question do not qualify for exemption pursuant to Article 92 (2) or (3) of the Treaty.

Lastly, the fact that a Commission decision to prohibit illegal aid and require its repayment could entail the liquidation of BFM, as the Italian authorities assert, should be examined in the specific context of the case in question. The BFM case is covered by the liquidation plan submitted to the Commission by EFIM. According to that plan, at the end of a transitional period, firms that have not found buyers will be wound up. Italy has twice extended the special liquidation arrangements, without the authorization of the Commission — on the second occasion by Decree of 24 January 1996.

In view of the failure to find a purchaser, BFM should already have been wound up at the end of 1994, the original date provided for in the law on the liquidation of EFIM. Thus the liquidation of BFM would be a logical consequence of the plan drawn up by the Italian legislator for the liquidation of the EFIM group rather than an excessively inflexible application of the Community rules.

VIII

In view of the foregoing, it must be concluded that the public measures from which BFM benefited, namely:

(a) capital injections amounting to Lit 12 billion, or Lit 7 billion in 1986 and Lit 5 billion in 1987;

(b) making good of losses totalling Lit 50,8 billion, of which Lit 7,1 billion in 1985, Lit 11,2 billion in 1987, Lit 3,9 billion 1988, Lit 11,6 billion in 1990, and Lit 17 billion in 1991;

(c) financing granted to BFM by Finanziaria Ernesto Breda and by EFIM, resulting in a debt towards the two parent companies of Lit 63 billion;

(d) Article 7 (2) of Law No 33/1993, extended by Decree of 24 January 1996, which enabled BFM to halt repayments of public debts and debts to public enterprises, including amounts owed by it to public financial institutions, and to remain operational without repaying State aid declared incompatible and without being wound up;

(e) the provisions of Law No 33/1993 to the extent that they enabled BFM to suspend repayments of loans granted by the public financial institutions Isveimer and IMI totalling Lit 6 609 million;

constitute illegal State aid, in so far as they were not notified to the Commission and are incompatible with the common market, as they do not qualify for any of the exceptions provided for in Article 92 (2) and (3) of the Treaty.

According to the case-law of the Court of Justice, in particular the judgment of 2 February 1989 in Case 94/87, Commission v. Germany, the relevant provisions of national law must be applied in such a way that the recovery required by Community law is not rendered practically impossible (1),

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted to BFM, namely:

(a) the capital contributions totalling Lit 12 billion, consisting of Lit 7 billion in 1986 and Lit 5 billion in 1987;

(b) the making good of losses totalling Lit 50,8 billion, consisting of Lit 7,1 billion in 1985, Lit 11,2 billion in 1987, Lit 3,9 billion in 1988, Lit 11,6 billion in 1990, and Lit 17 billion in 1991;

(c) the financing granted to BFM by Finanziaria Ernesto Breda and by EFIM, the amount owed by BFM to its two parent companies totalling Lit 63 billion;

(d) Article 7 (2) of Law No 33/1993, as extended by the Decree of 24 January 1996, inasmuch as it enabled BFM to postpone repayment of its public debts, its debts to public enterprises and its debts toward public financial institutions, and to remain in business without repaying State aid declared incompatible and without being wound up;

(e) the provisions of Law No 33/1993 inasmuch as they allowed BFM to suspend repayments of loans granted by the public financial institutions Isveimer and IMI totalling Lit 6 609 million;

is illegal as it was not notified in advance to the Commission in accordance with Article 93 (3) of the EC Treaty.

The aid is also incompatible with the common market within the meaning of Article 92 of the Treaty.

Article 2

Italy shall recover the aid paid to BFM in accordance with the provisions of Italian law relating to the recovery of amounts owed to State.

In order to abolish the effects of the aid, interest shall be charged on the amount of aid, as from the date of its award and until the date of its repayment. The rate shall be that used by the Commission to calculate the net grant equivalent of regional aid in the period in question.

Article 3

Italy shall forthwith suspend, with regard to BFM, the application of the provisions relating to the extension of the derogation from ordinary law with regard to the public debts and the debts to public enterprises. Furthermore, Italy shall, solely with regard to BFM, forthwith suspend the application of the provisions relating to the suspension of the repayment of loans granted by the public financial institutions.

Article 4

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

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 29 May 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

(1) [1989] ECR, p. 175.

COMMISSION DECISION

of 29 May 1996

on the renewal, for the period 1993 to 1997, of the charge levied on certain oil products for the benefit of the Institut Français du Pétrole (IFP)

(Only the French text is authentic)

(Text with EEA relevance)

(96/615/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular the first subparagraph of Article 61 (1) thereof,

Having requested the parties concerned to submit their comments pursuant to those Articles,

Whereas:

I

By letter No SG(94) D/16532 of 23 November 1994, the Commission informed France that the procedure provided for in Article 93 (2) of the EC Treaty had been initiated in respect of the aid arrangements financed by a parafiscal charge levied on certain oil products for the benefit of the Institut Français du Pétrole (IFP).

The IFP is a non-profit-making scientific and technical institute founded in 1944. Operating under the supervision of the French authorities, it is engaged primarily in R&D projects in prospecting, refining and petrochemical technologies. As an adjunct to this activity, it carries out studies, disseminates technical information and trains technicians in the above fields. The IFP also has financial holdings in oil companies.

To a large extent, the IFP is financed from the proceeds of a parafiscal charge on certain oil proudcts that was introduced for that purpose (68 % of its operating budget in 1991, 63,7 % in 1993 and 65,2 % in 1994). The parafiscal charge was introduced in 1944 but France gave notification of its renewal only in 1992 for the period 1993 to 1997.

Average annual proceeds from this charge for the period 1993 to 1997 are estimated at around FF 1 billion (ECU 155 million). The figure for 1944 was FF 1,15 billion.

The refinancing project for the period was notified to the Commission in August 1992 but, following the announcement that the IFP was to be granted advances on the proceeds from the charge, the aid was registered as non-notified aid in January 1993.

The Commission decided to initiate the procedure pursuant to Article 93 (2) of the EC Treaty in connection with these arrangements because of the following doubts:

— the levying of a charge on imported products might violate the general principle (which the Commission has regularly asserted in connection with parafiscal charges) that imports from other Member States shall be fully exempt from tax,

— firms acquiring the findings of IFP studies would benefit from indirect aid because the prices, although they reflected market prices, did not seem to be calculated on the basis of real costs,

— it could not be ruled out that the IFP programmes involved direct aid to some of the firms controlled by the Institute and/or indirect aid as mentioned in the above indent,

— the proceeds from the charge could constitute direct aid favouring the Institute's activities over those of similar establishments in the rest of the Community,

— the fact that the IFP did not obtain sufficient remuneration from its financial holdings might also constitute aid.

Since taxable oil producers who exported their production could obtain a refund of the charge, the Commission took the view that exemption constituted export aid. However, since France had notified it of a draft decree making exports of the products in question subject to the charge in accordance with the general principles in force, the Commission did not examine this matter when it initiated the procedure.

At the same time, France had proposed amending the procedure for levying the charge on imports so that traders liable to it would not pay it on a proportion of their deliveries in France corresponding to the national average consumption of the product concerned that was met by imports from other Member States. In its decision to initiate the procedure, the Commission argued that this

system 'does not wholly neutralize the tax on products imported from other Member States. This is because certain releases for consumption in France made by operators whose own supply originates in a proportion of imports higher than the national French average would be burdened with a residual tax that would infringe the general principle of complete exoneration of imports from other Member States.'

After the procedure had been initiated, France neither applied the mechanism for adjusting the procedure for levying the charge on imports nor made exports subject to the charge.

The Commission received France's observations on 5 January 1995. Those observations addressed some of the Commission's doubts as to the compatibility of the arrangements. Further information was received on 10 November 1995, 6 December 1995 and 15 January 1996. A meeting between representatives of France and the Commission was held in Brussels on 14 November 1995 to clarify a number of points.

The Commission communication giving the other Member States and third parties notice to submit their observations was published in the *Official Journal of the European Communities* on 27 June 1995 (1).

As part of the procedure, no other Member States or third parties submitted any observations to the Commission.

II

In the observations submitted by them when the procedure was initiated, the French authorities explained that:

— as a preliminary remark, the procedure was initiated as part of the ongoing examination of existing schemes (Article 93 (1) of the Treaty) since the arrangements in question had been in force, without significant change, since 1944. Accordingly, the Commission could not complain of a failure by France to notify those arrangements. Furthermore, adoption of this method for 'informing' the Commission of the renewal of the arrangements in 1992 could not call into question the fact that the arrangements were standing arrangements,

— the IFP's activities did not lead to any distortion of competition since the results of its work were accessible to all without discrimination. The following evidence bore witness to this:

1. participation of non-French nationals in the IFP's governing bodies (four out of 13 on the Scientific Advisory Board and three out of 18 on the Board of Directors). This shows that international parties have always been informed of the IFP's work through these channels and that they have played an active part in determining strategy;

2. participation by the IFP in Commission initiatives forming part of the Community's energy and R&D policy and in various programmes launched by the Commission;

3. the IFP has helped to set up various European networks, including the European Institute on Geo-energies and the European Network for Research and Geo-energies. A similar network is currently being set up for motors;

4. as regards training activities, more than one-third of students attending the Ecole Nationale Supérieure des Pétroles et Moteurs are non-French (37 % in 1993/94);

5. research findings are available to any interested company irrespective of its nationality or location (inside or outside the Community). Participation in collaborative research programmes is open to any interested firms (from inside or outside the Community) on condition, of course, that they contribute to their realization. Participation brings with it shared ownership of any future results;

6. for companies, another way of obtaining access to research findings is to acquire process-operating licences developed by the IFP on its own account or in collaboration with others. This option is open to all companies inside or outside the Community and is invoiced at market prices. Of the total number of licences granted worldwide as at 1 January 1995 (1 042), only 74 (7,1 %) were granted to French firms,

— there is no State-owned or independent research establishment in Europe comparable to the IFP. The leading establishments, which are comparable in size to the IFP, do not specialize in fuels, motors and the environment, while the other establishments specializing in these fields are small and pursue a niche policy. Furthermore, virtually all research establishments qualify for substantial public funding equivalent to or exceeding that available to the IFP. Lastly, the research establishments of the major oil, chemicals, gas and automobile groups do not provide free access to their research findings. It cannot be claimed that the part-funding of the IFP from the public purse favours its activities in comparison with those of the other establishments in the Community, for which the rate of public funding is more often than not comparable or higher,

(1) OJ No C 161, 27. 6. 1995, p. 5.

— the IFP does not grant indirect aid, since licence sales are effected at market prices, irrespective of the partner. These prices are determined by competition and are not lowered artificially. They cannot be held below cost in the long term,

— it is wrong to state that the IFP does not receive any remuneration from its financial holdings in its holding company ISIS. Between 1986 and 1994 the IFP received FF 98,4 million in normal remuneration for shareholders. In addition, while the companies in which the IFP has holdings use its services, they do not enjoy any benefits either in terms of access to research programmes or in terms of the conditions governing access to research findings. As regards the exploitation of IFP technologies, they have either non-exclusive concessions on market terms or joint ownership of findings proportionate to their financial contribution,

— the charge financing the IFP is additional to excise duties and is borne, as excise duties are, by final consumers. It is a tax on consumption and is totally neutral as to product origin. Furthermore, there is no link between those paying the charge and those benefiting from the IFP's research, and it is such a link that determines the application of the principles derived from the Court of Justice's case-law on parafiscal charges.

These arguments were developed in the subsequent correspondence and at the meeting held with the Commission.

III

As a preliminary observation, the Commission challenges France's interpretation of the nature of the existing arrangements and points out that, pursuant to Article 93 (3) of the EC Treaty, on 17 August 1992 France notified the renewal of the parafiscal charge levied for the benefit of the IFP.

As regards parafiscal charges financing aid schemes, the Commission is bound to examine, in the light of Articles 92 and 93, both the compatibility of the procedures for collecting the charge and the compatibility of the aid itself which is financed from the proceeds of the charge.

The compatibility of the collection procedure is assessed in the light of two general principles which are regularly asserted by the Commission and were confirmed by the Court of Justice in its ruling of 25 June 1970 in Case 47/69, France v. Commission [2] (parafiscal charge for the benefit of the Institut Textile de France), namely exemption from payment of the charge for imported products and taxation of products exported to the other Member States and, by extension, to the EEA countries.

The first principle was introduced to avoid situations in which positive measures (in this case, R&D programmes) which chiefly benefit companies from the Member State levying the charge are financed disproportionately, in relation to the benefits, by companies from other Member States.

The second principle is designed to ensure that it is not more advantageous to export rather than to produce for the domestic market since this might lead to a larger flow of exports and thus affect intra-Community trade. Another objective is to ensure that domestic firms engaged in exports do not benefit from positive measures financed from the proceeds of the charge without having contributed to the financing of those measures.

An analysis of these two aspects is inseparable from the third principle laid down by the Commission in connection with parafiscal charges, namely that the proceeds of such charges should not be used to grant direct aid to individual firms.

The Commission has consistently maintained since the judgment handed down in Case 47/69 [3] that 'placing the resources and works of (an institute of that kind) at the disposal of all undertakings without discrimination does not necessarily bring about an actual and equal beneficial share for everyone in these advantages, as even if equality of treatment were guaranteed by legislation, in practice French undertakings (or, more generally, any domestic firms) would be in a more favourable position by force of circumstances.'

It follows that, in general, a parafiscal charge introduced by a Member State for the purpose of financing a research establishment 'naturally' procures greater advantages for firms from that Member State.

If, as France maintains, the results of work by the IFP are accessible to all without discrimination, the Commission must assess whether this is true not merely in terms of the regulatory environment but also in practice. To demonstrate that this is indeed the case, France has argued that the IFP's research activity takes place within an open European and international context.

The Commission took the view that these arguments, which are detailed in Print II, were not sufficient to show that French firms were not the chief beneficiaries of the results of the research carried out in all its forms by the IFP. In other words, they were not sufficient to refute the presumption that the advantages derived from that Institute's activities naturally accrued primarily to French firms.

[2] [1970] ECR p. 487.

[3] See footnote 2.

The Commission therefore asked the French authorities to provide it with detailed information on the nature of the IFP's R&D activities and on the industrial partners with which these activities were carried out (4).

The French authorities provided further information on the IFP's budget, broken down by activity, by fundamental, basic and applied R&D expenditure, by own and collaborative research expenditure and by collaborative research undertaken by each country and firm concerned.

Taken as a whole, these data show that the IFP's operating budget for the last four years covered is as follows:

(%)

	1992	1993	1994	1995
Operating budget	91	92	85	87
Of which:				
training	10	10	9	9
information-documentation	3	4	4	4
R&D	78	79	72	75
Net investment	2	1	3	-1
Repayment of loans	5	5	5	5
Non-refundable VAT	—	—	7	7
Other	2	2	0	2
Total general expenditure	100	100	100	100

To give an idea of the sums involved, R&D expenditure in 1994 and 1995 was just under FF 1,3 billion and total general expenditure about FF 1,8 billion.

For management purposes, the IFP distinguishes between expenditure on explanatory research and that on applied research. Exploratory research aims to enhance understanding of the scientific phenomena and technological processes underlying more applied work and to open up new channels for technical progress. Applied research consists of investigation and experimentation work designed to improve or develop new methods, products, equipment or processes. It does not lead systematically to the creation of a new prototype.

In recent years the IFP's research expenditure has broken down as follows: 20 % on exploratory research and 80 % on applied research (5).

Within the research budget, the shares accounted for by own research and by collaborative research are as follows:

(%)

	1992	1993	1994	1995
Own research	38,74	40,30	40,92	41,11
Other research	13,74	13,71	14,35	12,91
Research with external partners	47,51	46,00	44,73	45,98
Total	100,00	100,00	100,00	100,00

The share of the research budget accounted for by the IFP's own research is about 40 %, that by general-interest programmes (e.g. the environment, Commission programmes) 14 % and that by research with external partners 46 %. Thus, the share of research programmes carried out by the IFP with financial backing from external partners amounted for 60 % of its R&D budget.

Data on the type of research, combined with data on the partners with which it is carried out show, as one would logically expect, that exploratory research accounts for a relatively substantial, albeit minor, share of the IFP's own research (38 %) while applied research accounts for a very substantial share of collaborative research (93 %).

In order to assess the benefits accruing to firms from research findings, we need to examine the different types of technology transfer used by the IFP.

In general, contacts between the IFP and potential customers are made at scientific conferences. The Institute's reputation and the patents it has filed (which are public) mean that buyers know to which areas of the IFP's work they can have access. The IFP does not engage in canvassing to set up contracts for collaboration or to sell licences but operates a network of offices and agents which promote its research work.

Research findings are transferred to firms in four different ways: (a) dissemination in the public domain; (b) individu-

(4) Since the French authorities have asked the Commission to keep details of the relationship between the IFP and firms strictly confidential, these firms' names will not be quoted in this Decision. Data on the firms concerned are given on an aggregate basis.

(5) According to the information provided by the French authorities, these percentages have not changed significantly for a number of years.

alized services; (c) exploitation of collaborative research; (d) sales of licences.

(a) Dissemination in the public domain concerns fundamental research or basic industrial research which has been published. Such research is accessible to all, especially since some of the publications are in English.

(b) Individualized services: in this case, all findings are communicated to the buyer. Such transfers are carried out on an exclusive, full-ownership basis. The IFP may even be prohibited from using knowledge thus acquired for an agreed period. The work is invoiced at cost price as calculated from the accounts. These services are available to any interested company.

(c) Collaborative research is the most usual form of transfer. The expenditure incurred by each partner is recorded on presentation of invoices for external expenditure and by applying rates reflecting all staff costs and overheads to time spent. This is carried out under the supervision and subject to the approval of an auditor in accordance with the rules of ordinary law. It should be noted that depreciation is not taken into account when the IFP's expenditure is calculated.

Joint ownership of findings is proportionate to the respective shares in financing, and the allocation of the rights of exploitation includes the option of transferring licences to third parties against payment.

(d) The transfer of licences concerns both the IFP's own research and collaborative research. Total transfers of research findings do not occur (no sales of patents but merely of licences to exploit the findings). User rights are limited over time and geographically. The IFP and its partners remain free to grant licences to other firms.

In this situation, it is impossible to impose on each party acquiring a licence the total costs of research, even assuming that these could be separately identified (for instance, it is very difficult to evaluate knowledge acquired prior to a research programme, multiple findings, deferred findings or spin-off). In addition, the first licence is sold without its being possible to make a valid estimate of the number of purchasers between whom total real costs should be divided.

In view of this objective difficulty in invoicing at cost price, the IFP can rely only on the market price resulting from the interplay of supply and demand, which mostly involves consultations launched by potential customers (firms) or, to a lesser extent, by the issue of calls for tender by potential buyers (countries).

Although the meaning of 'market price' is quite rightly open to question in a situation where most tenderers are subsidized to a greater or lesser extent in their operating budgets, it is clear that buyers are prepared to offer a price equal to, or lower than, the profit gains arising when the old process is replaced by the new one developed by the research establishment.

Potential customers interested in a given technique may contact the IFP's competitors without its being informed and ask them to make price and service proposals. They are then free to select the best offer.

The IFP's different activities are financed from two sources, the proceeds from the surcharge on the domestic tax on petroleum products (Taxe Intérieure sur les Produits Pétroliers — TIPP) and external financing from firms, public authorities or the Commission.

The financing of the IFP's activities from these different sources breaks down as follows:

(%)

	1992		1993		1994		1995	
	IFP charge	Industry	IFP charge	Industry	IFP charge	Industry	IFP charge	Industry
Activities								
Training	93,90	6,10	93,90	6,10	95,40	4,60	94,50	5,50
Information/documentation	98,80	1,20	98,80	1,20	99,10	0,90	99,60	0,40
Own research	100	0	100	0	100	0	100	0
General-interest programmes	70,50	0	69,40	0	72,60	0	69,40	0
Programmes with external partners	27	73	26,40	73,60	27,80	72,20	29,40	70,60

Where the total does not equal 100 %, particularly in the case of general-interest programmes, the balance is financed by the public authorities (various ministries) and the Commission.

It should be noted that the proceeds of the charge finance all the Institute's own research but only a minor part of research carried out with external partners (French and foreign industrialists). In addition, expenditure financed by the charge does not benefit fully the industrialists that co-finance research since the IFP continues to own its share of findings.

Part of the IFP's operating budget (between 32 and 37 %, depending on the year) consists of financial support from external partners in return for transfers of technology (revenue from contracts and licence fees); this is the most sensitive aspect of the financing of the Institute. Such support is broken down as follows:

(% of external financing of research)

	1994	1995
Support from national bodies	15,20	14,00
Financing by French partners	21,90	24,00
Licence fees (France)	12,30	12,00
Subtotal (France)	49,40	50,00
Community support	5,90	4,00
Financing by partners in other countries	24,70	22,00
Licence fees (other countries)	20,00	24,00
Subtotal (other countries)	50,60	50,00
Total	100,00	100,00

The item 'licence fees' would not seem to require further explanation since details are given in the description of the price-fixing mechanism for licences.

By contrast, the item 'financing by partners', whether French or foreign partners, does require further explanation. This term covers both the payment for individualized services (with activities invoiced at the cost price resulting from the accounts) and the invoicing balance for collaborative research.

As regards the latter form of technology transfer, collaborative research entails equal financing by the different partners. When the value of work carried out by the IFP under this programme exceeds its share of financing, the resulting difference is invoiced by the IFP to the partners concerned.

In the above table, the subtotal for France corresponds to revenue from French firms or their subsidiaries abroad, whereas the subtotal for other countries comprises turnover achieved outside France with foreign companies and with the subsidiaries of foreign companies based in France.

As the above table shows, financing from foreign sources is roughly equivalent overall to financing from domestic sources. But a very different picture emerges if the focus is narrowed to relations between the IFP and firms. Turnover achieved in 1994 with French firms amounted to 34,2 % of the total, whereas turnover achieved with foreign firms in the same year amounted to 44,7 % of the total. In 1995 these figures were 36 and 46 % respectively.

Even if revenue from foreign firms or their subsidiaries based in France is added to turnover achieved with French firms, there is no significant change: in 1994, 36,8 % was realized in France or abroad with subsidiaries of French firms, while 42,1 % was realized with foreign firms.

A more detailed analysis of the different revenue categories shows that the major French firms in the oil or automobile industries are important partners for the IFP. In 1994, for example, 24,7 % of turnover was achieved with the major oil companies, the main French car manufacturers and ISIS group companies (ISIS being the holding company which manages the IFP's interests in the petrochemicals, automobile and related industries).

A country which levies a parafiscal charge to finance positive actions generally does so in order to support its own industry and not that industry's competitors abroad. The two leading French companies in the oil and automobile industries are among the IFP's most important customers, but this does not alter the fact that the IFP generates most of its turnover with foreign companies.

The following table shows the IFP's turnover for 1994, broken down by geographical area:

(%)

Foreign industries	Revenue from foreign partners 1994	Fees from abroad 1994	Fees from abroad 1995 (1)
Subsidiaries in France	2,60	—	—
European Union	5,00	3,20	2,15
Other European countries	0,60	0,70	0,72
North and South America	6,20	4,80	12,18
Asia	10,10	11,30	8,95
Africa	0,20	—	—
Australia (2)	—	—	—
Total (3)	24,70	20,00	24,00

(1) A detailed breakdown of revenue from foreign partners is not available.

(2) The IFP also deals with a number of Australian firms, but the total revenue from this source is not large enough to warrant inclusion in the table.

(3) Figures obtained from the previous table.

In the light of the above, it can be concluded that French firms are not the chief benificiaries of the findings of R&D carried out by the IFP and that these findings are available to all firms without discrimination. This situation is in line with what happens on the market, where most companies are active in the same fields and so are interested in the same technologies. There is therefore nothing strange in the IFP's research findings also being disseminated internationally.

This conclusion is borne out when we examine the number of licences granted to French firms (74 out of 1 042 as at 1 January 1995) and the number of exploitation contracts signed in recent years:

	1989	1990	1991	1992	1993	1994
France	24	17	27	n.a.	40	28
Europe-CIS	31	34	28	n.a.	48	26
North and South America	28	23	31	n.a.	32	42
Asia-Australia	43	73	58	n.a.	50	51
Africa	0	2	13	n.a.	7	5
Total	126	149	157	n.a.	177	152

IV

With regard to the other doubts raised as part of the Article 93 (2) procedure, the following facts have been established on the basis of the information available to the Commission:

1. With regard to the direct and/or indirect aid available under IFP programmes for certain firms in which it has holdings, it transpires that the companies of the ISIS group, 57,3 % of which is held by the IFP, 39,1 % by Sogerap (ELF group) and 3,6 % by Banque Nationale de Paris, are treated in exactly the same way as the other firms with which the IFP has dealings.

   It is true that the ISIS-group companies (13 companies in 1994) are important customers for the IFP, with revenue from contracts and licences amounting to 10,3 % of the Institute's total external revenue (2 % from contracts and 8,3 % from licence fees).

   However, the involvement of other shareholders, the fact that ISIS's holdings in companies active in the oil, chemicals and automobile industries are, with three exceptions, all minority holdings, and the fact that the IFP carries out collaborative reseach with the group companies, provides them with individualized services or grants licences to them under the same conditions as for other firms lead to the conclusion that the ISIS group companies do not receive any more aid from the IFP than other firms (bearing in mind that the IFP does not invoice its total costs for certain types of technology transfer, namely collaborative research and licence sales). In addition, the three exceptions where ISIS holds a majority stake are a consultancy firm (100 % of which is controlled by ISIS), a real estate company (70,39 %) and a firm specializing in the manufacture and marketing of measuring instruments (81 %);

2. With regard to the IFP's income from its holdings, the Commission takes the view that it is acceptable under normal market conditions.

   On the basis of the ISIS share price as at 1 January 1986 and 31 December 1994, and on the basis of dividends paid each year by ISIS to the IFP between 1986 and 1994 inclusive, the average annual return on the investment, calculated on the internal rate of return (which measures the discounted value of a series of cash flows equal to the interest rate that would have been earned on the initial investment if income had been regular), amounted to 15 %. This means that, on average over the period in question, the IFP received an annual return of 15 % on its investment, taking account both of dividends paid and of increases in the share price. Even if inflation is assumed to average 3 % for the period in question, the return on the holding is still acceptable;

3. As regards the view that the protocols from the charge represent direct aid that favours the activities of the Institute over those of similar establishments in the rest of the Community, it should be noted that the IFP is not the only research establishment in the Community which is financed in full or in part from public funds.

As point 2.4 of the new Community framework for State aid for research and development [6] states, 'Public financing of R&D activities by public non-profit-making higher-education or research establishments is normally not covered by Article 92 (1) of the EC Treaty'. It should be noted that the IFP is a non-profit-making research institute (its statutes state that it is a non-commercial body ('à caractère non commercial')).

[6] Adopted by the Commission on 20 December 1995 and communicated to the Member States by letter dated 19 January 1996 (OJ No C 45, 17. 2. 1996, p. 5.).

It can hardly be claimed that the IFP carries out activities which are contrary to its statutes. However, it could be argued that, by selling its research findings at market prices, the IFP is acting in a manner incompatible with its statutes.

It could also be argued that a non-profit making establishment could transfer its findings without charge since it is not supposed to make profits. Instead of this, the IFP sells its findings at the market price (although the concept has no meaning in this field since most similar institutes are subsidized and do not therefore have to cover their costs) because the proceeds from the charge are not sufficient to finance all its activities and it needs additional funds.

In view of the fact that, under the new Community framework for State aid for R&D, public financing of non-profit-making research establishments is not covered by Article 92 (1) of the EC Treaty, any aid elements may be detected when findings are transferred to companies. This point was dealt with in Part III.

V

In the light of the above considerations, it has to be noted that, even though the IFP does not always charge the real cost of research to customers, it makes no distinction between the companies to which it transfers the findings of research carried out on its own behalf or on a collaborative basis. It cannot therefore be argued that French companies are the chief beneficiaries of the IFP's work.

It also transpired that the IFP does not give direct or indirect aid to firms and that firms controlled by the ISIS holding company are not accorded more favourable treatment than other companies. The IFP also receives an acceptable return on its holdings with ISIS.

Accordingly, in cases of collaborative research where the cost price is not charged, there is an aid element because resources are transferred from the State to companies which have an interest in availing themselves of the IFP's work rather than in carrying out research themselves. In other types of technology transfer, namely individualized services and licence sales, the transfer is effected on the basis of either the cost price or the market price as determined by the interplay of supply and demand, and so there is no aid element involved.

Point 2.4 of the new Community framework for State aid for research and development [7] states that 'where the results of publicly financed R&D projects ... are made available to Community industry on a non-discriminatory basis, the Commission will assume that State aid within the meaning of Article 92 (1) of the EC Treaty is not normally involved.'

Even in instances where there is an aid element (collaborative research), research findings are available on a non-discriminatory basis to all interested companies irrespective of their nationality and the transfer of such findings does not therefore fall within the scope of Article 92 (1) of the EC Treaty.

Nevertheless, the Commission would be likely to change its assessment if it were to emerge in future that, although the IFP was theoretically open to all companies, French companies were the chief beneficiaries of its activities in practice.

Since it has been established, for the reasons set out above, that the IFP's activities do not involve aid within the meaning of Article 92 (1) of the EC Treaty, it is necessary to ascertain whether financing the Institute by means of a parafiscal charge levied on certain oil products is compatible with the Treaty.

As the Court of Justice ruled in Case 47/69 [8], 'It may be that aid properly so-called ... may ... be acknowledged as permissible but that the disturbance which it creates is increased by a method of financing it which would render the scheme as a whole incompatible with a single market and the common interest.'

Accordingly, in the present case, in so far as it does not involve any aid within the meaning of Article 92 (1) of the EC Treaty, the method of financing cannot be contested, at least with regard to the taxation of imported products. Furthermore, since all interested companies can benefit from positive actions financed from the proceeds of the charge, the fact that non-French companies help to finance those actions is not incompatible with the Treaty.

As regards the exemption of exported products, it should be remembered that this aspect was not examined when the procedure was initiated because France had undertaken not to refund the charge on products intended for export to other Member States or to EEA countries.

Such an exemption would, at least in theory, be an incentive for manufacturers to sell abroad rather than on the domestic market, and this might adversely affect trade within the Community.

[7] See footnote 6.

[8] See footnote 2.

Since, as part of the present procedure, France has renewed its agreement (9) on the principle that products exported to other Member States and to EEA countries should be subject to the charge levied for the benefit of the IFP by no longer refunding the charge in the case of products intended for export to other Member States and to EEA countries, the Commission does not intend to investigate this aspect,

HAS ADOPTED THIS DECISION:

Article 1

The renewal, for the period 1993 to 1997, of the parafiscal charge levied on certain oil products for the benefit of the IFP shall not be caught by Article 92 (1) of the EC Treaty in so far as:

1. the financing of the IFP's research and development (R&D) activities from the proceeds of that parafiscal charge does not constitute aid within the meaning of Article 92 (1) of the EC Treaty;
2. transfers to companies of the findings of R&D carried out by the IFP, either on its own account or on a collaborative basis, do not constitute aid within the meaning of Article 92 (1) of the EC Treaty because such transfers are effected without any discrimination between interested firms from the Member States.

Article 2

In compliance with its undertaking to levy the charge for the benefit of the IFP on oil products intended for export, which it entered into in the letter dated 5 January 1996 from the Office of its Permanent Representative to the European Union, France shall inform the Commission of the measures it has taken to implement the draft Decree amending Decree 93-28 of 8 January 1993 within two months of this Decision being notified.

Article 3

France shall inform the Commission, by submitting an annual report, of the amount of the charge fixed each year and of the use made by the IFP of the proceeds thereof, specifying the different categories of activity undertaken and giving a detailed description of those activities and of the partners with which they are carried out.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 29 May 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

(9) Letter TL/dm No 0016 of 5 January 1996 from the Office of the French Permanent Representative to the European Union.