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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EEC) No 2539/93

of 15 September 1993

amending Commission Regulation (EEC) No 3942/92 establishing a reference method for the determination of sitosterol and stigmasterol in butteroil

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic 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 (EEC) No 2071/92 ⁽²⁾, and in particular Article 6, paragraph 7 thereof,

Whereas Article 1 of Commission Regulation (EEC) No 3942/92 ⁽³⁾ specifies that the reference method of analysis described in the Annex of that Regulation shall be applied for the determination of the stigmasterol and δ -sitosterol content of butteroil;

Whereas the use of routine methods should not be excluded and therefore the text of Article 1 of that Regulation should be amended to avoid possible misunderstanding;

Whereas this amendment does not modify the substance of the Regulation but aims only to clarify it and therefore should have a retroactive effect;

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

The first paragraph of Article 1 of Regulation (EEC) No 3942/92 is replaced by the following text:

'The reference method of analysis to determine the stigmasterol content of butteroil according to Article 6 of Regulation (EEC) No 3143/85, Article 6 of Regulation (EEC) No 570/88 or Article 11 of Regulation (EEC) No 429/90 and the δ -sitosterol content of butteroil according to Article 6 of Regulation (EEC) No 570/88, is specified in the Annex'.

Article 2

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

It shall apply from 1st February 1993.

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

Done at Brussels, 15 September 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 64.

⁽³⁾ OJ No L 399, 31. 12. 1992, p. 29.

COMMISSION REGULATION (EEC) No 2540/93

of 15 September 1993

adopting for 1994 the measures to improve the quality of olive-oil production

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organization of the market in oils and fats⁽¹⁾, as last amended by Regulation (EEC) No 2046/92⁽²⁾, and in particular Article 5 (5) thereof,

Whereas, pursuant to Article 5 (4) of Regulation No 136/66/EEC, a percentage of the production aid earmarked for olive-oil producers may be allocated to financing action at regional level to improve the quality of olive-oil production; whereas, under Article 4 of Council Regulation (EEC) No 2047/92⁽³⁾ 1,6 % of the production aid earmarked for olive-oil producers in the relevant Member States has been allocated to financing action to improve the quality of olive oil in those countries;

Whereas rules for the execution and monitoring of the operations in question should be laid down; whereas the tasks that may be assigned to producers' organizations should also be defined;

Whereas the measures laid down for 1993 should be maintained so as to provide for a wide selection on the basis of the requirements and opportunities existing in each Member State;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. This Regulation specifies the action to be taken during the period 1 January to 31 December 1994 to improve the quality of olive oil production.

⁽¹⁾ OJ No 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ No L 215, 30. 7. 1992, p. 1.

⁽³⁾ OJ No L 215, 30. 7. 1992, p. 3.

2. Action shall be taken in the following areas:

- (a) control of the olive fly (*Dacus oleae*) and, where appropriate, other harmful organisms;
- (b) improvement of the treatment of olive trees, of the cropping, storage and processing of olives and of the storage of the oils produced;
- (c) technical assistance during the year to olive growers and to mills with a view to improving the quality, production and processing of olives into oil;
- (d) the installation and/or the management of tasting rooms to assess the organoleptic characteristics of the virgin olive oils;
- (e) the installation and/or the management at regional or provincial level of laboratories to analyse the physical and chemical properties of olive oils;
- (f) collaboration with bodies specializing in research programmes to improve the quality of olive oil.

Article 2

Expenditure on action as defined in this Regulation shall be financed by resources arising from the deduction made from the production aid pursuant to Article 4 of Regulation (EEC) No 2047/92. The distribution of resources for the financing of action shall be based on the amount withheld in each Member State.

Article 3

On the basis of the resources available, each Member State shall draw up a programme covering part or all of the field of action indicated in Article 1.

Article 4

In the case of action as indicated in Article 1 (2) (a), the programme shall comprise:

- (a) a list of the olive-oil production zones in which action against the olive fly is to be considered a matter of priority in view of the likely impact of the programme on the quality of the oil produced and the impact of the production volume involved;
- (b) where regional situations so dictate, a list of the olive-oil production zones in which action against other harmful organisms is to be considered a matter of priority in view of the likely impact of the programme on the quality of the oil produced and the impact of the production volume involved;

(c) a plan for establishing or maintaining a monitoring, warning and assessment system in each priority production zone, comprising in particular:

- means of measuring the population of olive fly or of other harmful organisms,
- a warning and treatment prescription mechanism,
- means of training and briefing producers,
- means of assessing the warning mechanism and the effects of treatment;

(d) a draft plan for effecting treatment necessary in each production zone.

Article 5

In the case of action as indicated in Article 1 (2) (b), the programme shall comprise:

- a producer training course covering treatment of olive trees, the optimum cropping period and cropping and processing methods,
- a training course for mill managers and technical staff on olive storage and processing methods and on the quality and storage of the oils produced.

Article 6

In the case of action as indicated in Article 1 (2) (c), the programme shall comprise a detailed description of the technical assistance contract, the area involved, the proposed objectives and the means to be used to achieve them.

Article 7

In the case of action as indicated in Article 1 (2) (d), the programme shall comprise the specifications proposed for the installation and/or management of tasting rooms, account being taken of the information set out in Annex XII to Commission Regulation (EEC) No 2568/91⁽¹⁾.

Article 8

In the case of action as indicated in Article 1 (2) (e), the programme shall comprise a description of the analyses to be carried out, and of the equipment to be acquired.

Article 9

In the case of action under Article 1 (2) (f), the programme shall include a detailed description of the scientific research, aims and methods, and whether the

research organization or organizations specialize in research.

Article 10

1. Each Member State concerned shall transmit its action programme to the Commission by 31 October 1993 at the latest.

The programme shall comprise:

- (a) a detailed description of the action planned, giving duration and costs;
- (b) a list of all products and equipment required, with unit costs;
- (c) a list of the centres, bodies or producers' organizations responsible for execution of the various actions.

2. If the Commission considers any change in the programme desirable it may request the Member State accordingly within 30 days of receipt of the programme.

3. The programme shall be adopted definitively by the Member State by 31 December 1993 at the latest and transmitted immediately to the Commission.

The contracts or agreements with the centres, bodies or producers' organizations or the administrative provisions adopted by the Member State with regard to the said centres, bodies or producers' organizations responsible for implementing the measures shall be concluded or adopted so that they can take effect on or after 1 March 1994.

These contracts or agreements may be multiannual, save as amended by subsequent programmes approved by the Commission.

The Member States shall use the standard contracts provided by the Commission.

The Member State shall be responsible for execution of the programme.

4. Expenditure arising from the programme adopted by the Member State, as adjusted in line with any requests made by the Commission, shall be eligible under this Regulation.

However, expenditure on:

- carrying out treatment as referred to in Article 4,
- tasters' allowances and the salaries of laboratory personnel

shall be chargeable only to a maximum of 60 %.

5. The contractor's general costs, including any subcontracting costs, shall be limited to a maximum of 2 % of the overall eligible expenditure.

⁽¹⁾ OJ No L 248, 5. 9. 1991, p. 1.

Article 11

Treatments may be carried out by olive-oil producer groups or associations thereof recognized under Article 20c of Regulation No 136/66/EEC.

When insecticides are used in anti-olive-fly treatment, such treatment must be carried out in conjunction with protein taps. However, in special circumstances and under the direction of the bodies responsible for prescribing treatment, different procedures for insecticide use may be authorized. Insecticides and application methods must be such that no residue can be detected in oil produced from olives from treated zones.

Integrated biological pest control methods may also be used.

Article 12

Payments in connection with :

- contracts and agreements concluded or adopted by the Member State with the centres, bodies or organizations referred to in Article 10 (1) (c), or
- the administrative arrangements made by the Member State with regard to such centres, bodies or organizations,

shall be made-up on presentation of documentary proof of the expenditure incurred and after the competent authorities have checked the said documents and have verified that the obligations laid down have been observed.

Advances of up to 30 % may be paid following the signing of the contract or agreement or on adoption of the administrative provisions, against the lodging of a security for an equivalent amount ; however, the Member State may stand surety for the centres and bodies referred to in Article 10 (1) (c) having the status of public establishments.

Further advances may be decided, against the lodging of an equal amount as security, when the Member State has been provided with supporting documents for expenditure effected using funds advanced previously.

Release of the security shall be subject to :

- (i) transmission to the Member State of the documentary evidence in support of the expenditure effected,
- (ii) verification of such documentation and acknowledgment that the obligations laid down have been observed.

Article 13

The Member States concerned shall monitor the application of their programmes in order to ensure that operations for which financing is granted are executed correctly. To this end, the Member States concerned shall carry out :

- administrative and accounting checks to verify the costs for which assistance was given,
- checks — on-the-spot checks in particular — to verify that the measures have been carried out in conformity with the provisions of the contract, the agreement or the administrative arrangements.

They shall inform the Commission of the monitoring measures provided for when transmitting the programme referred to in Article 3.

The Commission may also, if it deems advisable, request any amendment to the control arrangements.

A report on the execution of the programme shall be drawn up by the Member States concerned and transmitted to the Commission before 1 March 1995.

Article 14

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

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

Done at Brussels, 15 September 1993.

For the Commission

René STEICHEN

Member of the Commission

COMMISSION REGULATION (EEC) No 2541/93

of 15 September 1993

fixing the export refunds on white sugar and raw sugar exported in its unaltered state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 (EEC) No 1548/93⁽²⁾, and in particular point (a) of the first subparagraph of Article 19 (4) thereof,

Whereas Article 19 of Regulation (EEC) No 1785/81 provides that the difference between quotations or prices on the world market for the products listed in Article 1 (1) (a) of that Regulation and prices for those products within the Community may be covered by an export refund;

Whereas Council Regulation (EEC) No 766/68 of 18 June 1968 laying down general rules for granting export refunds on sugar⁽³⁾, as last amended by Regulation (EEC) No 1489/76⁽⁴⁾, provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 3 of that Regulation; whereas the same Article provides that the economic aspect of the proposed exports should also be taken into account;

Whereas the refund on raw sugar must be fixed in respect of the standard quality; whereas the latter is defined in Article 1 of Council Regulation (EEC) No 431/68 of 9 April 1968 determining the standard quality for raw sugar and fixing the Community frontier crossing point for calculating cif prices for sugar⁽⁵⁾; whereas, furthermore, this refund should be fixed in accordance with Article 5 (2) of Regulation (EEC) No 766/68; whereas candy sugar is defined in Commission Regulation (EEC) No 394/70 of 2 March 1970 on detailed rules for granting export refunds on sugar⁽⁶⁾, as last amended by Regulation (EEC) No 1684/92⁽⁷⁾; whereas the refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content;

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

Whereas, in special cases, the amount of the refund may be fixed by other legal instruments;

Whereas Council Regulation (EEC) No 990/93⁽⁸⁾ prohibits trade between the European Economic 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; whereas account should be taken of this fact when fixing the refunds;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92⁽⁹⁾ 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⁽¹⁰⁾;

Whereas the refund must be fixed every two weeks; whereas it may be altered in the intervening period;

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1 (1) (a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 September 1993.

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 154, 25. 6. 1993, p. 10.

⁽³⁾ OJ No L 143, 25. 6. 1968, p. 6.

⁽⁴⁾ OJ No L 167, 26. 6. 1976, p. 13.

⁽⁵⁾ OJ No L 89, 10. 4. 1968, p. 3.

⁽⁶⁾ OJ No L 50, 4. 3. 1970, p. 1.

⁽⁷⁾ OJ No L 176, 30. 6. 1992, p. 31.

⁽⁸⁾ OJ No L 102, 28. 4. 1993, p. 14.

⁽⁹⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽¹⁰⁾ OJ No L 108, 1. 5. 1993, p. 106.

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

Done at Brussels, 15 September 1993.

For the Commission

René STEICHEN

Member of the Commission

ANNEX

to the Commission Regulation of 15 September 1993 fixing the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund ⁽¹⁾
	— ECU/100 kg —
1701 11 90 100	35,26 ⁽¹⁾
1701 11 90 910	34,21 ⁽¹⁾
1701 11 90 950	⁽²⁾
1701 12 90 100	35,26 ⁽¹⁾
1701 12 90 910	34,21 ⁽¹⁾
1701 12 90 950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 000	0,3833
	— ECU/100 kg —
1701 99 10 100	38,33
1701 99 10 910	38,90
1701 99 10 950	38,90
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 100	0,3833

⁽¹⁾ Applicable to raw sugar with a yield of 92 % ; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 5 (3) of Regulation (EEC) No 766/68.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ No L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ No L 309, 21. 11. 1985, p. 14).

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

COMMISSION REGULATION (EEC) No 2542/93

of 15 September 1993

fixing the maximum export refund for white sugar for the 16th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EEC) No 1144/93

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 (EEC) No 1548/93⁽²⁾, and in particular the first subparagraph of Article 19 (4) (b) thereof,

Whereas Commission Regulation (EEC) No 1144/93 of 10 May 1993 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾ requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9 (1) of Regulation (EEC) No 1144/93, a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 16th partial invitation to tender, the provisions set out in Article 1 should be adopted;

Whereas Council Regulation (EEC) No 990/93⁽⁴⁾ prohibits trade between the European Economic 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; 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 Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 16th partial invitation to tender for white sugar issued pursuant to Regulation (EEC) No 1144/93 the maximum amount of the export refund is fixed at ECU 41,760 per 100 kilograms.

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

Article 2

This Regulation shall enter into force on 16 September 1993.

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

Done at Brussels, 15 September 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 154, 25. 6. 1993, p. 10.

⁽³⁾ OJ No L 116, 12. 5. 1993, p. 5.

⁽⁴⁾ OJ No L 102, 28. 4. 1993, p. 14.

COMMISSION REGULATION (EEC) No 2543/93

of 15 September 1993

fixing the import levies on white sugar and raw sugar

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European Economic Community,

Having regard to 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 (EEC) No 1548/93 ⁽²⁾, and in particular Article 16 (8) 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⁾, and in particular Article 5 thereof,

Whereas the import levies on white sugar and raw sugar were fixed by Commission Regulation (EEC) No 1695/93 ⁽⁴⁾, as last amended by Regulation (EEC) No 2531/93 ⁽⁵⁾;

Whereas it follows from applying the detailed rules contained in Commission Regulation (EEC) No 1695/93 to the information known to the Commission that the

levies at present in force should be altered to the amounts set out in the Annex hereto ;

Whereas, in order to make it possible for the levy arrangements to function normally, the representative market rate established during the reference period from 14 September 1993, as regards floating currencies, should be used to calculate the levies,

HAS ADOPTED THIS REGULATION :

Article 1

The import levies referred to in Article 16 (1) of Regulation (EEC) No 1785/81 shall be, in respect of white sugar and standard quality raw sugar, as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 16 September 1993.

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

Done at Brussels, 15 September 1993.

For the Commission

René STEICHEN

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 154, 25. 6. 1993, p. 10.

⁽³⁾ OJ No L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ No L 159, 1. 7. 1993, p. 40.

⁽⁵⁾ OJ No L 232, 15. 9. 1993, p. 20.

ANNEX

to the Commission Regulation of 15 September 1993 fixing the import levies on white sugar and raw sugar

(ECU/100 kg)

CN code	Levy ⁽¹⁾
1701 11 10	36,60 ⁽¹⁾
1701 11 90	36,60 ⁽¹⁾
1701 12 10	36,60 ⁽¹⁾
1701 12 90	36,60 ⁽¹⁾
1701 91 00	43,37
1701 99 10	43,37
1701 99 90	43,37 ⁽²⁾

⁽¹⁾ The levy applicable is calculated in accordance with the provisions of Article 2 or 3 of Commission Regulation (EEC) No 837/68.

⁽²⁾ In accordance with Article 16 (2) of Regulation (EEC) No 1785/81 this amount is also applicable to sugar obtained from white and raw sugar containing added substances other than flavouring or colouring matter.

⁽³⁾ No import levy applies to OCT originating products according to Article 101 (1) of Decision 91/482/EEC.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 June 1993

concerning State aid procedure C 32/92 (ex NN 67/92) — Italy (tax credit for professional road hauliers)

(Only the Italian text is authentic)

(93/496/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having, in accordance with the abovementioned Article, given notice to the parties concerned to submit their comments,

Whereas :

I

By letter dated 15 April 1992, the Commission asked the Italian Government for detailed information concerning the following scheme introducing a tax credit for the road haulage sector :

Ministero dei trasporti — Decreto 28 gennaio 1992

Determinazione dei criteri per la concessione di un credito di imposta a favore delle imprese esercenti l'autotrasporto di merci per conto di terzi ⁽¹⁾.

On the basis of the information available to it, the Commission considered that the scheme was covered by Article 92 (1) of the EEC Treaty.

Since no reply was received to the letter of 15 April 1992 a reminder was sent on 6 May 1992. A reply was received by letter of 4 August 1992. This information could not

remove the doubts about the incompatibility of the scheme with the common market.

Since the Italian Government did not comply with the prior notification requirement laid down in Article 93 (3), the scheme had been introduced unlawfully. Since the Commission also considered that the scheme cannot be considered compatible with the common market based on Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aid for transport by rail, road and inland waterway ⁽²⁾, as last amended by Regulation (EEC) No 3578/92 ⁽³⁾, and that it does not qualify for any of the exemptions provided for in Article 93 (2) and (3), it has decided to initiate the procedure provided for in Article 93 (2).

By letter of 26 October 1992 it gave notice to the Italian Government to submit its comments and to provide the detailed information requested. A reminder was sent on 12 February 1993. The other Member States and interested third parties were given notice to submit comments by publication of the letter to the Italian Government ⁽⁴⁾.

II

Despite the Commission's request to the Italian authorities, both in its letter dated 26 October 1992 and its letter dated 12 February 1993, to provide detailed information concerning the scheme, no reaction was received.

⁽¹⁾ *Gazzetta ufficiale della Repubblica Italiana* of 3. 1. 1992, Serie Generale — No 25, p. 13.

⁽²⁾ OJ No L 130, 15. 6. 1970, p. 1.

⁽³⁾ OJ No L 364, 12. 12. 1992, p. 11.

⁽⁴⁾ OJ No C 316, 3. 12. 1992, p. 7.

Under these circumstances, which stem from a lack of cooperation on the part of the Italian Government, the Commission is nevertheless obliged to close the present procedure by adopting its decision on the basis of the information available to it (see judgment of the Court of Justice of 14 February 1990 in Case C-301/87, *France v. Commission* ⁽¹⁾ and that of 10 July 1986 in Case 234/84, *Belgium v. Commission* ⁽²⁾).

No other Member States or other interested parties submitted comments.

III

According to the Italian Decree of 28 January 1992, professional road hauliers regardless of their legal status, will benefit in 1992 from a tax or on municipal tax or on value added tax. The benefit of the scheme applies only to vehicles of 3 500 Kg or more in weight, provided that the hauliers were registered on 31 December 1991 in the national road haulage register established by Law No 298 of 6 June 1974.

The budget for 1992 amounts to Lit 275 000 million (ECU 179 million). It is understood that this amount was already provided for in 1990. It is further understood that another Lit 300 000 million (ECU 195 million) will be voted soon, which will lead to a total amount to be allocated of ECU 374 million. According to calculations made by the Commission, the first instalment of ECU 179 million will not cover all claims, but the total expected budget of ECU 374 million should show a surplus of about ECU 50 million.

The volume of aid allocated to a particular firm depends on the number and the size of its vehicles. The aid is limited to 13,5 % of real expenditure, VAT excluded, on fuel and lubricants, but the following ceilings would be observed with respect to the total weight (= Gross Vehicle Weight) of each vehicle with its payload:

Vehicle class	Lit	ECU	G-VW
A	364 000	237	3 500 Kg < GVW < 6 000 Kg
B	776 000	505	6 000 Kg < GVW < 11 500 Kg
C	2 180 000	1 420	11 500 Kg < GVW < 24 000 Kg
D	3 760 000	2 450	24 000 Kg and over

According to the Decree, these amounts are based on a fuel consumption of 8, 6, 3.5 and 2.2 kilometers per litre of gasoil respectively for the aforementioned vehicle classes. This means that given a gasoil price of Lit 941,176 per litre (ECU 0,613), VAT excluded, on 15 December 1991, the tax credit covers 3 100 km free

for vehicles of class A; 4 900 km for class B; 8 100 for class C and 8 800 km for class D. These figures should be put against an average annual performance in international transport of between 70 000 and 120 000 km.

Furthermore, the aid in terms of the annual vehicle tax covers 88 % for class A vehicles, 132 % for class B, 293 % for class C and 505 % for class D vehicles. It is to be noted that the tax credit grows with the vehicle size in a non-linear way.

The effect of the scheme is a direct net cash flow increase in favour of the undertakings of a particular economic sector only.

According to Europa Transport, a Commission publication on inland transport statistics made available by the Member States ⁽³⁾, intra-Community transport is sizeable and has the following structure (1989 = latest available data):

Intra-Community transport ⁽¹⁾

	% share by Member State (EUR 12 = 100 %) (intra-Community + national)	% share of total transport
Belgium	12,6	61,2
Denmark	3,1	34,7
Germany	14,4	16,4
Greece	1,7	16,1
Spain	9,7	13,7
France	17,5	21,5
Ireland	0,8	23,7
Italy	12,7	13,9
Luxembourg	1,5	89,1
Netherlands	17,9	56,3
Portugal	2,6	28,4
United Kingdom	5,4	5,9
EUR 12	100	19,6

⁽¹⁾ Definitions. Intra-Community transport: sum of bilateral transport and cross-trade transport (national transport and cabotage are not included). Cross-trade transport: transport between Member States carried by vehicles from other Member States.

Furthermore, according to the same source, road transport to and from Italy has grown faster than transport by Italian hauliers in this market segment, and compared with other Member States, cross trade is high in relations with Italy.

⁽³⁾ Transport between Member State was not completely liberalized before 1 January 1993. The fact that transport between Member States is now liberalized (based on Council Regulation (EEC) No 881/92) will even lead to an increase in intra-Community transport.

⁽¹⁾ [1990] ECR I 307.

⁽²⁾ [1986] ECR 2263.

According to a study carried out by Coopers & Lybrand for the Commission in October 1989, in all Member States other than Greece, national and international road haulage are closely related. Most international hauliers also operate in their own national market, which in most countries is considerably larger than the international market. The vehicles used for international road haulage are not substantially different from those used for national haulage. Thus it is easy for hauliers to move resources between national and international operations depending upon the state of the respective markets. The state of the international road haulage market will therefore reflect the state of the individual and larger national markets.

The aim of Article 92 of the Treaty is to prevent trade between Member States from being affected by benefits granted by the public authorities which, in various forms, distort or threaten to distort competition by favouring certain undertakings or the production of certain goods. Accordingly, Article 92 does not distinguish between the measures of State intervention concerned by reference to their causes or aims but defines them in relation to their effects.

It is understood that the benefits from the Decree will go to all professional road hauliers, and are not linked to the objectives of restructuring of the sector concerned nor is the aim orientated to a specific region. The only requirement for the recipients is to be included in the register introduced by Law No 298 of 6 June 1974, on 31 December 1991. Therefore, the Decree tends towards a general improvement of the financial situation of all undertakings of the sector concerned and affects the market. When a Member State, by means of financial aid, strengthens the position of undertakings in a particular sector involved in intra-Community trade, the latter must be considered as affected by that aid.

The aid introduced by the Decree is purely and simply an operating aid. It should also be noted that the Commission has always had a negative attitude towards such aid since it may force other Member States to take similar measures at a substantial cost or may transfer difficulties from one Member State to another.

It is also believed that the effects of the Decree will hinder an orderly adaptation of the Italian road haulage market to a new viable economic structure in the longer term and that preserving the status quo will serve only to delay the necessary adjustments in a sector which is characterized by an overcapacity, as is generally admitted. Therefore, it must be concluded that the aid scheme introduced by the Decree goes against the common interest.

In the light of the above, it is estimated that the Decree is liable to affect trade between Member States and to distort

competition between transport undertakings established in Italy and other Member States, and between transported goods.

However this view is not shared by the Italian authorities as expressed in their reply from 4 August 1992. The Italian authorities consider that the Decree of 28 January 1992 does not constitute a State aid but a taxation plan. In support of their view, the Italian authorities also argue that the tax burden in Italy on diesel vehicles is particularly high and that this is a major cost factor for the undertakings in question. They also refer to the planned harmonization of taxes between Member States.

As regards the taxation argument and national sovereignty in this domain, it should be pointed out that the rules governing State aid and those governing taxation have different objectives. This means that a national measure may comply with taxation rules but conflict with other provisions such as Articles 92 and 93 of the Treaty. Furthermore, Article 92 does not distinguish between the measures of State intervention concerned by reference to their causes or aims but defines them in relation to their effects. The effect of the scheme is a direct net cash flow increase in favour of the undertakings of a particular economic sector only. Indeed it should also be pointed out that only operators in the road haulage market registered in Italy can benefit from the measure. Those operators compete with operators in the other means of transport and operators from other Member States. The cash flow which results from the measure thus clearly leads to a distortion of competition in favour of those benefitting from the measure. Consequently, the alleged fiscal nature or social aim of the measure cannot suffice of itself to shield it from the application of Article 92. For this reason tax exemptions granted on a sectoral or regional basis have consistently been treated as constituting State aid.

In the light of the above, the Decree as it stands constitutes a State aid within the meaning of Article 92 (1) of the Treaty.

IV

Given the fact that the Decree covers road transport the aid should be assessed on the basis of Regulation (EEC) No 1107/70. That Regulation was introduced to eliminate disparities liable to distort the conditions of competition in the transport market, and allows the granting of aid only in certain circumstances. Article 2 lays down that Articles 92, 93 and 94 shall apply to aid granted for transport. Article 3 lays down the conditions under which aid could be granted.

The aid introduced by the Decree does not, however, comply with the provisions of Regulation (EEC) No 1107/70.

Article 3 of the Regulation states that 'Member States shall not take coordination measures which involve the granting of aids pursuant to Article 77 of the Treaty except in the following cases or circumstances:

(...)

(d) until the entry into force of Community rules on access to the transport market, where aid is granted as an exceptional aid and temporary measure, in order to eliminate, as part of a reorganization plan, excess capacity causing serious structural problems, and thus to contribute towards meeting more effectively the needs of the transport market.'

According to the Italian Government there exists a serious imbalance between supply and demand in the road transport market, as expressed in protocols between the Italian Government itself and the trade organizations concerned⁽¹⁾. However, the further conditions which must be satisfied under that Regulation cannot be said to exist since it requires concrete results, i.e. the preparation of a reorganization plan and the reduction of excess capacity, and since the system introduced by the Decree in question is designed to improve the financial position of all undertakings in the sector without requiring any *quid pro quo* on their part.

Based on what the Commission has pointed out in Decision 90/224/EEC⁽²⁾, upheld by the Court in its judgment of 3 October 1991 in Case C-261/89, Italy v. Commission⁽³⁾, it can be concluded that the breach is sufficiently clear to conclude that the Decree is incompatible with the common market. The Commission notes, as an additional argument, that the exceptions mentioned in Article 92 (2) and (3) do not apply.

Article 92 (1) of the EEC Treaty lays down the principle that aid having the characteristics which it specifies, is incompatible with the common market.

As far as the exceptions to that principle are concerned, those provided for in Article 92 (2) do not apply to the case in point, given the nature and objectives of the aid.

Furthermore, the Italian authorities have not invoked these exceptions.

As regards aid which may be considered compatible with the common market under Article 92 (3), which paragraph is not invoked by the Italian authorities either, it should be noted, *inter alia*, that the objectives listed in that provision must be in the interest of the Community and not solely in that of the undertakings receiving the aid. The provisions of that provision must be interpreted strictly in an examination of any regional or sectoral aid programme. Exemptions to the principle of incompatibility of aid with the common market set out in Article 92 (1) apply only if the Commission can establish that, without the aid under consideration, the free interplay of market forces will not in itself ensure that the recipient undertakings take action to help attain one of the objectives of those exemptions.

Aid without any *quid pro quo* would also be tantamount to giving certain Member States undue advantages, affecting trade between Member States and distorting competition without the justification of being in the Community interest.

A system of aid which does not contribute to the attainment of the objectives of the exemptions provided for in Article 92 (3) and without a *quid pro quo*, by this very fact alone serves only to improve the financial position of the undertakings in question.

There is no evidence to suggest that undertakings which are beneficiaries under this system are expected to provide anything in return.

Consequently, it is considered that the aid system, by virtue of its scope, i.e. all national undertakings in a given economic sector, irrespective of their location, does not have regional development as an aim as defined in points (a) and (c) of Article 92 (3).

Nor does the system involve any major project of European interest or remedy a serious disturbance in the Italian economy within the meaning of point (b) of Article 92 (3).

As regards Article 92 (3), point (c), which also deals with aid to promote the development of certain economic activities, it should be noted that the aid in question for which all road hauliers are eligible, is nothing more than an operating aid which is generally acknowledged as not itself satisfying the conditions of point (c); the lack of any *quid pro quo* makes it impossible to conclude that the aid is to facilitate 'development'.

The fact that the subsidy differs with vehicle size does not affect the above reasoning.

⁽¹⁾ See protocols of 13 April 1990 and 15 November 1990 to which the Italian authorities drew the attention in their reply of 4 August 1992.

⁽²⁾ OJ No L 118, 9. 5. 1990, p. 42.

⁽³⁾ [1990] ECR I-4437.

V

The aid should have been notified to the Commission as required by Article 93 (3) of the Treaty. Since the Italian Government failed to do so, the Commission was unable to make its position known before the measure was implemented. Since the provisions of Article 93 (3) of the Treaty were not complied with, the aid must be considered to be illegal under Community law.

In this connection it must be pointed out that the imperative character of the procedural rules set out in Article 93 (3), compliance with which is important from the point of view of public order, and the direct effect of which has been recognized by the Court of Justice in its judgments of 19 June 1973 in Case 77/72 ⁽¹⁾, 11 December 1973 in Case 120/73 ⁽²⁾, 22 March 1977 in Case 78/76 ⁽³⁾ and 21 November 1991 in Case C-354/90 ⁽⁴⁾, is such that the illegality of the aid in question cannot be remedied by subsequent action.

Moreover, where aid is incompatible with the common market, the Commission can make use of the option afforded it by the judgment of the Court of Justice of 12 July 1973 in Case 70/72 ⁽⁵⁾, confirmed by the judgments of 24 February 1987 and 20 September 1990 in Cases 310/85 ⁽⁶⁾ and C-5/89 ⁽⁷⁾ and can require Member States to recover from recipients all aid illegally granted.

In view of the above, the aid introduced by the Decree must be abolished and sums paid reimbursed.

Repayment must be made in accordance with the procedures and provisions of Italian law, in particular those concerning interest on overdue payments owed to the State, the interest being calculated from the date the aid in question was paid. This appears necessary in order to restore the previous situation by abolishing all the financial advantages enjoyed by the companies receiving the illegal aid since the date on which it was paid (see the judgment of the Court of Justice of 21 March 1990 in Case C-142/87, paragraph 66 ⁽⁸⁾).

It should be recalled that recovery of aid which has been paid unlawfully is the logical consequence of the fact that its illegality has been established (see Case C-142/87),

HAS ADOPTED THIS DECISION:

Article 1

The aid in favour of professional road hauliers in Italy in the form of a tax credit on income tax or on municipal tax or on VAT which was introduced by the Ministerial Decree of 28 January 1992 is unlawful in so far as it is granted in breach of the procedural rules laid down in Article 93 (3) of the EEC Treaty. The aid is also incompatible with the common market within the meaning of Article 92 (1) of the EEC Treaty, in so far as it meets neither the conditions for the exemptions provided for in Article 92 (2) and (3) nor the conditions of Regulation (EEC) No 1107/70.

Article 2

The Italian Republic shall abolish the aid referred to in Article 1 and ensure that the aid granted is recovered within two months of the notification of this Decision. The aid shall be recovered in accordance with the procedures and provisions of national law, in particular those relating to interest on overdue payments owed to the Government, with interest starting to run from the date on which the unlawful aid was granted.

Article 3

The Italian Government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 9 June 1993.

For the Commission

Abel MATUTES

Member of the Commission

⁽¹⁾ [1973] ECR 611.
⁽²⁾ [1973] ECR 1471.
⁽³⁾ [1977] ECR 595.
⁽⁴⁾ [1991] ECR I-5505.
⁽⁵⁾ [1973] ECR 813.
⁽⁶⁾ [1987] ECR 901.
⁽⁷⁾ [1990] ECR I-3437.
⁽⁸⁾ [1990] ECR I-959.

COMMISSION DECISION

of 15 September 1993

amending Decision 93/364/EEC concerning certain protection measures relating to classical swine fever in Germany

(93/497/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intracommunity trade in certain live animals and products with a view to the completion of the internal market⁽¹⁾, as last amended by Directive 92/118/EEC⁽²⁾, and in particular Article 10 (4) thereof,

Whereas as a result of outbreaks of classical swine fever in different parts of Germany, the Commission adopted Decision 93/364/EEC of 18 June 1993 concerning certain protection measures relating to classical swine fever in Germany⁽³⁾;

Whereas during recent months additional outbreaks of classical swine fever have been confirmed in Germany;

Whereas the occurrence of classical swine fever is liable to present a serious threat to the herds of Member States in view of trade in live pigs, fresh meat and certain meat-based pork products;

Whereas in the light of the new disease situation it is necessary to adjust the measures adopted by Decision 93/364/EEC;

Whereas the measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Decision 93/364/EEC is hereby amended as follows:

1. Article 1 (2) is replaced by the following:

'2. Germany shall not end to other Member States breeding pigs and production pigs originating from a holding situated outside the areas described in Annex I unless the pigs:

- come from a holding where no live pigs have been introduced during the 21-day period immediately prior to the dispatch of the pigs in question,
- have been subject to a test for antibodies to classical swine fever virus (HC virus) and found nega-

tive; this test shall include one pig per pen of the pigs intended for movement and the test shall have been carried out within 10 days of certification.';

2. Article 1 (3) is replaced by the following:

'3. The clinical examination required in Council Directive 64/432/EEC⁽⁴⁾ shall be carried out for pigs referred to in paragraph 2 on the farm of origin in the case of pigs aged under three months. The examination shall comprise all pigs and related facilities on the holding of origin. The animals shall be identified in such a way that the holding of origin can be ascertained.

4. Intra-Community movements of the animals referred to in paragraph 2 shall only be allowed following advance notification to the competent authority in the Member State of destination.

⁽⁴⁾ OJ No 121, 29. 7. 1964, p. 1977/64.';

3. in Article 4 (1), (2) and (3) the certificate must be completed with the following:

'as amended by Decision 93/497/EEC.';

4. in Article 5 the last sentence is deleted;

5. in Article 6, 'Annex III' is replaced by 'Annex II';

6. in Annex I, point 1, 'Soltau-Fallingbostel' is inserted after 'Harburg';

7. in Annex I the following point is added:

'3. In Bundesland Rhineland Pfalz, Regierungsbezirk Rheinhessen-Pfalz, the Kreis: Germersheim and Südliche Weinstraße and the Stadt: Landau in der Pfalz.

From 1 August 1993 as regards pigmeat and pigmeat products referred to in Article 3.';

8. Annex II is deleted;

9. Annex III is renumbered Annex II and in this Annex, point 1, the introductory phase is replaced by:

'For the area listed in Annex I the following shall apply'.

Article 2

Member States shall amend the measures which they apply to trade so as to bring them into compliance with this Decision. They shall immediately inform the Commission thereof. The Decision shall be reviewed not later than 15 December 1993 taking into account the disease situation.

⁽¹⁾ OJ No L 224, 18. 8. 1990, p. 29.

⁽²⁾ OJ No L 62, 15. 3. 1993, p. 49.

⁽³⁾ OJ No L 150, 22. 6. 1993, p. 47.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 15 September 1993.

For the Commission

René STEICHEN

Member of the Commission
