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Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 620/97 of 9 April 1997 fixing the representative prices and the additional import duties for molasses in the sugar sector	1
Commission Regulation (EC) No 621/97 of 9 April 1997 altering the export refunds on white sugar and raw sugar exported in the natural state	3
Commission Regulation (EC) No 622/97 of 9 April 1997 fixing the maximum export refund for white sugar for the 33rd partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1464/96	5
★ Commission Regulation (EC) No 623/97 of 9 April 1997 amending Regulation (EC) No 1318/93 on detailed rules for the application of Council Regulation (EEC) No 2067/92 on measures to promote and market quality beef and veal	6
★ Commission Regulation (EC) No 624/97 of 8 April 1997 amending Regulation (EEC) No 1164/89 laying down detailed rules concerning the aid for fibre flax and hemp	8
Commission Regulation (EC) No 625/97 of 9 April 1997 on the issue of import licences for garlic originating in China	13
Commission Regulation (EC) No 626/97 of 9 April 1997 establishing the standard import values for determining the entry price of certain fruit and vegetables	14
★ Commission Directive 97/15/EC of 25 March 1997 adopting Eurocontrol standards and amending Council Directive 93/65/EEC on the definition and use of compatible technical specifications for the procurement of air-traffic-management equipment and systems ⁽¹⁾	16

⁽¹⁾ Text with EEA relevance

II *Acts whose publication is not obligatory*

Commission

97/238/EC:

- * **Commission Decision of 2 October 1996 concerning aid granted by the French State to the audiovisual production company Société française de Production ⁽¹⁾ 19**

97/239/EC:

- * **Commission Decision of 4 December 1996 concerning aid granted by Belgium under the Maribel *bis/ter* scheme ⁽¹⁾ 25**
-

Corrigenda

- * **Corrigendum to Council Regulation (EC) No 2250/95 of 18 September 1995 amending for the fifth time Regulation (EEC) No 1866/86 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound (OJ No L 230 of 27.9.1995) 30**

⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 620/97**of 9 April 1997****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar⁽¹⁾, as last amended by Regulation (EC) No 1599/96⁽²⁾,

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

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

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

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either

directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

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

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

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

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

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 141, 24. 6. 1995, p. 12.

⁽⁴⁾ OJ No L 145, 27. 6. 1968, p. 12.

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 10 April 1997.

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

Done at Brussels, 9 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

CN code	Amount of the representative price in ECU per 100 kg net of the product in question	Amount of the additional duty in ECU per 100 kg net of the product in question	Amount of the duty to be applied to imports in ECU per 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	8,40	—	0,00
1703 90 00 ⁽¹⁾	12,34	—	0,00

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 621/97
of 9 April 1997
altering the export refunds on white sugar and raw sugar exported in the natural state

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European 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 (EC) No 1599/96⁽²⁾, and in particular the second subparagraph of Article 19 (4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 589/97⁽³⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 589/97 to the informa-

tion known to the Commission that the export refunds at present in force should be altered to the amounts set out in the Annex hereto,

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, as fixed in the Annex to Regulation (EC) No 589/97, are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 April 1997.

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

Done at Brussels, 9 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 88, 3. 4. 1997, p. 13.

ANNEX

to the Commission Regulation of 9 April 1997 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— ECU/100 kg —
1701 11 90 9100	37,86 ⁽¹⁾
1701 11 90 9910	35,85 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	37,86 ⁽¹⁾
1701 12 90 9910	35,85 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— ECU/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4116
	— ECU/100 kg —
1701 99 10 9100	41,16
1701 99 10 9910	40,73
1701 99 10 9950	40,73
	— ECU/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4116

⁽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 17a (4) of Regulation (EEC) No 1785/81.

⁽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).

COMMISSION REGULATION (EC) No 622/97

of 9 April 1997

fixing the maximum export refund for white sugar for the 33rd partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1464/96

THE COMMISSION OF THE EUROPEAN COMMUNITIES,
Having regard to the Treaty establishing the European 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 (EC) No 1599/96⁽²⁾, and in particular the second subparagraph of Article 17 (5) (b) thereof,

Whereas Commission Regulation (EC) No 1464/96 of 25 July 1996 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 (EC) No 1464/96 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 33rd partial invitation to

tender, the provisions set out in Article 1 should be adopted;

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

For the 33rd partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1464/96 the maximum amount of the export refund is fixed at ECU 43,734 per 100 kilograms.

Article 2

This Regulation shall enter into force on 10 April 1997.

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

Done at Brussels, 9 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No L 206, 16. 8. 1996, p. 43.

⁽³⁾ OJ No L 187, 26. 7. 1996, p. 42.

COMMISSION REGULATION (EC) No 623/97

of 9 April 1997

amending Regulation (EC) No 1318/93 on detailed rules for the application of
Council Regulation (EEC) No 2067/92 on measures to promote and market
quality beef and veal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Community,

Having regard to Council Regulation (EEC) No 2067/92
of 30 June 1992 on measures to promote and market
quality beef and veal⁽¹⁾, and in particular Article 4
thereof,

Whereas Commission Regulation (EEC) No 1318/93⁽²⁾,
as last amended by Regulation (EC) No 487/97⁽³⁾, lays
down detailed rules for the application of Regulation
(EEC) No 2067/92;

Whereas Articles 4 and 5 of Regulation (EEC)
No 1318/93 lay down deadlines for the lodging of appli-
cations for financing to the competent bodies of each
Member State and for their forwarding to the Commis-
sion;

Whereas, in view of the substantial funding allocated in
1997 for the promotion of quality beef and veal, in the
interests of good management, new deadlines should be
laid down for the submission of further programmes in
1997;

Whereas Article 4 (3) (b) of Regulation (EEC) No 1318/93
lays down that applicants must have an assessment study
carried out at their own expense; whereas, in the interests
of consistency with rules of application in other sectors,
Community part financing should be provided for this
study;

Whereas, in the light of experience and in order to
encourage the implementation of promotional measures,
the products and additional qualities eligible for such
measures should be defined and the minimum produc-
tion, quality and inspection requirements laid down;
whereas, in particular, promotional measures should be
restricted to farms complying with stricter rules on the
welfare of calves; whereas Annex I to Regulation (EEC)
No 1318/93 should therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1318/93 is hereby amended as
follows:

1. The second sentence of Article 4 (1) is replaced by the
following:

‘However:

— for 1997, new applications may be lodged up to 15
May 1997,

— for 1998, applications may be lodged up to 30
September 1997.’

2. Article 4 (3) (b) is replaced by the following:

‘that an assessment study of the measures implemented
will be carried out by an independent body within the
time limit laid down in Article 7 (3); the study shall be
financed under the same conditions as the other
planned measures.’

3. Annex I is amended as follows:

(a) Under ‘Stockbreeding’:

— the text under ‘Origin’ is replaced by the
following:

‘Except for veal calves, breeds other than
those listed in Annex II to Commission
Regulation (EEC) No 3886/92⁽¹⁾, and the
first crosses with one of those breeds.’

— the text under ‘Welfare’ is replaced by the
following:

‘Application of national, international and
Community standards. However, for veal
calves, all farms covered by programmes
submitted from 1999 onwards must comply
with all of the requirements referred to in
Article 3 (3) of Council Directive
91/629/EEC⁽²⁾ notwithstanding the final
subparagraph thereof.’

⁽¹⁾ OJ No L 215, 30. 7. 1992, p. 57.

⁽²⁾ OJ No L 132, 29. 5. 1993, p. 83.

⁽³⁾ OJ No L 76, 18. 3. 1997, p. 1.

^(*) OJ No 340, 11. 12. 1991, p. 28.’

(b) Under 'Slaughter':

- the following text is added to that under 'Types of carcase':

'Veal calves of a carcase weight, including all organs contained within the thoracic and abdominal cavities, not exceeding 140 kg.'

- the text under 'Category' is amended as follows:

'Confirmation: SEUR, except for veal carcasses.

- Fat cover: — young bovine animals: 2 and 3,
— cows and castrated animals: 2, 3 and 4 L (or 4-).'

Article 2

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, 9 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 624/97

of 8 April 1997

amending Regulation (EEC) No 1164/89 laying down detailed rules concerning the aid for fibre flax and hemp

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1308/70 of 29 June 1970 on the common organization of the market in flax and hemp ⁽¹⁾, as last amended by Regulation (EC) No 3290/94 ⁽²⁾, and in particular Article 4 (5) thereof,

Having regard to Council Regulation (EEC) No 619/71 of 22 March 1971 laying down general rules for granting aid for flax and hemp ⁽³⁾, as last amended by Regulation (EC) No 154/97 ⁽⁴⁾, and in particular Articles 5 (2), 6 and 6a thereof,

Whereas Commission Regulation (EEC) No 1164/89 ⁽⁵⁾, as last amended by Regulation (EC) No 466/96 ⁽⁶⁾, sets certain detailed rules of application for the aid for fibre flax and hemp;

Whereas Regulation (EEC) No 619/71 sets as requirements for granting of the aid conclusion of a contract between grower and primary processor (except in certain specific cases), an undertaking to process the flax, and approval of the primary processor; whereas detailed rules applying to this undertaking should therefore be specified and also requirements for primary processor approval; whereas rules for checking on the execution of contracts and compliance with undertakings to process and with terms of approval must be set and also procedures for cooperation between Member States; whereas provision should be made for withdrawal of approval if the terms on which it was granted are no longer met or irregularities are found;

Whereas in order to permit payment of the aid at as early as date as possible, provision should be made for security to be lodged to be lodged by the processor against processing of the flax straw within a reasonable time; whereas in view of the particular way in which primary processors operate, provision can be made for the aid to be paid without lodging of security if proof of processing has

already been produced; whereas the provisions of Commission Regulation (EEC) No 2220/85 ⁽⁷⁾, as last amended by Regulation (EC) No 3403/93 ⁽⁸⁾, apply to securities;

Whereas for the purposes of payment of three-quarters of the aid to the primary processor, Member States may opt to use certificates or registered contracts; whereas these arrangements should be adjusted in line with the new terms on which aid is granted;

Whereas experience of operation of the aid scheme in the last few years has shown a need to adjust certain provisions in order to prevent the scheme from being abused; whereas in particular aid for flax produced from seed of varieties in course of examination by the national authorities that are not included in the list of varieties intended principally for fibre production should be discontinued with effect from the 1998/99 marketing year and additional information should be required in the declaration of areas sown and aid application;

Whereas Regulation (EEC) No 619/71 allows for transitional measures to be adopted for the first marketing year of application of the provisions introduced by Regulation (EC) No 154/97; whereas given the time needed for Member States to implement the approval provisions there is a need to permit provisional approval of processors and growers for the 1997/98 marketing year; whereas the case must also be accommodated of growers who have been able to have their flax straw processed in a third country;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1164/89 is amended as follows:

1. the first paragraph of Article 2 is replaced by the following:

'Aid shall be granted for flax grown from seed of the varieties listed in Annex A.;

⁽¹⁾ OJ No L 146, 4. 7. 1970, p. 1.

⁽²⁾ OJ No L 349, 31. 12. 1994, p. 105.

⁽³⁾ OJ No L 72, 26. 3. 1971, p. 2.

⁽⁴⁾ OJ No L 27, 30. 1. 1997, p. 1.

⁽⁵⁾ OJ No L 121, 29. 4. 1989, p. 4.

⁽⁶⁾ OJ No L 65, 15. 3. 1996, p. 6.

⁽⁷⁾ OJ No L 205, 3. 8. 1985, p. 5.

⁽⁸⁾ OJ No L 310, 14. 12. 1993, p. 4.

2. Article 4 is amended as follows:

- (a) the subparagraph of point (a) which begins with the words: 'The use referred to ...' and ends with the words: '... from the ground.', is replaced by the following:

'If the crop is cut the cutter bar must be no more than 10 cm from the ground for flax and 20 cm for hemp;'

- (b) the following point (c) is added:

'(c) which in the case of flax are covered by a contract and/or undertaking to process as indicated in Article 3 (2) of Regulation (EEC) No 619/71;'

3. Article 5 is amended as follows:

- (a) paragraph 2 is deleted;

- (b) paragraph 3 is replaced by the following:

'3. The declaration shall include at least the following:

- the surname, first names and address of the declarant and his identification, if any, in the integrated administration and control system,
- the species and variety sown,
- the area sown, in hectares and ares,
- the area on which seedlings have emerged, in hectares and ares,
- the quantity of seed used, in kilograms per hectare,
- the reference to the areas sown in the integrated administration and control system or in the absence of this their cadastral reference or an indication recognized as equivalent by the body responsible for control checks on the areas,
- the date of sowing.

If crop contracts as referred to at (b) in Article 3a of Regulation (EEC) No 619/71 have been concluded a copy is to be attached;'

the process of separating the fibre and the woody parts of the stalk. If the stalk is submitted to a process which renders necessary any additional treatment to lead to the separation, this process shall not count as processing for the purposes of this Regulation;

- (c) if different from that required under (a), the address(es) at which the flax straw will be processed;

- (d) the maximum area the crop from which can be processed annually by his equipment given a normal crop yield;

- (e) a description of the type and characteristics of his processing equipment, specifying the maximum quantity of flax straw that can be processed (in tonnes/hour and tonnes/year).

If the equipment comprises several flax straw processing machines, the maximum quantity must be specified for each;

- (f) the weight in kilograms of the flax straw needed to produce 1 kilogram of each of the products referred to at (b); a maximum and minimum may be specified with an indicative average;

- (g) his storage capacity for straw and processed products;

- (h) a descriptive plan of his installations for straw storage, processing and storage of processed products.

The application shall be accompanied by a commitment to keep records as indicated in paragraph 4 and to submit to any checks imposed for the purposes of the aid scheme.

2. Approval shall only be granted following a check on the spot and provided it is clear from this and from the information required under paragraph 1 that the existing installations can process each year the flax straw harvested from the maximum area referred to at (d) in paragraph 1 into the products referred to at (b) therein.

The competent authority shall assign an approval number to the primary processor.

Should the information given in the approval application change, the primary processor shall immediately notify the competent national authority.

3. The approval procedure referred to in paragraphs 1 and 2 shall apply *mutatis mutandis*:

- (a) to growers as defined at (a) or (b) in Article 3a of Regulation (EEC) No 619/71 who undertake to process their own flax straw;

4. the following Articles 5a and 5b are inserted:

Article 5a

1. Primary processors who intend to conclude contracts with textile flax growers must send the competent authority of the Member State in which the flax will be processed an application for approval giving the following information:

- (a) name and address;

- (b) a full description of his range of products from processing of flax straw. These must be yielded by

(b) to primary processors who process flax straw on a grower's behalf under (b) or (d) of Article 3 (2) of Regulation (EEC) No 619/71.

4. Approved primary processors and growers must keep records showing:

(a) the quantities of all raw materials bought in, broken down by supplier (or entering the processing premises in the case of growers undertaking to process their own flax), and stocks;

(b) the quantities of raw materials processed and the quantities and types obtained of the finished products listed in the application for approval, the quantities and types of co-products and by-products, and stocks;

(c) processing losses;

(d) quantities destroyed, with the reasons for destruction;

(e) the quantities and types of products sold or assigned by the processor, broken down by purchaser/subsequent processor;

(f) the names and addresses of purchasers and subsequent processors.

Article 5b

In cases covered by the first subparagraph of Article 3 (2) of Regulation (EEC) No 619/71 the undertaking to process must be made out by the primary processor for each contract and attached to it. It must take the form of an explicit commitment to process the flax straw from the area covered by the contract.

The competent authority may, however, allow a general undertaking to process covering all the processor's contracts to be transmitted directly to it with a copy to each grower.

In the cases indicated at (a) and (c) in the said Article 3 (2) the undertaking to process must be made out by the grower and comprise an explicit commitment to process the flax straw from the area for which aid is requested.

In the cases indicated at (b) and (d) in the said Article 3 (2) the undertaking to process must be made out by the grower and comprise an explicit commitment to have the flax straw from the area for which aid is requested processed on his behalf.

The undertaking to process must include the approval number.;

5. The following paragraphs 1a and 1b are inserted after Article 6 (1):

'1a Verification of execution of contracts and of compliance with undertakings to process and terms of approval, as mentioned in Article 5 (1) of Regulation (EEC) No 619/71, must be organized such that in each Member State at least half the total number of approved processors or growers as defined in Article 3a of that Regulation is inspected for each marketing year and that the maximum interval between inspections of a given undertaking does not exceed three years.

Inspection shall comprise physical checks and scrutiny of materials records, accounts and all commercial documents (invoices, delivery notes, etc.) relevant to the inspection.

1b Inspection under paragraph 1a of the primary processor by the Member State's competent authorities must cover all his processing of flax straw grown in the Community.

If the competent authorities of a Member State find irregularities of relevance to aid payments made or to be made by another Member State they shall immediately inform its competent authorities.

The competent authorities of one Member State may ask those of another to effect an inspection relating to the processing in its territory of flax straw grown in the requesting Member State. The Member State to which the request is addressed shall carry out the inspection within two months of receiving the request and immediately notify its findings to the competent authorities of the requesting Member State.;

6. Article 7 is replaced by the following:

Article 7

1. If the checks provided for in Article 5 (1) of Regulation (EEC) No 619/71 show that the area declared is:

(a) less than that ascertained during the checks, the area ascertained shall be used;

(b) greater than that ascertained during the checks, the area used shall be the ascertained area minus the difference between the area originally declared and that ascertained, without prejudice to any penalties laid down under national law, except where the difference is considered justified by the Member State concerned; in that case the area ascertained shall be used.

2. If inspection pursuant to Article 5 (1) of Regulation (EEC) No 619/71 shows that the terms of approval indicated in Article 5a are no longer met approval shall be withdrawn with effect from the beginning of the marketing year following the date of inspection and the primary processor or grower in question shall not be granted fresh approval before the second marketing year following the date of inspection.

If the proof of processing indicated in Article 12a that is adduced does not correspond to reality approval shall be suspended from the beginning of the marketing year following the date of inspection for one or two marketing years depending on the seriousness of the irregularity.

The Member State may decide not to impose suspension if the irregularity was not committed deliberately or by serious negligence and is of minimal importance when set against the total operations of the primary processor or grower.

3. Member States shall notify the Commission of the measures taken for the application of this Article.;

7. Article 8 is amended as follows:

(a) the following indents are inserted after the second indent in paragraph 2:

- the date of harvesting,
- the date of gathering,
- the quantity of straw harvested/gathered,;

(b) paragraph 3 is replaced by the following:

'3. The aid application must be accompanied by a copy of the contract and/or undertakings to process indicated in Article 3 (2) of Regulation (EEC) No 619/71.;

8. Article 10 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. If the grower processes the flax straw or has it processed on his own behalf he shall retain the certificate.

If the grower has concluded with an approved primary processor a contract as indicated in Article 3 (2) of Regulation (EEC) No 619/71, the certificate shall be given to the primary processor.

Without prejudice to application of Articles 6, 7 and 12a, three-quarters of the aid shall be paid to the person concerned on submission of the duly completed certificate. The certificate must be

submitted by the last day of the marketing year at the latest.;

(b) in paragraph 3:

- the words: 'and also his identification in the integrated administration and control system or in the absence of this another number assigned by the competent authority', are added to the first indent,
- the words: 'and his approval number' are added to the fourth indent;

9. Articles 11 and 12 are replaced by the following:

Article 11

If the Member State uses a system of registered contracts pursuant to Article 9, three-quarters of the aid shall be paid to the primary processor.

This Article shall apply without prejudice to Articles 6, 7 and 12a.

Article 12

Member States shall pay the aid for flax and hemp before 16 October following the end of the marketing year.

However, in cases where Article 12a (4) is applied this time-limit shall apply only to the quarter of the aid to be paid to growers who concluded a contract as indicated in the first subparagraph of Article 3 (2) of Regulation (EEC) No 619/71.;

10. the following Article 12a is inserted:

Article 12a

1. The primary processor of textile flax shall, except where paragraph 4 is applied, lodge with the competent authorities of the Member State to which the aid application is made security equal to three-quarters of the aid plus 10 %, before that part of the aid is paid.

2. A grower as defined at (a) or (b) of Article 3a of Regulation (EEC) No 619/71 who undertakes to process his flax or have it processed on his behalf shall, except where paragraph 4 is applied, lodge with the competent authority of the Member State to which the aid application is made security equal to the total amount of the aid plus 10 %, before the aid is paid.

3. Regulation (EEC) No 2220/85 shall apply to securities lodged pursuant to this Article.

The primary requirement for the purposes of that Regulation shall be actual processing of all the quantities of flax straw from the areas covered by the contracts or undertakings to process (or of an equivalent quantity).

The secondary requirement for the purposes of that Regulation shall be that the primary requirement is met within at most 12 months of the end of the marketing year.

The primary requirement shall be considered to have been met in the same proportion that the quantity of flax straw for which proof of processing is given within 18 months of the end of the marketing year constitutes of the total quantities from the areas covered by contracts or undertakings to process.

Member States shall draw up a list of documentation which shall constitute such proof. The list shall include, as a minimum, monthly summaries of the materials records and copies of the sales invoices for the products of primary processing, for the entire period concerned.

4. At the request of the primary processor, or grower as indicated in paragraph 2, and with the competent authority's agreement, the aid may be paid without lodging of security provided that proof is given beforehand that the primary requirement specified in paragraph 3 has been met within 12 months of the end of the marketing year.

Payment shall be made in respect of the quantities of flax straw (as a proportion of the total quantities from the areas covered by contracts or undertakings to process) for which proof of processing is given within 18 months of the end of the marketing year. However, the competent authority may set a minimum payment amount.

If the time-limit for meeting the primary requirement is not met or if proof that it has been met is not given within the period set, the aid that would have been paid shall be reduced by a percentage equal to that of the part of the security that would have been forfeited had paragraph 3 applied.

5. If as a result of exceptional weather conditions part of the flax straw from the areas covered by contracts or undertakings to process is unfit for

processing the competent authority shall following a check on the spot release the security, or pay the aid if paragraph 4 is applied, for the quantities concerned, unless the deterioration is attributable to the grower or the primary processor.'

11. The following Article 17a is inserted:

'Article 17a

1. The transitional arrangements set out in this Article shall apply to the 1997/98 marketing year.

2. Primary processors shall be considered as approved for the purposes of Article 3 (2) of Regulation (EEC) No 619/71 if they have concluded contracts and/or given undertakings to process in line with that provision.

Growers shall be considered as approved if they have given undertakings to process as indicated in that provision.

Article 5a (4) shall however apply to primary processors and growers from the 1997/98 marketing year.

3. Where growers, in line with local practice since at least the 1996/97 marketing year, have flax straw processed on their own behalf in installations located in the territory of a third country the provisions on approval shall not apply but the competent authority must ensure by physical inspection that the quantities of processed products brought back to the Member State are consistent with the quantities of straw harvested and delivered. In such cases the aid shall be paid in full to the grower following that inspection.'

Article 2

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

It shall apply from the 1997/98 marketing year. However, point 1 of Article 1 shall apply from the 1998/99 marketing year.

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

Done at Brussels, 8 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 625/97
of 9 April 1997
on the issue of import licences for garlic originating in China

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

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organization of the market in fruit and vegetables ⁽¹⁾,

Having regard to Council Regulation (EC) No 885/96 of 15 May 1996 concerning a protective measure applicable to imports of garlic from China ⁽²⁾, and in particular Article 1 (3) thereof,

Whereas pursuant to Commission Regulation (EEC) No 1859/93 ⁽³⁾, as amended by Regulation (EC) No 1662/94 ⁽⁴⁾, the release for free circulation in the Community of garlic imported from third countries is subject to presentation of an import licence;

Whereas Article 1 (1) of Regulation (EC) No 885/96, restricts the issue of import licences for garlic originating in China to a maximum monthly quantity in the case of applications lodged from 1 June 1996 to 31 May 1997;

Whereas, given the criteria laid down in Article 1 (2) of that Regulation and the import licences already issued, the quantity applied for on 4 April 1997 is in excess of the maximum monthly quantity given in the Annex to

that Regulation for the month of April 1997; whereas it is therefore necessary to determine to what extent import licences may be issued in response to these applications; whereas the issue of licences in response to applications lodged after 4 April 1997 and before 5 May 1997 should be refused,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences applied for on 4 April 1997 under Article 1 of Regulation (EEC) No 1859/93 for garlic falling within CN code 0703 20 00 originating in China shall be issued for 0,24855 % of the quantity applied for, having regard to the information available to the Commission on 9 April 1997.

For the abovementioned products applications for import licences lodged after 4 April 1997 and before 5 May 1997 shall be refused.

Article 2

This Regulation shall enter into force on 10 April 1997.

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

Done at Brussels, 9 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 297, 21. 11. 1996, p. 1.

⁽²⁾ OJ No L 119, 16. 5. 1996, p. 12.

⁽³⁾ OJ No L 170, 13. 7. 1993, p. 10.

⁽⁴⁾ OJ No L 176, 9. 7. 1994, p. 1.

COMMISSION REGULATION (EC) No 626/97

of 9 April 1997

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 2375/96⁽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 Commis-

sion 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 10 April 1997.

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

Done at Brussels, 9 April 1997.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ No L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ No L 325, 14. 12. 1996, p. 5.

⁽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 9 April 1997 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 20	052	93,6
	204	62,6
	212	116,5
	624	128,7
	999	100,3
0709 90 75	052	132,1
	204	62,0
	999	97,1
0805 10 11, 0805 10 15, 0805 10 19	052	64,3
	204	43,7
	212	61,0
	220	36,8
	400	37,1
	448	26,8
	600	45,3
	624	50,3
	625	39,8
	999	45,0
	600	63,8
0805 30 20	999	63,8
	060	50,6
0808 10 61, 0808 10 63, 0808 10 69	388	98,6
	400	91,5
	404	98,5
	508	71,7
	512	69,4
	524	74,8
	528	67,6
	804	102,5
	999	80,6
	388	70,0
	512	59,4
0808 20 37	528	74,9
	999	68,1

⁽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 DIRECTIVE 97/15/EC

of 25 March 1997

adopting Eurocontrol standards and amending Council Directive 93/65/EEC on the definition and use of compatible technical specifications for the procurement of air-traffic-management equipment and systems

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/65/EEC of 19 July 1993 on the definition and use of compatible technical specifications for the procurement of air-traffic-management equipment and systems⁽¹⁾, and in particular Articles 3 and 5 (2) thereof,

Whereas in accordance with Article 3 of Directive 93/65/EEC the Commission shall identify and adopt Eurocontrol standards;

Whereas Annex I to Directive 93/65/EEC contains an indicative list of Eurocontrol standards; whereas that list should be as complete as possible;

Whereas Annex II to Directive 93/65/EEC defines the awarding entities responsible for the purchasing of air-navigation equipment; whereas this list needs to be kept up to date;

Whereas, given that Eurocontrol has adopted two standards, it is appropriate that these standards be made mandatory; whereas it is also appropriate that the indicative list in Annex I be amended as a result of introduction by Eurocontrol of the Eatchip programme;

Whereas it is necessary to amend Annex II to take account of changes notified by Member States and further to include the awarding entities of new Member States;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee established in accordance with Directive 93/65/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The mandatory elements of Eurocontrol specifications included in the following Eurocontrol standards documents are adopted in as much as they are necessary for the implementation of an integrated European air-traffic-management system:

— the Eurocontrol standard for on-line data interchange (OLDI), first edition, (Eurocontrol document reference 001-92),

— the Eurocontrol standard for air traffic services data exchange presentation (ADEXP) (Eurocontrol document reference 002-93).

Article 2

Annex I to Directive 93/65/EEC is replaced by the Annex to this Directive.

Article 3

Annex II to the Directive is amended as follows:

1. The awarding entities of Eurocontrol, Belgium, Denmark, France, Greece, Ireland, Italy, Portugal and United Kingdom, are modified as follows:

EUROCONTROL

Rue de la Fusée, 96
B-1130 Bruxelles

Belgium

Régie des Voies Aériennes (RVA/RLW)
Centre Communication Nord (CCN)
rue du Progrès 80 Bte 2
B-1030 Bruxelles

Denmark

Statens Luftfartsvæsen
(Civil Aviation Administration)
Postbox 744
DK-Copenhagen SV

Billund Lufthavn
PO Box 10
DK-7190 Billund

Københavns Lufthavne A/S
PO Box 74
Flyvervej 11
DK-2770 Kastrup

France

Ministre chargé de l'aviation civile
Direction générale de l'aviation civile
48, rue Camille Desmoulins
F-92452 Issy les Moulineaux Cedex

and, where competent:

Aéroport de Paris
291, Boulevard Raspail
F-75675 Paris Cedex 14

⁽¹⁾ OJ No L 187, 29. 7. 1993, p. 52.

Greece

Ministry of Transport and Communications
Civil Aviation Authority
General Directorate of Air Navigation
who delegates in particular to:
Electronics Division
Vasileos Georgiou 1
PO Box 73751-16604 Elliniko
GR-Athens

Ireland

The Irish Aviation Authority
Aviation House
Hawkins Street
IRL-Dublin 2

Aer Rianta Cpt.
Dublin Airport
IRL-County Dublin

Italy

ENAV
Ente Nazionale di Assistenza al Volo
Via Salaria, 715
I-00138 Roma

Portugal

ANA-E.P. (Empresa Pública de Aeroportos e Navegação Aérea).
Rua D, Edifício 120
Aeroporto de Lisboa
P-1700 Lisboa

United Kingdom

National Air Traffic Services Ltd
CAA House
45-59 Kingsway
UK-London WC2B 6TE

Finland

Ilmailulaitos/Luftfartsverket
(CAA Finland)
PO Box 50
FIN-01531 Vantaa

Sweden

Swedish Civil Aviation Administration
Luftfartsverket
Vikboplan 11
S-601 79 Norrköping

Article 4

1. The Member States shall bring into force the provisions necessary for them to comply with this Directive before 1 December 1997 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions they shall include references to this Directive or shall accompany them with such references on their official publication. The Member States shall lay down the manner in which such references shall be made.

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

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 25 March 1997.

For the Commission

Neil KINNOCK

Member of the Commission

2. The following awarding entities are added to the list:

Austria

Austro Control GmbH
Schnirchgasse 11
A-1030 Wien

*ANNEX**ANNEX I***DOMAINS FOR EUROCONTROL STANDARDS AS REFERRED TO IN ARTICLE 3****Indicative list**

Communications

Navigation

Surveillance

Data-processing systems

Airspace management and air traffic management procedures

Air traffic management working rules and operational requirements

Human resources'

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 October 1996

concerning aid granted by the French State to the audiovisual production company Société française de Production

(Only the French text is authentic)

(Text with EEA relevance)

(97/238/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 Article 62 (1) (a) thereof,

Having given the parties concerned notice to submit their comments, in accordance with the abovementioned articles⁽¹⁾,

Whereas:

THE AID CONCERNED

I

This Decision relates to aid of FF 1 110 million granted to Société française de Production (SFP) in the period from 1993 to 1996. FF 860 million of this was paid in 1993 and 1994 and FF 250 million was added in February 1996.

⁽¹⁾ OJ No C 80, 1. 4. 1995, p. 7 and
OJ No C 171, 15. 6. 1996, p. 3.

DESCRIPTION

II

Competitors claimed to suffer from low prices charged by SFP as a result of the aid and lodged a complaint with the Commission on 7 April 1994. The Commission wrote to the French authorities on 22 June 1994 requesting information. After a meeting with Commission representatives on 12 September 1994, the French authorities replied by letter dated 21 October 1994 to the Commission's questions regarding the compatibility of the aid with the common market.

The Commission's doubts nevertheless persisted, especially since no ground could be seen for exempting the aid under Article 92 (3) (c) and (d), and, in addition, because an adequate restructuring plan for the company had not been submitted to the Commission.

These doubts led the Commission to initiate proceedings under Article 93 (2) of the EC Treaty by decision of 16 November 1994. This decision was communicated to the French Government by letter of 1 December 1994. The letter invited the French Government to submit its comments on the Commission's doubts regarding the compatibility of the aid, to present a complete and realistic restructuring plan, and to undertake that no further public financing would be supplied to SFP without the Commission's prior permission (letter published in the 1995 Official Journal referred to in footnote (1)).

The letter in which the French Government undertook not to grant any further aid without the Commission's approval was sent on 16 December 1994. The French authorities submitted their comments by letter dated 16 January 1995.

No comments from other Member States or other interested parties were received by the Commission following the initiation of proceedings.

Subsequently, meetings between Commission representatives and the French authorities were held on 21 December 1995 and 15 February 1996 to discuss the measures the French authorities planned to take regarding SFP and to stress the need for a restructuring plan. The intention of the French Government is to privatize SFP while at the same time restructuring the company.

At the meeting on 15 February 1996, the French delegation produced [...] ⁽¹⁾ on SFP's actual financial situation and its privatization prospects. [...] confirms SFP's problematic financial situation with annual losses of more than FF 100 million, the continued need for financial aid and the need for restructuring.

At that meeting, as at the preceding meeting on 21 December 1995, the French authorities informed the Commission representatives that a new capital injection would be necessary in order to meet SFP's immediate financial needs. A letter from the French Government on 19 February 1996 formally announced new aid of FF 250 million. The Commission extended the proceedings to include this amount by decision of 15 May 1996, which was communicated to the French Government by letter of 4 June 1996 (letter published in the 1996 Official Journal referred to in footnote (1)).

According to the timetable presented by the French authorities at the meeting held on 15 February 1996, parliament was to vote on the necessary privatization law in April 1996 and the transfer of ownership was to take place at the end of June or beginning of July 1996. The French authorities thought it would be possible to present a restructuring plan immediately after parliament's adoption of the privatization law in April 1996. Additional details on the privatization of SFP were provided in a letter which the French authorities sent to the Commission on 27 February 1996.

More than 18 months have passed since the initiation of proceedings, and the Commission representatives have reminded the French authorities on several occasions of their obligation to present a restructuring plan. It clearly informed them at the meeting on 15 February 1996 that it would wait no longer than until the end of April 1996 for the submission of a restructuring plan and that otherwise a negative decision would be taken.

That deadline passed four months ago and the plan has not yet been submitted to the Commission. From the fax sent by the French Government to the Commission on 1 July 1996 on the progress of the restructuring, it can be concluded that such a plan is far from ready since it will not be available before the end of September 1996. By letter dated 29 August 1996 the French authorities provided information on an offer for the take-over of SFP. The offer contains a proposal from the bidder to reorganize SFP, but the French authorities did not indicate whether the French Government intended to accept this bid and whether it thus will be taken into consideration. This proposal can therefore not be regarded as the necessary restructuring plan.

III

The aid concerned has to be seen in the overall context of the development of the audiovisual market in France.

In 1974, the national radio and television broadcasting company ORTF was split up: television production was taken over by the newly-established company SFP and broadcasting by several other organizations. However, SFP continued to enjoy a protected position on the French audiovisual market. At the moment, SFP is 100 % controlled by the French State [...].

SFP consists of a holding company and three operational subsidiaries: studios, video and productions. The holding company (with 67 staff) was set up in 1994. It supplies some services (legal advice, staff management) to the other divisions.

The studios subsidiary (a wholly-owned subsidiary) provides a whole range of services associated with the production of shows, games and advertising for television. It comprises the following departments (situation at the end of 1995):

- 'show, games; advertising': eight staff to liaise with customers,
- 'filming': 334 staff; supplies, mainly to television companies, film crews and film equipment,
- 'sets': 54 staff; produces the sets for television programmes; several fixed sets are made available to producers or broadcasters for the production of television shows,
- 'management of operations' and 'functional services': 111 staff; (these departments coordinate the different skills required for production and provide general services within Studios,
- 'France costumes': 12 staff; provides costumes for television and film production.

⁽¹⁾ Confidential.

The video subsidiary specializes in the broadcasting of large (sports) events which require a large fixed and mobile filming capacity. It does also filming work for the Studios subsidiary. It comprises two departments:

- 'equipment': 213 staff (1993 figure); supplies film crews and film equipment,
- 'post production video': 63 staff (1993 figure); edits the video work.

The third subsidiary is productions: 43 staff (1993 figure). It (co-)produces programmes or television channels and cinema movies. Its two departments are 'cinema' and '15-30 productions'.

IV

In 1986 free competition was introduced for audiovisual production. SFP was not used to operating in a competitive environment; it lost turnover and got into financial difficulties. That resulted in drastic cuts in staffing, from the 2 515 employees in 1985 to 1 056 at the end of 1995. Turnover in 1995 was FF 646 million.

The losses made since 1986 have been offset by the State and the other public shareholders. The total amount of public aid granted since 1986 is more than FF 2 billion.

For the period from 1986 to 1990, an initial aid operation involved the payment of a total of FF 940 million, while a second operation, carried out in 1991, resulted in the payment of an additional FF 320 million, giving a total of FF 1 260 million (ECU 194 million). The Commission approved the first aid by decision of 27 February 1991 and the second one by decision of 25 March 1992.

The French authorities stated, when the 1992 decision was adopted, that that would be the last aid operation. However, despite their declarations, the French authorities continued to provide financial support to the company as, notwithstanding the optimistic forecasts regularly made on its situation, it proved incapable of adapting sufficiently to competition.

That led to a third aid operation under which the State granted the company another FF 460 million in 1993 and FF 400 million in 1994, a total of FF 860 million (ECU 132 million). The Commission initiated proceedings in respect of that aid by decision of 16 November 1994.

The fourth and most recent aid operation amounting to FF 250 million (ECU 39 million) was announced by the

French authorities on 16 February 1996. The Commission extended the proceedings to include this new aid by decision of 15 May 1996.

The total aid for the company during the period from 1986 to 1996, including the most recent aid operation, stands at FF 2 370 million (ECU 365 million).

V

When the first aid operation (1986-1990) was carried out, it was argued by the French authorities that the company would regain its financial equilibrium in 1992 on the basis of a restructuring plan for the years 1990 and 1991, approved by the SFP shareholders on 13 June 1990. That plan was based, firstly, on the hypothesis that SFP would be able to restore its position on the market and increase its turnover, and, secondly, on measures intended to reorganize the company, reduce its fixed costs (in particular through staff cutbacks and the sale of part of its fixed assets) and seek partners for some of its activities.

The second aid operation (1991) was necessary because the results achieved by the 1990 plan were disappointing. Turnover did not develop as expected because of lower than expected demand for the services provided by SFP. The staff cutbacks were implemented, but they do not seem to have been sufficient. Sales of the fixed assets and partnerships could not be achieved.

The new restructuring plan submitted provided for continued efforts to achieve reorganization, through a further reduction in fixed costs (the renegotiation of staff working conditions was also included under this heading) and the conclusion of partnerships. A return to financial health was promised for 1994.

According to the French authorities, the third aid operation (1993-94) was necessary in order to allow the company to honour its debt servicing and meet the costs of lay-offs and for the coverage of the cash-flow lacking because of the delay in the sale of fixed assets. The French Government predicted that financial equilibrium would be restored by the end of 1995. However, the adjustment efforts required of the company are still slow to produce results: staff levels and salaries are still too high and must both be reduced. [...] The search for partners has so far proved fruitless. Several of the old problems have therefore still not been solved and further reorganization is necessary.

Press reports suggest that SFP made a loss of FF 270 million in 1995 on a turnover of FF 646 million.

The Commission decision of 25 March 1992 clearly indicated that the second aid operation was to be the last. The aid currently being examined, which has actually been paid, is therefore a clear breach of the undertaking given by the French State that the second aid operation would be the last one.

POSITION OF THE FRENCH GOVERNMENT

VI

The French Government believes that the aid is compatible on three grounds:

- restructuring measures are being undertaken. As indicated above, the measures comprise the same actions and pursue the same objectives as when the Commission authorized the previous aid,
- the aid paid serves to offset SFP's high costs and does not enable it artificially to undercut market prices;
- the audiovisual production markets are for linguistic reasons national markets. SFP operates mainly on the French market and its competitors are French companies. In the opinion of the French authorities, the aid does not therefore affect trade between Member States.

ASSESSMENT

VII

The financial aid was decided on and paid without prior notification of the Commission and is therefore illegal.

The Commission has to address the following questions:

- Do the financial contributions provided by the State constitute aid within the meaning of Article 92(1) of the Treaty? For that they must:
 - be granted by a Member State or through State resources,
 - distort or threaten to distort competition by favouring certain undertakings or the production of certain goods,
 - affect trade between Member States.
- Does the aid qualify for one of the derogations provided for in Article 92, and in particular Article 92 (3) (c) or (d)?

The financial contributions paid by the French State are to the sole benefit of Société française de production (SFP) to the exclusion of other companies and favour that enterprise compared to its competitors. A private investor would not have agreed to a third and fourth financial intervention without firm prospects of profitability. In this context it is irrelevant whether the contribution by the public shareholders took the form of a grant or a

share capital operation ('capital injection'). In the latter case, it has to be noted that, although as from 1990 it was predicted that the company would recover rapidly, the company continued to show a deficit in 1995, even with the previous aid operation, and that there are no signs of any improvement. The restructuring measures referred to by the French Government (see point V) are not sufficient:

- the public-sector collective wage agreement should no longer be applied since at present SFP does not have a competitive wage-cost structure; however, it is doubtful whether a new wage agreement can be concluded,
- attempts to find partners for the various activities are proving much more difficult than expected,
- moreover, the proper restructuring plan the Commission asked for when proceedings were initiated has still not been submitted by the French authorities, while the measures proposed and implemented so far are not sufficient to ensure the company's viability; the aid therefore amounts to operating aid, which cannot be authorized.

VIII

The Commission considers that the aid affects trade between Member States within the meaning of Article 92 (1). According to the French Government, only a limited part of SFP's production (10 % of video production) is intended for the international competitive market. This does not, however, alter the fact that the financial aid places SFP in a better position to market its services in other Member States or the States which are parties to the EEA Agreement and that the aid makes it more difficult for the services provided by foreign audiovisual companies to penetrate the French market.

It must also be borne in mind that a European market for television and film productions exists. This takes the form of co-productions by European producers and the broadcasting of audiovisual productions in countries other than the country of production. This is especially the case for the French market where the French Government pursues an active policy of dissemination of French productions to other countries.

Even though cultural and linguistic diversity plays a part in market partitioning and only 20 % of European films find a market beyond their national frontiers⁽¹⁾, the substantial support granted to SFP helps to reinforce this partitioning. As indicated above, the aid reduces the scope for productions from other Member States to be sold in France.

⁽¹⁾ *Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union* - Green Paper, COM(94) 96 final of 6 April 1994.

The aid must therefore be regarded as being caught by Article 92 (1) of the Treaty. That analysis is not affected by the argument that the financial contributions do not serve to cover operating costs due to prices which are abnormally low or lower than market prices for which no evidence has been given by the French Government. Even if that were the case, the fact remains that, as acknowledged by the French authorities, the purpose of the aid is to maintain on the market cost-inefficient suppliers who are ill-adapted to competition. The aid enables them artificially to maintain their activity, market share and employment levels to the detriment of other players in the market.

Furthermore, no public-service obligation relating to the promotion of culture and conservation of cultural heritage, which might possibly have justified State support, can be adduced in respect of the services provided by SFP.

IX

The derogations provided for in Article 92 (2) and Article 92 (3) (a) and (b) are not relevant in this case. The Commission has thus examined whether the aid is eligible for one of the derogations provided for in Article 92 (3) (c) and (d).

The aid is intended to ensure SFP's survival. The Commission has adopted guidelines⁽¹⁾ setting out the conditions governing application of the Article 92 (3) (c) derogation to aid for firms in difficulty. The guidelines specify a number of criteria which the aid must fulfil:

- the aid must be linked to a restructuring/recovery programme submitted in all relevant detail to the Commission and capable of restoring the long-term viability and health of the firm within a reasonable period,
- the measures proposed must distort competition as little as possible and must be in line with the common interest. There must be an effect on the recipient's market position which offsets the distortive effect on competition to a reasonable extent,
- the aid must be limited to the strict minimum required.

The Commission asked for an adequate reorganization plan in its decision of 16 November 1994 initiating proceedings in respect of the third aid operation. Following the decision, the French authorities submitted

on 16 January 1995, 15 February 1996 and 29 August 1996 [...] concerning SFP's situation and the reorganization efforts undertaken. [...] have to be examined in order to assess whether they contain sufficient information to be regarded as the required restructuring plan.

[...] mainly repeat what the French Government previously communicated to the Commission in respect of the first two aid operations. The 16 January 1995 [...] describes the company's poor financial situation and the need to reduce staff, review working conditions, sell off part of the fixed assets and establish partnerships so as to transfer some of its activities. However, the [...] does not present any credible arguments to suggest that the company can satisfactorily carry out the necessary measures, that such measures will sufficiently contribute to the viability of the firm, that they will distort competition as little as possible and that the aid is confined to the strict minimum required. The [...] cannot therefore be considered to be the required restructuring plan.

The 15 February 1996 [...] is [...] and was presented by the French authorities as a restructuring plan. [...] SFP's current financial situation and discusses considerations regarding the privatization of SFP. [...] that staff costs are still excessive and that turnover is not under control. This explains why the financial equilibrium which the 16 January 1995 document predicted for 1995 has still not been achieved and is an illustration of the fact that most of the measures envisaged have not been implemented. [...] a restructuring plan must accompany the bids of third parties who are interested in a take-over of the company.

By letter of 29 August 1996 the French authorities transmitted information concerning an offer for the take-over of SFP. That offer contains a proposal from the bidder on the reorganization of SFP, but the French authorities did not indicate whether the French Government intended to accept that bid and whether it was thus going to be taken into consideration. The proposal cannot therefore be regarded as the necessary restructuring plan.

The conclusion is that more than 18 months have passed since the initiation of proceedings and that, although the Commission representatives have reminded the French authorities on several occasions of their obligation to present a restructuring plan, the plan is still not forthcoming. It was therefore expressed clearly at the meeting of 15 February 1996 that the Commission would wait no longer than until the end of April 1996 for the submission of a restructuring plan and that otherwise a negative decision would be taken. This deadline passed five months ago and the plan has not yet been submitted to the Commission.

⁽¹⁾ Community guidelines on State aid for rescuing and restructuring firms in difficulty, (OJ No C 368, 23.12.1994).

Without an adequate restructuring plan, the loss-making situation will persist and the aid will therefore rank as operating aid (see point VII). Such aid cannot be allowed under Article 92 (3) (c) (concerning aid to facilitate the development of certain economic activities or of certain economic areas).

It must be concluded that the aid is intended to ensure the survival of SFP and is in the nature of operational aid; no factors have been put forward by the French Government which would permit the view to be taken that the purpose of the aid is to promote culture and heritage conservation within the meaning of Article 92 (3) (d).

In addition, owing in particular to its negative effects on the partitioning of European markets, a factor which the Commission regards as one of the main handicaps of the European film and television programme industry, the aid is not likely to contribute to the Community objective of developing a competitive European industry on the world market. This finding is reinforced by the fact that the aid will not restore SFP's viability. Article 92 (3) (d) does not therefore provide a basis for authorizing the aid to SFP. The consequences of not granting the aid, namely a further decline in SFP's situation to the benefit of more competitive (French) companies, do not therefore provide an appropriate basis for invoking Article 92 (3) (d).

The conclusion must be that the aid is incompatible with the common market since there are no grounds for applying one of the derogations provided for in Article 92 (2) or (3).

X

Since the French Government did not notify the aid measure in advance, the Commission was not able to submit its comments on it before it was implemented. The grant and payment of aid without prior notification constitute an infringement of Article 93 (3) of the Treaty. The aid of FF 1 110 million is therefore illegal and, since

it is also incompatible, it should be paid back by the recipient,

HAS ADOPTED THIS DECISION:

Article 1

The aid of FF 1 110 million granted by the French authorities in the period from 1993 to 1996 to SFP is illegal since it was awarded in breach of the procedure provided for in Article 93 (3). The aid is also incompatible with the common market.

Article 2

The French Government shall recover from SFP the amount of FF 1 110 million referred to in Article 1, together with interest covering the period from the date when the illegal aid was granted to the date of repayment. The interest rate shall be the reference interest rate for France used by the Commission in assessing the aid element in regional investment aid.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 2 October 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 4 December 1996

concerning aid granted by Belgium under the Maribel *bis/ter* scheme

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(97/239/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 establishing the European Economic Area, and in particular the first subparagraph of Article 61 (1) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the above-mentioned Articles,

Whereas:

I

By letter dated 9 July 1996⁽¹⁾, the Commission informed the Belgian Government of its decision to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of aid granted under the Maribel *bis/ter* scheme to undertakings which carry on their principal activity in one of the sectors most exposed to international competition.

In response to the request made by the Commission in its letter dated 4 February 1994, the Belgian authorities communicated to it, by note dated 29 March 1994, the amendments made to the Maribel scheme, which had become Maribel *bis*, the purpose of which is to grant to undertakings that are 'most exposed to international competition' benefits in addition to those provided for in the initial scheme. The Commission received further details on 12 September 1994 and on 7 March, 16 August, 28 September and 18 December 1995. This information has enabled the Commission to establish the following:

The Maribel scheme was introduced for an indefinite period by the Belgian Law of 29 June 1981 laying down the general principles of social security for wage earners. Under Article 35 of that Law, undertakings employing manual workers qualify for a reduction in social security contributions for all such workers. The reduction was

initially set at 6,17 % of the earnings of the workers concerned. Since it was general and automatic, that measure was not deemed to constitute aid falling within the scope of Article 92 (1) of the EC Treaty. By Royal Decree of 12 February 1993, the reduction in social security contributions was set at Bfrs 1 875 per quarter and per worker employed, i.e. Bfrs 7 500 per year.

A further amendment introduced by Royal Decree of 14 June 1993 and known as 'opération Maribel *bis*' provides that the quarterly amount of Bfrs 1 875 is increased to Bfrs 6 250 (Bfrs 8 437 since 1 January 1994 under 'Maribel *ter*') where the employer carries on his principal activity in one of the sectors most exposed to international competition. Accordingly, the reduction in those sectors is, with effect from 1 January 1994 (or from 1 April 1994 for the transport activities concerned), Bfrs 33 748 per worker per year. The aid granted to the undertakings concerned, i.e. the difference between the basic reduction and the increased reduction, is therefore Bfrs 26 248 per worker per year.

For undertakings with fewer than 20 employees, the reduction in respect of their first five workers was set by Royal Decree of 12 February 1993 at Bfrs 2 825 per quarter and per worker employed (Bfrs 3 000 since 1 July 1993). For the sectors most exposed to international competition, this amount was increased to Bfrs 7 200 under Maribel *bis* and Bfrs 9 300 under Maribel *ter*. The benefit nevertheless satisfies the *de minimis* criteria and therefore does not fall within the scope of Article 92 of the EC Treaty. (The net aid, i.e. the difference between the reductions for these small undertakings and those for other undertakings, does not exceed ECU 1 744 over a three-year period.)

According to the additional information obtained from the Belgian authorities, the undertakings which qualify for the increased reduction are those which carry on their principal activity in sectors involving the extraction and processing of non-energy materials and by-products, the chemical industry, the metal-processing industry, the mechanical engineering industry, the instrument engineering industry and certain other processing industries, and in certain service and transport activities, including international road transport.

⁽¹⁾ SG(96) D/6225.

In 1995 the Maribel scheme cost Bfrs 18 billion (ECU 465,1 million), Bfrs 11,4 billion of which (ECU 294,59 million) was accounted for by the cost of the increase and therefore represents the amount of aid.

The matter of the introduction of increased reductions for certain undertakings was raised with the Commission by two companies. One of them argued that support for the sectors of the Belgian economy most exposed to international competition seemed to be incompatible with Article 92 of the EC Treaty, while the other complained that the granting of increased reductions to certain other undertakings was discriminatory and demanded to be afforded equal treatment.

The Commission decided to initiate the procedure laid down in Article 93 (2) of the EC Treaty after establishing that the increased reductions in social security contributions provided for under Maribel *bis* and *ter* constituted State aid falling under Article 92 (1) of the EC Treaty and that, in the light of the information in its possession, they could not qualify for any of the derogations laid down in Article 92 (2) and (3).

In the context of that procedure, the Commission invited the Belgian Government to submit its observations. The other Member States and interested parties were informed of the Commission's decision to initiate proceedings and invited to submit their observations by publication of a notice in the *Official Journal of the European Communities*⁽¹⁾.

The Belgian Government's observations were submitted to the Commission by letter dated 5 August 1996, registered on 8 August 1996.

The Commission also received observations from the Dutch Government and from several employers and workers organizations in the Netherlands. Those observations were passed on to the Belgian authorities by letters dated 26 September 1996 and 1 October 1996; the Belgian authorities commented on them in a letter received by the Commission on 17 October 1996.

II

The observations submitted by the Belgian authorities may be summarized as follows:

- the Belgian Government proposed to modify the scheme by 'devising a new scheme which would be completely different from the existing one, while pursuing the same objectives'. According to the proposal, the increased reduction would be granted to employers who carry on their activity mainly in sectors corresponding to the following divisions of the NACE nomenclature:

- agriculture, hunting, forestry and fishing (Sections A and B),

- mining and quarrying (Section C),
- manufacturing (Section D),
- transport, storage and communication (Section I);

- it adduced the following arguments in support of the proposed scheme:

- restriction of the reductions to manual workers was 'justified by the nature and structure of the scheme, since the social security and additional social security system, labour law and the organization of manual workers differ fundamentally from those of non-manual workers. This means that, among other things, the risks of redundancy and long-term unemployment are significantly higher for manual than for non-manual workers'. Limitation of the scheme to industry was also justified, according to the Belgian authorities, by the fact that 'it is industry which employs most of the manual and low-paid workers, with low pay reflecting the low skill levels of workers',

- the aim of the increased reduction was to 'promote job creation in industry so that the Belgian economy does not in future come to rely too heavily on services',

- the principle of a flat-rate reduction tended to encourage the sharing-out of available work and the creation of part-time jobs,

- exclusion of the building industry was justified by the fact that it had its own, more favourable, social security and taxation systems.

III

In their observations, the Dutch Government and the Dutch employers and workers organizations took the view that the increased reduction granted to undertakings which carry on their principal activity in one of the sectors most exposed to international competition gave them a significant advantage over their competitors in the Netherlands and constituted aid that was incompatible with the common market.

IV

By omitting to notify the Commission in advance of the State aid elements of the Maribel *bis* scheme, the Belgian Government has failed to fulfil its obligations under Article 93 (3) of the EC Treaty. Aid granted on that basis is therefore illegal.

The fact that the Maribel *bis/ter* scheme reserves the benefit of the increased reduction in social security contributions to certain specific activities is an advantage

⁽¹⁾ OJ No C 227, 6. 8. 1996, p. 8.

constituting State aid caught by Article 92(1) of the EC Treaty. By according this advantage to certain undertakings only, the scheme relieves them of some of their costs and confers on them financial advantages which improve their competitive position. Given that under the rules, the granting of the additional reduction is explicitly reserved to undertakings doing business principally in one of the sectors most exposed to international competition, the goods produced and services provided by those firms compete, by definition, with those produced and provided by foreign undertakings, including those from other Member States, and the aid in question therefore affects intra-Community trade.

The aid cannot qualify for any of the derogations laid down in Article 92(2) and (3) of the EC Treaty.

The derogation provided for in Article 92(2) cannot apply since the aid is neither granted to individual consumers, nor is it intended to make good the damage caused by natural disasters or exceptional occurrences, nor is it granted to certain areas of Germany.

The derogation laid down in Article 92(3)(a) does not apply either, since the aid covers the whole of Belgium.

The same is true of the derogation laid down in Article 92(3)(b), since the aid is not granted to promote an important project of common European interest or to remedy a serious disturbance in the Belgian economy.

Similarly, the derogation provided for in Article 92(3)(c) is not applicable, for the following reasons. Since the aid takes the form of reductions in social security contributions, the Belgian Government argues that it is a measure to promote employment. Such an interpretation cannot be accepted in this case. In its guidelines on aid to employment⁽¹⁾, the Commission has set out the criteria whereby it assesses aid to employment in the light of the derogation laid down in Article 92(3)(c). The aid granted under the scheme in question here does not fall into any of the categories to which the Commission can give sympathetic consideration: it is not linked to the creation of jobs in small and medium-sized enterprises (SMEs) or in regions eligible for regional aid, or to the hiring of certain groups of workers experiencing particular difficulties entering or re-entering the labour market; neither does it promote job sharing.

According to the above Guidelines, the Commission may authorize certain aid measures to maintain jobs in the event of natural disasters or exceptional occurrences and, under certain conditions, in regions eligible for the derogation provided for in Article 92(3)(a). Where certain types of aid to maintain jobs are planned as part of a

rescue and/or restructuring plan for an ailing undertaking, it may also allow them once it has assessed them in the light of the guidelines it has laid down for that purpose⁽²⁾.

The aid granted under the Maribel *bis/ter* scheme does not fall into any of the above categories. First, it is in the nature of operating aid to the recipient undertakings without any social or economic compensatory contribution on their part, inasmuch as the increased reduction is granted on a continuous basis for all manual workers employed by them, even if their total workforce has declined.

Secondly, it is, by definition, aid whose primary purpose is to reduce the costs of undertakings which are either exporters or face competition from imports into Belgium of goods produced and services provided by foreign undertakings, including undertakings from other Member States. It is worth noting here that, in the statement on its overall plan for employment which it transmitted to the Commission on 27 December 1993, the Belgian Government pointed, among other things, to the contraction in exports as a justification for granting greater reductions in social security contributions.

The aid currently granted under the Maribel *bis/ter* scheme is therefore nothing more than operating support for undertakings, its direct purpose being the enhancement of their international competitiveness at the expense of their competitors in other Member States. Such aid entails a direct risk of adversely affecting the position of rival undertakings from other Member States and can in no way be said to be in the common interest. It is therefore incompatible with the common market.

V

The observations submitted by the Belgian Government in its letters of 5 August 1996 and 17 October 1996 prompt the Commission to make the following comments.

First, as the Commission pointed out in its communication on the monitoring of State aid and reduction of labour costs, which it sent to the Member States by letter dated 13 September 1996⁽³⁾, the fact that the reductions are granted for manual workers only does not in itself mean that the scheme constitutes a State aid scheme, because it does not designate a specific group of undertakings as the recipients. The Belgian authorities' argument that the limitation to manual workers is justified 'by the nature and structure of the scheme' is therefore not relevant here.

On the other hand, the limitation of the scheme to certain sectors of the economy (mainly industry) cannot be justified on the grounds that it supports the employ-

⁽¹⁾ OJ No C 334, 12. 12. 1995, p. 7.

⁽²⁾ Community guidelines on State aid for rescuing and restructuring firms in difficulty, (OJ No C 368, 23. 12. 1994, p. 12).

⁽³⁾ SG(96) D/8024.

ment of manual workers, since only 47 % of workers in this category are covered by the increased reduction (582 516 workers out of a total of 1 235 954; figures valid at 30 June 1993); furthermore, the other sectors of the economy, which account for 53 % of the manual workforce, comprise certain fields, in services and in building and construction, which are particularly important for this category of jobs. Limitation of the measure to certain sectors does therefore make it selective and has the effect of reserving the additional advantage to undertakings facing keener international competition⁽¹⁾, despite the fact that the words 'sectors most exposed to international competition' are no longer used explicitly. This is borne out by points made in the letter addressed to the Commission by the Belgian authorities on 9 August 1995, which stated: "The 'facelift' of Article 1 of the Royal Decree, i.e. the deletion of the phrase 'which carries on its principal activity in one of the sectors most exposed to international competition', does not pose any problem for the national social security institution as regards the description of the employers in question since reference to the NACE code is sufficient'.

The scheme is therefore not intended to promote the hiring of manual workers as such and is not a measure to encourage job creation, but it does alleviate the burden of social security contributions on undertakings, irrespective of the contribution they make to employment: the aid continues to be granted in respect of each manual worker employed by the undertaking, even if its workforce was reduced during the previous year.

The Belgian authorities' declared objective to 'promote job creation in industry so that the Belgian economy does not in future come to rely too heavily on services' cannot be achieved through measures which are incompatible with the EC Treaty. Neither does the means used in this case correspond to the declared objective since, as stated earlier, the measure constitutes operating aid for undertakings and not aid for creating jobs.

Lastly, the Belgian authorities argue that, even after the increased reduction under the Maribel *bis/ter* scheme, employers' social security contributions are still much higher in Belgium than in the Netherlands and that the reduction does not therefore distort competition.

That argument cannot be accepted. The Commission has always maintained the view, which has been explicitly

confirmed by the Court of Justice⁽²⁾, that, although the general conditions in which businesses operate can vary from one Member State to another, a Member State cannot single out a particular factor from those general conditions, in the case in point social security contributions, and offset, by means of reductions the additional costs arising from that factor for its own undertakings as compared with their competitors in other Member States while at the same time disregarding other factors in the situation which could favour its own undertakings.

VI

In the observations they sent to the Commission in the course of the procedure, the Belgian authorities mentioned that they might devise a new scheme which, while pursuing the same objectives, would differ from the existing one. If the Belgian authorities were to decide to go ahead with this idea, the plan would have to be notified to the Commission under Article 93(3) of the EC Treaty to enable it to decide whether the scheme is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The increased reduction in social security contributions in respect of manual workers granted under the Maribel *bis/ter* scheme to employers who carry on their principal activity in one of the sectors most exposed to international competition constitutes illegal State aid because it was not notified to the Commission in advance in accordance with Article 93(3) of the EC Treaty. It is furthermore incompatible with the common market within the meaning of Article 92(1) of the EC Treaty and cannot qualify for any of the derogations laid down in Article 92(2) and (3).

Article 2

Belgium shall take appropriate measures to terminate forthwith the granting of the increased reductions in social security contributions referred to in Article 1 and shall recover the illegal aid from the recipient undertakings. The aid shall be repaid in accordance with the

⁽¹⁾ See points 21 and 22 of the Commission communication on the monitoring of State aid and reduction of labour costs (SG(96) D/8024).

⁽²⁾ Judgment of 10 December 1969 in Joined Cases 6 and 11/69, *Commission v. France* [1969] ECR 523; Judgment of 2 July 1974 in Case 173/73, *Italy v. Commission* [1974] ECR 709.

procedures and provisions of Belgian law, with interest charged, from the date the aid was granted until the date it is actually repaid, at a rate equal to the percentage value on that date of the reference rate used for the calculation of the net grant equivalent of regional aid in Belgium.

Article 3

Belgium shall inform the Commission of the measures it has taken to comply with this Decision within two months of the date of its notification.

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 December 1996.

For the Commission

Karel VAN MIERT

Member of the Commission

CORRIGENDA

Corrigendum to Council Regulation (EC) No 2250/95 of 18 September 1995 amending for the fifth time Regulation (EEC) No 1866/86 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound

(Official Journal of the European Communities No L 230 of 27 September 1995)

On page 9, in Annex III, new Annex V, Diagram 2, Figure 2, second line of second part of text on the right of the page:

for: '4 mm double polyethelene',

read: 'Ø 4 mm double polyethelene';

on page 10 in Figure 3, text on right of the page:

for: 'Codend',

read: 'Codend in 120 mm';

and:

for: '4 mm double polyethelene',

read: 'Ø 4 mm double polyethelene'.
