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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1181/98
of 4 June 1998
amending Regulation (EEC) No 3760/92 establishing a Community system for
fisheries and aquaculture

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Article 1

Regulation (EEC) No 3760/92 is hereby amended as follows:

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

1. Article 8(2) shall be replaced by the following:

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

‘2. Where restrictions must be placed on the exploitation rates of fishery within or outside Community fishing waters for Community vessels, or within Community fishing waters for vessels flying the flag of a third country, they shall be fixed in accordance with paragraphs 3 and 4.’

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

2. in Article 8(4):

Whereas Article 8 of Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽⁴⁾, lays down that the Council is to determine for each fishery or group of fisheries the total allowable catch and to allocate a total allowable fishing effort for these fisheries between the Member States; whereas that Article does not provide for the exercise of powers by the Council as regards allocating catches in Community waters to vessels of third countries authorised to fish in those waters; whereas powers to establish the fishing opportunities for allocation to third countries and to set the technical conditions under which catches must be made should accordingly be conferred;

(a) point (i) shall be replaced by:

‘(i) shall determine for each fishery or group of fisheries, on a case-by-case basis, the total allowable catch together with the conditions linked to these restrictions of catches and/or the total allowable fishing effort, where appropriate on a multiannual basis. They shall be based on the management objectives and strategies where they have been established in accordance with paragraph 3;’

(b) the following point shall be added:

‘(vi) shall establish the fishing opportunities to be allocated to third countries and the specific conditions under which catches must be made.’

Whereas the temporary technical conservation measures associated with the conditions under which the quotas can be fished may be adopted using the same procedure as that laid down for establishing the total allowable catch,

Article 2

⁽¹⁾ OJ C 316, 25. 10. 1996, p. 13.

⁽²⁾ OJ C 286, 22. 9. 1997, p. 37.

⁽³⁾ OJ C 89, 19. 3. 1997, p. 23.

⁽⁴⁾ OJ L 389, 31. 12. 1992, p. 1. Regulation as amended by the 1994 Act of Accession

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

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

Done at Luxembourg, 4 June 1998.

For the Council

The President

D. BLUNKETT

COMMISSION REGULATION (EC) No 1182/98
of 8 June 1998
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 9 June 1998.

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

Done at Brussels, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 325, 14. 12. 1996, p. 5.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 8 June 1998 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 00	204	85,8
	999	85,8
0707 00 05	052	94,8
	999	94,8
0709 90 70	052	69,8
	999	69,8
0805 30 10	382	56,3
	388	56,3
	528	59,1
	999	57,2
0808 10 20, 0808 10 50, 0808 10 90	388	71,2
	400	86,1
	404	91,1
	508	93,2
	512	75,3
	524	63,6
	528	65,5
	804	104,5
	999	81,3
	052	293,8
0809 10 00	999	293,8
	616	376,1
0809 20 95	999	376,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2317/97 (OJ L 321, 22. 11. 1997, p. 19). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1183/98

of 8 June 1998

amending Regulation (EEC) No 220/91 laying down detailed rules for the application of Regulation (EC) No 952/97 on producer groups and associations thereof

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 952/97 of 20 May 1997 on producer groups and associations thereof⁽¹⁾,

Whereas Commission Regulation (EEC) No 220/91⁽²⁾, as last amended by Regulation (EC) No 386/96⁽³⁾, lays down detailed rules of application covering the economic activities of producer groups and associations thereof;

Whereas, in view of the results of application in certain Member States, some adjustments should be made to the minimum membership laid down for certain sectors of production in order to facilitate the setting-up of producer groups so as to achieve sufficient concentration of supply;

Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee on Agriculture Structures and Rural Development,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 220/91 is hereby amended as follows:

1. The particulars relating to the following CN codes in Table IV are replaced by the following.

IV. Producer groups and associations of producer groups in Greece

CN code	Description	Producer groups		Associations			
		Volume of production or turnover	Minimum membership	Minimum area or equivalent	Turnover (ECU million)	Share of national production (%)	Minimum membership
'1509 1510 00	Olive oil	50 tonnes	100	7 700 ha or 3 000 tonnes	7,0	1	10'

⁽¹⁾ OJ L 142, 2. 6. 1997, p. 30.

⁽²⁾ OJ L 26, 31. 1. 1991, p. 15.

⁽³⁾ OJ L 53, 2. 3. 1996, p. 1.

2. The particulars relating to the following CN codes in Table V are replaced by the following.

V. Producer groups and associations of producer groups in Spain

CN code	Description	Producer groups		Associations		
		Volume of production or turnover	Minimum membership	Minimum area or equivalent	Turnover (ECU million)	Share of national production (%)
0401	Milk and cream, not concentrated nor containing added sugar or other sweetening matter					
0406	Cheese and curd					
	(a) Of cows' milk ⁽³⁾	4 000 tonnes	30	100 000 tonnes	25,0	2,5
	(b) Of sheeps' milk	1 000 tonnes	25	20 000 tonnes	10,0	10,0
	(c) Of goats' milk ⁽³⁾	1 000 tonnes	25	10 000 tonnes	3,0	2,5
Chapter 6	Live plants and floricultural products	ECU 1,5 million	15		8,0	5
0701 90 51	Potatoes, fresh or chilled ⁽⁵⁾					
0701 90 59	(a) New potatoes	4 000 tonnes	25	4 300 ha	15,0	5,0
0701 90 90	(b) Potatoes for human consumption	8 000 tonnes	25	8 700 ha	21,0	2,5
	Cereals ⁽⁶⁾ ⁽⁷⁾ :	15 000 tonnes	200	160 000 ha	60,0	2,0
1001	Wheat and meslin					
1002 00 00	Rye					
1003 00	Barley					
1004 00	Oats					
1005	Maize					
1007 00	Grain sorghum					
ex 1201 to ex 1207	Oilseeds and oleaginous fruits other than for sowing ⁽⁴⁾	ECU 1 million	200	23 000 ha	10,0	2,5
1509	Olive oil and its fractions, whether or not refined, but not chemically modified	1 200 tonnes (in oil)	100	58 000 ha	30,0	5,0
ex 2204	Wine of fresh grapes, including fortified wines:					
	(a) Table wine	150 000 hl (in wine)	200	56 800 ha	60,0	5,0
	(b) Quality wines produced in specified regions (quality wines psr)	25 000 hl	100	10 000 ha	15,0	2,5'

3. The particulars relating to the following CN codes in Table VIII are replaced by the following.

VIII. Producer groups and associations of producer groups in Austria

CN code	Description	Producer groups		Associations			
		Volume of production or turnover	Minimum membership	Minimum area or equivalent	Turnover (ECU million)	Share of national production (%)	Minimum membership
'1207	Other oilseeds and oleaginous fruits, whether or not broken	500 000 ECU	50	—	—	—	—
ex 1209	Seeds of forage plants, other than beet seed						
1211	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered (*)						
2204 30 10	Grape must, in fermentation or with fermentation arrested otherwise than by the addition of alcohol	10 000 hl	50	—	—	—	—'
2204 10 2204 21 2204 29	Wine of fresh grapes: grape must with fermentation prevented or arrested by the addition of alcohol, including mistelle						

4. The following table is added.

'VIIIa. Producer groups and associations of producer groups in Austria (organic production)

CN code	Description	Producer groups		Associations			
		Volume of production or turnover (ECU)	Minimum membership	Minimum area or equivalent	Turnover (ECU million)	Share of national production (%)	Minimum membership
0102	Live bovine animals	1 million	50	—	—	—	—
ex 0201 ex 0202	Meat of bovine animals, fresh, chilled or frozen (*)						
0103	Live swine	1 million	50	—	—	—	—
ex 0203	Half-carcases of swine, fresh, chilled or frozen (*) (*)						
0105	Live poultry, that is to say, fowls of the species <i>Gallus domesticus</i> , ducks, geese, turkeys and guinea fowls (*)	1 million	50	—	—	—	—

CN code	Description	Producer groups		Associations			
		Volume of production or turnover (ECU)	Minimum membership	Minimum area or equivalent	Turnover (ECU million)	Share of national production (%)	Minimum membership
0207	Meat and edible offal, of live poultry, that is to say, fowls of the species <i>Gallus domesticus</i> , ducks, geese, turkeys and guinea fowls, fresh, chilled or frozen	1 million	50	—	—	—	—
0407	Birds' eggs, in shell, fresh, preserved or cooked ⁽²⁾	1 million	50	—	—	—	—'

5. The particulars relating to the following CN codes in Table IX are replaced by the following.

IX. Producer groups in Finland (conventional production)

CN code	Description	Producer groups	
		Volume of production or turnover	Minimum membership
'0104 ex 0204	Live sheep and goats ('); meat of sheep or goats, fresh, chilled or frozen	2 000 head	20'

Article 2

This Regulation shall enter into force on the third 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, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1184/98

of 8 June 1998

temporarily suspending the issuing of export licences for certain milk products
and determining what proportion of the amounts covered by pending
applications for export licences may be allocated

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1466/95 of 27 June 1995 laying down special detailed rules of application for export refunds on milk and milk products ⁽³⁾, as last amended by Regulation (EC) No 897/98 ⁽⁴⁾, and in particular Article 8(3) thereof,

Whereas the market in certain milk products is currently subject to uncertainty; whereas licence applications of a speculative nature which may lead to distortions of competition between operators and potentially disrupt the continuity of exports of these products for the remainder of the period in question should be avoided; whereas the issue of export licences for the products involved should be temporarily suspended, and licences for some of these products should not be issued in respect of applications pending;

Article 1

1. The issue of export licences for milk products referred to in the Annex is hereby suspended for the period 9 to 12 June 1998, excluding licences for destination '970'.
2. Licences shall be issued for milk products referred to as annexed for which applications submitted on 2 June 1998 are still pending and against which licences would have been issued from 9 June 1998.
3. No licences shall be issued for milk products referred to in the Annex for which applications submitted from 3 June 1998 are still pending and against which licences would have been issued from 10 June 1998.

Article 2

This Regulation shall enter into force on 9 June 1998.

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

Done at Brussels, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 21.

⁽³⁾ OJ L 144, 28. 6. 1995, p. 22.

⁽⁴⁾ OJ L 126, 28. 4. 1998, p. 22.

ANNEX

Product code	Product code	Product code	Product code
0401 10 10 9000	0402 21 99 9700	0402 99 39 9300	0404 90 23 9917
0401 10 90 9000	0402 21 99 9900	0402 99 39 9500	0404 90 23 9919
0401 20 11 9100	0402 29 15 9200	0402 99 91 9000	0404 90 23 9931
0401 20 11 9500	0402 29 15 9300	0402 99 99 9000	0404 90 23 9933
0401 20 19 9100	0402 29 15 9500	0403 10 11 9400	0404 90 23 9935
0401 20 19 9500	0402 29 15 9900	0403 10 11 9800	0404 90 23 9937
0401 20 91 9100	0402 29 19 9200	0403 10 13 9800	0404 90 23 9939
0401 20 91 9500	0402 29 19 9300	0403 10 19 9800	0404 90 29 9110
0401 20 99 9100	0402 29 19 9500	0403 10 31 9400	0404 90 29 9115
0401 20 99 9500	0402 29 19 9900	0403 10 31 9800	0404 90 29 9120
0401 30 11 9100	0402 29 91 9100	0403 10 33 9800	0404 90 29 9130
0401 30 11 9400	0402 29 91 9500	0403 10 39 9800	0404 90 29 9135
0401 30 11 9700	0402 29 99 9100	0403 90 11 9000	0404 90 29 9150
0401 30 19 9100	0402 29 99 9500	0403 90 13 9200	0404 90 29 9160
0401 30 19 9400	0402 91 11 9110	0403 90 13 9300	0404 90 29 9180
0401 30 19 9700	0402 91 11 9120	0403 90 13 9500	0404 90 81 9100
0401 30 31 9100	0402 91 11 9310	0403 90 13 9900	0404 90 81 9910
0401 30 31 9400	0402 91 11 9350	0403 90 19 9000	0404 90 81 9950
0401 30 31 9700	0402 91 11 9370	0403 90 31 9000	0404 90 83 9110
0401 30 39 9100	0402 91 19 9110	0403 90 33 9200	0404 90 83 9130
0401 30 39 9400	0402 91 19 9120	0403 90 33 9300	0404 90 83 9150
0401 30 39 9700	0402 91 19 9310	0403 90 33 9500	0404 90 83 9170
0401 30 91 9100	0402 91 19 9350	0403 90 33 9900	0404 90 83 9911
0401 30 91 9400	0402 91 19 9370	0403 90 39 9000	0404 90 83 9913
0401 30 91 9700	0402 91 31 9100	0403 90 51 9100	0404 90 83 9915
0401 30 99 9100	0402 91 31 9300	0403 90 51 9300	0404 90 83 9917
0401 30 99 9400	0402 91 39 9100	0403 90 53 9000	0404 90 83 9919
0401 30 99 9700	0402 91 39 9300	0403 90 59 9110	0404 90 83 9931
0402 21 11 9200	0402 91 51 9000	0403 90 59 9140	0404 90 83 9933
0402 21 11 9300	0402 91 59 9000	0403 90 59 9170	0404 90 83 9935
0402 21 11 9500	0402 91 91 9000	0403 90 59 9310	0404 90 83 9937
0402 21 11 9900	0402 91 99 9000	0403 90 59 9340	0404 90 89 9130
0402 21 17 9000	0402 99 11 9110	0403 90 59 9370	0404 90 89 9150
0402 21 19 9300	0402 99 11 9130	0403 90 59 9510	0404 90 89 9930
0402 21 19 9500	0402 99 11 9150	0403 90 59 9540	0404 90 89 9950
0402 21 19 9900	0402 99 11 9310	0403 90 59 9570	0404 90 89 9990
0402 21 91 9100	0402 99 11 9330	0403 90 61 9100	2309 10 70 9100
0402 21 91 9200	0402 99 11 9350	0403 90 61 9300	2309 10 70 9200
0402 21 91 9300	0402 99 19 9110	0403 90 63 9000	2309 10 70 9300
0402 21 91 9400	0402 99 19 9130	0403 90 69 9000	2309 10 70 9500
0402 21 91 9500	0402 99 19 9150	0404 90 21 9100	2309 10 70 9600
0402 21 91 9600	0402 99 19 9310	0404 90 21 9910	2309 10 70 9700
0402 21 91 9700	0402 99 19 9330	0404 90 21 9950	2309 10 70 9800
0402 21 91 9900	0402 99 19 9350	0404 90 23 9120	2309 90 70 9100
0402 21 99 9100	0402 99 31 9110	0404 90 23 9130	2309 90 70 9200
0402 21 99 9200	0402 99 31 9150	0404 90 23 9140	2309 90 70 9300
0402 21 99 9300	0402 99 31 9300	0404 90 23 9150	2309 90 70 9500
0402 21 99 9400	0402 99 31 9500	0404 90 23 9911	2309 90 70 9600
0402 21 99 9500	0402 99 39 9110	0404 90 23 9913	2309 90 70 9700
0402 21 99 9600	0402 99 39 9150	0404 90 23 9915	2309 90 70 9800

COMMISSION REGULATION (EC) No 1185/98**of 8 June 1998****amending Regulation (EC) No 2271/95 on the sale of certain products of the beef and veal sector held by intervention agencies to certain welfare institutions and bodies**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 2634/97⁽²⁾, and in particular Article 7(3) thereof,

Whereas Commission Regulation (EC) No 2271/95⁽³⁾ provides for the sale at fixed prices of intervention stocks held by various Member States; whereas the products and prices stated in that Regulation should be amended to take account of the availability of intervention stocks;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Regulation (EC) No 2271/95 Annex I and Annex II are replaced by Annex I and Annex II of this Regulation.

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, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽³⁾ OJ L 231, 28. 9. 1995, p. 23.

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

Estado miembro	Productos ⁽¹⁾	Precio de venta expresado en ecus por tonelada
Medlemsstat	Produkter ⁽¹⁾	Salgspriser i ECU/ton
Mitgliedstaat	Erzeugnisse ⁽¹⁾	Verkaufspreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα ⁽¹⁾	Τιμές πώλησης εκφραζόμενες σε Ecu ανά τόνο
Member State	Products ⁽¹⁾	Selling prices expressed in ecus per tonne
État membre	Produits ⁽¹⁾	Prix de vente exprimés en écus par tonne
Stato membro	Prodotti ⁽¹⁾	Prezzi di vendita espressi in ecu per tonnellata
Lidstaat	Producten ⁽¹⁾	Verkoopprijzen uitgedrukt in ECU per ton
Estado-membro	Produtos ⁽¹⁾	Preço de venda expresso em ecus por tonelada
Jäsenvaltio	Tuotteet ⁽¹⁾	Myyntihinta ecuina tonnilta
Medlemsstat	Produkter ⁽¹⁾	Försäljningspris i ecu per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα — Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso — Luullinen naudanliha — Kött med ben**

BELGIQUE/BELGIË	— Quartiers arrière/Achtervoeten	1 100
DANMARK	— Bagfjerdinger	1 100
DEUTSCHLAND	— Hinterviertel	1 100
ESPAÑA	— Cuartos traseros	1 100
FRANCE	— Quartiers arrière	1 100
ITALIA	— Quarti posteriori	1 100
IRELAND	— Hindquarters	1 100
NEDERLAND	— Achtervoeten	1 100
ÖSTERREICH	— Hinterviertel	1 100

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα — Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne desossada — Luuton naudanliha — Benfritt kött**

FRANCE	— Tranche grasse d'intervention (INT 12)	1 600
	— Semelle d'intervention (INT 14)	1 500
	— Rumsteak d'intervention (INT 16)	1 500
	— Faux-filet d'intervention (INT 17)	2 200
	— Entrecôte d'intervention (INT 19)	1 300
IRELAND	— Intervention thick flank (INT 12)	1 600
	— Intervention topside (INT 13)	1 700
	— Intervention silverside (INT 14)	1 500
	— Intervention rump (INT 16)	1 500
	— Intervention striploin (INT 17)	2 200
	— Intervention forerib (INT 19)	1 300
UNITED KINGDOM	— Intervention thick flank (INT 12)	1 600
	— Intervention topside (INT 13)	1 700
	— Intervention silverside (INT 14)	1 500
	— Intervention rump (INT 16)	1 500
	— Intervention striploin (INT 17)	2 200
	— Intervention forerib (INT 19)	1 300

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- (¹) Véanse los anexos V y VII del Reglamento (CEE) n° 2456/93 (DO L 225 de 4. 9. 1993, p. 4), cuya última modificación la constituye el Reglamento (CE) n° 2602/97 (DO L 351 de 23. 12. 1997, p. 20).
- (¹) Se bilag V og VII til forordning (EØF) nr. 2456/93 (EFT L 225 af 4. 9. 1993, s. 4), senest ændret ved forordning (EF) nr. 2602/97 (EFT L 351 af 23. 12. 1997, s. 20).
- (¹) Vgl. Anhänge V und VII der Verordnung (EWG) Nr. 2456/93 (ABl. L 225 vom 4. 9. 1993, S. 4), zuletzt geändert durch die Verordnung (EG) Nr. 2602/97 (ABl. L 351 vom 23. 12. 1997, S. 20).
- (¹) Βλέπε παραρτήματα V και VII του κανονισμού (ΕΟΚ) αριθ. 2456/93 (ΕΕ L 225 της 4. 9. 1993, σ. 4), όπως τροποποιήθηκε τελευταία από τον κανονισμό (ΕΚ) αριθ. 2602/97 (ΕΕ L 351 της 23. 12. 1997, σ. 20).
- (¹) See Annexes V and VII to Regulation (EEC) No 2456/93 (OJ L 225, 4. 9. 1993, p. 4), as last amended by Regulation (EC) No 2602/97 (OJ L 351, 23. 12. 1997, p. 20).
- (¹) Voir annexes V et VII du règlement (CEE) n° 2456/93 (JO L 225 du 4. 9. 1993, p. 4). Règlement modifié en dernier lieu par le règlement (CE) n° 2602/97 (JO L 351 du 23. 12. 1997, p. 20).
- (¹) Cfr. allegati V e VII del regolamento (CEE) n. 2456/93 (GU L 225 del 4. 9. 1993, pag. 4), modificato da ultimo dal regolamento (CE) n. 2602/97 (GU L 351 del 23. 12. 1997, pag. 20).
- (¹) Zie de bijlagen V en VII van Verordening (EEG) nr. 2456/93 (PB L 225 van 4. 9. 1993, blz. 4), laatstelijk gewijzigd bij Verordening (EG) nr. 2602/97 (PB L 351 van 23. 12. 1997, blz. 20).
- (¹) Ver anexos V e VII do Regulamento (CEE) n° 2456/93 (JO L 225 de 4. 9. 1993, p. 4). Regulamento com a última redacção que lhe foi dada pelo Regulamento (CE) n° 2602/97 (JO L 351 de 23. 12. 1997, p. 20).
- (¹) Katso asetuksen (ETY) N:o 2456/93 (EYVL L 225, 4. 9. 1993, s. 4), sellaisena kuin se on viimeksi muutettuna asetuksella (EY) N:o 2602/97 (EYVL L 351, 23.12.1997, s. 20), liitteitä V ja VII.
- (¹) Se bilagorna V och VII i förordning (EEG) nr 2456/93 (EGT L 225, 4.9.1993, s. 4), senast ändrad genom förordning (EG) nr 2602/97 (EGT L 351, 23.12.1997, s. 20).
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*ANEXO II — BILAG II — ANHANG II — ΠΑΡΑΡΤΗΜΑ II — ANNEX II — ANNEXE II —
ALLEGATO II — BIJLAGE II — ANEXO II — LIITE II — BILAGA II*

**Direcciones de los organismos de intervención — Interventionsorganernes adresser —
Anschriften der Interventionsstellen — Διευθύνσεις των οργανισμών παρεμβάσεως — Addresses
of the intervention agencies — Adresses des organismes d'intervention — Indirizzi degli
organismi d'intervento — Adressen van de interventiebureaus — Endereços dos organismos de
intervenção — Interventioelinten osoitteet — Interventionsorganens adresser**

BELGIQUE/BELGIË

Bureau d'intervention et de restitution belge
Rue de Trèves 82
B-1040 Bruxelles
Belgisch Interventie- en Restitutiebureau
Trierstraat 82
B-1040 Brussel
Téléphone: (32-2) 287 24 11; télex: BIRB. BRUB/24076-65567; télécopieur: (32-2) 230 2533/280 03 07

BUNDESREPUBLIK DEUTSCHLAND

Bundesanstalt für Landwirtschaft und Ernährung (BLE)
Postfach 180203, D-60083 Frankfurt am Main
Adickesallee 40
D-60322 Frankfurt am Main
Tel.: (49) 69 1564-704/772; Telex: 411727; Telefax: (49) 69 15 64-790/791

DANMARK

Ministeriet for Fødevarer, Landbrug og Fiskeri
EU-direktoratet
Kampmannsgade 3
DK-1780 København V
Tlf. (45) 33 92 70 00; telex 151317 DK; fax (45) 33 92 69 48, (45) 33 92 69 23

ESPAÑA

FEGA (Fondo Español de Garantía Agraria)
Beneficencia, 8
E-28005 Madrid
Teléfono: (34) 913 47 65 00, 913 47 63 10; télex: FEGA 23427 E, FEGA 41818 E; fax: (34) 915 21 98 32,
915 22 43 87

FRANCE

OFIVAL
80, avenue des Terroirs-de-France
F-75607 Paris Cedex 12
Téléphone: (33 1) 44 68 50 00; télex: 215330; télécopieur: (33 1) 44 68 52 33

ITALIA

AIMA (Azienda di Stato per gli interventi nel mercato agricolo)
Via Palestro 81
I-00185 Roma
Tel. 49 49 91; telex 61 30 03; telefax: 445 39 40/445 19 58

IRELAND

Department of Agriculture, Food and Forestry
Agriculture House
Kildare Street
IRL-Dublin 2
Tel. (01) 678 90 11, ext. 2278 and 3806
Telex 93292 and 93607, telefax (01) 661 62 63, (01) 678 52 14 and (01) 662 01 98

NEDERLAND

Ministerie van Landbouw, Natuurbeheer en Visserij, Voedselvoorzieningsin- en verkoopbureau
p/a LASER, Zuidoost
Slachthuisstraat 71
Postbus 965
6040 AZ Roermond
Tel: (31-475) 35 54 44; telex: 56396 VIBNL; fax: (31-475) 31 89 39

ÖSTERREICH

AMA-Agrarmarkt Austria
Dresdner Straße 70
A-1201 Wien
Tel.: (431) 33 15 12 20; Telefax: (431) 33 15 1297

UNITED KINGDOM

Intervention Board Executive Agency
Kings House
33 Kings Road
Reading RG1 3BU
Berkshire
Tel. (01189) 58 36 26
Fax (01189) 56 67 50

COMMISSION REGULATION (EC) No 1186/98**of 8 June 1998****fixing the minimum selling prices for beef put up for sale under the invitation to tender referred to in Regulation (EC) No 1028/98**

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EC) No 2634/97 ⁽²⁾, and in particular Article 7(3) thereof,

Whereas tenders have been invited for certain quantities of beef fixed by Commission Regulation (EC) No 1028/98 ⁽³⁾;

Whereas, pursuant to Article 9 of Commission Regulation (EEC) No 2173/79 ⁽⁴⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁵⁾, the minimum selling prices for meat put up for sale by tender should be fixed, taking into account tenders submitted;

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the invitation to tender held in accordance with Regulation (EC) No 1028/98 for which the time limit for the submission of tenders was 25 May 1998 are as set out in the Annex hereto.

Article 2

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

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

Done at Brussels, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽³⁾ OJ L 146, 16. 5. 1998, p. 6.

⁽⁴⁾ OJ L 251, 5. 10. 1979, p. 12.

⁽⁵⁾ OJ L 248, 14. 10. 1995, p. 39.

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

Estado miembro	Productos	Precio mínimo expresado en ecus por tonelada
Medlemsstat	Produkter	Mindestepriser i ECU/ton
Mitgliedstaat	Erzeugnisse	Mindestpreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα	Ελάχιστες πωλήσεις εκφραζόμενες σε Ecu ανά τόνο
Member State	Products	Minimum prices expressed in ECU per tonne
État membre	Produits	Prix minimaux exprimés en écus par tonne
Stato membro	Prodotti	Prezzi minimi espressi in ecu per tonnellata
Lidstaat	Producten	Minimumprijzen uitgedrukt in ecu per ton
Estado-membro	Produtos	Preço mínimo expresso em ecus por tonelada
Jäsenvaltio	Tuotteet	Vähimmäishinnat ecuina tonnia kohden ilmaistuna
Medlemsstat	Produkter	Minimipriser i ecu per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα —
Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso —
Luullinen naudanliha — Kött med ben**

BELGIQUE/BELGIË	— Quartiers arrière/Achtersvoeten	—
DANMARK	— Bagfjerdinger	1 771
DEUTSCHLAND	— Hinterviertel	—
ESPAÑA	— Cuartos traseros	2 101
FRANCE	— Quartiers arrière	—
IRELAND	— Hindquarters	—
ITALIA	— Quarti posteriori	1 986
NEDERLAND	— Achtersvoeten	—
ÖSTERREICH	— Hinterviertel	1 835
SVERIGE	— Bakkvartsparter	2 300

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα —
Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne
desossada — Luuton naudanliha — Benfritt kött**

FRANCE	— Semelle (INT 14)	2 400
	— Rumsteak (INT 16)	2 617
	— Faux-filet (INT 17)	4 201
	— Entrecôte (INT 19)	2 930
IRELAND	— Intervention topside (INT 13)	3 091
	— Intervention silverside (INT 14)	2 518
	— Intervention fillet (INT 15)	8 701
	— Intervention rump (INT 16)	3 044
	— Intervention striploin (INT 17)	5 150
UNITED KINGDOM	— Intervention topside (INT 13)	3 255
	— Intervention silverside (INT 14)	2 636
	— Intervention fillet (INT 15)	6 940
	— Intervention rump (INT 16)	3 905
	— Intervention striploin (INT 17)	4 557

COMMISSION REGULATION (EC) No 1187/98**of 8 June 1998****fixing the minimum selling prices for beef put up for sale under the invitation to tender referred to in Regulation (EC) No 1029/98**

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EC) No 2634/97 ⁽²⁾, and in particular Article 7(3) thereof,

Whereas tenders have been invited for certain quantities of beef fixed by Commission Regulation (EC) No 1029/98 ⁽³⁾;

Whereas, pursuant to Article 9 of Commission Regulation (EEC) No 2173/79 ⁽⁴⁾, as last amended by Regulation (EC) No 2417/95 ⁽⁵⁾, the minimum selling prices for meat put up for sale by tender should be fixed, taking into account tenders submitted;

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices for beef for the invitation to tender held in accordance with Regulation (EC) No 1029/98 for which the time limit for the submission of tenders was 26 May 1998 are as set out in the Annex hereto.

Article 2

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

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

Done at Brussels, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 24.

⁽²⁾ OJ L 356, 31. 12. 1997, p. 13.

⁽³⁾ OJ L 146, 16. 5. 1998, p. 12.

⁽⁴⁾ OJ L 251, 5. 10. 1979, p. 12.

⁽⁵⁾ OJ L 248, 14. 10. 1995, p. 39.

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

Estado miembro	Productos	Precio mínimo expresado en ecus por tonelada
Medlemsstat	Produkter	Mindestepriser i ECU/ton
Mitgliedstaat	Erzeugnisse	Mindestpreise, ausgedrückt in ECU/Tonne
Κράτος μέλος	Προϊόντα	Ελάχιστες πωλήσεις εκφραζόμενες σε Ecu ανά τόνο
Member State	Products	Minimum prices expressed in ECU per tonne
État membre	Produits	Prix minimaux exprimés en écus par tonne
Stato membro	Prodotti	Prezzi minimi espressi in ecu per tonnellata
Lidstaat	Producten	Minimumprijzen uitgedrukt in ecu per ton
Estado-membro	Produtos	Preço mínimo expresso em ecus por tonelada
Jäsenvaltio	Tuotteet	Vähimmäishinnat ecuina tonnia kohden ilmaistuna
Medlemsstat	Produkter	Minimipriser i ecu per ton

a) **Carne con hueso — Kød, ikke udbenet — Fleisch mit Knochen — Κρέατα με κόκαλα —
Bone-in beef — Viande avec os — Carni non disossate — Vlees met been — Carne com osso —
Luullinen naudanliha — Kött med ben**

FRANCE	— Quartiers avant	500
	— Quartiers arrière	600
DEUTSCHLAND	— Vorderviertel	—
	— Hinterviertel	—
DANMARK	— Forfjerdinger	—
	— Bagfjerdinger	—
ITALIA	— Quarti anteriori	500
	— Quarti posteriori	600
ÖSTERREICH	— Vorderviertel	—
	— Hinterviertel	—
NEDERLAND	— Voorvoeten	500
	— Achtervoeten	600
ESPAÑA	— Cuartos delanteros	—
	— Cuartos traseros	1 550

b) **Carne deshuesada — Udbenet kød — Fleisch ohne Knochen — Κρέατα χωρίς κόκαλα —
Boneless beef — Viande désossée — Carni senza osso — Vlees zonder been — Carne
desossada — Luuton naudanliha — Benfritt kött**

UNITED KINGDOM	— Intervention shank (INT 11)	—
	— Intervention thick flank (INT 12)	—
	— Intervention topside (INT 13)	—
	— Intervention silverside (INT 14)	—
	— Intervention rump (INT 16)	—
	— Intervention flank (INT 18)	—
	— Intervention forerib (INT 19)	—
	— Intervention shin (INT 21)	—
	— Intervention shoulder (INT 22)	—
	— Intervention brisket (INT 23)	—
	— Intervention forequarter (INT 24)	—

COMMISSION REGULATION (EC) No 1188/98
of 8 June 1998
on the supply of cereals as food aid

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

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

Whereas the abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated cereals to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as

Community food aid ⁽²⁾; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

Cereals shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

This Regulation shall enter into force on the 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, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Action Nos:** 655/96 (A1); 656/96 (A2)
2. **Beneficiary** (2): Euronaid, PO Box 12, NL-2501 CA Den Haag, Nederland
(tel.: (31 70) 33 05 757; fax: 36 41 701; telex: 30960 EURON NL)
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** A1: Bolivia; A2: Madagascar
5. **Product to be mobilised:** common wheat flour
6. **Total quantity (tonnes net):** 140
7. **Number of lots:** one in two parts (A1: 100 tonnes; A2: 40 tonnes)
8. **Characteristics and quality of the product** (3) (3): see OJ No C 114, 29.4.1991, p. 1 (II.B(1)(a))
9. **Packaging** (7) (6): see OJ No C 267, 13.9.1996, p. 1 (2.2.A 1.d, 2.d and B(4))
10. **Labelling or marking** (6): see OJ No C 114, 29.4.1991, p. 1 (II.B(3))
 - language to be used for the markings: A1: Spanish; A2: French
 - supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 13.7 — 2.8.1998
 - second deadline: 27.7 — 16.8.1998
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.6.1998
 - second deadline: 7.7.1998
20. **Amount of tendering guarantee:** ECU 5 per tonne
21. **Address for submission of tenders and tendering guarantees** (1): Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex 25670 AGREC B; fax (32 2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** (4): refund applicable on 31.5.1998, fixed by Commission Regulation (EC) No 977/98 (OJ L 137, 9.5.1998, p. 3)

LOT B

1. **Action No:** 716/96
2. **Beneficiary** ^(?): Euronaid, PO Box 12, NL-2501 CA Den Haag
(tel.: (31 70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL)
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Rwanda
5. **Product to be mobilized:** milled rice (product code 1006 30 92 9900, 1006 30 94 9900, 1006 30 96 9900, 1006 30 98 9900)
6. **Total quantity (tonnes net):** 715
7. **Number of lots:** one
8. **Characteristics and quality of the product** ^(?) ^(?): see OJ C 114, 29.4.1991, p. 1 (II.A(1)(f))
9. **Packaging** ^(?) ^(?): see OJ C 267, 13.9.1996, p. 1 (1.0.A(1)(c), (2)(c) and B(6))
10. **Labelling or marking** ^(?): see OJ C 114, 29.4.1991, p. 1 (II.A(3))
 - Language to be used for the markings: French
 - Supplementary markings: —
11. **Method of mobilization of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 13.7 — 2.8.1998
 - second deadline: 27.7 — 16.8.1998
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.6.1998
 - second deadline: 7.7.1998
20. **Amount of tendering guarantee:** ECU 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** ^(*): refund applicable on 31.5.1998, fixed by Commission Regulation (EC) No 977/98 (OJ L 137, 9.5.1998, p. 3)

LOT C

1. **Action No:** 124/97
2. **Beneficiary** (°): WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma; tel.: (39 6) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Angola
5. **Product to be mobilised:** maize
6. **Total quantity (tonnes net):** 6 233
7. **Number of lots:** one
8. **Characteristics and quality of the product** (°) (°): see OJ C 114, 29.4.1991, p. 1 (II.A(1)(d))
9. **Packaging:** see OJ C 267, 13.9.1996, p. 1 (1.0.A(1)(c), (2)(c) and B(2))
10. **Labelling or marking** (°): see OJ C 114, 29.4.1991, p. 1 (II.A(3))
 - Language to be used for the markings: Portuguese
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment — fob stowed and trimmed
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 6 — 26.7.1998
 - second deadline: 20.7 — 9.8.1998
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.6.1998
 - second deadline: 7.7.1998
20. **Amount of tendering guarantee:** ECU 5 per tonne
21. **Address for submission of tenders and tendering guarantees** (°): Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex 25670 AGREC B; fax: (32 2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** (°): refund applicable on 31.5.1998, fixed by Commission Regulation (EC) No 977/98 (OJ L 137, 9.5.1998, p. 3)

LOTS D and E

1. **Action Nos:** 169/97 (D); 172/97 (E)
2. **Beneficiary** (7): WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma;
tel.: (39-6) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** D: Liberia; E: Tajikistan
5. **Product to be mobilized:** common wheat flour
6. **Total quantity (tonnes net):** 8 167
7. **Number of lots:** two (D: 7 500; E: 667 tonnes)
8. **Characteristics and quality of the product** (8) (9): see OJ C 114, 29.4.1991, p. 1 (II.B(1)(a))
9. **Packaging** (7): see OJ C 267, 13.9.1996, p. 1 (2.2.A(1)(d), (2)(d) and B(1))
10. **Labelling or marking** (6): see OJ C 114, 29.4.1991, p. 1 (II.B(3))
 - Language to be used for the markings: English
 - Supplementary markings: —
11. **Method of mobilization of the product:** the Community market
12. **Specified delivery stage:** free at port of shipment — fob stowed
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:** —
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: D: 20.7 — 9.8.1998; E: 13.7 — 2.8.1998
 - second deadline: D: 3 — 23.8.1998; E: 27.7 — 16.8.1998
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.6.1998
 - second deadline: 7.7.1998
20. **Amount of tendering guarantee:** ECU 5 per tonne
21. **Address for submission of tenders and tendering guarantees** (1): Bureau de l'aide alimentaire, Attn. Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex: 25670 AGREC B; fax: (32-2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund** (4): refund applicable on 31.5.1998, fixed by Commission Regulation (EC) No 977/98 (OJ L 137, 9.5.1998, p. 3)

Notes:

- (¹) Supplementary information: André Debongnie (tel. (32 2) 295 14 65).
Torben Vestergaard (tel. (32 2) 299 30 50).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39) is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that referred to in point 22 of this Annex.
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following documents:
- phytosanitary certificate (A1: the certificate must be legalized by the diplomatic representation in the country of origin of the goods),
 - lots A, B: fumigation certificate (cereals/cereals derivatives are to be fumigated prior to shipment by way of magnesium phosphide (min 2 g/m³) for a minimum period of five (5) days between the application of the fumigant and the venting process. The appropriate certification must be made available at the time of shipment).
- (⁶) Notwithstanding OJ C 114, point II.A(3)(c) or II.B(3)(c) is replaced by the following: 'the words "European Community"'.
- (⁷) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁸) Shipment to take place in 20-foot containers, condition FCL/FCL (each containing 18 tonnes net).
The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
The supplier has to submit to the recipient's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.
The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal), the number of which is to be provided to the beneficiary's representative.
-

COMMISSION REGULATION (EC) No 1189/98
of 8 June 1998
on the supply of split peas as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas the abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage;

Whereas, following the taking of a number of decisions on the allocation of food aid, the Commission has allocated split peas to certain beneficiaries;

Whereas it is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid⁽²⁾; whereas it is necessary to specify the time limits and conditions of supply to determine the resultant costs;

Whereas, in order to ensure that the supplies are carried out, provision should be made for tenderers to be able to mobilise either green split peas or yellow split peas,

HAS ADOPTED THIS REGULATION:

Article 1

Split peas shall be mobilized in the Community, as Community food aid for supply to the recipients listed in the Annex, in accordance with Regulation (EC) No 2519/97, and under the conditions set out in the Annex.

Tenders shall cover either green split peas or yellow split peas. Tenders shall be rejected unless they specify the type of peas to which they relate.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

This Regulation shall enter into force on the 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, 8 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5. 7. 1996, p. 1.

⁽²⁾ OJ L 346, 17. 12. 1997, p. 23.

ANNEX

LOT A

1. **Action No:** 161/97
2. **Beneficiary** ⁽²⁾: WFP (World Food Programme), via Cristoforo Colombo 426, I-00145 Roma; tel.: (39 6) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Ethiopia
5. **Product to be mobilized** ⁽⁸⁾: split peas
6. **Total quantity (tonnes net):** 684
7. **Number of lots:** one
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁷⁾: —
9. **Packaging** ⁽⁵⁾: see OJ C 267, 13.9.1996, p. 1 (4.0.A(1)(c), (2)(c) and B(4))
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (II.A(3))
 - Language to be used for the markings: English
 - Supplementary markings: —
11. **Method of mobilization of the product:** the product must originate from the Community
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
 - (b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 3 — 23.8.1998
 - second deadline: 17.8 — 6.9.1998
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.6.1998
 - second deadline: 7.7.1998
20. **Amount of tendering guarantee:** ECU 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
 - tlx: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund:** —

LOT B

1. **Action No:** 708/96
2. **Beneficiary** ⁽²⁾: Euronaid, PO Box 12, NL-2501 CA Den Haag
(tel.: (31 70) 330 57 57; fax: 364 17 01; telex: 30960 EURON NL)
3. **Representative of the recipient:** to be designated by the recipient
4. **Country of destination:** Rwanda
5. **Product to be mobilized** ⁽⁸⁾: split peas
6. **Total quantity (tonnes net):** 1 377
7. **Number of lots:** one
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁷⁾: —
9. **Packaging** ⁽⁵⁾ ⁽⁶⁾: see OJ C 267, 13.9.1996, p. 1 (4.0.A(1)(c), (2)(c) and B(4))
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (II.A(3))
— Language to be used for the markings: French
— Supplementary markings: —
11. **Method of mobilization of the product:** the Community market
The product must originate from the Community
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) **Port of shipment:** —
(b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
— port or warehouse of transit: —
— overland transport route: —
17. **Period or deadline of supply at the specified stage:**
— first deadline: 27.7 — 16.8.1998
— second deadline: 10 — 30.8.1998
18. **Period or deadline of supply at the alternative stage:**
— first deadline: —
— second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
— first deadline: 23.6.1998
— second deadline: 7.7.1998
20. **Amount of tendering guarantee:** ECU 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽²⁾: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, Rue de la Loi/Wetstraat 200, B-1049 Bruxelles/Brussel
telex: 25670 AGREC B; fax: (32 2) 296 70 03 / 296 70 04 (exclusively)
22. **Export refund:** —

Notes:

- (¹) Supplementary information: André Debongnie (Tel.: (32 2) 295 14 65).
Torben Vestergaard (Tel.: (32 2) 299 30 50).
- (²) The supplier shall contact the beneficiary or the representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— phytosanitary certificate.
- (⁵) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.
- (⁶) Notwithstanding OJ C 114, point II.A(3)(c) is replaced by the following: 'the words "European Community" and point II.A(3)(b) by the following: 'pois cassés'.
- (⁷) Tenders shall be rejected unless they specify the type of peas to which they relate.
- (⁸) Yellow or green peas (*Pisum sativum*) for human consumption of the most recent crop. The peas must not have been coloured artificially. The split peas must be steam-treated for at least two minutes or have been fumigated (*) and meet the following requirements:
— moisture: maximum 15 %,
— foreign matters: maximum 0,1 %,
— broken split peas: maximum 10 % (pea fragments passing through a sieve of circular mesh of 5 mm diameter),
— percentage of discoloured seeds or of different colour: maximum 1,5 % (yellow peas), maximum 15 % (green peas),
— cooking time: maximum 45 minutes (after soaking for 12 hours).
- (⁹) Shipment to take place in 20-foot containers, condition FCL/FCL (each containing 18 tonnes net).
The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
The supplier has to submit to the recipient's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.
The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal), the number of which is to be provided to the beneficiary's representative.
-

(*) The successful tender shall supply to the beneficiary or its representative, on delivery a fumigation certificate.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 July 1997

concerning State aid in favour of 'Grupo de Empresas Alvarez' (GEA)

(notified under document number C(1997) 2615)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(98/364/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 62(1)(a) thereof,

Having given notice in accordance with Article 93 to interested parties to submit their comments to it,

Whereas:

I

On 15 November 1995, the Commission decided to open the Article 93(2) proceeding against aid which was awarded to GEA. GEA manufactures and sells tableware made of porcelain, earthenware and glass; it also produces bottles. GEA was in the past one of the most important Spanish tableware manufacturers. During the last five years, GEA's market share amounted to an average of 11,6 % within the Spanish market and of 0,64 % within the EU market. GEA has a workforce of 1 029. Its annual turnover amounted to approximately ESP 2 500 million in 1995 and 1996. The group is located in Vigo, province of Pontevedra in Galicia, a Spanish region in which the shipping, fishing and car industry are dominant and

which suffers, owing to the problems these industries are facing, a serious economic crisis and high unemployment. The region is considered an Objective 1 zone and eligible for regional aid within the meaning of Article 92(3)(a). After Citroen, GEA is the second-largest industrial employer in this area.

Until June 1991, GEA was wholly owned by the Spanish public holding INI. INI then decided to privatise the enterprise. One condition, however, was that INI should first clean up GEA, which had made significant losses during the previous years. Thus, INI paid aid which amounted to ECU 24 million in order to leave GEA free of debts. That aid, although not notified, was approved by the Commission in 1992 (State aid NN 15/92, doc. SEC(92) 1655). The approval was justified on the grounds of a marked decrease in production capacity, the severance of GEA's ties with INI and the fact of its location in an Article 92(3)(a) area.

After this approval, which was not subject to the fulfilment of any conditions, GEA had received further aid from INI which was not notified to, nor approved by, the Commission. This aid comprised a guarantee in 1992 which, at that time, entailed a potential risk of ESP 1 620 million and a direct grant of ESP 983 million in 1994 which was paid in order to discharge the earlier guarantee. In addition, the Commission was informed that the

regional authorities of Galicia were prepared to award a new guarantee amounting to ESP 2 500 million.

The Commission seriously doubted whether all the aid which evidently fell within the scope of Article 92(1) complied with the derogations as set out in Article 92(3); it therefore decided to initiate the Article 93(2) procedure in respect of:

- the guarantee amounting to ESP 1 620 million, awarded in 1992,
- the subsidy granted in 1994, amounting to ESP 983 million, and
- the probable new guarantee to be awarded by the regional authorities of Galicia amounting to ESP 2 500 million.

II

By letter dated 26 January 1996, the Spanish authorities responded to the Commission's decision to commence the Article 93(2) proceeding. According to the Spanish authorities, neither the guarantee awarded in 1992 nor the payment of the lump sum in 1994 constituted aid within the meaning of Article 92(1) of the EC Treaty and Article 61 of the EEA Agreement. In both cases, INI acted as any private investor would have done under market conditions. In 1992, the risk of bankruptcy of GEA would have been very slight and the guarantee had only served to support the restructuring process of the enterprise by financing investment. As to the 1994 payment, the Spanish authorities admitted that GEA had been in a serious economic crisis since its privatisation in 1992 which had deteriorated in particular in 1994 since all efforts to render GEA viable had failed. Even at this stage, efforts to restructure the firm such as an early and smooth reduction of workforce and production capacities had been undertaken. The payment of ESP 983 million was designed to support these early efforts. Since those early efforts had failed, a restructuring plan would be drafted proposing drastic measures to restore the firm's viability. Once this plan was finalised, it would be immediately submitted to the Commission for a thorough assessment. The Spanish authorities considered, nevertheless, that the payment of ESP 983 million in 1994 was an advantageous deal for INI, since it relieved INI of any obligation to pay ESP 1 620 million by way of guarantee.

As regards the guarantee of ESP 2 500 million, the Spanish authorities stressed that, even though such grant could not be ruled out, no such guarantee had been

awarded yet and, if the autonomous regional authorities were to decide to do so, the Spanish authorities would notify it.

III

By letter dated 30 July 1996, the Commission transmitted to the Spanish authorities the comments of the third parties (four different Spanish competitors of GEA and the Liaison Office of the European Ceramic Industry) which it had received on the occasion of the publication of the Commission's decision to initiate Article 93(2) proceedings⁽¹⁾.

All the parties were of the opinion that the aid which GEA had received had led to important distortions of competition, since it had allowed GEA to offer its products at artificially low prices over a long period. They themselves as competitors could not compete anymore with these prices since they did not receive any support by the State. In support of this thesis, one competitor enclosed copies of advertisements of supermarket chains in which GEA's products were indeed offered at cheap prices.

One competitor, in addition, alleged that GEA in the meantime had received further aid in the form of guarantees covering loans totalling ESP 1 000 million. Those guarantees had not been notified to the Commission and would have to be added to the aid for which the Commission had opened the proceeding.

IV

By letters dated 15 October 1996 and 24 October 1996, the Spanish authorities replied to the comments of the third parties. They confirmed that the regional authorities of Galicia, in April, had provided rescue aid in the form of guarantees covering credits up to a total of approximately ESP 700 million in order to keep GEA in business until the Commission had taken its final decision. Furthermore, another ESP 350 million had been awarded on guarantees to cover outstanding payments for the employees' salaries. The duration of those guarantees was first fixed at six months and then extended until June 1997, since the Commission had not yet arrived at a final decision. This aid would, however, have absolutely no effect on the market since it only served to cover credits which were necessary to cover the firm's running costs. According to the Spanish authorities, this rescue aid was based on the regional authorities' decree N 309/1995 of 23 November 1995 on incentives for the economic development and the promotion of entrepreneurial activities of the autonomous region of Galicia. This decree was notified to and approved by the Commission (State aid N 21/1995, Commission Decision of 31 December 1995). A precondition of the Commission's approval, however, was that rescue aid for firms exceeding the SME criteria (which is the case with GEA) would have to be notified individually.

⁽¹⁾ OJ C 144, 16. 5. 1996, p. 3.

For the rest, the Spanish authorities stressed again that both INI's guarantee in 1992 and the payment in 1994 should not be considered as aid within the meaning of Article 92(1) of the EC Treaty, since INI had acted as any private investor would have done. The Spanish authorities also emphasised that the guarantee amounting to ESP 2 500 million which the Commission had included in its proceeding had not been awarded yet.

As regards the alleged price-undercutting policy on the part of GEA, the Spanish authorities pointed out that GEA always sold its products at prices which matched its costs. In order to support this allegation, the Spanish authorities enclosed copies of GEA's bills to its clients, which demonstrated that the prices were higher than those charged by the supermarket chain for the product. According to the Spanish authorities, the cheap offers of GEA's products by the supermarkets might therefore have been part of a campaign to attract clients. For them, at least, these offers afforded no evidence that GEA was undercutting prices.

V

In the meantime, several meetings between the Commission and the Spanish authorities had taken place, in which the Spanish authorities had submitted new documentation concerning GEA's economic state. The main objective was to inform the Commission about GEA's difficult economic situation and the plans of the regional government of Galicia to restore the firm's viability along the lines of the already announced restructuring plan which was, after early and unsuccessful attempts to render the firm viable, worked out in early 1996 and submitted to the Commission in August and enlarged in November 1996 and February 1997.

According to the documentation which was provided by the Spanish authorities, GEA had been making heavy losses after its privatisation in 1991. The company's overall debt was ESP 14 000 million in November 1996, whilst its equity was exhausted. The Spanish authorities stressed that, despite the situation, and owing to social considerations arising from the dramatic labour-market situation in Vigo, the regional authorities had felt obliged to keep the company in business, since GEA was, after Citroen, the second industrial employer in that area.

The restructuring plan which was submitted to the Commission aims at rationalising and restoring the viability of GEA for the future. In order to achieve this objective, the plan proposes, since the other gentler attempts to render the firm viable and to which the payment of ESP 983 million in 1994 was related had failed, drastic measures which can, in essence, be summarised as follows:

1. out of the six currently producing plants, two will be closed. One plant which is producing glass bottles and which is profit-making will be sold. The remaining three factories will be independent of each other;
2. significant reduction of debts and generation of funds, as follows:
 - (a) reduction of debts actually amounting to ESP 14 000 million, of which ESP 7 000 million are public debt through a suspension of payment proceeding in which the public and private creditors waive their claims by 50 % (the Spanish authorities had submitted a survey prepared by an independent lawyer which confirmed that a waiver of claims to such an extent is quite realistic and common practice in Spain in similar cases);
 - (b) two of the remaining factories which are situated in urban areas will be moved to other areas outside the centre of Vigo. The company's installations in Vigo will be sold at an estimated ESP 5 000 million (an appraisal of the premises which was submitted to the Commission and drafted by two different independent consultants even arrived at a figure of ESP 5 900 million). The negotiations for the sale of the land have already started;
 - (c) sale of the profit-making plant for ESP 1 000 million;
3. drastic cuts, as follows:
 - (a) reduction of workforce by 43 %, from 1 029, to 587 which will lead to a decrease of the share of personnel costs from 93 % of sales in 1995 to an estimated 40 to 45 % in 1997 and 1998;
 - (b) reduction of production capacity by 32 % from 23,7 million items to 16,1 million items;
 - (c) introduction of a central management structure for the three remaining undertakings in order to decrease management and commercial costs;
 - (d) further cost reduction due to a switch in the energy sources (tableware production is highly energy-intensive) from electricity to natural gas which will be possible in Vigo from 1997 onwards.

Through the implementation of the above measures, the plan expects the restructured group to break even between 1997 and 1998 and to yield positive results in the financial years thereafter, amounting to ESP 91 million in 1998 and ESP 200 million in 1999. The plan assumes sales of which the volume is expected to be the same as in the bad previous years (12 million units instead of 16 million in the better years) and a constant turnover amounting to an average of ESP 2 500 million. The overall restructuring costs are ESP 3 500 million. They consist mainly of costs for indemnities, complementary social costs for dismissed employees and costs for the transfer of the two factories to sites outside Vigo. The generation of funds through the sale of GEA's premises in Vigo and the waiver of debts will allow the firm to cover the restructuring costs completely by using the firm's own financial resources.

By letter dated 13 March 1997, the Spanish authorities informed the Commission that GEA was negotiating several contracts with altogether eight major customers (the names of the different firms is confidential) which would ensure long-term orders for a period of at least three years at a total of approximately ESP 3 500 million. In the same letter, the Commission was informed that GEA was going to be sold to a major porcelain producer, which was a private company — which demonstrated that there was confidence in GEA's future on the part of the private market. All this suggests that GEA's restructuring plan and its objectives regarding sales and turnover are realistic.

By letter dated 25 April 1997, the Commission was informed that the firm had renounced its claim on the regional authorities of Galicia for the guarantee worth ESP 2 500 million, and this is also the subject of the Article 93(2) proceeding. This demonstrated that the private banks which would have to provide GEA with new loans would trust in the firm's ability to implement a successful restructuring plan and to restore its viability. In the same letter, the Commission was informed that the regional authorities of Galicia had agreed to notify individually any future aid to GEA even if such aid was based on already approved general aid schemes.

Finally, by letter of 22 May 1997, the Spanish authorities informed the Commission that the regional authorities now had even gone beyond their commitment as communicated in their letter 25 April 1997, by refraining from granting any further financial aid to GEA in the future.

VI

The Article 93(2) proceeding confirmed the Commission's view in commencing the procedure, namely that the guarantee which was awarded to GEA in 1992 amounting to ESP 1 620 million, and the subsidy of ESP 983 million for releasing the guarantee in 1994, constitute aid which may distort or threaten to distort competition within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement. No private investor would have awarded a guarantee to a loss-making enterprise like GEA without any security, as INI did in 1992. Moreover, it is hardly to be expected that a private enterprise which had just rid itself of a loss-making company would again invest in such a company.

Nevertheless, the current proceeding has also revealed that both the guarantee and the payment of the subsidy were closely linked since the payment enabled INI to discharge itself from the 1992 undertaking entered into on the granting of the guarantee, namely the risk of being obliged to pay ESP 1 620 million. From an economic view, this behaviour has to be regarded as a single event, and it cannot be denied that the payment of ESP 983

million, representing only 60 % of the risk which INI had undertaken in granting the guarantee, was behaviour such as any private company would have adopted in such a situation. Accordingly, the amount of aid to GEA which has to be taken into account when examining the guarantee given in 1992 is reduced to the payment of ESP 983 million, the amount which was actually paid by the guarantor.

It has also to be borne in mind that the guarantee of ESP 2 500 million, to be provided by the autonomous authorities of Galicia which was also covered by the scope of the procedure commenced by the Commission may be ignored, since it has been cancelled.

The aid could distort competition and affect trade between Member States. There is a brisk trading of goods in the tableware industry between Spain and other Member States. According to the information provided by Eurostat, in 1993, Spain exported 7 272 tons of tableware to other Member States, worth ECU 24,5 million, whereas it imported 5 813 tons of tableware worth ECU 27,5 million. In 1994, Spain exported 7 917 tons worth ECU 29 million and imported 6 577 tons worth ECU 28,5 million. Between January and October 1995, Spain exported 8 546 tons of tableware products worth ECU 32,6 million and imported between January and September 1995 7 844 tons worth ECU 43,3 million. Spain's share in the overall intra-Community trade in tableware goods stands at roughly 3 %. GEA, although not one of the EU's major producers of tableware, participates in this market. Thus, any grant may improve GEA's position in the common market to the detriment of other competitors which do not receive any State aid.

Since the aid was not part of any approved aid scheme, it was notifiable individually according to Article 93(3) of the Treaty. Spain did not comply with this requirement. Consequently, the aid was awarded illegally.

As to whether the aid qualifies for the exemptions under Article 92(2) or (3) of the EC Treaty, it has to be held that the exceptions set out in Article 92(2) do not apply in this case in view of the aid's specific features, and indeed of the fact that it does not even seek to satisfy the qualifying conditions.

As regards the exception under Article 92(3)(a) of the EC Treaty, GEA's location certainly is in an area where there is serious underemployment and where the standard of living is abnormally low. Aid to promote the economic development of those areas may, according to Article 92(3)(a), be considered to be compatible with the common market. In this case, however, the aid was certainly unable to contribute to the promotion of the economic development of the region, since it served to support unsuccessful attempts to enable the firm to stay in business without

further restructuring measures rather than to provide investment or to create jobs.

Nevertheless, the exception under Article 92(3)(c) of the Treaty indicates that the aid may be considered compatible with the common market, since it complies with the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹⁾.

The aid which was awarded to GEA certainly has no immediate link with the restructuring plan now being proposed. It has, however, to be borne in mind that the efforts to make the firm viable started immediately after the firm's privatisation and the Commission's subsequent approval in 1992, and that the drastic restructuring plan now being proposed is only a consequence of the earlier and gentler measures, whose implementation obviously did not meet with success. The aid, therefore, has to be regarded in the context of a process in which the present restructuring plan represents the final, and most ambitious, effort to restore the firm's viability. Here, it has also to be remembered that the proposed restructuring will be carried out without any further commitment from public bodies.

The present restructuring plan proposes drastic cuts in costs. In addition, there is a strong reduction in capacity which, according to point 3.2.2(ii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, is necessary in this case since the tableware market is suffering from overcapacity caused by a significant decline in consumption in 1992 and 1993 and an increased import penetration (Panorama of EU Industry 1997, point 9.20). The most significant cost saving will be achieved through the reduction of personnel by 43 %, from 1 029 to 587. This will lead to a reasonable proportion of personnel costs, namely 45 % of the firm's overall sales. Furthermore, production capacity will be reduced by 32 % from 23,7 million items to 16,1 million. The company also pointed to the opportunity for the reduction of structural costs such as energy costs. Thus the improvement in viability will, as is required by point 3.2.2(i) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, mainly result from the firm's own efforts and internal measures rather than from external factors such as price and demand increases, over which the company has no control.

Both the reduction of cost and the reduction of capacities will enable the firm to become profitable and viable again. The restructuring plan's assumption as to future turnover is based on the average turnover obtained in the past and should therefore be quite realistic. The fact that GEA is negotiating major contracts confirms this assumption. The restructuring plan's assumptions as to price increases use only normal inflation rates. Similarly, the

anticipated reduction of debt and the generation of funds appear quite realistic although they are based on external factors over which the company has no control. As regards the reduction of debts by waiver of claims, the Spanish authorities have provided evidence that in comparable cases creditors waive up to 50 % of their claims. The value of GEA's land and of the profit-making plant were estimated and confirmed by independent consultants. Nevertheless, it has to be observed that both the waiver of claims and the sale of the land which are now being negotiated are indispensable conditions for the success of the restructuring.

Another convincing sign that the firm may recover its viability is the fact that the firm has renounced the new guarantee amounting to ESP 2 500 million and will be in a position to finance the restructuring out of its own resources obtained by the generation of funds through the sale of land and the formal suspension of payments. At the same time, the waiver of the guarantee demonstrates that the banks which would have to provide GEA with further loans during the restructuring process have faith in the measures which will be carried out by the firm. This view is also confirmed by the fact that there is a new private company which was willing to take over the management and thus the entrepreneurial risk in GEA.

As to the ratio between the aid and the financial contribution by the investor, one has to conclude that there was, and will be, a significant financial contribution from the firm's own resources. Thus the immediate restructuring costs will amount to ESP 3 500 million and will be covered completely by the firm's own financial resources which it will obtain by the implementation of the restructuring plan, which entails the generation of funds (suspension of payment proceeding which will significantly reduce the firm's debt, sale of the firm's premises in Vigo and sale of the profit-making plant). Compared to this financial contribution and all the financial efforts the enterprise will have to make, the aid of ESP 983 million is fairly low.

Furthermore, one has to consider the social impact and the fact that GEA is one of the most important employers in a depressed area as contemplated in Article 92(3)(a). After Citroen, GEA is the second industrial employer in this region and the demise of GEA in this area would also mean a disappearance of important industrial activities there and would cause a chain reaction since, certainly, many of GEA's suppliers would be forced to shut down as well. Therefore, the maintenance of approximately 500 directly employed industrial staff (from the original number of 1 029), who will thereby maintain their purchasing power without resorting in future to public aid (the Spanish authorities have confirmed officially that there will be no further State aid to GEA), will also have

⁽¹⁾ OJ C 368, 23. 12. 1994, p. 12.

a knock-on effect on the survival of GEA's suppliers, who in turn will maintain their purchasing power; all this has to be taken into account if the Commission is to assess the consequences which sustaining a firm like GEA will have for the economic development of an Article 92(3)(a) area such as Vigo.

Furthermore, it has to be taken into account that, in the case of GEA's bankruptcy, the Commission would certainly not object to new aid in favour of any investor taking over the company's assets, if this new aid were based on approved aid schemes and would not exceed the permitted aid ceilings for the Article 92(3)(a) region of Vigo. In such an event, any new investor taking over GEA could obtain up to 60 % of regional investment aid. The regional authorities consider that such a procedure cannot be employed in this case, not only for political and/or social reasons but also because the company would, in the meantime, lose its customers and consequently lose any chance to regain viability. Nevertheless, the aid, ultimately amounting to ESP 983 million, is equal to less than 30 % of the immediate overall restructuring costs of ESP 3 500 million. The aid intensity is thus far lower than the aid that would be granted for a new investment, with far less serious social repercussions.

Moreover, it has to be borne in mind that GEA's market share is fairly low. In the Spanish market, it has averaged 11,6 % during the last five years, and in the Community market it was 0,64 % during the same period. Thus, the aid measures in favour of GEA are unlikely to have a major impact on the common market.

On top of that, it has to be taken into account that the Spanish authorities have confirmed that the autonomous government had withdrawn its promise to award the guarantee worth ESP 2 500 million and that, after a preliminary undertaking to notify individually any future aid to GEA in April 1997, it officially confirmed by letter dated 22 May 1997 that there will be no more State aid to the company. Accordingly, it is ensured that GEA will have to act in the market like any other private company. Future distortions of competition through injections of public money should therefore be excluded.

VII

The rescue aid in the form of guarantees covering loans amounting to ESP 700 million and salary costs of ESP 350 million, awarded in 1995 pending termination of the Article 93(2) proceeding, also constitutes aid within the meaning of Article 92(1).

Contrary to the Spanish authorities' opinion, this aid was notifiable individually. The Commission's decision under which Decree 309/95 — the legal basis for the guarantees

— was approved, expressly stated that rescue aid to large enterprises had to be notified individually. This requirement was repeated in Article 8.5 of the Decree itself.

Nevertheless, although illegal as to its form, this aid may be approved as to substance, since it served to keep the company in business until the Commission had adopted a final Decision in its Article 93(2) proceeding. There are precedents in which the Commission has agreed to rescue aid (for example, in Nino Textile, State aid N 540/95, letter SG(93) D/16433, of 5 October 1993) because it was aware that the enterprise involved in the Article 93(2) proceeding would not survive economically and would consequently have to file for bankruptcy before the final decision on the aid if it was not supported by the State. A prerequisite for such an approval, however, is that the rescue aid complies with the Community guidelines on State aid for rescuing and restructuring of firms in difficulty. This requirement is fulfilled in the present case, since the aid, in substance, is based on an approved aid scheme of which the conditions for awarding rescue aid themselves comply with the guidelines. The duration of the guarantees was first envisaged to be six months, as is required in the guidelines. Since the Commission, owing to the complexity of the restructuring plan submitted by the Spanish authorities and to the need to enlarge it, would not arrive at a final decision within that period, the Spanish authorities extended their duration until June 1997. Moreover, it has to be borne in mind that the Spanish authorities expressly promised that the duration of the guarantees would not exceed the duration of the Commission's proceeding.

VIII

Since GEA may restore its viability by the implementation of drastic restructuring measures and that it is located in a depressed area for the purposes of Article 92(3)(a), both the guarantee awarded in 1992 which was discharged by the payment of ESP 983 million in 1994 and the rescue aid totalling ESP 1 050 million can be accepted under the derogation in Article 92(3)(c), read in combination with the Community guidelines on State aid for rescuing and restructuring of firms in difficulty. Since GEA, however, has received aid as part of its privatization in 1991 the approval will be accompanied by the imposition of drastic conditions. A rigorous approach will have to be followed in respect of any new grant of State aid to the company. The Spanish authorities will be informed accordingly that any new State aid in favour of this company will be considered incompatible with the common market and at odds with the undertaking given and it will consequently have repercussions on the aid being approved by this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The 1992 guarantee amounting to ESP 1 620 million which was discharged by the payment in 1994 of ESP 983 million, and the 1996 guarantees totalling ESP 1 050 million which were provided by the Spanish authorities to the enterprise Grupo de Empresas Alvarez (GEA) constitute illegal aid for the purposes of Article 93(3) of the EC Treaty because they were not notified to the Commission prior to their award. They comply, however, with the Community guidelines on State aid for rescuing and restructuring firms in difficulty and are therefore compatible with the common market under Article 92(3)(c) of the Treaty and Article 61(3)(c) of the EEA Agreement, on condition that the Spanish authorities refrain, as they undertook in their letter of 22 May 1997, from granting any new aid to the company in the future and that they fully implement the agreed restructuring plan.

The Spanish authorities shall submit to the Commission, until 31 December 2000, half yearly reports on the progress of the implementation of the restructuring plan as well as on GEA's economic data (business plans, profit and loss accounts) in order to enable it to verify if the

estimates contained in the plan are being adhered to and if the Spanish authorities' undertaking to refrain from granting any further State aid to the firm is being observed. The reports shall be submitted to the Commission at half yearly intervals in March or October at the latest.

Article 2

The Spanish authorities shall inform the Commission, within two months of notification of this Decision, of the measures they have taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 15 July 1997.

For the Commission

Emma BONINO

Member of the Commission

COMMISSION DECISION

of 1 October 1997

concerning alleged State aid granted by France to SFMI-Chronopost

(notified under document number C(1997) 3146)

(Only the French text is authentic)

(Text with EEA relevance)

(98/365/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 of Article 62(1)(a) thereof,

Having, in accordance with the provisions of the above-mentioned Articles, given notice to the parties concerned to submit their comments and having regard to those comments,

Whereas:

(34 %), a subsidiary of the airline Transport Aérien Trans-régional ("TAT"). SFMI provided the express delivery service under the name of EMS/Chronopost.

The conditions for the operation and marketing of the express delivery service were set out in an order of 19 August 1986 by the French Ministry of Posts and Telecommunications. Under this order the service was to be operated by SFMI using mainly the resources of the Post Office supplemented by those of TAT. The arrangements in the order included the requirement that the post office was to provide SFMI with logistical and commercial assistance. The contractual relations between the Post Office and SFMI-Chronopost are regulated by way of agreements entered into by the two parties. The first agreement, which was concluded in 1986 and was in force until 1992, was replaced by a second agreement which entered into force on 1 January 1993.

I. THE FACTS

A. Background

In France express delivery service is an activity open to unrestricted competition, unlike the ordinary postal service, which is subject to the monopoly of the French Post Office.

The French Post Office belonged to the French public administration until the end of 1990. On 1 January 1991, pursuant to the provisions of Law No 90-568 of 2 July 1990, it became an autonomous corporation subject to French public law, and as such is free to operate in sectors open to competition, as well as pursuing public sector activities.

At the end of 1985 and the beginning of 1986, the Post Office entrusted the management of its express delivery service, operated under the name of Postadex, to a private company called Société Française de Messagerie Internationale (SFMI) which had been set up for this purpose. SFMI was incorporated with a share-capital of FRF 10 million held by Sofipost (66 %), a holding company wholly owned by the Post Office, and by TAT Express

In 1992 the structure of the express delivery business changed. Sofipost and TAT set up a new company, Chronopost SA ('Chronopost'), in which their respective holdings were again 66 % and 34 %. Chronopost took over the domestic activity of SFMI, which remained responsible for international business. SFMI was acquired by GDEW France, the French subsidiary of the international common operator GDEW whose participants are the Australian company TNT and the German, Canadian, French, Netherlands and Swedish post offices. It is worth remembering that GDEW is a concentrative joint venture which was authorised by Commission Decision of 2 December 1991 (¹).

Under this new structure, Chronopost was to act as a service provider and agent on behalf of SFMI (and thus GDEW) in the handling of its international dispatches in France. Moreover, Chronopost could not compete with SFMI and was its exclusive agent until 1 January 1995. Chronopost was also granted until that date exclusive access to the post office's network. (In the course of this Decision reference will be made to 'SFMI-Chronopost', even when only one of the two companies is involved).

(¹) OJ C 322, 13. 12. 1991, p. 19.

B. SFMI-Chronopost's economic performance

When SFMI-Chronopost started its operations in 1986, the international express delivery service in France was a market dominated by the company DHL with a market share of over 40 %. The Post Office's international turnover corresponding to its product Postadex was FRF 45 million in 1985 (approximately 10 % of the market). This market has constantly grown since the entry of SFMI-Chronopost in 1986 (total sales grew from FRF 500 million in 1986 to FRF 2,7 billion in 1996).

SFMI-Chronopost has been a successful business. It has conquered market shares and consolidated its market position and been constantly profit-making. SFMI-Chronopost increased its market share from 4 % in 1986 to 22 % in 1996 and has distributed dividends each year. The reasons for its profitability lie in the rapid growth of the express delivery market in France, in SFMI-Chronopost's access to the parent company's network, in the choice of a sound commercial strategy and in the significant advertising investments made.

In particular, especially during the early years of operation, SFMI-Chronopost subcontracted most of its activity to the Post Office and therefore incurred limited start-up costs (in particular, fixed costs). This explains why the company was provided with very limited equity capital (FRF 10 million).

SFMI-Chronopost, unlike its competitors which were mainly active on the international market, decided to enter both the international and the domestic French market. This permitted SFMI-Chronopost to operate in a new market characterised by little competition and to benefit from the synergies stemming from the combined operation of the international and domestic markets.

Moreover, the EMS/Chronopost product was less sophisticated than other products offered by the competitors and in particular than DHL's products. Unlike the latter, EMS/Chronopost was targeted at the casual customer. The characteristics of SFMI-Chronopost's product enabled it to charge prices lower than those of its competitors. In particular, SFMI-Chronopost normally collected the occasional customers' dispatches at the postal offices, while competitors collected dispatches at home. SFMI-Chronopost did not guarantee delivery deadlines, whilst DHL did so. Geographical coverage was also more limited than DHL's (100 countries in 1988 compared with 175 countries for DHL). Ancillary services, particularly informatics services giving a permanent control of the service provided, were less advanced than those of competitors.

SFMI-Chronopost has enjoyed increasing autonomy from the Post Office, and the share of business subcontracted to the latter has decreased over time (collection decreasing

from 67 % in 1987 to 39 % in 1994 and distribution decreasing from 94 % in 1987 to 45,8 % in 1994). In 1996 SFMI-Chronopost employed 1 870 people, had 32 offices, two transit centres, six international exchange centres and 600 vehicles. SFMI-Chronopost dealt with 450 subcontractors, amongst which there was the Post Office.

As regards marketing activities, by 1996 SFMI-Chronopost had 95 salesmen and only one quarter of its sales was made through the Post Office.

C. The complaint and the procedure

On 21 December 1990, the Syndicat Français de l'Express International ('SFEI'), a consortium of companies providing express delivery services in competition with SFMI-Chronopost, lodged a complaint with the Commission on the grounds that the logistical and commercial assistance provided by the post office to SFMI-Chronopost involved State aid under Articles 92 and 93 of the EC Treaty. This aid allegedly enabled SFMI-Chronopost to charge much lower prices than its competitors. An economic study by Braxton, a consulting firm appointed by SFEI, was attached to the complaint. This study quantifies the amount of the alleged aid received by SFMI-Chronopost over the period 1986 to 1989.

By letter of 10 March 1992, the Commission informed the complainant that the file had been shelved. SFEI and a number of SFMI-Chronopost's competitors brought an action before the Court of Justice for annulment of the letter. The Commission withdrew the letter in order to obtain further information.

At the Commission's request, France provided information by letter of 21 January 1993, by fax from the competent government departments on 3 May 1993, and by letter of 10 June 1993.

SFEI and five of its member undertakings brought an action before the Paris Commercial Court on 16 June 1993 against SFMI-Chronopost, the French Post Office and others. A second study by the consultancy Braxton was attached to the application. This study updated the valuation of the aid carried out in the previous one up to the end of 1991.

On 5 January 1994, the Paris Commercial Court, on the basis of Article 177 of the Treaty, put eight questions relating to the interpretation of Articles 92 and 93 of the Treaty to the Court of Justice. The Commission presented its comments on the matter on 6 May 1994. The French Government, which intervened in May 1994, attached to its comments a study by the firm Ernst & Young, in response to the two Braxton studies.

In February 1996 the Commission opened the procedure provided for under Article 93(2) of the Treaty, in respect *inter alia* of the assistance provided by the Post Office to SFMI-Chronopost over the period 1986 to 1991⁽²⁾. The Commission considered that the possibility that State aid had been granted to SFMI-Chronopost by France (directly or through the intermediary of the Post Office) could not be ruled out.

In particular, as regards the assistance by the Post Office to SFMI-Chronopost, the information available suggests that only in 1992 did the prices charged by the postal administration match actual costs plus a profit margin. The Commission did not have sufficient information to rule out the possibility that, during the financial years before and after 1992, SFMI-Chronopost had benefited from State aid.

The Commission did not have sufficiently detailed information to allow it to dismiss the possibility that the establishment of SFMI-Chronopost had involved a transfer of resources from the State in some form or other.

No information was available as to how far there had been observance of one of the conditions to which the participants in the joint venture GDEW had subscribed when the concentration had been authorised. That condition was that, unless it was shown that no cross subsidies had been paid, the parties undertook to offer to competitors the same services as those provided for the joint venture, in accordance with the principle of equal treatment for equivalent transactions, so as to exclude the risk of a transfer of public resources to one of the players on the express delivery market. The same considerations apply to admittance to the postal infrastructures to operators other than the joint venture, as from 1 January 1995.

Nor was any information available on the implementation of the Commission's recommendation contained in the decision on the Post Office's competitive activities⁽³⁾. The Commission urged the need to ensure that the postal administration's accounts showed that there were no subsidies for non-public service activities, since such subsidies would be caught by Articles 92 and 93 of the EC Treaty. Since, under the decision, precise information on this matter was to be submitted annually, an initial check on the situation in the express delivery sector had to be carried out on the basis of the information available at the end of 1995.

The Commission took the view that the series of measures described above, with the exception of the es-

tablishment of the joint venture GDEW, had not been notified to the Commission in accordance with Article 93(3) of the EC Treaty. Those measures could involve State aid under Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement. Any such aid would not have been eligible for any of the derogations allowed under Article 92(2) and (3) of the EC Treaty or Article 61(2) and (3) of the EEA Agreement.

France was informed of the opening of the procedure by letter of 20 March 1996.

The Court of Justice gave its ruling on 11 July 1996⁽⁴⁾. The proceedings before the Paris court, suspended pending the Court's judgment, recommenced on 24 September 1996.

France sent a note to the Commission on 30 May 1996 setting out its comments pursuant to the Article 93(2) procedure.

SFEI submitted its comments in August 1996, drawing the Commission's particular attention to a number of additional measures which might be regarded as State aid to SFMI-Chronopost. These include the use by SFMI-Chronopost of the Post Office's trade image, and in particular its vehicles as an advertising medium, its privileged access to Radio France's broadcasting programmes, some customs and tax privileges conceded both to SFMI-Chronopost and to the Post Office, and the Post Office's investment in dispatching platforms. SFEI extended its complaint of December 1990 to cover these additional points.

SFEI attached to its comments another economic study by the consultancy Bain & Company (the 'Bain study'). The purpose of this study is also to evaluate the amount of aid involved in the assistance provided by the Post Office to SFMI over the period 1986 to 1991. The Bain study is based on the information contained in the Ernst & Young report and, according to the SFEI, its figures are more accurate than those of the two previous studies by Braxton. SFEI further asked the Commission to take interim measures in respect of the alleged aid granted to SFMI-Chronopost. The complainant repeated its request for interim measures in a subsequent letter of 7 November 1996. The Commission replied to the complainant by two letters of 22 October and 13 November 1996, setting that it did not intend to take interim measures since it was not yet in a position to establish whether State aid was involved.

⁽²⁾ OJ C 206, 17. 7. 1996, p. 3.

⁽³⁾ OJ C 262, 7. 10. 1995, p. 11.

⁽⁴⁾ Case C-34/94, SFEI and Others v. La Poste and Others ('La Poste'), [1996] ECR I-3547.

SFEI's comments were transmitted by the Commission to France in September 1996. In reply to SFEI's comments, France addressed another note to the Commission, attaching to it a comprehensive economic study by the consultancy Deloitte Touche Tohmatsu (the 'Deloitte study'). The Deloitte study examines and replies to the findings of the Bain study. Upon the Commission's request, further information and clarifications were provided by the French authorities.

A number of meetings took place between the Commission and the French authorities. The last meeting took place in Paris on 10 June 1997.

The complainant sent another letter to the Commission on 21 April 1997, asking for information about the progress of the examination of the case. SFEI requested the Commission to provide detailed information on France's reply to the opening of the Article 93(2) procedure and on the Commission's position and intentions in the matter. The Commission replied to the complainant by letter of 30 April 1997, stating that the information provided by France was commercially sensitive and could not be disclosed and that the Commission had sufficient evidence to take a position on the case. In the same letter the Commission asked the complainant to provide clarification on certain points made previously. SFEI replied to the Commission by letter of 14 May 1997.

D. The measures at issue

The measures which the Commission will examine under State aid rules are the following:

1. *Logistical assistance*, which consists in making available to SFMI-Chronopost the usage of the postal infrastructure for the collection, sorting, transport and delivery of its dispatches.

The price of the logistical assistance is calculated by multiplying the number of items handled (as regards collection, for example) or the total weight of the items transported (as regards forwarding) by the Post Office, by the unit price of the different operations carried out by the Post Office in performing the relevant service. Unit prices are negotiated each year between the Post Office and SFMI-Chronopost. They are based on the costs incurred by the Post Office, plus a margin.

To calculate the total cost of the assistance to SFMI-Chronopost, the Post Office calculates first the direct operating costs before central and local offices' overheads on the basis of the production range (chain of elementary operations) of the services provided and the actual traffic volumes. The central and local offices'

overheads are then allocated in proportion to the operating costs of each service.

As regards the production range, the Post Office did not have an analytical accounting system which enabled it to calculate the real costs incurred in providing the logistical assistance to SFMI-Chronopost. Until 1992 those costs were calculated on the basis of approximations. The services provided to SFMI-Chronopost were divided into elementary operations, which before 1992 had not been timed. To establish those costs the Post Office compared the corresponding services to similar existing postal services, whose operations had already been timed and valued (such as the deposit of a registered letter). In 1992 those operations were timed and valued, account being taken of the actual traffic volumes of the express courier activity. This has enabled the Post Office to assess the actual cost of the logistical assistance.

In order to determine the cost of the logistical assistance more accurately, the Post Office has applied to unit costs in 1992 a discount factor corresponding to the wages growth rate. The choice of this rate is justified by the fact that wages represent the main cost incurred for the logistical assistance (over 75 %). Hence the actual costs of 1992, corresponding to the real production range, have been discounted backwards and multiplied by the actual traffic volumes of each year during the period 1986 to 1991. By means of this method of backward projection the Post Office has been able to arrive at a reliable estimate of the actual costs incurred by the Post Office from 1986 to 1991.

It is apparent from a comparison of the costs of the logistical assistance with the remuneration paid by SFMI-Chronopost that the cumulative cover rate of total costs was 116,1 % over the period 1986 to 1991 and 119 % over the period 1986 to 1995. It is only in 1986 and 1987 that the revenues from the logistical assistance did not cover the corresponding costs entirely (the cover rates were 70,3 % and 84,3 % respectively). However, revenues covered direct costs before central and local offices' overheads.

Since 1993, SFMI-Chronopost has been paying annual fixed fees by way of contribution to the postal network (see below); accordingly, unit prices have decreased. However, the remuneration paid by SFMI-Chronopost has been in excess of the costs incurred by the Post Office.

The advantages derived from the logistical assistance are amplified, according to the complainant, by the fact that SFMI-Chronopost benefits from a preferential customs-clearance procedure (see below) and from delays in payment.

Until 1992 the Post Office sent monthly invoices to SFMI-Chronopost which had to be paid no later than 90 days after the end of the month to which they referred.

2. *Commercial assistance*, which consists in SFMI-Chronopost's access to the Post Office's customers and enjoyment of its goodwill. In this connection, the complainant maintains that in 1986 the Post Office transferred the customers of the Postadex product to SFMI-Chronopost for no consideration (Postadex was replaced by EMS-Chronopost in 1986). In addition, SFMI benefits from promotional and advertising campaigns undertaken by the Post Office.

France has made it clear that the prices paid by SFMI-Chronopost in return for the logistical assistance cover the total costs incurred by the Post Office. Hence those prices cover the costs of the commercial assistance (through the deposit and cashing operations). In addition to this direct remuneration, SFMI-Chronopost pays a fee whose amount depends on SFMI-Chronopost's turnover and its annual increase (*). SFMI-Chronopost paid out the following amounts during the 1986-95 period:

— 1986/1987:	FRF 26 million,
— 1988:	FRF 31 million,
— 1989:	FRF 39 million,
— 1990:	FRF 47 million,
— 1991:	FRF 49 million,
— 1992:	FRF 56 million,
— 1993:	FRF 45 million,
— 1994:	FRF 56 million,
— 1995:	FRF 76 million.

This remuneration is structured in such a way as to encourage the Post Office to promote the subsidiary's products. To this end the Post Office launches advertising campaigns regularly.

This system of remuneration was amended in 1993. Remuneration now consists of a fixed part, which is an annual contribution of FRF 25 million to the sales network, and a variable part, namely a premium on SFMI-Chronopost's sales. In addition, since 1994 SFMI-Chronopost has been paying a contribution to the Post Office's distribution network (FRF 30 million in 1994 and FRF 33 million in 1995).

(*) Business secret.

3. *Use of the Post Office's vehicles as advertising media* for SFMI-Chronopost's operations.

4. *Acces to Radio France's advertising spots*. SFEI maintains that SFMI-Chronopost advertised its product Skypack on Radio France under preferential conditions.

5. *Tax, customs and other privileges*. SFEI claims that the Post Office was exempted from 'taxe sur les salaires' (payroll tax) until October 1994, the equivalent aid being FRF 457 million in 1994. It maintains that the Post Office is exempted from stamp duty, equivalent to aid amounting to FRF 800 million a year. SFMI-Chronopost could have benefited from those advantages in relation to the activity subcontracted to the Post Office. In addition, SFMI-Chronopost enjoys a privileged customs regime, as opposed to the common regime applicable to private undertakings. SFMI-Chronopost benefits under assistance from French Bureau d'échange which performs the customs clearance procedures for its dispatches. Finally, SFEI claims that SFMI-Chronopost benefits from an investment of FRF 1,2 billion made in 1995 by the Post Office to construct a number of dispatching platforms.

E. The complainant's arguments

SFEI's main arguments may be summarised as follows:

- the logistical and commercial assistance provided by the Post Office to SFMI-Chronopost involves State aid. The total amount involved was FRF 1,516 billion over the period 1986-1991,

The aid is the difference between the normal price of the logistical assistance and the actual remuneration paid by SFMI to the Post Office. The complainant, on the basis of his interpretation of the abovementioned preliminary ruling of the Court in *La Poste*, maintains that this normal market price is what an undertaking 'operating in normal market conditions, should have charged for the services in question, no account being taken of the economics of scale enjoyed by the Post Office by virtue of its monopoly, since those economics were precisely the root-cause of the distortion in competition'.

The Bain study quantifies the aid element involved in the logistical assistance at FRF 1,048 billion (FRF 725 million for the international operations) over the period 1986 to 1991. The valuation is based on two

methods, the 'market price' method and a method based on a comparison between SFMI's estimated costs and the actual costs incurred by a group of competitors. The first method calculates the cost of the main components of the logistical assistance (wages and leases) and deducts from it the actual price paid by SFMI. It values the cost that an undertaking would incur in setting up and operating a network similar to the Post Office's. The second method refers only to the international activity of SFMI and values the aid at FRF 725 million.

As regards the commercial assistance SFEI values the corresponding aid at FRF 468 million (FRF 126 million for the international operations) during the 1986 to 1991 period. Of this amount, FRF 230 million is the difference between the amount actually paid by SFMI-Chronopost and an amount corresponding to the marketing costs incurred by the private undertaking members of SFEI (20 % of the turnover during the first years and 6 % afterwards); FRF 38 million is the aid corresponding to the free transfer of Postadex customers to SFMI in 1986 (the aid corresponds to Postadex's estimated turnover in 1985); and FRF 200 million is the aid stemming from the advantageous conditions of access to the Post Office's counters. It has to be pointed out the complainant and the Bain study do not explain how this last figure has been calculated.

In support of its reasoning the Bain study points out a number of elements which are supposed to prove that SFMI-Chronopost benefits from State aid. In particular, SFMI-Chronopost's growth was abnormally rapid during the period 1986 to 1991. Growth has slowed down since then, as the amount of aid granted by the Post Office has decreased. In addition, SFMI-Chronopost has a better balance sheet structure than its competitors, and the return on the Post Office's investment in SFMI-Chronopost is particularly high,

- the Commission should examine under Articles 92 and 93 the other measures mentioned above (credit periods, use of the Post Office's vehicles, privileged access to Radio France, tax and custom privileges, and use of the dispatching platforms), which constitute ad hoc aid to SFMI-Chronopost. The Commission should also look at SFMI-Chronopost's and the Post Office's customs arrangements and the Post Office's tax system in respect of payroll tax and stamp duty. Any benefit accrued to the parent could be passed on to the subsidiary. Such benefits are claimed to decrease

the Post Office's costs and to enable it to offer its assistance at lower prices.

F. The French authorities' reply

France rejects all SFEI's allegations as unfounded.

In general, the Post Office has behaved like a private investor under normal market conditions in setting up and operating the subsidiary SFMI-Chronopost. After a two-year period, which corresponds to the period in which the subsidiary started up its operations, the Post Office has been able to cover the total costs of the assistance, and the investment has been fully profitable. The Post Office's behaviour is comparable to that of a holding company or a group of undertakings pursuing a structural policy, global or sectoral, and guided by long-term profitability aims. To support its statements France has provided detailed information covering the period 1986 to 1995. This information relates *inter alia* to the remuneration of the logistical and commercial assistance, and SFMI-Chronopost's financial performance over that period.

Moreover,

- as regards customs clearance, France has confirmed that since February 1987 SFMI has been carrying out its customs clearance operations at its own international centre, without making any use of the Post Office's centres, contrary to the complainants' allegations on this specific point. In addition, SFMI is subject to the usual customs clearance rules provided for by law. Before that date (from April 1986 to February 1987) it was the Post Office which carried out customs clearance operations for SFMI-Chronopost's international business. However, this had not conferred any advantages on SFMI-Chronopost,
- as regards the credit periods allowed to SFMI-Chronopost, France has confirmed that these were aimed at offsetting the latter's loss of earnings due to the period needed by the Post Office for crediting to SFMI-Chronopost the revenues received on its behalf. Those credit intervals were due to accounting practice and were on average longer than the credit periods granted to SFMI-Chronopost. By way of example: in 1989 the average period for the Post Office's payments was 132 days whereas the average credit period for SFMI-Chronopost's payments was 105 days. Since 1992 shorter periods have been granted to SFMI-Chronopost for the payment of its monthly invoices. If this deadline is not adhered to, the Post Office is entitled to the principal plus interest,

- as regards the condition undertaken by the participants of the joint venture GDEW, France maintains, first, that it has been able to prove the absence of cross-subsidy in favour of SFMI-Chronopost. Secondly, the Post Office has received so far no application seeking access to its network,
- as regards the implementation of the recommendation in the Commission's decision relating to the Post Office's competitive activities ⁽⁵⁾, France has stated that since 1995 the Post Office has been improving its accountancy. The Post Office's analytical accountancy is based upon a distinction between the following areas: postal delivery services, financial services, 'Réseau Grand Public' (offices open to the public), supporting services and overheads. The Conseil de la Concurrence has examined the Post Office's accounting system and confirmed the validity of the methodology employed. The Conseil has concluded that the analytical accountancy put in place by the Post Office points to a presumption that there is no cross-subsidy,
- as regards commercial assistance, France has pointed out that SFMI-Chronopost carries out its own advertising campaigns, which are separate from those of the Post Office. As to the use of the Post Office's vehicles as a medium for the subsidiary's advertisement, this is very limited since SFMI-Chronopost may use the Post Office's vehicles only when there is spare space available,
- as regards Radio France's advertising activities, France maintains that SFMI-Chronopost paid the market price for the advertising of Skypack. SFMI-Chronopost carried out its advertising campaign for Skypack without the help of the Post Office. SFMI-Chronopost consulted an advertising agency, which contacted six radio stations, including Radio France. It was the advertising agency which negotiated and concluded the contract with the radio stations on behalf of SFMI-Chronopost,
- as regards payroll tax and stamp duty, France has explained that SFMI-Chronopost is a company subject to the same tax arrangements as are applicable to its private competitors. On the other hand, the Post Office is subject to a special scheme which is less favourable than the common scheme applicable to private companies. The Post Office is exempted from VAT under Article 13 A of the Sixth Council Directive on VAT ⁽⁶⁾. Consequently, it cannot deduct or obtain reimbursement of VAT paid on its purchases. Private companies, on the other hand, are subject to VAT and may deduct the whole amount of VAT paid out. The Post Office is now subject to a payroll tax,

which is a fiscal substitute for VAT, while private companies are exempted from this tax. As far as the dispatching platforms are concerned France has informed the Commission that SFMI-Chronopost's dispatches did not use them.

II. ASSESSMENT

Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement provide that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between the Member States, incompatible with the common market.

The Treaty and the Agreement set up the principle of neutrality with regard to the system of property ownership in the Member States and the principle of equality between publicly owned and private undertakings (Articles 222 and 90 of the Treaty and Articles 125 and 59 of the Agreement). In accordance with those principles the Commission must not prejudice or favour publicly owned undertakings, in particular when examining an operation in the light of Article 92 of the Treaty and Article 61 of the Agreement.

In this case it is necessary to distinguish between two sets of measures:

- the provision by the Post Office, as subcontractor of SFMI-Chronopost, of logistical and commercial services,
- the individual measures, such as the privileged access to Radio France and the tax and customs privileges.

In respect of the first set of measures, by way of a preliminary remark it should be noted that France has been able to show that the cumulative remuneration paid by SFMI-Chronopost for the Post Office's logistical support was higher than the total operating costs incurred over the period 1986 to 1995.

Marketing and commercial costs are included among the operating costs. Fixed costs have been allocated in proportion to the business carried out by the Post Office on behalf of the subsidiary. Therefore the remuneration paid by SFMI-Chronopost covers the marketing costs incurred by the Post Office. The fixed costs were apportioned in accordance with the scale of the services provided by the Post Office for the benefit of the subsidiary.

With regard to the period 1986 to 1991, the Commission considers that the calculation of the costs by backward projection from the actual unit costs in 1992 is a sound and conservative approach. The structure of the produc-

⁽⁵⁾ See footnote 2.

⁽⁶⁾ OJ L 145, 13. 6. 1977, p. 1.

tion range in 1992 was more complex and sophisticated (that is, more costly) than in the early years of operation. Thus backward projection produces figures which in the absence of any contrary indication cannot be lower than the costs actually incurred by the Post Office during 1986 to 1991.

The figures provided by France show that the estimation of the cost of the logistical assistance (FRF 1,048 billion) and the marketing costs (FRF 230 million) made by the complainant is inaccurate.

As regards the logistical assistance, the Commission is of the opinion that there is no point in evaluating the cost of setting up *ex novo* an alternative network (and infrastructure) to the Post Office's. SFMI-Chronopost does not need to create it since such a network is already in existence. Moreover, comparisons with private companies competing with SFMI-Chronopost must be treated with care. Those companies have a different cost structure; unlike SFMI-Chronopost in 1986 to 1991, they are integrated concerns which had their own network and made limited use of subcontractors.

As regards commercial assistance, the Commission considers that the complainant overestimates the cost of the marketing support given by the parent company to the subsidiary (FRF 230 million). The complainant does not take into account SFMI-Chronopost's own marketing efforts and exaggerates the costs of the promotional activity of SFMI-Chronopost's products. The cost of providing space for the display of advertising posters and of placing leaflets on post office counters should be negligible. The only possible significant cost is the proportion of post office staff's time spent on providing information on the products or directing the customers to SFMI-Chronopost's salesmen. Again, taking into account the wide range of services provided by such staff and the similar nature of the service provided it is unlikely that this expense is material. In any event the figures provided by France contradict the complainant's valuation.

The Commission believes that when the complainant talks about commercial assistance it refers not only to the direct marketing business but also to the more general use of the Post Office's trade image.

As regards the use of the trade image, it is worth recalling that the complainant values the aid at FRF 38 million for Postadex and at FRF 200 million for advantageous conditions of access to the Post Office's network. The Commission is of the opinion that the calculation of the value of these forms of commercial support by the Post Office to its subsidiary is highly subjective. The commercial assistance includes the use of the Post Office's goodwill (as in

the case of the transfer of Postadex's customers to SFMI-Chronopost), which is an intangible asset. Access by a subsidiary to the parent company's customers and goodwill is a common feature of any relationship within a group of companies. The transfer of Postadex's customers to SFMI-Chronopost is the logical corollary of the creation of SFMI-Chronopost as the subsidiary in charge of the Post Office's express delivery activities, and therefore of Postadex. For these reasons the Commission does not consider that the transfer, which does not entail any cash advantage for SFMI-Chronopost, represents State aid to the latter.

In its abovementioned preliminary ruling, the Court of Justice upheld the view that 'the provision of logistical and commercial assistance by a public undertaking to its subsidiaries, which are governed by private law and carry on an activity open to free competition, without normal consideration in return is capable of constituting State aid within the meaning of Article 92 of the Treaty' ⁽⁷⁾. The Court concluded that 'the provision of logistical and commercial assistance by a public undertaking to its subsidiaries, which are governed by private law and carry on an activity open to free competition, is capable of constituting State aid within the meaning of Article 92 of the EC Treaty if the remuneration received in return is less than that which would have been demanded under normal market conditions' ⁽⁸⁾.

According to the Advocate-General's conclusions in *La Poste*, State aid is involved if the assistance is provided 'on financial terms that are more favourable than those which the undertaking could obtain from a comparable commercial investor [...] in deciding whether there is a subsidy, it seems to me that it is necessary to consider whether a commercial investor would be satisfied with the level of the consideration received for the assistance, having regard to factors such as the cost of providing the assistance, the size of its investment in the undertaking and its return from it, the importance of the activity of the undertaking to the investing group as a whole, conditions on the market in question and the period for which the assistance is granted' ⁽⁹⁾.

According to the complainant, the Court's ruling shows that in deciding whether there is State aid, the Commission should examine whether SFMI-Chronopost paid the 'normal market price' for the logistical and commercial services provided by the Post Office. The complainant does not give a precise definition of normal market price.

⁽⁷⁾ *La Poste, ante*, at paragraph 57.

⁽⁸⁾ *La Poste, ante*, at paragraph 62.

⁽⁹⁾ Advocate-General Jacob's conclusions in *La Poste, ante*, at paragraph 61.

However, it may be inferred from its reasoning that it is the price at which a comparable private company would provide the same services to an unrelated company. This price should include a fee for the access to the postal network.

The complainant claims that the Commission should disregard the group's strategic interests and the economies of scale arising from the privileged access of SFMI-Chronopost to the Post Office's network and infrastructure. According to the complainant, such considerations could not be taken into account in this case because the Post Office has a monopoly. SFMI-Chronopost should bear the costs that a private undertaking would incur in creating a network equivalent to that of the Post Office.

The complainant's reasoning reflects a fundamental flaw in the interpretation of the Court's judgment.

Nothing in the Court's case-law suggests that the Commission should disregard the strategic considerations and the synergies stemming from the fact that the Post Office and SFMI-Chronopost belong to the same group. On the contrary, strategic considerations, such as the wish to penetrate a new market, play an important role in the investment decision-making process of a holding company. This principle applies directly to this case, where we are considering the behaviour of a parent company and its subsidiary.

The fact that the transaction takes place between an undertaking operating in a reserved market and its subsidiary operating in a competitive market is of no relevance to this case. The Court of Justice has never suggested that in determining whether State aid is involved the Commission must apply a different approach if one of the parties to the transaction has a monopoly.

Accordingly, the relevant question is whether the terms of the transaction between the Post Office and SFMI-Chronopost are comparable to those of an equivalent transaction between a private parent company, which may very well be a monopoly (for instance, because of the ownership of exclusive rights), and its subsidiary. The 'normal market price' criterion put forward by the complainant does not answer this question since it overlooks the fact that the transaction takes place between two companies within the same group. In this context it is worth remembering that the Court in *La Poste* took the view that to establish whether State aid is involved one has to verify if the parent company received the normal consideration in return from the subsidiary.

The Commission considers that internal prices at which products and services are transacted between companies belonging to the same group do not involve any financial advantage whatsoever if they are full-cost prices (total costs plus a mark-up to remunerate equity capital investment). In this case payments made by SFMI-Chronopost did not cover total costs over the first two years of operation, but covered total costs before central and local offices' overheads. The Commission considers that this situation is not abnormal since revenues from the operations of a new firm belonging to a group of companies may cover only variable costs in the start-up period. Once the undertaking has stabilised its position on the market, the revenues generated by it must be in excess of variable costs so as to make a contribution to the fixed costs of the group. Over the first two years (1986 to 1987) of operation payment made by SFMI-Chronopost covered not only variable costs, but also some fixed costs (such as buildings and vehicles). France has shown that as from 1988 the remuneration paid by SFMI-Chronopost for the assistance covers all the costs incurred by the Post Office, plus a contribution by way of interest on its equity capital. Therefore, the logistical and commercial assistance was provided by the Post Office to its subsidiary under normal business conditions and did not constitute State aid.

The Commission has also considered whether the Post Office behaviour as a shareholder of SFMI-Chronopost was commercially justified under the market economy investor principle. Under that test, to establish whether a transaction between a Member State and an undertaking contains State aid, it is necessary to verify whether the undertaking would have been able to obtain the monies on the private capital markets. To assess whether the Post Office has behaved like a market economy investor the Commission has to look at the return to the parent company in terms of dividends distributed and capital growth.

No State aid arises if the internal rate of return ('IRR') of the investment exceeds the cost of capital of the company (that is to say, the normal rate of return that a private investor would require under similar circumstances). To work out the IRR the Commission has taken into account, on the one hand the equity injection by the Post Office in 1986, and on the other hand the dividends distributed by SFMI-Chronopost over the period 1986 to 1991, and the value of that company in 1991. The Commission following standard investment appraisal techniques, has calculated SFMI-Chronopost's value in 1991 by inflating the cashflow generated by that company

in that year, using a multiplier coefficient. That multiplier coefficient is a function of both the average growth rate (10 %, which was the expected growth rate of the delivery express market in France at the end of 1991) of the cash-flow and the discounting rate used (13,91 %). The latter is the cost of equity⁽¹⁰⁾. The formula used is,

$$C/r-g$$

where

C is the cashflow in 1991,

r is the cost of equity,

g is the growth rate.

The Commission has, on this basis, valued SFMI-Chronopost at FRF 564 million at the end of 1991. The reliability of this figure is confirmed by the price of FRF 180,4 million paid by GDEW in June 1992 for the acquisition of the international business of SFMI-Chronopost, which accounted for approximately one-third of the total business (FRF 180,4 × 3 = FRF 541,2 million).

The analysis carried out by the Commission covers the period 1986 to 1991 (before SFMI was transferred to GDNEW). This is the start-up period when, according to the complainant, SFMI-Chronopost received the largest amount of State aid.

The Commission has worked out the IRR and compared it with SFMI-Chronopost's cost of equity in 1986 (13,65 %)⁽¹¹⁾ the year when the company was incorporated and started its operations. This has permitted it to verify whether the profitability of the whole capital venture has been adequate. The IRR calculated by the Commission is largely in excess of the cost of equity in 1986. Therefore no State aid was involved in the financial transactions between the Post Office and its subsidiary over the years 1986 to 1991. This conclusion is all the more valid for the years subsequent to 1991, when the amount of dividends paid out was higher than in the previous period.

The Commission has stated above that it does not endorse the complainant's claim that SFMI-Chronopost should pay a fee to have access to the parent's network and goodwill. However, even taking into account the alleged aid involved in SFMI-Chronopost's access to the Post Office's goodwill and network (FRF 238 million) the conclusion that the relationship between the Post Office and its subsidiary is commercially justified remains valid. To that end the Commission has calculated the global IRR on the Post Office's investment in its subsidiary. Amongst the elements of the calculation the Commission

has taken into account on the one hand the equity injections and the costs incurred by the Post Office in providing the assistance and on the other hand the dividends distributed, the subsidiary's value in 1991 and the remuneration paid for the assistance. The Commission has treated the sum of FRF 38 million corresponding to the free transfer of Postadex as an equity capital injection, which took place in 1986, and the sum of FRF 200 million as a one-off fee, paid in 1986, to have access to the Post Office's network over the period 1986 to 1991⁽¹²⁾. The calculation carried out by the Commission shows that even taking into account those amounts the IRR is again higher than the cost of equity in 1986.

As regards the customs clearance procedure, France has informed the Commission that since 4 February 1987 SFMI-Chronopost has carried out the customs clearance procedure in its own customs centre and has been subject to the normal customs arrangements applicable to private companies (see above). Before that date, those customs procedures were performed by the Post Office on behalf of SFMI-Chronopost. Therefore, SFMI-Chronopost's dispatches were subject to a special scheme only for the period from April 1986 (when the company started to operate) to February 1987. The Commission has verified that the temporary application of the special arrangements involved no financial advantage granted out of State resources to SFMI-Chronopost. Moreover, the Commission does not hold any evidence showing that SFMI-Chronopost derived any economic advantage whatsoever from the application of the special scheme during its first months in business. In any case, even if the special scheme applicable to the Post Office was more favourable than the common regime (inasmuch as customs clearance procedure would be more rapid), the corresponding advantage would be very modest, since SFMI-Chronopost's level of activity was at that time very small. In 1986 (the first year of operation) SFMI-Chronopost's turnover corresponding to its international activity, which was launched in October 1986, was approximately only FRF 2,9 million before tax, corresponding to 10 500 packages. Of those, only some 15 % were taxable packages (meaning that approximately 1 600 packages were subject to the customs clearance procedure). The others were non-taxable packages which, given their modest value, were exempted from the normal customs procedure.

In respect of the other points raised by the Commission at the time of the opening of the Article 93(2) procedure and the other issues raised by the complainant, the Commission has arrived at the following conclusions.

⁽¹⁰⁾ Source: Eurostat and Associés en Finance.

⁽¹¹⁾ Source: Eurostat and Associés en Finance.

⁽¹²⁾ The other figures estimated by SFEI (i.e. FRF 1,048 billion for the logistical assistance and FRF 230 million for the commercial assistance) cannot be taken into account since they have been proved inaccurate (see above).

As regards the conditions subscribed by the Post Office within the framework of the authorisation of the GDEW joint venture, the Commission has been able to prove that no State aid has been granted to SFMI-Chronopost. Moreover, France has informed the Commission that the Post Office had received no application to gain access to its network. This is acknowledged by SFEI, which admits to being unaware of any such application lodged with the Post Office. SFEI's member undertakings are integrated firms, which are not interested in access to the Post Office's network.

As regards the alleged tax exemptions, by way of a preliminary remark the Commission points out that SFMI-Chronopost is a normal company which is subject to the same tax system as its private competitors. The Commission has verified in this case whether SFMI-Chronopost benefits from any direct or indirect advantage in relation to stamp duty and payroll tax. In respect of stamp duty, France has informed the Commission that SFMI-Chronopost's dispatches are subject to this tax irrespective of whether they are transported by the Post Office or not. Consequently, as far as this tax is concerned SFMI-Chronopost enjoys no special treatment or financial advantage over its competitors.

As regards the payroll tax, the complainant's claim about the Post Office being exempted from this tax until October 1994 is unfounded. Before that date the Post Office was subject to a reduced tax rate of 4,25 %. The tax charge borne by the Post Office ranged from FRF 1,049 billion in 1986 to FRF 1,136 billion in 1990. The ordinary tax rate of 9,25 % has been in force since October 1994. However, the tax treatment of the Post Office in the dispatching sector (including express courier) has always been in this respect less favourable than the common tax system. The Post Office is exempted from VAT under Article 13 A of the Sixth VAT Directive. Hence the Post Office pays VAT on its purchases but is unable to deduct or apply for reimbursement of the tax paid out. On the other hand, the Post Office, unlike the ordinary companies which are subject to VAT, is subject to a payroll tax, which is an alternative to VAT. As a result the tax charge borne by the Post Office is heavier than that of ordinary companies irrespective of the reduced rate of payroll tax.

France has demonstrated that in 1993 (namely before the introduction of the normal tax rate) the Post Office was in a disadvantageous position compared to the companies subject to the common tax system. The Post Office paid FRF 78 million by way of payroll tax, and the non-refundable VAT was FRF 274 million. The Post Office's turnover in the dispatches sector was FRF 5,465 billion in 1993. Of the corresponding customers 16,6 % were not subject to VAT and 83,4 % were subject to VAT. It follows from the calculation carried out by the French authorities that the Post Office enjoyed a theoretical advantage in respect of the customers not subject to VAT (the advantage is theoretical because this is a segment of the dispatching market which is not operated by the

competitors). On the other hand, the Post Office suffered from a FRF 278 million disadvantage in respect of the customers which are subject to VAT. The global net disadvantage stemming from the exemption from VAT and the payment of payroll tax is at least FRF 174,6 million. 1993 was a typical year in terms of volume of activity and expenses of the Post Office and the conclusions drawn for that year are valid for the other years prior to 1994. Therefore, as regards stamp duty the Post Office did not profit from any particular tax benefit which might have been transferred to SFMI-Chronopost.

As regards the periods allowed for payment, the Commission is satisfied with the information provided by France, which clearly show the absence of any kind of advantage for SFMI-Chronopost.

As regards the utilisation of the Post Office's vehicles as advertising media, the Commission considers that this forms part of the commercial assistance provided by the Post Office to SFMI-Chronopost. The considerations set out above for the commercial assistance are also valid in this respect.

As regards Radio France's advertising, the Commission has no evidence that SFMI-Chronopost paid a price below the market price for the advertising of Skypack. It is clear from the information provided by France that SFMI-Chronopost enjoyed no preferential treatment.

As for the dispatching platforms, France has stated that SFMI-Chronopost's dispatches do not transit on them. Therefore, SFMI-Chronopost does not benefit from any advantage in relation to that investment.

As regards the recommendation in the Commission's decision on the Post Office's competitive activities, the Commission is satisfied with the general methodology and principles underlying the Post Office's analytical accountancy. A correct implementation of them will ensure transparency and allow verification that there is no cross-subsidy between the various businesses run by the Post Office,

HAS ADOPTED THIS DECISION:

Article 1

The logistical and commercial assistance provided by the Post Office to its subsidiary SFMI-Chronopost, the other financial transactions between those two companies, the relationship between SFMI-Chronopost and Radio France, the customs arrangements applicable to the Post Office and SFMI-Chronopost, the system of payroll tax and stamp duty applicable to the Post Office and its (*) investment in the dispatching platforms do not constitute State aid to SFMI-Chronopost.

(*) Business secret.

Article 2

This Decision is addressed to the Republic of France.

Done at Brussels, 1 October 1997.

For the Commission

Marcelino OREJA

Member of the Commission

COMMISSION DECISION

of 28 May 1998

exempting imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93

(notified under document number C(1998) 1427)

(98/366/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community⁽¹⁾, as amended by Regulation (EC) No 2331/96⁽²⁾,

Having regard to Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered pursuant to Regulation (EC) No 703/96⁽³⁾,

Having regard to Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93⁽⁴⁾, and in particular Article 7 thereof,

After consulting the Advisory Committee,

Whereas:

A. REQUESTS PURSUANT TO ARTICLE 3 OF REGULATION (EC) No 88/97

- (1) After the entry into force of Regulation (EC) No 88/97 a number of bicycle assemblers submitted requests pursuant to Article 3 of that Regulation for exemption from the extension to imports of certain bicycle parts from the People's Republic of China by Regulation (EC) No 71/97 (hereinafter referred to as 'the extended anti-dumping duty') of the definitive anti-dumping duty imposed on bicycles originating in the People's Republic of China by Regulation (EEC) No 2474/93. The Commission published in the *Official Journal of the European Communities* a list of applicants⁽⁵⁾ for which payment of the extended anti-dumping duty in

respect of their imports of essential bicycle parts declared for free circulation was suspended pursuant to Article 5(1) of that Regulation.

- (2) The Commission requested and received the necessary information from the parties listed in the Annex to this Decision and found their requests admissible pursuant to Article 4(1) of Regulation (EC) No 88/97. The information provided was examined and verified where necessary at the premises of the parties concerned.
- (3) The facts as finally ascertained by the Commission show that the assembly operations of the applicants concerned do not fall within the scope of Article 13(2) of Regulation (EC) No 384/96. It was found that for all the applicants' bicycle assembly operations, the value of the parts originating in the People's Republic of China which were used in their assembly operations was lower than 60 % of the total value of the parts used in these assembly operations. In addition, for some of them, the value added to the parts brought in exceeded 25 % of the manufacturing costs of the finished bicycles.
- (4) For the above reasons, and in accordance with Article 7(1) of Regulation (EC) 88/97, the parties listed in the Annex to this Decision should be exempted from the extended anti-dumping duty. The parties concerned were informed accordingly and given an opportunity to comment.
- (5) In accordance with Article 7(2) of Regulation (EC) No 88/97 the parties listed in the Annex to this Decision should be exempted from the extended anti-dumping duty as from the date of receipt of their request and their customs debt in respect of the extended anti-dumping duty is to be considered void as from that date.

B. INFORMATION TO INTERESTED PARTIES

- (6) Following the adoption of this Decision, an updated list of parties exempted pursuant to Article 7 of Regulation (EC) No 88/97 and of parties whose requests pursuant to Article 3 of that Regulation are under examination will be published in the 'C' series of the *Official Journal of the*

⁽¹⁾ OJ L 56, 6. 3. 1996, p. 1.

⁽²⁾ OJ L 317, 6. 12. 1996, p. 1.

⁽³⁾ OJ L 16, 18. 1. 1997, p. 55.

⁽⁴⁾ OJ L 17, 21. 1. 1997, p. 17.

⁽⁵⁾ OJ C 45, 13. 2. 1997, p. 3, OJ C 112, 10. 4. 1997, p. 9 and OJ C 378, 13. 12. 1997, p. 2.

European Communities in accordance with Article 16(2) of that Regulation,

The exemptions shall take effect in relation to each party as from the relevant date shown in the column headed 'Date of effect'.

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to the Member States and to the parties listed in the Annex to this Decision.

Article 1

The parties listed in the Annex to this Decision are hereby exempted from the extension by Regulation (EC) No 71/97, of the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China, to imports of certain bicycle parts from the People's Republic of China.

Done at Brussels, 28 May 1998.

For the Commission

Leon BRITTAN

Vice-President

ANNEX

EXEMPTED PARTIES

Name	City	Country	Exemption pursuant to Regulation (EC) No 88/97	Date of effect	Taric additional codes
LDM Cycles SARL	F-38500 Voiron	France	Article 5	3.7.1997	8331
Giant Europe Manufacturing BV	NL-8218 Lelystad	The Nether- lands	Article 5	10.7.1997	8328
Magna Technology	UK-WA5 2UL Warrington	United Kingdom	Article 5	3.10.1997	8525
Bikkel Bikes	NL-6004 BE Weert	The Nether- lands	Article 5	18.11.1997	8749
Ludo Cycles	B-3070 Kortenberg	Belgium	Article 5	24.11.1997	8750
Cicli Frera s.n.c.	I-35020 Arzergrande (PD)	Italy	Article 5	18.2.1998	8205