

Official Journal

of the European Communities

ISSN 0378-6978

L 171

Volume 41

17 June 1998

English edition

Legislation

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1239/98**of 8 June 1998****amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

(1) Whereas Articles 2 and 4 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture ⁽⁴⁾ state that the Council is to establish, in the light of available scientific opinion, conservation measures necessary to ensure rational and responsible exploitation, on a sustainable basis, of living marine resources, taking account, *inter alia*, of the impact of fishing on the marine ecosystem; whereas for that purpose the Council may adopt technical measures regarding fishing gear and its method of use;

(2) Whereas it is necessary to establish the principles and certain rules at Community level so that Member States may ensure the management of fishing activities by vessels flying their flag or under their jurisdiction;

(3) Whereas Regulation (EC) No 894/97 ⁽⁵⁾ regulates fishing with drift-nets;

(4) Whereas fishing activities using drift-nets have in the past undergone a rapid increase in terms of fishing effort; whereas uncontrolled expansion of these activ-

ities could present a grave risk of an excessive increase in the fishing effort as regards the target species;

(5) Whereas Article 130r(2) of the Treaty establishes the principle that all Community measures must take account of the requirements of environmental protection in a precautionary spirit;

(6) Whereas, in accordance with the Community's international obligations to contribute towards the conservation and management of the biological resources of the oceans, it is necessary to regulate strictly any expansion of drift-net fishing by Community vessels;

(7) Whereas restrictions on the length of drift-nets are required;

(8) Whereas drift-net fishing for tuna, swordfish and certain other species gives rise to by-catches and a risk for the populations of species other than the target species;

(9) Whereas, in view of the risk of an uncontrolled expansion of the fishing effort and the lack of sufficient selectivity of drift-nets, their use should be prohibited in fisheries for tuna, swordfish and certain other species; whereas the transition should be made rapidly to avoid any ecological risks;

(10) Whereas Community vessels which have fished with drift-nets for those species are subject to economic constraints necessitating a phasing-out period; whereas the continuation of fishing with drift-nets by these vessels should be authorised until 31 December 2001;

(11) Whereas technical conservation measures for fishing in the Baltic Sea are laid down in Regulation (EC) No 88/98 ⁽⁶⁾;

⁽¹⁾ OJ C 118, 29. 4. 1994, p. 2.

⁽²⁾ OJ C 305, 31. 10. 1994, p. 83.

⁽³⁾ OJ C 393, 31. 12. 1994, p. 175.

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

⁽⁵⁾ OJ L 132, 23. 5. 1997, p. 1.

⁽⁶⁾ OJ L 9, 15. 1. 1998, p. 1.

- (12) Whereas fishing using drift-nets should take place only under conditions where such use can be, and actually is, controlled;
- (13) Whereas Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish ⁽¹⁾ does not cover all fisheries concerned by the use of drift-nets; whereas the general provisions of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽²⁾ concerning logbooks and landing declarations will not apply to the Mediterranean until 1 January 1999;
- (14) Whereas, therefore, the control of fishing using drift-nets poses special difficulties; whereas specific provisions for that activity should be defined;
- (15) Whereas the consequences of fishing using drift-nets must be subject to constant assessment; whereas, therefore, the necessary data must be collected;
- (16) Whereas the logbook data must be verified against the volume of landings, on which effective checks must be possible;
- (17) Whereas the Member States must supply the Commission with certain information necessary for the supervision at Community level of the checks they carry out;
- (18) Whereas any failure to comply with the provisions of this Regulation should be subject to sanctions by Member States in accordance with Regulation (EC) No 2847/93,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 894/97 is hereby amended as follows:

1. Article 11 shall be replaced by the following:

'Article 11

No vessel may keep on board, or use for fishing, one or more drift-nets whose individual or total length is more than 2,5 kilometres.

Article 11a

1. From 1 January 2002, no vessel may keep on board, or use for fishing, one or more drift-nets

⁽¹⁾ OJ L 276, 10. 10. 1983, p. 1. Regulation as last amended by Commission Regulation (EC) No 2945/95 (OJ L 308, 21. 12. 1995, p. 18).

⁽²⁾ OJ L 261, 20. 10. 1993, p. 1. Regulation as last amended by Regulation (EC) No 686/97 (OJ L 102, 19. 4. 1997, p. 1).

intended for the capture of species listed in Annex VIII.

2. From 1 January 2002, it is prohibited to land species listed in Annex VIII which have been caught in drift-nets.

3. Until 31 December 2001, a vessel may keep on board, or use for fishing, one or more drift-nets referred to in paragraph 1 after receiving authorisation from the competent authorities of the flag Member State. In 1998, the maximum number of vessels which may be authorised by a Member State to keep on board, or use for fishing, one or more drift-nets shall not exceed 60 % of the fishing vessels which used one or more drift-nets during the period 1995 to 1997.

4. Member States shall communicate to the Commission for each target species by 30 April of each year, the list of vessels authorised to carry out fishing activities using the drift-nets referred to in paragraph 3; for 1998, the information shall be sent not later than 31 July 1998.

Article 11b

1. All fishing vessels using one or more drift-nets intended for the capture of species listed in Annex VIII shall operate under the following conditions:

- during fishing activity, the vessel must keep the net under constant visual observation,
- floating buoys, with radar reflectors, must be moored to each end of the netting, so that its position can be determined at any time. The buoys must be permanently marked with the registration letter(s) and number of the vessel to which they belong.

2. The master of a fishing vessel using one or more drift-nets referred to in paragraph 1 shall keep a logbook in which he must record the following information on a day-to-day basis:

- the total length of the nets on board,
- the total length of the nets used in each fishing operation,
- the quantity of each species caught during each fishing operation, including by-catches and discards at sea, in particular cetaceans, reptiles and sea-birds,
- the quantity of each species held on board,
- the date and position of such catches.

3. All masters referred to in paragraph 2 shall forward to the competent authorities of the Member State of landing a declaration giving at least the quantities of each species landed and the catch dates and zones.

4. Masters of vessels using one or more drift-nets referred to in paragraph 1 who wish to use a landing location in a Member State shall notify the competent authorities in the Member State concerned, at least two hours before arrival in port, of the planned landing location and time of arrival.

5. All fishing vessels using one or more drift-nets referred to in paragraph 1 shall keep on board the prior authorisation to fish issued by the competent authorities of the flag Member State.

6. In the case of failure to comply with the obligations laid down in Articles 11 and 11a and this Article, the competent authorities shall take appropriate measures in respect of the vessels concerned, in ac-

cordance with Article 31 of Regulation (EEC) No 2847/93.

Article 11c

With the exception of waters covered by Council Regulation (EC) No 88/98 of 18 December 1997 laying down certain technical measures for the conservation of fishery resources in the waters of the Baltic Sea, the Belts and the Sound (*) and notwithstanding Article 1(1), Articles 11, 11a and 11b shall apply in all waters falling within the sovereignty of jurisdiction of the Member States and, outside those waters shall apply to all Community fishing vessels.

(*) OJ L 9, 15.1.1998, p. 1.'

2. The text annexed hereto shall be added as Annex VIII.

Article 2

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

It shall apply from 1 July 1998.

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

Done at Luxembourg, 8 June 1998.

For the Council

The President

J. CUNNINGHAM

ANNEX

'ANNEX VIII

- Albacore: *Thunnus alalunga*
 - Bluefin tuna: *Thunnus thynnus*
 - Bigeye tuna: *Thunnus obesus*
 - Skipjack: *Katsuwonus pelamis*
 - Atlantic Bonito: *Sarda sarda*
 - Yellowfin tuna: *Thunnus albacares*
 - Blackfin tuna: *Thunnus atlanticus*
 - Little tuna: *Euthynnus* spp.
 - Southern bluefin tuna: *Thunnus maccoyii*
 - Frigate tuna: *Auxis* spp.
 - Oceanic sea breams: *Brama rayi*
 - Marlins: *Tetrapturus* spp.; *Makaira* spp.
 - Sailfishes: *Istiophorus* spp.
 - Swordfishes: *Xiphias gladius*
 - Sauries: *Scomberesox* spp.; *Cololabis* spp.
 - Dolphinfishes: *Coryphæna* spp.
 - Sharks: *Hexanchus griseus*; *Cetorhinus maximus*; *Alopiidae*; *Carcharbinidae*; *Sphymidae*; *Isuridae*; *Lamnidae*
 - Cephalopods: all species'.
-

COMMISSION REGULATION (EC) No 1240/98
of 16 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 17 June 1998.

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

Done at Brussels, 16 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 16 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
0707 00 05	052	86,9
	999	86,9
0709 90 70	052	64,5
	999	64,5
0805 30 10	378	60,7
	382	62,1
	388	61,3
	528	60,1
	999	61,0
	388	72,6
	400	89,3
0808 10 20, 0808 10 50, 0808 10 90	404	91,1
	508	96,0
	512	72,3
	524	55,9
	528	67,4
	800	188,8
	804	104,5
	999	93,1
	052	183,3
	999	183,3
0809 20 95	052	266,9
	064	202,1
	068	210,8
	616	204,4
	999	221,0
0809 40 05	624	221,1
	999	221,1

⁽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 1241/98
of 16 June 1998
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as amended by Regulation (EC) No 192/98 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 1403/97 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation; whereas, however, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties;

Whereas, pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product;

Whereas Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector;

Whereas the import duties are applicable until new duties are fixed and enter into force; whereas they also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing;

Whereas, pursuant to the first subparagraph of Article 4(1) of Regulation (EC) No 1503/96, the import duties applicable in the rice sector should be fixed and explicit provision should be made for them, which are more advantageous for operators, to apply from 11 June 1998;

Whereas, in order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties;

Whereas application of Regulation (EC) No 1503/96 results in import duties being fixed as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 17 June 1998.

It shall apply with effect from 11 June 1998.

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

Done at Brussels, 16 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30. 12. 1995, p. 18.

⁽²⁾ OJ L 20, 27. 1. 1998, p. 16.

⁽³⁾ OJ L 189, 30. 7. 1996, p. 71.

⁽⁴⁾ OJ L 194, 23. 7. 1997, p. 2.

ANNEX I

Import duties on rice and broken rice

(ECU/tonne)

CN code	Duties ⁽¹⁾			
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽⁷⁾	ACP Bangladesh ⁽¹⁾ ⁽²⁾ ⁽³⁾ ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	130,91		202,88
1006 10 23	(7)	130,91		202,88
1006 10 25	(7)	130,91		202,88
1006 10 27	(7)	130,91		202,88
1006 10 92	(7)	130,91		202,88
1006 10 94	(7)	130,91		202,88
1006 10 96	(7)	130,91		202,88
1006 10 98	(7)	130,91		202,88
1006 20 11	307,64	149,48		230,73
1006 20 13	307,64	149,48		230,73
1006 20 15	307,64	149,48		230,73
1006 20 17	257,01	124,17	7,01	192,76
1006 20 92	307,64	149,48		230,73
1006 20 94	307,64	149,48		230,73
1006 20 96	307,64	149,48		230,73
1006 20 98	257,01	124,17	7,01	192,76
1006 30 21	530,53	250,36		397,90
1006 30 23	530,53	250,36		397,90
1006 30 25	530,53	250,36		397,90
1006 30 27	(7)	251,59		399,75
1006 30 42	530,53	250,36		397,90
1006 30 44	530,53	250,36		397,90
1006 30 46	530,53	250,36		397,90
1006 30 48	(7)	251,59		399,75
1006 30 61	530,53	250,36		397,90
1006 30 63	530,53	250,36		397,90
1006 30 65	530,53	250,36		397,90
1006 30 67	(7)	251,59		399,75
1006 30 92	530,53	250,36		397,90
1006 30 94	530,53	250,36		397,90
1006 30 96	530,53	250,36		397,90
1006 30 98	(7)	251,59		399,75
1006 40 00	(7)	78,38		123,00

⁽¹⁾ Subject to the application of the provisions of Articles 12 and 13 of amended Council Regulation (EEC) No 715/90 (OJ L 84, 30.3.1990, p. 85).

⁽²⁾ In accordance with Regulation (EEC) No 715/90, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of ECU 250 per tonne applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (ECU/tonne)	(¹)	257,01	533,00	307,64	530,53	(¹)
2. Elements of calculation:						
(a) Arag cif price (ECU/tonne)	—	354,00	346,69	330,53	375,80	—
(b) fob price (ECU/tonne)	—	—	—	303,36	348,63	—
(c) Sea freight (ECU/tonne)	—	—	—	27,17	27,17	—
(d) Source	—	USDA	Operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1242/98
of 16 June 1998

fixing Community producer and import prices for carnations and roses with a view to the application of the arrangements governing imports of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip

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

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5 (2) (a) thereof,

Whereas, pursuant to Article 2 (2) and Article 3 of above-mentioned Regulation (EEC) No 4088/87, Community import and producer prices are fixed each fortnight for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses and apply for two-weekly periods; whereas, pursuant to Article 1b of Commission Regulation (EEC) No 700/88 of 17 March 1988 laying down detailed rules for the application of the arrangements for the import into the Community of certain floricultural products originating in Cyprus, Israel, Jordan, Morocco and the West Bank and the Gaza Strip ⁽³⁾, as last amended by Regulation (EC) No 2062/

97 ⁽⁴⁾, those prices are determined for fortnightly periods on the basis of weighted prices provided by the Member States; whereas those prices should be fixed immediately so the customs duties applicable can be determined; whereas, to that end, provision should be made for this Regulation to enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

The Community producer and import prices for uniflorous (bloom) carnations, multiflorous (spray) carnations, large-flowered roses and small-flowered roses as referred to in Article 1b of Regulation (EEC) No 700/88 for a fortnightly period shall be as set out in the Annex.

Article 2

This Regulation shall enter into force on 17 June 1998.

It shall apply from 17 to 30 June 1998.

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

Done at Brussels, 16 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ L 177, 5. 7. 1997, p. 1.

⁽³⁾ OJ L 72, 18. 3. 1988, p. 16.

⁽⁴⁾ OJ L 289, 22. 10. 1997, p. 1.

ANNEX

(ECU/100 pieces)

Period from 17 to 30 June 1998				
Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	13,96	10,56	31,83	14,30
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	7,55	8,52	13,02	11,54
Morocco	13,19	12,66	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

COMMISSION REGULATION (EC) No 1243/98**of 16 June 1998****suspending the preferential customs duties and re-establishing the Common Customs Tariff duty on imports of multiflorous (spray) carnations originating in Israel**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco and the West Bank and the Gaza Strip ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5(2)(b) thereof,

Whereas Regulation (EEC) No 4088/87 lays down the conditions for applying a preferential duty on large-flowered roses, small-flowered roses, uniflorous (bloom) carnations and multiflorous (spray) carnations within the limit of tariff quotas opened annually for imports into the Community of fresh cut flowers;

Whereas Council Regulation (EC) No 1981/94 ⁽³⁾, as last amended by Commission Regulation (EC) No 650/98 ⁽⁴⁾, opens and provides for the administration of Community tariff quotas for cut flowers and flower buds, fresh, originating in Cyprus, Egypt, Israel, Malta, Morocco and the West Bank and the Gaza Strip;

Whereas Commission Regulation (EC) No 1242/98 ⁽⁵⁾ fixes the Community producer and import prices for carnations and roses for the application of the import arrangements;

Whereas Commission Regulation (EEC) No 700/88 ⁽⁶⁾, as last amended by Regulation (EC) No 2062/97 ⁽⁷⁾, lays down the detailed rules for the application of the arrangements;

Whereas the representative market rates defined in Article 1 of Council Regulation (EEC) No 3813/92 ⁽⁸⁾, as last amended by Regulation (EC) No 150/95 ⁽⁹⁾, are used to

convert amounts expressed in third country currencies and are used as the basis for determining the agricultural conversion rates of the Member States' currencies; whereas detailed rules on the application and determination of these conversions were set by Commission Regulation (EEC) No 1068/93 ⁽¹⁰⁾, as last amended by Regulation (EC) No 961/98 ⁽¹¹⁾;

Whereas, on the basis of prices recorded pursuant to Regulations (EEC) No 4088/87 and (EEC) No 700/88, it must be concluded that the conditions laid down in Article 2(2) of Regulation (EEC) No 4088/87 for suspension of the preferential customs duty are met for multiflorous (spray) carnations originating in Israel; whereas the Common Customs Tariff duty should be re-established;

Whereas the quota for the products in question covers the period 1 January to 31 December 1998; whereas, as a result, the suspension of the preferential duty and the reintroduction of the Common Customs Tariff duty apply up to the end of that period at the latest;

Whereas, in between meetings of the Management Committee, the Commission must adopt such measures,

HAS ADOPTED THIS REGULATION:

Article 1

For imports of multiflorous (spray) carnations (CN codes ex 0603 10 13 and ex 0603 10 53) originating in Israel, the preferential customs duty fixed by Regulation (EC) No 1981/94 is hereby suspended and the Common Customs Tariff duty is hereby re-established.

Article 2

This Regulation shall enter into force on 17 June 1998.

⁽¹⁾ OJ L 382, 31. 12. 1987, p. 22.

⁽²⁾ OJ L 177, 5. 7. 1997, p. 1.

⁽³⁾ OJ L 199, 2. 8. 1994, p. 1.

⁽⁴⁾ OJ L 88, 24. 3. 1998, p. 8.

⁽⁵⁾ See page 10 of this Official Journal.

⁽⁶⁾ OJ L 72, 18. 3. 1988, p. 16.

⁽⁷⁾ OJ L 289, 22. 10. 1997, p. 1.

⁽⁸⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁹⁾ OJ L 22, 31. 1. 1995, p. 1.

⁽¹⁰⁾ OJ L 108, 1. 5. 1993, p. 106.

⁽¹¹⁾ OJ L 135, 8. 5. 1998, p. 5.

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

Done at Brussels, 16 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1244/98
of 16 June 1998
amending Regulation (EEC) No 1627/89 on the buying in of beef by invitation to
tender

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 organization of the market in beef and veal⁽¹⁾, as last amended by Regulation (EC) No 2634/97⁽²⁾, and in particular Article 6 (7) thereof,

Whereas Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying in of beef by invitation to tender⁽³⁾, as last amended by Regulation (EC) No 1176/98⁽⁴⁾, opened buying in by invitation to tender in certain Member States or regions of a Member State for certain quality groups;

Whereas the application of Article 6 (2), (3) and (4) of Regulation (EEC) No 805/68 and the need to limit intervention to the buying in of the quantities necessary to ensure reasonable support for the market result, on the basis of the prices of which the Commission is aware, in

an amendment, in accordance with the Annex hereto, to the list of Member States or regions of a Member State where buying in is open by invitation to tender, and the list of the quality groups which may be bought in;

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 Annex to Regulation (EEC) No 1627/89 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 22 June 1998.

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

Done at Brussels, 16 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 159, 10. 6. 1989, p. 36.

⁽⁴⁾ OJ L 163, 6. 6. 1998, p. 17.

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

Estados miembros o regiones de Estados miembros y grupos de calidades previstos en el apartado 1 del artículo 1 del Reglamento (CEE) n° 1627/89

Medlemsstater eller regioner og kvalitetsgrupper, jf. artikel 1, stk. 1, i forordning (EØF) nr. 1627/89

Mitgliedstaaten oder Gebiete eines Mitgliedstaats sowie die in Artikel 1 Absatz 1 der Verordnung (EWG) Nr. 1627/89 genannten Qualitätsgruppen

Κράτη μέλη ή περιοχές κρατών μελών και ομάδες ποιότητας που αναφέρονται στο άρθρο 1 παράγραφος 1 του κανονισμού (ΕΟΚ) αριθ. 1627/89

Member States or regions of a Member State and quality groups referred to in Article 1 (1) of Regulation (EEC) No 1627/89

États membres ou régions d'États membres et groupes de qualités visés à l'article 1^{er} paragraphe 1 du règlement (CEE) n° 1627/89

Stati membri o regioni di Stati membri e gruppi di qualità di cui all'articolo 1, paragrafo 1 del regolamento (CEE) n. 1627/89

In artikel 1, lid 1, van Verordening (EEG) nr. 1627/89 bedoelde lidstaten of gebieden van een lidstaat en kwaliteitsgroepen

Estados-membros ou regiões de Estados-membros e grupos de qualidades referidos no n° 1 do artigo 1° do Regulamento (CEE) n° 1627/89

Jäsenvaltiot tai alueet ja asetuksen (ETY) N:o 1627/89 1 artiklan 1 kohdan tarkoittamat laaturyhmit

Medlemsstater eller regioner och kvalitetsgrupper som avses i artikel 1.1 i förordning (EEG) nr 1627/89

Estados miembros o regiones de Estados miembros	Categoría A			Categoría C		
Medlemsstat eller region	Kategori A			Kategori C		
Mitgliedstaaten oder Gebiete eines Mitgliedstaats	Kategorie A			Kategorie C		
Κράτος μέλος ή περιοχές κράτους μέλους	Κατηγορία Α			Κατηγορία Γ		
Member States or regions of a Member State	Category A			Category C		
États membres ou régions d'États membres	Catégorie A			Catégorie C		
Stati membri o regioni di Stati membri	Categoria A			Categoria C		
Lidstaat of gebied van een lidstaat	Categorie A			Categorie C		
Estados-membros ou regiões de Estados-membros	Categoria A			Categoria C		
Jäsenvaltiot tai alueet	Luokka A			Luokka C		
Medlemsstater eller regioner	Kategori A			Kategori C		
	U	R	O	U	R	O
België/Belgique		×				
Deutschland		×				
France		×				
Ireland				×	×	×
Österreich		×				
Great Britain					×	
Northern Ireland				×	×	×

COMMISSION REGULATION (EC) No 1245/98

of 16 June 1998

opening individual invitations to tender for the sale for export of vinous alcohol

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 822/87 of 16 March 1987 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 2087/97 ⁽²⁾,

Having regard to Council Regulation (EEC) No 3877/88 of 12 December 1988 laying down general rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies ⁽³⁾,

Whereas Commission Regulation (EEC) No 377/93 ⁽⁴⁾, as last amended by Regulation (EC) No 1448/97 ⁽⁵⁾, lays down detailed rules for the disposal of alcohol obtained from the distillation operations referred to in Articles 35, 36 and 39 of Regulation (EEC) No 822/87 and held by intervention agencies;

Whereas individual invitations to tender should be opened for the export of vinous alcohol to certain Caribbean and Central American countries so as to guarantee continuity of supplies to those countries and reduce the Community stock of vinous alcohol;

Whereas a specific security should be provided for to ensure that the alcohol is physically exported from the customs territory of the Community and non-compliance with the date laid down for export should be progressively penalised; whereas this security must be independent of the performance guarantee ensuring that the alcohol is removed from storage and the awarded alcohol is used for the purposes laid down;

Whereas Commission Regulation (EEC) No 2192/93 ⁽⁶⁾, concerning the operative events for the agricultural conversion rates used in the wine sector and amending Regulation (EEC) No 377/93, specifies the agricultural conversion rates to be used to convert the payments and securities provided for in connection with individual invitations to tender into national currency;

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

Article 1

Six sales by individual invitation to tender Nos 246/98 EC, 247/98 EC, 248/98 EC, 249/98 EC, 250/98 EC and 251/98 EC shall be held for a total quantity of 300 000 hectolitres of alcohol obtained from the distillation operations referred to in Articles 35 and 36 of Regulation (EEC) No 822/87 and held by the Spanish and French intervention agencies.

Each of the individual invitations to tender Nos 246/98 EC, 247/98 EC, 248/98 EC, 249/98 EC, 250/98 EC and 251/98 EC shall cover a quantity of 50 000 hectolitres of alcohol at 100 % volume.

Article 2

The alcohol offered for sale:

- shall be for export outside the European Community,
- must be imported into and dehydrated in:
 - in the case of individual invitations to tender Nos 246/98 EC, 247/98 EC and 248/98 EC one of the following third countries:
 - Costa Rica,
 - Guatemala,
 - Honduras, including the Swan Islands,
 - El Salvador,
 - Nicaragua,
 - in the case of individual invitations to tender Nos 249/98 EC, 250/98 EC and 251/98 EC one of the following third countries:
 - St Kitts and Nevis,
 - Bahamas,
 - Dominican Republic,
 - Antigua and Barbuda,
 - Dominica,
 - British Virgin Islands and Montserrat,
 - Jamaica,
 - Saint Lucia,
 - Saint Vincent, including the Northern Grenadines,
 - Barbados,
 - Trinidad and Tobago,
 - Belize,

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1.

⁽²⁾ OJ L 292, 25. 10. 1997, p. 1.

⁽³⁾ OJ L 346, 15. 12. 1988, p. 7.

⁽⁴⁾ OJ L 43, 20. 2. 1993, p. 6.

⁽⁵⁾ OJ L 198, 25. 7. 1997, p. 4.

⁽⁶⁾ OJ L 196, 5. 8. 1993, p. 19.

- Grenada, including the Southern Grenadines,
 - Aruba,
 - Netherlands Antilles (Curaçao, Bonaire, Saint Eustace, Saba and the southern part of Saint Martin),
 - Guyana,
 - United States Virgin Islands,
 - Haiti,
- must be used only as motor fuel.

Article 3

The location and reference numbers of the vats concerned, the quantity of alcohol contained in each vat, the alcoholic strength and the characteristics of the alcohol as well as certain specific conditions are given in Annex I hereto.

Article 4

The sales shall take place in accordance with Articles 13 to 18 and 30 to 38 of Regulation (EEC) No 377/93.

However, notwithstanding Article 15 of Regulation (EEC) No 377/93, the final date for the submission of tenders for the invitations to tender referred to in this Regulation, shall fall between the eighth and the 25th day following the date of publication of the individual invitations to tender.

Article 5

1. The tendering security referred to in Article 15 of Regulation (EEC) No 377/93 shall be ECU 3,622 per hectolitre of alcohol at 100 % volume and shall be lodged for the total quantity of alcohol offered for sale in each of the invitations to tender referred to in Article 1.

Maintenance of the tender after the time limit for submitting tenders and the lodging of a guarantee to ensure export and of a performance guarantee shall constitute the primary requirements within the meaning of Article 20 of Commission Regulation (EEC) No 2220/85⁽¹⁾ as regards the tendering security.

The tendering security lodged for each of the invitations to tender referred to in Article 1 shall be released immediately if the tender is not accepted or if the successful tenderer had lodged the entire guarantee to ensure export and the entire performance guarantee for the invitation to tender in question.

2. The guarantee to ensure export shall amount to ECU 5 per hectolitre of alcohol at 100 % volume and shall be lodged for each quantity of alcohol for which

there is a removal order under each of the invitations to tender referred to in Article 1 of this Regulation.

This guarantee shall be released only by the intervention agency holding the alcohol for each quantity of alcohol for which proof has been furnished that it has been exported within the time limit laid down in Article 6 of this Regulation. Notwithstanding Article 23 of Regulation (EEC) No 2220/85, and except in cases of *force majeure*, where the time limit referred to in Article 6 has not been complied with, the guarantee to ensure export of ECU 5 per hectolitre of alcohol at 100 % volume shall be forfeit as follows:

- (a) 15 % in all cases;
- (b) 0,33 % of the amount remaining after deduction of the 15 %, for each day the time limit in question is exceeded.

3. The performance guarantee shall be ECU 25 per hectolitre of alcohol at 100 % volume.

This guarantee shall be released in accordance with Article 34(3)(b) of Regulation (EEC) No 377/93.

4. Notwithstanding Article 17 of Regulation (EEC) No 377/93, the guarantees on export and performance shall be lodged simultaneously with each intervention agency concerned, for each of the invitations to tender referred to in Article 1 of this Regulation not later than the day of issue of a removal order for the quantity of alcohol concerned.

5. The agricultural conversion rate to be applied for the conversion into national currency shall be that in force on the final day for the submission of tenders for the invitation in question in the case of the guarantee to ensure export, as expressed in ecus per hl at 100 % volume.

Article 6

1. The alcohol awarded under the invitations to tender referred to in Article 1 shall be exported by 31 January 1999 at the latest.

2. The alcohol awarded shall be used within two years from the date of first removal.

Article 7

To be valid, tenders must indicate the place where end use of the alcohol awarded is to take place and must include an undertaking by the tenderer to the effect that the alcohol will be sent to that destination and used for that purpose. The tender shall also include proof that the tenderer has binding commitments with an operator in the motor fuel sector in one of the third countries listed in Article 2 who has undertaken to dehydrate the alcohol awarded in one of those countries and to export it for use solely as motor fuel.

⁽¹⁾ OJ L 205, 3. 8. 1985, p. 5.

Article 8

1. Before the awarded alcohol is removed, the intervention agency and the successful tenderer shall take a reference sample and shall analyse that sample to verify the alcoholic strength expressed in % volume of the alcohol in question.

Where the final results of the analysis of the sample show a difference between the alcoholic strength by volume of the alcohol to be removed and the minimum alcoholic strength by volume stated in the notice of invitation to tender, the following provisions shall apply:

- (i) the intervention agency shall, the same day, inform the Commission thereof in accordance with Annex II, as well as the storer and the successful tenderer;
- (ii) the successful tenderer may:
 - either agree to take over the lot with its characteristics as established, subject to the Commission's agreement,
 - or refuse to take over the lot in question.

In either case, the successful tenderer shall, the same day, inform the intervention agency and the Commission thereof in accordance with Annex III.

Once these formalities have been completed, if he has refused to take over the lot concerned, he shall be immediately released from all his obligations relating to that lot.

2. Where the successful tenderer refuses the merchandise, as provided for in paragraph 1, the intervention agency shall supply him with another quantity of alcohol of the requisite quality, at no extra charge, within a maximum of eight days.

3. If physical removal of the alcohol is delayed by more than five working days in relation to the date of acceptance of the lot to be removed by the successful tenderer for reasons attributable to the intervention agency, the Member State shall be responsible for the payment of compensation.

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

Done at Brussels, 16 June 1998.

Article 9

1. Successful tenderers for the individual invitations to tender Nos 246/98 EC, and 247/98 EC may, by common agreement, exchange an equal quantity of alcohol stored in the designated vats in the same Member State for the purposes provided for in those invitations to tender.

2. Successful tenderers for the individual invitations to tender Nos 249/98 EC and 250/98 EC may, by common agreement, exchange an equal quantity of alcohol stored in the designated vats in the same Member State for the purposes provided for in those invitations to tender.

3. Such exchange shall not affect the obligations of the tenderers concerned, particularly as regards the price to be paid and the time limit for removal and use of the alcohol awarded to them indicated in the invitation to tender concerned.

4. Successful tenderers who wish to make such an exchange must give prior notice to the intervention agencies concerned.

5. If such exchange affects the planned timetable for physical removal of the alcohol, that timetable shall immediately be amended and that amendment notified to the Commission.

Article 10

Notwithstanding the first subparagraph of Article 36(2) of Regulation (EEC) No 377/93, the alcohol contained in the vats indicated in the communication from the Member States referred to in Article 36 of Regulation (EEC) No 377/93 and covered by the invitation to tender referred to in Article 1 of this Regulation may be substituted by alcohol of the same type by the intervention agencies holding the alcohol concerned in agreement with the Commission, or mixed with other alcohol delivered to the intervention agency until a removal order is issued for that alcohol, in particular for logistical reasons.

Article 11

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

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

INDIVIDUAL INVITATION TO TENDER No 246/98 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
FRANCE	Deulep Boulevard Chanzy 30800 Saint-Gilles-du-Gard	605	244	35 + 36	Raw alcohol + 92 %
		508	1 114	35 + 36	Raw alcohol + 92 %
		508	342	35 + 36	Raw alcohol + 92 %
		73	10 000	35 + 36	Raw alcohol + 92 %
	Port-la-Nouvelle boîte postale 62, avenue Adolphe Turrel 11200 Port-la-Nouvelle	4	38 300	35 + 36	Raw alcohol + 92 %
		Total	50 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in French francs, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 50 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

- be sent by registered post to the European Commission, 200 rue de la Loi/Wetstraat, B-1049 Brussels, or
- be submitted at the reception of the Loi 130 building of the European Commission, 130 rue de la Loi/Wetstraat, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 246/98 EC (alcohol), DG VI (E-2), to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 2 July 1998.

5. Tenders must state the name and address of the tenderer and must:

- (a) include a reference to individual sale by tender No 246/98 EC;
- (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;
- (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

- SAV, zone industrielle, avenue de la Ballastière, boîte postale 231, F-33505 Libourne Cedex (tel.: (05) 57 55 20 00; telex: 572 025; fax: (05) 57 55 20 59).

This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

INDIVIDUAL INVITATION TO TENDER No 247/98 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
FRANCE	Deulep Boulevard Chanzy 30800 Saint-Gilles-du-Gard	508	73	35 + 36	Raw alcohol + 92 %
		71	10 000	35 + 36	Raw alcohol + 92 %
	Port-la-Nouvelle boîte postale 62, avenue Adolphe Turrel 11200 Port-la-Nouvelle	6	23 000	35 + 36	Raw alcohol + 92 %
		9	16 927	35 + 36	Raw alcohol + 92 %
	Total		50 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in French francs, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 50 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

- be sent by registered post to the European Commission, 200 rue de la Loi/Wetstraat, B-1049 Brussels, or
- be submitted at the reception of the Loi 130 building of the European Commission, 130 rue de la Loi/Wetstraat, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 247/98 EC (alcohol), DG VI (E-2), to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 2 July 1998.

5. Tenders must state the name and address of the tenderer and must:

- (a) include a reference to individual sale by tender No 247/98 EC;
- (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;
- (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

- SAV, zone industrielle, avenue de la Ballastière, boîte postale 231, F-33505 Libourne Cedex (tel.: (05) 57 55 20 00; telex: 572 025; fax: (05) 57 55 20 59).

This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

INDIVIDUAL INVITATION TO TENDER No 248/98 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
SPAIN	Tarancón	A-8	24 795	35 + 36	Raw alcohol
	Tomelloso	2	9 220	35 + 36	Raw alcohol
	Tomelloso	3	1 823	35 + 36	Raw alcohol
	Tomelloso	4	14 162	35 + 36	Raw alcohol
	Total		50 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in Spanish pesetas, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 50 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

- be sent by registered post to the European Commission, 200 rue de la Loi/Wetstraat, B-1049 Brussels, or
- be submitted at the reception of the Loi 130 building of the European Commission, 130 rue de la Loi/Wetstraat, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 248/98 EC (alcohol), DG VI (E-2), to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 2 July 1998.

5. Tenders must state the name and address of the tenderer and must:

- (a) include a reference to individual sale by tender No 248/98 EC;
- (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;
- (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

- FEGA, Beneficencia 8, E-28004 Madrid (tel.: 913 47 65 00, telex: 23427 FEGA, fax: 915 21 98 32).

This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

INDIVIDUAL INVITATION TO TENDER No 249/98 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
FRANCE	Deulep Boulevard Chanzy 30800 Saint-Gilles-du-Gard	72	28 975	35 + 36	Raw alcohol + 92 %
	Port-la-Nouvelle boîte postale 62, avenue Adolphe Turrel	9	5 738	35 + 36	Raw alcohol + 92 %
	11200 Port-la-Nouvelle	7	15 287	35 + 36	Raw alcohol + 92 %
	Total		50 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in French francs, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 50 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

- be sent by registered post to the European Commission, 200 rue de la Loi/Wetstraat, B-1049 Brussels, or
- be submitted at the reception of the Loi 130 building of the European Commission, 130 rue de la Loi/Wetstraat, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 249/98 EC (alcohol), DG VI (E-2), to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 2 July 1998.

5. Tenders must state the name and address of the tenderer and must:

- (a) include a reference to individual sale by tender No 249/98 EC;
- (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;
- (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

- SAV, zone industrielle, avenue de la Ballastière, boîte postale 231, F-33505 Libourne Cedex (tel.: (05) 57 55 20 00; telex: 572 025; fax: (05) 57 55 20 59).

This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

INDIVIDUAL INVITATION TO TENDER No 250/98 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
FRANCE	Deulep Boulevard Chanzy 30800 Saint-Gilles-du-Gard	73	36 800	35 + 36	Raw alcohol + 92 %
	Port-la-Nouvelle boîte postale 62, avenue Adolphe Turrel 11200 Port-la-Nouvelle	7	3 200	35 + 36	Raw alcohol + 92 %
		4	10 000	35 + 36	Raw alcohol + 92 %
	Total		50 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in French francs, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 50 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

- be sent by registered post to the European Commission, 200 rue de la Loi/Wetstraat, B-1049 Brussels, or
- be submitted at the reception of the Loi 130 building of the European Commission, 130 rue de la Loi/Wetstraat, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 250/98 EC (alcohol), DG VI (E-2), to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 2 July 1998.

5. Tenders must state the name and address of the tenderer and must:

- (a) include a reference to individual sale by tender No 250/98 EC;
- (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;
- (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

- SAV, zone industrielle, avenue de la Ballastière, boîte postale 231, F-33505 Libourne Cedex (tel.: (05) 57 55 20 00; telex: 572 025; fax: (05) 57 55 20 59).

This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

INDIVIDUAL INVITATION TO TENDER No 251/98 EC

I. Place of storage, volume and characteristics of the alcohol offered for sale

Member State	Location	Reference number of vat	Volume in hectolitres of pure alcohol	Reference to Regulation (EEC) No 822/87	Type of alcohol
SPAIN	Tarancón	B-8	24 759	35 + 36	Raw alcohol
	Tomelloso	3	16 787	35 + 36	Raw alcohol
	Tomelloso	5	8 454	35 + 36	Raw alcohol
	Total		50 000		

Any interested party may, on application to the intervention agency concerned and on payment of ECU 2,415 per litre or the equivalent thereof in Spanish pesetas, obtain samples of the alcohol offered for sale. Such samples shall be taken by a representative of the intervention agency concerned.

II. Destination and use of the alcohol

The alcohol offered for sale must be exported from the Community. It must be imported into and dehydrated in one of the non-member countries listed in Article 2 of this Regulation as for use exclusively as motor fuel.

Evidence relating to the destination and use of the alcohol is to be obtained by an international security company and transmitted to the intervention agency concerned.

The costs thus incurred are to be borne by the successful tenderer.

III. Submission of tenders

1. Tenders should be submitted for a quantity of 50 000 hectolitres of alcohol, expressed in hectolitres of alcohol at 100 % vol.

Any tender relating to a smaller quantity will not be considered.

2. Tenders must:

- be sent by registered post to the European Commission, 200 rue de la Loi/Wetstraat, B-1049 Brussels, or
- be submitted at the reception of the Loi 130 building of the European Commission, 130 rue de la Loi/Wetstraat, B-1049 Brussels, between 11 a.m. and 12 noon on the date mentioned in point 4.

3. Tenders must be enclosed in a sealed envelope marked 'Tender for individual sale No 251/98 EC (alcohol), DG VI (E-2), to be opened only at the meeting of the group', which itself must be enclosed in an envelope addressed to the Commission.

4. Tenders must reach the Commission not later than 12 noon (Brussels time) on 2 July 1998.

5. Tenders must state the name and address of the tenderer and must:

- (a) include a reference to individual sale by tender No 251/98 EC;
- (b) specify the price tendered, expressed in ecus per hectolitre of alcohol at 100 % vol;
- (c) include all the undertakings and statements referred to in Article 31 of Regulation (EEC) No 377/93, specify the final destination of the alcohol awarded and include proof of a commitment with an operator for dehydration and use solely as motor fuel.

6. Each tender must be accompanied by attestations of the lodging of a tendering security, issued by the following intervention agency:

- FEGA, Beneficencia 8, E-28004 Madrid (tel.: 913 47 65 00, telex: 23427 FEGA, fax: 915 21 98 32).

This security must correspond to a sum of ECU 3,622 per hectolitre of alcohol at 100 % vol.

ANNEX II

The only telex and fax numbers in Brussels to be used are:

DG VI (E-2) (for the attention of Mr Chiappone/Mr Van der Stappen)

— telex: 22037 AGREC B,
22070 AGREC B (Greek characters),

— fax: (32 2) 295 92 52.

ANNEX III

**Communication of refusal or acceptance of lots under the individual invitation to tender for the
export of vinous alcohol opened by Regulation (EC) No 1245/98**

— Name of the successful tenderer:

— Date of award of contract:

— Date of refusal or acceptance of the lot by the successful tenderer:

Lot No	Quantity in hectolitres	Location of alcohol	Reason for refusal or acceptance to take over

COMMISSION REGULATION (EC) No 1246/98

of 16 June 1998

on the sale of olive oil residues held by the Italian intervention agency

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 12(2) thereof,

Whereas Article 2 of Council Regulation (EEC) No 2754/78⁽³⁾, as amended by Regulation (EEC) No 2203/90⁽⁴⁾, provides that olive oil held by the intervention agencies is to be put up for sale by invitation to tender except where particular conditions call for other procedures;

Whereas Article 1(1) of Commission Regulation (EEC) No 2960/77⁽⁵⁾, as last amended by Regulation (EEC) No 3818/85⁽⁶⁾, provides that intervention agencies may not sell the olive oil which they hold until a regulation to that effect has been adopted in accordance with the procedure provided for in Article 38 of Regulation No 136/66/EEC;

Whereas, following sales of olive oil by invitation to tender organised by the Italian intervention agency, the latter still holds a stock of vat bottom residues; whereas those residues contain oil in varying percentages; whereas sound management of the olive oil bought in by the intervention agency demands that those residues should be put up for sale;

Whereas, for commercial reasons based chiefly on the fact that there is no well-defined market or price system for the product in question, the system of sale by invitation to tender previously applied for olive oil is ruled out; whereas the Italian intervention agency should therefore sell the product at the best price it can obtain;

Whereas the product in question could not be sold under Commission Regulation (EC) No 747/98⁽⁷⁾ because of the low level of offers received; whereas the residues must therefore be put on sale again;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The Italian intervention agency Azienda di Stato per gli interventi nel mercato agricolo, hereinafter referred to as 'AIMA', shall sell at the best price it can obtain on the Community market approximately 720 tonnes of the vat bottom residues it holds from olive oil bought in.
2. The notice of sale shall be displayed by AIMA at its head office at Via Palestro 81, 00185 Rome, Italy, at least 10 days before the date set for the sale.
3. The product referred to in paragraph 1 must be sold before 15 July 1998. The product sold must be delivered before 30 September 1998.
4. AIMA shall inform the Commission as soon as possible of the outcome of the sale.

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, 16 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 331, 28. 11. 1978, p. 13.

⁽⁴⁾ OJ L 201, 31. 7. 1990, p. 5.

⁽⁵⁾ OJ L 348, 30. 12. 1977, p. 46.

⁽⁶⁾ OJ L 368, 31. 12. 1985, p. 20.

⁽⁷⁾ OJ L 103, 3. 4. 1998, p. 17.

COMMISSION REGULATION (EC) No 1247/98

of 16 June 1998

on the sale of olive oil residues held by the Greek intervention agency

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1581/96⁽²⁾, and in particular Article 12(2) thereof,

Whereas Article 2 of Council Regulation (EEC) No 2754/78⁽³⁾, as amended by Regulation (EEC) No 2203/90⁽⁴⁾, provides that olive oil held by the intervention agencies is to be put up for sale by invitation to tender except where particular conditions call for other procedures;

Whereas Article 1(1) of Commission Regulation (EEC) No 2960/77⁽⁵⁾, as last amended by Regulation (EEC) No 3818/85⁽⁶⁾, provides that intervention agencies may not sell the olive oil which they hold until a regulation to that effect has been adopted in accordance with the procedure provided for in Article 38 of Regulation No 136/66/EEC;

Whereas, following sales of olive oil by invitation to tender organised by the Greek intervention agency, the latter still holds a stock of vat bottom residues; whereas those residues contain oil in varying percentages; whereas sound management of the olive oil bought in by the intervention agency demands that those residues should be put up for sale;

Whereas, for commercial reasons based chiefly on the fact that there is no well-defined market or price system for the product in question, the system of sale by invitation to tender previously applied for olive oil is ruled out; whereas the Greek intervention agency should therefore sell the product at the best price it can obtain;

Whereas about 30 tonnes of the product in question could not be sold as part of the sale provided for by Commission Regulation (EC) No 746/98⁽⁷⁾ because not enough offers were received; whereas those 30 tonnes of residues should therefore be put on sale again;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. The Greek intervention agency Geniki Diefthinsi Diachiriseos Agoron Georgikon Proïonton, hereinafter referred to as 'Gedidagep', shall sell at the best price it can obtain approximately 30 tonnes of the vat bottom residues it holds from olive oil bought in.
2. The notice of sale shall be displayed by Gedidagep at its head office at 241 Acharnon Street, 11253 Athens, Greece, at least 10 days before the date set for the sale.
3. The product referred to in paragraph 1 must be sold before 15 July 1998. The product sold must be delivered before 30 September 1998.
4. Gedidagep shall inform the Commission as soon as possible of the outcome of the sale.

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, 16 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30. 9. 1966, p. 3025/66.

⁽²⁾ OJ L 206, 16. 8. 1996, p. 11.

⁽³⁾ OJ L 331, 28. 11. 1978, p. 13.

⁽⁴⁾ OJ L 201, 31. 7. 1990, p. 5.

⁽⁵⁾ OJ L 348, 30. 12. 1977, p. 46.

⁽⁶⁾ OJ L 368, 31. 12. 1985, p. 20.

⁽⁷⁾ OJ L 103, 3. 4. 1998, p. 16.

COMMISSION DIRECTIVE 98/40/EC

of 8 June 1998

adapting to technical progress Council Directive 74/346/EEC relating to rear-view mirrors for wheeled agricultural or forestry tractors

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 74/346/EEC of 25 June 1974 on the approximation of the laws of the Member States relating to rear-view mirrors for wheeled agricultural or forestry tractors⁽¹⁾, as last amended by Directive 97/54/EC of the European Parliament and of the Council⁽²⁾, and in particular Article 4 thereof,

Whereas, in view of the growing complexity of the task performed by tractors, thought should be given to the rear-view mirrors used to monitor implements not designed for on-road use;

Whereas, in order to increase safety, the conditions under which rear-view mirrors are set by drivers should be set out in detail; whereas Directive 74/346/EEC should therefore be amended accordingly;

Whereas the measures provided for in this Directive are in accordance with the opinion of the Committee on adaptation to technical progress set up by Council Directive 74/150/EEC⁽³⁾, as last amended by Directive 97/54/EC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive 74/346/EEC is amended as follows:

1. the following sentence is added to Item 1.1: 'The additional mirrors and rear-view mirrors designed in order to monitor the implements while working in the fields are not necessarily open to component type-approval

⁽¹⁾ OJ L 191, 15. 7. 1974, p. 1.

⁽²⁾ OJ L 277, 10. 10. 1997, p. 24.

⁽³⁾ OJ L 84, 28. 3. 1974, p. 10.

but must be located in accordance with the setting requirements contained in Items 2.3.3 to 2.3.5.;

2. in Item 2.4.2, the first sentence is replaced by the following:

'The driver must be able to adjust the exterior rear-view mirror without leaving the driving position.'

Article 2

1. From 1 May 1999, no Member State may:

— refuse, in respect of a type of tractor, to grant EC type-approval, to issue the document referred to in the third indent of Article 10(1) of Directive 74/150/EEC, or to grant national type approval, or

— prohibit the entry into service of tractors,

if those tractors meet the requirements of Directive 74/346/EEC, as amended by this Directive.

2. From 1 October 1999, Member States:

— may no longer issue the document referred to in the third indent of Article 10(1) of Directive 74/150/EEC for a type of tractor that does not meet the requirements of Directive 74/346/EEC, as amended by this Directive,

— may refuse to grant national type-approval in respect of a type of tractor which does not meet the requirements of Directive 74/346/EEC, as amended by this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary in order to comply with this Directive not later than 30 April 1999. They shall forthwith inform the Commission thereof.

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

2. Member States shall send the Commission the text of the essential provisions of national law that they adopt in the area covered by this Directive.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 8 June 1998.

For the Commission

Martin BANGEMANN

Member of the Commission

II

(Acts whose publication is not obligatory)

CONFERENCE OF THE REPRESENTATIVES
OF THE GOVERNMENTS OF THE MEMBER STATES

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF
THE MEMBER STATES

of 27 May 1998

appointing members of the Court of First Instance of the European Commu-
nities

(98/380/EC, ECSC, Euratom)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE
MEMBER STATES OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European
Community, and in particular Article 168a thereof,

Having regard to the Treaty establishing the European
Coal and Steel Community, and in particular Article 32d
thereof,

Having regard to the Treaty establishing the European
Atomic Energy Community, and in particular Article
140a thereof,

Having regard to Council Decision 88/591/ECSC, EEC,
Euratom of 24 October 1988 establishing a Court of First
Instance of the European Communities ⁽¹⁾,

Whereas the terms of office of Mr Josef Azizi, Mr Corne-
lius Paulus Briet, Mr Marc Jaeger, Mr Andreas Kalogero-
poulos, Mr Koenraad Lenaerts, Mr Rui Manuel Gens de
Moura Ramos, Mrs Virpi Tiili and Mr Bo Vesterdorf
expire on 31 August 1998;

Whereas the partial replacement of members of the Court
of First Instance should take place for the period from 1
September 1998 to 31 August 2004;

Whereas, to complete the partial replacement of members
of the Court of First Instance, it will be necessary to
appoint a judge at a later date,

HAVE DECIDED AS FOLLOWS:

Article 1

The following are hereby appointed judges to the Court
of First Instance for the period 1 September 1998 to 31
August 2004:

Mr Josef Azizi,
Mr Marc Jaeger,
Mr Koenraad Lenaerts,
Mr Rui Manuel Gens de Moura Ramos,
Mrs Virpi Tiili,
Mr Bo Vesterdorf,
Mr Michael Vilaras.

Article 2

This Decision shall be published in the *Official Journal
of the European Communities*.

Done at Brussels, 27 May 1998.

The President
S. WALL

⁽¹⁾ OJ L 319, 25. 11. 1988, p. 1. Corrigendum: OJ C 215, 21. 8.
1989, p. 1. Decision as last amended by Decision 95/1/
Euratom, ECSC, EC adjusting the instruments concerning the
accession of new Member States to the European Union (OJ
L 1, 1. 1. 1995, p. 1).

COUNCIL

COUNCIL DECISION

of 5 June 1998

concerning the Community contribution to the European Bank for Reconstruction and Development for the Chernobyl Shelter Fund

(98/381/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

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

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

Whereas a Memorandum of Understanding (MOU) was signed on 21 December 1995 between the governments of the G7 countries and the Commission of the European Communities and the government of Ukraine on the closure of the Chernobyl nuclear power plant by the year 2000;

Whereas Article III(4) of the MOU provided that Ukraine and the G7 will continue to cooperate in the development of a cost effective and environmentally sound approach to the shelter for Chernobyl IV, including the definition, as soon as possible, of technical and cost options as the basis for reviewing financial requirements;

Whereas the Commission, through the TACIS programme, participated actively in the development of such an approach which resulted in the definition of the 'shelter implementation plan' (SIP) endorsed by the Ukrainian authorities;

Whereas at their Denver Summit of June 1997, the G7 Heads of State and Government and the President of the European Commission decided to add to the commitments undertaken in the MOU with Ukraine and endorsed the setting up of a multilateral funding mechanism to assist Ukraine in transforming the existing Chernobyl sarcophagus into a safe and environmentally stable system, with measures as described in the SIP;

Whereas the implementation of the SIP will be placed in the context of the MOU between the G7 and Ukraine on the closure of Chernobyl by the year 2000;

Whereas, for the purpose of implementing the SIP, the Chernobyl Shelter Fund has been established at the European Bank for Reconstruction and Development (EBRD) and will be administered by the EBRD;

Whereas the Community pursues a clear policy of supporting Ukraine in its efforts to eliminate the consequences of the nuclear accident which occurred on 26 April 1986 at the Chernobyl Nuclear Power Plant and is thus willing to contribute to the Chernobyl Shelter Fund; whereas the Community assumes through its contribution no liability whatsoever for any resulting damage;

Whereas due account will be taken by the Fund of the fulfilment by Ukraine of its undertakings under the Framework Agreement, signed with the EBRD on 20 November 1997;

Whereas a financial reference amount, within the meaning of point 2 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;

Whereas the contribution will be taken from existing TACIS credits and will thus not imply any supplementary budgetary expenditures from the 1998 and 1999 budgets;

Whereas EBRD procurement policies and rules will apply to grants made from the resources of the Chernobyl Shelter Fund, with the understanding that procurement shall in principle be limited to goods and services produced in or supplied from the countries of the contributors or the countries of EBRD operations; whereas these rules are not identical to those applied for operations directly financed through the TACIS programme, which can notably for this reason not cover the present contribution;

⁽¹⁾ OJ C 364, 2. 12. 1997, p. 16.

⁽²⁾ OJ C 138, 4. 5. 1998.

Whereas it is however appropriate to ensure that no discrimination is made between operators of individual Member States of the European Community with regard to procurement arrangements relating to grants made from the Chernobyl Shelter Fund, irrespective of whether the Member States have concluded individual agreements with the EBRD or not;

Whereas the Community contribution to the Chernobyl Shelter Fund with the EBRD shall be administered by the European Commission in accordance with the principles of sound and efficient management;

Whereas this contribution will contribute to the achievement of the Community's objectives in particular in relation to nuclear safety; whereas the Treaties do not provide for the adoption of this Decision powers other than those of Article 235 of the EC Treaty and 203 of the EAEC Treaty,

HAS DECIDED AS FOLLOWS:

Article 1

1. The Community shall contribute to the Chernobyl Shelter Fund at the European Bank for Reconstruction and Development (EBRD), in accordance with the rules of this Fund, an amount of up to ECU 100 million to be paid over the two years 1998 and 1999.

2. This contribution to the Fund shall be administered by the Commission in accordance with the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾ in force, with particular regard for the principles of sound and efficient management.

3. The Commission will take all necessary steps to ensure that, with respect to procurement arrangements relating to grants made from the resources of the Fund, no discrimination is made between operators of individual Member States.

Article 2

1. The financial reference amount for the implementation of this programme for the period 1998 and 1999 shall be a maximum of ECU 100 million.

2. The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Article 3

1. The Commission will forward all relevant information to the Court of Auditors and will request from the EBRD any supplementary information that the Court of Auditors may wish to receive, as regards the financial operation of the Chernobyl Shelter Fund to the extent that it is related to the Community's contribution.

2. The Commission shall submit, on a yearly basis, a progress report on the implementation of the Chernobyl Shelter Fund to the European Parliament and the Council.

Done at Luxembourg, 5 June 1998.

For the Council

The President

G. BROWN

⁽¹⁾ OJ L 356, 31. 12. 1977, p. 1.

COUNCIL DECISION

of 5 June 1998

on the statistical data to be used for the determination of the key for subscription
of the capital of the European Central Bank

(98/382/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 29.2 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank annexed thereto,

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

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

Having regard to the opinion of the European Monetary Institute⁽³⁾,

Acting in accordance with the procedure provided for in Article 106(6) of the Treaty and in Article 42 of the said Protocol,

- (1) Whereas the European Central Bank (ECB) will be established as soon as its Executive Board is appointed;
- (2) Whereas the initial capital of the ECB, which shall become operational upon its establishment, is ECU 5 000 million;
- (3) Whereas the national central banks will be the sole subscribers to, and holders of, the capital of the ECB;
- (4) Whereas the key for the subscription of the ECB's capital will be determined when the ECB is established;
- (5) Whereas the statistical data to be used for the establishment of the key will be provided by the Commission in accordance with the rules adopted by the Council;
- (6) Whereas the nature of, and sources for, the data to be used and the method of calculation of the weighting of national central banks in the key must be defined;
- (7) Whereas Council Directive 89/130/EEC, Euratom of 13 February 1989 on the harmonisation of the compilation of gross national product at market prices⁽⁴⁾ introduces a procedure for the adoption by Member States of data on the gross domestic product at market prices; whereas Member States must take all the neces-

sary steps to ensure that these data are transmitted to the Commission,

HAS DECIDED AS FOLLOWS:

Article 1

The statistical data to be used for the determination of the key for subscription of the capital of the ECB shall be provided by the Commission in accordance with the rules laid down in the following Articles.

Article 2

Population and gross domestic product at market prices, hereinafter referred to as 'GDP mp', shall be defined according to the European System of Integrated Economic Accounts (ESA) in the version which is used for the application of Directive 89/130/EEC, Euratom. GDP mp shall mean GDP mp as defined in Article 2 of that Directive.

Article 3

The data on population shall be taken for the year 1996. The mean of the total population over the course of the year shall be used in accordance with the ESA recommendation.

Article 4

The data on GDP mp shall be taken for each of the years 1991 to 1995. The data on GDP mp for each Member State shall be expressed in the national currency at current prices.

Article 5

The data on population shall be collected by the Commission (Eurostat) from Member States.

Article 6

The data on GDP mp for the years 1991 to 1995 shall result from the application of Directive 89/130/EEC, Euratom.

⁽¹⁾ OJ C 118, 17. 4. 1998, p. 13.

⁽²⁾ Opinion delivered on 28 May 1998 (not yet published in the Official Journal).

⁽³⁾ Opinion delivered on 6 April 1998 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 49, 21. 2. 1989, p. 26.

Article 7

1. The share of a Member State in the population of the Community shall be its share in the sum of the population of the Member States, expressed as a percentage.
2. The GDP mp data for each year and each Member State expressed in national currencies shall be converted into figures expressed in ecus. The exchange rate used for this purpose shall be the average of the exchange rates for all working days in a year. The daily exchange rate shall be the rate calculated by the Commission and published in the 'C' series of the *Official Journal of the European Communities*.
3. The share of a Member State in GDP mp of the Community shall be its share in the sum of GDP mp of the Member States over five years, expressed as a percentage.

Article 8

The weighting of a national central bank in the key shall be the arithmetic mean of the shares of the Member State

concerned in the population and in the GDP mp of the Community.

Article 9

The various steps of calculation shall use sufficient digits to ensure their accuracy. The weighting of national central banks in the key shall be expressed to four decimal places.

Article 10

The data referred to in this Decision shall be communicated by the Commission to the ECB as soon as possible after its establishment.

Done at Luxembourg, 5 June 1998.

For the Council

The President

G. BROWN

COUNCIL DECISION
of 8 June 1998
appointing a member of the Committee of the Regions

(98/383/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 198a thereof,

Having regard to the Council Decision of 26 January 1998 ⁽¹⁾ appointing members and alternate members of the Committee of the Regions,

Whereas a seat as a member of the Committee has become vacant following the resignation of Lord Peter Bowness, notified to the Council on 8 May 1998;

Having regard to the proposal from the United Kingdom Government,

Sole Article

Mrs Joan Hanham is hereby appointed a member of the Committee of the Regions in place of Lord Peter Bowness for the remainder of his term of office, which runs until 25 January 2002.

Done at Luxembourg, 8 June 1998.

For the Council

The President

R. COOK

⁽¹⁾ OJ L 28, 4. 2. 1998, p. 19.

COMMISSION

COMMISSION DECISION

of 21 January 1998

on aid granted by the Netherlands to a hydrogen peroxide works in Delfzijl

(notified under document number C(1998) 232)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(98/384/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with those Articles,

Whereas:

I

A complaint drew the Commission's attention to the construction of a hydrogen peroxide plant in Delfzijl in the Netherlands.

FMC Industrial Chemicals (Netherlands) BV ('FMC'), a subsidiary of the US company FMC Corp., submitted a request to the Netherlands authorities for a contribution towards the cost of constructing a hydrogen peroxide production plant in Delfzijl in the province of Groningen. Production was scheduled to start at the end of 1995 and was targeted at northern Europe. The investment would amount to NLG 115 million, and the plant was to have a production capacity of 35 000 tonnes a year.

FMC's project was considered to be of special interest to the economic development of the province of Groningen, and in particular the town of Delfzijl, in view of the state

of the local economy and the fact that it was the first time since 1986 that a large firm had settled in the area. The Netherlands authorities accordingly acceded to the company's request; they awarded a grant of 25 % of eligible costs, subject to a ceiling of NLG 25 million. The aid was to be paid under a scheme which the Commission had previously approved, the Regional Investment Project Subsidies Order (*Besluit subsidies regionale Investeringsprojecten* — 'the IPR scheme')⁽¹⁾. The aid granted amounted to NLG 28,75 million.

On 18 September 1996 the Commission decided to initiate proceedings under Article 93(2) of the Treaty in respect of these measures. It informed the Netherlands Government accordingly by letter of 3 October 1996⁽²⁾. By letter of 31 October the Netherlands authorities asked for an extension of the time allowed for observations until 15 January 1997, and the Commission agreed to this. The observations reached the Commission on 27 January 1997, followed by additional information on 28 February 1997.

The letter informing the Netherlands authorities that the proceedings had been initiated was published in a notice in the *Official Journal of the European Communities*⁽³⁾. Following that notice the Commission received observations from four firms, including the group to which the complainant belongs, the recipient, and one trade association.

On 2 June 1997 Commission staff met representatives of the recipient company; the company's lawyer was present.

By letter of 16 June 1997 the Commission sent the Netherlands authorities the observations received from interested parties, with translations into Dutch. The Commission received the Netherlands authorities' replies to these observations on 17 July 1997.

⁽¹⁾ Commission Decision of 27 December 1990: State aid measure No N 514/90 — Netherlands.

⁽²⁾ SG(96) D/8632.

⁽³⁾ OJ C 112, 10. 4. 1997, p. 3.

On 27 October and 6 November 1997 the advisers to the recipient company submitted further information to the Commission. Lastly, on 4 November 1997 the Netherlands Government supplied further details of the environmental aspects of the investments to be carried out by the recipient company.

II

The Commission decided to initiate the proceedings for the following reasons:

- The complaint that gave rise to the proceedings stated that in 1994, when the Netherlands authorities approved the aid to the company, the hydrogen peroxide market was in overcapacity. The complainant expressed surprise that in such circumstances the company could be given aid towards an investment which would create new capacity.
- The aid given to FMC exceeds the maximum aid intensity which the Commission approved in connection with the IPR scheme. The Netherlands authorities were authorised to provide no more than 20 % of gross investment, whereas in fact they approved a little over 25 % gross. In its initial inquiry, the Commission established that three kinds of aid had been given to FMC: the grant already referred to, a subordinated loan, and a site sold to the recipient company for less than its market value. The aid added up to a total of NLG 29,88 million. It should be borne in mind that these proceedings relate only to that part of the aid in excess of the maximum allowed in connection with the IPR scheme, that maximum being 20 % gross of the eligible costs.

III

In the course of the proceedings, the Netherlands authorities put forward the following arguments:

- they submitted a study of the market in hydrogen peroxide which was more detailed than the one that they had had carried out by Chem Systems, an independent chemical industry consultant, and the other data they had submitted to the Commission, which were reviewed at the initial stages of the proceedings.

According to these studies, which are based on a maximum effective rate of utilization of 90% of theoretical capacity, capacity will be almost fully utilised by the year 2000. In the industry an effective capacity utilisation rate of 90 % is regarded as the maximum level of production that is reasonably feasible in the

long term, for mainly environmental reasons. The data supplied by the complainant likewise suggest that the effective rate of capacity utilisation will be fully taken up. At this stage, the few percentage points' difference between effective capacity and demand have to be regarded as necessary in order to be able to deal with market fluctuations.

These studies also show that in 1993 market growth was expected to average 6,3 % a year over the period 1991-2000. Thus, the prospect was for a rapidly growing market, and other producers announced that they were to increase capacity in the same period as FMC: Aussimont in 1993, and Oxysynthèse, EKA and Kemira in 1995,

- the gross investment, which is virtually completed, has cost NLG 115 million, as expected. Of this total NLG 2 million is not eligible for assistance under the IPR scheme, so that the sum provided in aid is NLG 28,25 million. As a percentage of the gross investment of NLG 115 million, this sum amounts to a rate of aid of 24,75 %.

NV Noordelijke Ontwikkelingsmaatschappij (Northern Development Corporation - 'NOM') granted a subordinated loan of NLG 12,5 million towards the project, at an interest rate of 5,92 %, largely because FMC provided a 100 % guarantee. In view of the reservations expressed by the Commission, and given that a better rate could be obtained from a non-Dutch bank, FMC repaid the loan early, in March 1997.

As regards the sale of the land, the Commission denied that its Decision in the Fresenius case ⁽¹⁾ was a relevant precedent here, because there was nothing to indicate that the land had been for sale over a long period, and because the depreciation of the land seemed to be due not to the lack of buyers but to the use to which the site had been put in recent years. (In Fresenius the Commission considered that although the price paid was 10 % lower than the theoretical market value estimated by the valuers, the local authority in question had for a number of years been offering the site for sale both directly and through intermediaries, without finding a buyer. The Commission concluded that these efforts to sell the land were comparable to an open and unconditional bidding procedure, and that consequently the price paid corresponded to the market value).

The competent authorities observe, however, that during the 1980s and at the beginning of the 1990s the land was offered to interested firms at a price no lower than the cost price. This brought not a single investor to settle in the region, partly because of the price being asked. In view of the poor results, it was decided in 1992 to set the price on the basis of market value, and no longer on the basis of cost.

⁽¹⁾ State aid measure No C 36/92, ex NN 108/92: OJ C 21, 25. 1. 1994, p. 4.

Although the price asked was NLG 1 per square metre, or in some cases even less, only FMC accepted. The Netherlands Government also observes that Belgian and French regions were offering sites at prices comparable to what was being asked by the Delfzijl/Eemshaven harbour authority,

- according to the Netherlands authorities, the FMC site in Delfzijl is near the waters of the Waddenzee. The area has a special status as a conservation area. The Waddenzee is a nature reserve within the scope of Article 3 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds⁽¹⁾ and of Article 4 of Council Directive 92/42/EEC of 21 May 1992 on the conservation of natural habitats and of wild flora and fauna⁽²⁾. It is also a wetland area covered by the Ramsar Convention. The Netherlands authorities have enacted legislation which allows economic activity in the area only in so far as it is not detrimental to the area's status.

FMC has taken a series of environmental measures in consequence; a large proportion of the investment, accounting for NLG 62,92 million, must be regarded as investment of this kind. It is important to establish, therefore, whether the investment can be described as 'excessive'. An independent consultant was asked to examine the question. The consultant defined 'excessive' as meaning 'higher than the minimum level required in other Member States, taking account of Community Directives'. Whether an investment is excessive has to be determined by comparing it with the customary environmental measures and with a generally accepted level of environmental protection.

A number of investments and measures aimed at environmental conservation were identified on the basis of applications for authorization submitted by FMC under the different environmental conservation measures in force in the Netherlands: the Environmental Management Act (Wet milieubeheer), the Pollution of Surface Waters Act (Wet verontreiniging oppervlaktewateren), and the permits granted by the municipal and provincial authorities under those Acts. The consultant identified from those documents the measures which were aimed solely at the protection of the environment, and excluded those which did not appear to be 'excessive'.

The consultant concluded that a number of investments costing a total of between NLG 12 million and NLG 21 million were 'excessive' in whole or in part. Some of these were 'locally excessive', that is to say necessitated by the vulnerability of the local environ-

ment. The consultant estimated the cost of these 'locally excessive' investments at between NLG 1,4 million and NLG 2,65 million. The Netherlands Government takes the view that in such circumstances additional aid should be allowed.

IV

In the course of the proceedings, the Commission received observations from four firms and one trade association in the industry. The four firms include the group to which the complainant belongs, and the recipient.

The four firms submitting observations supplied figures for the period 1994-96 and estimates for 1997-2000, relating to the question of production capacity for hydrogen peroxide. From an examination of these figures, some of which are confidential, it is clear that European demand falls short of installed production capacity, even taking the effective capacity (which is equal to 90 % of theoretical capacity, as indicated by Chem Systems). According to these four parties, the rate of utilisation is as follows, though it must be pointed out that no account has been taken of exports (equal to about 10 % of European demand):

	(%)						
	1994	1995	1996	1997	1998	1999	2000
(a)	84,05	85,47	76,90	74,43	75,45	79,79	84,55
(b)	77,88	82,72	72,78				77,78
(c)	82,26	80,38	74,52	73,12	75,12	78,25	81,48
(d)	81,94	83,98	76,61	73,35	74,12		80,62

The observations submitted can be summarised as follows:

- the complainant's group contends that the 1994 forecasts, according to which the expansion of capacity would outpace growth in demand for several years, have been proved correct,
- the same group, basing itself on its own experience in the last few years, states that the rate of utilization that can be achieved on a steady basis with world-scale capacities (and there are no others in western Europe) is 95 %. Demand has to be looked at against this figure. None of the other parties objects to the 90 % capacity utilisation rate calculated by Chem Systems,

⁽¹⁾ OJ L 103, 25. 4. 1979, p. 1.

⁽²⁾ OJ L 206, 22. 7. 1992, p. 7.

- the same group states that the growth of the market for hydrogen peroxide was previously buoyed up by a changeover from chlorine to the less environmentally damaging hydrogen peroxide in the bleaching of cellulose; that changeover came to an end in western Europe in 1994, which is why growth has stagnated since,
- another party argues that pressure from environmental activists for the replacement of chlorine by hydrogen peroxide was very strong at the beginning of the 1990s. That pressure has diminished in the last few years. Demand has consequently risen less rapidly than most producers had expected at the beginning of the 1990s,
- another party asks the Commission to investigate the investment costs of the Delfzijl works carefully, in order to establish whether or not they have been made to include FMC's own internal costs,
- lastly, one party alleges that other companies have built production plants for hydrogen peroxide in Germany. The companies referred to are Solvay, Aussimont and Oxysynthèse. There are rumours in the industry that they received State aid.

V

As already explained, FMC also submitted observations on the initiation of proceedings. In so far as they differ from the observations of the Netherlands authorities they can be summarised as follows:

- on the purchase of the site, FMC argues that open bidding would have served little purpose in view of the lack of interested buyers over many years. The valuation carried out by Stichting Adviesbureau Onroerende Zaken cannot be taken as a reference. The agreement concluded in 1988 among the various authorities involved in the financial restructuring of the Delfzijl harbour authority required that that foundation's services be used. The price set may have been influenced by considerations other than economic ones,
 - FMC observes that the loan granted by NOM has been fully repaid. FMC fails to see how this loan could have been considered an aid measure for purposes of Article 92(1) of the Treaty. As the Court of Justice of the European Communities held in its judgment of 17 March 1993 in *Joined Cases C-72/91 and C-73/91 Sloman Neptun v. Bodo Ziesemer* ⁽¹⁾, a measure taken by the authorities is an aid measure only where it confers an advantage the cost of which is borne by the State or a public or private body designated or established by the State. The account from which NOM lent the money to FMC earned NOM a lower rate of interest than NOM charged FMC, so that there was no advantage granted through State resources of the kind referred to by the Court,
 - on the alleged overcapacity on the market in hydrogen peroxide, FMC argues that between the decision to build a plant and the moment when production comes on stream there is a gap of eighteen months. An expected increase in demand can be met only by expanding output correspondingly, which requires that a decision be taken eighteen months beforehand. Producers have to anticipate, as can easily be seen from the fact that demand in 1994 was 647 000 tonnes and in 1992 effective production capacity was 646 000 tonnes (according to CEFIC figures cited at the initiation of proceedings) ⁽²⁾.
- When FMC took the decision to invest, in 1992, it expected demand to increase by over 10 % a year over the period 1992-95. FMC also confirms, and provides figures to substantiate the claim, that the stagnation in sales between 1995 and 1996 was due mainly to the fall in demand from the paper industry. This was an unexpected development, given the historical data and the objective factors that influence demand,
- Other firms likewise received regional investment aid, for investments in Germany,
 - If the Commission were to find that the aid was incompatible with the common market, any attempt to recover the aid would in any event be unjustified and out of time. Recovery would conflict with the protection of FMC's legitimate expectations. FMC has displayed great care in familiarising itself with the rules of all the applicable aid schemes and assuring itself that they had been approved by the Commission. FMC became aware of the 20 % gross ceiling governing the IPR scheme only when the notice announcing the initiation of proceedings was published ⁽³⁾.
- On the basis of the information in its possession at the time of the investment decision, and the legal advice it had obtained, FMC could only conclude that the investment aid qualified for approval under the IPR scheme, and that the Commission clearly had not prohibited the provision for 'major cases' in the scheme which in the view of the Netherlands authorities allows the admissible amounts and intensities to be exceeded,

⁽¹⁾ ECR [1993] I-887.

⁽²⁾ OJ C 112, 10. 4. 1997, p. 3.

⁽³⁾ OJ C 112, 10. 4. 1997, p. 3.

- FMC takes the view that as the aid was approved in 1994 and the Commission has been aware of it since 1995, a long time has passed up to the present final decision. Citing the judgment of the Court of Justice of 24 November 1987 in Case 223/85 RSV v. Commission⁽¹⁾, FMC argues that the time the Commission has taken to reach a decision precludes recovery of the aid,
- Lastly, FMC's advisers have recently submitted that, in its Decision 97/542/EC⁽²⁾ on tax exemptions for biofuels in France (State aid measure No C 51/94 France), the Commission had found that the aid was unlawful and incompatible, but had nevertheless decided not to require France to recover it. In FMC's view the same arguments apply to its own case.

VI

As the Commission pointed out when it initiated the proceedings, the Court of Justice held in its judgment of 30 June 1992 in Case C-47/91 Italy v. Commission (the Italgrani case)⁽³⁾ that when the Commission came to consider cases where fresh aid was to be granted under a scheme the Commission had previously authorised, the Commission had only to establish that the terms of the scheme had been complied with. If the terms of such a scheme have indeed been complied with, there is no need to consider whether the individual case is compatible with the common market. If the Commission finds that the terms of the scheme have not been complied with, then it has to carry out a thorough assessment of the compatibility with the common market of the individual aid measures.

The Commission considers, for the reasons set out below, that the conditions of the IPR scheme have not been met in this case. A more detailed scrutiny is therefore called for.

The start-up of FMC's Delfzijl plant increases Dutch production capacity by 20 000 tonnes a year to 55 000 tonnes. According to data from various sources, the proportion of European hydrogen peroxide production traded between Member States in 1994 was between 30 % and 40 %. Of this total, the Dutch share varies between 10 and 15 %. It follows that the aid given to FMC for its Delfzijl works will affect trade between Member States.

⁽¹⁾ [1987] ECR 4617.

⁽²⁾ OJ L 222, 12. 8. 1997, p. 26.

⁽³⁾ [1992] ECR I-4145.

The Commission deplores the Netherlands Government's failure to notify the measures sufficiently in advance for it to be able to reach a decision pursuant to Article 93(3) of the EC Treaty. By implementing the measures before the Commission has had time to state its position on them, the Netherlands Government has rendered them unlawful.

The case raises three important questions for the Commission to consider:

- (A) it must be established whether or not the hydrogen peroxide market was in overcapacity in 1994, when the Netherlands authorities approved the aid, and in succeeding years, as the complainant contends;
- (B) the Commission must decide how to handle aid in excess of the maximum intensity that it authorised in connection with the regional aid scheme that applies in Delfzijl, the IPR scheme. The Netherlands authorities were authorised to grant up to 20 % gross towards the investment, but in fact granted slightly more than 25 % gross;
- (C) in conjunction with the preceding point, the Commission must consider what weight to give to the Netherlands authorities' argument that FMC has carried out substantial investment in the protection of the environment.

In addition, the Commission must consider the observations of the recipient company according to which recovery of the aid, should the Commission find it incompatible, would be unjustified and out of time.

A. The market in hydrogen peroxide

The Commission takes the view that the examination of the market in hydrogen peroxide and the way it has developed must begin with the time when it was decided to carry out the projected investment. It was on the basis of the information in the company's possession at that time that the decision whether or not to carry out the investment had to be taken.

In the course of the proceedings, four parties have supplied statistics describing the situation on the market in the past, up to 1995 or 1996 as the case may be, and estimates for the future. The demand figures provided by these four parties for the period 1994-96 show strong similarities. However, they do not give a good picture of the time when FMC decided to invest in the Delfzijl site.

The same applies to the remark made by one of the parties, the complainant's parent company, that according to its expectations in 1994, which were subsequently proven right, the overcapacity that existed at that time would continue for many years. One may question the consistency between what the company says now and what it said in 1994. According to its 1995/96 annual report, which the Netherlands authorities have supplied to the Commission, the hydrogen peroxide industry was then in continuous growth. The same report stated that growth of 7 % to 8 % a year was expected on the world market.

This company attributes the stagnation of growth in the hydrogen peroxide market to the fact that the changeover from chlorine to hydrogen peroxide in the bleaching of cellulose came largely to an end in 1994. The annual report just referred to, however, states that hydrogen peroxide is increasingly replacing the chlorine products used previously in a variety of uses in industries such as textiles and paper.

Another of the parties agrees with FMC that pressure from environmental activists for a changeover from chlorine to hydrogen peroxide has fallen off in recent years, with the result that demand has increased more slowly than most producers expected at the beginning of the 1990s. In 1993, 42 % of the hydrogen peroxide produced was used for the bleaching of textiles and paper⁽¹⁾. The same party claims that in 1993 demand for hydrogen peroxide was expected to grow by 8,2 % a year for the bleaching of paper, and 2,6 % a year for the bleaching of textiles, over the period 1991-2000.

To determine whether there is overcapacity account must be taken of the time between the investment decision and the opening of the new plant. A decision whether or not to invest will be taken on the basis of current expectations. FMC is of the opinion that the gap amounts to eighteen months. In the light of the annual figures received from all the parties, the Commission must work on the basis of a period of two years.

From the tables drawn up using the data supplied by the Netherlands authorities, to which the Commission referred when it initiated the proceedings, it will be seen that effective capacity (90 % of theoretical capacity) of year 't' is lower than anticipated demand in the year t + 2, a difference which can be overcome only by increasing the effective capacity utilization rate to over 90 % or by

expanding capacity. If the same analysis is applied to statistical data supplied by third parties in the course of the proceedings, bearing in mind that they give a picture of the past only and do not forecast the future, it can be concluded that demand in 1996 was between 90 % and 100 % of the capacity actually installed in 1994.

Lastly, on the basis of all the information it has received, the Commission notes that FMC was by no means the only firm to expand its capacity in the second half of the 1990s. Several competitors set up new production plants, frequently with production capacities larger than that of Delfzijl, despite their claims that there was overcapacity on the market at that time.

Between 1994 and 1996 the capacity expansions announced totalled 245 000 tonnes, only 35 000 tonnes was to be installed by FMCI⁽²⁾.

The Commission accordingly takes the view that although there may have been overcapacity on the market in hydrogen peroxide in 1994 (data from before that year would be needed to allow a more precise assessment), nevertheless at the time FMC decided to expand its capacity it might reasonably expect the market to grow by about 7 % a year, as many of its competitors did. The competitors also confirm that most of them did not foresee the later stagnation of growth. The growth in the market was consequently sufficient to encourage firms to invest in order to take advantage of it. Between 1993 and 1995 various other firms announced comparable investments (in the former German Democratic Republic and Scandinavia).

In these circumstances, FMC's decision to build a works in Delfzijl was not exceptional. There is a difference, however, in that FMC received State aid for the purpose, which several of its competitors did not. Indeed, some of the interested parties take the view that the Commission ought to challenge the whole of the aid received by FMC. The aid allegedly received by other hydrogen peroxide producers at about the same time as FMC is the subject of a separate Commission inquiry.

The Netherlands authorities have stated that they grant aid only provided the applicant satisfies the requirements for eligible costs laid down in the relevant legislation. Aid is paid only once the costs have been audited. The Commission does not propose to pursue its examination of this point.

⁽¹⁾ Source: Chem Systems; data supplied by the Netherlands authorities.

⁽²⁾ Source: Chem Systems; data supplied by the Netherlands authorities.

B. Exceeding the maximum permitted aid intensity

FMC was given aid in three forms: a direct grant, a subordinated loan, and a site sold at a price apparently below the market value.

- (1) As regards the grant, the Commission cannot accept the Netherlands authorities' view that while the costs eligible for aid are less than the total investment, the aid intensity should nevertheless be calculated by reference to the total sum invested.

According to the Netherlands authorities, there is a misunderstanding regarding the maximum rate of aid under the IPR scheme. The scheme allows aid to be granted at a maximum intensity of 20 % of the eligible costs, and the eligible costs may amount to a maximum of NLG 18 million. This rule applies in normal cases. In more important cases, known as 'major cases' (*belangrijke gevallen*), in which the NLG 18 million eligible costs ceiling set by the scheme is exceeded, the responsible Minister may exceed the amount of aid authorized by the scheme (20 % of NLG 18 million). Article 5(2) of the 1991 IPR rules (*Subsidieregeling regionale investeringsprojecten 1991*) provides that if the costs of a project within the scope of paragraph 1(a) or (b) of that Article amount to more than NLG 18 million and the project is of special importance to the development of a regional economy, the Minister may decide to give a grant higher than the maximum amount referred to in paragraph 1. The Netherlands authorities consider that the Minister was entitled to award a grant which was higher in amount and intensity. A grant of 20 % net to FMC was therefore in accordance with the scheme.

The Commission does not share this opinion, because the scheme does not provide that in 'major cases' aid may exceed the maximum aid intensity. Only the amount of the aid can exceed the ceiling laid down for normal cases. When they notified the IPR scheme, the Netherlands authorities nowhere mentioned that they wished to allow a special aid intensity for 'major cases'. The Commission decision

on the IPR scheme specifies that the maximum aid intensity is 20 % gross. Before this particular case the Netherlands Government had never challenged that decision. That intensity must therefore be taken as the ceiling. The grant actually given amounts to 25 % gross.

- (2) The Commission takes note of the fact that FMC has made early repayment of the whole of the loan granted to it by NOM, and has contracted another loan on more advantageous terms with a foreign bank. Both the recipient and the Netherlands authorities maintain that the NOM loan did not constitute aid, because NOM acted on the basis of purely commercial considerations. NOM was able to grant this subordinated loan of NLG 12,5 million at an interest rate of 5,92 % as a result of the 100 % guarantee that FMC provided. The account from which the funds were lent to FMC earned NOM a rate of interest lower than what it charged FMC, so that there does not appear to be any advantage granted through state resources of the kind referred to by the Court of Justice in the *Sloman Neptun* judgment⁽¹⁾, to which the recipient company refers. Lastly, the reference rate that the Commission was using in the calculation of regional aid in 1994 was 6,27 %, which differed by 35 basis points from the rate charged to FMC. That reference rate included a risk premium calculated at 75 basis points in the case of the Netherlands, representing the risk associated with the average debtor. As FMC acted as guarantor for the whole amount of the loan, and even then NOM charged a risk premium of 40 basis points, it must be concluded that the loan is outside the scope of Article 92(1) of the Treaty.
- (3) As regards the sale of the site, the Netherlands Government takes the view, for the reasons set out in Section III above, that the sale is not a measure caught by Article 92(1) of the Treaty. The fact that no buyer was found for the site over a very long period is in its opinion sufficient proof that the price paid by FMC corresponds to the market value.

As the Commission stated when it initiated the proceedings, it considers as a rule that the value of a site put up for sale by the public authorities may be determined most accurately by an open and unconditional bidding procedure. During such a procedure potential purchasers are able to make their bids, the highest of which is accepted. This procedure also shows how great an effort the vendor has made to procure the best terms available. This view was discussed in the Commission's *Fresenius* decision⁽²⁾.

⁽¹⁾ ECR [1993] I-887.

⁽²⁾ OJ C 21, 25. 1. 1994, p. 4.

If the responsible authorities do not follow this procedure, the Commission is of the opinion that the market price of the site should be established by an independent valuer using generally accepted methods, working in particular from recent sales of comparable sites.

These criteria have recently been confirmed in the Commission Communication on State aid elements in sales of land and buildings by public authorities⁽¹⁾.

The Commission does not share the recipient company's scepticism regarding the valuation of the site in March 1994. The valuer's report, which the Netherlands authorities supplied with their letter of 9 January 1997, is sufficiently detailed, and in arriving at a final valuation takes account of a range of factors (geographic location, proximity of waterways and railways, the state of the property, and valuations carried out in the past). No considerations other than economic ones are considered in the report, apart perhaps for the observation that the State attaches great importance to the definitive conclusion of the deed of transfer of the property rights and the establishment of the company on the site. The valuer nevertheless valued the land at NLG 10 per square metre; the harbour authority sold it for one tenth of that price.

As the valuer reported that his own office had valued the site in 1987, and added that at the second valuation in 1994 the plots had previously (1993) formed part of an area for the dumping of silt, but that the land was now cleared and could be used as an industrial site, the Commission is satisfied that he took account of all relevant factors in valuing the property. It is important to note, therefore, that while the company has voiced various objections, it acknowledges that the valuation may reflect the possibility of using the site for industrial purposes.

The Commission concludes that the market price of the site for industrial use at the time FMC bought it was NLG 10 per square metre, as determined by the valuer, whose report clearly states that the site can be used for that purpose and that there are no special rights over the land or obligations borne by it which might reduce its value. In order to determine whether there is State aid, therefore, this is the price which must be taken as the point of reference.

The Commission notes that the Netherlands authorities tried in vain to sell the site in the 1980s and at the beginning of the 1990s. It therefore takes the view

that the Fresenius precedent does apply in this case⁽²⁾, and that, as no other buyer has come forward, the valuer's valuation can be reduced by 10 %. This approach is in line with the Commission Communication on State aid elements in sales of lands and buildings by public authorities, which has applied since 1996, except that the Communication considers that where the authorities have made vain efforts to sell the land the market price may be reduced by 5 %.

Given the area sold (10,5 ha), and the price the Commission regards as compatible with the market in view of the Netherlands authorities' efforts to sell the site (NLG 9 per square metre), FMC should have been buying the site for a total of NLG 945 000. The State aid component is consequently NLG 840 000. This brings the total aid received by FMC to NLG 29,09 million (NLG 28,25 million + NLG 840 000). The costs eligible for aid under the IPR scheme amount to NLG 113,945 million (NLG 113 million plus the corrected value of the site), so that the aid intensity is 25,52 % gross. In cash terms the excess is the equivalent of a sum of NLG 6,3 million. Given the position of the Netherlands in trade in hydrogen peroxide between Member States, this aid affects trade between Member States. As the aid did not comply with the ceiling set by the applicable regional scheme, it must be concluded that it distorts or threatens to distort competition, as it reduces the investment costs which would otherwise have to borne by the company. The aid is therefore caught by Article 92(1) of the Treaty, and does not qualify for any of the exemptions allowed.

The granting of the aid is also motivated by the difficulties and handicaps suffered by the Delfzijl area and by the favourable impact the assisted project is expected to have. These considerations are already reflected, however, in the applicable regional scheme, and in the authorized aid intensity, which is based on objective criteria (unemployment rate, GDP per capita, etc.). Although the sum involved is small, the fact that the authorized aid ceiling has been exceeded raises a problem of principle. The Commission can scarcely allow the aid ceiling permitted by the scheme to be exceeded without robbing the scheme of its purpose, and without setting a very dangerous precedent which would be invoked systematically in similar cases.

⁽¹⁾ OJ C 209, 10. 7. 1997, p. 3.

⁽²⁾ OJ C 21, 25. 1. 1994, p. 4.

C. The environmental investments

The Commission cannot accept that the maximum intensity should be exceeded in the case of aid which is investment aid only, but it might nevertheless be permissible to exceed the ceiling if the Netherlands authorities had provided different forms of aid towards different classes of costs all being eligible for assistance (regional investment aid and environmental aid, for example), and the total then exceeded the maximum intensity for regional aid. When it initiated the proceedings, the Commission confirmed that it would consider whether FMC qualified for aid under the Community guidelines on State aid for environmental protection ⁽¹⁾.

To justify exceeding the regional ceiling, the Netherlands authorities have stated that a large proportion of the investment is in environmental measures (NLG 63 million out of NLG 115 million).

It is stated in point 3.2.B of the guidelines that: 'Aid for investment that allows significantly higher levels of environmental protection to be attained than those required by mandatory standards may be authorised up to a maximum of 30 % gross of the eligible costs. The level of aid actually granted for exceeding standards must be in proportion to the improvement of the environment that is achieved and to the investment necessary for achieving the improvement (...). If both Community and national mandatory standards exist for one and the same type of nuisance or pollution, the relevant standard for the purposes of applying this provision shall be the stricter one'.

In this case, it is clear that the area in which FMC is established is a nature conservation area which is protected under both Community and domestic legislation. The Netherlands Government confirms that FMC had to apply for a number of authorisations from different authorities in order to be able to build the plant in Delfzijl. It can be gathered that there are mandatory environmental standards in force in the area which are especially strict in view of its exceptional character.

In order to show that FMC had made particularly strenuous efforts in the environmental sphere, the Netherlands Government recently sent the Commission a report analysing the proportion of the investment that can be considered 'excessive' by comparison with what is customary in other Member States. An FMC plant in Spain is used as a yardstick to measure what is an 'exces-

sive' effort in Delfzijl. The comparison identifies investments between NLG 12 million and NLG 21 million. The Netherlands authorities also claim that some of these investments (between NLG 1,4 million and NLG 2,65 million) are 'locally excessive', meaning that the company had to undertake these investments in order to adapt to local circumstances (a protected and vulnerable area).

The Commission is obliged to note that the Netherlands authorities are unable precisely to quantify these 'extra' investments on the part of FMC. The Commission wonders, therefore, what figure it should take as a basis for an assessment of the compatibility of these environmental aid measures with the Treaty. In addition, a large part of the sums in question relate to safety measures and accident prevention measures: in a recent State aid case (C 6/96, Hoffmann La Roche v. Austria) ⁽²⁾, the Commission decided that investment of this kind was in the company's own interests, as the company would be liable for any damage or injury, and consequently did not qualify for State aid.

The Netherlands authorities have not produced anything to show that FMC has gone beyond what is required by Netherlands environmental legislation, or if so that it has done so to any appreciable extent; nor have they shown that the aid is in proportion to the investment or to the extent to which standards have been exceeded. It may be added that the Commission allows aid up to the ceiling of 30% gross of the eligible costs referred to in the guidelines only in cases in which the measures being taken go very substantially beyond the compulsory standards.

The guidelines do not allow aid to be authorised for investment going beyond the standards in force in other Member States, but only for investment going beyond compulsory standards in the Member State concerned, and the Commission accordingly takes the view that the investments of an environmental nature carried out by FMC on this site do not qualify for aid under the guidelines. The fact that the regional aid ceiling applicable has been exceeded consequently cannot be justified on environmental grounds.

VII

It must be concluded, then, that the sum of NLG 6,3 million in aid by which the regional aid ceiling applying under the IPR scheme is exceeded should be declared unlawful and incompatible with the common market.

⁽¹⁾ OJ C 72, 10. 3. 1994, p. 3.

⁽²⁾ OJ L 103, 3. 4. 1998, p. 28.

Where aid granted unlawfully is found to be incompatible with the common market, Article 93(2) of the EC Treaty requires the Commission to request the Member State to recover it from the recipient, as the Court of Justice has confirmed in its judgments of 12 July 1973 in Case 70/72 *Commission v. Germany* ⁽¹⁾, of 14 February 1987 in Case 310/85 *Deufil v. Commission* and of 20 September 1990 in Case C-5/89 *Commission v. Germany* (BUG-Alutechnik) ⁽²⁾.

The lawyers representing FMC have argued that if the Commission finds that the aid is unlawful and incompatible with the common market, any decision to require repayment would not only be contrary to the principle of the protection of legitimate expectations but would also be out of time.

In the BUG-Alutechnik case, the Court of Justice had this to say: 'However, it must be noted that, in view of the mandatory nature of the supervision of State aid by the Commission under Article 93 of the Treaty, undertakings to which an aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article. A diligent businessman should normally be able to determine whether that procedure has been followed.'

In that regard, it must be pointed out that, by a Communication published in the *Official Journal of the European Communities*, the Commission informed potential recipients of State aid of the risk attaching to any aid granted them illegally, in that they might have to refund the aid (OJ C 318, 1983, p. 3).

It is true that a recipient of illegally granted aid is not precluded from relying on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and thus declining to refund the aid. If such a case is brought before a national court, it is for that court to assess the material circumstances, if necessary after obtaining a preliminary ruling on interpretation from the Court of Justice.

However, a Member State whose authorities have granted aid contrary to the procedural rules laid down in Article 93 may not rely on the legitimate expectations of recipients in order to justify a failure to comply with the

obligation to take the steps necessary to implement a Commission decision instructing it to recover the aid. If it could do so, Articles 92 and 93 of the Treaty would be set at naught, since national authorities would thus be able to rely on their own unlawful conduct in order to deprive decisions taken by the Commission under provisions of the Treaty of their effectiveness.'

According to the observations submitted by FMC, it had a legitimate expectation that the aid would be compatible with the common market because it had been very careful to enquire into the aid schemes available and to establish that they had been authorized by the Commission. At the meeting with the Commission, FMC developed this argument, and stated that it had assurances from the Netherlands authorities that the aid was covered by a Commission authorisation. At no stage in these proceedings was any detailed account or documentary evidence provided of the approaches FMC allegedly made to the authorities.

FMC also refers to a point in the Twentieth Report on Competition Policy, 1991, point 330; but it is there stated that for 'regional aid programmes in the Netherlands' the Commission 'agreed to investment aid up to 20 % gross'. The Report does not mention the 'major cases' because the scheme does not provide for any special aid intensity in such cases.

At no stage has FMC shown that its alleged legitimate expectation was attributable to any act on the part of the Commission. At the time it received the aid, FMC did not ask the Commission, nor does it claim to have asked the Commission, for a copy of the Decision of 12 December 1990 on the scheme. Only after the aid had been granted, in point of fact after the Commission decided to initiate the Article 93(2) proceedings, was this request first made to the Commission.

As for the decision to initiate the proceedings, it is obvious that by its very nature it cannot justify an expectation that the aid being examined is compatible.

As regards the contention that the Commission's final decision would be out of time, it will be sufficient to recall the succession of steps which the Commission took following the complaint and which are outlined in the decision initiating the proceedings, and to point out that the Commission had to base its decision on the situation on the hydrogen peroxide market, so that other parties

⁽¹⁾ ECR [1973] 813.

⁽²⁾ ECR [1987] 901 and ECR [1990] I-3437 respectively.

had to be consulted in the course of the proceedings. The most recent information on 'excessive' and 'locally excessive' investments was supplied to the Commission only on 4 November 1997. The Commission could take a decision only once it had obtained all the necessary information, this in order strictly to ensure the right of the Member State concerned to defend itself in the course of the proceedings.

The lawyers representing FMC cite the arguments that the Commission put forward for not requiring recovery in the French biofuels case (C 51/94)⁽¹⁾, and ask the Commission to follow that precedent here:

- like biofuel, hydrogen peroxide helps to reduce pollution and is more expensive than the product it replaces,
- the investment aid does not overcompensate for the production costs,
- there is no indication that the aid will lead to an increase in sales and profits, as the FMC plant is still making a loss,
- recovering the aid would not restore the *status quo ante*.

In the first place, there is no Community policy of encouraging the production of hydrogen peroxide similar to that which exists in the case of biofuels. In addition, the aid towards biofuels is intended partially to offset the higher production costs of biofuels as compared with fossil fuels. In the case of FMC the Commission could not have authorized production aid or operating aid.

The aid reduced FMC's investment costs, and it logically follows that the cost of capital to FMC was lower than it was for competitors who had received no State aid. The advantage thus conferred might be reflected for example in the form of lower financing costs, because without the aid the company would have had to go to the capital markets for the money covered by the aid. Such a saving in the cost of capital might have an impact on FMC's results in the form of higher profits or lower losses than previously. The Netherlands authorities have not shown otherwise.

Lastly, the Commission takes the view that recovery of the aid will allow the financing costs to be brought back to the level the company would have had to bear if it had not received the incompatible aid that conferred an artificial advantage on it; it will thus allow the *status quo* to be restored.

The Commission accordingly concludes that the arguments that FMC has put forward give the Commission no

cause to dispense with the recovery of the incompatible aid,

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to NLG 6,3 million which the Netherlands granted to FMC Industrial Chemicals (Netherlands) BV in excess of the aid ceiling laid down by the IPR scheme approved by the Commission is unlawful, in that it was granted before the Commission had submitted its comments in accordance with Article 93(3) of the EC Treaty.

That aid is also incompatible with the common market within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement, and does not qualify for any of the exemptions laid down in Article 92(2) and (3) of the EC Treaty or Article 61(2) and (3) of the EEA Agreement.

Article 2

The Netherlands shall take whatever steps are necessary to recover the unlawful aid referred to in Article 1. Repayment shall be made in accordance with the procedures and provisions of Netherlands law; the amount to be repaid shall bear interest from the date on which the aid was granted until the date on which it is in fact repaid, the interest rate being equal to the reference rate in use on the date of repayment for the calculation of the net grant equivalent of regional aid in the Netherlands.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 21 January 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ L 222, 12. 8. 1997, p. 26.