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Notice to readers (see page 3 of the cover)

(Acts adopted pursuant to Title V of the Treaty on European Union)

JOINT ACTION
of 22 December 1998
adopted by the Council on the basis of Article J.3 of the Treaty on European
Union in support of the democratic process in Nigeria

(98/735/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS JOINT ACTION:

Having regard to the Treaty on European Union, and in particular Articles J.3 and J.11 thereof,

Article 1

Having regard to the general guidelines contained in the conclusions adopted by the European Council in Madrid on 15-16 December 1995,

1. The European Union shall deploy a contingent of 100 EU observers to the February 1999 elections in Nigeria within the framework of the international observer mission coordinated by the United Nations.

2. The Presidency shall appoint an EU spokesperson who will be responsible for joint EU-UN declarations and press and public relations.

Whereas on 30 October 1998, the Council adopted, on the basis of Article J.2 of the Treaty, Common Position 98/614/CFSP and issued a declaration concerning Nigeria, which indicated the EU's willingness to consider concrete measures to support the legislative and presidential elections which will take place in Nigeria on 20 and 27 February 1999 respectively;

Article 2

1. An amount of up to EUR 810 000 shall be charged to the general budget of the European Communities. This amount is intended to cover the operational expenditure of the EU observer mission in Nigeria and shall be managed by the UN Volunteers under the responsibility of the Commission.

2. The salary and related charges of observers designated by the EU shall be at the charge of the Member States which provide them.

3. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with Community procedures and rules applicable to the said budget.

Whereas, within the framework of the international effort coordinated by the United Nations, the Commission, acting on behalf of the European Community and its Member States, has undertaken a number of activities to provide assistance for the preparation of, and observers for, the elections, including support to the functioning of the Nigerian Independent National Election Commission and assistance to local election monitoring (Transition Monitoring Group);

Whereas the EU will further contribute to the support for the election process by deploying an EU contingent of election observers who will be integrated in the United Nations overall coordination structure;

Article 3

Whereas, in order to guarantee EU visibility and in the absence of a UN-appointed spokesperson, the Presidency will appoint an EU spokesperson,

The Council notes that the Commission intends to direct its action towards achieving the objectives and priorities of this Joint Action, where appropriate by pertinent Community measures.

Article 4

This Joint Action shall come into force on 1 January 1999.

Article 5

This Joint Action shall be published in the Official Journal.

Done at Brussels, 22 December 1998.

For the Council

The President

C. EINEM

JOINT ACTION**of 22 December 1998****adopted by the Council on the basis of Article J.3 of the Treaty on European Union concerning a forensic experts mission in the Federal Republic of Yugoslavia**

(98/736/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Articles J.3 and J.11(2) thereof,

Having regard to the general guidelines contained in the conclusions adopted by the European Council in Vienna on 11-12 December 1998,

Whereas in its conclusions of 5 October 1998 the Council condemned in the strongest terms those responsible for atrocities in Kosovo and called upon the authorities in Belgrade immediately to investigate, identify and punish those responsible;

Whereas, in this context, the Council decided to send, as soon as possible, an EU team of forensic experts to examine the recently alleged killings of civilians in Kosovo; whereas this team should have unhindered access to the required sites within the FRY and should be granted independent working conditions,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. The EU forensic experts mission shall investigate, in an impartial and independent manner, sites of alleged killings of civilians in Kosovo, *inter alia* in Glodjane, Golubovac, Gorne Obrinje, Klecka, Orahovac and Volujak.

2. The mission shall report its findings to the Council.

Article 2

1. An amount of up to ECU 950 000 shall be charged to the general budget of the European Communities in order to cover the costs of the EU forensic experts mission from the date of the adoption of this Joint Action.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with Community procedures and rules applicable to the said budget.

Article 3

This Joint Action shall come into force on 1 January 1999.

Article 4

This Joint Action shall be published in the Official Journal.

Done at Brussels, 22 December 1998.

*For the Council**The President*

C. EINEM

COUNCIL DECISION**of 22 December 1998****concerning the extension of Joint Action 95/545/CFSP with regard to the participation of the Union in the implementing structures of the peace plan for Bosnia and Herzegovina and amending Decision 98/607/CFSP**

(98/737/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.3 thereof,

Whereas on 11 December 1995 the Council adopted Joint Action 95/545/CFSP with regard to the participation of the European Union in the implementing structures of the peace plan for Bosnia and Herzegovina ⁽¹⁾, extended on 20 November 1996 by Decision 96/745/CFSP ⁽²⁾ and supplemented on 26 October 1998 by Decision 98/607/CFSP ⁽³⁾;

Whereas in its conclusions of 7 December 1998 the Council assured the High Representative in Bosnia and Herzegovina of its firm support;

Whereas at the Peace Implementation Council held in Madrid on 15 and 16 December 1998 the Union reiterated its support for the efforts of the High Representative;

Whereas Joint Action 95/545/CFSP is due to expire on 31 December 1998 and should be extended; whereas the continuity of the Union's contribution to the costs of such extension should be ensured,

HAS DECIDED AS FOLLOWS:

Article 1

Joint Action 95/545/CFSP shall be extended until 31 December 1999.

Article 2

Article 2 of Decision 98/607/CFSP shall be replaced by the following:

'Article 2

This Decision shall enter into force on the day of its adoption and shall be applicable until 31 December 1999.'

Article 3

This Decision shall enter into force on the day of its adoption.

Article 4

This Decision shall be published in the Official Journal.

Done at Brussels, 22 December 1998.

*For the Council**The President*

C. EINEM

⁽¹⁾ OJ L 309, 21. 12. 1995, p. 2.

⁽²⁾ OJ L 340, 30. 12. 1996, p. 3.

⁽³⁾ OJ L 290, 29. 10. 1998, p. 3.

I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 2836/98
of 22 December 1998
on integrating of gender issues in development cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

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

Acting in accordance with the procedure referred to in Article 189c of the Treaty ⁽²⁾,

- (1) Whereas the importance of women's economic and social roles in developing countries has led to increasing international recognition that their full participation without discrimination is indispensable for sustainable and effective development;
- (2) Whereas their contribution to development is presently achieved in the face of formidable obstacles specific to women, limiting the outcome of their work and reducing the benefits to society as a whole;
- (3) Whereas these obstacles include persistent and severe disparities between women and men in the right to equal participation in development for women, access to basic services, particularly in the areas of education, training and health, access to decision-making and control over economic resources;
- (4) Whereas development interventions have frequently failed to address adequately the differences between women's and men's situations, roles, opportunities and priorities, thereby reducing their overall success;
- (5) Whereas redressing gender disparities and enhancing the role of women are crucial for social justice and the effectiveness of development efforts;
- (6) Whereas development cooperation must encourage the necessary accompanying changes in attitudes, structures and mechanisms at political, economic, legal, community and household level;
- (7) Whereas it is now recognized that though specific efforts to enhance the role of women in development remain as necessary as ever, the focus must widen to encompass both men's and women's roles, responsibilities, needs, access to resources and decision-making, and the inter-relationship between them, known as gender issues;
- (8) Whereas development effectiveness requires that gender analysis should be systematically integrated into the conception, design, implementation and evaluation of all development interventions and strategies;
- (9) Whereas the foregoing analysis is set out in more detail in the Commission's communication to the Council and the European Parliament on integrating gender issues in development cooperation of 18 September 1995 and was endorsed by the Council in its Resolution of 20 December 1995;
- (10) Whereas in a series of conclusions from 1982 to 1993 the Council has stressed the importance it attaches to women's role in development;
- (11) Whereas the Community and its Member States were signatories to the Nairobi Forward-Looking Strategies in 1985 and to the Declaration and Platform for Action of the Fourth World Conference

⁽¹⁾ OJ C 371, 8. 12. 1997, p. 74.

⁽²⁾ Opinion of the European Parliament of 19 November 1997 (OJ C 371, 8. 12. 1997), Council Common Position of 30 March 1998 (OJ C 204, 30. 6. 1998, p. 18.) and Decision of the European Parliament of 17 September 1998 (OJ C 313, 12. 10. 1998).

on Women at Beijing in 1995, which stressed the need for action against worldwide obstacles to gender equality and to ensure that this perspective is reflected in all policies and programmes;

- (12) Whereas the United Nations Convention on the Elimination of all forms of Discrimination against Women (1979) considers discrimination against women as an obstacle to development which parties agree to eliminate using all appropriate means, and the UN Declaration on the Right to Development (1986) emphasizes the right of all persons to participate in and contribute to development and the need to undertake effective measures to ensure that women have an active role in the development process;
- (13) Whereas the European Parliament has emphasized in numerous Resolutions, and particularly in its Resolution of 14 May 1992 on the situation of women in developing countries and its Resolution of 15 June 1995 on the fourth World Conference on Women in Beijing, the need to integrate proper attention to women's roles and priorities in Community development cooperation and to take adequate measures to ensure active implementation of the conclusions of the Beijing Conference;
- (14) Whereas the Resolution of the Council and the Representatives of the Governments of the Member States of 20 December 1995 endorses the Commission's communication on the same subject, requires the full integration of gender issues in development cooperation and coordination between the Commission and Member States in this field, and sets out guidelines which also translate into the field of development cooperation the political commitments undertaken at Beijing;
- (15) Whereas this approach is further endorsed by the Resolution of the Council and the Member States on human and social development of 22 November 1996;
- (16) Whereas the recognized importance of these issues to development effectiveness makes it appropriate to envisage specific activities aimed at ensuring adequate attention to gender issues across the mainstream of Community financial instruments, which should increasingly assume responsibility for these key questions;
- (17) Whereas the most effective approach is strategic and precisely targeted sensitization initiatives capable of achieving a substantial multiplier effect, rather than the funding of small-scale operational

projects; whereas Community development cooperation aid should also be used to a greater extent for specific action in favour of women;

- (18) Whereas the importance of Community activities in the field of development cooperation necessitates measures by the Community to ensure its implementation of its commitments at Beijing, complementary to those undertaken by Member States;
- (19) Whereas measures need to be taken to finance the activities covered by this Regulation;
- (20) 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 on the incorporation of financial provisions into legislative acts⁽¹⁾ is included in this Regulation for the period 1999 to 2003, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
- (21) Whereas detailed rules for implementation, and in particular the form of action, the recipients of the aid and the decision-making procedures should be laid down,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Community shall provide financial assistance and technical expertise to support the mainstreaming of the gender perspective into all its development cooperation policies and interventions.
2. The assistance provided pursuant to this Regulation shall complement, reinforce and coordinate assistance provided pursuant to other instruments of development cooperation, including those existing at intergovernmental and/or national level, with a view to taking fully into account gender considerations in Community policies and interventions.
3. For the purposes of this Regulation 'gender issues' means the different and interrelated roles, responsibilities and opportunities of women and men relative to development, which are culturally specific and socially constructed, and can change over time, *inter alia*, as a result of policy interventions.

Article 2

1. The following are the central objectives of activities to be carried out pursuant to this Regulation:
 - (a) to support the mainstreaming of gender analysis in all areas of development cooperation, taking particular account of the legal and actual status of women and men, their needs and their contribution to society and

⁽¹⁾ OJ C 102, 4. 4. 1996, p. 4.

the family; to support the adoption of a gender-sensitive approach in the conception, design and implementation of Community development policies and interventions at macro, meso and micro level, as well as in their monitoring and evaluation;

(b) to support and facilitate the inclusion of actions addressing major gender disparities and on an appropriately large scale, particularly with regard to access to resources, services and participation in the decision-making processes in political, economic and social life, in the mainstream of Community development interventions;

(c) to lead progressively to a situation in 2003 where a substantially increased percentage of Community interventions satisfy the OECD/DAC criteria for gender integration or positive action;

(d) to develop and promote endogenous public and private capacities in developing countries which can take the responsibility and initiative for mainstreaming the gender dimension in the development effort.

2. Activities eligible for financing include, in particular:

- provision of technical advice and support on the integration of gender issues in development interventions;
- activities aimed at including gender implications in analyses, policies, country and sector strategies;
- schemes to build up the institutional and operational capacities of developing countries on gender issues at national, regional and local level, including, as regards legislative and administrative action, on equal rights for men and women;
- supporting the collection and dissemination of data desegregated by sex;
- development of methodologies, guidelines, manuals, procedures, indicators and other operational instruments seeking to improve the integration of gender issues in development activities;
- thematic monitoring and evaluations;
- training and sensitization of key decision-makers in the Commission and the developing countries;
- support to the formulation, follow-up and monitoring of national plans in developing countries designed to implement the Platform for Action of the Beijing Conference;
- actions within the framework of coordination with Member States on integrating gender issues in development cooperation.

3. Particular attention will be given to incorporating gender issues into emerging areas of development cooperation.

Article 3

Beneficiaries of activities carried out under this Regulation may include public authorities and government agencies, decentralized departments, regional bodies, universities and research centres, traditional and local communities, trade unions, non-governmental organizations, public utility associations and associations representing local people, particularly women, as well as cooperatives and agricultural and craft-based credit institutions.

Priority will be given to endogenous structures that can play a role in developing local capacities with respect to gender.

Article 4

1. Community financing of the operations referred to in Article 1 shall cover a period of five years (1999 to 2003).

The financial reference amount for the implementation of this programme for the period 1999 to 2003 shall be ECU 25 million.

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

2. The budgetary authority shall determine the appropriations available for each financial year taking account of the principles of sound financial management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

Article 5

1. The instruments to be employed in the course of the activities referred to in Article 2 shall include studies, appropriate technical assistance, including the use of experts in the short and long term, education, training or other services, supplies and works, as well as audits and evaluation and monitoring missions.

2. Community financing may cover both investment, with the exception of the purchase of real estate, and, since the project must, if possible, aim at medium-term viability, recurring expenditure (including administrative, maintenance and operating expenditure).

However, with the exception of training, education and research programmes, operating costs may normally be covered only during the start-up phase and on a gradually decreasing basis.

3. A contribution from the beneficiaries defined in Article 3 shall be sought.

Their contribution shall be according to their means and the nature of the operation concerned.

4. Opportunities may be sought for cofinancing with other donors, especially with Member States and the international organizations concerned.

5. The necessary measures shall be taken to emphasize the Community character of the aid provided pursuant to this Regulation.

6. In order to attain the objectives of consistency and complementarity laid down in the Treaty and with the aim of guaranteeing optimum efficiency for the totality of these operations, the Commission may take all coordination measures necessary, including in particular:

- (a) the establishment of a system for the systematic exchange and analysis of information on operations financed or being considered for financing by the Community and the Member States;
- (b) on-the-spot coordination of these operations by means of regular meetings and exchanges of information between the representatives of the Commission and Member States in the beneficiary countries.

7. The Commission can organize meetings between representatives of the Commission, Member States and partner countries in order to increase awareness of gender issues in emerging areas of development cooperation.

8. In order to obtain the greatest possible impact internationally and nationally, the Commission, in liaison with the Member States, may take any initiative in order to ensure proper coordination and close collaboration, particularly as regards the exchange of information, with the beneficiary countries and the providers of funds and other international agencies involved, in particular those forming part of the United Nations system.

Article 6

Financial support pursuant to this Regulation shall take the form of grants.

Article 7

1. The Commission shall be responsible for appraising, deciding on and administering operations covered by this Regulation according to the budgetary and other procedures in force, and in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

2. Decisions relating to grants of more than ECU 1 million for individual operations financed pursuant to this Regulation shall be adopted under the procedure laid down in Article 8.

3. The Commission shall be authorized to approve, without seeking the opinion of the Committee referred to in Article 8, any extra commitments needed for covering any expected or real cost overruns in connection with the operations, provided that the overrun or additional requirement is less than or equal to 20 % of the initial commitment fixed by the financing decision.

4. All financing agreements or contracts concluded pursuant to this Regulation shall provide for the Commission and the Court of Auditors to conduct on-the-spot checks in accordance with the usual procedures laid down by the Commission under the rules in force, in particular those of the Financial Regulation applicable to the general budget of the European Communities.

5. Where operations are the subject of financing agreements between the Community and the recipient country, such agreements shall stipulate that the payment of taxes, duties or any other charges is not to be covered by the Community.

6. Participation in invitations to tender and the award of contracts shall be open on equal terms to all natural and legal persons of the Member States and of the recipient State. It may be extended to other developing countries and, in exceptional cases which are fully justified, to other third countries.

7. Supplies shall originate in the Member States, the recipient State or other developing countries. In exceptional cases, where circumstances warrant, supplies may originate in other countries.

8. Particular attention will be given to:

- the pursuit of cost-effectiveness and sustainable impact in project design,
- the clear definition and monitoring of objectives and indicators of achievement for all projects,
- the capacity of projects and programmes to address the objective of mainstreaming the gender dimension on a large scale in Community interventions.

Article 8

1. The Commission shall be assisted by the geographically determined Committee competent for development.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt measures which apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- The Commission shall defer application of the measures which it has decided for a period of one month from the date of such communication.
- The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

Article 9

An exchange of views shall take place once a year on the basis of a presentation by the representative of the Commission of the general guidelines for the operations to be carried out in the year ahead, in the framework of a joint meeting of the Committees referred to in Article 8(1).

Article 10

1. After each budget year, the Commission shall submit an annual report to the European Parliament and the Council giving an account of the activities financed under this Regulation relative to integrating gender issues in Community development cooperation and of their outcome, together with:

- a list of the projects indicating the names of the implementing partners and the percentage of the operational cost financed by the Community;
- an evaluation, complete with figures, of the implementation of this Regulation over that period.

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

Done at Brussels, 22 December 1998.

2. The Commission shall regularly assess operations financed by the Community with a view to establishing whether the objectives aimed at by those operations have been achieved and to providing guidelines for improving the effectiveness of future operations. The Commission shall submit to the Committee referred to in Article 8 a summary of the assessments made which assessments, if appropriate, may be examined by the Committee. The assessment reports shall be available to any Member States requesting them.

3. Each month, the Commission shall inform the Member States of the operations and projects approved, stating their cost and nature, the recipient country and partners.

4. The financing guide indicating guidelines and criteria for project selection shall be published and distributed among interested parties by the Commission's services, including its delegations in the recipient countries.

Article 11

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

It shall apply until 31 December 2003.

2. Three years after this Regulation enters into force, the Commission shall submit to the European Parliament and to the Council an overall assessment of the operations financed the Community under this Regulation, which may be accompanied by suggestions concerning the future of this Regulation.

For the Council

The President

C. EINEM

COUNCIL REGULATION (EC) No 2837/98**of 17 December 1998****amending Regulation (EEC) No 2990/82 on the sale of butter at reduced prices to persons receiving social assistance**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 12(2) thereof,

Having regard to the proposal from the Commission,

Whereas Regulation (EEC) No 2990/82 ⁽²⁾ introduced arrangements, expiring on 31 December 1998, for the sale of butter at reduced prices to persons receiving social assistance; whereas Article 3a(3) of that Regulation provides that the Council is to examine the possibility before that date and on the basis of a report from the Commission, of renewing the arrangements laid down; whereas, in view of the report presented by the Commission and the results achieved, the arrangements should be extended for 12 months and the aid reduced to EUR 100/100 kg,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2990/82 is amended as follows:

1. in Article 1, '31 December 1998' shall be replaced by '31 December 1999';
2. in Article 3, the amount 'ECU 138,9/100 kg' shall be replaced by 'EUR 100/100 kg'.

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, 17 December 1998.

For the Council
The President
W. MOLTERER

⁽¹⁾ OJ L 148, 28. 6. 1968, p. 13. Regulation as last amended by Regulation (EC) No 1587/96 (OJ L 206, 16. 8. 1996, p. 21).

⁽²⁾ OJ L 314, 10. 11. 1982, p. 26. Regulation as last amended by Regulation (EC) No 2442/96 (OJ L 333, 21. 12. 1996, p. 1).

COUNCIL REGULATION (EC) No 2838/98**of 17 December 1998****amending Regulation (EEC) No 2390/89 laying down general rules for the import of wines, grape juice and grape must**

THE COUNCIL OF THE EUROPEAN UNION,

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⁾, and in particular Article 70(2) thereof,

Having regard to the proposal from the Commission,

Whereas Articles 1(2) and 2 of Regulation (EEC) No 2390/89 ⁽²⁾, provide for import facilities for wine products originating in third countries which offer specific guarantees through the provision of a certificate of origin and conformity and an analysis report; whereas Article 3(2) of that Regulation limits those facilities to a trial period expiring on 31 December 1998;

Whereas negotiations are currently under way between the Community, represented by the Commission, and the United States of America, with a view to reaching an agreement on trade in wine; whereas these negotiations involve in particular the import conditions and oenological practices of each party and also the protection of appellation as to origin; whereas the intentions expressed by both parties indicate that the adoption of an agreement satisfactory to both parties can be expected within a reasonable time; whereas to facilitate the smooth progress of these negotiations the derogations for import facilities should be extended until the entry into force of the agreement resulting from these negotiations, but not later than 31 December 2003;

Whereas, in order to avoid any deadlock in negotiations leading to the permanent introduction of these facilities, a mechanism should be set up whereby the Council can verify the actual state of progress of the negotiations; whereas the Commission should therefore keep the Council regularly informed of progress,

HAS ADOPTED THIS REGULATION:

Article 1

Article 3(2) of Regulation (EEC) No 2390/89 shall be replaced by the following:

'2. Article 1(2) and the second subparagraph of Article 2(2) shall apply until the entry into force of the agreement resulting from the negotiations with the United States of America on an agreement on trade in wine, but not later than 31 December 2003. The Commission shall keep the Council regularly informed of the progress of these negotiations and submit to the latter a report not later than 31 March 2000, together with appropriate proposals, if necessary'.

Article 2

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

It shall apply as from 1 January 1999.

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

Done at Brussels, 17 December 1998.

For the Council

The President

W. MOLTERER

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1. Regulation as last amended by Regulation (EC) No 1627/98 (OJ L 186, 16. 7. 1998, p. 9).

⁽²⁾ OJ L 232, 9. 8. 1989, p. 1. Regulation as last amended by Regulation (EC) No 2611/97 (OJ L 353, 24. 12. 1997, p. 1).

COUNCIL REGULATION (EC) No 2839/98
of 17 December 1998

amending Regulation (EEC) No 1873/84 authorising the offer or disposal for direct human consumption of certain imported wines which may have undergone oenological processes not provided for in Regulation (EEC) No 822/87

THE COUNCIL OF THE EUROPEAN UNION,

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⁾, and in particular Article 73(1) thereof,

Having regard to the proposal from the Commission,

Whereas Article 70(1) of Regulation (EEC) No 822/87 provides that the products referred to in Article 1(2)(a) and (b) of that Regulation may only be imported if accompanied by a certificate attesting that they comply with the provisions on production, release for free circulation and, where appropriate, disposal for direct human consumption applying in the third country in which they originate;

Whereas Article 73(1) of that Regulation stipulates that, if the imported products in question have undergone oenological practices not allowed by Community rules or do not comply with the provisions of that Regulation or of those adopted pursuant thereto, they may not, except by way of a derogation, be offered or disposed of for direct human consumption; whereas the Council derogated from this principle by Regulation (EEC) No 1873/84 ⁽²⁾; whereas the derogation expires on 31 December 1998;

Whereas negotiations are currently under way between the Community, represented by the Commission, and the United States of America with a view to reaching an agreement on trade in wine; whereas the negotiations involve, in particular the import conditions and the oenological practices of each party and also the protection of appellation as to origin; whereas the intentions expressed by the two parties indicate that the adoption of an agree-

ment satisfactory to both parties can be expected within a reasonable time; whereas to facilitate the smooth progress of these negotiations the American oenological practices referred to in paragraph 1(b) of the Annex to Regulation (EEC) No 1873/84 should continue to be authorised as a transitional measure until the entry into force of the agreement resulting from the said negotiations but not later than 31 December 2003;

Whereas to avoid any deadlock in negotiations leading to the permanent introduction of the oenological practices concerned, a mechanism should be set up whereby the Council can verify the actual state of progress of the negotiations; whereas the Commission should therefore keep the Council regularly informed of progress,

HAS ADOPTED THIS REGULATION:

Article 1

In the second subparagraph of Article 1(1) of Regulation (EEC) No 1873/84, 'until 31 December 1998' shall be replaced by 'until the entry into force of the agreement resulting from the negotiations with the United States of America on an agreement on trade in wine, but not later than 31 December 2003. The Commission shall keep the Council regularly informed of the progress of these negotiations, and submit to the latter a report not later than 31 March 2000, together with appropriate proposals, if necessary'.

Article 2

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

It shall apply as from 1 January 1999.

⁽¹⁾ OJ L 84, 27. 3. 1987, p. 1. Regulation as last amended by Regulation (EC) No 1627/98 (OJ L 186, 16. 7. 1998, p. 9).

⁽²⁾ OJ L 176, 3. 7. 1984, p. 6. Regulation as last amended by Regulation (EC) No 2612/97 (OJ L 353, 24. 12. 1997, p. 2).

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

Done at Brussels, 17 December 1998.

For the Council

The President

W. MOLTERER

COUNCIL REGULATION (EC) No 2840/98**of 21 December 1998****amending Regulation (EC) No 1734/94 on financial and technical cooperation
with the Occupied Territories**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130w thereof,

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

Acting in accordance with the procedure referred to in Article 189c of the Treaty ⁽²⁾,

Whereas Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the Occupied Territories ⁽³⁾ lays down detailed arrangements and rules for administering the Community programme for aid and assistance to the Palestinian population in the West Bank and Gaza Strip;

Whereas, according to that Regulation, the Community is to implement financial and technical cooperation with the West Bank and Gaza Strip under a five-year programme; whereas this programme expires at the end of 1998;

Whereas the persistent deadlock in the peace process that prevails is the worst crisis since the Middle East peace process was launched in 1991; whereas international economic assistance has nevertheless succeeded in maintaining the peace process alive and providing support for the Palestinian Authority;

Whereas the objective is to prevent any further deterioration of the Palestinian economy by minimising and cancelling out the effects of closures and other obstacles to development as well as to contribute to a sound management and fiscal balance of the Palestinian Authority and to consolidate it by means of institutional reinforcement;

Whereas the ultimate aim is the achievement of sustainable economic and social development and to foster democracy, human rights and the development of civil society;

Whereas, given the present situation, the Community should pursue its aid effort; whereas to this end a five-year period of assistance (1999 to 2003) should be launched and Regulation (EC) No 1734/94 amended accordingly; whereas this Regulation should be reviewed by the Council within two years and not later than 31 December

2000 in order to take into account recent development and bring it into line with the reviewed Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership ⁽⁴⁾;

Whereas 'the Occupied Territories' should be replaced by 'the West Bank and the Gaza Strip' throughout the text of Regulation (EC) No 1734/94;

Whereas Article 4 of Regulation (EC) No 1734/94 provides that all financing decisions on projects and operations are to be adopted in accordance with the procedure laid down in Article 5 thereof; whereas, in order to allow for rapid and flexible reactions and to increase expediency, only financing decisions exceeding ECU 2 000 000 other than those relating to interest-rate subsidies on Bank loans should be adopted in accordance with that procedure;

Whereas Council Decision 97/256/EC of 14 April 1997 granting a Community guarantee to the European Investment Bank against losses under loans for projects outside the Community (Central and Eastern Europe countries, Mediterranean countries, Latin America and Asian countries and South Africa) ⁽⁵⁾ covers guarantees also in this region for the period to the year 2000,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1734/94 is hereby amended as follows:

1. the title shall be replaced by the following: 'Council Regulation (EC) No 1734/94 of 11 July 1994 on financial and technical cooperation with the West Bank and the Gaza Strip';
2. Article 1 shall be replaced by the following:

'Article 1

1. The Community shall implement financial and technical cooperation with the West Bank and the Gaza Strip under a five-year period (1999 to 2003) with

⁽¹⁾ OJ C 253, 12. 8. 1998, p. 15.

⁽²⁾ Opinion of the European Parliament of 16 September 1998 (OJ C 313, 12. 10. 1998), Council Common Position of 13 October 1998 (OJ C 388, 14. 12. 1998) and Decision of the European Parliament of 3 December 1998 (OJ C 398, 21. 12. 1998).

⁽³⁾ OJ L 182, 16. 7. 1994, p. 4.

⁽⁴⁾ OJ L 189, 30. 7. 1996, p. 1. Regulation as amended by Regulation (EC) No 780/98 (OJ L 113, 15. 4. 1998, p. 3).

⁽⁵⁾ OJ L 102, 19. 4. 1997, p. 33. Decision as amended by Decision No 98/348/EC (OJ L 155, 29. 5. 1998, p. 53).

the aim of aiding their achievement of sustainable economic, political and social development. Should new financial perspectives be adopted for the period after 2000, the amount of this cooperation shall be determined in accordance with the financial perspectives and conditional upon the budgetary authority deciding the amount in the annual budgetary procedure.

2. Within two years and not later than 31 December 2000, the Council shall review this Regulation on the basis of an independent evaluation of the programmes as envisaged in Article 6. This review shall also take into account recent developments in the area and might also consider bringing the Regulation into line with Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (*).

(*) OJ L 189, 30.7.1996, p. 1. Regulation as amended by Regulation (EC) No 780/98 (OJ L 113, 15.4.1998, p. 3).'

3. Article 2 shall be amended as follows:

(a) the words 'and the development of civil society' shall be added after 'human rights' at the end of paragraph 1;

(b) the following subparagraph shall be added to paragraph 3:

'The said projects and operations shall aim *inter alia* at the promotion of employment and the creation of employment by improving the social services and combating poverty'.

(c) in paragraphs 5 and 6 'the Occupied Territories' shall be replaced by 'the West Bank and the Gaza Strip'.

4. in Article 3 'the Occupied Territories' shall be replaced by 'the West Bank and the Gaza Strip'.

5. Article 4(1) to (3) shall be replaced by the following:

Article 4

1. Financing decisions on projects and operations under this Regulation exceeding ECU 2 000 000 other than those relating to interest-rate subsidies on bank loans shall be adopted in accordance with the procedure laid down in Article 5.

2. Financing decisions on overall allocations for technical cooperation, training and trade promotion shall be adopted in accordance with the procedure laid down in Article 5. Within an overall allocation, the Commission shall adopt financing decisions not exceeding ECU 2 000 000.

The Committee referred to in Article 5 shall be informed systematically and promptly, and in any event before the next meeting, of financing decisions for measures not involving more than ECU 2 000 000.

3. Decisions amending financing decisions adopted in accordance with the procedure laid down in Article 5 shall be taken by the Commission where they do not entail any substantial amendments or additional commitments in excess of 20 % of the original commitment. The Commission shall inform the Committee referred to in Article 5 immediately of any such decisions.'

6. Article 5(1) shall be replaced by the following:

'1. The Commission shall be assisted by the MED Committee set up pursuant to Article 11 of Regulation (EC) No 1488/96.'

7. Article 6(1) shall be replaced by the following:

'1. The Commission shall examine the state of implementation of cooperation under this Regulation and shall report annually in writing to the European Parliament and the Council.'

Article 2

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

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

Done at Luxembourg, 21 December 1998.

For the Council

The President

M. BARTENSTEIN

COMMISSION REGULATION (EC) No 2841/98
of 29 December 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 1498/98 ⁽²⁾, and in particular Article 4 (1) thereof,

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

Whereas Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third

countries, in respect of the products and periods stipulated in the Annex thereto;

Whereas, in compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 30 December 1998.

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

Done at Brussels, 29 December 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

⁽¹⁾ OJ L 337, 24. 12. 1994, p. 66.

⁽²⁾ OJ L 198, 15. 7. 1998, p. 4.

⁽³⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽⁴⁾ OJ L 22, 31. 1. 1995, p. 1.

ANNEX

to the Commission Regulation of 29 December 1998 establishing the standard import values for determining the entry price of certain fruit and vegetables

(ECU/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	109,5
	204	69,3
	999	89,4
0709 90 70	052	95,7
	204	90,0
	999	92,8
0805 10 10, 0805 10 30, 0805 10 50	052	59,1
	204	39,9
	220	30,5
	999	43,2
0805 20 10	204	66,3
	999	66,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	52,3
	464	171,5
	999	111,9
	052	50,6
0805 30 10	600	84,7
	999	67,6
	052	64,4
	400	58,0
	404	79,9
0808 10 20, 0808 10 50, 0808 10 90	728	88,7
	999	72,8
	052	137,5
	064	64,2
	400	95,8
0808 20 50	720	63,5
	999	90,3

⁽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 2842/98

of 22 December 1998

on the hearing of parties in certain proceedings under Articles 85 and 86 of the EC Treaty

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 24 thereof,

Having regard to Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway ⁽²⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 29 thereof,

Having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport ⁽³⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 26 thereof,

Having regard to Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector ⁽⁴⁾, as last amended by Regulation (EEC) No 2410/92 ⁽⁵⁾, and in particular Article 19 thereof,

Having consulted the appropriate Advisory Committees on Restrictive Practices and Dominant Positions,

- (1) Whereas a great deal of experience has been acquired in the application of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Regulation No 17 ⁽⁶⁾, Commission Regulation (EEC) No 1630/69 of 8 August 1969 on the hearings provided for in Article 26(1) and (2) of Council Regulation (EEC) No 1017/68 of 19 July 1968 ⁽⁷⁾, Section II of Commission Regulation (EEC) No 4260/88 of 16

December 1988 on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport ⁽⁸⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and Section II of Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints, applications and hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector ⁽⁹⁾;

- (2) Whereas that experience has revealed the need to improve certain procedural aspects of those Regulations; whereas it is appropriate for the sake of clarity to adopt a single Regulation on the various hearing procedures laid down by Regulation No 17, Regulation (EEC) No 1017/68, Regulation (EEC) No 4056/86 and Regulation (EEC) No 3975/87; whereas, accordingly, Regulations No 99/63/EEC and (EEC) No 1630/69 should be replaced, and Sections II of Regulations (EEC) No 4260/88 and (EEC) No 4261/88 should be deleted and replaced;
- (3) Whereas the provisions relating to the Commission's procedure under Decision 94/810/ECSC, EC of 12 December 1994 on the terms of reference of hearing officers in competition procedures before the Commission ⁽¹⁰⁾ should be framed in such a way as to safeguard fully the right to be heard and the rights of defence; whereas for these purposes, the Commission should distinguish between the respective rights to be heard of the parties to which the Commission has addressed objections, of the applicants and complainants, and of other third parties;
- (4) Whereas in accordance with the principle of the rights of defence, the parties to which the Commission has addressed objections should be given the

⁽¹⁾ OJ L 13, 21. 2. 1962, p. 204/62.

⁽²⁾ OJ L 175, 23. 7. 1968, p. 1.

⁽³⁾ OJ L 378, 31. 12. 1986, p. 4.

⁽⁴⁾ OJ L 374, 31. 12. 1987, p. 1.

⁽⁵⁾ OJ L 240, 24. 8. 1992, p. 18.

⁽⁶⁾ OJ L 127, 20. 8. 1963, p. 2268/63.

⁽⁷⁾ OJ L 209, 21. 8. 1969, p. 11.

⁽⁸⁾ OJ L 376, 31. 12. 1988, p. 1.

⁽⁹⁾ OJ L 376, 31. 12. 1988, p. 10.

⁽¹⁰⁾ OJ L 330, 21. 12. 1994, p. 67.

opportunity to submit their comments on all the objections which the Commission proposes to take into account in its decisions;

(5) Whereas the applicants and complainants should be granted the opportunity of expressing their views, if the Commission considers that there are insufficient grounds for granting the application or acting on the complaint; whereas the applicant or complainant should be provided with a copy of the non-confidential version of the objections and should be permitted to make known its views in writing where the Commission raises objections;

(6) Whereas other third parties having sufficient interest should also be given the opportunity of expressing their views in writing where they make a written application to do so;

(7) Whereas the various parties entitled to submit comments should do so in writing, both in their own interest and in the interests of sound administration, without prejudice to the possibility of an oral hearing where appropriate to supplement the written procedure;

(8) Whereas it is necessary to define the rights of persons who are to be heard and on what conditions they may be represented or assisted;

(9) Whereas the Commission should continue to respect the legitimate interest of undertakings in the protection of their business secrets and other confidential information;

(10) Whereas compatibility should be ensured between the Commission's current administrative practices and the case-law of the Court of Justice and the Court of First Instance of the European Communities in accordance with the Commission notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89⁽¹⁾;

(11) Whereas to facilitate the proper conduct of the hearing it is appropriate to allow statements made by each person at a hearing to be recorded;

(12) Whereas in the interest of legal certainty, it is appropriate to set the time limit for the submissions by the various persons pursuant to this Regu-

lation by defining the date by which the submission must reach the Commission;

(13) Whereas the appropriate Advisory Committee under Article 10(3) of Regulation No 17, Article 16(3) of Regulation (EEC) No 1017/68, Article 15(3) of Regulation (EEC) No 4056/86 or Article 8(3) of Regulation (EEC) No 3975/87 must deliver its opinion on the basis of a preliminary draft decision; whereas it should therefore be consulted on a case after the inquiry in that case has been completed; whereas such consultation should not prevent the Commission from reopening an inquiry if need be,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Scope

Article 1

This Regulation shall apply to the hearing of parties under Article 19(1) and (2) of Regulation No 17, Article 26(1) and (2) of Regulation (EEC) No 1017/68, Article 23(1) and (2) of Regulation (EEC) No 4056/86 and Article 16(1) and (2) of Regulation (EEC) No 3975/87.

CHAPTER II

Hearing of parties to which the Commission has addressed objections

Article 2

1. The Commission shall hear the parties to which it has addressed objections before consulting the appropriate Advisory Committee under Article 10(3) of Regulation No 17, Article 16(3) of Regulation (EEC) No 1017/68, Article 15(3) of Regulation (EEC) No 4056/86 or Article 8(3) of Regulation (EEC) No 3975/87.

2. The Commission shall in its decisions deal only with objections in respect of which the parties have been afforded the opportunity of making their views known.

⁽¹⁾ OJ C 23, 23. 1. 1997, p. 3.

Article 3

1. The Commission shall inform the parties in writing of the objections raised against them. The objections shall be notified to each of them or to a duly appointed agent.

2. The Commission may inform the parties by giving notice in the *Official Journal of the European Communities*, if from the circumstances of the case this appears appropriate, in particular where notice is to be given to a number of undertakings but no joint agent has been appointed. The notice shall have regard to the legitimate interests of the undertakings in the protection of their business secrets and other confidential information.

3. A fine or a periodic penalty payment may be imposed on a party only if the objections have been notified in the manner provided for in paragraph 1.

4. The Commission shall, when giving notice of objections, set a date by which the parties may inform it in writing of their views.

5. The Commission shall set a date by which the parties may indicate any parts of the objections which in their view contain business secrets or other confidential material. If they do not do so by that date, the Commission may assume that the objections do not contain such information.

Article 4

1. Parties which wish to make known their views on the objections raised against them shall do so in writing and by the date referred to in Article 3(4). The Commission shall not be obliged to take into account written comments received after that date.

2. The parties may in their written comments set out all matters relevant to their defence. They may attach any relevant documents as proof of the facts set out and may also propose that the Commission hear persons who may corroborate those facts.

Article 5

The Commission shall afford to parties against which objections have been raised the opportunity to develop their arguments at an oral hearing, if they so request in their written comments.

CHAPTER III

Hearing of applicants and complainants*Article 6*

Where the Commission, having received an application made under Article 3(2) of Regulation No 17 or a complaint made under Article 10 of Regulation (EEC) No 1017/68, Article 10 of Regulation (EEC) No 4056/86 or Article 3(1) of Regulation (EEC) No 3975/87, considers that on the basis of the information in its possession there are insufficient grounds for granting the application or acting on the complaint, it shall inform the applicant or complainant of its reasons and set a date by which the applicant or complainant may make known its views in writing.

Article 7

Where the Commission raises objections relating to an issue in respect of which it has received an application on a complaint as referred to in Article 6, it shall provide an applicant or complainant with a copy of the non-confidential version of the objections and set a date by which the applicant or complainant may make known its views in writing.

Article 8

The Commission may, where appropriate, afford to applicants and complainants the opportunity of orally expressing their views, if they so request in their written comments.

CHAPTER IV

Hearing of other third parties*Article 9*

1. If parties other than those referred to in Chapters II and III apply to be heard and show a sufficient interest, the Commission shall inform them in writing of the nature and subject matter of the procedure and shall set a date by which they may make known their views in writing.

2. The Commission may, where appropriate, invite parties referred to in paragraph 1 to develop their arguments at the oral hearing of the parties against which objections have been raised, if they so request in their written comments.

3. The Commission may afford to any other third parties the opportunity of orally expressing their views.

CHAPTER V

General provisions*Article 10*

Hearings shall be conducted by the Hearing Officer.

Article 11

1. The Commission shall invite the persons to be heard to attend the oral hearing on such date as it shall appoint.
2. The Commission shall invite the competent authorities of the Member States to take part in the oral hearing.

Article 12

1. Persons invited to attend shall either appear in person or be represented by legal representatives or by representatives authorised by their constitution as appropriate. Undertakings and associations of undertakings may be represented by a duly authorised agent appointed from among their permanent staff.
2. Persons heard by the Commission may be assisted by their legal advisers or other qualified persons admitted by the Hearing Officer.
3. Oral hearings shall not be public. Each person shall be heard separately or in the presence of other persons invited to attend. In the latter case, regard shall be had to the legitimate interest of the undertakings in the protection of their business secrets and other confidential information.
4. The statements made by each person heard shall be recorded on tape. The recording shall be made available to such persons on request, by means of a copy from which business secrets and other confidential information shall be deleted.

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

Done at Brussels, 22 December 1998.

Article 13

1. Information, including documents, shall not be communicated or made accessible in so far as it contains business secrets of any party, including the parties to which the Commission has addressed objections, applicants and complainants and other third parties, or other confidential information or where internal documents of the authorities are concerned. The Commission shall make appropriate arrangements for allowing access to the file, taking due account of the need to protect business secrets, internal Commission documents and other confidential information.

2. Any party which makes known its views under the provisions of this Regulation shall clearly identify any material which it considers to be confidential, giving reasons, and provide a separate non-confidential version by the date set by the Commission. If it does not do so by the set date, the Commission may assume that the submission does not contain such material.

Article 14

In setting the dates provided for in Articles 3(4), 6, 7 and 9(1), the Commission shall have regard both to the time required for preparation of the submission and to the urgency of the case. The time allowed in each case shall be at least two weeks; it may be extended.

CHAPTER VI

Final provisions*Article 15*

1. Regulations No 99/63/EEC and (EEC) No 1630/69 are repealed.
2. Sections II of Regulations (EEC) No 4260/88 and (EEC) No 4261/88 are deleted.

Article 16

This Regulation shall enter into force on 1 February 1999.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION REGULATION (EC) No 2843/98
of 22 December 1998

**on the form, content and other details of applications and notifications provided
for in Council Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No
3975/87 applying the rules on competition to the transport sector**

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 29 thereof,

Having regard to Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport⁽²⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and in particular Article 26 thereof,

Having regard to Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector⁽³⁾, as last amended by Regulation (EEC) No 2410/92⁽⁴⁾, and in particular Article 19 thereof,

Having consulted the Advisory Committee on restrictive practices and monopolies in the transport industry, the Advisory Committee on agreements and dominant positions in maritime transport, and the Advisory Committee on agreements and dominant positions in air transport,

- (1) Whereas experience in the application of Commission Regulation (EEC) No 1629/69 of 8 August 1969 on the form, content and other detail of complaints pursuant to Article 10, applications pursuant to Article 12 and notifications pursuant to Article 14(1) of Council Regulation (EEC) No 1017/68 of 19 July 1968⁽⁵⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, and of Section I of Commission Regulation (EEC)

No 4260/88 of 16 December 1988 on the communications, complaints and applications and the hearings provided for in Council Regulation (EEC) No 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport⁽⁶⁾, as last amended by the Act of Accession of Austria, Finland and Sweden and also of Section I of Commission Regulation (EEC) No 4261/88 of 16 December 1988 on the complaints, applications and hearings provided for in Council Regulation (EEC) No 3975/87 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector⁽⁷⁾, as last amended by the Act of Accession of Austria, Finland and Sweden, has shown the need to improve certain procedural aspects of those Regulations;

- (2) Whereas it is appropriate, for the sake of clarity, to adopt a single Regulation on the procedures for applications and notifications in the transport sector; whereas, accordingly, Regulation (EEC) No 1629/69 and Regulations (EEC) No 4260/88 and (EEC) No 4261/88 should be replaced;
- (3) Whereas the submission of applications under Article 12 of Regulation (EEC) No 1017/68 and notifications under Article 14(1) of that Regulation, and applications under Article 12 of Regulation (EEC) No 4056/86 and Articles 3(2) and 5 of Regulation (EEC) No 3975/87, may have important legal consequences for each undertaking which is a party to an agreement, a decision or a practice; whereas each party should therefore have the right to submit such applications or notifications to the Commission; whereas, furthermore, a party exercising the right should inform the other parties in order to enable them to protect their interests;
- (4) Whereas it is for the applicants and the notifying parties to make full and honest disclosure to the

⁽¹⁾ OJ L 175, 23. 7. 1968, p. 1.

⁽²⁾ OJ L 378, 31. 12. 1986, p. 4.

⁽³⁾ OJ L 374, 31. 12. 1987, p. 1.

⁽⁴⁾ OJ L 240, 24. 8. 1992, p. 18.

⁽⁵⁾ OJ L 209, 21. 8. 1969, p. 1.

⁽⁶⁾ OJ L 376, 31. 12. 1988, p. 1.

⁽⁷⁾ OJ L 376, 31. 12. 1988, p. 10.

Commission of the facts and circumstances which are relevant to reaching a decision on the agreements, decisions or practices concerned;

54 of the Agreement on the European Economic Area,

(5) Whereas, in order to simplify and expedite their examination, it is desirable to prescribe that a form be used for applications for negative clearance relating to Article 85(1) and for applications relating to Article 5 of Regulation (EEC) No 1017/68 and to Article 85(3); whereas the use of this form should also be possible in the case of applications for negative clearance relating to Article 86;

(6) Whereas, in order to simplify their handling, it is appropriate to introduce a single form for applications under Article 12 of Regulation (EEC) No 1017/68, under Article 12 of Regulation (EEC) No 4056/86 and under Articles 3(2) and 5 of Regulation (EEC) No 3975/87; whereas, in the case of notifications under Article 14(1) of Regulation (EEC) No 1017/68, it is appropriate to provide a separate form;

(7) Whereas the Commission, in appropriate cases, should continue to give the parties, if they so request, an opportunity before the application or the notification to discuss the intended agreement, decision or practice informally and in strict confidence; whereas, in addition, it should, after the application or notification, continue to maintain close contact with the parties to the extent necessary to discuss with them any practical or legal problems which it discovers on a first examination of the case and if possible to remove such problems by mutual agreement;

(8) Whereas the obligation of communication to the Commission, pursuant to point 5 of Article 5 of Regulation (EEC) No 4056/86, of awards at arbitration and recommendations by conciliators concerns the settlement of disputes relating to the practices of conferences referred to in Article 4 and in points 2 and 3 of Article 5 of that Regulation; whereas it seems appropriate to make the procedure for this notification as simple as possible; whereas it is appropriate, therefore, to provide for notifications to be made in writing, attaching the documents containing the text of the awards and recommendations concerned;

(9) Whereas the provisions of this Regulation should also cover cases in which complaints, applications and notifications are made under Articles 53 and

HAS ADOPTED THIS REGULATION:

Article 1

Entitled persons

1. Any undertaking and any association of undertakings being a party to agreements or to concerted practices, or any association of undertakings adopting decisions, shall be permitted to submit applications or notifications to the Commission under any of the following provisions:

- (a) Article 2 or Article 14(1) of Regulation (EEC) No 1017/68;
- (b) Article 12 of Regulation (EEC) No 4056/86;
- (c) Articles 3(2) and 5 of Regulation (EEC) No 3975/87.

2. Where the application or notification is submitted by some, but not all, of the parties referred to in paragraph 1, they shall give notice to the other parties.

3. Where the application or notification is signed by representatives of persons, undertakings or associations of undertakings, such representatives shall produce written proof that they are authorised to act.

4. Where a joint application or notification is made, a joint representative shall be appointed who is authorised to transmit and receive documents on behalf of all the applicants or notifying parties.

Article 2

Submission of applications and notifications

1. Applications under Article 3(2) of Regulation (EEC) No 3975/87 relating to Article 85(1) of the Treaty and applications under Article 12 of Regulation (EEC) No 1017/68, Article 12 of Regulation (EEC) No 4056/86 and Article 5 of Regulation (EEC) No 3975/87 shall be submitted in the manner prescribed by Form TR as shown in Annex I to this Regulation.

Form TR may also be used for applications under Article 3(2) of Regulation (EEC) No 3975/87 relating to Article 86 of the Treaty.

Notifications under Article 14(1) of Regulation (EEC) No 1017/68 shall be submitted on Form TR(B) shown in Annex II to this Regulation.

2. Joint applications and joint notifications shall be submitted on a single form.

3. One original and 17 copies of each application and notification, and three copies of the supporting documents, shall be submitted to the Commission at the address indicated on the forms.

4. The supporting documents shall be either originals or copies of the originals; in the latter case the applicant or notifying party shall certify that they are true and complete copies of the originals.

5. Applications and notifications shall be in one of the official languages of the Union. This language shall also be the language of the proceeding for the applicant or notifying party. Documents shall be submitted in their original language. Where the original language is not one of the official Union languages, a translation into the language of the proceeding shall be attached.

6. Where an application which purports to be submitted under Article 12 of Regulation (EEC) No 1017/68, Article 12 of Regulation (EEC) No 4056/86 or Articles 3(2) and 5 of Regulation (EEC) No 3975/87 is found to fall outside the scope of the Regulation or Regulations under which it has been submitted, the Commission shall without delay inform the applicant that it intends to examine the application under the provisions of such other Regulation or Regulations as is or are applicable to the case; however, the date of submission of the application shall be the date resulting from Article 4. The Commission shall inform the applicant of its reasons and fix a period for the applicant to submit any comments in writing before it conducts its appraisal pursuant to that other Regulation or those other Regulations. The period fixed by the Commission shall be not less than two weeks; it may be extended.

Article 3

Content of applications and notifications

1. Applications and notifications shall contain the information, including the documents, required by the forms. The information shall be correct and complete.

2. The Commission may dispense with the obligation to provide any particular information, including documents, required by the forms where the Commission considers that such information is not necessary for the examination of the case.

3. The Commission shall, without delay, acknowledge in writing to the applicant or notifying party receipt of the application or notification, and of any reply to a letter sent by the Commission pursuant to Article 4(2).

Article 4

Effective date of submission of applications and notifications

1. Without prejudice to paragraphs 2 to 5, applications and notifications shall become effective on the date on which they are received by the Commission. Where, however, the application or notification is sent by regis-

tered post, it shall become effective on the date shown on the postmark of the place of posting.

2. Where the Commission finds that the information, including documents, contained in the application or notification is incomplete in any material respect, it shall, without delay, inform the applicant or notifying party in writing of this fact and shall fix an appropriate time limit for the supply of full information. In such cases, the application or notification shall become effective on the date on which the complete information is received by the Commission.

3. Material changes in the facts contained in the application or notification which the applicant or notifying party knows or ought to know shall be communicated to the Commission voluntarily and without delay.

4. Incorrect or misleading information shall be considered to be incomplete information.

5. Where, at the expiry of a period of one month following the date on which the application or notification has been received, the Commission has not provided the applicant or notifying party with the information referred to in paragraph 2, the application or notification shall be deemed to have become effective on the date of its receipt by the Commission.

Article 5

Notifications of awards given at arbitration and recommendations

1. Awards at arbitration and recommendations by conciliators accepted by the parties shall be notified to the Commission when they concern the settlement of disputes relating to the practices of conferences referred to in Article 4 and points 2 and 3 of Article 5 of Regulation (EEC) No 4056/86.

2. The obligation of notification applies to any party to the dispute resolved by the award or recommendation.

3. Notifications shall be submitted forthwith by registered letter with an acknowledgement of receipt or shall be delivered by hand against receipt. They shall be written in one of the official languages of the Union.

4. Supporting documents shall be either originals or copies. Copies shall be certified as true copies of the original. They shall be submitted in their original language. Where the original language is not one of the official languages of the Union, a translation in one of the official Union languages shall be attached.

5. When representatives of undertakings, of associations of undertakings, or of natural or legal persons sign such notifications, they shall produce written proof that they are authorised to act.

*Article 6***Applications and notifications under Articles 53 and 54 of the EEA Agreement**

Where applications and notifications as provided for in Articles 2(1) and 5(1) are made under Articles 53 or 54 of the Agreement on the European Economic Area, they may be made in one of the official Union languages or in one of the official languages of the EFTA States.

*Article 7***Repeal**

Regulations (EEC) No 1629/69, (EEC) No 4260/88 and (EEC) No 4261/88 are repealed.

*Article 8***Entry into force**

This Regulation shall enter into force on 1 February 1999.

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

Done at Brussels, 22 December 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

ANNEX I

FORM TR

INTRODUCTION

Form TR, as its Annex, is an integral part of Commission Regulation (EC) No 2843/98 of 22 December 1998 on the form, content and other details of applications and notifications provided for in Council Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 applying the rules on competition to the transport sector (hereinafter referred to as 'the Regulation'). It allows undertakings and associations of undertakings to make applications under Article 12 of Regulation (EEC) No 4056/86 and under Articles 3(2) and 5 of Regulation (EEC) No 3975/87.

Form TR is not a form to be filled in.

To facilitate the use of the Form TR the following pages set out:

- in which situations it is necessary to make an application (point A);
- to which authority (the Commission or the EFTA Surveillance Authority) the application should be made (point B);
- for which purposes the application can be used (point C);
- what information must be given in the application (points D, E, and F);
- who can make an application (point G);
- how to make an application (point H);
- how the business secrets of the undertakings can be protected (point I);
- the subsequent procedure after the application has been made (point J); and
- how certain technical terms used in the operational part of the Form TR should be interpreted (point K).

A. In which situations is it necessary to make an application?

I. *Purpose of the competition of the EC Treaty and the EEA Agreement*

1. Purpose of the EC competition rules

The purpose of the competition rules is to prevent the distortion of competition in the common market by restrictive practices or the abuse of dominant positions. They apply to any enterprise trading directly or indirectly in the common market, wherever established.

Article 85(1) of the EC Treaty (the text of Articles 85 and 86 is reproduced in Appendix I to this form) prohibits restrictive agreements, decisions or concerted practices (arrangements) which may affect trade between Member States, and Article 85(2) declares agreements and decisions containing such restrictions void (although the Court of Justice has held that if restrictive terms of agreements are severable, only those terms are void); Article 85(3), however, provides for exemption of arrangements with beneficial effects, if its conditions are met. Article 86 prohibits the abuse of a dominant position which may affect trade between Member States.

The original procedures for implementation Articles 85 and 86, which provide for 'negative clearance' and exemption pursuant to Article 85(3), were laid down in Regulation No 17. However, Council Regulation No 14⁽¹⁾ rendered Regulation No 17 inapplicable in the transport sector. The procedures for implementing the EC competition rules in the transport sector have subsequently been laid down for transport by rail, road and inland waterway in Regulation (EEC) No 1017/68, for maritime transport by Regulation (EEC) No 4056/86 and for the air transport sector by Regulation (EEC) No 3975/87 (the references to these and other acts mentioned in this form or relevant to applications made on this form are listed in Appendix II to this form).

⁽¹⁾ Council Regulation No 141/62 of 26 November 1962 exempting transport from the application of Council Regulation No 17, (OJ 124, 28. 11. 1962, p. 2753); Regulation as last amended by Regulation No 1002/67/EEC, (OJ 306, 16. 12. 1967, p. 1).

Regulations (EEC) No 4056/86 and (EEC) No 3975/87, like Regulation No 17, make reference to Articles 85 and 86 of the EC Treaty. By contrast, Regulation (EEC) No 1017/68 enacts substantive competition rules for the inland transport sector. Articles 2, 5, 7 and 8 of Regulation (EEC) No 1017/68 contain provisions which, with minor variations, mirror those respectively of Articles 85(1), (2) and (3) and 86 of the EC Treaty. Those provisions of Regulation (EEC) No 1017/68 are to be interpreted in the same way as Articles 85 and 86 of the Treaty⁽¹⁾.

2. Purpose of the EEA competition rules

The competition rules of the Agreement on the European Economic Area (concluded between the Community, the Member States and the EFTA States⁽²⁾) are based on the same principles as those contained in the Community competition rules and have the same purpose, i.e. to prevent the distortion of competition in the EEA by cartels or the abuse of dominant positions. They apply to any enterprise trading directly or indirectly in the EEA, wherever established.

Article 53(1) of the EEA Agreement (the text of Articles 53, 54 and 56 of the EEA Agreement is reproduced in Appendix I) prohibits restrictive agreements, decisions or concerted practices (arrangements) which may affect trade between the Community and one or more EFTA States (or between EFTA States), and Article 53(2) declares agreements or decisions containing such restrictions void; Article 53(3), however, provides for exemption of arrangements with beneficial effects, if its conditions are met. Article 54 prohibits the abuse of a dominant position which may affect trade between the Community and one or more EFTA States (or between EFTA States). The procedures for implementing the EEA competition rules in the transport sector are laid down for transport by rail, road and inland waterway in Regulation (EEC) No 1017/68, for maritime transport by Regulation (EEC) No 4056/86 and for the air transport sector by Regulation (EEC) No 3975/87, supplemented for EEA purposes, by Protocols 21, 22 and 23 to the EEA Agreement.

II. *The scope of the competition rules of the EC Treaty and the EEA Agreement*

The applicability of Articles 2, 5 and 8 of Regulation (EEC) No 1017/68, Articles 85 and 86 of the EC Treaty and Articles 53 and 54 of the EEA Agreement depends on the circumstances of each individual case. It presupposes that the arrangement or behaviour satisfies all the conditions set out in the relevant provisions. This question must consequently be examined before any application is made.

1. Negative clearance

In the transport sector, the negative clearance procedure has been provided for only in the air transport sector. Its purpose is to allow undertakings to ascertain whether the Commission considers that their arrangement or their behaviour is or is not prohibited by Article 85(1), or Article 86 of the EC Treaty or by Article 53(1) or Article 54 of the EEA Agreement. This procedure is governed by Article 3(2) of Regulation (EEC) No 3975/87. The negative clearance takes the form of a decision by which the Commission certifies that, on the basis of the facts in its possession, there are no grounds pursuant to Article 85(1) or Article 86 of the EC Treaty or under Article 53(1) or Article 54 of the EEA Agreement for action on its part in respect of the arrangement or behaviour.

There is, however, no point in making an application when the arrangements or the behaviour are manifestly not prohibited by the abovementioned provisions. Nor is the Commission obliged to give negative clearance. Article 3(2) of Regulation (EEC) No 3975/87 states that '... the Commission may certify ...'. The Commission issues negative clearance decisions only where an important problem of interpretation has to be solved. In the other cases it reacts to the application by sending a comfort letter.

The Commission has published several notices relating the interpretation of Article 85(1) of the EC Treaty. They define certain categories of agreements which, by their nature or because of their minor importance, are not caught by the prohibition⁽³⁾.

2. Exemption

The procedure for exemption pursuant to Article 5 of Regulation (EEC) No 1017/68, Article 85(3) of the EC Treaty and Article 53(3) of the EEA Agreement allows companies to enter into arrangements which, in fact, offer economic advantages but which, without exemption, would be prohibited by Article 2 of Regulation (EEC) No 1017/68, Article 85(1) of the EC Treaty or by Article 53(1) of the EEA Agreement. This procedure is governed by Articles 12 and 13 of

⁽¹⁾ See Case T-224/94 *Deutsche Bahn v. Commission* [1997] ECR II-1689, at paragraph 77. The Court of First Instance held that Article 8 of the Regulation does not have a purpose which is substantially different from that of Article 86 of the Treaty.

⁽²⁾ See list of Member States and EFTA States in Appendix III.

⁽³⁾ See Appendix II.

Regulation (EEC) No 1017/68, Articles 12 and 13 of Regulation (EEC) No 4056/86 and Articles 5 and 6 of Regulation (EEC) No 3975/87. The exemption takes the form of a decision by the Commission declaring Article 2 of Regulation (EEC) No 1017/68, Article 85(1) of the EC Treaty or Article 53(1) of the EEA Agreement to be inapplicable to the arrangements described in the decision. The Commission is required to specify the period of validity of any such decision, it can attach conditions and obligations and it can amend or revoke decisions or prohibit specified acts by the parties in certain circumstances, notably if the decisions were based on incorrect information or if there is any material change in the facts.

Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 provide for an objections procedure under which applications can be handled expeditiously. If an application is admissible pursuant to the relevant Regulation, if it is complete and if the arrangement which is the subject of the application has not given rise to a procedure as a result of a complaint or on the Commission's own initiative, the Commission publishes a summary of the request in the *Official Journal of the European Communities* and invites comments from interested third parties, from Member States and from EFTA States where requests relate to the EEA Agreement. Unless the Commission notifies the applicants within 90 days of the date of such publication that there are serious doubts as to the applicability of Article 5 of Regulation (EEC) No 1017/68, Article 85(3) of the EC Treaty or Article 53(3) of the EEA Agreement, the arrangement will be deemed exempt for the time already elapsed and for a maximum of three years from the date of publication, in the case of applications under Regulation (EEC) No 1017/68, and for a maximum of six years from the date of publication in the case of applications under Regulations (EEC) No 4056/86 and (EEC) No 3975/87.

The Commission has adopted a number of regulations granting exemptions to categories of agreements in the air transport sector and in the maritime sector⁽¹⁾.

A decision granting exemption under Regulations (EEC) No 1017/68, (EEC) No 4056/86 or (EEC) No 3975/87 may have retroactive effect. Should the Commission find that notified arrangements are indeed prohibited and cannot be exempted and, therefore, take a decision condemning them, the participants are nevertheless protected, between the date of the application of the date of the decision, against fines for any infringement described in the application (Article 19(4) of Regulation (EEC) No 4056/86 and Article 12(5) of Regulation (EEC) No 3975/87). Regulation (EEC) No 1017/68 does not provide for such immunity from fines.

B. To which authority should an application be made?

The applications must be made to the authority which has competence for the matter. The Commission is responsible for the application of the competition rules of the EC Treaty. However there is shared competence in relation to the application of the competition rules of the EEA Agreement.

The competence of the Commission and of the EFTA Surveillance Authority to apply the EEA competition rules follows from Article 56 of the EEA Agreement. Applications relating to agreements, decisions or concerted practices liable to affect trade between Member States should be addressed to the Commission unless their effects on trade between Member States or on competition within the Community are not appreciable within the meaning of the Commission notice of 1997 on agreements of minor importance⁽²⁾. Furthermore, all restrictive agreements, decisions or concerted practices affecting trade between one Member State and one or more EFTA States fall within the competence of the Commission, provided that the undertakings concerned achieve more than 67 % of their combined EEA-wide turnover within the Community⁽³⁾. However, if the effects of such agreements, decisions or concerted practices on trade between Member States or on competition within the Community are not appreciable, the application should, where necessary, be addressed to the EFTA Surveillance Authority. All other agreements, decisions and concerted practices falling under Article 53 of the EEA Agreement should be notified to the EFTA Surveillance Authority (the address of which is given in Appendix III).

Applications for negative clearance regarding Article 54 of the EEA Agreement should be lodged with the Commission if the dominant position exists only in the Community, or with the EFTA Surveillance authority, if the dominant position exists only in the whole of the territory of the EFTA States, or a substantial part of it. Only where the dominant position exists within both territories should the rules outlined above with respect to Article 53 be applied.

⁽¹⁾ See Appendix II.

⁽²⁾ OJ C 372, 9. 12. 1997, p. 13.

⁽³⁾ For a definition of 'turnover' in this context, see Articles 2, 3 and 4 of Protocol 22 to the EEA Agreement reproduced in Appendix I.

The Commission will apply, as a basis for appraisal, the competition rules of the EC Treaty. Where the case falls under the EEA Agreement and is attributed to the Commission pursuant to Article 56 of that Agreement, it will simultaneously apply the EEA rules.

C. The purpose of this form

Form TR lists the questions that must be answered and the information and documents that must be provided when applying for the following:

- a negative clearance with regard to Article 85(1) of the EC Treaty and/or Article 53(1) of the EEA Agreement, pursuant to Article 3(2) of Regulation (EEC) No 3975/87, with respect to agreements between undertakings, decisions by associations of undertakings and concerted practices,
- an exemption pursuant to Article 5 of Regulation (EEC) No 1017/68, or Article 85(3) of the EC Treaty and/or Article 53(3) of the EEA Agreement with respect to agreements between undertakings, decisions by associations of undertakings and concerted practices.

Applications for exemption pursuant to Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 shall be submitted in the manner prescribed by form TR (see Article 2(1) of the Regulation).

This form can also be used by undertakings that wish to apply for a negative clearance from Article 86 of the EC Treaty or Article 53 of the EEA Agreement, pursuant to Article 3(2) of Regulation (EEC) No 3975/87. Applicants requesting negative clearance from Article 86 are not required to use form TR. They are none the less strongly recommended to give all the information requested below to ensure that their application gives a full statement of the facts (see Article 2(1)(a), second sentence of the Regulation).

The applications or notifications made on the form TR issued by the EFTA side are equally valid. However, if the agreements, decisions or practices concerned fall solely within Article 85 or 86 of the EC Treaty, i.e. have no EEA relevance whatsoever, it is advisable to use the present form established by the Commission.

D. Which chapters of the form should be completed?

Undertakings wishing to make an application must complete all three chapters of the operational part of this form. Notifications under Regulation No 17 of agreements concerning the creation of a cooperative joint venture of a structural character can benefit from an accelerated procedure. The accelerated procedure is not applied to applications under Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 because those Regulations provide for an objections procedure containing a specific timetable.

E. The need for complete information

The receipt by the Commission of a valid application has two main consequences. First, under Regulations (EEC) No 4056/86 and (EEC) No 3975/87, it affords immunity from fines from the date that the valid application is received by the Commission with regard to applications made in order to obtain exemption (see Article 19(4) of Regulation (EEC) No 4056/86 and Article 12(5) of Regulation (EEC) No 3975/87).

Second, until a valid application is received, the Commission is not 'in possession of all the available evidence' which is necessary before it can publish a summary of the application under the opposition procedure in Article 12 of Regulation (EEC) No 1017/68, Article 12 of Regulation (EEC) No 4056/86 and Article 5 of Regulation (EEC) No 3975/87.

A valid application for this purpose means one that is not incomplete (see Article 3(1) of this Regulation). This is subject to two qualifications. First, if the information or documents required by this form are not reasonably available to you in part or in whole, the Commission will accept that an application is complete and thus valid notwithstanding the failure to provide such information, providing that you give reasons for the unavailability of the information, and provide your best estimates for missing data together with the sources for the estimates. Indications as to where any of the requested information or documents that are unavailable to you could be obtained by the Commission must also be provided. Secondly, the Commission only requires the submission of information relevant and necessary to its inquiry into the notified operation. In some cases not all the information required by this form will be necessary for this purpose.

The Commission may therefore dispense with the obligation to provide certain information required by this form (see Article 3(2) of the Regulation). This provision enables, where appropriate, each application to be tailored to each case so that only the information strictly necessary for the Commission's examination is provided. This avoids unnecessary administrative burdens being imposed on undertakings, in particular on small and medium-sized ones. Where the information or documents required by this form are not provided for this reason, the application should indicate the reasons why the information is considered to be unnecessary to the Commission's investigation.

Where the Commission finds that the information contained in the application is incomplete in a material respect, it will, within one month from receipt, inform the applicant or the notifying party in writing of this fact and the nature of the missing information. In such cases, the application shall become effective on the date on which the complete information is received by the Commission. If the Commission has not informed the applicant or the notifying party within the one month period that the application is incomplete in a material respect, the application will be deemed to be complete and valid (see Article 4 of the Regulation).

It is also important that undertakings inform the Commission of important changes in the factual situation including those of which they become aware after the application has been submitted. The Commission must, therefore, be informed immediately of any changes to an agreement, decision or practice which is the subject of an application (see Article 4(3) of the Regulation). Failure to inform the Commission of such relevant changes could result in any negative clearance decision being without effect or in the withdrawal of any exemption decision⁽¹⁾ adopted by the Commission on the basis of the application.

F. The need for accurate information

In addition to the requirement that the application be completed, it is important that you ensure that the information provided is accurate (see Article 3(1) of the Regulation). The Commission is empowered to impose, by decision, on undertakings or associations of undertakings, fines of up to EUR 5 000 where, intentionally or negligently, they supply incorrect or misleading information in an application (Article 22(1)(a) of Regulation (EEC) No 1017/68, Article 19(1)(a) of Regulation (EEC) No 4056/86 and Article 12(1)(a) of Regulation (EEC) No 3975/87). Such information is, moreover, considered to be incomplete (see Article 4(4) of the Regulation).

G. Who can lodge an application?

Any of the undertakings party to an agreement, decision or practice of the kind described in Articles 85 or 86 of the EC Treaty and Articles 53 or 54 of the EEA Agreement may submit an application for negative clearance pursuant to Article 3(2) of Regulation (EEC) No 3975/87. Any of the undertakings party to an agreement, decision or practice of the kind described in Articles 2 and 5 of Regulation (EEC) No 1017/68, or Article 85 of the EC Treaty and Article 53 of the EEA Agreement, may submit an application requesting an exemption. An association of undertakings may submit an application in relation to decisions taken or practices pursued in the operation of the association.

In relation to agreements and concerted practices between undertakings it is common practice for all the parties involved to submit a joint application. Although the Commission strongly recommends this approach, because it is helpful to have the views of all the parties directly concerned at the same time, it is not obligatory. Any of the parties to an agreement may submit an application in their individual capacities, but in such circumstances the notifying party should inform all the other parties to the agreement, decision or practice of that fact (see Article 1(2) of the Regulation). They may also provide them with a copy of the completed form, where relevant, once confidential information and business secrets have been deleted (see below, operational part, question 1.2).

Where a joint application is submitted, it has also become common practice to appoint a joint representative to act on behalf of all the undertakings involved, both in making the application or notification, and in dealing with any subsequent contacts with the Commission (see Article 1(4) of the Regulation). Again, while this is helpful, it is not obligatory, and all the undertakings jointly submitting an application may sign it in their individual capacities.

⁽¹⁾ See points (a) Article 13(3) of Regulation (EEC) No 1017/68, Article 13(3) of Regulation (EEC) No 4056/86 and Article 6(3) of Regulation (EEC) No 3975/87.

H. How to submit an application

Applications may be submitted in any of the official languages of the European Union or of an EFTA State (see Articles 2(5) and 6 of the Regulation). In order to ensure rapid proceedings, it is, however, recommended to use, in case of an application to the EFTA Surveillance Authority one of the official languages of an EFTA State or the working language of the EFTA Surveillance Authority, which is English, or, in case of an application to the Commission, one of the official languages of the Union or of the EFTA States or the working language of the EFTA Surveillance Authority. This language will thereafter be the language of the proceeding for the applicant.

Undertakings should provide the information requested by form TR, using its sections and paragraph numbers, signing a declaration as stated in Section 13, and annexing the required supporting documentation.

Supporting documents shall be submitted in their original language; where this is not an official language of the Union they must be translated into the language of the proceeding. The supporting documents may be originals or copies of the originals (see Article 2(4) of the Regulation).

All information requested in this form shall, unless otherwise stated, relate to the calendar year preceding that of the application. Where information is not reasonably available on this basis (for example if accounting periods are used that are not based on the calendar year, or the previous year's figures are not yet available), the most recently available information should be provided and reasons given why figures on the basis of the calendar year preceding that of the application cannot be provided.

Financial data may be provided in the currency in which the official audited accounts of the undertaking(s) concerned are prepared or in euros. In the latter case the exchange rate used for the conversion must be the average conversion rates prevailing for the years or other periods in question.

One original and 17 copies of each application, but only three copies of all supporting documents must be provided (see Article 2(3) of the Regulation).

The application is to be sent to:

European Commission
Directorate-General for Competition (DG IV),
The Registrar
Rue de la Loi/Wetstraat 200,
B-1049 Brussels,

or be delivered by hand during Commission working days and official working hours to the following address:

European Commission,
Directorate-General for Competition (DG IV),
The Registrar
Avenue de Cortenberg/Kortenberglaan 158,
B-1040 Brussels.

I. Confidentiality

Article 214 of the EC Treaty, Article 27 of Regulation (EEC) No 1017/68, Article 24 of Regulation (EEC) No 4056/86 and Article 17 of Regulation (EEC) No 3975/87, Article 9 of Protocol 23 to the EEA Agreement, Article 122 of the EEA Agreement and Article 27 of Chapter VI, Article 24 of Chapter IX and Article 17 of Chapter XI of Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and of a Court of Justice require the Commission, the Member States, the EEA Surveillance Authority and EFTA States not to disclose information of the kind covered by the obligation of professional secrecy.

On the other hand, Regulations (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 require the Commission to publish a summary of an application for exemption. In this publication, the Commission '... shall have regard to the legitimate interest of undertakings in the protection of their business secrets' (Article 12(2) of Regulation (EEC) No 1017/68, Article 12(2) of Regulation (EEC) No 4056/86 and Article 5(2) of Regulation (EEC) No 3975/87).

Before publishing a summary of an application, the Commission will show the applicant(s) a copy of the proposed text.

In this connection, if an undertaking believes that its interests would be harmed if any of the information it is asked to supply were to be published or otherwise divulged to other undertakings, it should put all such information in one or more separate annexes with each page clearly marked 'Business secrets'. It should also give reasons why any information identified as confidential or secret should not be divulged or published.

J. Subsequent procedure

The application is registered in the Registry of the Directorate-General for Competition (DG IV). The date of receipt by the Commission (or the date of posting if sent by registered post) is the effective date of the submission (see Article 4(1) of the Regulation). However, special rules apply to incomplete applications (see under point E).

The Commission will acknowledge receipt of all applications in writing, indicating the case number attributed to the file. This number must be used in all future correspondence regarding the application. The receipt of acknowledgement does not prejudice the question whether the application is valid.

Further information may be sought from the parties or from third parties and suggestions may be made as to amendments to the arrangements that might make them acceptable.

An application for an exemption decision may be opposed by the Commission if it has serious doubts as to whether the arrangements should benefit from an exemption decision.

If, after having raised serious doubts under the opposition procedure, the Commission intends to issue an exemption decision, it is obliged to publish a summary and invite comments from third parties (Article 26(3) of Regulation (EEC) No 1017/68, Article 23(3) of Regulation (EEC) No 4056/86 and Article 16(3) of Regulation (EEC) No 3975/87). Subsequently, a preliminary draft decision has to be submitted to and discussed with the appropriate Advisory Committee composed of officials of the competent authorities of the Member States. Where the case falls under the EEA Agreement, representatives of the EFTA Surveillance Authority and the EFTA States will be invited to attend. Only then, and providing nothing has happened to change the Commission's intention, can it adopt a decision.

Sometimes files are closed without any formal decision being taken, for example, because it is found that the arrangements are already covered by a block exemption, or because they do not call for any action by the Commission, at least in circumstances at that time. In such cases comfort letters are sent. Although not a Commission decision, a comfort letter indicates how the Commission's Directorate-General for Competition (DG IV) views the case on the facts currently in their possession which means that the Commission could where necessary, for example, if it were to be asserted that a contract was void under Article 85(2) of the EC Treaty and/or Article 53(2) of the EEA Agreement, take an appropriate decision to clarify the legal situation.

K. Definitions used in the operational part of this form

Agreement: the word 'agreement' is used to refer to all categories of arrangements, i.e. agreements between undertakings, decisions by associations of undertakings and concerted practices.

Year: all references to the word 'year' in this form shall be read as meaning calendar year, unless otherwise stated.

Group: a group relationship exists for the purpose of this form where one undertaking:

- owns more than half the capital or business assets of another undertaking, or
- has the power to exercise more than half the voting rights in another undertaking, or
- has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or
- has the right to manage the affairs of another undertaking.

An undertaking which is jointly controlled by several other undertakings (joint venture) forms part of the group of each of these undertakings.

Notified agreement: a notified agreement is one that is the subject of an application using this form.

Relevant product market: question 5.1 of this form requires the undertaking or individual submitting the application to define the relevant product and/or service market(s) that are likely to be affected by the agreement in question. That definition(s) is then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the applicants are referred to in this form as the relevant product market(s).

Relevant geographic market: question 5.2 of this form requires the undertaking or individual submitting the application to define the relevant geographic market(s) that are likely to be affected by the agreement in question. That definition(s) is then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the applicants are referred to in this form as the relevant geographic market(s).

Relevant product and geographic market: by virtue of the combination of their replies to question 5 the parties provide their definition of the relevant market(s) affected by the notified agreement(s). That (those) definition(s) is (are) then used as the basis for a number of other questions contained in this form. The definition(s) thus submitted by the notifying parties is referred to in this form as the relevant geographic and product market(s).

Parties and applicant: the word 'party' is used to refer to all the undertakings which are party to the agreement being notified. As an application may be submitted by only one of the undertakings which are party to an agreement, 'applicant' is used to refer only to the undertaking or undertakings actually submitting the application.

FORM TR — OPERATIONAL PART

The first page of your application must contain the words 'Application in accordance with form TR', and also one or more of the following indications as the case may be:

- 'Application for exemption under Article 12 of Regulation (EEC) No 1017/68',
- 'Application for exemption under Article 12 of Regulation (EEC) No 4056/86',
- 'Application for negative clearance under Article 3(2) and/or exemption under Article 5 of Regulation (EEC) No 3975/87'.

CHAPTER I*Sections concerning the parties, their groups and the agreement***Section 1****Identity of the undertakings or persons submitting the application**

- 1.1. Please list the undertakings on behalf of which the application is being submitted and indicate their legal denomination or commercial name, shortened or commonly used as appropriate (if it differs from the legal denomination).
- 1.2. If the application is being submitted on behalf of only one or some of the undertakings party to the agreement being notified, please confirm that the remaining undertakings have been informed of that fact and indicate whether they have received a copy of the application, with relevant confidential information and business secrets deleted⁽¹⁾. (In such circumstances a copy of the edited copy of the application which has been provided to such other undertakings should be annexed to this application).
- 1.3. If a joint application is being submitted, has a joint representative⁽²⁾ been appointed⁽³⁾?

If yes, please give the details requested in 1.3.1 to 1.3.3.

If no, please give details of any representatives who have been authorised to act for each or either of the parties to the agreement indicating who they represent.
- 1.3.1. Name of representative.
- 1.3.2. Address of representative.
- 1.3.3. Telephone and fax number of representative.
- 1.4. In cases where one or more representatives have been appointed, an authority to act on behalf of the undertaking(s) submitting the application must accompany the application.

Section 2**Information on the parties to the agreement and the groups to which they belong**

- 2.1. State the name and address of the parties to the agreement being notified, and the country of their incorporation.
- 2.2. State the nature of the business of each of the parties to the agreement being notified.
- 2.3. For each of the parties to the agreement, give the name of a person that can be contacted, together with his or her name, address, telephone number, fax number and position held in the undertaking.
- 2.4. Identify the corporate groups to which the parties to the agreement being notified belong. State the sectors in which these groups are active, and the worldwide turnover of each group⁽⁴⁾.

⁽¹⁾ The Commission is aware that in exceptional cases it may not be practicable to inform non-notifying parties to the notified agreement of the fact that it has been notified, or to provide them with a copy of the application. This may be the case, for example, where a standard agreement is being notified that is concluded with a large number of undertakings. Where this is the case you should state the reasons why it has not been practicable to follow the standard procedure set out in this question.

⁽²⁾ For the purposes of this question a representative means an individual or undertaking formally appointed to make the application on behalf of the party or parties submitting the application. This should be distinguished from the situation where the application is signed by an officer of the company or companies in question. In the latter situation no representative is appointed.

⁽³⁾ It is not mandatory to appoint representatives for the purpose of completing and/or submitting this application. This question only requires the identification of representatives where the applicants have chosen to appoint them.

⁽⁴⁾ For the calculation of turnover in the banking and insurance sectors see Article 3 of Protocol 22 to the EEA Agreement.

Section 3

Procedural matters

- 3.1. Please state whether you have made any formal submission to any other competition authorities in relation to the agreement in question. If yes, state which authorities, the individual or department in question, and the nature of the contact. In addition to this, mention any earlier proceedings or informal contacts, of which you are aware, with the Commission and/or the EFTA Surveillance Authority and any earlier proceedings with any national authorities or courts in the Community or in the territory of the EFTA States concerning these or any related agreements.
- 3.2. Please summarise any reasons for any claim that the case involves an issue of exceptional urgency.
- 3.3. State whether you intend to produce further supporting facts or arguments not yet available and, if so, on which points⁽¹⁾.

Section 4

Full details of the arrangements

- 4.1. Please summarise the nature, content and objectives pursued by the agreement being notified.
- 4.2. Detail any provisions contained in the agreements which may restrict the parties in their freedom to take independent commercial decisions, for example regarding:
 - buying or selling prices, discounts or other trading conditions,
 - the quantities of services to be offered,
 - technical development or investment,
 - the choice of markets or sources of supply,
 - purchases from or sales to third parties,
 - whether to apply similar terms for the supply of equivalent services,
 - whether to offer different services separately or together.

If you are claiming the benefit of an opposition procedure under a block exemption regulation, identify in this list the restrictions that exceed those automatically exempted by the relevant regulation.

- 4.3. State between which Member States of the Community and/or EFTA States⁽²⁾ trade may be affected by the arrangements. Please give reasons for your reply to this question, giving data on trade flows where relevant. Furthermore please state whether trade between the Community or the EEA and any third countries is affected, again giving reasons for your reply.

CHAPTER II

Section concerning the relevant market

Section 5

The relevant market

A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use⁽³⁾.

The following factors are normally considered to be relevant to the determination of the relevant product market and should be taken into account in this analysis⁽⁴⁾:

- the degree of similarity between the services in question,
- differences in price between two services,
- the cost of switching between two potentially competing services,
- established or entrenched consumer preferences for one type or category of service over another,
- industry-wide service classifications (e.g. classifications maintained by trade associations).

⁽¹⁾ In so far as the notifying parties provide the information required by this form that was reasonably available to them at the time of notification, the fact that the parties intend to provide further supporting facts or documentation in due course does not prevent the notification being valid at the time of notification.

⁽²⁾ See list in Appendix II.

⁽³⁾ See Commission notice on the definition of relevant market for the purposes of Community competition law (OJ C 372, 9. 12. 1997, p. 5).

⁽⁴⁾ This is not however, exhaustive, and applicants may refer to other factors.

The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because, in particular, conditions of competition are appreciably different in those areas.

Factors relevant to the assessment of the relevant geographic market include ⁽¹⁾ the nature and characteristics of the services concerned, the existence of entry barriers or consumer preferences, and appreciable differences for the undertakings' market share or substantial price differences between neighbouring areas.

- 5.1. In the light of the above please explain the definition of the relevant product market or markets that in your opinion should form the basis of the Commission's analysis of the application.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account. In particular, please state the specific products or services directly or indirectly affected by the agreement being notified and identify the categories of services viewed as substitutable in your market definition.

In the questions figuring below, this (or these) definition(s) will be referred to as 'the relevant product market(s)'.

- 5.2. Please explain the definition of the relevant geographic market or markets that in your opinion should form the basis of the Commission's analysis of the application.

In your answer, please give reasons for assumptions or findings, and explain how the factors outlined above have been taken into account. In particular, please identify the countries in which the parties are active in the relevant product market(s), and in the event that you consider the relevant geographic market to be wider than the individual Member States of the Community or the territory of the EFTA States on which the parties to the agreement are active, give the reasons for this.

In the questions below, this (or these) definitions will be referred to as 'the relevant geographic market(s)'.

Section 6

Group members operating on the same markets as the parties

- 6.1. For each of the parties to the agreement being notified, provide a list of all undertakings belonging to the same group which are:
- 6.1.1. active in the relevant product market(s);
- 6.1.2. active in markets neighbouring the relevant product market(s) (i.e. active in products and/or services that represent imperfect and partial substitutes for those included in your definition of the relevant product market(s)).

Such undertakings must be identified even if they sell the product or service in question in other geographic areas than those in which the parties to the notified agreement operate. Please list the name, country of incorporation, exact products or services provided and the geographic scope of operation of each group member.

Section 7

The position of the parties on the relevant product market(s)

Information requested in this section must be provided for the groups of the parties as a whole. It is not sufficient to provide such information only in relation to the individual undertakings directly concerned by the agreement.

- 7.1. In relation to each relevant product market(s) identified in your reply to question 5.1 please provide the following information:
- 7.1.1. the market shares of the parties on the relevant geographic market during the previous three years;
- 7.1.2. where different, the market shares of the parties in (a) the EEA as a whole, (b) the Community, (c) the territory of the EFTA States and (d) each EC Member State and EFTA State during the previous three years ⁽²⁾. For this section, where market shares are less than 20 %, please state simply which of the following bands are relevant: 0 to 5 %, 5 to 10 %, 10 to 15 %, 15 to 20 %.

⁽¹⁾ This list is not, however, exhaustive, and applicants may refer to other factors.

⁽²⁾ That is where the relevant geographic market has been defined as worldwide, these figures must be given regarding the EEA, the Community, the territory of the EFTA States, and each EC Member State. Where the relevant geographic market has been defined as the Community, these figures must be given for the EEA, the territory of the EFTA States, and each EC Member State. Where the market has been defined as national, these figures must be given for the EEA, the Community and the territory of the EFTA States.

For the purpose of answering these questions, market share may be calculated either on the basis of value or volume. Justification for the figures provided must be given. Thus, for each answer, total market value/volume must be stated, together with the sales/turnover of each of the parties in question. The source or sources of the information should also be given (e.g. official statistics, estimates, etc.), and where possible, copies should be provided of documents from which information has been taken.

Section 8

The position of competitors and customers on the relevant product market(s)

Information requested in this section must be provided for the group of the parties as a whole and not in relation to the individual companies directly concerned by the agreement notified.

For the (all) relevant product and geographic market(s) in which the parties have a combined market share exceeding 15 %, the following questions must be answered.

- 8.1. Please identify the five main competitors of the parties. Please identify the company and give your best estimate as to their market share in the relevant geographic market(s). Please also provide address, telephone and fax number, and, where possible, the name of a contact person at each company identified.
- 8.2. Please identify the five main customers of each of the parties. State company name, address, telephone and fax numbers, together with the name of a contact person.

Section 9

Market entry and potential competition in product and geographic terms

For the (all) relevant product and geographic market(s) in which the parties have a combined market share exceeding 15 %, the following questions must be answered.

- 9.1. Describe the various factors influencing entry in product terms into the relevant product market(s) that exist in the present case (i.e. what barriers exist to prevent undertakings that do not presently provide services within the relevant product market(s) entering this market(s)). In so doing take account of the following where appropriate:
 - to what extent is entry to the markets influenced by the requirement of government authorisation or standard setting in any form? Are there any legal or regulatory controls on entry to these markets?
 - to what extent is entry to the markets influenced by the need to have access to transport infrastructure?
 - to what extent is entry to the markets influenced by the availability of rolling-stock vessels, aircraft, or other vehicles required for providing the services?
 - to what extent is entry to the market influenced by the length of contracts between an undertaking and its suppliers and/or customers?
 - describe the importance of research and development and in particular the importance of licensing patents, know-how and other rights in these markets.
- 9.2. Describe the various factors influencing entry in geographic terms into the relevant geographic market(s) that exist in the present case (i.e. what barriers exist to prevent undertakings already providing services within the relevant product market(s) but in areas outside the relevant geographic market(s) extending the scope of their activities into the relevant geographic market(s)?) Please give reasons for your answer, explaining, where relevant, the importance of the following factors:
 - trade barriers imposed by law, such as tariffs, quotas etc.,
 - local specification or technical requirements,
 - procurement policies,
 - the existence of adequate and available local distribution and retailing facilities,
 - the need to have access to transport infrastructure,
 - entrenched consumer preferences for local brands or products,
 - language.

- 9.3. Have any new undertakings entered the relevant product market(s) in geographic areas where the parties are active during the last three years? Please provide this information with respect to both new entrants in product terms and new entrants in geographic terms. If such entry has occurred, please identify the undertaking(s) concerned (name, address, telephone and fax numbers, and, where possible, contact person), and provide your best estimate of their market share in the relevant product and geographic market(s).

CHAPTER III

Final sections

Section 10

Reasons for the application for negative clearance

If you are applying for negative clearance state:

- 10.1. why, i.e. state which provision or effects of the agreement or behaviour might, in your view, raise questions of compatibility with the Community's and/or the EEA rules of competition. The object of this subheading is to give the Commission the clearest possible idea of the doubts you have about your agreement or behaviour that you wish to have resolved by a negative clearance.

Then, under the following three references, give a statement of the relevant facts and reasons as to why you consider Article 85(1) or 86 of the EC Treaty and/or Article 53(1) or 54 of the EEA Agreement to be inapplicable, i.e.:

- 10.2. why the agreements or behaviour do not have the object or effect of preventing, restricting or distorting competition within the common market or within the territory of the EFTA States to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position, and/or
- 10.3. why the agreements or behaviour do not have the object or effect of preventing, restricting or distorting competition within the EEA to any appreciable extent, or why your undertaking does not have or its behaviour does not abuse a dominant position, and/or
- 10.4. why the agreements or behaviour are not such as may affect trade between Member States or between the Community and one or more EFTA States, or between EFTA States to any appreciable extent.

Section 11

Reasons for the application for exemption

If you are applying for an exemption under Article 5 of Regulation (EEC) No 1017/68, Article 85(3) of the EC Treaty and/or Article 53(3) of the EEA Agreement, explain how:

- 11.1. the agreement contributes to improving production or distribution, and/or promoting technical or economic progress. Explain in particular how the agreement contributes towards improving the quality of transport services, or promoting greater continuity and stability in the satisfaction of transport needs on markets where supply and demand are subject to considerable temporal fluctuation, or increasing the productivity of undertakings.

In particular, please explain the reasons why these benefits are expected to result from the collaboration; for example, do the parties to the agreement possess complementary technologies or distribution systems that will produce important synergies? (if so, please state which). Also please state whether any documents or studies were drawn up by the applicants when assessing the feasibility of the operations and the benefits likely to result therefrom, and whether any such documents or studies provided estimates of the savings or efficiencies likely to result. Please provide copies of any such documents or studies;

- 11.2. a proper share of the benefits arising from such improvement or progress accrues to consumers. Explain in particular how the agreement takes fair account of the interest of transport users;
- 11.3. all restrictive provisions of the agreement are indispensable to the attainment of the aims set out under 11.1 (if you are claiming the benefit of the opposition procedure, it is particularly important that you should identify and justify restrictions that exceed those automatically exempted by the relevant Regulations). In this respect please explain how the benefits resulting from the agreement identified in your reply to question 11.1 could not be achieved, or could not be achieved so quickly or efficiently or only at higher cost or with less certainty of success (i) without the conclusion of the agreement as a whole and (ii) without those particular clauses and provisions of the agreement identified in your reply to question 4.2;
- 11.4. the agreement does not eliminate competition in respect of a substantial part of the goods or services concerned.

Section 12

Supporting documentation

The completed application must be drawn up and submitted in one original. It shall contain the last versions of all agreements which are the subject of the application and be accompanied by the following:

- (a) 17 copies of the application itself;
- (b) three copies of the annual reports and accounts of all the parties to the notified agreement, decision or practice for the last three years;
- (c) three copies of the most recent in-house or external long-term market studies or planning documents for the purpose of assessing or analysing the affected market(s) with respect to competitive conditions, competitors (actual and potential), and market conditions. Each document should indicate the name and position of the author;
- (d) three copies of reports and analyses which have been prepared by or for any officer(s) or director(s) for the purposes of evaluating or analysing the notified agreement.

Section 13

Declaration

The application must conclude with the following declaration which is to be signed by or on behalf of all the applicants.

"The undersigned declare that the information given in this application is correct to the best of their knowledge and belief, that complete copies of all documents requested by form TR have been supplied to the extent that they are in the possession of the group of undertakings to which the applicant(s) belong(s) and are accessible to the latter, that all estimates are identified as such and are their best estimates of the underlying facts and that all the opinions expressed are sincere.

They are aware of the provisions of Article 22(1)(a) of Regulation (EEC) No 1017/68, Article 19(1)(a) of Regulation (EEC) No 4056/86 and Article 12(1)(a) of Regulation (EEC) No 3975/87.

Place and date:

Signatures:

Please add the name(s) of the person(s) signing the application and their function(s).

Applications which have not been signed are invalid.

Appendix I

TEXT OF ARTICLES 85 AND 86 OF THE EC TREATY, ARTICLES 53, 54 AND 56 OF THE EEA AGREEMENT, AND OF ARTICLES 2, 3 AND 4 OF PROTOCOL 22 TO THAT AGREEMENT

Article 85 of the EC Treaty

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations or undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 86 of the EC Treaty

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 53 of the EEA Agreement

1. The following shall be prohibited as incompatible with the functioning of this Agreement: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties and which have as their object or effect the prevention, restriction or distortion of competition within the territory covered by this Agreement, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;

- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings,
- any decision or category of decisions by associations of undertakings,
- any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 54 of the EEA Agreement

Any abuse by one or more undertakings of a dominant position within the territory covered by this Agreement or in a substantial part of it shall be prohibited as incompatible with the functioning of this Agreement in so far as it may affect trade between Contracting Parties.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 56 of the EEA Agreement

1. Individual cases falling under Article 53 shall be decided on by the Surveillance Authorities in accordance with the following provisions:

- (a) individual cases where only trade between EFTA States is affected shall be decided on by the EFTA Surveillance Authority;
- (b) without prejudice to subparagraph (c), the EFTA Surveillance Authority decides, as provided for in the provisions set out in Article 58, Protocol 21 and the rules adopted for its implementation, Protocol 23 and Annex XIV, on cases where the turnover of the undertakings concerned in the territory of the EFTA States equals 33 % or more of their turnover in the territory covered by this Agreement;
- (c) the EC Commission decides on the other cases as well as on cases under (b) where trade between EC Member States is affected, taking into account the provisions set out in Article 58, Protocol 21, Protocol 23 and Annex XIV.

2. Individual cases falling under Article 54 shall be decided on by the Surveillance Authority in the territory of which a dominant position is found to exist. The rules set out in paragraph 1(b) and (c) shall apply only if dominance exists within the territories of both Surveillance Authorities.

3. Individual cases falling under subparagraph (c) of paragraph 1, whose effects on trade between EC Member States or on competition within the Community are not appreciable, shall be decided on by the EFTA Surveillance Authority.

4. The terms 'undertaking' and 'turnover' are, for the purpose of this Article, defined in Protocol 22.

Articles 2, 3 and 4 of Protocol 22 to the EEA Agreement*Article 2*

'Turnover' within the meaning of Article 56 of the Agreement shall comprise the amounts derived by the undertaking concerned, in the territory covered by this Agreement, in the preceding financial year from the sale of products and the provision of services falling within the undertaking's ordinary scope of activities after deduction of sales rebates and of value-added tax and other taxes directly related to turnover.

Article 3

In place of turnover the following shall be used:

- (a) for credit institutions and other financial institutions, their total assets multiplied by the ratio between loans and advances to credit institutions and customers in transactions with residents in the territory covered by this Agreement and the total sum of those loans and advances;
- (b) for insurance undertakings, the value of gross premiums received from residents in the territory covered by this Agreement, which shall comprise all amounts received and receivable in respect of insurance contracts issued by or on behalf of the insurance undertakings, including also outgoing reinsurance premiums, and after deduction of taxes and parafiscal contributions or levies charged by reference to the amounts of individual premiums or the total value of premiums.

Article 4

1. In derogation from the definition of the turnover relevant for the application of Article 56 of the Agreement, as contained in Article 2 of this Protocol, the relevant turnover shall be constituted:

- (a) as regards agreements, decisions of associations of undertakings and concerted practices related to distribution and supply arrangements between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which are the subject matter of the agreements, decisions or concerted practices, and from the other goods or services which are considered by users to be equivalent in view of their characteristics, price and intended use;
- (b) as regards agreements, decisions of associations of undertakings and concerted practices related to arrangements on transfer of technology between non-competing undertakings, of the amounts derived from the sale of goods or the provision of services which result from the technology which is the subject matter of the agreements, decisions or concerted practices, and of the amounts derived from the sale of those goods or the provision of those services which that technology is designed to improve or replace.

2. However, where at the time of the coming to existence of arrangements as described in paragraph 1(a) and (b) turnover as regards the sale of products or the provision of services is not in evidence, the general provision as contained in Article 2 shall apply.

Appendix II

LIST OF RELEVANT ACTS

(as of 1 February 1999)

(If you think it possible that your arrangements do not need to be notified by virtue of any of these regulations or notices it may be worth your while to obtain a copy.)

Implementing regulations⁽¹⁾

- Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ L 175, 23.7.1968, p. 1), as last amended by the Act of Accession of Austria, Finland and Sweden,
- Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ L 378, 31.12.1986, p. 4), as last amended by the Act of Accession of Austria, Finland and Sweden,
- Council Regulation (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector (OJ L 374, 31.12.1987, p. 1), as last amended by Regulation (EEC) No 2410/92 (OJ L 240, 24.8.1992, p. 18),
- Commission Regulation (EC) No 2843/98 of 22 December 1998 on the form, content and other details of applications and notifications provided for in Council Regulation (EEC) No 1017/68, (EEC) No 4056/86 and (EEC) No 3975/87 applying the rules on competition to the transport sector.

Regulations granting block exemption

- Article 4 of Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway, as last amended by the Act of Accession of Austria, Finland and Sweden (exemption for groups of small and medium-sized undertakings),
- Articles 3 and 6 of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport, as last amended by the Act of Accession of Austria, Finland and Sweden (exemption for agreements between carriers concerning the operation of scheduled maritime transport services, and exemption for agreements between transport users and conferences concerning the use of scheduled maritime transport services),
- Commission Regulation (EC) No 870/95 of 20 April 1995 on the application of Article 85(3) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies (consortia) pursuant to Council Regulation (EEC) No 479/92 (OJ L 89, 21.4.1992, p. 7). Article 7 of this Regulation provides for an opposition procedure,
- Commission Regulation (EEC) No 1617/93 of 25 June 1993 on the application of Article 85(3) of the Treaty to certain categories of agreements and concerted practices concerning joint planning and coordination of schedules, joint operations, consultations on passenger and cargo tariffs on scheduled air services and slot allocation at airports (OJ L 155, 26.6.1993, p. 18), as last amended by Regulation (EC) No 1523/96 (OJ L 190, 31.7.1996, p. 11). See also the notice concerning procedures for communications to the Commission pursuant to Articles 4 and 5 of Commission Regulation (EEC) No 1617/93 (OJ C 177, 29.6.1993, p. 6).

⁽¹⁾ As regards procedural rules applied by the EFTA Surveillance Authority, see Article 3 of Protocol 21 to the EEA Agreement and the relevant provisions in Protocol 4 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice.

Notices of a general nature⁽¹⁾

- Commission notice concerning agreements, decisions and concerted practices in the field of cooperation between enterprises (OJ C 75, 29.7.1968, p. 3, as corrected in OJ C 84, 28.8.1968, p. 17). This defines the sorts of cooperation on market studies, accounting, R&D, joint use of production, storage or transport, *ad hoc* consortia, selling or after-sales service, advertising or quality labelling that the Commission considers not to fall under the prohibition of Article 85(1),
- Commission notice concerning its assessment of certain subcontracting agreements in relation to Article 85(1) of the Treaty (OJ C 1, 3.1.1979, p. 2),
- Commission notice concerning the assessment of cooperative joint ventures pursuant to Article 85 of the EC Treaty (OJ C 43, 16.12.1993, p. 2). This notice sets out the principles on the assessment of joint ventures,
- Commission communication on clarification of the Commission recommendations on the application of the competition rules to new transport infrastructure projects (OJ C 298, 30.9.1997, p. 5),
- Commission notice on the non-imposition or reduction of fines in cartel cases (OJ C 207, 18.7.1996, p. 4),
- Commission notice on the internal rules of procedure for processing requests for access to the file in cases under Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89 (OJ C 23, 23.1.1997, p. 3),
- notice on agreements of minor importance which do not fall under Article 85(1) of the Treaty establishing the European Community (OJ C 372, 9.12.1997, p. 13),
- Commission notice on the definition of the relevant market for the purposes of Community competition law (OJ C 372, 9.12.1997, p. 5).

A collection of these texts (as at 30 June 1994) was published by the Office for Official Publications of the European Communities (references Vol. I: ISBN 92-826-6759-6, catalogue No CM-29-93-A01-EN-C). These texts can also be found at DGIV homepage 'DGIV — Competition on Europa':

<http://europa.eu.int/comm/dg4home.htm>

Pursuant to the Agreement, these texts will also cover the European Economic Area.

⁽¹⁾ See also the corresponding notices published by the EFTA Surveillance Authority.

Appendix III

LIST OF MEMBER STATES AND EFTA STATES, ADDRESS OF THE COMMISSION AND OF THE EFTA SURVEILLANCE AUTHORITY, LIST OF COMMISSION INFORMATION OFFICES WITHIN THE COMMUNITY AND IN EFTA STATES AND ADDRESSES OF COMPETENT AUTHORITIES IN EFTA STATES

The Member States as at the date of this Annex are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

The EFTA States which will be Contracting Parties to the EEA Agreement, as at the date of this Annex, are: Iceland, Liechtenstein and Norway.

The address of the Commission's Directorate-General for Competition is:

European Commission,
Directorate-General for Competition,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.
Tel. (32-2) 299 11 11
<http://europa.eu.int/comm/dg04>

The address of the EFTA Surveillance Authority's Competition Directorate is:

EFTA Surveillance Authority — ESA,
Competition and State Aid Directorate,
Rue de Trèves, 74,
B-1040 Brussels.
Tel. (32-2) 286 18 11
Fax (32-2) 286 18 00
<http://www.efta.int>

The addresses of the Commission's Information Offices in the Community are:

BELGIUM

Commission Européenne
Bureau en Belgique
Europese Commissie
Bureau in België
Rue Archimède/Archimedesstraat 73
B-1040 Bruxelles/Brussel
Tel. (32-2) 295 38 44
Fax (32-2) 295 01 66
<http://europa.eu.int/comm/represent/be>

DENMARK

Europa-Kommissionen
Repræsentation i Danmark
Østergade 61 (Højbrohus)
Postboks 144
DK-1004 København K
Tel. (45) 33 14 41 40
Fax (45-33) 11 12 03
<http://europa.eu.int/dk>

FEDERAL REPUBLIC OF GERMANY

Europäische Kommission
Vertretung in der Bundesrepublik Deutschland
Zitelmannstraße 22
D-53113 Bonn
Tel. (49-228) 530 09-0
Fax (49-228) 530 09-50, 530 09-12

Europäische Kommission
Vertretung in der Bundesrepublik Deutschland
— Vertretung in Berlin
Kurfürstendamm 102
D-10711 Berlin 31
Tel. (49-30) 896 09 30
Fax (49-30) 892 20 59

Europäische Kommission
Vertretung in der Bundesrepublik Deutschland
— Vertretung in München
Erhardtstraße 27
D-80331 München
Tel. (49-89) 202 10 11
Fax (49-89) 202 10 15
<http://www.eu-kommission.de>

GREECE

Evropaiki Epitropi
Antiprosopia stin Ellada
2 Vassilissis Sofias
GR-10674 Athina
Tel. (30-1) 725 10 00
Fax (30-1) 724 46 20
<http://www.forthnet.gr/ee>

SPAIN

Comisión Europea
Representación en España
Paseo de la Castellana, 46
E-28046 Madrid
Tel. (34-1) 431 57 11
Fax (34-1) 432 17 64

Comisión Europea
Representación en Barcelona
Av. Diagonal, 407 bis, Planta 18
E-08008 Barcelona
Tel. (34-3) 415 81 77
Fax (34-3) 415 63 11
<http://www.euroinfo.cce.es>

FRANCE

Commission Européenne
Représentation en France
288, boulevard Saint-Germain
F-75007 Paris
Tel. (33-1) 40 63 38 00
Fax (33-1) 45 56 94 17/18/19

Commission Européenne
Représentation à Marseille
2, rue Henri Barbusse (CMCI)
F-13241 Marseille, Cedex 01
Tel. (33-4) 91 91 46 00
Fax (33-4) 91 90 98 07
<http://europa.eu.int/france>

IRELAND

European Commission
Representation in Ireland
18 Dawson Street
Dublin 2
Irelandlanda
Tel. (353-1) 662 51 13
Fax (353-1) 662 51 18

ITALY

Commissione Europea
Rappresentanza in Italia
Via Poli 29
I-00187 Roma
Tel. (39-6) 69 99 91
Fax (39-6) 679 16 58, 679 36 52

Commissione Europea
Ufficio di Milano
Corso Magenta 59
I-20123 Milano
Tel. (39-2) 467 51 41
Fax (39-2) 480 12 535

LUXEMBOURG

Commission Européenne
Représentation au Luxembourg
Bâtiment Jean-Monnet
Rue Alcide de Gasperi
L-2920 Luxembourg
Tel. (352) 43 01-34935
Fax (352) 43 01-34433

NETHERLANDS

Europese Commissie
Bureau in Nederland
Korte Vijverberg 5
NL-2513 AB Den Haag
Nederland
Tel. (31-70) 346 93 26
Fax (31-70) 364 66 19
<http://www.dds.nl/plein/europa>

AUSTRIA

Europäische Kommission
Vertretung in Österreich
Kärtner Ring 5-7
A-1010 Wien
Tel: (43-1) 516 18
Fax (43-1) 513 42 25
<http://www.europa.or.at>

PORTUGAL

Comissão Europeia
Gabinete em Portugal
Centro Europeu Jean Monnet
Largo Jean Monnet, 1-10º
P-1250 Lisboa
Tel. (351-1) 350 98 00
Fax (351-1) 350 98 01/02/03
<http://euroinfo.ce.pt>

FINLAND

Euroopan komissio
Suomen edustusto
Europeiska kommissionen
Representationen i Finland
31 Pohjoisesplanadi/Norra esplanaden 31
FIN-00100 Helsinki/Helsingfors
Tel. (358-9) 622 65 44
Fax (358-9) 65 67 28 (lehistö ja tiedotus/press och information)

SWEDEN

Europeiska Kommissionen
Representation i Sverige
Nybrogatan 11, Box 7323
S-10390 Stockholm
Tel. (46-8) 562 444 11
Fax (46-8) 562 444 12
<http://www.eukomm.se>

UNITED KINGDOM

European Commission
Representation in the United Kingdom
Jean Monnet House
8 Storey's Gate
London SW1 P3 AT
United Kingdom
Tel. (44-171) 973 19 92
Fax (44-171) 973 19 00, 973 19 10

European Commission
Representation in Northern Ireland
9/15 Bedford Street (Windsor House)
Belfast BT2 7EG
United Kingdom
Tel. (44-1232) 24 07 08
Fax (44-1232) 24 82 41

European Commission
Representation in Wales
4 Cathedral Road
Cardiff CF1 9SG
United Kingdom
Tel. (44-1222) 37 16 31
Fax (44-1222) 39 54 89

European Commission
Representation in Scotland
9 Alva Street
Edinburgh EH2 4PH
United Kingdom
Tel. (44-131) 225 20 58
Fax (44-131) 226 41 05
<http://www.cec.org.uk>

The addresses of the Commission's Information Offices in the EFTA States are:

NORWAY

European Commission Delegation in Norway
Haakon VII's Gate 10 (9th floor)
N-0161 Oslo
Tel. (47-22) 83 35 83
Fax (47-22) 83 40 55

Forms for notifications and applications, as well as more detailed information on the EEA competition rules, can also be obtained from the following offices:

ICELAND

Samkeppnisstofnun (Icelandic Competition Authority)
Laugavegi 118
Pósthólf 5120
IS-125 Reykjavík
Iceland
Tel. (354-5) 527 422
Fax (354-5) 627 442

LIECHTENSTEIN

Amt Für Volkswirtschaft (Office of National Economy)
Gerberweg 5
FL-9490 Vaduz
Tel. (41-75) 236 68 73
Fax (41-75) 236 68 89

NORWAY

Norwegian Competition Authority
PO Box 8132 Dep.
0033 Oslo
Norway
Tel. (47-22) 40 09 00
Fax (47-22) 40 09 99

ANNEX II

FORM TR(B)⁽¹⁾

This form and the supporting documents should be forwarded in one original and 17 copies together with proof in a single copy of the representative's authority to act.

If the space opposite each question is insufficient, please use extra pages, specifying to which item on the form they relate.

TO THE EUROPEAN COMMISSION

Directorate-General for Competition
Rue de la Loi/Wetstraat 200
B-1049 Brussels.

Notification of an agreement, decision or concerted practice pursuant to Article 14(1) of Council Regulation (EEC) No 1017/68 with a view to obtaining a declaration of non-applicability of the prohibition in Article 2, available in states of crisis, pursuant to Article 6 of that Regulation⁽²⁾.

I. Information regarding parties

1. Name, forenames and address of person submitting the notification. If such person is acting as representative, state also the name and address of the undertaking or association of undertakings represented and the name, forenames and address of the proprietors or partners or, in the case of legal persons, of their legal representatives.

Proof of representative's authority to act must be supplied.

If the notification is submitted by a number of persons or on behalf of a number of undertakings, the information must be given in respect of each person or undertaking.

2. Name and address of the undertakings which are parties to the agreement, decision or concerted practice and name, forenames and address of the proprietors or partners, in the case of legal persons, of their legal representatives (unless this information has been given under I.1).

If the undertakings which are parties are not all associated in submitting the notification, state what steps have been taken to inform the other undertakings.

This information is not necessary in respect of standard contracts (see II.2(b)).

3. If a firm or joint agency has been formed in pursuance of the agreement, decision or concerted practice, state the name and address of such firm or agency and the names, forenames and addresses of its representatives.
4. If a firm or joint agency is responsible for operating the agreement, decision or concerted practice, state the name and address of such firm or agency and the names, forenames and addresses of its representatives.

Attach a copy of the statutes.

5. In the case of a decision of an association of undertakings, state the name and address of the association and the names, forenames and addresses of its representatives.

Attach a copy of the statutes.

6. If the undertakings are established or have their seat outside the EEA, state the name and address of a representative or branch established in the EEA.

⁽¹⁾ Notifications made by using form TR(B) issued by the Commission and the equivalent form issued by the EFTA side are equally valid. Any reference to EFTA States shall be understood to mean those EFTA States which are Contracting Parties to the Agreement on the European Economic Area.

⁽²⁾ See also this Regulation as adapted for EEA purposes (point 10 of Annex XIV to the Agreement on the European Economic Area, hereinafter referred to as 'the EEA Agreement').

II. Information regarding contents of agreement, decision or concerted practice

1. Does the agreement, decision or concerted practice concern transport:
 - by rail,
 - by road,
 - by inland waterway,or operations of providers of services ancillary to transport?
2. If the contents were reduced to writing, attach a copy of the full text unless (a) or (b) below provides otherwise.
 - (a) Is there only an outline agreement or outline decision?
If so, attach also copy of the full text of the individual agreements and implementing provisions.
 - (b) Is there a standard contract, i.e. a contract which the undertaking submitting the notification regularly concludes with particular persons or groups of persons?
If so, only the text of the standard contract need be attached.
3. If the contents were not, or were only partially, reduced to writing, state the contents in the space opposite.
4. In all cases give the following additional information:
 - (a) date of agreement, decision or concerted practice;
 - (b) date when it came into force and, where applicable, proposed period of validity;
 - (c) subject: exact description of the transport service or services involved, or of any other subject to which the agreement, decision or concerted practice relates;
 - (d) aims of the agreement, decision or concerted practice;
 - (e) terms of adherence, termination or withdrawal;
 - (f) sanctions which may be taken against participating undertakings (penalty clause, exclusion, etc.).

III. Means of achieving the aims of the agreement, decision or concerted practice

1. State whether and how far the agreement, decision or concerted practice relates to:
 - adherence to certain rates and conditions of transport or other operating conditions,
 - restriction or control of the supply of transport, technical development or investment,
 - sharing of transport markets,
 - restrictions on freedom to conclude transport contracts with third parties (exclusive contracts),
 - application of different terms for supply of equivalent services.
2. Is the agreement, decision or concerted practice with transport services:
 - (a) within one Member State or EFTA State only?
 - (b) between Member States?
 - (c) between EFTA States?
 - (d) between the Community and one or more EFTA States?
 - (e) between a Member State or an EFTA State and third countries?
 - (f) between third countries in transit through one or more EC Member States and/or one or more EFTA States?

IV. Description of the conditions to be fulfilled by the agreement, decision or concerted practice so as to be exempt from the prohibition in Article 2

Describe to what extent:

1. the transport market is disturbed;
2. the agreement, decision or concerted practice is essential for reducing that disturbance;
3. the agreement, decision or concerted practice does not eliminate competition in respect of substantial parts of the transport market concerned.

V. State whether you intend to produce further supporting arguments and, if so, on which points

The undersigned declare that the information given above and in the Annexes attached hereto is correct.
They are aware of the provisions of Article 22(1)(a) of Regulation (EEC) No 1017/68.

Place and date:

Signatures:

COMMISSION REGULATION (EC) No 2844/98
of 22 December 1998

laying down detailed rules for the application of Council Regulation (EC) No 1587/98 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1587/98 of 17 July 1998 introducing a scheme to compensate for the additional costs incurred in the marketing of certain fishery products from the Azores, Madeira, the Canary Islands and the French departments of Guiana and Réunion as a result of those regions' remoteness ⁽¹⁾, and in particular Article 4 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 ⁽²⁾, as last amended by Regulation (EC) No 150/95 ⁽³⁾, and in particular Article 6(2) thereof,

Whereas it is necessary to lay down detailed rules for implementing the scheme introduced by Regulation (EC) No 1587/98 so that detailed arrangements can be established for granting Community aid for the measures provided for in that Regulation, in particular the arrangements for payments and for checking and monitoring the measures;

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

HAS ADOPTED THIS REGULATION:

Article 1

The compensation scheme introduced by Regulation (EC) No 1587/98 shall be implemented for 1998, 1999, 2000 and 2001 in accordance with the provisions of this Regulation.

Article 2

1. In the case of the Azores and Madeira, should the overall annual quota of 15 000 tonnes not be exhausted by the catches of vessels registered at the ports of the Azores and/or Madeira the operators concerned may resort to the use of tuna originating in other Member States.

⁽¹⁾ OJ L 208, 24. 7. 1998, p. 1.

⁽²⁾ OJ L 387, 31. 12. 1992, p. 1.

⁽³⁾ OJ L 22, 31. 1. 1995, p. 1.

2. For all the regions, the maximum annual quantities for the various species shall be those laid down in Article 2 of Regulation (EC) No 1587/98.

3. In the case of Guiana, the compensation shall be paid for the quantities produced, as the producers are the recipients of the scheme.

The eligible quantities shall be expressed in head-on shrimp equivalent; a coefficient of 1,6 shall be applied when they are presented head-off.

4. In the case of Réunion, the compensation shall be paid for the quantities exported, as the exporters are the recipients of the scheme.

The eligible quantities shall be expressed in whole equivalent (gutted with head). A processing coefficient of 1,15 shall be applied for fish presented gutted and with head removed (VDK), and a processing coefficient of 1,65 shall be applied when they are exported in the form of loins.

5. No compensation shall be granted for tuna imported from third countries.

Article 3

1. The agricultural conversion rate applicable to the aid amounts shall be that in force on the first day of the month in which the products are physically taken over by:

- (a) the first purchaser for the purposes of marketing fresh or the industrial undertaking concerned in the case of the Azores and Madeira;
- (b) the first purchaser for the purposes of marketing fresh, the freezing undertaking or, where applicable, the processing undertaking concerned in the case of the Canary Islands.

2. In the case of Guiana, the agricultural conversion rate applicable to the aid amounts shall be that in force on the first day of the month in which the eligible products are landed.

3. In the case of Réunion, the agricultural conversion rate applicable to the aid amounts shall be that in force on the first day of the month in which the eligible products are exported.

Article 4

1. The competent national authorities shall ensure that recipients' applications, to be submitted before a date to be set by those authorities, are accompanied by the documentation needed to check for compliance with Community rules.

2. As regards allocation of compensation among recipients, Member States shall send the Commission the national provisions for implementing this Regulation. These provisions must ensure that compensation is allocated in a balanced way between recipients when the applications submitted to the national authorities exceed the quantities laid down in Article 2 of Regulation (EC) No 1587/98.

Article 5

The competent authorities of the Member States shall pay the aid in the three months following the month in which the time limit for lodging applications expires.

Article 6

1. Member States shall adopt appropriate provisions to ensure compliance with the requirements for implementing the system, particularly as regards the regularity of operations. They shall undertake to take measures to

prevent and pursue any irregularities and recover amounts wrongly paid out.

2. National authorities shall make available to the Commission all information required for the purposes of applying this Regulation and shall make every endeavour to facilitate such checks as the Commission may consider it useful to undertake, including on-the-spot checks.

3. Without prejudice to checks carried out by the Member States' authorities in line with national legislative, regulatory or administrative provisions, persons charged by the Commission with on-the-spot checks shall have access to all documents relating to expenditure financed by the Community under this Regulation.

4. Five months after the end of the period in respect of which the aid is granted at the latest, the national authorities shall send the Commission an annual report on the quantities produced and marketed, and the value thereof, for which aid has actually been received.

Article 7

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

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

Done at Brussels, 22 December 1998.

For the Commission

Emma BONINO

Member of the Commission

COMMISSION REGULATION (EC) No 2845/98**of 22 December 1998****introducing prior Community surveillance of imports of certain iron and steel products covered by the ECSC and EC Treaties originating in certain third countries**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3285/94 of 22 December 1994 on common rules for imports and repealing Regulation (EC) No 518/94 ⁽¹⁾, as last amended by Regulation (EC) No 2315/96 ⁽²⁾, and in particular Article 11 thereof,

Having regard to Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) No 1765/82, (EEC) No 1766/82 and (EEC) No 3420/83 ⁽³⁾, as last amended by Regulation (EC) No 1138/98 ⁽⁴⁾, and in particular Article 9(1) thereof,

Consultations having taken place within the Committees set up under the Regulations referred to above,

Whereas by Commission Regulation (EC) No 2604/97 ⁽⁵⁾, as amended by Regulation (EC) No 706/98 ⁽⁶⁾, imports into the Community of certain iron and steel products covered by the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Community were subject to *a priori* Community surveillance;

Whereas in accordance with the provisions of Regulations (EC) No 3285/94 and (EC) No 519/94, products covered by the Treaty establishing the European Coal and Steel Community are subject to the common rules for imports and it is therefore necessary that the arrangements for Community surveillance measures in respect of ECSC products be adopted in accordance with the provisions of those Regulations;

Whereas in view of the elimination on 31 December 1998 of Turkey's import tariffs towards the Community in respect of all ECSC products, earlier than foreseen in the bilateral agreement on trade in products covered by the Treaty establishing the European Coal and Steel Community, it is appropriate to remove from the scope of

the present Regulation all products subject to the ECSC Treaty which originate in Turkey;

Whereas the steel market in the Community has been unstable in recent years, partly due to pressure from imports and notably from regions with excessive production capacity and weak domestic consumption. Since the beginning of 1998, the steel market has been seriously disturbed by the consequences of the financial and economic crisis that began in south-east Asia. Available economic indicators show the following trends:

- (a) Production. In 1997, production of crude steel in the Community increased to 160 million tonnes, 8,8 % above 1996. It continued to grow between January and July 1998. Since August, production has slowed down. The significant increase in imports of finished steel products in the first semester, the slowdown of activity in individual consuming sectors, the high level of stocks and a further reduction of exports should result in a 1998 crude steel production of about 160 million tonnes. It could decrease slightly in 1999, since consumption is expected to decrease by 4 % compared with 1998;
- (b) Imports. Imports of ECSC products into the Community from all third countries amounted to 12,2 million tonnes in 1997, 15 % above 1996. During the first six months of 1998, imports of ECSC products amounted to 10 million tonnes, an increase of 57,2 % compared with the same period in 1997. Imports of flat products increased by 70 %, long products by 49 % and semi-finished products by 117 %. Imports of finished products from the Asian region increased from 0,2 million tonnes in the first half of 1997 to 1,6 million tonnes in the same period of 1998. Imports also rose from countries indirectly affected by the Asian crisis. Prices for certain steel products within the Community fell by up to 30 % during 1998 as a consequence of low-priced imports. Imports are expected to stay at high levels in 1999;
- (c) Exports. Exports of ECSC products decreased by 15 % to 21 million tonnes in 1997 compared with 1996. In the first six months of 1998, exports of ECSC products amounted to 8,6 million tonnes, an average

⁽¹⁾ OJ L 349, 31. 12. 1994, p. 53.

⁽²⁾ OJ L 314, 4. 12. 1996, p. 1.

⁽³⁾ OJ L 67, 10. 3. 1994, p. 89.

⁽⁴⁾ OJ L 159, 3. 6. 1998, p. 1.

⁽⁵⁾ OJ L 351, 23. 12. 1997, p. 28.

⁽⁶⁾ OJ L 98, 31. 3. 1998, p. 8.

decrease of 18 % compared with the same period in 1997. For 1998 as a whole, the Community is likely to become a net importer of steel products for the first time. In 1997, it had a net surplus of 8,5 million tonnes;

(d) Similar trends apply to certain steel products covered by the EC Treaty:

— in 1997, production of narrow strip coil increased by 16,8 % compared with 1996. Imports increased by an average of 2 % in 1997 compared with 1996. For the first six months of 1998, imports increased by an average of 7 % compared with the same period in 1997. However, these general trends conceal the pressure of imports in certain regions of the Community.

— in 1997, production of steel tubes and pipes increased by 8,6 % compared with 1996. Imports of steel tubes and pipes increased by an average of 1 % in 1997 compared with 1996. For the first six months of 1998, imports of steel tubes and pipes increased by an average of 34 % compared with the same period in 1997;

Whereas, therefore, the trends with respect to certain ECSC and EC products originating in third countries covered by this Regulation threaten to cause injury to Community producers;

Whereas the Community's external trade statistics are not available within the periods established by Commission Regulation (EC) No 840/96⁽¹⁾; whereas it is necessary that this problem should be addressed urgently;

Whereas the interests of the Community require that imports of certain steel products should be subject to prior Community surveillance in order to provide statistical information permitting rapid analysis of import trends;

Whereas the completion of the internal market requires that the formalities to be accomplished by Community importers be identical wherever the goods may be cleared;

Whereas release for free circulation of the products covered by this Regulation should be made subject to presentation of a surveillance document meeting uniform criteria;

Whereas that document should on simple application by the importer, be endorsed by the authorities of the Member States within a certain period but without the importer thereby acquiring any right to import; the document should therefore be valid only during such period as the import rules remain unchanged;

Whereas the surveillance documents issued for the purposes of Community surveillance must be valid throughout the Community, regardless of the Member State of issue;

Whereas the Member States and the Commission should exchange the information resulting from Community surveillance as fully as possible;

Whereas the issue of surveillance documents, while subject to standard conditions at Community level, is to be the responsibility of the national authorities;

Whereas it should be recalled that the delivery of a surveillance documentation for certain iron and steel products is subject to presentation of an export document in accordance with arrangements established within the framework of double-checking agreements with certain third countries; whereas the present Regulation does not apply to the products originating in those countries which are subject to such a double-checking system,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January 1999, the release for free circulation in the Community of iron and steel products covered by the ECSC and EC Treaties listed in Annex I shall be subject to prior Community surveillance in accordance with Articles 11 and 12 of Regulation (EC) No 3285/94 and Articles 9 and 10 of Regulation (EC) No 519/94. This applies to imports originating in all non-member countries other than in respect of products originating in countries of the European Free Trade Association (EFTA), in countries which are Parties to the Agreement on the European Economic Area (EEA), and in Turkey. Products which are subject to a double-checking surveillance agreement established between a non-member country and the Community shall be subject to the conditions established by that agreement and not to the present Regulation.

2. The classification of the products covered by this Regulation is based on the tariff and statistical nomenclature of the Community (hereinafter called the 'Combined Nomenclature', or in abbreviated form 'CN'). The origin of the products covered by this Regulation shall be determined in accordance with the rules in force in the Community.

Article 2

1. The release for free circulation of the products referred to in Article 1 in the Community shall be subject to presentation of a surveillance document issued by the relevant authorities of a Member State.

⁽¹⁾ OJ L 114, 8. 5. 1996, p. 7.

2. The surveillance document referred to in paragraph 1 shall be issued automatically by the competent authority in the Member States, without charge for any quantities requested, within five working days of presentation of an application by any Community importer, wherever established in the Community. This application shall be deemed to have been received by the competent national authority no later than three working days after submission, unless it is proven otherwise.

3. A surveillance document issued by one of the authorities listed in Annex II shall be valid throughout the Community.

4. The surveillance document shall be made out on a form corresponding to the model in Annex I to Regulation (EC) No 3285/94 ⁽¹⁾. The importer's application shall include the following elements:

- (a) the name and full address of the applicant (including telephone and telefax numbers, and possible identification number used by the competent national authorities) and VAT registration number, if subject to VAT;
- (b) if applicable, the name and full address of the declarant or representative of the applicant (including telephone and telefax numbers);
- (c) the full name and address of the exporter;
- (d) the exact description of the goods, including:
 - their trade name,
 - the Combined Nomenclature (CN) code(s),
 - the country of origin,
 - the country of consignment;
- (e) the net weight, expressed in kilograms and also quantity in the unit prescribed where other than net weight, by Combined Nomenclature heading;
- (f) the cif value of the goods in euro at the Community frontier by Combined Nomenclature heading;
- (g) whether the products concerned are seconds or of substandard quality ⁽²⁾;
- (h) the proposed period and place of customs clearance;
- (i) whether the application is a repeat of a previous application concerning the same contract;
- (j) the following declaration, dated and signed by the applicant with the transcription of his name in capital letters:

'I, the undersigned, certify that the information provided in this application is true and given in good faith, and that I am established in the Community.'

⁽¹⁾ And taking into account the provisions of Article 2 of Council Regulation (EC) No 1103/97 (OJ L 162, 19. 6. 1997, p. 1).

⁽²⁾ Under the criteria given in OJ C 180, 11. 7. 1991, p. 4.

The importer shall also submit a copy of the contract of sale or purchase and of the pro forma invoice. If so requested, for example in cases where the goods are not directly purchased in the country of production, the importer shall present a certificate of production issued by the producing steel mill.

5. Surveillance documents may be used only for such time as arrangements for liberalisation of imports remain in force in respect of the transactions concerned. Without prejudice to possible changes in the import regulations in force or decisions taken in the framework of an agreement or the management of a quota:

- the period of validity of the surveillance document is hereby fixed at four months,
- unused or partly used surveillance documents may be renewed for an equal period.

6. The importer shall return surveillance documents to the issuing authority at the end of their period of validity.

7. The competent authorities may, under the conditions fixed by them, allow the submission of declarations or requests to be transmitted or printed by electronic means. However, all documents and evidence must be available to the competent authorities.

8. The surveillance document may be issued by electronic means as long as the customs offices involved have access to this document across a computer network.

Article 3

1. A finding that the unit price at which the transaction is effected varies from that indicated in the surveillance document by less than 5 % in either direction or that the total quantity of the products presented for import exceeds the quantity given in the surveillance document by less than 5 % shall not preclude the release for free circulation of the products in question.

2. Applications for surveillance documents and the documents themselves shall be confidential. They shall be restricted to the competent authorities and the applicant.

Article 4

1. The Member States shall communicate to the Commission:

- (a) on as regular and up-to-date a basis as possible and at least by the last day of each month, details of the quantities and values (calculated in euro) for which surveillance documents have been issued;

- (b) within six weeks of the end of each month, details of imports during that month, in accordance with Article 26 of Regulation (EC) No 840/96.

The information provided by Member States shall be broken down by product, CN code and by country.

2. The Member States shall give notification of any anomalies or cases of fraud which they discover and, where relevant, the basis on which they have refused to grant a surveillance document.

Article 5

Any notices to be given hereunder shall be given to the Commission of the European Communities and shall be

communicated electronically within the integrated network set up for this purpose, unless for imperative technical reasons it is necessary to use other means of communication temporarily.

Article 6

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

It shall apply from 1 January to 31 December 1999.

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

Done at Brussels, 22 December 1998.

For the Commission

Leon BRITTAN

Vice-President

ANNEX I

LIST OF PRODUCTS SUBJECT TO PRIOR SURVEILLANCE (1999)

7208 10 00	7210 12 19	7213 91 10	7225 11 00
7208 25 00	7210 20 10	7213 91 20	7225 19 10
7208 26 00	7210 30 10	7213 91 41	7225 19 90
7208 27 00	7210 41 10	7213 91 49	7225 20 20
7208 36 00	7210 49 10	7213 91 70	7225 30 00
7208 37 10	7210 50 10	7213 91 90	7225 40 80
7208 37 90	7210 61 10	7213 99 10	
7208 38 10	7210 69 10	7213 99 90	7226 11 10
7208 38 90	7210 70 31		7226 11 90 ⁽¹⁾
7208 39 10	7210 70 39		7226 19 10
7208 39 90	7210 90 31	7214 20 00	7226 19 30
7208 40 10	7210 90 33	7214 30 00	7226 19 90 ⁽¹⁾
7208 40 90	7210 90 38	7214 91 10	
7208 51 10		7214 91 90	
7208 51 30		7214 99 10	7228 10 10
7208 51 50	7211 13 00	7214 99 31	7228 10 30
7208 51 91	7211 14 10	7214 99 39	7228 20 11
7208 51 99	7211 14 90	7214 99 50	7228 20 19
7208 52 10	7211 19 20	7214 99 61	7228 20 30
7208 52 91	7211 19 90	7214 99 69	7228 30 20
7208 52 99	7211 23 10	7214 99 80	7228 30 41
7208 53 10	7211 23 51	7214 99 90	7228 30 49
7208 53 90	7211 23 91 ⁽¹⁾		7228 30 61
7208 54 10	7211 23 99 ⁽¹⁾	7215 90 10	7228 30 69
7208 54 90	7211 29 20		7228 30 70
7208 90 10	7211 29 50 ⁽¹⁾		7228 30 89
7209 15 00	7211 29 90 ⁽¹⁾	7216 10 00	7228 60 10
7209 16 10	7211 90 11	7216 21 00	7228 70 10
7209 16 90	7211 90 90 ⁽¹⁾	7216 22 00	7228 70 31
7209 17 10		7216 31 11	7228 80 10
7209 17 90		7216 31 19	7228 80 90
7209 18 10	7212 10 10	7216 31 91	
7209 18 91	7212 10 91	7216 31 99	7301 10 00
7209 18 99	7212 20 11	7216 32 11	
7209 25 00	7212 30 11	7216 32 19	Complete
7209 26 10	7212 40 10	7216 32 91	CN heading 7304 ⁽¹⁾
7209 26 90	7212 40 91	7216 32 99	
7209 27 10	7212 50 31	7216 33 10	Complete
7209 27 90	7212 50 51	7216 33 90	CN heading 7306 ⁽¹⁾
7209 28 10	7212 60 11	7216 40 10	
7209 28 90	7212 60 91	7216 40 90	
7209 90 10		7216 50 10	7307 93 11 ⁽¹⁾
		7216 50 91	7307 93 19 ⁽¹⁾
7210 11 10	7213 10 00	7216 50 99	7307 99 30 ⁽¹⁾
7210 12 11	7213 20 00	7216 99 10	7307 99 90 ⁽¹⁾

⁽¹⁾ Products covered by the EC Treaty.

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

**LISTA DE LAS AUTORIDADES NACIONALES COMPETENTES
LISTE OVER KOMPETENTE NATIONALE MYNDIGHEDER
LISTE DER ZUSTÄNDIGEN BEHÖRDEN DER MITGLIEDSTAATEN
ΛΙΣΤΗ ΤΩΝ ΑΡΧΩΝ ΕΚΔΟΣΗΣ ΑΔΕΙΩΝ ΤΩΝ ΚΡΑΤΩΝ ΜΕΛΩΝ
LIST OF THE COMPETENT NATIONAL AUTHORITIES
LISTE DES AUTORITÉS NATIONALES COMPÉTENTES
ELENCO DELLE COMPETENTI AUTORITÀ NAZIONALI
LIJST VAN BEVOEGDE NATIONALE INSTANTIES
LISTA DAS AUTORIDADES NACIONAIS COMPETENTES
LUETTELO TOIMIVALTAISISTA KANSALLISISTA VIRANOMAISISTA
LISTA ÖVER KOMPETENTA NATIONELLA MYNDIGHETER**

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Ministère des affaires économiques
Administration des relations économiques
Quatrième division: Mise en œuvre des politiques commerciales
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Ministerie van Economische Zaken
Bestuur van de Economische Betrekkingen
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Ministerio de Economía y Hacienda
Dirección General de Comercio Exterior
Paseo de la Castellana, 162
E-28046 Madrid
Fax: (34) 915 63 18 23/913 49 38 31

FRANCE

Service des industries manufacturières
3-5, rue Barbet-de-Jouy
F-75357 Paris 07 SP
Télécopieur: (33 1) 43 19 43 69

IRELAND

Licensing Unit
Department of Enterprise, Trade and Employment
Kildare Street
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Fax: (353 1) 676 61 54

ITALIA

Ministero per il Commercio estero
D.G. Import-export, Divisione V
Viale Boston
I-00144 Roma
Telefax: (39) 06-59 93 26 36 / 06 59 93 26 37

LUXEMBOURG

Ministère des affaires étrangères
Office des licences
BP 113
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Centrale Dienst voor In- en Uitvoer
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United Kingdom TS23 2NF
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II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 December 1998

amending Decision 95/506/EC authorising Member States temporarily to take additional measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards the Kingdom of the Netherlands

(notified under document number C(1998) 3944)

(98/738/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 77/93/EEC of 21 December 1976 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community⁽¹⁾, as last amended by Directive 98/2/EC⁽²⁾, and in particular Article 15(3) thereof,

Whereas the harmful organism *Pseudomonas solanacearum* (Smith) Smith is now known as *Ralstonia solanacearum* (Smith) Yabuuchi et al.; however *Pseudomonas solanacearum* (Smith) Smith is a synonym of *Ralstonia solanacearum* (Smith) Yabuuchi et al. and both names are used in scientific literature and in current Community legislation;

Whereas, where a Member State considers that there is an imminent danger of the introduction into its territory of *Pseudomonas solanacearum* (Smith) Smith, the cause of potato brown rot, from another Member State, it may temporarily take any additional measures which it deems necessary, as long as the Commission has not adopted such measures;

Whereas the Kingdom of the Netherlands informed the other Member States and the Commission on 3 October 1995 that some samples of potatoes originating in that

country were identified as infected by *Pseudomonas solanacearum*; whereas complementary reports supplied by the Netherlands indicated that more samples of the 1995 potato production including seed potatoes, showed a confirmed infection by *Pseudomonas solanacearum*; whereas therefore the Commission adopted Decision 95/506/EC of 24 November 1995 authorising Member States temporarily to take additional measures against the dissemination of *Pseudomonas solanacearum* (Smith) Smith as regards the Kingdom of the Netherlands⁽³⁾; whereas Decision 95/506/EC was amended by Decisions 96/599/EC⁽⁴⁾ and 97/649/EC⁽⁵⁾ and extended by a limited period;

Whereas the Kingdom of the Netherlands informed the other Member States and the Commission on 28 August 1998 that in the summer of 1998, samples of potatoes destined for starch production originating in that country were identified as infected by *Pseudomonas solanacearum*; whereas however, it was not possible to definitively identify the source of contamination and whereas also the Community control regime on *Pseudomonas solanacearum* established by Council Directive 98/57/EC⁽⁶⁾ is not yet effective in the Member States, it is justified to further maintain additional measures with regard to this situation; whereas accordingly Decision 95/506/EC should be extended for a further limited period;

⁽¹⁾ OJ L 26, 31. 1. 1977, p. 20.

⁽²⁾ OJ L 15, 21. 1. 1998, p. 34.

⁽³⁾ OJ L 291, 6. 12. 1995, p. 48.

⁽⁴⁾ OJ L 265, 18. 10. 1996, p. 18.

⁽⁵⁾ OJ L 274, 7. 10. 1997, p. 14.

⁽⁶⁾ OJ L 235, 21. 8. 1998, p. 1.

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

HAS ADOPTED THIS DECISION:

Article 1

Decision 95/506/EC is hereby amended as follows:

1. in Article 1(1), the words 'potatoes of the 1997 crop, until 30 June 1998 for seed potatoes and until 30 September 1998 for other potatoes' shall be replaced by the words 'potatoes of the 1998 crop, until 20 August 1999';

2. in Article 3(1), last subparagraph, the reference to '1 May 1998' shall be replaced by '1 May 1999';
3. in Article 3(3), the references to '15 December 1997' and '1997' shall be replaced by '15 December 1998' and '1998' respectively.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 9 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 14 December 1998

amending Decision 95/328/EC establishing health certification for fishery products from third countries which are not yet covered by a specific decision*(notified under document number C(1998) 4044)***(Text with EEA relevance)**

(98/739/EC)

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

Having regard to Council Directive 91/493/EEC of 11 July 1991 laying down the health conditions for the production and placing on the market of fishery products ⁽¹⁾, as last amended by Directive 97/79/EC ⁽²⁾, and in particular Article 11 thereof,

Whereas Commission Decision 95/328/EC of 25 July 1995 establishing health certification for fishery products from third countries which are not yet covered by a specific decision ⁽³⁾, as last amended by Decision 94/418/EC ⁽⁴⁾, is valid until 31 December 1998;

Whereas Commission Decision 97/296/EC ⁽⁵⁾, as last amended by Decision 98/711/EC ⁽⁶⁾, establishes the list of third countries from which the import of fishery products for human consumption is authorised; whereas Part II of that list contains the third countries which are not yet covered by a specific decision but which satisfy the requirements of Article 2(2) of Council Decision 95/408/EC ⁽⁷⁾, as amended by Decision 98/603/EC ⁽⁸⁾;

Whereas, under Decision 95/408/EC, that list is valid until 31 December 2000; whereas the date of validity of

certification should therefore be amended to bring it into line with the date of validity of the provisional lists;

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

HAS ADOPTED THIS DECISION:

Article 1

In Article 4 of Decision 95/328/EC the words 'to 31 December 1998' are replaced by 'to 31 December 2000'.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 268, 24. 9. 1991, p. 15.

⁽²⁾ OJ L 24, 30. 1. 1998, p. 31.

⁽³⁾ OJ L 191, 12. 8. 1995, p. 32.

⁽⁴⁾ OJ L 190, 4. 7. 1998, p. 53.

⁽⁵⁾ OJ L 122, 14. 5. 1997, p. 21.

⁽⁶⁾ OJ L 337, 12. 12. 1998, p. 58.

⁽⁷⁾ OJ L 243, 11. 10. 1995, p. 17.

⁽⁸⁾ OJ L 289, 28. 10. 1998, p. 36.

COMMISSION DECISION

of 14 December 1998

amending Decision 96/333/EC establishing health certification of live bivalve molluscs, echinoderms, tunicates and marine gastropods from third countries which are not covered by a specific decision

(notified under document number C(1998) 4046)

(Text with EEA relevance)

(98/740/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/492/EEC of 15 July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs ⁽¹⁾, as last amended by Directive 97/79/EC ⁽²⁾, and in particular Article 9 thereof,

Whereas Commission Decision 96/333/EC of 3 May 1996 establishing health certification of live bivalve molluscs, echinoderms, tunicates and marine gastropods from third countries which are not yet covered by a specific decision ⁽³⁾, as amended by Decision 97/589/EC ⁽⁴⁾, is applicable until 31 December 1998;

Whereas Commission Decision 97/20/EC ⁽⁵⁾, as amended by Decision 98/572/EC ⁽⁶⁾, establishes the list of third countries fulfilling the equivalence conditions for the production and placing on the market of bivalve molluscs, echinoderms, tunicates and marine gastropods; whereas Part II of that list contains the third countries which might be the subject of a provisional decision based on Council Decision 95/408/EC ⁽⁷⁾, as last amended by Decision 98/603/EC ⁽⁸⁾;

Whereas, under Decision 95/408/EC, that list is applicable until 31 December 2000; whereas the date of validity of certification should therefore be amended to bring it into line with the date of validity of the provisional lists;

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

HAS ADOPTED THIS DECISION:

Article 1

In Article 5 of Decision 96/333/EC the words 'to 31 December 1998' are replaced by 'to 31 December 2000.'

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 14 December 1998.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 268, 24. 9. 1991, p. 1.

⁽²⁾ OJ L 24, 30. 1. 1998, p. 31.

⁽³⁾ OJ L 127, 25. 5. 1996, p. 33.

⁽⁴⁾ OJ L 238, 29. 8. 1997, p. 47.

⁽⁵⁾ OJ L 6, 10. 1. 1997, p. 46.

⁽⁶⁾ OJ L 277, 14. 10. 1998, p. 42.

⁽⁷⁾ OJ L 243, 11. 10. 1995, p. 17.

⁽⁸⁾ OJ L 289, 28. 10. 1998, p. 36.

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