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

COMMON POSITION
of 16 April 1999
defined by the Council on the basis of Article J.2 of the Treaty on European
Union concerning Libya

(1999/261/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DEFINED THIS COMMON POSITION:

Having regard to the Treaty on European Union and, in particular, Article J.2 thereof,

Article 1

Whereas on 22 November 1993 the Council adopted a Decision on the Common Position 93/614/CFSP⁽¹⁾ with regard to the reduction of economic relations with Libya, in accordance with the relevant provisions of United Nations Security Council Resolution (UNSCR) 883(1993);

In accordance with UNSC Resolution 1192(1998), the restrictive measures taken against Libya on the basis of UNSC Resolutions 748(1992) and 883(1993), shall be suspended, with the exception of measures taken in application of paragraph 8 of UNSC Resolution 883(1993).

Whereas on 27 August 1998, the United Nations Security Council (UNSC) adopted Resolution 1192(1998) through which it reaffirmed the measures set forth in its Resolutions 748(1992) and 883(1993) and decided that the aforementioned measures shall be suspended immediately if the UN Secretary-General reports to the UNSC that the two persons charged with the bombing of Pan Am flight 103 have arrived in the Netherlands for the purpose of trial as well as on the cooperation of the Libyan Government with the French judicial authorities with regard to the bombing of UTA 772;

Article 2

1. Measures decided by the Member States on 27 January and 14 April 1986, namely

- (a) embargo on the export of arms or other military equipment;
- (b) restrictions on the freedom of movement of diplomatic and consular personnel;
- (c) reduction of the staff of diplomatic and consular missions;
- (d) stricter visa requirements and procedures,

will remain in force.

Whereas the UN Secretary-General reported accordingly on 5 April 1999; whereas the measures taken against Libya on the basis of UNSC Resolutions 748(1992) and 883(1993) should therefore be suspended;

2. In accordance with UNSC Resolution 1192(1998), the Netherlands shall be exempted from measures listed under paragraph 1(b) and (c) for the purpose of facilitating the holding of the 'Lockerbie trial'.

Whereas the UN Secretary-General will report on Libya's compliance with the remaining provisions of UNSC Resolutions 731(1992) and 748(1992) within 90 days from the suspension, with a view to lifting the suspended measures upon Libya's full compliance with the requests and decisions contained in those resolutions, in accordance with paragraph 16 of UNSC Resolution 883(1993);

Article 3

Whereas in the meantime the Union considers it appropriate to continue implementing the measures which the Member States decided in 1986 against Libya for its support of terrorism,

This common position will be reviewed in the light of the US Secretary-General's report on Libya's compliance with the remaining provisions of UNSC Resolutions 731(1992) and 748(1992).

⁽¹⁾ OJ L 295, 30.11.1993, p. 7.

Article 4

This common position shall take effect on 6 April 1999.

Article 5

This common position shall be published in the Official Journal.

Done at Luxembourg, 16 April 1999.

For the Council

The President

J. FISCHER

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 811/1999
of 19 April 1999
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,

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 20 April 1999.

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

Done at Brussels, 19 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 19 April 1999 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	83,6
	204	49,1
	999	66,3
0707 00 05	052	114,3
	999	114,3
0709 10 00	052	86,4
	220	170,9
	999	128,6
0709 90 70	052	78,6
	204	94,5
	999	86,5
0805 10 10, 0805 10 30, 0805 10 50	052	43,4
	204	43,2
	212	61,0
	600	59,2
	624	49,0
	999	51,2
0805 30 10	052	35,7
	999	35,7
0808 10 20, 0808 10 50, 0808 10 90	039	108,6
	388	87,9
	400	82,6
	404	100,5
	508	79,4
	512	82,9
	524	68,6
	528	72,4
	720	82,3
	804	106,1
0808 20 50	999	87,1
	388	67,1
	512	73,6
	528	77,6
	999	72,8

⁽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 812/1999
of 19 April 1999

**amending Regulation (EEC) No 1102/89 laying down certain measures for imple-
menting Council Regulation (EEC) No 1101/89 on structural improvements in
inland waterway transport**

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

Having regard to Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport ⁽¹⁾, as last amended by Commission Regulation (EC) No 742/98 ⁽²⁾, and in particular Articles 6 and 10(3) thereof,

Whereas, pursuant to Commission Regulation (EEC) No 1102/89 of 27 April 1989 laying down certain measures for implementing Council Regulation (EEC) No 1101/89 on structural improvements in inland waterway transport ⁽³⁾, as last amended by Regulation (EC) No 2433/97 ⁽⁴⁾, the Commission establishes the practical arrangements for implementing these scrapping schemes;

Whereas the objective of reducing overcapacity in the tanker fleet has been attained with the financial resources available; whereas there is no longer any justification for maintaining the annual contribution by the trade for tanker vessels in 1999; whereas, consequently, the contribution for tanker vessels is abolished for 1999 and may be refunded;

Whereas Commission Regulation (EEC) No 3690/92 ⁽⁵⁾ added Article 6(6)(a) and (b) introducing a permanent scrapping scheme based on a quarterly list of applications for scrapping premiums;

Whereas to enable the surplus funds from the structural improvement schemes to be placed in the reserve fund set up by Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community fleet capacity policy to promote inland waterway transport ⁽⁶⁾, submission of new applica-

tions for scrapping premiums under Article 6(6)(a) and (b) must remain suspended until Regulation (EEC) No 1101/89 expires; whereas the quarterly mechanism for applying for premiums from the Scrapping Funds, as provided for in Article 6(6)(a) and (b) of Regulation (EEC) No 1102/89, as amended, therefore remains suspended until the above-mentioned Regulation expires;

Whereas the Member States and the Group of Experts on Structural Improvements in Inland Waterway Transport set up under Article 12 of Regulation (EEC) No 1102/89 have been consulted on the proposed amendments,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 1102/89 is hereby amended as follows:

1. the following paragraph 4 is added to Article 3:

‘4. For 1999 the rates of the annual contributions for tanker vessels referred to in paragraph 1 shall be set at zero and the 1999 annual contributions for tanker vessels shall be refunded by the Scrapping Funds for these vessels.’;

2. for 1999, paragraph 6 of Article 6 shall be deleted.

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, 19 April 1999.

For the Commission

Neil KINNOCK

Member of the Commission

⁽¹⁾ OJ L 116, 28.4.1989, p. 25.

⁽²⁾ OJ L 103, 3.4.1998, p. 3.

⁽³⁾ OJ L 116, 28.4.1989, p. 30.

⁽⁴⁾ OJ L 337, 9.12.1997, p. 10.

⁽⁵⁾ OJ L 374, 22.12.1992, p. 22.

⁽⁶⁾ OJ L 90, 2.4.1999, p. 1.

COMMISSION REGULATION (EC) No 813/1999
of 19 April 1999
on the supply of white sugar as food aid

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

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

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

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

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

specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

Done at Brussels, 19 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.

⁽²⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 123/98
2. **Beneficiary's** ⁽²⁾: World Food Programme (PAM), via Cristoforo Colombo 426, I-00145 Roma
tel. (39-6) 65 13 29 88; fax 65 13 28 44/3; télex 626675 WFP I
3. **Beneficiary's representative:** to be designated by the recipient
4. **Country of destination:** Angola
5. **Product to be mobilised:** white sugar
6. **Total quantity (tonnes net):** 285
7. **Number of lots:** one
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾ ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (V.A 1))
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (11.2, A(1)(b), (2)(b) and B(4))
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (V.A (3))
 - Language to be used for the markings: Portuguese
 - Supplementary markings: —
11. **Method of mobilisation of the product:** sugar produced in the Community in accordance with the sixth subparagraph of Article 24(1a) of Council Regulation (EEC) No 1785/81 as follows:
A or B sugar (points (a) and (b))
12. **Specified delivery stage:** free at port of shipment
13. **Alternative delivery stage:** —
14. (a) Port of shipment: —
(b) Loading address: —
15. **Port of landing:** —
16. **Place of destination:** —
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 24.5 — 13.6.1999
 - second deadline: 7 — 27.6.1999
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 4.5.1999
 - second deadline: 18.5.1999
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: Bureau de l'aide alimentaire, Attn Mr T. Vestergaard, Bâtiment Loi 130, bureau 7/46, rue de la Loi 200, B-1049 Bruxelles; telex: 25670 AGREC B; fax (32-2) 296 70 03/296 70 04 (exclusively)
22. **Export refund** ⁽⁴⁾: refund applicable to white sugar on 13.4.1999, fixed by Commission Regulation (EC) No 725/1999 (OJ L 93, 8.4.1999, p. 5)

Notes

- (¹) Supplementary information: André Debongnie (tel.: (32-2) 295 14 65),
Torben Vestergaard (tél.: (32-2) 299 30 50).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium —134 and —137 and iodine —131.
- (⁴) Commission Regulation (EC) No 259/98 (OJ L 25, 31.1.1998, p. 39), is applicable as regards the export refund. The date referred to in Article 25 of the said Regulation is that indicated in point 22 of this Annex.
- The supplier's attention is drawn to the last subparagraph of Article 4(1) of the above Regulation., The photocopy of the export licence shall be sent as soon as the export declaration has been accepted (fax (32-2) 296 20 05)).
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— health certificate.
- (⁶) Notwithstanding OJ C 114, point V.A.(3)(c) is replaced by the following: 'the words "European Community"'.
- (⁷) Since the goods have may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital «R».
- (⁸) The rule provided at the second indent of Article 18(2)(a) of Commission Regulation (EEC) No 2103/77 (OJ L 246, 27.9.1977, p. 12), as last amended by Regulation (EC) No 260/96 (OJ L 34, 13. 2. 1996, p. 16), is binding for determination of the sugar category.
-

COMMISSION REGULATION (EC) No 814/1999

of 19 April 1999

opening a standing invitation to tender for the export of sorghum held by the French intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals⁽¹⁾, as last amended by Commission Regulation (EC) No 923/96⁽²⁾, and in particular Article 5 thereof,

Whereas Commission Regulation (EEC) No 2131/93⁽³⁾, as last amended by Regulation (EC) No 39/1999⁽⁴⁾, lays down the procedure and conditions for the disposal of cereals held by intervention agencies;

Whereas, given the current market situation, a standing invitation to tender should be opened for the export of 28 600 tonnes of sorghum held by the French intervention agency;

Whereas special procedures must be laid down to ensure that the operations and their monitoring are properly effected; whereas, to that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators; whereas derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93;

Whereas, where removal of the sorghum is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency the Member State concerned must pay compensation;

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to the provisions of this Regulation the French intervention agency issues a standing invitation to tender

for the export of sorghum held by it in accordance with Regulation (EEC) No 2131/93.

Article 2

1. The invitation to tender shall cover a maximum of 28 600 tonnes of sorghum for export to third countries.
2. The regions in which the 28 600 tonnes of sorghum are stored are set out in Annex I.

Article 3

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.
2. No export refund or tax or monthly increase shall be granted on exports carried out pursuant to this Regulation.
3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

Article 4

1. The export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.
2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted pursuant to Article 44 of Commission Regulation (EEC) No 3719/88⁽⁵⁾.

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 22 April 1999.
2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.
3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 27 May 1999.
4. Tenders shall be lodged with the French intervention agency.

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 191, 31.7.1993, p. 76.

⁽⁴⁾ OJ L 5, 9.1.1999, p. 64.

⁽⁵⁾ OJ L 331, 2.12.1988, p. 1.

Article 6

1. The intervention agency, the storer and the successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the successful tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

The analysis results shall be forwarded to the Commission in the event of a dispute.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

- (a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;
- (b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences having regard to those criteria do not exceed the following limits:

- one percentage point as regards moisture content,
- 0,1 percentage point for the tannin content,
- half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EEC) No 689/92 ⁽¹⁾, and
- half a percentage point as regards impurities as specified in point B.5 of the Annex to Regulation (EEC) No 689/92, the percentages admissible for noxious grains, however, remaining unchanged,

the successful tenderer must accept the lot as established;

- (c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

- accept the lot as established, or
- refuse to take over the lot in question. The successful tenderer shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, if he requests the intervention agency to supply him with another lot of intervention sorghum of the quality laid down at no additional

charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

- (d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. He shall be discharged of all his obligations relating to the lot in question and the securities shall be released only once he has informed the Commission and the intervention agency forthwith in accordance with Annex II; however, he may request the intervention agency to supply him with another lot of intervention sorghum of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the sorghum is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress of which he may avail himself against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of his request for a replacement, he shall be discharged of all his obligations and the securities shall be released once he has informed the Commission and the intervention agency forthwith in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) in respect of up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by the successful tenderer shall be borne by him.

Article 7

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 ⁽²⁾, the documents relating to the sale of sorghum in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where necessary, the T5 copy shall carry the entry:

⁽¹⁾ OJ L 74, 20.3.1992, p. 18.

⁽²⁾ OJ L 301, 17.10.1992, p. 17.

- Sorgo de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) n° 814/1999
- Sorghum fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 814/1999
- Interventionssorghum ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 814/1999
- Σόργο παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 814/1999
- Intervention sorghum without application of refund or tax, Regulation (EC) No 814/1999
- Sorgho d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) n° 814/1999
- Sorgho d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 814/1999
- Sorghum uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 814/1999
- Sorgo de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 814/1999
- Interventiodurraa, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 814/1999
- Interventionssockerhirs, utan tillämpning av bidrag eller avgift, förordning (EG) nr 814/1999.

Article 8

1. The security lodgement pursuant to Article 13(4) of Regulation (EEC) No 2131/93 must be released once the export licences have been issued to the successful tenderers.
2. The obligation to export to the third countries shall be covered by a security amounting to EUR 50 per tonne of which EUR 30 per tonne shall be lodged when the export licence is issued, with the balance of EUR 20 per tonne being lodged before removal of the cereals.

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

Done at Brussels, 19 April 1999.

Article 15(2) of Regulation (EEC) No 3002/92 notwithstanding:

- the amount of EUR 30 per tonne must be released within 20 working days of the date on which the successful tenderer supplies proof that the sorghum removed has left the customs territory of the Community,
- the amount of EUR 20 per tonne must be released within 15 working days of the date on which the successful tenderer supplies the proof referred to in Article 17(3) of Regulation (EEC) No 2131/93.

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to EUR 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the French intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the telex or fax numbers set out in Annex IV.

Article 10

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

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

<i>(tonnes)</i>	
Place of storage	Quantity
Bordeaux	1 500
Lyon	2 900
Montpellier	6 000
Toulouse	18 200

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of sorghum held by the French intervention agency

(Article 6(1) of Regulation (EC) No 814/1999)

- Name of successful tenderer:
 — Date of award of contract:
 — Date of refusal of lot by successful tenderer:

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			— % of tannins — % sprouted grains — % miscellaneous impurities (Schwarzbesatz) — % of matter which is not basic cereal of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of sorghum held by the French intervention agency

(Regulation (EC) No 814/1999)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (EUR/tonne) (!)	Price increases (+) or reductions (–) (EUR/tonne) p.m.	Commercial costs (EUR/tonne)	Destination
1						
2						
3						
etc.						

(¹) This price includes the increases or reductions relating to the lot to which the tender refers.

ANNEX IV

The only numbers to use to call Brussels are (DG VI-C-1):

— fax 296 49 56,
295 25 15,

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

COMMISSION REGULATION (EC) No 815/1999
of 19 April 1999

**opening imports of quantities of quality common wheat, on the one hand, and of
quality durum wheat, on the other hand, within the framework of tariff quotas
provided for in Regulation (EC) No 778/1999**

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

Having regard to Council Regulation (EC) No 1095/96 of
18 June 1996 on the implementation of the concessions
set out in Schedule CXL drawn up in the wake of the
conclusion of the GATT XXIV.6 negotiations⁽¹⁾, and in
particular Article 1 thereof,

Whereas Commission Regulation (EC) No 778/1999 of
15 April 1999 opening and providing for the administra-
tion of tariff quotas for 300 000 tonnes of quality wheat
and 50 000 tonnes of durum wheat and repealing Regula-
tions (EC) No 529/97 and (EC) No 2228/96⁽²⁾ lays down
provisions governing imports under these quotas; whereas,
in view of the situation on the Community market for
wheat, import licence applications should be called for
under the quota of 300 000 tonnes of quality wheat for a
given period;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Import licence applications may be submitted for
quality common wheat falling within CN code
1001 90 99 meeting the criteria laid down in Annex I to

Regulation (EC) No 778/1999, from the date of entry into
force of this Regulation until the end of the 45th day
thereafter.

2. A total of 100 000 tonnes of common wheat may be
imported in accordance with this Article.

3. Regulation (EC) No 778/1999 shall apply to such
imports.

Article 2

1. Import licence applications may be submitted for
quality durum wheat falling within CN code 1001 10 00
meeting the criteria laid down in Annex I to Regulation
(EC) No 778/1999 from the date of entry into force of
this Regulation until the end of the 45th day thereafter.

2. A total of 50 000 tonnes of durum wheat may be
imported in accordance with this Article.

3. Regulation (EC) No 778/1999 shall apply to such
imports.

Article 3

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, 19 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 146, 20.6.1996, p. 1.

⁽²⁾ OJ L 101, 16.4.1999, p. 36.

COMMISSION REGULATION (EC) No 816/1999
of 19 April 1999

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 21 April 1999.

It shall apply from 21 April to 4 May 1999.

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

Done at Brussels, 19 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 382, 31.12.1987, p. 22.

⁽²⁾ OJ L 177, 5.7.1997, p. 1.

⁽³⁾ OJ L 72, 18.3.1988, p. 16.

⁽⁴⁾ OJ L 289, 22.10.1997, p. 1.

ANNEX

(EUR/100 pieces)

Period from 21 April to 4 May 1999				
Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	11,40	9,80	27,93	13,58
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	10,20	10,69	12,85	10,66
Morocco	13,78	13,38	—	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

COMMISSION REGULATION (EC) No 817/1999

of 19 April 1999

re-establishing the preferential customs duty on imports of multiflorous (spray) carnations originating in Israel

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

down detailed rules for the application of these arrangements;

Having regard to the Treaty establishing the European Community,

Whereas the preferential customs duty fixed for multiflorous (spray) carnations originating in Israel by Regulation (EC) No 1981/94 was suspended by Commission Regulation (EC) No 512/1999 ⁽⁶⁾;Having regard to Council Regulation (EEC) No 4088/87 of 21 December 1987 fixing conditions for the application of preferential customs duties on imports of certain flowers originating in Cyprus, Israel, Jordan and Morocco ⁽¹⁾, as last amended by Regulation (EC) No 1300/97 ⁽²⁾, and in particular Article 5(2)(b) thereof,

Whereas on the basis of price recordings made as specified in Regulations (EEC) No 4088/87 and (EEC) No 700/88 it must be concluded that the requirement for reintroduction of the preferential customs duty laid down in the last indent of Article 2(4) of Regulation (EEC) No 4088/87 is met for multiflorous (spray) carnations originating in Israel; whereas the preferential customs duty should be reintroduced;

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

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

Whereas Council Regulation (EC) No 1981/94 ⁽³⁾, as last amended by Commission Regulation (EC) No 650/98 ⁽⁴⁾, opens and provides for the administration of Community tariff quotas for certain products originating in Algeria, Cyprus, Egypt, Israel, Jordan, Malta, Morocco, the West Bank and the Gaza Strip, Tunisia and Turkey, and providing detailed rules for extending and adapting these tariff quotas;

HAS ADOPTED THIS REGULATION:

*Article 1*Whereas Commission Regulation (EC) No 816/1999 ⁽⁵⁾ fixed Community producer prices for carnations and roses for application of the arrangements for importation from the countries in question;

1. For imports of multiflorous (spray) carnations (CN codes ex 0603 10 13 and ex 0603 10 53) originating in Israel the preferential customs duty set by Regulation (EC) No 1981/94 is reintroduced.

2. Regulation (EC) No 512/1999 is hereby repealed.

Whereas Commission Regulation (EEC) No 700/88 ⁽⁶⁾, as last amended by Regulation (EC) No 2062/97 ⁽⁷⁾, laid*Article 2*

This Regulation shall enter into force on 22 April 1999.

⁽¹⁾ OJ L 382, 31.12.1987, p. 22.⁽²⁾ OJ L 177, 5.7.1997, p. 1.⁽³⁾ OJ L 199, 2.8.1994, p. 1.⁽⁴⁾ OJ L 88, 24.3.1998, p. 8.⁽⁵⁾ See page 15 of this Official Journal.⁽⁶⁾ OJ L 72, 18.3.1988, p. 16.⁽⁷⁾ OJ L 264, 23.10.1997, p. 33.⁽⁸⁾ OJ L 60, 9.3.1999, p. 59.

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

Done at Brussels, 19 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 July 1998

on aid granted by France in connection with the recapitalisation and transfer of the assets of Société de Banque Occidentale (SDBO)

(notified under document number C(1998) 2406)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/262/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

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

Whereas:

I. ARTICLE 93(2) PROCEDURE

By letter dated 3 October 1996 the Commission notified the French authorities of its decision of 18 September 1998 ⁽¹⁾ to initiate the Article 93(2) procedure in respect of the aid granted to Société de Banque Occidentale

(SDBO) and to Crédit Lyonnais (CL) in connection with the transfer of part of SDBO through Consortium de Réalisations (CDR) to Banque des Échanges Internationaux (BDEI), a CL subsidiary. CDR is the hive-off vehicle set up in 1995 under the second CL restructuring plan, for containing CL's non-performing assets, including SDBO. The resale of the healthy part of SDBO to CL, agreed at the beginning of 1996, took place on 28 June 1996, with retroactive effect from 1 January 1996. The Commission learned by letter from CL dated 7 August 1997 that the SDBO assets in question had finally been transferred to Banque de l'Ile-de-France, a CL subsidiary.

The transaction was part of the Crédit Lyonnais restructuring plan which the Commission examined in 1995 and 1998 and approved, subject to certain conditions, in Decision 95/547/EC of 26 July 1995 giving conditional approval to the aid granted by France to the bank Crédit Lyonnais ⁽²⁾ and in Decision 98/490/EC ⁽³⁾. It was in particular stipulated in Decision 95/547/EC that the healthy parts of the banking subsidiaries hived off to CDR would either be sold off to third parties or returned to CL before 31 December 1995, so that no active banking organisation would be retained in CDR after that date.

⁽¹⁾ OJ L 346, 16.11.1996, p. 5.

⁽²⁾ OJ L 308, 21.12.1995, p. 92.

⁽³⁾ OJ L 221, 8.8.1998, p. 28.

As part of the procedure initiated on 18 September 1996, new information on the amount of capital injected and the value of the SDBO assets sold by CDR to CL was submitted by the French authorities to the Commission. As the information was likely substantially to modify the assessment of State aid contained in the measures in question, the Commission decided on 2 April 1997 to extend the procedure initiated on 18 September 1996 pursuant to Article 93(2) of the Treaty⁽¹⁾.

II. DESCRIPTION OF THE MEASURES COVERED BY THIS PROCEDURE

(i) Background to the transaction

SDBO, set up in 1981 through a merger of two medium-sized banks, was a subsidiary of CL until 1995, at which time it was transferred to the CL hive-off structure, CDR, as part of the overall rescue plan for CL. SDBO carried on a conventional banking business with a clientele of mainly small and medium-sized enterprises, and offered a range of commercial banking services, market products, asset management and financial engineering products. A large proportion of its clientele was involved in commercial-court business, property with a strong commercial presence in respect of estate agents, the art market and goodwill-financing in the hotel and catering trade. SDBO's activities grew very rapidly until 1992, chiefly as a result of a sharp increase in its lending to the property market, which totalled FRF 7,6 billion at the end of 1992 out of a total balance sheet of FRF 21,7 billion — an unreasonable concentration of its risks in a sector of which it had little experience before the mid- 1980s and in which it did not have any special know-how. At the beginning of 1990, the slide of the property market began to have dramatic effects on its business. That decline, together with a very difficult economic climate in general, resulted in SDBO's making provision for default on a large proportion of its lending. It was also penalised by inadequate risk control and a concentration of risk on a few very major clients who proved unable to meet their obligations (e.g. Immopar and the Tapie group). The crisis created considerable operating losses of FRF 159 million in 1992, FRF 643 million in 1993 and FRF 468 million in 1994⁽²⁾.

In 1993, SDBO withdrew from its property activities and transferred its property assets to CL's property hive-off, OIG (Omnium immobilier de gestion). SDBO was pared down to the basic banking services and, in 1995, implemented a social plan to cut the workforce from 372 to 242 employees. In 1995 it was transferred to CDR with the other hived-off CL assets. According to information already sent in 1995 to the Commission by the French authorities, the value at which SDBO was transferred to

CDR included FRF 578 million in securities and FRF 2 487 million in loans, representing a contribution to the hive-off amounting to a total asset value of FRF 3 065 million.

In 1995, SDBO's financial position worsened further. It experienced a spectacular drop in business owing to a reduction in customers' deposits from FRF 4,5 billion at the end of 1994 to FRF 2,4 billion at the end of 1995. The use of clients' funds fell from FRF 8,8 billion to FRF 7 billion. The bank's total balance sheet was slashed by some FRF 5 billion, from FRF 17 billion to FRF 12,1 billion. The conditions in which the bank operated continued, owing to the trend in its commercial activities, to generate considerable losses: net receipts from banking, having been in deficit for several years, settled at the minus FRF 506 million mark. As a result of the losses, its own funds were completely exhausted. Once the result for 1985 had been added (and before recapitalisation), SDBO's own capital had fallen to FRF 104 million, which meant that, without recapitalisation by CDR or a potential buyer, its banking licence would have been withdrawn since the solvency ratio would have been below the legal minimum, and it would probably have been wound up.

Table 1

SDBO: principal financial indicators

in FRF million

	1992	1993	1994	1995
Overall net receipts from banking	422	431	485	290
Overheads and depreciation	247	288	276	272
Gross operating result	175	142	208	18
Net result	-159	-643	-468	-506
Total balance sheet	21 750	21 393	17 020	12 128
Own capital	917	798	535	104

Source: SDBO management reports, 1994 and 1995.

At the end of 1995, CDR defined an entity that could be sold, the 'sound' bank, and entrusted its valuation and sale to Compagnie Financière Edmond de Rothschild (CFER). In November 1995 CFER produced a document assessing the value of SDBO and setting out a commercial recovery plan for the new entity (the 'sound' bank). The valuation

⁽¹⁾ OJ C 207, 8.7.1997, p. 5.

⁽²⁾ Net result of the financial year.

took account of several methods currently used in this type of analysis of the value of a firm: the revalued net assets method, the stock exchange comparison method and the 'available' (discounted) cash-flow method. The three methods provided a very wide range of values for the healthy parts of SDBO, ranging from minus FRF 134 million (available flow method) and minus FRF 18 million (stock-exchange comparison method) to FRF 51 million (revalued net assets method). The average value of the healthy parts of SDBO, on the basis of the three methods, was thus minus FRF 34 million. The document stated clearly that it would be necessary to recapitalise the healthy parts of SDBO, valued at FRF 207 million, and that this would be paid for by the purchaser of the 'sound' bank.

This document was then sent in January 1996 to eight French banks selected as potential acquirers of the 'sound' bank, and to CL. The transaction with CL took place, although the final arrangements had not yet been fully defined, on 2 February with the signing between CDR and CL of an agreement on the transfer of a complete branch of SDBO. The agreement stipulates that the partial transfer includes assets, liabilities, performing off-balance sheet commitments and plant. It was extended by a supplementary agreement of 20 March 1996. On 21 May 1996 SDBO and BDEI (Banque des Échanges Internationaux, a CL subsidiary) included an asset transfer agreement. The agreement stipulates that, as SDBO would, under CDR's terms of reference, lose its banking licence, the sale to BDEI for FRF 50 million of a package of the assets and liabilities needed to keep its banking business going would best enhance the potential of that package. The transfer would be backdated to 1 January 1996. The agreement was confirmed at an SDBO extraordinary shareholders meeting on 28 June 1996.

(ii) Reasons for initiating the Article 93(2) procedure on 18 September 1996

At the time, the Commission took the view that the following measures connected with the transfer of part of SDBO to CL were likely to contain aid: (i) the conditions attached to the sale of SDBO; (ii) the capital injected by CDR before the sale of the healthy part of SDBO to CL; (iii) the price paid by CL for regaining the healthy part of SDBO (FRF 50 million); (iv) the payment made by CL to CDR in the form of preference shares.

First, the terms on which the healthy part of SDBO was sold to CL by CDR did not at first sight appear to comply with the normal rules of impartiality that could be expected. In particular, CDR had not put out any unconditional, competitive tender. All eight banks invited early

in 1996 to express an interest were French. CFER, acting as an agent for CDR, had contacted the eight preselected potential buyers on the basis of the buyer's injecting sufficient capital to restore own funds to the requisite level and cover forecast requirements, the amount being estimated at FRF 207 million. CDR received only two bids, from CL and Banque Delubac, and did not select the latter as it covered only a limited number of assets. However, as was pointed out by the Commission when it initiated the Article 93(2) procedure, CDR had finally decided to recapitalise the part transferred to SDBO before its sale to CL. The last-minute recapitalisation at the expense of the vendor was not notified to the eight banks originally contacted, which were thus not given the opportunity to make an offer on the basis of the new position.

Secondly, the Commission took the view in its notice on the initiation of this procedure that the recapitalisation by CDR in 1996 of the disposable part of SDBO, which had not been notified to it, was liable to contain a considerable proportion of State aid. In particular, it pointed out that the liquidation costs were not necessarily higher, as the French authorities believed, than the costs of recapitalisation and disposal. Nor was it proven that the recapitalisation was in proportion to the absolute minimum required.

Thirdly, in its notice of 18 September 1996, the Commission took the view, on the basis of data submitted earlier by the French authorities, that the price of the sale to CL — FRF 50 million — was below the average value of the healthy part of SDBO as defined by the bank advising CDR (namely, FRF 173 million after the injection of the FRF 207 million originally planned), revealing a loss incurred by CDR on the selling price and corresponding aid to CL.

Fourthly, the Commission had taken the view in its initiation of the procedure that the use of CL preference shares to pay for its acquisition could contain elements of State aid, and infringed Decision 95/547/EC.

III. COMMENTS OF OTHER INTERESTED PARTIES

- (i) The Commission received two sets of comments following publication of the procedure in the *Official Journal of the European Communities*.

The United Kingdom submitted its comments by letter of 13 December 1996, stressing the importance it attached

to the need for State aid, such as that approved by the Commission in 1995 under the CL restructuring plan, to be granted once only, in full and final settlement.

Société Générale, which was one of the banks selected by CDR on the recommendation of its advisory bank with a view to the purchase of the healthy part of SDBO, informed the Commission by letter of 4 December 1996 that it agreed with the analysis set out by the Commission in its notice on the sales procedure adopted by CDR. Société Générale had been contacted at the beginning of 1996 by the bank advising CDR only on the basis of recapitalisation at the expense of the buyer of the transferable part of SDBO. Société Générale considered that the cost of acquiring the relevant branch of SDBO would consist of FRF 50 million (revalued net assets of the healthy part of the bank) and the cost of the recapitalisation (FRF 207 million), giving a total cost of FRF 257 million. Société Générale states that, on this basis, it had declined the invitation to tender, that it had not been informed by CDR of changes to its decision to recapitalise the relevant parts of SDBO prior to its sale and that it had only subsequently learned through the press of the altered terms on which CL had acquired the healthy part of SDBO. Société Générale considered that Crédit Lyonnais had thus benefited from aid.

- (ii) Following the extension of the present procedure on 2 April 1997, the Commission also received a letter dated 7 August 1997 from CL, which pointed out in particular that if the transaction had followed the reverse order, that is, if the sale (at a negative price) had preceded recapitalisation at the buyer's expense (CL), the financial consequences for CL and CDR would have been exactly the same. Should the Commission take a negative decision at the end of this procedure, CL considers that it is not liable for repayment of any aid that might be calculated by the Commission, as it believes that it paid a fair price for the healthy part of SDBO.

IV. COMMENTS OF THE FRENCH AUTHORITIES

By letter dated 11 November 1996 the French authorities presented their comments in defence of the measures concerned by the Article 93(2) procedure. They enlarged on their comments by letter dated 29 January 1997. As the letters in question resulted in the Commission's extending the procedure, the French authorities sent additional comments on the extended procedure by letter dated 13 June 1997.

(i) Transfer of the healthy part of SDBO

In reply to the Commission notice on the initiation of the present procedure, the authorities stated in their letter of 11 November 1996 that the small number of banks contacted by the bank advising CDR was due to the limited value of such an acquisition to French and European banking establishments. They stressed that a sale was necessary as quickly as possible in order to offset the erosion of the bank's image due to disputes concerning some of its loans, which justified the simplified procedure adopted. By letter dated 29 January 1997 the authorities considered that the fact that the value calculated by the bank advising CDR was negative necessitated, in order for the sale to take place, prior recapitalisation by the vendor, irrespective of the buyer. If the capital had been injected by the buyer, the selling price would have been negative, which would have entailed payment of the value of the healthy part of SDBO by the vendor to the purchaser. According to the French authorities, such a transaction would have involved material difficulties. They added in their letter of 13 June 1997 that the preliminary tender specifications clearly showed that the value of the assets to be transferred was negative before recapitalisation. They attached a letter from CFER showing the very tight deadlines imposed on the transaction, in view of the crisis in the operation of SDBO, which meant that the banks originally approached could be contacted only by telephone. CFER also stated that the question of recapitalisation by the buyer was simply a working hypothesis with no immediate bargaining value, as the value of the business being sold was negative.

According to the French authorities, CDR rejected the bid by Banque Delubac, the only one submitted by the eight banks contacted, because it covered too few of the assets and activities of SDBO, leaving too high a restructuring cost for CDR.

(ii) Recapitalisation

The recapitalisation of the healthy part of SDBO was, according to the French authorities, re-estimated at FRF 274,5 million at the beginning of 1996. In comparison with the initial estimate of FRF 207 million presented to the eight banks questioned in January of the same year, the increase was due to the need to allocate FRF 57,5 million to the fund for general banking risks in order to consolidate the solvency ratio and the need for FRF 10 million more own funds because of the FRF 400 million increase in the volume of assets to be sold.

However, the recapitalisation actually made in the end was lower: FRF 240,5 million. The French authorities explained this by the fact that the advisory bank CFER had reassessed the value of the assets on the basis of revised estimates made at the beginning of 1996.

(iii) Valuation of the SDBO assets sold. Selling price

By letters of 11 November 1996 and 27 January 1997 the French authorities sent the following comments on the value of the healthy part of SDBO sold to CL.

First, they took the view that, of the different methods for estimating the value of the healthy part of SDBO (discounted cash flows, stock exchange comparisons and revalued net assets), it was proper to prefer the discounted cash flow method producing a negative value, initially estimated at minus FRF 134 million. In support of this view, they have pointed to the concern of potential buyers to prevent such a purchase from having adverse repercussions on their own profitability. This prompted the French authorities to disregard the estimate of the revalued net assets carried out by the bank advising CDR, which had arrived at a higher value (FRF 51 million before recapitalisation), and the valuation made by the advisory bank in the document submitted to potential purchasers, by calculating the average of the values arrived at by the three methods, which produce an estimated negative value of minus FRF 34 million (before recapitalisation).

The French authorities then informed the Commission that the value of the transferred part of SDBO had been revised at the beginning of 1996 by the bank advising CDR. The net receipts from banking were thus revised downwards by FRF 16 million for 1996. An identical correction to the net receipts from banking had been made for the forecasts for the following years. The discounted cash flow method thus resulted in an average negative net value before recapitalisation of minus FRF 220 million instead of minus FRF 134 million set out in the previous CFER reference document.

Taking account of the two factors, the value of the part of SDBO sold after a capital injection of FRF 240,5 million amounts, according to the French authorities, to FRF 20,5 million. As CL purchased the business for FRF 50 million, it is not possible, according to the French authorities, to conclude, as the Commission did in its decision of 18 September 1996 initiating the procedure, that CL benefited from State aid in the form of an under-valuation of the price obtained by CDR, the transfer having on the

contrary produced extra value in relation to the real value of the assets sold to CL.

The Commission having questioned the French authorities in its notice of 2 April 1997 extending the present procedure concerning the difference between the value of FRF 20,5 million after recapitalisation and the price of FRF 50 million paid by Crédit Lyonnais, the French authorities replied by letter of 13 June 1997 that the difference was due to a final adjustment in the volume of the assets to be sold and to the different valuation methods used by CFER, so that the reference values for valuing the business ranged from minus FRF 195 million to minus FRF 236,7 million before recapitalisation — a range after recapitalisation of FRF 45,5 million to FRF 3,8 million. They attached a letter from CFER which explained that the value also depended on the provisioning rate on the outstanding volume of SDBO assets, where a variation of 0,1 % could alter the value by some FRF 20 million. The authorities concluded on that basis that there were no grounds for considering that the price of FRF 50 million was unusual.

(iv) Terms of payment

The French authorities made the following points concerning the use of CL preference shares as a means of payment in the transaction in question. First, the preference shares are securities without any voting rights and are thus not comparable to shares. CDR does not therefore become a CL shareholder, which maintains the necessary separation between CL and the hive-off vehicle. According to the French authorities, the CL preference shares used in this transaction could not, because of stock exchange regulations, be negotiated by CL itself, entitled only to carry out price adjustment operations on its own account. The CL preference shares were transferred at the stock exchange price on the day the contribution was made (28 June 1996). The French authorities also pointed out to the Commission by letter of 11 November 1996 that, from June to October 1996, CDR had been able to sell nearly all the CL preference shares on the stock exchange under satisfactory conditions, for a total of FRF 54 million, so that the end result of the share transactions resulted in a gain for CDR of FRF 6,66 million.

(v) Liquidation costs

In their letter of 11 November 1996, the French authorities repeated their argument that the cost of winding up SDBO, estimated by CDR at FRF 220 to 230 million, would have exceeded the net cost of the transaction borne by CDR, namely some FRF 190 million (that is, the cost of recapitalisation, FRF 240,5 million, minus the product

of the sale, FRF 50 million). The French authorities pointed out that the CDR estimate of liquidation costs was based on an estimate by the bank advising CDR of costs totalling some FRF 180 to 190 million, to which CDR had added FRF 40 million, chiefly to cover social costs, as it considered the amount taken into account by CFER insufficient.

In their letter of 13 June 1997, the French authorities presented two fresh arguments concerning the liquidation costs which CDR would have borne. First, the authorities considered that Annex 16 to the Protocol of agreement of 5 April 1995 between CL and CDR provided for compensation by CDR for all companies of the CL group incurring future costs and consequences of civil, administrative, arbitration or other ongoing procedures relating to the assets and liabilities or commitments guaranteed by CDR, as defined in Annex 16.2.1. The French authorities informed the Commission of the opinion of their lawyers that the social plan negotiated within SDBO was covered by the words 'other ongoing procedures' and that the fact that the plan was not specifically referred to in the Annex in question did not alter that view, the terms defined in the Annex referring only to CDR liabilities and not assets. Secondly, the French authorities and their lawyers referred to recent Court of Appeal (Cour de Cassation) case-law stipulating that redundancies on economic grounds must be preceded by an effort on the part of the employer to find other employment within the group to which the firm belongs, failing which the redundancy becomes void. The French authorities concluded that they are justified on those grounds in including social costs, estimated at FRF 162 million, in the liquidation costs that would be borne by CDR. By letter of 13 June 1997 they revised the previous estimate of the total liquidation costs to be borne by CDR, arriving at a figure of FRF 350 million.

In view of the foregoing, the French authorities took the view that the sale of part of SDBO to CL did not constitute State aid.

V. ASSESSMENT OF THE AID

(i) Distortion of trade between Member States

Competition between financial establishments within the Community is growing as a result of economic and monetary union. With the creation of the single currency,

trade in the Community will be able to develop without incurring risks or exchange costs, which will heighten the distortions of competition that had until then been limited to Member States' domestic markets.

As the Commission pointed out in its notice initiating the procedure, aid that is designed to allow credit institutions to survive despite a lower level of profitability and capacity to meet competitive challenges, such as the aid to SDBO, is liable to distort competition in the Community when it makes it more difficult for foreign banks to enter the various domestic banking markets. Such is the case with the aid in question. It has been explicitly established that no foreign bank was contacted in connection with the disposal of SDBO and none was able to express an interest. Furthermore, by keeping an uncompetitive French business alive by means of the measures in question, financial institutions in other Community countries are deprived of an opportunity to expand their exports of financial services in France so as to reach the clientele of the SDBO branch being sold.

Furthermore, as it was decided to recapitalise part of the business rather than wind up the whole of SDBO, no banks in other Community countries were given the opportunity to acquire the assets, especially the sounder assets sold to CL which would have been put on the market in the event of liquidation.

Consequently, it must be concluded that if the measures in question contain aid, they are caught by Article 92(1) of the Treaty as they constitute State aid which distorts competition to an extent liable to affect trade between Member States.

(ii) Transfer procedure adopted for the healthy part of SDBO

The Commission set out its position on privatisation transactions in its 23rd Competition Report⁽¹⁾ for 1993, and listed cases where such a transaction could be regarded as not containing aid and those where notification would be required owing to a presumption of aid; the cases were also listed in its notice of 18 September 1996 on the initiation of this procedure. The principles provide in particular that there is no State aid and no need to notify if:

- an unconditional competitive tender is held,
- it takes place in non-discriminatory and transparent conditions,

⁽¹⁾ See paragraph 403, page 273. The French authorities had been informed beforehand about the Commission's position by letter of 14 July 1993 from the Director-General for Competition.

- the company is sold to the highest bidder,
- bidders are given enough time and information to carry out a proper valuation of the assets as the basis of their bid.

On the other hand, the Commission considers that a sale must be notified in advance in accordance with Article 93(3) of the Treaty as it may contain State aid if it:

- takes place either after negotiation with the single prospective purchaser or a number of selected bidders (in that event, there may be aid to the purchaser if the price is not a market price and is under-valued (see (iii)(b)),
- or is preceded by the writing-off of debt by the State, other public enterprises or any public body, in which case the aid is granted to the firm receiving the capital injection,
- or is preceded by the conversion of debt into equity or capital increases, in which case the aid is granted to the firm receiving the capital injection (see (iii)(a) and (iv)),
- or takes place on conditions that are not customary in comparable transactions between investors in a market economy.

It seems that the transaction failed in several respects to follow the principles outlined above which could have exempted it from notification, as it was not the subject of an unconditional, transparent and non-discriminatory competitive tender and it was preceded by a capital increase.

The Commission considers in particular that, in two fundamental respects, the sale of the healthy part of SDBO did not satisfy the need for transparency and impartiality. First, the list of banks contacted in January 1996 by the bank advising CDR is limited to eight French institutions. The French authorities justified that on the grounds of the limited value of such an acquisition to French and European banking establishments and by the urgency in view of the deteriorating image of SDBO. The Commission, however, does not see that there is any justification for the preference given to French banks over other Community banks. It is not for the vendor to take the place of a potential buyer in order to decide in advance whether such an acquisition is in the latter's interests. Only by consulting a far larger number of banks, including banks outside France, would it have been possible to check *a posteriori* the accuracy of the French authorities' claim.

The procedure was extremely brief for a sale of this type: the CFER letters to the pre-selected banks were sent between 8 and 11 January 1996 and imposed a strict

deadline of 19 January for all expressions of interest. By 22 January 1996, CFER was already writing to CDR informing it that there were no satisfactory offers for the healthy part of SDBO; it is reasonable to doubt whether the banks approached had an opportunity to examine the file under satisfactory conditions. The sale agreements with CL was signed on 2 February 1996. The Commission notes, however, that the actual sales was on 28 June 1996, following approval of the transaction by an extraordinary general meeting. Thus, there is no evidence either that an approach to a larger number of banks would, in view of the duration of the valuation and transfer procedures, have significantly prolonged the proceedings and would thus have injured SDBO. The precipitate nature of the procedure followed in January has therefore not been satisfactorily justified.

The French authorities also refer to the importance of an adequate knowledge of the French business market owing to the size of SDBO's law courts department and SME-financing department. However, a bank specialising in this area in another Community country could have contributed know-how an expressed and interest in acquiring the 'sound' bank assets of SDBO, thus expanding its activities into France.

Secondly, basic information on the valuation of the business and the recapitalisation of the SDBO branch being sold was modified in the course of the transfer procedure. Only CL was able to benefit from the information on these changes. The other eight banks were not informed by CDR of the revised estimate made by its advisory bank at the beginning of 1996 of the value of the healthy part of SDBO or of the transfer of the obligation to recapitalise the firm from the buyer to the vendor, or of the change in the volume of assets sold by the authorities or, in fine, of the decision by CDR to increase the recapitalisation from FRF 207 million to FRF 240,5 million. As was confirmed by the comments received from Société Générale, none of the eight other banks was given the opportunity to modify their assessment and make an offer on the basis of the new information. By letters of 29 January and 13 June 1997, the French authorities denied that the banks were approached on the basis of recapitalisation at the expense of the buyer and considered that Société Générale could not claim that the invitation to tender would, if it had made an offer, have required it to provide the capital itself.

The Commission has checked this particular point. The assessment report prepared by the bank advising CDR served as a basic document to the invitation to tender and was sent to each of the eight banks in question. Chapter 6.1 'Valuation framework' of the report states that the

valuation of the healthy part of SDBO, referred to as the sound bank, is based on its transfer from CDR to an establishment that will be responsible for its recapitalisation. [...] The valuation [...] will also take account of the fact that the capitalisation of the new establishment will be carried out by the beneficiary. It is thus very clear from this document that the banks approached were consulted on the basis of recapitalisation at the expense of the buyer. The Commission cannot therefore consider, as was claimed by CFER and the French authorities in a letter of 13 June 1997, that recapitalisation by the buyer was only a working hypothesis.

The Commission is not concerned with the desirability as such of recapitalising the relevant part of SDBO before or after a transfer which, in the latter case, would have been at a negative price: in both cases, the transaction should have been notified to it under Article 93 of the Treaty as it involved the transfer of CDR resources. On the other hand, as soon as one method is chosen rather than another, the vendor should keep to it throughout the procedure. These factors, together with the altered estimate of the value and the volume of the SDBO assets in the middle of a transfer procedure, introduce inequality between CL and the other potential buyers. Any change in the initial data supplied to the potential buyer should have given rise to a new invitation to tender. The procedure followed did not therefore guarantee the transfer of the healthy part of SDBO under the necessary conditions of impartiality and transparency.

On the basis of the abovementioned criteria which the Commission applies in cases of privatisation, the transaction should therefore have been notified to it as it was likely to include aid in view of the procedure adopted.

(iii) Measures covered by this procedure

(a) *The recapitalisation*

The recapitalisation measures in question concern the 'healthy' part of SDBO (the 'sound' bank) and not its less-performing assets which, like the legal entity SDBO, remained the property of CDR after the recapitalisation and sale of the 'sound' bank.

The capital injection is an extra cost borne by the State and is not provided for in the restructuring plans for CL approved by the Commission in its decisions of 26 July 1995 and 20 May 1998. As the French authorities pointed out, because the recapitalisation was chiefly intended to make good the negative value of the 'sound' bank to avoid a sale at a negative price, the losses incurred by CDR on the transaction are not related to the book value of the SDBO contribution to CDR in respect of which provi-

sions or loss from transfer were made by CDR and included by the Commission in calculating the estimated aid (upper value within the range) to CL authorised in its decision of 20 May 1998 on CL. The aid in question (see below, confirmation that the transaction comprises aid) may thus differ in nature and amount from the aid to CL already authorised by the Commission.

(b) *Possible aid to the buyer in the terms and price of the sale*

In its notice of 18 September 1996 on the initiation of this procedure, the Commission considered that, in view of the transfer procedure adopted and the value of the firm as estimated at the time by the authorities, there was a presumption of aid to the buyer (CL), assuming that the price paid by the latter for the assets was lower than their value.

Following the extension of the procedure in April 1997, it would seem as matters stand that, in the absence of alternative offers from the other banks approached in January 1996 by the bank advising CDR, a transfer agreement was signed on 2 February 1996 by CDR and Credit Lyonnais on the acquisition of the healthy assets of SDBO by the latter at a price (FRF 50 million) which differed from the reference value fixed by the authorities (minus FRF 20,5 million after recapitalisation) for the healthy part of SDBO. The Commission is unable, owing to that difference and the procedure followed, to conclude that the selling price agreed on by the parties is a market price.

The Commission has noted the information sent by the French authorities by letter of 11 November 1996 on the revaluation of the healthy part of SDBO carried out at the beginning of 1996, based on a correction by the bank advising CDR of the expected results achieved by the SDBO branch being sold and the value of the bank obtained on the basis of discounted income flows, namely a negative value of FRF 220 million. The Commission notes, however, that the valuation method currently preferred by the French authorities is in contradiction with their original presentation of the transaction based on the weighted average of three valuations obtained by different methods.

Despite the inadequacies of the transfer procedure adopted, the Commission is prepared to accept the French authorities' argument that the discounted cash flow method is an appropriate method of valuing the assets to be sold. The Commission generally takes the view that it is the standard method that should be preferred in transactions of this kind, as it values the firm

concerned with a view to its long-term prospects, usually the aim of any buyer. The bank advising CDR had already drawn the latter's attention, in a letter dated 23 February 1996, to the downward revision of the expected results for 1996 and, given the repercussions of the revision on the forecast for subsequent years, stressed the impact on the value of the company determined using the discounted cash flow method. On that basis, the Commission can also accept the new estimated value presented by the French authorities, namely a negative value for the SDBO assets sold of minus FRF 220 million (before recapitalisation).

Given CDR's decision to recapitalise the healthy part of SDBO at its own expense to the tune of FRF 240,5 million, the value of the part sold after recapitalisation is FRF 20,5 million, as the French authorities note in their letter to the Commission of 11 November 1996.

Accordingly, on the basis of the estimated value of the assets accepted by the French authorities and in view of the selling price of FRF 50 million, the Commission concludes that the transaction did not involve aid to the buyer.

It is pointed out, however, that the price at which the healthy part of SDBO (FRF 50 million) was sold to CL is in itself unusual and unjustified, inasmuch as it exceeded the value of the assets by FRF 29,5 million — an overvaluation by some 60 %. The French authorities endeavoured to justify that price in a letter of 13 June 1997 on the ground of a last-minute adjustment to the volume of assets sold and by the very wide range of valuations of the bank, ranging from FRF 3,8 million to FRF 45,4 million, depending on the valuation method used by CFER (namely stock-exchange comparison, revalued net assets and discounted cash-flow methods); they also provided data from CFER on the volatility of the estimate in relation to the provisions for loans of the 'sound' bank. The Commission notes that it is highly contradictory to consider, as the French authorities did in their letter of 11 November 1996, that the value of the bank should in fact be defined solely on the basis of the flow method, giving a value of FRF 20,5 million after recapitalisation (which resulted in the Commission's extending this procedure to take account of the change in the valuation method), and

then later to consider that the selling price should be assessed again on the basis of a range comprising several methods. By imposing an additional cost, corresponding to the extra value, on CL, thus producing an improper transfer of value from CL to CDR, the transaction runs counter to the objectives of the CL restructuring plan. Nevertheless, a price that is higher than the value of the asset does not in itself constitute State aid, especially as the beneficiary of the extra value, CDR, is the holding company created to wind-up CL's bad assets rather than a firm in competition with others.

(iv) Presence of State aid in the recapitalisation

As the Commission pointed out in its notice initiating the procedure, the recapitalisation in question may contain State aid pursuant to Article 92(1) of the Treaty. The recapitalisation, which represents a considerable investment by CDR, should have been notified to the Commission by the authorities before it was carried out by CDR. As the latter is a public undertaking, set up by the State as part of a plan to rescue CL, and is controlled by the public authorities, its resources are State resources within the meaning of Article 92(1) of the Treaty. Any injection of funds by CDR into one of its subsidiaries thus constitutes State aid if, under normal market conditions, a private investor would not have carried out a similar operation⁽¹⁾. If it is confirmed that a non-notified measure of this type constitutes State aid, it is unlawful. It is for the Commission to determine, if appropriate, whether such aid may be regarded as compatible with the Treaty.

The French authorities have not backed their claim that the measure does not constitute State aid with any information on returns on capital invested which would indicate that, under similar circumstances, a private investor would have been prepared to recapitalise the firm. On the contrary, the aid was essentially granted on a non-repayable basis, CDR having recouped only a very small fraction of the capital injected from the selling price. With the exception of Banque Delubac, which submitted a bid rejected by CDR as it did not cover a sufficient number of assets, the fact that all the banks contacted declined the invitation to acquire the 'healthy' part of SDBO, on the basis of the volume of assets defined by the vendor and recapitalisation at the buyer's expense, lends credence to the argument that a private investor would not have invested the capital. Furthermore, the forecasts corrected at the beginning of 1996 by the bank advising CDR indicate that the firm incurred losses in 1996, 1997 and 1998, so that its estimated value using the discounted cash-flow method was very negative (FRF 220 million).

⁽¹⁾ In deciding whether injections of public resources into a firm constitute State aid, the commission applies the principle of a commercial investment in a market economy, see communication to the Member States (OJ C 307, 13.11.1993, p. 3).

The Commission noted the argument put forward by the French authorities by letter of 11 November 1996 that, if the transferable assets of the firm had been wound up, CDR would have incurred costs of some FRF 220 million to 230 million. The recapitalisation (FRF 240.5 million) followed by the sale (FRF 50 million) resulted in net costs (FRF 190 million). In the letter of 13 June 1997 the French authorities also re-estimated at FRF 350 million the total costs of winding up the transferable assets of SDBO, including the liquidation costs for loans outstanding (FRF 180 to 190 million) and social costs (some FRF 160 million). They conclude on this basis that CDR acted as a prudent shareholder and that the recapitalisation measures in question do not constitute aid.

The Commission cannot agree that the liquidation costs referred to by the French authorities are chargeable to the shareholder. The estimated liquidation costs to be borne by the shareholder are based on the assumption that CDR, which owned SDBO, would be required to make good the liabilities in the event of liquidation and was liable for various liquidation charges such as the social costs. In similar precedents, the Commission and the Court of Justice of the European Communities have consistently rejected⁽¹⁾ the argument that such costs are chargeable to the shareholder, on the ground that a shareholder's liability is related to the value of its contribution to the firm's capital and not to all the liquidation debts. The fact that the State (or a public entity such as CDR) takes over all or part of the liquidation debts is not due to its status as a shareholder but to additional obligations which it considers are placed on it and which take the form of aid. Accordingly, in calculating the liquidation costs, the Commission can take account only of those costs that are chargeable to the shareholder State, that is, usually the amount of its contribution to the firm's capital.

The Commission has in particular examined the provisions of the law of 25 January 1985 on company rehabilitation and liquidation⁽²⁾. The law cannot be invoked to establish a shareholder's liability for all the liquidation debts. Article 180 of the law provides that, in the event of the management having contributed to a shortfall in liquidation assets, the *ipso jure* or *de facto* managers are liable for the firm's debts. It should be noted in this connection that CDR cannot in this specific instance be regarded as an *ipso jure* or *de facto* manager (nor is that its role), SDBO having been transferred from CL to the

hive-off vehicle only in 1995 and that, if management errors are at the root of inadequate liquidation assets of SDBO, those errors are very probably due to decisions preceding the hive-off of SDBO, at which time SDBO was already regarded as a poor quality asset of CL, justifying its hive-off. Furthermore, the error or errors committed by the *ipso jure* or *de facto* managers should be identified and their effects should be quantifiable. The managers would thus be liable, not for all the debts of the firm and its liquidation debts, but within the limits of the financial consequences due to any such management errors.

Neither the French authorities nor the present procedure have produced evidence that CDR is equivalent to an *ipso jure* or *de facto* manager of SDBO following the latter's hiving-off to CDR in 1995, or that it committed errors of management which justify requiring it to make good all or part of the liquidation debts of SDBO.

In their letter of 13 June 1997 the French authorities pointed out that Annex 16.2 to the Protocol of 5 April 1995 between CL and CDR provides for CDR to compensate any CL company for possible future costs and consequences of civil, administrative, arbitration or other ongoing proceedings connected with assets, liabilities or commitments guaranteed by CDR, as defined in Annex 16.2.1. The authorities concluded from this that, in the event of liquidation owing to the cessation of the activities which formed the basis for the social plan of 1995, negotiated before SDBO was hived-off to CDR, the latter should have borne the cost of compensating the workforce for the termination of the social plan. The Commission notes, however, that Annex 16.2.1. refers only to transferred assets and not to any social commitments. Furthermore, the event to which the French authorities refer is a liquidation which, when the Protocol was drawn up, was not an ongoing proceeding. The Commission cannot therefore agree with the French authorities on this point or with the views of the lawyers contained in the same letter, to the effect that the social costs of liquidation would have been borne by CDR under the Protocol of Agreement between CL and CDR.

In support of their argument that CDR would bear all or part of the social costs of winding up SDBO, the French authorities referred in the same letter of 13 June 1997 to a recent judgment of the French Court of Appeal (Cour de Cassation)⁽³⁾, stating that redundancy for

⁽¹⁾ See Commission Decision 94/1073/EC (Bull) (OJ L 386, 31.12.1994, p. 1; see judgment of the Court of Justice in Case of 14 September 1994 in Case C-278/92 *Spain v. Commission* [1994] ECR I-4103 *et seq.*, paragraph 22.

⁽²⁾ *Official Journal of the French Republic*, 26.1.1985, p. 1547 *et seq.*

⁽³⁾ Judgments of the Court of Appeal of 5 April 1995 and 3 February 1996.

economic reasons must be preceded by a search for other possible employment within the group to which the employer belongs, failing which the redundancy procedure would become void. However, the obligation in question clearly relates to the search and not to the result. To the extent that CDR (the 'group' to which SDBO belongs) has the task of selling or liquidating the poor-quality assets hived-off to it, and having regard to the mix of activities hived-off, most of which have nothing in common with the banking activities of SDBO, it is unlikely that, if SDBO had been liquidated, there would have been any significant chance of re-employing SDBO staff in the firms hived-off to CDR. Lastly, the French authorities appear to draw an arguable parallel between the obligation of the employer (SDBO) and that of the shareholder (CDR): according to the abovementioned case-law of the Court of Appeal, as presented by the authorities' legal representatives, a redundancy procedure initiated by an employer (SDBO) becomes null and void under certain circumstances (failure to seek alternative employment within the group), but clearly does not impose such a requirement or compensatory payments by the employer, on the shareholder (CDR).

It is not for the Commission to assess the real cost of liquidating the assets transferred to SDBO. According to the estimate presented by the French authorities, the debt liquidation costs apparently totalled some FRF 190 million. The claim that all or even part of such debt liquidation costs would be chargeable to the shareholder CDR under the abovementioned law of 1985 on company rehabilitation and liquidation has not been proved either, and must be rejected by the Commission.

The Commission cannot therefore accept the estimated liquidation costs borne by the shareholder as presented by the French authorities. It is not apparent that CDR chose the least costly option by deciding to recapitalise and sell SDBO, under the conditions described above. Furthermore, on a secondary basis, even if that were the case as a result of management errors by CDR as the *ipso facto* or *de facto* manager, the Commission notes that the provisions of the 1985 law would not enable the French State to claim exemption from Article 92 of the Treaty without flouting the principle of law that arguments cannot be based on one's own faults.

As a result, the private investor would not, on the basis of the foregoing, have carried out the recapitalisation which, as it is liable to affect intra-Community trade, thus consti-

tutes a measure containing aid within the meaning of Article 92(1) of the Treaty. As stated in the Commission notice initiating this procedure, the compatibility of such a measure with the common market can be examined only pursuant to Article 92(3)(c) of the Treaty, on the basis of a new restructuring plan which, in particular, demonstrates that the firm is viable.

(v) Assessment of the compatibility of aid granted in the form of capital injections

As the Court of Justice of the European Communities has consistently held, aid must be assessed on the basis of its effects. In the present case, the effects of the measures concerned, borne by CDR, must be assessed from the standpoint of the 'sound' bank.

In assessing the compatibility of the aid in question, the Commission follows the general principles contained in its guidelines on rescue and restructuring aid⁽¹⁾ which sets out the conditions for such aid to be regarded as compatible with the Treaty. Because the measures do not constitute rescue aid within the meaning of the guidelines, as they are not temporary pending other restructuring measures, their compatibility with the Treaty must be determined by examining whether they may be regarded as restructuring aid and, if appropriate, whether they satisfy the conditions applicable to restructuring aid. In particular, the restructuring plan must restore the viability of the enterprise. Furthermore, in order to be compatible with the Treaty, the measures must not cause distortions of competition contrary to the common interest, the aid must be in proportion to the costs and benefits of restructuring and the plan must be implemented in full.

The authorities have not presented the Commission with any overall restructuring plan for SDBO, although some of its assets were clearly impossible to manage so as to yield a satisfactory rate of return. CDR, however undertook restructuring measures aimed at isolating and reselling to CL the part of SDBO regarded as healthy — the 'sound' bank. The less-performing assets continued to be held by the legal entity of SDBO, within CDR. The measures were undertaken with the support of CFER, which summarised them in a document dated 29 November 1995 (subsequently the subject of consultations in January 1996 with the banks approached with regard to the acquisition of the 'sound' bank), incorporating a commercial plan aimed at improving the position of the entity being sold.

⁽¹⁾ Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 368, 23.12.1994, p. 12).

The measures in question were as follows:

- withdrawal from the property business, already commenced in 1993 — the year in which most SDBO property assets were hived off to the CL property vehicle (Omnium Immobilier de Gestion, subsequently integrated in 1995 in CDR for FRF 44 billion of debt),
- refocusing of the bank's activities on the legal professions, commercial banking services for SMEs, financial engineering, asset management for third parties and market activities,
- the social plan for June to the end of August 1995, involving a substantial reduction in the workforce from 372 to 242 employees,
- an improvement in audit procedures in 1995, including the setting-up of an internal audit team and reinforced management control,
- internal reorganisation of the bank on the basis of two main departments with responsibility for operational matters (law courts department, commercial department, private management, merchant banking), production and logistics.

The Commission notes that these measures, which were already operative in 1995 (and in 1993 as regards the withdrawal from the property market), could not be regarded in 1996 as constituting, at the time of the capital increase in the second quarter, a restructuring plan enabling the fresh aid to be regarded as compatible with the common market.

Apart from the regrouping and reorganisation measures, a commercial plan was approved in 1995 designed to place the 'sound' bank on a healthy footing. The commercial plan, intended to stabilise a turnover rate that had steadily declined in preceding years, was aimed at ensuring that the business remained in strict equilibrium.

The hypothetical results were, however, dependent on the amount of capital that would subsequently be injected into the transferred branch of SDBO, a figure not known when the forecasts were drawn up at the end of 1995. Initially estimated by CFER at FRF 207 million, the recapitalisation would, according to the bank advising CDR, have had the effect of producing a net operating result of FRF 45 million and a result of FRF 9,6 million. If the forecasts had been realised, it would have been possible to envisage the viability of the healthy part of SDBO, although that is not certain since not only was the

return on capital insufficient to attract risk capital but also the firm's result, very close to equilibrium, was particularly vulnerable to any unforeseen hazards. An operating result that was higher by FRF 13 million⁽¹⁾ following a capital injection of FRF 207 million, the figure proposed at the time, would have produced, on the basis of forecasts made at the end of 1995, a corrected net result of FRF 15 million in 1998, which still represents a very low rate of return.

Table 2

Projections for the commercial plan drawn up at the end of 1995

(FRF million)

	1996	1997	1998
Gross margin	193	190	195
Gross operating result	40	32	37
Net result	6,5	0,8	2,5
Own capital⁽¹⁾	300		
Profitability	2,1	na	na

⁽¹⁾ 1996 budget hypothesis

Source: CFER

The figures (see Table 2), however, which were provisional when the forecasts were drawn up at the end of 1995, were already irrelevant when the transfer took place in 1996. According to information provided by the French authorities by letter of 11 November 1996, at the beginning of 1996 the bank advising CDR corrected its 1996 estimate of the expected result for SDBO by FRF 16 million downwards and applied a similar negative correction to the subsequent years. On the basis of that correction, the 'sound' bank would have incurred losses in 1996, 1997 and 1998. As a result, using the discounted cash-flow method, the advisory bank produced a very negative estimate of the value of the company. As a result, at the end of the transaction, the recapitalised entity could not be regarded as viable.

Thus the first requirement, according to the abovementioned guidelines, for aid to be regarded as compatible has not been satisfied. The commercial recovery plan contained in the CFER document submitted by the French authorities to the Commission cannot be accepted by the latter as it has been established that, during the transaction in question, it did not allow the firm to become viable. As the aid granted to the assets sold was not intended to accompany a plan capable of restoring viability, it cannot be regarded as restructuring aid but as *de facto* operating aid. The plan therefore does not satisfy the requirements of the guidelines.

⁽¹⁾ FRF 207 million multiplied by an average long-term interest rate of 6,5 % in 1996.

As it distorts competition to an extent which may affect intra-Community trade (see Section V(i)), the recapitalisation comprises elements of State aid pursuant to Article 92(1) of the Treaty and, as it was not notified, it is therefore unlawful. In view of the fact that, as was established by the Commission in its notice initiating the procedure, its compatibility with the Treaty could be assessed only pursuant to Article 92(3)(c) of the Treaty on the basis of a new restructuring plan demonstrating, in particular, the viability of the firm, it must be concluded in view of the foregoing that the recapitalisation of the healthy part of SDBO constitutes aid that is incompatible with the common market and unlawful as it was implemented without being notified.

action gives rise to aid in respect of the discount which a private investor would have required. It is particularly difficult, however, to assess the amount of aid. In view of the extra value of FRF 29,5 million which CL paid for the 'sound' bank — about 60 % of the amount of the transaction — the Commission considers that this element of aid to CL cannot exceed the extra value of 60 % in question and that it should not therefore be included in the calculation of aid covered by this Decision.

VI. CONCLUSIONS

(vi) Mode of payment by the buyer

Taking note of the information supplied by the French authorities and outlined in Section IV, the Commission considers that payment in the form of CL preference shares rather than payment in cash for SDBO was inappropriate. In any such transaction, all payments in the form of listed securities, the value of which is volatile, may give rise to aid where the State sells some of its assets in exchange for the buyer's securities. Furthermore, the fact that CDR held CL securities, even temporarily, is contrary to the need for strict separation between the hive-off vehicle and CL pursuant to Decision 95/547/EEC. Any decline in the value of CL would be reflected in the value of the preference shares held by CDR.

As the Commission has not been informed of any factors offsetting the risk incurred by CDR in connection with this method of payment, it is highly unlikely that, before the completion of this transaction, a private shareholder would have agreed to sell its assets in exchange for volatile securities. There was a considerable risk of incurring a loss, as the poor results of the bank produced the safeguard measures notified to the Commission in September; the risk should have been avoided, particularly in view of the volatility of the preference share rate, which fell by some 50 % between 31 December 1995 and June 1996. The Commission, which analysed the transaction on the basis of the conditions known on the date of the transaction (and not on the basis of the *ex post* gain made by CDR on the securities), considered that a private operator would, in view of such volatile securities as the CL preference shares which had fallen by almost 50 % in the month preceding the transaction, have demanded a discount on the stock exchange rate in order to take account of that risk. It therefore considers that the trans-

Concluding the procedure initiated on 18 September 1996 and extended on 2 April 1997 concerning the recapitalisation and transfer of part of SDBO to CL, the Commission has reached the following conclusion:

1. The procedure for the transfer of the healthy part of SDBO failed to apply the equality of treatment that is desirable between, on the one hand, the eight pre-selected potential buyers and, on the other, CL. Having taken place without an open and unconditional invitation to tender, it should have been notified to the Commission under the criteria defined in the 23rd Competition Report. In particular, it did not allow the banks of other Community countries to submit bids and consequently distorted competition in the Community to an extent liable to affect trade between the Member States. The price paid for the transfer of the healthy assets of SDBO — FRF 50 million — is an excessive purchase price, to the detriment of CL as regards the FRF 29,5 million in extra value paid by CL. In view of the selling price and extra value paid by CL, the Commission concludes that the transaction did not involve State aid to the purchaser, which would have been the case, as stated when this procedure was initiated, if the selling price had been too low in relation to the real value of the assets sold.
2. The recapitalisation of the SDBO assets sold to CL increased CDR's losses and caused the hive-off mechanism to exceed the costs approved by the Commission in Decisions 95/547/EC and 98/490/EC on CL. However, the additional losses borne by the hive-off are not chargeable to CL in the same way as provisions for asset depreciation which occurred during the transfer of the CL assets or subsequently during the hiving-off: the cause of the losses is not the hive-off operation but a management decision, for which CDR alone is responsible, taken after the transfer of the assets in question from CL to CDR. It should

be noted that, although CDR continues to be wholly-owned by CL, it is not consolidated and is not involved in any of the management or supervisory bodies of CDR. The nature of the aid and its recipient are different from the aid to CL. As a result, the recapitalisation of SDBO is a measure intended to assist the 'sound' bank sold immediately after the transaction and not CL as part of the overall hive-off operation.

3. The recapitalisation of FRF 240,5 million prior to the disposal of the healthy part of SDBO, which had a negative value and could have been wound up at less cost to the shareholder, constitutes State aid to the recapitalised entity because a private investor would not have invested such capital under similar circumstances. As the recapitalisation was not notified to the Commission, it is unlawful. Furthermore, it was not accompanied by a restructuring plan demonstrating the viability of the firm, with the result that the exemption provided for in Article 92(3)(c) of the Treaty which was, as stated in the notice initiating this procedure, the only possible exemption under the circumstances, is not applicable. The aid in question is therefore not compatible with the Treaty.
4. The terms of payment for the sale of the healthy part of SDBO in the form of CL preference shares are not appropriate to such a transaction, in particular because the parties to the contract have unequal information with a view to determining their value. They are also contrary to the necessary separation between CDR and CL. They constitute aid to CL amounting to the value of the discount on the securities which a private vendor, remunerated in this way, would have required at the end of the transaction. However, in view of the extra value of FRF 29,5 million paid by CL, the Commission takes the view that the discount should not exceed that amount, namely about 60 % of the selling price, and that CL did not benefit from any aid in the transaction in question.
5. The Commission concludes that State aid was granted through the measures covered by the procedure initiated on 18 September 1996 in the form of the recapitalisation by CDR of the SDBO assets sold to CL for FRF 240,5 million. The Commission cannot deduct the product of the sale (FRF 50 million) from that amount, as the funds paid by CL also constitute

State resources within the meaning of Article 92(1) of the Treaty and do not reduce the amount of State resources employed in this transaction. The aid granted by CDR in the context of the transaction amounts to a total FRF 240,5 million,

HAS ADOPTED THIS DECISION:

Article 1

The capital increase of FRF 240,5 million granted by the French State through CDR to SDBO before the transfer of its healthy activities to CL constitutes State aid within the meaning of Article 92(1) of the Treaty and Article 61(1) of the EEA Agreement. The aid is unlawful and is incompatible with the common market within the meaning of Article 92(2) and (3) of the Treaty and Article 61(2) and (3) of the EEA Agreement.

Article 2

France shall take steps to recover the full amount of FRF 240,5 million constituting the State aid in question. The amount to be repaid shall bear interest from the date on which the aid was granted, at the reference rate established by the Commission for the calculation of the net grant equivalent of aid in France.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 22 July 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION

of 19 April 1999

amending Decision 1999/120/EC drawing up provisional lists of third-country establishments from which the Member States authorise imports of animal casings

(notified under document number C(1999) 962)

(Text with EEA relevance)

(1999/263/EC)

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

Having regard to Council Decision 95/408/EC of 22 June 1995 on the conditions for drawing up, for an interim period, provisional lists of third-country establishments from which Member States are authorised to import certain products of animal origin, fishery products or live bivalve molluscs ⁽¹⁾, as last amended by Decision 98/603/EC ⁽²⁾, and in particular Article 2(4) thereof,

- (1) Whereas provisional lists of establishments in third countries producing animal casings have been drawn up by Commission Decision 1999/120/EC ⁽³⁾;
- (2) Whereas Afghanistan, Costa Rica, Honduras, Japan, Latvia, Paraguay, South Africa, Turkmenistan and Uzbekistan have sent lists of establishments producing animal casings and for which the responsible authorities certify that the establishments are in accordance with the Community rules;
- (3) Whereas provisional lists of establishments producing animal casings can thus be drawn up for Afghanistan, Costa Rica, Honduras, Japan, Latvia, Paraguay, South Africa, Turkmenistan and Uzbekistan; whereas Decision 1999/120/EC should therefore be amended accordingly;

- (4) 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

The lists of establishments producing animal casings in the Annex to this Decision are added, in alphabetical order, to the Annex to Decision 1999/120/EC.

Article 2

This Decision shall apply from 1 April 1999.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 19 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 243, 11.10.1995, p. 17.

⁽²⁾ OJ L 289, 28.10.1998, p. 36.

⁽³⁾ OJ L 36, 10.2.1999, p. 21.

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

‘País: AFGANISTÁN / Land: AFGHANISTAN / Land: AFGHANISTAN / Χώρα: ΑΦΓΑΝΙΣΤΑΝ /
Country: AFGHANISTAN / Pays: AFGHANISTAN / Paese: AFGHANISTAN / Land:
AFGHANISTAN / País: AFGANISTÃO / Maa: AFGANISTAN / Land: AFGHANISTAN

1	2	3	4	5
4321	Arif Zarif Ltd Factories: Shohada, Kabul, Shaida-I, Heart	Kabul		
18046	Habib Waheed Ltd Factories: Parwan-3, Kabul, Panjwa-I, Kandahar,	Kabul		
3538	Afghon Casin Company Factories: Shohada-I salehin, Kabul Pulli Behsood	Kabul		
3775	Sharifyar Company Factories: Shah Shahid, Kabul Puli Saracha, Jalalabad	Kabul’		

‘País: COSTA RICA / Land: COSTA RICA / Land: COSTA RICA / Χώρα: ΚΟΣΤΑ ΡΙΚΑ / Country:
COSTA RICA / Pays: COSTA RICA / Paese: COSTA RICA / Land: COSTA RICA / País: COSTA
RICA / Maa: COSTA RICA / Land: COSTA RICA

1	2	3	4	5
124-DIC-99	El Arreo S.A.	Alajuela	Alajuela’	

‘País: HONDURAS / Land: HONDURAS / Land: HONDURAS / Χώρα: ΟΝΔΟΥΡΑ / Country:
HONDURAS / Pays: HONDURAS / Paese: HONDURAS / Land: HONDURAS / País:
HONDURAS / Maa: HONDURAS / Land: HONDURAS

1	2	3	4	5
SUB-01	Honimex S.A. de C.V.	Tegucigalpa	Capital’	

‘País: JAPÓN / Land: JAPAN / Land: JAPAN / Χώρα: ΙΑΠΩΝΙΑ / Country: JAPAN / Pays:
JAPON / Paese: GIAPPONE / Land: JAPAN / País: JAPÃO / Maa: JAPANI / Land: JAPAN

1	2	3	4	5
2855001	New Asia Trading Co. Ltd, Kawanishi Plant	Kawanishi	Hyogo	
2865001	Matsunaga Corporation Kansai Office Factory	Ako-Shi	Kyogo’	

‘País: LETONIA / Land: LETLAND / Land: LETTLAND / Χώρα: ΛΕΤΟΝΙΑ / Country: LATVIA / Pays: LETTONIE / Paese: LETTONIA / Land: LETLAND / País: LETÓNIA / Maa: LATVIA / Land: LETTLAND

1	2	3	4	5
LV-11G	SIA “SW-KOVER”	Demenes village	Daugvpils’	

‘País: PARAGUAY / Land: PARAGUAY / Land: PARAGUAY / Χώρα: ΠΑΡΑΓΟΥΑΗ / Country: PARAGUAY / Pays: PARAGUAY / Paese: PARAGUAY / Land: PARAGUAY / País: PARAGUAI / Maa: PARAGUAY / Land: PARAGUAY

1	2	3	4	5
05	Expacar S.A.	Asunción	Capital	
08	Frigobeef	Asunción	Capital	
13	I.P.F.S.A.	Asunción	Capital	
18	Guaraní S.A.	Asunción	Capital	
142	INCADER S.R.L.	Asunción	Capital	
143	TRIPAR S.A.	Villeta	Dep. Central’	

‘País: SUDÁFRICA / Land: SYDAFRIKA / Land: SÜDAFRIKA / Χώρα: ΝΟΤΙΟΣ ΑΦΡΙΚΗ / Country: SOUTH AFRICA / Pays: AFRIQUE DU SUD / Paese: SUDAFRICA / Land: ZUID-AFRIKA / País: ÁFRICA DO SUL / Maa: ETELÄ-AFRIKKA / Land: SYDAFRIKA

1	2	3	4	5
ZA 42	Exim International (Pty) Ltd	Maitland	Western Cape’	

‘País: TURKMENISTÁN / Land: TURKMENISTAN / Land: TURKMENISTAN / Χώρα: ΤΟΥΡΚΜΕΝΙΣΤΑΝ / Country: TURKMENISTAN / Pays: TURKMÉNISTAN / Paese: TURKMENISTAN / Land: TURKMENISTAN / País: TURQUEMENISTÃO / Maa: TURKMENISTAN / Land: TURKMENISTAN

1	2	3	4	5
1	Individual enterprise “Paykhas”	Maryjskij	Bazarskij district	
2	Non-profit trade and production association	Mary town		
3	Football club “Nissa”	Ashkhabat town’		

‘País: UZBEKISTÁN / Land: USBEKISTAN / Land: USBEKISTAN / Χώρα: ΟΥΖΜΠΕΚΙΣΤΑΝ /
Country: UZBEKISTAN / Pays: OUZBÉKISTAN / Paese: UZBEKISTAN / Land:
OEZBEKISTAN / País: UZBEQUISTÃO / Maa: UZBEKISTAN / Land: UZBEKISTAN

1	2	3	4	5
1	Arian Khafiz Ltd	Shura-Bazar	Tashkent'	