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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1016/1999
of 17 May 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 18 May 1999.

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

Done at Brussels, 17 May 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 17 May 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	105,2
	068	92,4
	999	98,8
0707 00 05	052	82,4
	064	41,3
	628	133,3
	999	85,7
0709 90 70	052	51,8
	999	51,8
0805 10 10, 0805 10 30, 0805 10 50	204	44,4
	212	63,8
	600	47,0
	624	49,3
	999	51,1
0805 30 10	052	63,1
	388	74,9
	999	69,0
0808 10 20, 0808 10 50, 0808 10 90	388	69,5
	400	99,3
	508	75,8
	512	76,9
	524	79,1
	528	62,9
	720	82,3
	804	101,5
	999	80,9

⁽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 1017/1999

of 17 May 1999

reducing the Community withdrawal compensation for cauliflowers for the 1999/2000 marketing year as a result of the overrun of the intervention threshold fixed for the 1998/99 marketing year

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

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as amended by Regulation (EC) No 857/99 ⁽²⁾, and in particular Article 27(2) thereof,

- (1) Whereas Commission Regulation (EC) No 1068/98 ⁽³⁾ fixes at 111 300 tonnes the intervention threshold for cauliflowers for the 1998/1999 marketing year; whereas under Article 3 of that Regulation, if the quantity of cauliflowers withdrawn in the period between 1 March 1998 and 28 February 1999 exceeds the threshold fixed, the Community withdrawal compensation indicated in Annex V to Regulation (EC) No 2200/96 for the 1999/2000 marketing year is to be reduced in proportion to the size of the overrun based on the production used to calculate the relevant threshold;
- (2) Whereas the information supplied by the Member States indicates that withdrawals for the 1998/1999 marketing year involved 120 064 tonnes of cauliflowers;
- (3) Whereas, as a result of the above, the Community withdrawal compensation set by Regulation (EC)

No 2200/96 for the 1999/2000 marketing year must be reduced by 0,4 % for cauliflowers;

- (4) Whereas Article 3 of Regulation (EC) No 1068/98 lays down that the consequences of the threshold overrun are to apply in the following marketing year; whereas it is therefore necessary to apply the reduced Community withdrawal compensation during the marketing year for cauliflower;
- (5) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

The Community withdrawal compensation for cauliflowers for the 1999/2000 marketing year is hereby fixed at EUR 8,38 per 100 kilograms net.

Article 2

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

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

Done at Brussels, 17 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 6.

⁽²⁾ OJ L 108, 27.4.1999, p. 7.

⁽³⁾ OJ L 153, 27.5.1998, p. 9.

COMMISSION REGULATION (EC) No 1018/1999
of 17 May 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 18 May 1999.

It shall apply from 19 May to 1 June 1999.

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

Done at Brussels, 17 May 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 19 May to 1 June 1999				
Community producer price	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
	16,19	9,31	33,24	16,43
Community import prices	Uniflorous (bloom) carnations	Multiflorous (spray) carnations	Large-flowered roses	Small-flowered roses
Israel	12,69	8,15	16,19	14,41
Morocco	13,45	15,83	8,00	—
Cyprus	—	—	—	—
Jordan	—	—	—	—
West Bank and Gaza Strip	—	—	—	—

COMMISSION REGULATION (EC) No 1019/1999
of 17 May 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 940/1999 ⁽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 1018/1999 ⁽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 940/1999 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 20 May 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 4 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 117, 5.5.1999, p. 22.

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

Done at Brussels, 17 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DIRECTIVE 1999/39/EC

of 6 May 1999

amending Directive 96/5/EC on processed cereal-based foods and baby foods for infants and young children

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 89/398/EEC of 3 May 1989 on the approximation of the laws of the Member States relating to foodstuffs for particular nutritional uses ⁽¹⁾, as amended by Directive 96/84/EC of the European Parliament and of the Council ⁽²⁾, and in particular Article 4(1) thereof,

After consulting the Scientific Committee for Food,

- (1) Whereas Article 6 of Commission Directive 96/5/EC ⁽³⁾, as amended by Directive 98/36/EC ⁽⁴⁾, provides that processed cereal-based foods and baby foods shall not contain any substance in such quantity as to endanger the health of infants and young children and that necessary maximum levels for such substances shall be established without delay;
- (2) Whereas different regulations on the maximum levels of pesticide residues in processed cereal-based foods and baby foods cause trade barriers between certain Member States;
- (3) Whereas maximum levels for pesticide residues stipulated in Council Directive 76/895/EEC of 23 November 1976 relating to the fixing of maximum levels for pesticide residues in and on fruit and vegetables ⁽⁵⁾, as last amended by Directive 97/41/EC ⁽⁶⁾, in Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽⁷⁾, as last amended by Directive 98/82/EC ⁽⁸⁾, in Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ⁽⁹⁾, as last amended by Directive 98/82/EC, and in Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and

vegetables ⁽¹⁰⁾, as last amended by Directive 98/82/EC, are without prejudice to specific provisions applicable to processed cereal-based foods and baby foods;

- (4) Whereas, taking into account the Community's international obligations, in cases where the relevant scientific evidence is insufficient, the precautionary principle allows the Community to provisionally adopt measures on the basis of available pertinent information, pending an additional assessment of risk and a review of the measure within a reasonable period of time;
- (5) Whereas on the basis of the two opinions given by the Scientific Committee for Food on 19 September 1997 and 4 June 1998 there are at presents doubts as to the adequacy of existing acceptable daily intake values (ADI) for the protection of the health of infants and young children; whereas the doubts expressed concern not only pesticides and pesticide residues, but also dangerous chemical substances, and consequently the Commission will examine the possibility of fixing, as soon as possible, maximum levels for heavy metals in foods intended for infants and young children;
- (6) Whereas, therefore, as far as foods for particular nutritional uses intended for infants and young children are concerned, it is appropriate to adopt a very low common limit for all pesticides pending case-by-case scientific screening and evaluation of substances;
- (7) Whereas this very low common limit should be fixed at 0,01 mg/kg which is in practice the minimum detectable level;
- (8) Whereas the Commission in cooperation with interested parties will endeavour to complete the review without delay and to fix the appropriate and scientifically justified levels to be incorporated in a new Annex VII;

⁽¹⁾ OJ L 186, 30.6.1989, p. 27.

⁽²⁾ OJ L 48, 19.2.1997, p. 20.

⁽³⁾ OJ L 49, 28.2.1996, p. 17.

⁽⁴⁾ OJ L 167, 12.6.1998, p. 23.

⁽⁵⁾ OJ L 340, 9.12.1976, p. 26.

⁽⁶⁾ OJ L 184, 12.7.1997, p. 33.

⁽⁷⁾ OJ L 221, 7.8.1986, p. 37.

⁽⁸⁾ OJ L 290, 29.10.1998, p. 25.

⁽⁹⁾ OJ L 221, 7.8.1986, p. 43.

⁽¹⁰⁾ OJ L 350, 14.12.1990, p. 71.

- (9) Whereas severe limitations on pesticide residues should be required ; whereas, with careful selection of raw materials, and given that processed cereal-based foods and baby foods undergo extensive processing during their manufacture, it is feasible to produce products containing very low levels of pesticide residues;
- (10) Whereas, however, for a small number of pesticides even such low levels might allow the possibility that under worst-case intake conditions the ADI of these pesticides is exceeded; whereas, therefore, processed cereal-based foods and baby foods should be free of those particular pesticides and should be produced without the use of such pesticides;
- (11) Whereas, as and when ADI is derived from the scientific evaluation of pesticides carried out pursuant to Council Directive 91/414/EEC⁽¹⁾, as last amended by Commission Directive 1999/1/EC⁽²⁾, this ADI will be used as the basis for the establishment of maximum residue limits for processed cereal-based foods and baby foods, using, where appropriate, the approach followed in the framework of Directives 86/362/EEC, 86/363/EEC and 90/642/EEC;
- (12) Whereas this Directive reflects current knowledge about these substances; whereas any amendment, based on scientific or technical progress, will be decided by the procedure laid down in Article 13 of Directive 89/398/EEC;
- (13) Whereas Directive 96/5/EC should be amended accordingly;
- (14) Whereas the measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Foodstuffs,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 96/5/EC is hereby amended as follows:

1. The following indent is added to Article 1(4):

— “pesticide residue” shall mean the residue in processed cereal-based foods and baby foods of a plant protection product, as defined in point 1 of Article 2 of Council Directive 91/414/EEC^(*), including its metabolites and products resulting from its degradation or reaction,

(*) OJ L 230, 19.8.1991, p. 1’

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 21, 28.1.1999, p. 21.

2. Article 6 is replaced by the following:

‘Article 6

1. Processed cereals-based foods and baby foods shall not contain any substance in such quantity as to endanger the health of infants and young children. Necessary maximum levels shall be established without delay.

2. Processed cereal-based foods and baby foods shall not contain residues of individual pesticides at levels exceeding 0,01 mg/kg, except for those substances for which specific levels have been set in Annex VII, in which case these specific levels shall apply.

The above levels apply to processed cereal-based foods and baby foods as proposed ready for consumption or as reconstituted according to the instructions of the manufacturer.

Analytical methods for determining the levels of pesticide residues shall be generally acceptable standardised methods.

3. Those pesticides listed in Annex VIII shall not be used in agricultural products intended for the production of processed cereal-based foods and baby foods.

4. Microbiological criteria shall be established as necessary;’

3. the following Annexes VII and VIII are added:

‘ANNEX VII

Specific maximum residue levels of pesticides in processed cereal-based foods and baby foods

Chemical name of the substance	Maximum Residue Limite (*)

(*) The analytical method used shall be validated and shall have a limit of detection which allows detection of the substance at the established Maximum Residue Limit.

ANNEX VIII

Pesticides which shall not be used in agricultural products intended for the production of processed cereal-based foods and baby foods.

Chemical name of the substance

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 30 June 2000. They shall forthwith inform the Commission thereof.

Those laws, regulations and administrative provisions shall be applied in such a way as to:

- (a) permit trade in products conforming to this Directive no later than 30 June 2000;
- (b) prohibit trade in products which do not comply with this Directive, with effect from 1 July 2002.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 6 May 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

COMMISSION DIRECTIVE 1999/40/EC

of 6 May 1999

adapting to technical progress Council Directive 79/622/EEC relating to the roll-over protection structures of wheeled agricultural or forestry tractors (static testing)

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Article 2

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 74/150/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to the type-approval of wheeled agricultural or forestry tractors⁽¹⁾, as last amended by Directive 97/54/EC⁽²⁾ of the European Parliament and of the Council and in particular Article 11 thereof,

Having regard to Council Directive 79/622/EEC of 25 June 1979 on the approximation of the laws of the Member States relating to the roll-over protection structures of wheeled agricultural or forestry tractors⁽³⁾, as last amended by Directive 88/413/EEC⁽⁴⁾, and in particular Article 11 thereof,

- (1) Whereas, in order to improve safety, it is now necessary to clarify the testing arrangements for roll-over protective structures by taking account of the wide range of equipment used;
- (2) Whereas the arrangements for testing such structures should be harmonised with the arrangements defined in Organisation for Economic Cooperation and Development (OECD) code 4 for the official testing of protection structures of agricultural tractors (static tests);
- (3) Whereas the provisions of this Directive are in accordance with the opinion of the Committee for Adaptation to Technical Progress established by Article 12 of Directive 74/150/EEC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes II and III to Directive 79/622/EEC are hereby amended as shown in the Annex hereto.

1. From 1 July 2000, Member States may not:

- refuse to grant EC type-approval, to issue the document provided for in the third indent of Article 10(1) of Directive 74/150/EEC, or to grant national type-approval, in respect of a type of tractor, or
- prohibit the entry into service of tractors,

if the tractors in question meet the requirements of Directive 79/622/EEC, as amended by this Directive.

2. From 1 January 2001, Member States:

- shall no longer issue the document provided for in the third indent of Article 10(1) of Directive 74/150/EEC in respect of any type of tractor which does not meet the requirements of Directive 79/622/EEC, as amended by this Directive,
- may refuse to grant national type-approval in respect of any type of tractor which does not meet the requirements of Directive 79/622/EEC, as amended by this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2000 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law that they adopt in the field governed by this Directive.

⁽¹⁾ OJ L 84, 28.3.1974, p. 10.

⁽²⁾ OJ L 277, 10.10.1997, p. 24.

⁽³⁾ OJ L 179, 17.7.1979, p. 1.

⁽⁴⁾ OJ L 200, 26.7.1988, p. 32.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 6 May 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

ANNEX

Annexes II and III to Directive 79/622/EEC are amended as follows:

1. in Annex II, the following text is added in point 1.2.4:

‘All components that the driver could himself remove shall be removed for the tests. If it is possible to keep the doors and windows open or to remove them when the tractor is in use, they must be kept open or removed during the tests, so as not to increase the strength of the roll-over protection structure. If, in this position, they constitute a danger for the driver should the tractor roll over, the test report must refer to this fact.’

2. Annex III is amended as follows:

- (a) the following text is added to the first subparagraph of point 1.3:

‘In the case of a tractor with a reversible position, the load shall be applied to the upper extremity of the roll-over protection structure half-way between the two seat reference points.’

- (b) the following points 2.2.11, 2.2.12 and 2.2.13 are inserted:

‘2.2.11. In the case of a tractor with a reversible driving position, the clearance shall be a combination of the two clearances determined for the two positions of the steering wheel and seat.

2.2.12. In the case of a tractor which can be fitted with optional seats, the tests shall be based on the combined seat-reference-point clearance for all available seat options. The roll-over protection structure must not enter the combined clearance around the various seat reference points.

2.2.13. Where a new seat option is proposed after the test has taken place, a calculation is made to determine whether the clearance around the new seat reference point is located entirely within the clearance previously established. If this is not the case, a new test is required.’

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 April 1999

on the application of Article 9 of Council Directive 96/67/EC to Roissy-Charles de Gaulle airport

(notified under document number C(1999) 1067)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/326/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 96/67/EC of 15 October 1996 on access to the groundhandling market at Community airports ⁽¹⁾, and in particular Article 9(5) thereof,

Having regard to the request for approval of the decision of the French authorities of 8 January 1999, and after consulting those authorities,

After consulting the Advisory Committee,

Whereas:

**I. SCOPE OF THE EXEMPTION NOTIFIED
BY THE GOVERNMENT OF THE FRENCH
REPUBLIC**

**1. The notification presented by the French
authorities**

- (1) By letters of 8 and 27 January 1999, as registered by the Commission on 13 and 27 January 1999, the French authorities notified a request to approve the decision of the Government of the French Republic of 8 January 1999 to grant to Roissy-

Charles de Gaulle airport (hereinafter CDG) an exemption:

— as regards terminal CDG 2:

to ban self handling and to reserve for the airport the provision of services to third parties concerning the transport of passengers between the terminal and the aircraft; category of services listed under point 5.4 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(b) and (d) of the Directive, until 31 December 2000,

— as regards terminal T 9:

— to reserve for the airport the provision of services to third parties for the categories of services listed under points 3, 5.1, 5.2, 5.4 concerning the loading and unloading of the aircraft and the transport of baggage between the terminal and the aircraft, along with the services listed under 5.5 and 5.6 of the Annex to the Directive, on the basis of Article 9(1)(b),

— to limit to two the number of service providers and users authorised to self handle for the category of services listed under point 2 of the Annex to the Directive. This exemption is granted, on the basis of Article 9(1)(a) and (c) of the Directive, until 1 April 2000.

⁽¹⁾ OJ L 272, 25.10.1996, p. 36.

- (2) This decision is based on the provisions of the Decree of 22 December 1998 restricting access to the market for certain categories of groundhandling operations at the airport, in particular Article 4, which lays down special provisions for the operations covered by this exemption.
- (3) The decision also provides for a restriction in all terminals, CDG 1, CDG 2 and T9, where passenger and freight transport is concerned, to three self handling airlines for each of the services listed under categories 3, 4, 5.2, 5.4, 5.5 and 5.6. This restriction stems solely from the decision of the Member State in application of Article 7(2) of the Directive and is thus not affected by the present Decision.
- (4) Pursuant to Article 9(3) of the Directive, the Commission published an extract of this notification in the *Official Journal of the European Communities*⁽¹⁾ of 6 March 1999 and invited interested parties to submit comments.
- (5) In accordance with Article 9(5) of the Directive, the French Government was consulted by the Commission on the Commission's draft evaluation on 18 and 24 March 1999. The French authorities responded to this consultation with written comments dated 19, 25 and 26 March 1999.

Basis of the exemption

- (6) The general rules for access to the groundhandling services market are set out in Articles 6 and 7 of the Directive. These provisions clearly state the principle that most categories of groundhandling services should be opened up to the maximum possible extent. For an airport with the volume of traffic that Roissy-Charles de Gaulle has the Directive provides for recognition of the right to self handle as from 1 January 1998 and opens up the groundhandling market to third parties as from 1 January 1999. However, because of the specific situation and role of an airport, and in particular constraints of safety and security, but also space and capacity, which can arise in certain parts of most airports, the Directive does not impose total freedom but requires a minimum degree of

opening up of both self handling and services to third parties for four categories of services located air-side, i.e. in a particularly sensitive area of the airport. These categories concern ramp handling, baggage handling, fuel handling and certain freight and mail handling operations.

- (7) Directive 96/67/EC also takes account of the fact that, in certain very special cases, severe space and capacity problems prevent the opening-up of the market to the degree provided for. In such cases, exemptions may be granted on a temporary basis to give the airports the time to overcome the constraints. These exemptions can therefore be only exceptional in nature and are not intended to automatically give airports an extra transitional period in addition to that already provided for in Article 1 of the Directive.
- (8) An exemption can be granted only on the basis of specific space or capacity constraints. This is the basis on which the French authorities have granted the abovementioned exemption in accordance with Article R-216-7 of the French Civil Aviation Code, as amended by Decree No 98-7⁽²⁾ of 5 January 1998 transposing Directive 96/67/EC into national law.

2. Situation regarding groundhandling at Roissy-Charles de Gaulle Airport

2.1. Presentation of the airport

- (9) The airport of Roissy-Charles de Gaulle is currently the biggest airport in the Paris area with 38,5 million passengers in 1998, putting it ahead of Orly (just over 25 million). This airport is made up of two main terminals: CDG 1 in the north and CDG 2 to the south, plus terminal T 9, which is more restricted and reserved for certain charter flights.
- (10) The airport is fully coordinated within the meaning of Article 2(g) of Council Regulation (EEC) No 95/93⁽³⁾ on common rules for the allocation of slots at Community airports because of problems of runway capacity which is currently at 84 movements per hour. With the construction of two new runways for landing, to the north and to the south, this capacity should permit up to 96 movements per hour as from the summer of 1999 (opening of the third runway) and 120 movements once the fourth runway is open. Nevertheless, the airport has major noise problems with local residents, as recently illustrated by the problem surrounding the decision to construct these new runways and the

⁽¹⁾ OJ C 64, 6.3.1999.

⁽²⁾ Decree No 98-7 of 5 January 1998 amending the Civil Aviation Code (Part II) relating to groundhandling services in airports, *Official Gazette of the French Republic*, 7.1.1998, p. 293.

⁽³⁾ OJ L 14, 22.1.1993, p. 1.

commitments undertaken by the operator and the French authorities, especially regarding the positioning of these runways to the east, restricting them to the sole function of landing and the number of movements at the airport limited to 84 during certain periods of the day.

- (11) Air traffic at CDG 2 increased from 28,4 million passengers in 1995 to 38,5 million in 1998. Similarly, at the T 9 terminal traffic rose from 1,2 million passengers in 1995 to 1,9 million in 1998.
- (12) The new installations completed (hall F 1 put into service in the spring of 1998) and projected at CDG 2 (opening of the hall F 2 for the 1999 summer season, opening of the E 1 hall for the 2001 summer season, opening of the E 2 hall for the 2003 summer seasons, opening of the E 3, F 3 and E 3 and F 4 halls between 2005 and 2010) and the entry into service of the third runway in 1999 and the fourth in 2001 should make it possible, in technical terms, to cope with an increase in traffic of 6,3 % (on average) for the years 1999 to 2004. The projects to upgrade CDG 2 and T 9 will also mean an increase in traffic of more than double in terms of area for T 9.

2.2. Groundhandling services at the airport

- (13) The groundhandling services at the Paris airports of Orly and Roissy-Charles de Gaulle are currently open to competition in accordance with the provisions of the Directive and the French Regulation. Two Decrees issued by the Minister for Infrastructure, Transport and Housing on 22 December 1998 limit the number of operators at these airports for certain groundhandling categories listed in Articles 6(2) and 7(2) of the Directive. The provision of these services for third parties is thus put out to tender. At Roissy-Charles de Gaulle only the activities of passenger transport in connection with the CDG 2 terminal and activities concerning baggage handling, ramp handling and passenger handling at terminal T 9 are now restricted beyond the possibilities provided for within the normal framework of opening up the market and are thus the subject of this exemption.

II. CONSTRAINTS REFERRED BY THE FRENCH GOVERNMENT

- (14) The exemption granted by the French Government⁽¹⁾ is based principally, on the one hand, on

the problems of space encountered by the airport, namely:

— at CDG 2:

- current organisation of the fleet of 17 aerobuses and 47 conventional buses,
- lack of space to provide a parking area for the full fleet,
- current structure of the terminal and the halls in it (A, B, C, D and F 1),
- saturation of the aprons,
- congestion of the service roads,

— at T 9:

- insufficient space in the terminal (for baggage sorting area) and air-side to meet all the needs of the operators,

and, on the other hand, on the implications of opening up the market to the degree provided for by the Directive:

— at CDG 2 through:

- the level of investment and maintenance costs which would automatically price ADP out of the market; even given the high level of quality, the quality/price ratio would be negative,
- the growing difficulty of finding spare parts, which would increase maintenance costs,
- the lack of access to all types of flight, which would mean restricting access to the market,
- the lack of access to all parking positions, which would mean restricting access to the market,

— at T 9 through:

- a reduction in capacity terminal and air-side caused by work in the terminal (installation of the control baggage system (CBS) and creation of additional space) and air-side (construction of an air-side building) and through the opening-up of the market,
- the physical impossibility of admitting a second provider of ramp-handling services (categories 3 and 5),
- the negative impact of opening up the market on the quality of the services provided.

⁽¹⁾ Decree of 22 December 1998 restricting access to the ground-handling market at the airport of Roissy-Charles de Gaulle, *Official Gazette* No 302, 30.12.1998, p. 19950.

A. CDG 2 terminal

- (15) CDG 2 currently has five halls (A, B, C, D and F 1) and can handle 24,5 million passengers, i.e. 70 % of the airport's traffic, or 247 400 movements a year⁽¹⁾. This terminal handles traffic from Air France, mainly in halls C and F 1, and from almost 30 other airlines. The rate of aircraft contact at the gate at CDG 2 is 45 to 50 %, which is fairly low compared with CDG 1 (93 %). The number of aircraft in remote positions and the proliferation of small carriers due to the Air France hub make for a lot of passenger transport. It is this category of services, transport of passengers between the aircraft and the air terminal (part of point 5.4 of the Annex to the Directive) for which the exemption concerning CDG 2 has been granted.

A.1. Transport of passengers

- (16) This passenger transport operation to remote positions is performed:
- by 47 conventional buses providing a shuttle between the foot of the aircraft and the departure or arrival lounges (one per hall),
 - by 15 aerobuses (plus two aerobuses for maintenance) with an elevator system to enable passengers to board and/or disembark directly at the aircraft door, on the one hand, and at the first floor of the halls, on the other. This system, which was chosen when the terminal was constructed, the terminal being equipped for operations of this kind, allows steps to be dispensed with at the foot of the aircraft and guarantees safe passenger transport at all times. On the other hand, it is an unwieldy system and very expensive to purchase, requiring outsize taxiways and special driving qualifications. It is currently only used at CDG 2 and in certain North American airports, such as Montreal, because of climatic conditions, and production has now stopped on it, as far as the sizes used in Paris are concerned.
- (17) The aerobus service handles 54 % of the passengers in remote positions at CDG 2, which amounts to 38 % of aircraft movements at that terminal. Priority is given to the transport of long-haul passengers.

- (18) Transport operations are provided:
- in the case of aerobuses, by airport personnel specially trained for this kind of driving,
 - in the case of conventional buses, by a subcontractor selected by invitation to tender.
- (19) However, the two types are regulated from the same dispatching room, all the buses having to be coordinated from there because of the lack of availability at boarding or disembarking door level at certain times of the day.
- (20) Since 1 January 1999 Aéroports de Paris (ADP) has withdrawn from the passenger transport market at both Orly and CDG airports with the exception of CDG 2, which is the subject of the exemption. And as regards CDG 2, ADP also plans to cease being a service provider as from the end of the scheduled exemption period.
- (21) Apart from the extreme difficulty in obtaining new aerobuses and the imminent reduction in the market because of a major improvement in the proportion of gate parking positions, the dossier presented by the French authorities focuses on the problems of vehicle parking space, boarding and disembarking capacity and apron saturation.

A.2. Parking of equipment

- (22) According to the French authorities the only parking area at present, covering 1 054 m², is around the aerobes workshop. This is in the centre of the north of the terminal and obliges vehicles to cross the aircraft taxiways. In addition, being away from the central control of operations and from the drivers' zoom in hall A, it can only really be used for long-stay parking (overnight) and not for short stay.
- (23) This area allows for theoretical parking, i.e. just the floor space used by the equipment, of 30 buses and two aerobuses being serviced in the workshop.
- (24) Other vehicles, i.e. the aerobuses in operation and 17 ordinary buses, are parked on the apron and service roads alongside halls A, B and occasionally D under conditions which sometimes border on being unsafe.

⁽¹⁾ 1997.

- (25) Given the ground coverage of the aerobuses (77 m²) and the ordinary buses (30 m²) and the minimum area needed for manoeuvring, put at 2 m for aerobuses and 1 m for conventional buses, making for a dynamic area of 137 m² and 42 m² respectively, the total area requirement for parking vehicles is put at 4 303 m² at the CDG 2 terminal.
- (26) The current shortfall in parking space, for the remaining 17 buses and 15 aerobuses, is estimated at 1 665 m² in static area; or 2 769 m² in dynamic area, given the minimum manoeuvring requirements. In view of the distance from the workshop area, which only allows long-stay parking, the airport is of the opinion that the operational parking space needed under guaranteed safety conditions is over 4 000 m².

A.3. Boarding and disembarking capacity

- (27) Boarding and disembarking operations at the terminal are performed:
- in the case of aerobuses:
 - by double doors at the fingers on level +1 thanks to the elevation system of the aerobuses,
 - in the case of buses:
 - either by specialised lounges at level 0, one per hall,
 - or at the foot of the stairs of the fingers, although this system compromises both the quality of the service to passengers and safety on the apron.
- (28) In particular, hall C is only equipped for aerobuses as far as boarding is concerned, which ntles out conventional buses.
- (29) Since whether aerobuses or conventional buses are used depends largely on the type of aircraft being handled and the time at which it has to be handled, the frequent changes of aircraft positions mean that bus or aerobus allocation have to be fully coordinated centrally as long as the two types continue to operate side by side. This coordination is centralised in order to make for optimum use of available

capacity at any time at the terminal and at the air-side positions.

A.4. Saturation of aprons

- (30) The dossier presented by the French authorities shows that, given the areas available and the vehicles involved expressed in traffic units, the passenger transport vehicles have 1,6 times more room to move around and park at CDG 1 than at CDG 2. This is due to the area available, the types of vehicle (no aerobuses but conventional buses and articulated buses at CDG 1⁽¹⁾) and lesser vehicle requirements at CDG 1 because of the high proportion of gate parking positions at that terminal.
- (31) Similarly, the ratio between the service road areas⁽²⁾ shows that conditions are worse at CDG 2 than at CDG 1 (1,1 times more congestion at CDG 2), even if identical air-side equipment density is used for the comparison between the two terminals, which is not the case because the better rate of apron contact at CDG 1 makes for a saving on certain air-side equipment:
- (32) According to the report presented development of parking areas is prevented to the north by the crossing of the taxiways and the periphery of the controlled area, and to the south by the taxiways and runways.
- (33) To the west the problem is similar to the hall A satellite. Development to the east seems to be the only possible solution, but the construction area around halls F and E will mean parking outside that area (*Grand Large zone*). However, a parking area in this part of the airport could only be used for parking at night or for buses on standby because the distance from the dispatching rooms and the rest areas, which would mean transporting the drivers by car, would make it impossible for buses to be available as required.
- (34) The report indicates that at present, parking vehicles alongside the terminals or aircraft parking positions is not even satisfactory with a single operator, involving, as it does, problems not only of

⁽¹⁾ Taking a transport unit as a ratio of the floor coverage of the vehicles gives the following weighting scale:
conventional bus: 30 m² = 1 TU, articulated bus: 63 m² = 2,1 TU, aerobus: 77 m² = 2,56 TU.

The parking area at CDG 1 amounts to 0 TU in that all the buses at CDG 1 and T 9 are parked at T 9; the parking area at CDG 2 amounts to 90,5 TU (2,56 × 15)

Apron area:

— CDG1: 376 100 m², CDG2: 674 800 m²

— CDG2: $\frac{674\,800\text{ m}^2}{90,5\text{ TU}} = 7\,456\text{ m}^2/\text{TU}$;

CDG1: $\frac{376\,170\text{ m}^2}{31\text{ TU}} = 12\,134\text{ m}^2/\text{TU}$.

⁽²⁾ Service road area:

— CDG1: 52 000 m², CDG2: 134 000 m²,

— CDG2: $\frac{134\,000\text{ m}^2}{90,5\text{ TU}} = 1\,480\text{ m}^2/\text{TU}$;

CDG1: $\frac{52\,000\text{ m}^2}{31\text{ TU}} = 1\,677\text{ m}^2/\text{TU}$.

parking equipment at the apron positions but also moving in that area, especially at Air France's hub peaks. Opening the groundhandling market up to other air-side operations only reduces the space available in that area and makes the problem worse. According to the report the arrival of other operators providing passenger transport services is not therefore possible at the moment.

- (35) According to the dossier increasing the parking areas cannot therefore be extended beyond the work zone of hall F. The current carpark around the workshop can only be increased in the reserved area and parking CDG 2 vehicles in the areas of CDG 1 and T9 is not feasible because of the distances.

B. T 9 Terminal

- (36) The T 9 terminal, which is to the east of CDG 1 and to the north of the business park, was completed in 1991 to cope with the increase in charter traffic. It met the pressing need to handle peak summer traffic that the provisional installations at Orly and the new amenities there could not cope with.

- (37) The T 9 terminal has the peculiarities:

- of not being comparable in terms of size with CDG 1 and CDG 2, which handled 9,7 and 24,1 million passengers respectively in 1997, whereas only 1,5 million passed through T 9,
- of handling only charter flights, which means handling one third of the annual traffic just in the months of July and August and half the weekly traffic volume at the weekends,
- of only having, until recently, a light structure in part (office container), making it not as suitable as the other terminals.

- (38) For some years now crew administration (points 1 and 9), marshalling on departure (point 5.3), catering (point 11) and loading on board (point 5.7), cleaning (point 6), fuel handling (point 7) and aircraft maintenance (point 8) have been carried out by several service providers. Similarly, one airline already self handles for the ramp handling operations covered by the exemption (point 5) and for fuel handling. Finally, since 1 January all operations, except for those affected by the exemption,

are open to competition pursuant to the provisions of the Directive and the French regulation transposing it.

- (39) The report submitted by the French authorities shows that space has been becoming tighter for a number of years now in this terminal because of the significant rise in charter traffic at the airport. This has led to rapid saturation of infrastructure, making it difficult to handle passengers properly. The creation of extra space to increase the terminal's capacity would also mean new space constraints while work was being done.

- (40) It is these temporary constraints for the duration of the work in progress which are the basis for the exemption concerning terminal T 9 for passenger handling (point 2 of the Annex to the Directive), baggage handling (point 3) and ramp handling (point 5 with the exception of point 5.3 concerning communication between aircraft and supplier).

B.1. Saturation of existing installations

- (41) Terminal T 9, with its simple design and spacious waiting areas to meet the demands of charter traffic (groups, long waits to board, numerous accompanying persons), has found it difficult to cope with the remarkable growth in non-scheduled traffic at the Paris airports, from 3,5 million passengers in 1990 to 4,2 million in 1996, which has meant that more than 55 000 overflow passengers have had to be passed on to other terminals.

- (42) It appears from the dossier presented that the problem arises essentially from the concentration of traffic over the summer months. The peak traffic forecasts, based on the 25th summer peak hour, indicate complete saturation of installations. This gives rise to numerous incidents in the summer, especially at the weekends because of the impossibility of handling all passengers at certain times.

- (43) The airport authorities have decided to expand the terminal in order to cope with this traffic. Initial work began in 1997 and an additional hall was opened at the end of April 1998, notably to cope with the extra traffic brought on by the World Cup. This is being followed by a second stage of work

designed to increase the space available to take account of the effects of the Directive. The situation has also been improved temporarily by the transfer of Star Airlines to CDG 1.

(44) Since April 1998 the old terminal has thus been converted into a departure hall, the new hall being used only for arrivals. In the departure hall 14 check-in desks have been added to the international area with its 20 check-in counters (plus two outsize ones). These check-in desks should also help to handle Schengen traffic which has been growing regularly for the past few years. This growth means that the airport has to create specific installations, particularly at boarding level, in order to guarantee the quality of passenger handling.

(45) The lack of space has also meant that the airport has had to use temporary structures (office containers) covering almost 800 m² (of which 700 m² air-side) to house more than 46 % of requirements in terms of offices, hall rest areas, administrative premises and bus dispatching centre for the transport of passengers to the aircraft.

(46) The area shortfall in premises is currently put by the airport authorities at 1 600 m².

(47) With the work carried out so far the areas available are now 600 m² in the terminal (of which 500 m² for groundhandling) and 700 m² (600 m² for groundhandling) air-side.

(48) The new facilities have thus provided, in an initial phase now completed, the resources needed for handling traffic by way of check-in desks, baggage conveyors and departure lounges. The second phase of the work, i.e. the period of the exemption, is intended to provide the space needed for suppliers and users to self handle.

(49) As regards baggage handling, terminal T 9 has had a 100 % hold luggage control system since June 1997. The work to extend the control system to all departure facilities since the rearrangement of the terminal, especially on the south side behind the 14 new check-in desks, requires some of the space along the south side of the departure hall to be condoned off, making for constraints in both space and movement in this area and, according to the French authorities, not permitting the arrival of an

additional operator during the work period, which should be for the whole of 1999.

III. REACTIONS OF THE INTERESTED PARTIES

(50) Following the publication of the résumé of the notification of the application for exemption by the French authorities, the Commission has received no comments from any interested parties.

IV. EVALUATION OF THE EXEMPTION IN THE LIGHT OF THE PROVISIONS OF DIRECTIVE 96/67/EC

1. The rules in force concerning groundhandling

1.1. *The scope for restricting access to the market*

(51) Directive 96/67/EC provides for the structured opening-up of the market as a function of the manner in which groundhandling operations are provided (self-handling or services to third parties) and the volume of traffic at the airport.

(52) The general rules for self-handling and the provision of services to third parties as set out in the notification from the French authorities are laid down by Articles 6 and 7 of the Directive. These rules are included in Article 1 of the French Decree of 5 January 1998 amending the French Civil Aviation Code and transposing the Directive. According to the Directive a Member State may limit the number of suppliers and users self handling for certain categories of services listed in points 3, 4, 5 and 7 of the Annex to the Directive to a minimum of two.

(53) However, where specific space or capacity constraints, in particular because of the rate of use or congestion of space, make it impossible to admit a new supplier and/or to authorise self handling to the degree provided for by the Directive, the Member State in question may, in accordance with Article 9 and the particular categories concerned, restrict or even reserve the provision of services to third parties for a single operator and/or ban or limit self handling to a single user.

(54) Nevertheless, under Article 9(2) an exemption of this kind must:

- specify the category or categories of services for which the exemption is granted and the specific constraints of available space or capacity which justify it,
- be accompanied by a plan of appropriate measures to overcome these constraints.

(55) Also, under Article 9(2), the exemption must not:

- unduly prejudice the aims of the Directive,
- give rise to distortions of competition,
- extend further than necessary.

(56) As the Commission pointed out in its Decision of 14 January 1998 concerning the airports of Frankfurt and Düsseldorf⁽¹⁾, the main purpose of the Directive is to liberalise groundhandling services. Limitations imposed on third parties amount to restrictions to those parties' freedom to provide services. By way of analogy with State measures restricting the freedom to provide services⁽²⁾, measures which are liable to exclude or prohibit the activities of a provider of services or users wishing to self-handle, even if they apply without distinction to national providers of services and to those of other Member States, must 'be such as to guarantee the achievement of the intended aim and must not go beyond that which is necessary in order to achieve that objective. In other words, it must not be possible to obtain the same result by less restrictive rules' (ground 15 of the judgment)⁽³⁾.

(57) It is in the light of the principles of necessity and proportionality that it has to be examined whether the national provision in question (Decree of 22 December 1998 restricting access to the market of groundhandling for the airport of Roissy-Charles de Gaulle) contains restrictions on freedom to provide services and, if so, whether those restrictions are justified by overriding reasons relating to the public interest⁽⁴⁾.

1.2. Procedure

(58) As recalled in the various decisions⁽⁵⁾ on the application of Article 9 of the Directive, the Commission must base its examination on:

- the existence and extent of the space and capacity constraints used to justify the exemption and the impossibility of opening up the market to the degree provided for in the Directive; only the space and/or capacity constraints can be taken into account,
- the plan of appropriate measures to overcome the constraints; this plan must be credible and unconditional and have a timetable for the implementation of those measures,
- conformity with the principles referred to Article 9(2) concerning compliance with the objectives of the Directive, no distortion of competition and extent of the measure.

(59) The granting of an exemption is not meant to grant the airport a further general adaptation period in addition to that already granted by Article 1 of the Directive. It must allow the airport to overcome the specific constraints that it may encounter when the market is opened up. Any exemption must therefore be examined in the light of the specific constraints invoked to justify the impossibility of opening up the market within the time permitted. Moreover, according to the case-law of the Court, any exemption must be interpreted strictly and the scope of an exemption must be determined in the light of the aims of the measure in question⁽⁶⁾. It is in the light of these considerations that this exemption has to be examined.

(60) In accordance with Article 9(4) of the Directive, the Commission has made a detailed analysis of the alleged space and capacity constraints, has considered whether the decision taken by the French authorities is appropriate to those constraints, and has appraised the measures put forward to overcome them. It has based its examination on the dossier presented by the French authorities, on the visit it made to Roissy-Charles de Gaulle Airport following the notification by the French authorities and on the report drawn up on its behalf by the

⁽¹⁾ Commission Decisions 98/387/EC and 98/388/EC (OJ L 173, 18.6.1998, pp. 32 and 45).

⁽²⁾ Judgments of 25 July 1991, Case C-288/89, *Mediawet-Collectieve Antenne voorziening Gouda*, [1991] ECR I-4007 and Case C-76/90, *Sager v. Denemeyer* [1991] ECR I-4221.

⁽³⁾ See in particular the judgment of 25 July 1991, Case C-288/89, *Mediawet-Collectieve Antenne voorziening Gouda*, [1991] ECR I-4007, grounds 10 to 16.

⁽⁴⁾ Commission interpretative communication concerning the free movement of services across frontiers (OJ C 334, 9.12.1993, point III.2).

⁽⁵⁾ Commission Decisions 98/387/EC and 98/388/EC (OJ L 173, 18.6.1998) concerning the airports of Frankfurt and Düsseldorf;

Commission Decisions 98/630/EC, 98/631/EC and 98/632/EC (OJ L 300, 11.11.1998, pp. 25, 33 and 41) concerning the airports of Cologne, Stuttgart and Hamburg.

⁽⁶⁾ See judgments of 20 April 1998 in Joined Cases 80 and 81/77 [1978] ECR 927, p. 945, and of 25 June 1992 in Case C-116/91, *British Gas* [1992] ECR I-4071, ground 12.

company Aerotec Ground Handling & Management Consultants. The conclusions of this report, entitled 'Access to aircraft groundhandling market at Community airports — Paris (CDG)', were submitted to the Commission in March 1999. The Commission also took account of the comments made by ADP and the French authorities with regard to this appraisal, which were communicated by the French authorities on 19, 25 and 26 March 1999.

2. Constraints referred to by the French authorities

- (61) The exemption concerns different categories of services in two separate terminals which are not comparable either in situation, size or type of traffic. Each of the situations must therefore be presented and examined separately.
- (62) However, the French authorities point out in general that the capacity and space at the airport as a whole must not hide problems of space for parking specific groundhandling equipment at certain specific points in the airport. This equipment has to be parked close to where it is used.
- (63) Wherever possible space for groundhandling equipment should ideally be close to the aircraft, i.e. near the terminals. However, this is only as a matter of priority. The Directive provides that the authorities of the Member State must demonstrate that it is impossible to open up the market to the degree required. The Member State must therefore show that there is insufficient space to park the equipment and carry out the intended operations without specifically setting quality criteria for each of the positions so as not to affect the proper functioning of the airport.

CDG 2

- (64) The visit by the Commission and the report drawn up on its behalf confirm that the terminal CDG 2 uses two types of passenger transport operations: transport by aerobus (mobile lounge) and transport by conventional and articulated buses. In principle the two types of transport can be interchanged from an operational viewpoint. As already mentioned, the three types of bus differ in terms of design and energy supply requirements (aerobus: electricity). However, not all of the arrival areas (fingers) allow aerobuses and conventional buses to be used at the same time. At present aerobuses can perform departure and arrival operations on 23 fingers whereas the departure operations (only)

performed by conventional buses are at 18 departure gates. ADP uses five dedicated arrival lounges.

- (65) That said, boarding and disembarking by conventional buses is not a full option in hall C. As already said (point 28), only aerobuses can be used for boarding in hall C. Since it only has fingers, the hall does not have the doors and stairs for boarding by conventional buses. The configuration of this hall is such that it is impossible to use normal buses to transport passengers between the terminal and the aircraft, thus making aerobuses the only possibility, although disembarking by normal bus at level 0 to the arrivals lounge is possible. This is thus a significant capacity constraint which prevents the arrival of a service-provider or self handler before the configuration of the hall/terminal is changed to enable the use of any type of bus for passenger transport.
- (66) As regards the other halls at CDG 2, the Commission, while recognising that there are significant peak periods at the terminal, nevertheless feels that the French authorities have not demonstrated that all of the space available was in use. On the one hand, they claim that the space available (1 054 m²) only covers part of the overall needs (4 303 m²). On the other, they say that in 1999 already they will be phasing out eight of the aerobuses and adding 27 conventional buses to the 47 existing ones. Phasing out eight aerobuses will mean a gain in dynamic area of 1 096 m² = (8 × 137 m²) whereas the extra conventional buses will mean additional requirements of dynamic area of 1 134 m² (27 × 42 m²). However, the French authorities have not shown how they plan to park (long and/or short stay) the extra buses.
- (67) The French authorities maintain that because of the Air-France hub operations at this terminal and because of the reduction in the number of aerobuses, extra conventional buses are needed and that this requires centralised coordination to guarantee the flexibility (change of operating plans at the last minute) and the quality of the service provided. It also claims that the arrival of another service provider would not permit this kind of coordination. While recognising that coordination may be necessary for more efficient operations, especially in the case of delays and/or any last-minute changes of plan, it is up to the airport to provide proper management of bus services to avoid any operational disturbances on the aprons. Management of this kind is in place in airports already open to competition as a result of the regular administration and supervision rights of the

airport, which may impose rules on all operators working there in order to make for a fully functional system. The French authorities have not shown that the presence of a single operator in hall C would not make for a fully operational system throughout the terminal and that coordination of that kind could not be achieved if the groundhandling market were made open in the other halls of the terminal.

- (68) The French authorities also claim that any self handler or other provider of passenger transport services would only use the conventional buses and not the aerobuses, since the latter are no longer in production, which would have serious consequences for ADP (higher maintenance costs for the aerobuses). This argument cannot be accepted: firstly, because it does not explain either the lack of parking capacity or show an inextricable link with the saturation of the aprons and service roads; secondly, because this point does not affect handling capacity in terms of passengers. As already said, Article 9 has to be interpreted strictly and account taken of the purpose of the measure in question. The purpose of the Directive means that only the constraints mentioned in Article 9, which are in themselves barriers to the application of the Directive, can serve as a basis for an exemption. The impossibility of opening up the market must be due to a fact independent of the party invoking that impossibility. According to ADP, however, it is not just the lack of space as such that makes it impossible for the arrival of a new operator at CDG 2 but also the fact that the arrival of this new operator would increase the maintenance costs of the aerobuses.

buses only need to be parked during the period when they are not in use. These buses could be parked, for example, to the east of the current building area, on the sites of the future halls F 3, E 3, F 4 and E 4 which will not be put into service until between 2005 and 2010.

The arrival of another supplier and/or user applying self handling would not affect the terminal's traffic handling capacity. At present there are 23 fingers (piers) and only 14 aerobuses that can be used at any one time. The argument put forward only stresses the commercial consequences that the arrival of a new service provider or self handler would have on ADP. There is no mention of congested areas (fingers and remote positions) which might cause serious operational disturbances and jeopardise the terminal's traffic handling capacity. According to the dossier 18 of the gates can be used only for boarding, arrivals being channelled via five others. The fingers cannot be used at the same time by aerobuses and conventional buses. Even if a supplier and/or user were to handle 20 % of the terminal's traffic (double the market share estimated by ADP) the increase in the number of conventional buses would not have serious consequences either for space or operations. ADP had in fact planned to increase the bus fleet from 47 to 74 in 1999 (an increase of 57 %) and to phase out some of the aerobuses (there will only be nine at the end of 1999). ADP does not feel that it will be impossible to park these extra buses.

It has not therefore been shown that, in halls A, B, D and F, the extra number of conventional buses cannot be operated by another service provider or self-handler.

T 9

- (69) The visit by the Commission and the report drawn up at its request confirm that the buses (aerobuses and conventional) do not necessarily have to be parked near the terminal that they service. At many airports, such as Heathrow, buses use the long-stay parking areas around the perimeter of the airport and are used according to the needs of users and/or suppliers. If this capacity is put to effective use

- (70) The visit by the Commission and the report drawn up on its behalf confirmed the reality of the constraints and the validity of the points made by the French authorities concerning passenger

handling in the terminal, in particular ticket control, travel documents, registering baggage and carrying it to the sorting area (category 2).

(71) As far as baggage sorting is concerned, and transport of the baggage between the aircraft and the terminal, the Commission noted in its various Decisions ⁽¹⁾ that, generally speaking, the number of trolleys needed for the baggage sorting system depended on the number of flights to be handled and not the number of operators within the system. However, in some cases the very configuration of the baggage-sorting hall prevents any crossing of vehicles in the hall. As in the case of Stuttgart airport, the fact that the hall is small and at times congested is indisputable. Because of the tightness along the baggage-conveyance system and the single door which obliges operators to make a U-turn it is not possible to admit more than one vehicle into the hall at any one time. The airport therefore has to regulate trolley management in the hall, the other trolleys having to be kept on hold near the door ⁽²⁾. In the particular case of the T 9 terminal the baggage sorting hall has been placed between the departure lounge with its passenger rest area and the arrivals hall, thus making it impossible to park the extra baggage-transport equipment near the hall. The area currently set aside for storage of the baggage-transport equipment for the whole terminal is 2 500 m² and is completely full at present. A second service provider would need a minimum additional area of 500 m². The work in progress on two of three sides of the hall air-side in order to make the terminal bigger will reduce available space by some 700 m² and will thus amount to a further constraint and, for the period in question, prevent the parking of equipment belonging to a second operator in the area around the terminal.

(72) Space and capacity constraints thus exist which justify the decision of the French authorities to reserve the provision of services to third parties for a single operator and to prohibit self handling for baggage sorting and transport between terminal and aircraft (point 3 and part of point 5.4 of the Annex to the Directive).

(73) As regards the other air-side operations referred to by the exemption, it is generally acknowledged that the presence of several operators calls for more equipment than is needed for a single supplier and also more space to park that equipment. While equipment needs in the case of a single provider depend on the volume of traffic during the peak periods of the terminal, in a system open to competition account has to be taken of the peak periods of each of the operators, which do not necessarily coincide with those of the airport. A competitive situation would therefore mean more equipment required and more space needed to park it.

However, during calmer periods, especially at night when the equipment is used to a lesser degree, the free positions at the airport can in principle act as temporary parking areas for equipment. Account also needs to be taken of the fact that the advent of competition will lower the market share of the operator currently in a position of sole supplier and thus also lower equipment requirements and parking space.

(74) At present the terminal apron has 14 aircraft parking positions, requiring pushing operations (TIPO — taxi in push-out — positions). The parking positions are MARS (multi-aircraft remote stands) positions allowing simultaneous parking of 8 to 14 aircraft depending on their size/type and the configuration of the apron. Parking is always nose-in. ADP takes the view that a new operator with a market share of around 10 % would be able to handle 2 000 movements a year. However, the figures submitted by ADP show that in 1998 there were 13 900 movements at that terminal, i.e. 10 % amounts to a maximum of 1 400 movements. ADP reckons that a new operator could handle three aircraft at the same time; the equipment for an operation of this kind would take up about 1 000 m². However, only 600 m² is needed to park equipment which has to be used right next to the aircraft. During peak periods 10 aircraft movements can be handled per hour. Making more efficient use of the available space around the noses of the aircraft could save space of around 1 800 m². The

⁽¹⁾ See Commission Decisions concerning the airports of Frankfurt, Stuttgart and Cologne/Bonn.

⁽²⁾ See, in particular, the Decision concerning Stuttgart airport.

standards and practices recommended by the International Civil Aviation Organisation (ICAO) lay down the space and areas that have to be reserved for safety purposes and for equipment on aircraft positions as a function of the type of aircraft. Inspection of the installations showed that there was still plenty of space left to park groundhandling equipment around the noses of the aircraft. Also, during peak periods most of the groundhandling equipment is in use and therefore does not need to be parked.

(75) The French authorities claim that during peak periods personnel and equipment from CDG 1 are used in T 9 to handle extra traffic. ADP's argument that air-side operations prevent any parking of extra equipment for safety reasons cannot be accepted because this kind of situation is common in many international airports and does not present any particular problems. A clear demarcation of positions along with supervision to ensure that the aircraft position provides all the safety guarantees on arrival of the aircraft (which is a normal safety procedure in many airports with nose-in positions) will solve this problem.

(76) At present ADP uses office containers to provide a total area of 800 m² of offices, administrative units and rest areas, i.e., more than 46 % of the office space. It is accepted that during work phases there is no extra space to house the offices and administrative units of a new operator. However, stacking up two office container systems, as has already been done on other building sites, including at airports, would provide premises both for ADP and another operator. In addition, these installations only need to be at a reasonable distance from operations in order to show access to the terminal in time to provide the services concerned.

(77) The French authorities have not therefore demonstrated that it is impossible to accept the arrival of a second service provider for the air-side operations in question (except for baggage sorting and transport between the aircraft and the terminal) as long as this second operator accepts being subjected to the parking and housing constraints described above.

3. Measures planned

(78) Article 9(2) of the Directive provides that the exemption must be accompanied by a schedule of appropriate measures that are intended to overcome the constraints cited.

CDG 2 terminal

(79) The schedule presented sets out to make a marked improvement in the proportion of gate parking positions at CDG 2, in particular through the construction of the new F and E halls to handle the Air-France hub, Air-France being the main generator of traffic peaks at CDG 2. The proportion of gate parking positions after the work planned is completed is put at 90 and 100 %, thereby making for a considerable reduction in vehicle requirements and hence parking space. Space will also be freed up as the work sites at CDG 2 disappear. In addition, the aerobuses will be gradually phased out: phasing-out of aerobuses in 1999 for halls B and D, making for a reduction in the number of aerobuses for the 15 at present to nine by the end of 1999 and an increase in the number of normal buses from 47 at present to 74 by the end of 1999; in 2000 phasing-out of all aerobuses and stabilisation of the number of conventional buses at 49.

(80) The French authorities are planning major work on hall C (cost: EUR 1,5 million) to overcome the constraints cited. They plan to (i) create a covered stairway to handle departures in C 2 to C 12, (ii) install an escalator and a lift to the transfer hall and then to the arrivals filters at C 0 to C 10, and (iii) convert the aerobus disembarkation door on the west of the arrivals hall. By the end of the period in question this work will make for boarding and disembarking by conventional buses and will eliminate the capacity constraint.

Consequently, the planned measures submitted by the French authorities can be considered as suitable for overcoming the constraints identified in this hall.

(81) As regards halls A, B, D and F, since the constraints indicated by the French authorities have not been established the measures put forward to overcome such constraints need to be examined in more detail.

T 9 terminal

(82) After the first phase of work, which was completed on 25 May 1998 and solved the problem of resources to cope with traffic through the creation of a new departure hall and 14 extra check-in desks, the second phase will comprise:

- installation of a baggage control system south-side,
- the creation of the additional infrastructure needed for groundhandling operations.

(83) The measures planned are as follows:

- In the departure hall:
 - rearrangement of the public area to avoid passenger flows crossing,
 - creation of an additional 30 m² waiting area,
 - creation of around 500 m² of office space,
- in the arrivals hall:
 - possibility of doubling the baggage sorting area,
- outside:
 - construction of an air-side building with an area of around 2 000 m²,
 - possibility of 50 % more space in storage area.

(84) This work should help to meet space requirements (administrative offices/operations rooms) of the order of 1 400 m², especially in the view of the need to re-house the office containers and meet pending requirements as well as new requirements due to the application of the regulation on ground-handling.

(85) A first reorganisation of resources (passenger traffic) which did not create extra 'exclusive' space, was completed in May 1998. The plans submitted by the French authorities show that the space currently dedicated to land and air-side activities of 1 300 m² (of which 1 100 m² for groundhandling services) will increase to 2 700 m² (of which 2 100 m² for groundhandling) in April 2000. The space created will be for users (airlines, groundhandling suppliers, etc.). Consequently, the planned measures presented by the French authorities can be regarded as appropriate for overcoming the constraints identified at that terminal.

4. Compliance with the criteria laid down in Article 9(2) of the Directive

(86) As regard the objectives of the Directive, the title of it is enough to explain that the main objective is access to the market. However, its purpose is that this access should be real, i.e. that 'the opening-up of access to the groundhandling market should help to reduce the operating costs of airline companies and improve the quality of service provided to airport users' (fifth recital of the Directive). Thus,

opening-up which also helps to improve the services on offer and the prices paid by users will help to achieve the objectives of the Directive by introducing competition between service providers.

(87) As regards the extent of the measures, since only the constraints concerning hall C in terminal CDG 2 have been established it is only in respect of this hall that the proportionality of the measure should be reviewed. In this instance immediate opening-up of the market would not amount to real access being a possibility. The work planned by the French authorities is indispensable for the departure areas to be converted to enable passenger boarding by conventional buses. In view of the current situation in this hall the Commission takes the view that the measures taken do not extend further than necessary and that the available capacity does not allow immediate opening-up of the market in this hall to the degree provided for by the Directive.

As regards the other halls in this terminal, however, the constraints cited by the French authorities have not been established and thus there is no need to make a more detailed examination of the proportionality of the measures put forward to overcome these constraints.

(88) As far as terminal T 9 is concerned, the exemption granted by the French authorities seems to extend further than necessary in that it involves air-side activities, notably marshalling of aircraft, assistance to aircraft parking, loading and unloading, engine stetting and moving the aircraft, which are not necessarily linked either to the passenger-handling service or to the baggage handling service in the sorting area and the transport of baggage between the aircraft and the terminal, and for which space constraints have been established.

V. CONCLUSION

(89) The CDG 2 terminal does not present any structural space and capacity problems which prevent the opening-up of the groundhandling market concerning the transport of passengers. The French authorities have not cited specific space and capacity constraints to demonstrate that it is completely impossible to open up the market for this service. None the less, the configuration of hall C justifies reserving the provision of this service solely for the airport in this hall for the period in question.

(90) The T 9 terminal has only partly structural space and capacity problems which prevent the opening-up of the groundhandling market to the degree provided for by the Directive. The space available and the work in progress to enlarge and improve traffic handling at this terminal do not allow for more than two self handlers and two providers of services to third parties for passenger handling. By the same token, the space available for baggage sorting and transport of baggage between the terminal and the aircraft does not allow for a second provider of services to third parties. However, it has not been sufficiently demonstrated that ADP should continue to be the sole provider of groundhandling services for the remaining air-side activities since the lack of space and capacity does not affect the provision of these services,

HAS ADOPTED THIS DECISION:

Article 1

The exemption decision granted to Paris-Roissy-Charles de Gaulle airport, as notified to the Commission on 8 and 27 January 1999, is approved subject to the following amendments being made by the French Republic:

— as regards the provision of air-side services to third parties concerning marshalling (point 5.1 of the Annex), parking (point 5.2 of the Annex), loading and

unloading (part of point 5.4 of the Annex), engine starting (point 5.5 of the Annex) and moving of the aircraft (point 5.6 of the Annex) at terminal T 9, the decision taken on the basis of Article 9 (1)(b) must permit the opening-up of the market to a second provider of services to third parties,

— as regards the provision of services to third parties and self-handling in. passenger transport at CDG 2, the decision taken on the basis of Article 9(1)(b) and (d) shall be revoked for halls A, B, D and F.

Article 2

The French Republic shall notify the Commission, before it enters into force, of the exemption decision as amended in accordance with Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 27 April 1999.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION

of 30 April 1999

on the clearance of the accounts of Member States' expenditure financed by the European Agricultural guidance and Guarantee Fund (EAGGF), Guarantee Section, for the 1998 financial year

(notified under document number C(1999) 1175)

(1999/327/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ⁽¹⁾, as last amended by Regulation (EC) No 1287/95 ⁽²⁾, and in particular Article 5(2)(b) thereof,

After consulting the Fund Committee,

Whereas:

- (1) under Article 5(2)(b) of Regulation (EEC) No 729/70, the Commission, on the basis of the annual accounts submitted by the Member States, accompanied by the information required for clearance and a certificate regarding the veracity, completeness, and accuracy of the accounts transmitted clears the accounts of the paying agencies referred to in Article 4(1) of that Regulation;
- (2) with regard to Article 7(1) of Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be forwarded by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and repealing Regulation (EEC) No 2776/88 ⁽³⁾, as last amended by Regulation (EC) No 2236/98 ⁽⁴⁾, account is taken for the 1998 financial year of expenditure incurred by the Member States between 16 October 1997 and 15 October 1998;
- (3) the time limits granted to the Member States for the submission to the Commission of the documents referred to in Article 5(1)(b) of Regulation (EEC) No 729/70 and in Article 4(1), (3) and (4) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation (EEC) No 729/70 regarding the procedure for the clearance of accounts of the

EAGGF Guarantee Section ⁽⁵⁾, as amended by Regulation (EC) No 896/97 ⁽⁶⁾, have expired;

- (4) the Commission has checked the information submitted and communicated to the Member States before the 31 March 1999 the results of its verifications with the necessary amendments;
- (5) under the first subparagraph of Article 7(1) of Regulation (EC) No 1663/75, the accounts clearance decision referred to in Article 5(2)(b) of Regulation (EEC) No 729/740 must determine, without prejudice to decisions taken subsequently in accordance with paragraph 21(c) of that Article, the amount of expenditure effected in each Member State during the financial year in question recognised as being chargeable to the EAGGF Guarantee Section, on the basis of the accounts referred to in Article 5(1)(b) of the abovementioned Regulation and the reductions and suspensions of advances for the financial year concerned, including the reductions referred to in the second subparagraph of Article 4(3) of Regulation (EC) No 296/96; under Article 102 of the Financial Regulation of 21 December 1977, as last amended by Regulation (EC, ECSC, Euratom) No 2779/98 ⁽⁷⁾, the outcome of the clearance decision, that is to say, any discrepancy which may occur between the total expenditure booked to the accounts for a financial year pursuant to Articles 100 and 101 and that total expenditure taken into consideration by the Commission in this Decision, is to be booked, under a single article, as additional expenditure or a reduction in expenditure;
- (6) for certain paying agencies, the annual accounts and the accompanying documents permit the Commission to take a decision on the completeness, accuracy and veracity of the accounts submitted; whereas in the light of the verifications made some of the accounts do not fulfil this condition and therefore part of the expenditure

⁽¹⁾ OJ L 94, 28.4.1970, p. 13.

⁽²⁾ OJ L 125, 8.6.1995, p. 1.

⁽³⁾ OJ L 39, 17.2.1996, p. 5.

⁽⁴⁾ OJ L 281, 17.10.1998, p. 9.

⁽⁵⁾ OJ L 158, 8.7.1995, p. 6.

⁽⁶⁾ OJ L 128, 21.5.1997, p. 8.

⁽⁷⁾ OJ L 356, 31.12.1977, p. 1.

- concerned cannot be recognised as chargeable to the EAGGF Guarantee Section; whereas Annex I lists the amounts cleared for each paying agency;
- (7) in the light of the verifications made, the information submitted by certain other paying agencies requires additional inquiries and their accounts cannot therefore be cleared in this Decision; whereas Annex II lists the paying agencies concerned;
- (8) Article 4(2) of Regulation (EC) No 296/96, in liaison with Article 13 of Council Decision 94/729/EC of 31 October 1994 on budgetary discipline⁽¹⁾, lays down that advances against bookings are to be reduced for expenditure effected by the Member States after the limits or deadlines laid down; whereas, however, pursuant to Article 4(3) of Regulation (EC) No 296/96, any overrun of deadlines during September and October are to be taken into account in the accounts clearance decision except where noted before the last decision of the financial year relating to advances; whereas part of the expenditure claimed by certain Member States during the abovementioned period and for the measures for which the Commission did not accept any extenuating circumstances was effected after the limits reductions; whereas laid down; this Decision should therefore lay down the relevant reductions; whereas a decision will be taken at a later date, in accordance with Article 5(2)(c) of Regulation (EEC) No 729/70, definitively fixing the expenditure for which Community financing will not be granted regarding those reductions and any other expenditure which may be found to have been effected after the limits or deadlines laid down;
- (9) the Commission, in accordance with Article 13 of Decision No 94/7296/EC and Article 4(2) of Regulation (EC) No 296/96, reduced or suspended a number of monthly advances on entry into the accounts of expenditure for the 1998 financial year and proceeds in this Decision to the reductions laid down in Article 4(3) of the above Regulation; whereas, notwithstanding their clearance under this Decision, a decision will be taken at a later date on the expenditure concerned in accordance with Article 5(2)(c) Regulation (EEC) No 729/70; whereas, in the light of the above, to avoid any premature or even only temporary reimbursement of the amounts in question, they should not be recognised in this Decision, without prejudice to further examination according to Article 5(2)(c) of Regulation (EEC) No 729/70;
- (10) the second subparagraph of Article 7(1) of Regulation (EC) No 1663/95, lays down that the amounts which are recoverable from, or payable to, each Member State in accordance with Annex III to this Decision are to be deducted from, or added to, advances against expenditure from the second month following that in which the accounts clearance decision is taken;
- (11) in accordance with the final subparagraph of Article 5(2)(b) of Regulation (EEC) No 729/70 and Article 7(1) of Regulation (EC) No 1663/95, this Decision, adopted on the basis of accounting information, does not prejudice decisions taken subsequently by the Commission excluding from Community financing expenditure not effected in accordance with Community rules,

HAS ADOPTED THIS DECISION:

Article 1

The accounts of the paying agencies of the Member States concerning expenditure financed by the EAGGF Guarantee Section in respect of the 1998 financial year are hereby cleared as shown in Annex I.

Article 2

The accounts of the paying agencies of the Member States concerning expenditure financed by the EAGGF Guarantee Section in respect of the 1998 financial year referred to in Annex II are disjoined from the present Decision and shall be the subject of a future decision.

Article 3

The amounts which are recoverable from, or payable to, each Member State in accordance with the present clearance of accounts are determined in Annex III to the present Decision.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 30 April 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 347, 23.12.1998, p. 3.

ANNEX I

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS — FINANCIAL YEAR 1998

List of paying agencies for which the accounts are cleared as follows

Member State	Paying agency	Amounts cleared in national currency
B	BIRB	23 418 055 735,00
	Ministerie van Landbouw — DG3	11 175 715 784,00
	Organisme payeur de la Région wallonne	34 471 981,00
	Betaalorgaan voor de Vlaamse Gemeenschap	15 206 542,00
D	BLE	1 836 608 396,94
	Hamburg-Jonas	1 156 094 596,39
	Baden-Württemberg MLR	593 126 542,85
	Bayern StMELF	1 494 779 698,95
	Bayern StMLU	11 876 977,61
	Berlin SenWiTech	3 672 672,86
	Brandenburg MELF	602 723 587,48
	Bremen	2 408 780,53
	Hamburg	6 285 856,78
	Hessen HMILFN	337 324 017,49
	Mecklenburg-Vorpommern LM	744 906 099,96
	Nordrhein-Westfalen LfEJ	19 972 955,06
	Nordrhein-Westfalen LfA	3 359 485,25
	Nordrhein-Westfalen Rheinland	169 634 527,53
	Nordrhein-Westfalen Westfalen	495 340 518,35
	Rheinland-Pfalz MWVLW	237 913 283,85
	Saarland MUEV	25 870 603,98
	Sachsen	555 417 624,64
	Sachsen-Anhalt ML	662 857 742,87
	Schleswig-Holstein MELFF	477 590 806,90
	Schleswig-Holstein MNU	2 556 263,93
	Thüringen TLVwA	468 160 624,07
	<i>B1-370 clearance</i>	— 42 661 663,00
EL	GEDIDAGEP	819 044 466 862,00
E	FEGA	130 341 442 014,00
	FROM	29 819 310,00
	Andalucía	274 571 609 932,00
	Aragón	61 280 456 086,00
	Asturias	6 092 784 035,00
	Baleares	2 777 136 484,00
	Canarias	21 099 492 462,00
	Castilla-La Mancha	112 108 746 381,00
	Castilla y León	110 505 962 370,00
	Cataluña	43 883 860 923,00
	Extremadura	72 934 326 000,00
	Galicia	11 304 785 113,00
	La Rioja	3 774 399 971,00
	Madrid	6 443 033 339,00
	Murcia	7 618 677 410,00

Member State	Paying agency	Amounts cleared in national currency
F	Navarra	15 721 619 620,00
	País Vasco	5 234 836 037,00
	Valencia	20 250 655 556,00
	<i>B1-370 clearance</i>	– 24 384 738 761,00
	CNASEA	958 008 202,28
	FIOM	46 351 840,42
	FIRS	3 916 779 451,09
	ODEADOM	729 325 614,43
	ONIC	27 438 986 577,00
	ONIFLHOR	2 042 657 886,10
	ONILAIT	5 073 628 763,14
	ONIVINS	502 000 529,09
	SAV	800 693 368,34
	Services déconcentrés du Trésor et services déconcentrés du ministère de l'agriculture, de la pêche et de l'alimentation	4 660 440 000,70
	SIDO	9 340 743 762,44
	<i>B1-370 clearance</i>	– 673 166 182,00
IRL	DAF	1 248 822 967,43
	DMNR	26 189 468,12
I	AIMA	7 678 750 445 710,00
	DCCC	751 740 126 054,00
	ENR	127 146 491 765,00
	<i>B1-370 clearance</i>	– 523 508 596 612,00
L	Ministère de l'agriculture	710 442 347,00
NL	DLG	12 110 942,36
	HPA	848 515 768,04
	LASER	798 997 214,63
	MVO	77 070,82
	PT	116 026 207,40
	PVE	290 131 859,75
	PVis	294 482,83
	PZ	991 697 939,20
	STOAS	3 325 050,00
	<i>B1-370 clearance</i>	– 9 987 148,04
A	AMA	10 797 943 842,24
	BMLF Abt. VI B 8 (Wein)	8 103 257,39
	ZA Salzburg	855 578 737,00
	Landesamt Tirol	7 496 558,00
	Landesamt Vorarlberg	89 900,00
	<i>B1-370 clearance</i>	0,00
P	INGA	110 320 598 025,00
	IFADAP	19 973 046 818,00
FIN	MMM	3 434 323 550,51
S	SJV	6 696 683 958,15

Member State	Paying agency	Amounts cleared in national currency
UK	CCW	1 513 705,33
	DANI	161 905 508,85
	FC	9 846 782,16
	IBEA	713 331 520,45
	MAFF	1 488 965 120,37
	SOAEFD	359 636 401,13
	WOAD	175 557 278,56

The amount 'B1-370 clearance' is mentioned only if it was not included in the declaration initially sent in by the Member State.

*ANNEX II***CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS — FINANCIAL YEAR 1998**

List of paying agencies for which the accounts are disjoined and are subject of a later clearance decision

Member State	Paying agency
DK	EU-Direktoratet
DE	Niedersachsen
E	Cantabria
F	OFIVAL

ANNEX III

CLEARANCE OF THE PAYING AGENCIES' ACCOUNTS — FINANCIAL YEAR 1998

Amount to be recovered from or paid to the Member State

Member State	1998 — Expenditure for the paying agencies for which the accounts are		Total a + b	Reductions and suspensions for the whole financial year	Total including reductions and suspensions	Advances paid to the Member States for the financial year	Amount to be recovered from (–) or paid to (+) the Member State
	cleared	disjoined					
	expenditure declared in the annual declaration	total of the expenditure in the monthly declarations					
	a	b	c = a + b	d	e = c + d	f	g = e – f
B	34 643 450 042,00	0,00	34 643 450 042,00	– 2 156 254,00	34 641 293 788,00	34 641 241 804,00	51 984,00
DK	0,00	8 672 146 317,38	8 672 146 317,38	– 32 646,00	8 672 113 671,38	8 672 113 671,38	0,00
D	9 865 820 001,27	1 086 312 085,77	10 952 132 087,04	– 2 029,44	10 952 130 057,60	10 951 822 732,04	307 325,56
EL	819 044 466 862,00	0,00	819 044 466 862,00	– 5 246 439 183,00	813 798 027 679,00	814 142 657 584,00	– 344 629 905,00
E	881 588 904 282,00	2 830 711 486,00	884 419 615 768,00	– 1 058 448,00	884 418 557 320,00	884 638 631 151,00	– 220 073 831,00
F	54 836 449 813,03	4 685 322 007,33	59 521 771 820,36	– 12 358 432,47	59 509 413 387,89	59 513 857 775,37	– 4 444 387,48
IRL	1 275 012 435,55	0,00	1 275 012 435,55	– 1 328 280,46	1 273 684 155,09	1 273 925 423,88	– 241 268,79
I	8 034 128 466 917,00	0,00	8 034 128 466 917,00	– 17 018 984 237,00	8 017 109 482 680,00	8 013 655 774 443,00	3 453 708 237,00
L	710 422 347,00	0,00	710 442 347,00	0,00	710 442 347,00	710 442 347,00	0,00
NL	3 051 189 386,99	0,00	3 051 189 386,99	– 936 801,74	3 050 252 585,25	3 050 133 164,63	119 420,62
A	11 669 212 295,33	0,00	11 669 212 295,33	0,00	11 669 212 295,33	11 669 212 295,33	0,00
P	130 293 644 843,00	0,00	130 293 644 843,00	– 1 707 605 274,00	128 586 039 569,00	128 561 006 394,00	25 033 175,00
FIN	3 434 323 550,51	0,00	3 434 323 550,51	– 628 238,35	3 433 695 312,16	3 433 695 312,16	0,00
S	6 696 683 958,15	0,00	6 696 683 958,15	– 32 715,00	6 696 651 243,15	6 696 677 748,18	– 26 505,03
UK	2 910 756 316,85	0,00	2 910 756 316,85	208 699,46	2 910 965 016,31	2 904 569 880,59	6 395 135,72

(¹) For the calculation of the amount to be recovered from or paid to the Member State the amount taken into account is either the total of the annual declaration for the expenditure cleared (column a) or the total of the monthly declarations for the expenditure disjoined (column b).

(²) The reductions and suspensions are those taken into account in the advance system, to which are added in particular the corrections for non-compliance with payment deadlines established in September and October 1998.

COMMISSION DECISION

of 7 May 1999

derogating, for the 1998/1999 marketing year, from certain provisions of Regulation (EEC) No 1201/89 as regards aid applications and applications for supervised storage of unginned cotton originating in certain Greek prefectures

(notified under document number C(1999) 1179)

(Only the Greek text is authentic)

(1999/328/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol No 4 on cotton annexed to the Act of Accession of Greece, as last amended by Regulation (EC) No 1553/95 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1554/95 of 29 June 1995 laying down the general rules for the system of aid for cotton and repealing Regulation (EEC) No 2169/81 ⁽²⁾, as last amended by Regulation (EC) No 1419/98 ⁽³⁾, and in particular Article 11(1) thereof,

- (1) Whereas Commission Regulation (EEC) No 1201/89 of 3 May 1989 laying down rules implementing the system of aid for cotton ⁽⁴⁾, as last amended by Regulation (EC) No 1664/98 ⁽⁵⁾, lays down 31 March as the time limit for lodging applications for supervised storage of unginned cotton but allows the Member State to set a later time limit under certain conditions; whereas for the 1998/1999 marketing year Greece used that provision by setting the time limit for lodging applications for supervised storage at 31 January 1999; whereas, as a result of exceptional weather conditions, it proved impossible to harvest the unginned cotton until the beginning of March 1999 in certain Greek prefectures; whereas, therefore, the start of supervised storage and the lodging of the corresponding aid applications should be accepted without penalty for the unginned cotton originating in those prefectures up to a date allowing for the other time limits in the rules to be complied with;
- (2) Whereas the measures provided for in this Decision are in accordance with the opinion of the Management Committee for Flax and Hemp,

HAS ADOPTED THIS DECISION:

Article 1

1. Notwithstanding Article 5(3), Article 7(1), the first subparagraph of Article 9(2) and Article 11 of Regulation (EEC) No 1201/89, the following conditions shall apply for the 1998/1999 marketing year to unginned cotton harvested in the Greek prefectures indicated in paragraph 2:

- (a) aid applications lodged by 28 April at the latest may be accepted;
- (b) if the aid applications are lodged between 1 April and 28 April, the aid granted shall be that valid on the previous 31 March;
- (c) applications for supervised storage lodged by 28 April at the latest may be accepted;
- (d) the quantity of ginned cotton produced from the quantity of unginned cotton under supervised storage shall be notified before 5 May.

2. The Greek prefectures referred to in paragraph 1 are:
Drame, Serres and Evros.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 7 May 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 30.6.1995, p. 45.

⁽²⁾ OJ L 148, 30.6.1995, p. 48.

⁽³⁾ OJ L 190, 4.7.1998, p. 4.

⁽⁴⁾ OJ L 123, 4.5.1989, p. 23.

⁽⁵⁾ OJ L 211, 29.7.1998, p. 9.