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Legislation

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COMMON STRATEGY OF THE EUROPEAN UNION

of 4 June 1999

on Russia

(1999/414/CFSP)

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, in particular Article 13 thereof,

Whereas the Agreement on Partnership and Cooperation (PCA) between the European Communities, their Member States and the Russian Federation entered into force on 1 December 1997,

HAS ADOPTED THIS COMMON STRATEGY:

PART I

VISION OF THE EU FOR ITS PARTNERSHIP WITH RUSSIA

A stable, democratic and prosperous Russia, firmly anchored in a united Europe free of new dividing lines, is essential to lasting peace on the continent. The issues which the whole continent faces can be resolved only through ever closer cooperation between Russia and the European Union. The European Union welcomes Russia's return to its rightful place in the European family in a spirit of friendship, cooperation, fair accommodation of interests and on the foundations of shared values enshrined in the common heritage of European civilisation.

The European Union has clear strategic goals:

- a stable, open and pluralistic democracy in Russia, governed by the rule of law and underpinning a prosperous market economy benefiting alike all the people of Russia and of the European Union,
- maintaining European stability, promoting global security and responding to the common challenges of the continent through intensified cooperation with Russia.

The Union remains firmly committed to working with Russia, at federal, regional and local levels, to support a successful political and economic transformation in Russia. The Union and its Member States offer to share with Russia their various experiences in building modern political, economic, social and administrative structures, fully recognising that the main responsibility for Russia's future lies with Russia itself.

The European Council therefore adopts this Common Strategy to strengthen the strategic partnership between the Union and Russia at the dawn of a new century. The European Council recognises that the future of Russia is an essential element in the future of the continent and constitutes a strategic interest for the European Union. The offer of a reinforced relationship, based on shared democratic values, will help Russia to assert its European identity and bring new opportunities to all the peoples of the continent. The enlargement of the Union will further increase these benefits and opportunities.

This Common Strategy sets out the objectives as well as the means to be used by the Union in taking forward this partnership. The core of the relationship between the Union and Russia remains the Partnership and Cooperation Agreement (PCA), with its aim of promoting the integration of Russia into a wider area of cooperation in Europe, as well as through creating the necessary conditions for the future establishment of a free trade area between the European Community and Russia. For their part the European Union and its Member States will develop the coordination, coherence and complementarity of all aspects of their policy towards Russia. The Union, the Community and its Member States will also work together with and within regional and other organisations and with like-minded partners to meet the objectives set out in this Common Strategy. The positions taken by the Member States in all relevant forums will conform to this Common Strategy. The European Council invites Russia to work with the Union on the basis of this Common Strategy to the benefit of both.

PRINCIPAL OBJECTIVES

The European Council has identified the following principal objectives:

1. Consolidation of democracy, the rule of law and public institutions in Russia

The establishment of efficient, transparent public institutions is one of the prerequisites for confidence and wider adherence to democratic guidelines and the operation of the rule of law. It constitutes the necessary foundation for economic and social development. The situation in Russia calls for the use of appropriate mechanisms and means to strengthen such institutions in terms of efficiency and responsibility.

The Union wishes to support Russia in the consolidation of its public institutions, particularly its executive, legislative and judicial bodies and its police, in accordance with democratic principles. Institutions which are essential for the operation of the economy form the second part of this objective. The European Union will attach particular importance to regional and local administrations, within their powers. Relations between central, regional and local authorities are an essential factor in the future of the Federation.

The emergence of civil society in all areas is indispensable for the consolidation of democracy in Russia. The European Union wishes to support that process, particularly by developing direct exchanges between civil society actors in Russia and the Union.

2. Integration of Russia into a common European economic and social space

The Union and Russia both have an interest in enabling Russia to integrate into a common economic and social space in Europe. The Union is already Russia's main trading partner and Russia itself provides a significant part of the Union's energy supplies. European undertakings have also made major investments in Russia.

In the first instance, an operational market economy needs to be put in place. The recent crisis in Russia has demonstrated the need to pursue that objective with vigour. The major effort must obviously come from Russia, in the context of a comprehensive and sustainable economic programme approved by the IMF. This programme must address, *inter alia*, the problems of enterprise restructuring, public finance, the banking system and 'corporate governance'. The Union is ready to provide support in that framework.

The Union considers that the rule of law is a prerequisite for the development of a market economy which offers opportunities and benefits to all the citizens of Russia. Russia's development and future prosperity depend first and foremost on sound domestic policies and economic management, for which the establishment of a fair and transparent legislative and regulatory framework, as well as of the necessary institutions, is essential. Attracting domestic and foreign investment, which would be greatly enhanced by Russia's access to international financial markets, plays a key role in its development. The Union will therefore support Russia in developing and adopting the economic policies needed to strengthen the confidence necessary to increase domestic and foreign investment and to meet the requirements of international lenders.

The Union is committed to the integration of Russia into the European and world economy. In this context, the Union will support Russia's efforts in meeting the requirements of WTO membership. It will also examine how to create the necessary conditions, in addition to WTO accession, for the future establishment of an EU-Russia free trade area. The progressive approximation of legislation and standards between Russia and the European Union, in accordance with the PCA, will facilitate the creation of a common economic area.

Finally, the establishment of a market economy must take account of the social aspects of transition and the needs of the Russian people, particularly those who are most deprived. The Union is ready to provide expertise and to step up exchanges in this area.

3. Cooperation to strengthen stability and security in Europe and beyond

Russia and the Union have strategic interests and exercise particular responsibilities in the maintenance of stability and security in Europe, and in other parts of the world.

The Union considers Russia an essential partner in achieving that objective and is determined to cooperate with her. It proposes that the strategic partnership develop within the framework of a permanent policy and security dialogue designed to bring interests closer together and to respond jointly to some of the challenges to security on the European continent. That dialogue will allow greater concertation in all the relevant forums to which both Russia and the Member States belong, particularly the UN and the OSCE.

4. Common challenges on the European continent

Geographical proximity, as well as the deepening of relations and the development of exchanges between the Union and Russia, are leading to growing interdependence in a large number of areas. Only through common responses will it be possible to find solutions to challenges which are more and more often common to both parties.

The Union and Russia have a common interest in developing their energy policies in such a way as to improve the exploitation and management of resources and security of supplies in Russia and in Europe.

Nuclear safety is an essential issue. The Union is prepared to continue providing expertise and support in that area.

The environment is the common property of the people of Russia and the European Union. The sustainable use of natural resources, management of nuclear waste and the fight against air and water pollution, particularly across frontiers, are priorities in this area.

Russia and the Union have a common interest in stepping up their cooperation in the fight against common scourges, such as organised crime, money-laundering, illegal trafficking in human beings and drug trafficking. The fight against illegal immigration is also a major preoccupation. The Union proposes to put increased cooperation in place in these areas by creating the necessary tools and forms of cooperation between the competent bodies and by developing exchanges of experts. It is also ready to offer its expertise, particularly in the development of legislation and competent institutions.

Regional cooperation, particularly in the framework of existing regional organisations, is a useful framework for putting practical cooperation in place which will allow a local response to these challenges.

INSTRUMENTS AND MEANS

1. General provisions

This Common Strategy shall be implemented in accordance with the applicable procedures of the Treaties. The European Council calls on the Council and the Commission in accordance with the responsibilities defined in Articles 3 and 13 of the Treaty on European Union to ensure the unity, consistency and effectiveness of the Union's actions in implementing this Common Strategy.

The European Union will work to achieve the objectives of this Common Strategy by making appropriate use of all relevant instruments and means available to the Union, the Community and to the Member States.

The Secretary-General of the Council, High Representative for the CFSP, shall assist the Council in implementing this Common Strategy in the framework of his or her obligations under the Treaties. The Commission shall be fully associated in accordance with Articles 18 and 27 of the Treaty on European Union.

2. The Council, the Commission and Member States

The European Council calls on the Council, the Commission and Member States:

- to review, according to their competencies and capacities, existing actions, programmes, instruments, and policies to ensure their consistency with this Strategy; and, where there are inconsistencies, to make the necessary adjustments at the earliest review date,
- to make full and appropriate use of existing instruments and means, in particular the PCA, as well as all relevant EU and Member States' instruments and Member States' programmes, and to develop and maintain to this end an indicative inventory of the resources of the Union, the Community and Member States through which this Common Strategy will be implemented.

3. Coordination

Member States shall make additional efforts to coordinate their actions *vis-à-vis* Russia, including in regional and international organisations such as the Council of Europe, the UN, the OSCE and the IFIs, and including coordination with the Community where it has competencies.

Coordination between the Member States and the Commission must also be consolidated, including through regular consultations between their respective representatives in Russia.

The Council, the Commission and Member States shall work towards more effective cooperation with regional and international organisations, and will seek with other like-minded countries to achieve the objectives of the Strategy.

The European Union will invite the candidate countries to associate themselves with actions within the framework of this Common Strategy.

4. Implementation and review

The European Council requests the Council:

- to ensure that each incoming Presidency presents to the Council, in the framework of its general programme, a work plan for implementation of this Common Strategy, based on the areas of action in Part II and taking due account of the specific initiatives in Part III,
- to review and evaluate the Union's action under this Strategy and to report to the European Council on progress towards its objectives not less than annually,
- to review the situation in Russia and the state of Russia's cooperation in the implementation of this Strategy, including through periodic reports by the Heads of Mission, and make an assessment in its report to the European Council,
- where necessary, to submit recommendations for amendments to Parts II and III of this Strategy to the European Council.

The Commission will contribute to the above within its competence.

5. Cooperation with Russia

The European Union and its Member States will work closely together with Russia to implement this Common Strategy, in particular through the PCA and its institutions.

6. Specific initiatives

The Union shall pursue the specific initiatives set out in Part III of this Common Strategy which are based on the areas of action identified in Part II. These initiatives shall be adapted when necessary and do not preclude possible new initiatives during the duration of this Common Strategy. The Council, the Commission and the Member States shall, according to their competencies and capacities, support and work towards the achievement of these specific initiatives.

PART II

AREAS OF ACTION

The European Union shall focus on the following areas of action in implementing this Common Strategy:

1. Consolidation of democracy, the rule of law and public institutions in Russia

To enhance democracy, institution-building and the rule of law in Russia, which is a prerequisite for the development of a market economy, the Union will undertake efforts to:

(a) *strengthen the rule of law and public institutions,*

- by providing support for and by encouraging the necessary institutional reforms towards a modern and effective administration within Russia's executive, legislature, and judiciary at federal, regional and local levels; in particular by developing the capacity of an independent judiciary, public administration and accountable law enforcement structures through the promotion of contacts between judicial authorities and law enforcement bodies of the EU Member States and Russia,
- by developing training programmes for young politicians and civil servants,
- by exploring, in response to a Russian request, the scope for EU action, in cooperation with international organisations such as the OSCE, in support of the efficient conduct of free and fair Presidential and Duma elections in 1999 and 2000,
- by supporting Russian efforts to meet its international human rights commitments including those to the Council of Europe, the UN and the OSCE, and by promoting joint EU-Council of Europe activities regarding Russia in the fields of the rule of law and human rights; by giving assistance in safeguarding human rights, including those of women, children and minorities, and by enhancing programmes to promote the abolition of the death penalty.

(b) *to strengthen civic society,*

- by enhancing contacts between politicians of Russia and the EU, at federal, regional and local levels including with assemblies at all levels,
- by promoting greater cultural and educational exchanges between Russia and the EU, and deeper contacts between societies, building on the long tradition of Russia's involvement in the formation of European civilisation, in particular by reviewing and enhancing, as necessary, scholarships and student contact programmes,

- by supporting independent NGOs,
- by cooperating with Russia to strengthen support for refugees and internally displaced people within Russia,
- by contributing to the freedom of the media,
- by promoting equal opportunities for men and women.

2. Integration of Russia into a common European economic and social space

The EU will:

(a) *consolidate the process of economic reform in Russia,*

- by enhancing the impact of economic policy advice, including through high-level policy dialogue so as to promote the development of a market economy, taking fully into account the transitional problems arising from necessary structural change,
- by undertaking additional efforts, in the competent bodies, to coordinate EU policy in the context of international financial institutions,
- by assisting in securing and implementing a transparent and stable legislative and regulatory framework in Russia designed to promote economic activity and increased domestic and foreign investment,
- by promoting the establishment of the necessary legislative and institutional framework for sustainable fiscal policies (e.g. taxation, accounting, and control of spending),
- by also promoting credible banking sector reforms with fair conditions for foreign banks and effective donor coordination with full EU participation,
- by encouraging further structural, economic and administrative reforms including further privatisation, restructuring of business, and the growth of the Russian SME sector,
- by helping to make Russian industry, agriculture, and energy sectors more competitive,
- by helping to provide the basis for effective land reform in Russia, allowing the introduction of private property, and providing technical assistance to this process (e.g. through a functioning land register);

(b) *support the integration of Russia into a wider area of economic cooperation in Europe,*

- by promoting progressive approximation of legislation, in particular in the field of customs as well as standards and certification, competition policy and the environment,
- by encouraging the further integration of Russia into the multilateral trading system and by supporting Russian efforts to meet the requirements for WTO accession, including legislative and institutional reform,
- by examining how to create the necessary conditions, in addition to Russia's WTO accession, for the future establishment of an EU-Russia free trade area,
- by encouraging Russia to remove obstacles to trade and investment, in particular through the improvement of border crossing procedures and facilities, and by examining, in accordance with EU rules and procedures, Russian concerns with respect to access to the EU market,
- by exploring more concretely the scope for cooperation in areas of established Russian expertise (e.g. science, aircraft, space, energy),
- by promoting partnership with a view to enhancing the development of the cultural industries of Russia including in the field of arts management,
- by better coordinating and, as necessary, expanding existing European programmes to train Russian managers and entrepreneurs;

(c) *lay the basis for a social market economy,*

- by favouring social dialogue through supporting the emergence of modern trade unions and employer organisations,
- by encouraging wider adherence to core ILO labour standards,
- by seeking to ensure the social protection of all Russia's citizens, in particular vulnerable groups, through technical support of administrative reforms of the Russian social services and health care systems.

3. Cooperation to strengthen stability and security in Europe and beyond

The EU wishes to deepen and widen cooperation with Russia and identify common responses to the security challenges in Europe and beyond through:

(a) *reinforcing political dialogue*

- by considering ways to give more continuity to the existing political dialogue and render it more operational, including through the important role to be played by the Secretary-General of the Council, High Representative for the CFSP,
- by working with Russia to develop joint foreign policy initiatives in support of common foreign policy objectives;

(b) *Russia's place in the European security architecture,*

- by further developing cooperation with Russia in the new European security architecture within the framework of the OSCE, in particular in the run-up to the Istanbul Summit,
- by continuing cooperation with Russia in the elaboration of aspects of the European Security Charter,
- by considering facilitating the participation of Russia when the EU avails itself of the WEU for missions within the range of the Petersberg tasks;

(c) *preventive diplomacy,*

- by enhancing EU-Russia cooperation to contribute to conflict prevention, crisis management and conflict resolution, including within the OSCE and the UN,
- by promoting arms control and disarmament and the implementation of existing agreements, reinforcing export controls, curbing the proliferation of WMD, and supporting nuclear disarmament and CW destruction.

4. Common challenges on the European continent

The European Union will, in particular, cooperate with Russia in:

(a) *energy and nuclear safety,*

- by enhancing the Russian commitment to energy sector reform, including nuclear safety and environmental protection; for example by working with Russia to improve energy efficiency and by providing technical assistance on energy conservation in Russia; by improving the safety of Russian nuclear power stations and by cooperation on nuclear waste and spent fuel issues in north-west Russia,

- by encouraging Russian commitment to nuclear safety in the framework of the Convention on Nuclear Safety, through the Nuclear Safety Account Agreement and in the framework of international initiatives and by helping to strengthen the Russian nuclear safety regulatory authority (GAN),
- by promoting Russian ratification of the Energy Charter Treaty and continuing consultations on a multilateral transit framework which will enhance cooperation between Russia and its neighbours over access to the Russian pipeline system;

(b) *environment and health,*

- by encouraging and supporting the secure storage of nuclear and chemical waste and the safe management of spent fuel, in particular in north-west Russia,
- by supporting the integration of environmental considerations in economic reform and by assisting in the creation of effective systems for monitoring and ensuring compliance with multilateral environmental agreements, and supporting Russian efforts to strengthen the enforcement of national environmental legislation,
- by working with Russia, especially in areas adjacent to the enlarging Union, to reduce water and air pollution and to improve environmental protection and by cooperating on promoting sustainable use of natural resources in particular in the various forums for regional cooperation,
- by cooperating with Russia in order to improve precautions against infectious diseases, including by supporting vaccination programmes,
- by cooperating also in strengthening phytosanitary controls;

(c) *fight against organised crime, money laundering and illicit traffic in human beings and drugs; judicial cooperation,*

- by enhancing the rule of law and offering assistance in developing the legal order, including by encouraging Russia to sign, ratify and implement key conventions, especially in the field of judicial cooperation in civil and criminal matters,

- by pursuing, on the basis of existing common positions, an appropriate dialogue with Russia in the ongoing negotiations in Vienna on the United Nations Convention against Transnational Organised Crime,
 - by increasing the cooperation and exchange of experts between Member States and Russia in the context of combating organised crime, including in the field of the treatment and rehabilitation of drug addicts as well as in the field of drug prevention. This shall be achieved in cooperation with the European Monitoring Centre for Drugs and Drug Addiction,
 - by organising seminars on types and methods of money laundering,
 - by developing the cooperation of Europol with the competent Russian authorities as provided for under the Europol Convention, notably for improving the fight against illicit traffic in human beings and drugs as well as immigrant smuggling,
 - by intensifying cooperation between the liaison officers of the Member States in Moscow, within the limits of their respective national laws,
 - by developing cooperation mechanisms in combating transnational drug crime, and the involvement of Russia in the concertation process of the Dublin Group,
 - by carrying out information campaigns in cooperation with Russian agencies in order to prevent the traffic of human beings,
 - by improving the cooperation regarding the readmission of own nationals, persons without nationality and third country nationals, including the conclusion of a readmission agreement; by combating illegal migration including by continuing the basic and advanced training courses for staff members of border and migration authorities,
 - by intensifying dialogue with Russia on the adjustment of Russia's visa policy to the European Union through the introduction of visa requirements in accordance with the EC provisions and introduction of travel documents which are sufficiently fake-proof,
 - by working together with Russia with a view to the introduction of sanctions by Russia on carriers providing transfrontier transport of inadequately documented passengers and with a view to the introduction of penal provisions for combating immigrant-smuggling;
- (d) *regional and cross border cooperation and infrastructure,*
- by working more effectively with Russia in the various form for regional cooperation (CBSS, BSEC, Barents Euro-Arctic Council), and by enhancing cross-border cooperation with neighbouring Russian regions (including Kaliningrad, especially in view of the EU's enlargement and including in the framework of the Northern Dimension,
 - by enhancing cooperation and technical assistance in the areas of border management and customs,
 - by exploring the scope for working towards linking the Russian transportation systems (road and rail) with the transeuropean corridors and by seeking mutually satisfactory ways to address transport issues.

PART III

SPECIFIC INITIATIVES

The following specific initiatives shall be pursued not precluding possible new initiatives.

Political and security dialogue

The Union will consider ways to give more continuity, flexibility and substance to the existing political dialogue, as instituted under the PCA, and to render it more operational and effective:

- the Council will examine the possibility of creating a permanent EU/Russia mechanism for political and security dialogue, bearing in mind the important role to be played by the, Secretary-General of the Council, High Representative for the CFSP. One of the aims would be to work with Russia to develop joint foreign policy initiatives with regard to specific third countries and regions, to conflict prevention and to crisis management especially in areas adjacent to Russia, on the Balkans and the Middle East,

- the Council will consider developing a consultation mechanism, in addition to existing troika expert level talks, with Russia, possibly involving third countries, on non-proliferation issues, as well as intensifying efforts, including through increased coordination/joint activities with third countries, in support of Russia's chemical weapons destruction,
- the Council will, in addition, examine the scope for joint actions and common positions concerning the safe management of biological, and chemical materials, as well as fissile materials in Russia under IAEA verification which are designated as no longer necessary for defence purposes, notably on the basis of international conventions. Particular consideration will be given to the International Science and Technology Centre in Moscow.

Work on these actions will begin by the end of 1999.

Dialogue on economic questions

The macroeconomic situation in Russia, experience in building European unity, the introduction of the euro and the process of enlargement reinforce the importance of specific consultations between the Union and Russia on economic issues.

The Union will consider the launching of a specific high-level EU/Russia dialogue to support the development by the Russian Government of measures to promote sustained economic recovery based on a comprehensive economic programme, endorsed by the IMF, leading to a functioning market economy. The Union will also consider the provision of high-level economic policy advice to the Russian Government through the involvement of eminent EU experts.

The Member States will reinforce, where necessary, their coordination in relevant international organisations and forums.

A joint Presidency/Commission report in regard to these proposals should be prepared by the competent bodies by the end of 1999.

Trade and investment

Taking into account the launch of new multilateral negotiations in the WTO and the fact that the Community has made proposals as to how Russia can continue its negotiations to accede to that organisation, the Community reaffirms its readiness to maintain and, if appropriate, enhance its existing support for Russian efforts to meet the requirements for entering the WTO at the earliest possible time.

In addition, the Commission will examine ways to deepen the investment dialogue with Russia in the framework of the PCA to improve the trade and investment climate in Russia and to facilitate two-way trade and investment, and to report to the Council by the end of 1999.

Fight against organised crime

The European Union and Russia have a major interest in setting up durable, effective cooperation in the area of justice and home affairs, not least as a means of promoting respect for human rights and the rule of law. In that respect, the fight against organised crime is an obvious priority.

For that reason, the European Union is proposing to set up a plan focused on common action with Russia to fight organised crime, including actions to fight corruption, money laundering, trafficking in drugs, human beings and illegal immigration. The Union proposes to cover, *inter alia*, the following areas:

- assistance in training for members of the judiciary and law enforcement authorities, particularly with regard to investigation and intervention techniques,
- the development of the necessary legal, institutional and judicial framework for the effective prosecution of organised crime, especially in the areas of money laundering, illegal economic activity, and trafficking in human beings,
- the development of effective cooperation mechanisms to combat cross-border drugs crime, and
- the development of cooperation between Europol and the competent Russian authorities as provided for under the Europol Convention.

Discussion with Russia within the PCA framework and an ongoing dialogue between the competent Russian bodies and European Union Member States' liaison officers based in Moscow will make it possible to analyse Russia's requirements in this area more precisely. In this respect, the December 1999 EU-Russia Conference on Organised Crime will be of particular importance. A report will be submitted to the Council in the first half of 2000.

Twinning programmes

The dual objective of consolidating Russian public institutions and bringing civil societies closer together involves an increase in the development of exchanges at all levels between Russia and the Member States.

To that end, the Union wishes to develop twinning programmes with Russia:

- for the purpose of strengthening institutions: in regional and local administrations,

— for the purpose of bringing civil societies closer together: between professional associations and trade unions, universities, NGOs, and the media. The Commission will study the possibility of bringing Community programmes into play for this purpose (TACIS, Tempus and Democracy). The Member States' bilateral instruments will also be used. The Member States and the Commission will coordinate their programmes; in that connection, they may draw on the programme set up by the Union to train Russian executives.

On the basis of an inventory of instruments in existence (to be drawn up by the Commission in liaison with the General Secretariat of the Council) and an identification mission in Russia, the Commission will report to the Council by the end of 1999 and will thereafter submit proposals for action as appropriate.

Exchange programmes for students and young scientists

The Union will examine the possibility of developing EU exchange programmes for students constituting an integral part of their course of study and for young scientists working on International Science and Technology Centre contracts. In particular, this will involve:

- inviting the Commission to draw up an overview of existing EC and Member States' programmes,
- also inviting the Commission to report, in the first half of 2000, on the means for improving complementarity among existing European programmes in this field and on the possibilities for and the modalities of an enhanced Community exchange programme.

Establishment of a viable health and welfare system

The Member States and the Commission will review their programmes designed in general to encourage Russian efforts to establish a viable system of welfare and social

protection and in particular to support the reform of public health care systems in Russia and improve the coordination, efficiency and complementarity of such programmes, with a view to a Commission report by June 2000.

Cross-border and regional cooperation

The Union will support the strengthening of cross-border and regional cooperation and will prepare an inventory of relevant EC and Member States instruments and actions directed at the enhanced involvement of EU programmes in Russian regions of special interest to the EU. In this context the Council and the Commission will intensify the preparation of the November 1999 Helsinki Conference on the EU's Northern Dimension.

PART IV

DURATION

This Common Strategy shall apply from the date of its publication for an initial period of four years. It may be prolonged, reviewed and, if necessary, adapted by the European Council on the recommendation of the Council.

PUBLICATION

This Common Strategy shall be published in the Official Journal.

Done at Cologne, 4 June 1999.

For the European Council

The President

G. SCHROEDER

EUROPEAN COUNCIL DECLARATION
related to the Common Strategy on Russia

The Council acts by qualified majority when adopting joint actions, common positions or any other decisions within the scope of Title V of the Treaty on European Union (common foreign and security policy), on the basis of the Common Strategy.

Acts adopted outside the scope of Title V of the Treaty on European Union shall continue to be adopted according to the appropriate decision-making procedures provided by the relevant provisions of the Treaties, including the Treaty establishing the European Community and Title VI of the Treaty on European Union.

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1315/1999
of 23 June 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 24 June 1999.

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

Done at Brussels, 23 June 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 23 June 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	56,3
	064	47,0
	999	51,6
0707 00 05	052	76,1
	628	130,8
	999	103,5
0709 90 70	052	55,8
	999	55,8
0805 30 10	382	57,2
	388	63,8
	528	64,3
	999	61,8
0808 10 20, 0808 10 50, 0808 10 90	388	87,0
	400	81,3
	508	75,1
	512	76,6
	524	65,7
	528	68,3
	720	88,4
	804	101,7
	999	80,5
	052	152,9
0809 10 00	999	152,9
	052	248,6
0809 20 95	064	171,5
	400	178,5
	999	199,5
0809 40 05	052	101,9
	624	260,1
	999	181,0

⁽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 1316/1999

of 23 June 1999

fixing the representative prices and the additional import duties for molasses in the sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the market in sugar ⁽¹⁾, as last amended by Commission Regulation (EC) No 1148/98 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽³⁾, and in particular Articles 1 (2) and 3 (1) thereof,

Whereas Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁴⁾; whereas that price should be fixed for the standard quality defined in Article 1 of the above Regulation;

Whereas the representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; whereas that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality; whereas the standard quality for molasses is defined in Regulation (EEC) No 785/68;

Whereas, when the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States; whereas, under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends;

Whereas the information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a

small quantity that is not representative of the market; whereas offer prices which can be regarded as not representative of actual market trends must also be disregarded;

Whereas, if information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68;

Whereas a representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price;

Whereas where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95; whereas should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed;

Whereas application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation;

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

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 June 1999.

⁽¹⁾ OJ L 177, 1.7.1981, p. 4.

⁽²⁾ OJ L 159, 3.6.1998, p. 38.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

fixing the representative prices and additional import duties applying to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	6,30	0,24	—
1703 90 00 ⁽¹⁾	7,47	0,00	—

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

**COMMISSION REGULATION (EC) No 1317/1999
of 23 June 1999**

**fixing the maximum export refund for white sugar for the 44th partial invitation
to tender issued within the framework of the standing invitation to tender
provided for in Regulation (EC) No 1574/98**

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector⁽¹⁾, as last amended by Commission Regulation (EC) No 1148/98⁽²⁾, and in particular the second subparagraph of Article 17(5)(b) thereof,

Whereas Commission Regulation (EC) No 1574/98 of 22 July 1998 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar⁽³⁾, requires partial invitations to tender to be issued for the export of this sugar;

Whereas, pursuant to Article 9(1) of Regulation (EC) No 1574/98 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question;

Whereas, following an examination of the tenders submitted in response to the 44th partial invitation to tender, the provisions set out in Article 1 should be adopted;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 44th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1574/98 the maximum amount of the export refund is fixed at 49,760 EUR/100 kg.

Article 2

This Regulation shall enter into force on 24 June 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1.7.1981, p. 4.

⁽²⁾ OJ L 159, 3.6.1998, p. 38.

⁽³⁾ OJ L 206, 23.7.1998, p. 7.

COMMISSION REGULATION (EC) No 1318/1999
of 23 June 1999
altering the export refunds on white sugar and raw sugar exported in the natural state

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

Having regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organisation of the markets in the sugar sector⁽¹⁾, as last amended by Commission Regulation (EC) No 1148/98⁽²⁾, and in particular the second subparagraph of Article 19(4) thereof,

Whereas the refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1242/1999⁽³⁾, as amended by Regulation (EC) No 1314/1999⁽⁴⁾;

Whereas it follows from applying the detailed rules contained in Regulation (EC) No 1242/1999 to the information known to the Commission that the export refunds

at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EEC) No 1785/81, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1242/1999 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 24 June 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 177, 1.7.1981, p. 4.

⁽²⁾ OJ L 159, 3.6.1998, p. 38.

⁽³⁾ OJ L 150, 17.6.1999, p. 8.

⁽⁴⁾ OJ L 156, 23.3.1999, p. 21.

ANNEX

to the Commission Regulation of 23 June 1999 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Amount of refund
	— EUR/100 kg —
1701 11 90 9100	43,12 ⁽¹⁾
1701 11 90 9910	42,93 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	43,12 ⁽¹⁾
1701 12 90 9910	42,93 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— EUR/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4688
	— EUR/100 kg —
1701 99 10 9100	46,88
1701 99 10 9910	46,67
1701 99 10 9950	46,67
	— EUR/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4688

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 17a (4) of Regulation (EEC) No 1785/81.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26. 9. 1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21. 11. 1985, p. 14).

COMMISSION REGULATION (EC) No 1319/1999
of 22 June 1999
establishing unit values for the determination of the customs value of certain
perishable goods

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

Having regard to Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽¹⁾, as last amended by Regulation (EC) No 955/1999 of the European Parliament and of the Council ⁽²⁾,

Having regard to Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽³⁾, as last amended by Regulation (EC) No 502/1999 ⁽⁴⁾, and in particular Article 173 (1) thereof,

Whereas Articles 173 to 177 of Regulation (EEC) No 2454/93 provide that the Commission shall periodically establish unit values for the products referred to in the classification in Annex 26 to that Regulation;

Whereas the result of applying the rules and criteria laid down in the abovementioned Articles to the elements communicated to the Commission in accordance with Article 173 (2) of Regulation (EEC) No 2454/93 is that unit values set out in the Annex to this Regulation should be established in regard to the products in question,

HAS ADOPTED THIS REGULATION:

Article 1

The unit values provided for in Article 173 (1) of Regulation (EEC) No 2454/93 are hereby established as set out in the table in the Annex hereto.

Article 2

This Regulation shall enter into force on 25 June 1999.

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

Done at Brussels, 22 June 1999.

For the Commission

Martin BANGEMANN

Member of the Commission

⁽¹⁾ OJ L 302, 19.10.1992, p. 1.

⁽²⁾ OJ L 119, 7.5.1999, p. 1.

⁽³⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁴⁾ OJ L 65, 12.3.1999, p. 1.

ANNEX

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.10	New potatoes 0701 90 51 0701 90 59	a) b) c)	32,35 192,34 283,01	445,15 212,20 1 305,00	63,27 25,48 21,05	240,40 62 638,33	10 479,78 71,29	5 382,59 6 485,59
1.30	Onions (other than seed) 0703 10 19	a) b) c)	28,12 167,19 246,01	386,94 184,46 1 134,36	55,00 22,15 18,29	208,97 54 447,91	9 109,47 61,97	4 678,77 5 637,55
1.40	Garlic 0703 20 00	a) b) c)	117,48 698,50 1 027,77	1 616,56 770,62 4 739,13	229,77 92,52 76,43	873,02 227 473,00	38 057,65 258,89	19 547,03 23 552,63
1.50	Leeks ex 0703 90 00	a) b) c)	26,05 154,89 227,90	358,46 170,88 1 050,85	50,95 20,52 16,95	193,58 50 439,83	8 438,90 57,41	4 334,36 5 222,56
1.60	Cauliflowers 0704 10 10 0704 10 05 0704 10 80	a) b) c)	55,28 328,68 483,62	760,67 362,61 2 229,99	108,12 43,54 35,97	410,80 107 037,01	17 907,96 121,82	9 197,82 11 082,64
1.70	Brussels sprouts 0704 20 00	a) b) c)	59,69 354,90 522,20	821,35 391,54 2 407,89	116,74 47,01 38,83	443,57 115 575,96	19 336,58 131,54	9 931,58 11 966,77
1.80	White cabbages and red cabbages 0704 90 10	a) b) c)	30,18 179,44 264,03	415,29 197,97 1 217,46	59,03 23,77 19,64	224,27 58 436,63	9 776,81 66,51	5 021,53 6 050,55
1.90	Sprouting broccoli or calabrese (<i>Brassica oleracea</i> L. <i>convar. botrytis</i> (L.) Alef var. <i>italica</i> Plenck) ex 0704 90 90	a) b) c)	105,95 629,95 926,90	1 457,90 694,99 4 274,01	207,22 83,44 68,93	787,34 205 147,81	34 322,50 233,48	17 628,60 21 241,07
1.100	Chinese cabbage ex 0704 90 90	a) b) c)	60,69 360,85 530,95	835,11 398,10 2 448,23	118,70 47,80 39,48	451,00 117 512,23	19 660,53 133,74	10 097,97 12 167,25
1.110	Cabbage lettuce (head lettuce) 0705 11 10 0705 11 05 0705 11 80	a) b) c)	152,67 907,73 1 335,63	2 100,79 1 001,45 6 158,69	298,60 120,24 99,33	1 134,52 295 610,34	49 457,45 336,44	25 402,15 30 607,59
1.120	Endives ex 0705 29 00	a) b) c)	21,82 129,74 190,89	300,25 143,13 880,22	42,68 17,18 14,20	162,15 42 249,41	7 068,59 48,08	3 630,54 4 374,52
1.130	Carrots ex 0706 10 00	a) b) c)	43,83 260,60 383,45	603,11 287,51 1 768,10	85,72 34,52 28,52	325,71 84 866,71	14 198,73 96,59	7 292,70 8 787,13
1.140	Radishes ex 0706 90 90	a) b) c)	117,77 700,23 1 030,31	1 620,55 772,52 4 750,83	230,34 92,75 76,62	875,17 228 034,52	38 151,59 259,53	19 595,28 23 610,77
1.160	Peas (<i>Pisum sativum</i>) 0708 10 90 0708 10 20 0708 10 95	a) b) c)	293,88 1 747,33 2 571,01	4 043,88 1 927,73 11 855,09	574,78 231,45 191,20	2 183,88 569 031,03	95 202,43 647,63	48 897,52 58 917,65

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
1.170	Beans:							
1.170.1	Beans (<i>Vigna</i> spp., <i>Phaseolus</i> spp.) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	107,28 637,86 938,54	1 476,20 703,71 4 327,66	209,82 84,49 69,80	797,22 207 723,05	34 753,36 236,41	17 849,89 21 507,71
1.170.2	Beans (<i>Phaseolus</i> spp., <i>vulgaris</i> var. <i>Compressus Savi</i>) ex 0708 20 90 ex 0708 20 20 ex 0708 20 95	a) b) c)	91,63 544,81 801,63	1 260,86 601,05 3 696,35	179,21 72,16 59,61	680,92 177 420,42	29 683,54 201,93	15 245,95 18 370,17
1.180	Broad beans ex 0708 90 00	a) b) c)	157,74 937,88 1 379,99	2 170,55 1 034,71 6 363,22	308,51 124,23 102,63	1 172,20 305 427,23	51 099,87 347,61	26 245,73 31 624,03
1.190	Globe artichokes 0709 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
1.200	Asparagus:							
1.200.1	— green ex 0709 20 00	a) b) c)	396,62 2 358,20 3 469,83	5 457,61 2 601,66 15 999,61	775,72 312,36 258,04	2 947,36 767 963,41	128 485,05 874,04	65 992,02 79 515,17
1.200.2	— other ex 0709 20 00	a) b) c)	212,27 1 262,10 1 857,04	2 920,90 1 392,40 8 562,95	415,16 167,18 138,10	1 577,42 411 012,03	68 764,87 467,78	35 318,76 42 556,31
1.210	Aubergines (eggplants) 0709 30 00	a) b) c)	72,80 432,85 636,89	1 001,75 477,54 2 936,74	142,38 57,33 47,36	540,99 140 960,46	23 583,56 160,43	12 112,90 14 595,09
1.220	Ribbed celery (<i>Apium graveolens</i> L., var. <i>dulce</i> (Mill.) Pers.) ex 0709 40 00	a) b) c)	66,57 395,81 582,39	916,02 436,67 2 685,43	130,20 52,43 43,31	494,69 128 897,49	21 565,35 146,70	11 076,32 13 346,09
1.230	Chantarelles 0709 51 30	a) b) c)	683,38 4 063,19 5 978,55	9 403,51 4 482,68 27 567,48	1 336,58 538,21 444,61	5 078,33 1 323 208,19	221 380,95 1 505,97	113 704,86 137 005,39
1.240	Sweet peppers 0709 60 10	a) b) c)	157,80 938,24 1 380,51	2 171,38 1 035,10 6 365,64	308,63 124,28 102,66	1 172,64 305 543,41	51 119,31 347,75	26 255,71 31 636,06
1.250	Fennel 0709 90 50	a) b) c)	73,55 437,31 643,45	1 012,07 482,46 2 967,00	143,85 57,93 47,85	546,56 142 412,66	23 826,52 162,08	12 237,69 14 745,45
1.270	Sweet potatoes, whole, fresh (intended for human consumption) 0714 20 10	a) b) c)	51,27 304,84 448,54	705,49 336,31 2 068,23	100,28 40,38 33,36	381,00 99 272,56	16 608,92 112,98	8 530,61 10 278,71
2.10	Chestnuts (<i>Castanea</i> spp.), fresh ex 0802 40 00	a) b) c)	176,48 1 049,30 1 543,94	2 428,42 1 157,63 7 119,19	345,16 138,99 114,82	1 311,46 341 712,93	57 170,70 388,91	29 363,80 35 381,06
2.30	Pineapples, fresh ex 0804 30 00	a) b) c)	56,97 338,73 498,40	783,92 373,70 2 298,16	111,42 44,87 37,06	423,36 110 309,30	18 455,43 125,55	9 479,01 11 421,46

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.40	Avocados, fresh ex 0804 40 90 ex 0804 40 20 ex 0804 40 95	a) b) c)	175,68 1 044,55 1 536,94	2 417,41 1 152,39 7 086,91	343,60 138,36 114,30	1 305,51 340 163,91	56 911,54 387,15	29 230,69 35 220,68
2.50	Guavas and mangoes, fresh ex 0804 50 00	a) b) c)	98,33 584,64 860,24	1 353,05 645,00 3 966,62	192,32 77,44 63,97	730,71 190 393,43	31 854,00 216,69	16 360,74 19 713,40
2.60	Sweet oranges, fresh:							
2.60.1	— Sanguines and semi-sanguines 0805 10 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.60.2	— Navels, navelines, navelates, salustianas, vernas, Valencia lates, Maltese, shamou- tis, ovalis, trovita and hamlins 0805 10 30	a) b) c)	48,85 290,45 427,36	672,19 320,43 1 970,60	95,54 38,47 31,78	363,01 94 586,79	15 824,96 107,65	8 127,96 9 793,55
2.60.3	— Others 0805 10 50	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.70	Mandarins (including tangerines and satsu- mas), fresh; clementines, wilkings and simi- lar citrus hybrids, fresh:							
2.70.1	— Clementines 0805 20 10	a) b) c)	55,68 331,06 487,12	766,17 365,24 2 246,13	108,90 43,85 36,23	413,77 107 811,51	18 037,54 122,70	9 264,37 11 162,84
2.70.2	— Monreales and satsumas 0805 20 30	a) b) c)	41,27 245,38 361,05	567,89 270,71 1 664,83	80,72 32,50 26,85	306,69 79 909,86	13 369,42 90,95	6 866,75 8 273,89
2.70.3	— Mandarines and wilkings 0805 20 50	a) b) c)	53,62 318,81 469,09	737,83 351,72 2 163,03	104,87 42,23 34,89	398,46 103 822,80	17 370,20 118,16	8 921,62 10 749,84
2.70.4	— Tangerines and others ex 0805 20 70 ex 0805 20 90	a) b) c)	44,20 262,80 386,68	608,21 289,93 1 783,02	86,45 34,81 28,76	328,46 85 583,13	14 318,59 97,40	7 354,26 8 861,30
2.85	Limes (<i>Citrus aurantifolia</i>), fresh ex 0805 30 90	a) b) c)	151,78 902,44 1 327,85	2 088,54 995,61 6 122,79	296,86 119,54 98,75	1 127,91 293 887,06	49 169,13 334,48	25 254,07 30 429,16
2.90	Grapefruit, fresh:							
2.90.1	— white ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	43,86 260,78 383,71	603,53 287,70 1 769,31	85,78 34,54 28,54	325,93 84 924,80	14 208,45 96,65	7 297,69 8 793,14
2.90.2	— pink ex 0805 40 90 ex 0805 40 20 ex 0805 40 95	a) b) c)	53,80 319,88 470,67	740,30 352,90 2 170,29	105,22 42,37 35,00	399,80 104 171,33	17 428,51 118,56	8 951,57 10 785,93
2.100	Table grapes ex 0806 10 10	a) b) c)	183,19 1 089,20 1 602,64	2 520,75 1 201,65 7 389,87	358,29 144,27 119,18	1 361,32 354 705,30	59 344,40 403,70	30 480,25 36 726,30

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.110	Water melons 0807 11 00	a) b) c)	37,21 221,24 325,53	512,02 244,08 1 501,05	72,78 29,31 24,21	276,51 72 048,61	12 054,18 82,00	6 191,22 7 459,94
2.120	Melons (other than water melons):							
2.120.1	— Amarillo, cuper, honey dew (including cantalene), onteniente, piel de sapo (including verde liso), rochet, tendral, futuro ex 0807 19 00	a) b) c)	61,88 367,92 541,36	851,49 405,91 2 496,23	121,03 48,73 40,26	459,84 119 816,39	20 046,03 136,37	10 295,97 12 405,83
2.120.2	— other ex 0807 19 00	a) b) c)	66,12 393,13 578,45	909,83 433,72 2 667,27	129,32 52,07 43,02	491,35 128 026,17	21 419,57 145,71	11 001,44 13 255,87
2.140	Pears							
2.140.1	Pears — nashi (<i>Pyrus pyrifolia</i>) ex 0808 20 50	a) b) c)	132,28 786,50 1 157,25	1 820,21 867,70 5 336,16	258,72 104,18 86,06	983,00 256 129,80	42 852,11 291,51	22 009,54 26 519,76
2.140.2	Other ex 0808 20 50	a) b) c)	67,02 398,48 586,32	922,22 439,62 2 703,58	131,08 52,78 43,60	498,04 129 768,82	21 711,13 147,69	11 151,19 13 436,30
2.150	Apricots 0809 10 00	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.160	Cherries 0809 20 05 0809 20 95	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.170	Peaches 0809 30 90	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.180	Nectarines ex 0809 30 10	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.190	Plums 0809 40 05	a) b) c)	— — —	— — —	— — —	— — —	— — —	— — —
2.200	Strawberries 0810 10 10 0810 10 05 0810 10 80	a) b) c)	491,71 2 923,57 4 301,72	6 766,08 3 225,41 19 835,53	961,70 387,25 319,91	3 654,00 952 083,32	159 289,45 1 083,59	81 813,66 98 579,00
2.205	Raspberries 0810 20 10	a) b) c)	1 648,10 9 799,16 14 418,40	22 678,35 10 810,83 66 484,19	3 223,40 1 297,98 1 072,25	12 247,36 3 191 166,59	533 901,99 3 631,93	274 220,77 330 414,38
2.210	Fruit of the species <i>Vaccinium myrtillus</i> 0810 40 30	a) b) c)	981,91 5 838,17 8 590,24	13 511,38 6 440,91 39 610,15	1 920,45 773,32 638,83	7 296,77 1 901 242,88	318 089,74 2 163,84	163 376,08 196 855,28
2.220	Kiwi fruit (<i>Actinidia chinensis</i> Planch.) 0810 50 10 0810 50 20 0810 50 30	a) b) c)	115,67 687,74 1 011,94	1 591,65 758,75 4 666,12	226,23 91,10 75,25	859,57 223 968,35	37 471,30 254,90	19 245,87 23 189,75

Code	Description	Amount of unit values per 100 kg						
	Species, varieties, CN code	a) b) c)	EUR FIM SEK	ATS FRF BEF/LUF	DEM IEP GBP	DKK ITL	GRD NLG	ESP PTE
2.230	Pomegranates ex 0810 90 85	a)	52,98	729,02	103,62	393,70	17 162,87	8 815,13
		b)	315,00	347,53	41,73	102 583,58	116,75	10 621,54
		c)	463,50	2 137,21	34,47			
2.240	Khakis (including sharon fruit) ex 0810 90 85	a)	317,58	4 370,00	621,13	2 360,00	102 880,04	52 840,87
		b)	1 888,24	2 083,19	250,11	614 920,63	699,85	63 669,07
		c)	2 778,35	12 811,15	206,62			
2.250	Lychees ex 0810 90 30	a)	400,99	5 517,74	784,27	2 979,84	129 900,71	66 719,12
		b)	2 384,18	2 630,32	315,81	776 424,91	883,67	80 391,28
		c)	3 508,06	16 175,90	260,88			

COMMISSION REGULATION (EC) No 1320/1999
of 23 June 1999
amending Regulation (EEC) No 2257/92 laying down detailed rules for imple-
menting the specific arrangements for supplying Madeira with certain vegetable
oils

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

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira relating to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EC) No 562/98 ⁽²⁾, and in particular Article 10 thereof,

- (1) Whereas, pursuant to Article 2 of Regulation (EEC) No 1600/92, Commission Regulation (EEC) No 2257/92 ⁽³⁾, as last amended by Regulation (EC) No 1387/98 ⁽⁴⁾, establishes the forecast supply balance for certain vegetable oils for Madeira for the 1998/1999 marketing year;
- (2) Whereas, in order to avoid a break in the application of the specific supply arrangements, the balance for the whole of the 1999/2000 marketing year has been drawn up following the presentation of data on the requirements for Madeira by the Portuguese authorities; whereas the Annex to Regulation (EEC) No 2257/92 should therefore be replaced;

- (3) Whereas the supply balances provided for in the specific supply arrangements are drawn up for the period 1 July to 30 June; whereas the definitive supply balance for the 1999/2000 marketing year should therefore apply from the start of that year, i.e. 1 July 1999;
- (4) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 2257/92 is replaced by the Annex hereto.

Article 2

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

It shall apply from 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27.6.1992, p. 1.

⁽²⁾ OJ L 76, 13.3.1998, p. 6.

⁽³⁾ OJ L 219, 4.8.1992, p. 44.

⁽⁴⁾ OJ L 187, 1.7.1998, p. 24.

*ANNEX***Forecast supply balance for Madeira for certain vegetable oils for the period 1 July 1999 to 30 June 2000***(tonnes)*

CN code	Description	Quantity
1507 to 1516 (excluding 1509 and 1510)	Vegetable oils (excluding olive oil)	3 000

COMMISSION REGULATION (EC) No 1321/1999
of 23 June 1999
establishing the forecast balance for the supply of certain vegetable oils to the
Canary Islands

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 2348/96 ⁽²⁾, and in particular Article 3(4) thereof,

- (1) Whereas, pursuant to Article 2 of Regulation (EEC) No 1601/92, the forecast balance for the supply of certain vegetable oils to the Canary Islands for the 1999/2000 marketing year should be established;
- (2) Whereas these balances are established on the basis of the justified requirements of consumption or the processing industry, communicated by the competent national authorities;
- (3) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Oils and Fats,

Article 1

The quantities of the forecast supply balance for the Canary Islands for certain vegetable oils for the 1999/2000 marketing year which qualify for exemption from customs duties on import or which benefit from the aid for supply from the rest of the Community shall be as follows:

(tonnes)

CN code	Description	Quantity
1507 to 1516 (excluding 1509 and 1510)	Vegetable oils (excluding olive oil)	34 500 ⁽¹⁾

⁽¹⁾ 24 500 tonnes of which for the processing and/or packaging sector.

Article 2

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

It shall apply with effect from 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27.6.1992, p. 13.

⁽²⁾ OJ L 320, 11.12.1996, p. 1.

COMMISSION REGULATION (EC) No 1322/1999
of 23 June 1999

establishing a forecast balance for the supply to the Azores and Madeira of cereal products covered by the specific measures provided for in Articles 2 to 10 of Council Regulation (EEC) No 1600/92

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

Having regard to Council Regulation (EEC) No 1600/92 of 15 June 1992 concerning specific measures for the Azores and Madeira, with regard to certain agricultural products ⁽¹⁾, as last amended by Commission Regulation (EC) No 562/98 ⁽²⁾, and in particular Article 10 thereof,

- (1) Whereas the quantities of products eligible for the specific supply arrangements are determined by means of periodic forecast balances which may be revised according to the essential requirements of the market taking into account local production and traditional trade flows;
- (2) Whereas in accordance with Article 2 of Regulation (EEC) No 1600/92 these arrangements include requirements for direct human consumption, and for processing and packaging in the Islands of products listed in the Annex to the aforementioned Regulation; whereas an assessment of these requirements is made annually in the context of a forecast supply balance which can be revised in the course of the year in the light of developments in the requirements of the Islands; whereas the assessment of the requirements of the processing and packaging industries, as regards products intended

for the local market or traditionally dispatched to the rest of the Community, may result in the establishment of a separate forecast supply balance;

- (3) Whereas a forecast supply balance for the products concerned should be established covering the entire 12-month period 1 July 1999 to 30 June 2000;
- (4) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of Article 2 of Regulation (EEC) No 1600/92 the quantities in the forecast supply balance which shall benefit, as appropriate, from exemption from import charges in the case of products coming from third countries, or from payment of Community aid in the case of products coming from the Community market, are as indicated in the Annex.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27.6.1992, p. 1.

⁽²⁾ OJ L 76, 13.3.1998, p. 6.

*ANNEX***Forecast supply balance for the Azores and Madeira for the 1999/2000 marketing year**

Region	Breadmaking common wheat	Feed wheat	Durum wheat	Barley	Maize	Malt	Total
Azores	34 000	—	500	39 000	79 500	1 000	154 000
Madeira	25 000	—	5 000	2 500	35 000	2 500	70 000
Total	59 000	—	5 500	41 500	114 500	3 500	224 000

COMMISSION REGULATION (EC) No 1323/1999
of 23 June 1999
amending Regulation (EC) No 1474/95 opening and providing for the administration of the tariff quotas in the egg sector and for egg albumin

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

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

- (1) Whereas, in the framework of the World Trade Organization, the Community has undertaken to open tariff quotas for certain products in the egg sector and for egg albumin; whereas as a result, detailed rules for the application of those quotas for the period 1 July 1999 to 30 June 2000 should be laid down;
- (2) Whereas Commission Regulation (EC) No 1474/95⁽²⁾, as last amended by Regulation (EC) No 1371/98⁽³⁾, provides for the administration of those quotas for the period 1 July 1998 to 30 June 1999; whereas provision should be made for their administration for the period 1 July 1999 to 30 June 2000;

- (3) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1474/95 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

For the period 1 July 1999 to 30 June 2000, the import tariff quotas listed in Annex I are opened for the product groups and under the conditions indicated therein.'

2. Annex I is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 146, 20.6.1996, p. 1.

⁽²⁾ OJ L 145, 29.6.1995, p. 19.

⁽³⁾ OJ L 185, 30.6.1998, p. 17.

ANNEX

ANNEX I

<i>(tonnes)</i>			
Group number	CN code	Duty applicable, EUR/tonne product weight	Tariff quotas (1.7.1999 to 30.6.2000)
E 1	0407 00 30	152	122 060
E 2	0408 11 80	711	6 821 ⁽¹⁾
	0408 19 81	310	
	0408 19 89	331	
	0408 91 80	687	
	0408 99 80	176	
E 3	3502 11 90	617	13 945 ⁽¹⁾
	3502 19 90	83	

⁽¹⁾ Shell egg equivalent. Conversion according to the rates of yield fixed in Annex 77 to Commission Regulation (EEC) No 2454/93 (OJ L 253, 11.10.1993, p. 1).'

COMMISSION REGULATION (EC) No 1324/1999
of 23 June 1999
concerning the classification of certain goods in the Combined Nomenclature

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

Having regard to Council Regulation (EEC) No 2658/87 of 23 July 1987⁽¹⁾ on the tariff and statistical nomenclature and on the Common Customs Tariff, as last amended by Commission Regulation (EC) No 861/1999⁽²⁾, and in particular Article 9 thereof,

- (1) Whereas in order to ensure uniform application of the Combined Nomenclature annexed to the said Regulation, it is necessary to adopt measures concerning the classification of the goods referred to in the Annex to this Regulation;
- (2) Whereas Regulation (EEC) No 2658/87 has set down the general rules for the interpretation of the Combined Nomenclature and those rules also apply to any other nomenclature which is wholly or partly based on it or which adds any additional subdivision to it and which is established by specific Community provisions, with a view to the application of tariff and other measures relating to trade in goods;
- (3) Whereas, pursuant to the said general rules, the goods described in column 1 of the table annexed to the present Regulation must be classified within the appropriate CN codes indicated in column 2, by virtue of the reasons set out in column 3;
- (4) Whereas it is accepted that binding tariff information issued by the customs authorities of Member States in respect of the classification of goods in the Combined Nomenclature and which do not

conform to the rights established by this Regulation, can continue to be invoked, under the provisions in Article 12(6) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽³⁾, for a period of three months by the holder;

- (5) Whereas the measures provided for in this Regulation are in accordance with the opinion of the tariff and statistical nomenclature section of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The goods described in column 1 of the annexed table are now classified within the Combined Nomenclature within the appropriate CN codes indicated in column 2 of the said table.

Article 2

Binding tariff information issued by the customs authorities of Member States which do not conform to the rights established by this Regulation can continue to be invoked under the provisions of Article 12(6) of Regulation (EEC) No 2913/92 for a period of three months.

Article 3

This Regulation shall enter into force on the 21st day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 23 June 1999.

For the Commission

Mario MONTI

Member of the Commission

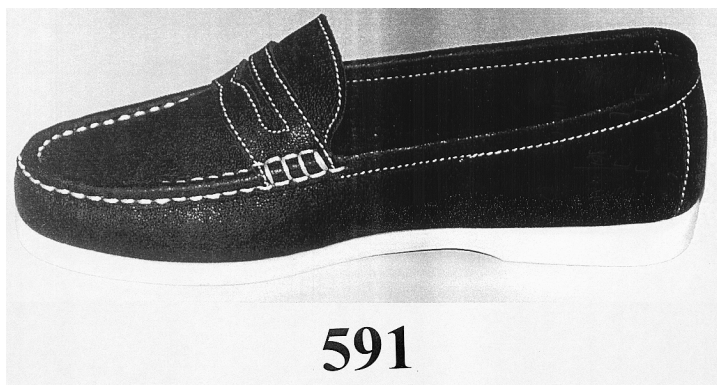
⁽¹⁾ OJ L 256, 7.9.1987, p. 1.

⁽²⁾ OJ L 108, 27.4.1999, p. 11.

⁽³⁾ OJ L 302, 19.10.1992, p. 1.

ANNEX

Description of the goods	Classification CN code	Reason
(1)	(2)	(3)
Footwear of moccassin-type with uppers of leather, with outer soles of plastic, covered with a layer of textile material which makes contact with the ground (see photograph No 591)(*)	6403 99 91	Classification is determined by the provisions of General Rules 1 and 6 for the interpretation of the Combined Nomenclature, Note 4(b) to Chapter 64, and the wording of the CN codes 6403, 6403 99 and 6403 99 91. The application of the abovementioned chapter note and considering that the characteristics of the layer of textile material result in the outer soles having to be regarded as plastic soles, the layer of textile material does not possess the characteristics of durability and/or strength usually required for normal use of an outer sole. These goods are therefore not classifiable within CN code 6405



(*) The photograph is purely for information.

COMMISSION REGULATION (EC) No 1325/1999
of 23 June 1999

amending Regulation (EC) No 1666/98 increasing to 358 060 tonnes the quantity of barley held by the Austrian intervention agency for which a standing invitation to tender for export has been opened

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

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

- (1) Whereas Commission Regulation (EEC) No 2131/93 ⁽³⁾, as last amended by Regulation (EC) No 39/1999 ⁽⁴⁾, lays down the procedures and conditions for the disposal of cereals held by the intervention agencies;
- (2) Whereas Commission Regulation (EC) No 1666/98 ⁽⁵⁾, as last amended by Regulation (EC) No 1153/1999 ⁽⁶⁾, opened a standing invitation to tender for the export of 305 229 tonnes of barley held by the Austrian intervention agency; whereas, Austria informed the Commission of the intention of its intervention agency to increase by 52 831 tonnes the quantity for which a standing invitation to tender for export has been opened; whereas the total quantity of barley held by the Austrian intervention agency for which a standing invitation to tender for export has been opened should be increased to 358 060 tonnes;
- (3) Whereas this increase in the quantity put out to tender makes it necessary to alter the list of regions

and quantities in store; whereas Annex I to Regulation (EC) No 1666/98 must therefore be amended;

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

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1666/98 is hereby amended as follows:

1. Article 2 is replaced by the following:

Article 2

1. The invitation to tender shall cover a maximum of 358 060 tonnes of barley to be exported to all third countries, with the exception of the United States, Canada and Mexico.

2. The regions in which the 358 060 tonnes of barley are stored are stated in Annex I to this Regulation.

2. Annex I is replaced by the Annex hereto.

Article 2

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

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 126, 24.5.1996, p. 37.

⁽³⁾ OJ L 191, 31.7.1993, p. 76.

⁽⁴⁾ OJ L 5, 9.1.1999, p. 64.

⁽⁵⁾ OJ L 211, 29.7.1998, p. 12.

⁽⁶⁾ OJ L 139, 2.6.1999, p. 16.

*ANNEX**'ANNEX I**(tonnes)*

Place of storage	Quantity
Niederösterreich / Wien / nördliches Burgenland	259 597
Steiermark / südliches Burgenland	23 803
Oberösterreich	74 660'

COMMISSION REGULATION (EC) No 1326/1999
of 23 June 1999

establishing a forecast balance for the supply to the Canary Islands of cereal products covered by the specific measures provided for in Articles 2, 3, 4 and 5 of Council Regulation (EEC) No 1601/92

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

Having regard to Council Regulation (EEC) No 1601/92 of 15 June 1992 concerning specific measures for the Canary Islands with regard to certain agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 2348/96 ⁽²⁾, and in particular Articles 2 and 3(4) thereof,

- (1) Whereas the measures, introduced by Regulation (EEC) No 1601/92 intended to offset as regards the supply of certain cereal products, the geographical situation of the Canary Islands, consist of exemption from import duties (customs duties and agricultural levies), and the grant of aid to encourage the delivery of cereal products from the Community;
- (2) Whereas in accordance with Article 2 of Regulation (EEC) No 1601/92 these arrangements include requirements for direct human consumption, and for processing and packaging in the Islands of products listed in the Annex to the aforementioned Regulation; whereas an assessment of these requirements is made annually in the context of a forecast supply balance which can be revised in the course of the year in the light of developments in the requirements of the Islands; whereas the assessment of the requirements of the processing and packaging industries, as regards products intended for the local market or traditionally dispatched to

the rest of the Community, may result in the establishment of a separate forecast supply balance;

- (3) Whereas, in order to facilitate administration of the supply balance, a certain margin of flexibility in the allocation of the quantities fixed in the supply balance should be permitted;
- (4) Whereas a forecast supply balance for the products concerned should be established covering the entire 12-month period 1 July 1999 to 30 June 2000;
- (5) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

For the purpose of Articles 2 and 3 of Regulation (EEC) No 1601/92 the quantities in the forecast supply balance which shall benefit, as appropriate, from exemption from import charges in the case of products coming from third countries, or from payment of Community aid in the case of products coming from the Community market, are as indicated in the Annex.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 173, 27.6.1992, p. 13.

⁽²⁾ OJ L 320, 11.12.1996, p. 1.

ANNEX

FORECAST SUPPLY BALANCE FOR THE CANARY ISLANDS FOR THE PERIOD 1 JULY 1999
TO 30 JUNE 2000

(tonnes)

CN code	Product	Quantity
1001 90 ⁽¹⁾	Soft wheat	150 000
1001 10 ⁽¹⁾	Durum wheat	0
1003 ⁽¹⁾	Barley	30 000
1004 ⁽¹⁾	Oats	3 000
1005 ⁽¹⁾	Maize	180 000
1103 11 50	Durum wheat-groats and meal	5 200
1103 13	Maize flour-groats and meal	3 350
1103 19	Other groats and meal	0
1103 21 to 1103 29	Pellets	0
1107	Malt	16 000
ex 1702 ⁽²⁾	Glucose	1 500

⁽¹⁾ The quantities fixed may be exceeded, up to a maximum of 25 %, provided that the combined quantity for the products concerned is not exceeded.

⁽²⁾ Other than products from CN codes 1702 30 10, 1702 40 10, 1702 60 10 and 1702 90 30.

COMMISSION REGULATION (EC) No 1327/1999
of 23 June 1999
amending Regulation (EC) No 1251/96 opening and providing for the adminis-
tration of the tariff quotas in the poultrymeat sector

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

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

- (1) Whereas, in the framework of the World Trade Organisation, the Community has undertaken to open tariff quotas for certain products in the poultrymeat sector; whereas as a result, detailed rules for the application of those quotas for the period 1 July 1999 to 30 June 2000 should be laid down;
- (2) Whereas Commission Regulation (EC) No 1251/96⁽²⁾, as last amended by Regulation (EC) No 1370/1999⁽³⁾, provides for the administration of those quotas for the period 1 July 1998 to 30 June 1999; whereas provision should be made for their administration for the period 1 July 1999 to 30 June 2000;

- (3) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1251/96 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

For the period 1 July 1999 to 30 June 2000, the import tariff quotas listed in Annex I are opened for the product groups and under the conditions indicated therein.'

2. Annex I is replaced by the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 146, 20.6.1996, p. 1.

⁽²⁾ OJ L 161, 29.6.1996, p. 136.

⁽³⁾ OJ L 185, 30.6.1998, p. 15.

ANNEX

ANNEX I

(tonnes)

Group No	CN code	Applicable duty (EUR/tonne)	Tariff quotas 1.7.1999 to 30.6.2000
P 1	0207 11 10	131	4 960
	0207 11 30	149	
	0207 11 90	162	
	0207 12 10	149	
	0207 12 90	162	
P 2	0207 13 10	512	3 200
	0207 13 20	179	
	0207 13 30	134	
	0207 13 40	93	
	0207 13 50	301	
	0207 13 60	231	
	0207 13 70	504	
	0207 14 20	179	
	0207 14 30	134	
	0207 14 40	93	
	0207 14 60	231	
P 3	0207 14 10	795	584
P 4	0207 24 10	170	800'
	0207 24 90	186	
	0207 25 10	170	
	0207 25 90	186	
	0207 26 10	425	
	0207 26 20	205	
	0207 26 30	134	
	0207 26 40	93	
	0207 26 50	339	
	0207 26 60	127	
	0207 26 70	230	
	0207 26 80	415	
	0207 27 30	134	
	0207 27 40	93	
	0207 27 50	339	
	0207 27 60	127	
	0207 27 70	230	

COMMISSION REGULATION (EC) No 1328/1999
of 23 June 1999
amending Regulation (EEC) No 1164/89 laying down detailed rules concerning
the aid for fibre flax and hemp

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1308/70 of 29 June 1970 on the common organisation of the market in flax and hemp ⁽¹⁾, as last amended by the Act of Accession of Austria, Finland and Sweden and by Regulation (EC) No 3290/94 ⁽²⁾, and in particular Article 4(5) thereof,

- (1) Whereas Annex A to Regulation (EEC) No 1164/89 ⁽³⁾, as last amended by Regulation (EC) No 1283/1999 ⁽⁴⁾, contains a list of the varieties of flax grown mainly for fibre eligible for aid; whereas certain new varieties of flax grown mainly for fibre have been included in the common seed catalogue; whereas it is considered appropriate to take account

of these amendments to that catalogue by adapting Annex A to Regulation (EEC) No 1164/89;

- (2) Whereas the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Flax and Hemp,

HAS ADOPTED THIS REGULATION:

Article 1

The varieties 'Diva', 'Exel' and 'Veralin' are added to Annex A to Regulation (EC) No 1164/89.

Article 2

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

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 146, 4.7.1970, p. 1.

⁽²⁾ OJ L 349, 31.12.1994, p. 105.

⁽³⁾ OJ L 121, 29.4.1989, p. 4.

⁽⁴⁾ OJ L 153, 19.6.1999, p. 43.

COMMISSION REGULATION (EC) No 1329/1999
of 23 June 1999
fixing the production refund for olive oil used in the manufacture of certain
preserved foods

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

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats⁽¹⁾, as last amended by Regulation (EC) No 1638/98⁽²⁾, and in particular Article 20a thereof,

Whereas Article 20a of Regulation No 136/66/EEC provides for the granting of a production refund for olive oil used in the preserving industry; whereas under paragraph 6 of that Article, and without prejudice to paragraph 3 thereof, the Commission shall fix this refund every two months;

Whereas by virtue of Article 20a(2) of the abovementioned Regulation, the production refund must be fixed on the basis of the gap between prices on the world market and on the Community market, taking account of the import charge applicable to olive oil falling within

CN subheading 1509 90 00 and the factors used for fixing the export refunds for those olive oils during the reference period; whereas it is appropriate to take as a reference period the two-month period preceding the beginning of the term of validity of the production refund;

Whereas the application of the above criteria results in the refund being fixed as shown below,

HAS ADOPTED THIS REGULATION:

Article 1

For the months of July and August 1999, the amount of the production refund referred to in Article 20a(2) of Regulation No 136/66/EEC shall be EUR 44,00/100 kg.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ 172, 30.9.1966, p. 3025/66.

⁽²⁾ OJ L 210, 28.7.1998, p. 32.

COMMISSION REGULATION (EC) No 1330/1999
of 23 June 1999

**determining the extent to which applications in the beef and veal sector for
import rights lodged pursuant to Regulation (EC) No 995/1999 may be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 995/1999 of 11 May 1999 opening and providing for the administration of a tariff quota for meat of bovine animals, frozen, falling within CN code 0202 and products falling within CN code 0206 29 91 (from 1 July 1999 to 30 June 2000)⁽¹⁾, and in particular Article 5 thereof,

Whereas Regulation (EC) No 995/1999 provides in particular for the quantities reserved for traditional importers to be allocated in proportion to their imports during the period 1 July 1996 to 31 March 1999 under Regulations (EC) No 1141/96⁽²⁾, (EC) No 1042/97⁽³⁾, as amended by Regulation (EC) No 260/98⁽⁴⁾, and Regulation (EC) No 1142/98⁽⁵⁾; whereas in the other cases the quantities applied for exceed the quantities available under Article 2(2) of that Regulation; whereas, therefore, the quantities applied for should be reduced on a proportional basis in

accordance with Article 5(2) of Regulation (EC) No 995/1999,

HAS ADOPTED THIS REGULATION:

Article 1

Every application for the right to import lodged in accordance with Regulation (EC) No 995/1999 shall be granted to the following extent:

- a) 278,967 kg imported during the period 1 July 1996 to 31 March 1999 under Regulations (EC) No 1141/96, (EC) No 1042/97 and (EC) No 1142/98 for importers as defined in Article 2(1)(a) of Regulation (EC) No 995/1999;
- b) 7,423 tonnes per application in the case of operators as defined in Article 2(1)(b) of Regulation (EC) No 995/1999.

Article 2

This Regulation shall enter into force on 24 June 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 122, 12.5.1999, p. 3.

⁽²⁾ OJ L 151, 26.6.1996, p. 9.

⁽³⁾ OJ L 152, 11.6.1997, p. 2.

⁽⁴⁾ OJ L 25, 31.1.1998, p. 42.

⁽⁵⁾ OJ L 159, 3.6.1998, p. 11.

COMMISSION REGULATION (EC) No 1331/1999
of 23 June 1999
fixing the import duties in the rice sector

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

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 2072/98 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 2831/98 ⁽⁴⁾, and in particular Article 4(1) thereof,

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

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 24 June 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 265, 30.9.1998, p. 4.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 351, 29.12.1998, p. 25.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽¹⁾				
	Third countries (except ACP and Bangladesh) ⁽²⁾ ⁽⁷⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁵⁾	Egypt ⁽⁶⁾
1006 10 21	(7)	83,41	121,01		188,03
1006 10 23	(7)	83,41	121,01		188,03
1006 10 25	(7)	83,41	121,01		188,03
1006 10 27	(7)	83,41	121,01		188,03
1006 10 92	(7)	83,41	121,01		188,03
1006 10 94	(7)	83,41	121,01		188,03
1006 10 96	(7)	83,41	121,01		188,03
1006 10 98	(7)	83,41	121,01		188,03
1006 20 11	202,78	66,63	97,05		152,09
1006 20 13	202,78	66,63	97,05		152,09
1006 20 15	202,78	66,63	97,05		152,09
1006 20 17	231,72	76,76	111,52	0,00	173,79
1006 20 92	202,78	66,63	97,05		152,09
1006 20 94	202,78	66,63	97,05		152,09
1006 20 96	202,78	66,63	97,05		152,09
1006 20 98	231,72	76,76	111,52	0,00	173,79
1006 30 21	424,24	136,09	197,21		318,18
1006 30 23	424,24	136,09	197,21		318,18
1006 30 25	424,24	136,09	197,21		318,18
1006 30 27	(7)	160,51	232,09		370,50
1006 30 42	424,24	136,09	197,21		318,18
1006 30 44	424,24	136,09	197,21		318,18
1006 30 46	424,24	136,09	197,21		318,18
1006 30 48	(7)	160,51	232,09		370,50
1006 30 61	424,24	136,09	197,21		318,18
1006 30 63	424,24	136,09	197,21		318,18
1006 30 65	424,24	136,09	197,21		318,18
1006 30 67	(7)	160,51	232,09		370,50
1006 30 92	424,24	136,09	197,21		318,18
1006 30 94	424,24	136,09	197,21		318,18
1006 30 96	424,24	136,09	197,21		318,18
1006 30 98	(7)	160,51	232,09		370,50
1006 40 00	(7)	49,58	(7)		114,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 1706/98 (OJ L 215, 1.8.1998, p. 12) and amended Commission Regulation (EC) No 2603/97 (OJ L 351, 23.12.1997, p. 22).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

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

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

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

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

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

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

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	231,72	494,00	202,78	424,24	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	347,70	303,81	402,39	435,23	—
(b) fob price (EUR/tonne)	—	—	—	373,30	406,14	—
(c) Sea freight (EUR/tonne)	—	—	—	29,09	29,09	—
(d) Source	—	USDA	USDA	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1332/1999
of 23 June 1999
establishing the quantity of certain poultrymeat sector products available for the
third quarter of 1999 pursuant to Regulation (EC) No 1396/98

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

Having regard to Commission Regulation (EC) No 1396/98 of 30 June 1998 laying down procedures for applying in the poultrymeat sector Council Regulation (EC) No 779/98 on the import into the Community of agricultural products originating in Turkey, repealing Regulation (EEC) No 4115/86 and amending Regulation (EC) No 3010/95⁽¹⁾, and in particular Article 4(5) thereof,

Whereas in order to ensure distribution of the quantities available, the quantities carried forward from the period 1

April to 30 June 1999 should be added to the quantities available for the period 1 July to 30 September 1999,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available for the period 1 July to 30 September 1999 pursuant to Regulation (EC) No 1396/98 is set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 187, 1.7.1998, p. 41.

*ANNEX**(tonnes)*

Group No	Total quantity available for the period 1 July to 30 September 1999
T1	750

COMMISSION REGULATION (EC) No 1333/1999
of 23 June 1999
establishing the quantity of certain poultrymeat sector products available for the
third quarter of 1999 pursuant to Regulation (EC) No 2497/96

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

Having regard to Commission Regulation (EC) No 2497/96 of 18 December 1996 laying down rules for the application in the poultrymeat sector of the system provided for by the Association Agreement and the Interim Agreement between the European Community and the State of Israel ⁽¹⁾, as amended by Regulation (EC) No 1514/97 ⁽²⁾, and in particular Article 4 (5) thereof,

Whereas in order to ensure distribution of the quantities available, the quantities carried forward from the period 1

April to 30 June 1999 should be added to the quantities available for the period 1 April to 30 June 1999,

HAS ADOPTED THIS REGULATION:

Article 1

The quantity available for the period 1 July to 30 September 1999 pursuant to Regulation (EC) No 2497/96 is set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 1 July 1999.

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

Done at Brussels, 23 June 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 338, 28.12.1996, p. 48.

⁽²⁾ OJ L 204, 31.7.1997, p. 16.

ANNEX

<i>(tonnes)</i>	
Group No	Total quantity available for the period 1 July to 30 September 1999
I1	1 050

II

(Acts whose publication is not obligatory)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

339/98/COL

of 3 December 1998

**regarding the Norwegian Government's financing of the Arcus group of companies
(State Aid No 95-021 (Norway))**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, in particular to Protocol 26, to Articles 61 to 63 and to the Act referred to in point 1 of Annex XV on the transparency of financial relations between Member States and public undertakings,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24 and Article 1 of Protocol 3 thereof,

Whereas:

I. FACTS

1. Background and correspondence

When the EEA Agreement entered into force on 1 January 1994 the State-owned Norwegian alcohol monopoly, A/S Vinmonopolet, had the exclusive right to import wines and spirits, the sole right to export spirits and the exclusive right to production or redistillation of spirits for industrial purposes, spirits for consumption, and isopropanol. As regards wholesale, producers of wine and spirits were required to sell their products only to A/S Vinmonopolet. Retail trade, i. e. sale of spirits, wine, and beer containing more than 4,75 % alcohol (strong beer) by volume to the consumer could only be carried out by A/S Vinmonopolet.

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

Having examined the Norwegian legislation and marketing arrangements for alcoholic beverages, the Authority concluded in its Reasoned Opinion of 30 December 1994 (Decision No 335/94. COL), that Norway by maintaining in force exclusive rights as regards imports, exports and wholesale of alcoholic beverages as well as by maintaining the institutional link between the retail monopoly and the production of alcoholic beverages had failed to fulfil its obligations under Articles 11, 12 and 16 of the EEA Agreement.

Following the Reasoned Opinion, the Norwegian authorities decided in 1995 to split A/S Vinmonopolet in two groups⁽³⁾. Retail activities were to be maintained as a monopoly under the same name as before, A/S Vinmonopolet. Activities related to exports, imports, wholesale and production were to be carried out by a separate group of undertakings, the Arcus Group (hereinafter referred to as Arcus). The Arcus Group was to be established with a holding company, Arcus AS, 100 % owned by the State, and two fully-owned subsidiary companies, Arcus Produksjon AS and Arcus Distribusjon AS. Parts of the assets and liabilities belonging to the old A/S Vinmopolet were to be transferred to the Arcus Group. The measures were to take effect from the beginning of 1996.

By letter of 23 November 1995 (see 95-6773 D) the Authority requested the Norwegian Government to submit full information on legislative matters and administrative changes related to the market organisation for alcoholic beverages in Norway. The letter expressed concerns about the corrective actions to the infringements addressed in the Authority's reasoned opinion of 30 December 1994, i.e. actions which were required to be completed by the end of 1995. The Authority drew in particular the Norwegian authorities' attention to the rules on competition set out in Articles 53 to 64 of the EEA Agreement.

By letter of 6 December 1995 (see 95-6989 D) the Authority informed the Norwegian Government that it had received information indicating that Arcus might be in the process of receiving public assistance, mainly by undervaluation of the assets transferred to the company. Referring to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, the Norwegian Government was reminded of the EFTA States' obligation to inform the Authority in sufficient time to enable it to submit its comments of any plans to grant or alter aid. It was also informed that failing this, any aid would be deemed unlawful, which might then necessitate the Authority demanding its recovery.

The Norwegian authorities replied by letter dated 4 January 1996 (see 96-11 A) that they did not consider the assets transferred to Arcus to be undervalued, and that they therefore were not under any obligation to notify the Authority. The Norwegian authorities committed themselves, nevertheless, to provide the Authority with more detailed information on the valuation and financing of Arcus. Such information including a copy of a report prepared by a consultant, Deloitte & Touche, on the valuation and establishment of opening balances in relation to the splitting up of A/S Vinmonopolet (the D&T report⁽⁴⁾) was submitted to the Authority by letter dated 11 March 1996 (see 96-1362 A).

By letter dated 22 December 1995 (see 95-7344 A), the Authority received a formal complaint on the valuation of assets transferred from A/S Vinmonopolet to Arcus considering that State aid in the meaning of Article 61(1) EEA was involved. The complainant estimated that the assets transferred to Arcus were likely to have been undervalued by NOK 1,5 billion, implying that Arcus unlike its competitors, would not be required to obtain a normal return on the real value of the assets employed. The complainant also expressed concerns that Arcus' alleged financial advantage could be used to undercut prices and that this would lead to a situation precluding fair competition and equal access to the Norwegian market for distribution of alcoholic beverages.

⁽³⁾ Propositions to Parliament, St prp No 49 (1994-95), and St prp No 11 (1995-96).

⁽⁴⁾ Verdssettelse og fastsettelse av åpningbalanser ved deling av A/S Vinmonopolet, carried out by Deloitte & Touche, for the Ministry of Health and Social Affairs, Oslo 25 September 1995.

The Authority informed the Norwegian authorities of the complaint by letter of 1 April 1996 (see. 96-1374 D inviting them to comment on the complainant's allegations. By the same letter, the Norwegian Authorities were also requested to provide certain additional information, *inter alia*, concerning possible plans to sell off fixed assets or to use excess capacity which might be used in other fields of activity than those related to production and trade in alcoholic beverages. A reply from the Norwegian authorities maintaining that no form of State aid had been granted in connection with the reorganisation of A/S Vinmonopolet was submitted by letter dated 7 May 1996 (see. 96-2662 A). In the same letter it was stated that there were for the time being no plans to sell off important fixed assets. Concerning other possible activities, a reference was made to a contract with a pharmaceutical company concerning letting of storage space and provision of distribution services. It was also mentioned that the estimated value of income from activities based on this contract was incorporated in the opening balance of Arcus.

On 30 October 1996 the Authority decided to open a formal investigation procedure as provided for in Article 1(2) of Protocol 3 to the Surveillance and Court Agreement (Decision No 246/97/COL). The Norwegian Government was informed by means of a copy of the Decision on the same date, whereby it was invited to submit its comments to the decision. The decision to open the investigation procedure was taken without prejudice to the outcome of a final decision.

The gist of the decision was published in the form of a notice in the EEA Section of the *Official Journal of the European Communities* and the EEA Supplement thereto⁽⁹⁾. Other EFTA States parties to the EEA Agreement, EU Member States, and other interested parties were thereby informed and invited to submit comments within one month from the date of publication. The European Commission was informed, in accordance with Protocol 27 of the EEA Agreement, by means of a copy of the decision.

The Authority expressed in its decision to open the investigation procedure, *inter alia*, that the opening balance of Arcus was based on a sub-optimal structure for the group. In this context, the Authority noted that the opening balance was based on the presumption that production facilities in Bergen and Trondheim would be retained in addition to those in Oslo. It was also noted that the D&T report showed that economic gates were to be expected if production activities were centralised in Oslo. The Authority was therefore not convinced that the value used by the Norwegian Government represented what a knowledgeable willing buyer would consider as the real value and willing to pay for the assets transferred to Arcus. It found therefore that a further examination was needed to establish the correct value of the assets transferred from A/S Vinmonopolet. The Authority submitted also that it had not received any information showing that the Norwegian authorities had imposed any specific restrictions on Arcus use of a provision to cover restructuring costs provided by A/S Vinmonopolet. The Authority concluded therefore at that stage, that the restructuring provision, which amounted to NOK 226 million, must be regarded as State aid in the meaning of Article 61(1) EEA.

By letter dated 13 December 1996 (see 96-7409 A), the Norwegian authorities gave in response to the Authority's decision to open the investigation procedure further explanations on why they considered there not to be any State aid involved in the financing of Arcus. It was, *inter alia*, pointed out that Arcus would need the warehouse and transport capacity in Bergen and Trondheim. It was also maintained that when the assessment of necessary capacity for Arcus was made, the new bottling and warehouse facilities in Oslo were still under construction, giving another reason for the importance of retaining facilities in Bergen and Trondheim. Referring to the restructuring costs the Norwegian authorities explained that the provision had been made on the basis of estimates of the costs of the necessary reorganisation and the decision of A/S Vinmonopolet to reduce personnel. The Norwegian authorities concluded that they did 'not consider that any form of aid was granted in the form of transfer of assets or financial assistance in connection with the reorganisation of A/S Vinmonopolet.'

⁽⁹⁾ OJ C 45, 13.2.1997, p 5; and the EEA Supplement thereto.

The Norwegian Association of Breweries and Mineral Water Producers (Norsk Bryggeri- og Mineralvannindustri Forening) responded to the Authority's invitation to submit comments on possible State aid to Arcus by telefax of 12 March 1997, i.e. within the specified period of one month (see 97-1656 A). The association expressed general support to the views expressed by the complainant and by the Authority. The association referred amongst other things to the alleged fact that the value of tangible assets appeared to have been set exceptionally low. The association also referred to Arcus' plans to convert part of its production facilities to production of beer and expressed concerns that such production would be based on using facilities taken over at a low price and on financing provided to cover restructuring costs. The association expressed otherwise concerns regarding Arcus' potential for economies of scale and synergies with regard to production, distribution and sales as Arcus was a monopoly producer of spirits. Such advantages were described as not available to other producers of beverages. The association also considered that there was a danger of cross-subsidies in Arcus' distribution activities, i.e. between different product categories of spirits, wine and beer. The comments from the association were forwarded to the Norwegian authorities by letter of 8 September 1997 (see 97-5809 D).

The Norwegian authorities replied (see 97-6979 A) by letter of 3 November 1997 that Arcus, in agreements from April 1997, had transferred bottling facilities in Bergen to a local brewery Hardanger Bryggeri A/S, and at the same time acquired shares in the brewery. The Norwegian authorities maintained that the involvement by Arcus in Hardanger Bryggeri A/S was a normal business transaction, and that the money involved in the transaction could be related neither to financing of restructuring costs, nor to the valuation of Arcus' assets. It was also explained that Arcus had bought shares in the existing brewery on a commercial basis, and thereby engaged itself in normal business practice with which it must be free to proceed, irrespective of the fact that Arcus was a monopoly producer of spirits. Regarding the alleged danger of cross-subsidies, the Norwegian authorities noted that complaints, previously filed with the EFTA Surveillance Authority and the Norwegian Competition Authority, had been closed without any form of intervention from either of those authorities.

On this latter matter and as far as the Authority is concerned, it can be noted that in 1996/97 it investigated complaints in the competition field concerning rebates offered by Arcus Distribusjon AS to importers of and agents for wine and spirits in Norway. The complaints in question did however not concern issues related to cross-subsidies. The cases were closed after Arcus undertook to bring its behaviour into compliance with the EEA competition rules. The same action enabled the Norwegian Competition Authority to close similar cases as well.

Outside the formal investigation procedure, the Authority has received correspondence from parties with economic interests in wholesale distribution and in activities related to the distribution and production of alcoholic beverages. The correspondence originates from parties located both in Norway and in other EEA countries and it voices, without exception, serious concerns regarding the Norwegian Government's financing of Arcus.

A further examination by the Authority of the Norwegian Government's financing of Arcus showed that certain issues which were likely to have a bearing on the outcome of the investigation needed further clarification. The Authority requested therefore additional information by letter of 11 May 1998 (see 98-3094 D). It invited in the same letter the Norwegian authorities to submit their comments on some preliminary observations of the Authority. In addition to requesting further information and observations concerning the restructuring provision and what the Authority had phrased the sub-optimal structure of Arcus, some other issues were raised. The Authority questioned amongst other things the justification for using what it considered comparatively high discount rates in the D&T report when calculating the value of Arcus.⁽⁶⁾ The Authority also asked for information related to an environmental obligation attached to Arcus' property in Trondheim. To cover this obligation NOK 30 million were provided from A/S Vinmonopolet to Arcus when the company took up its activities.

⁽⁶⁾ The discounted cash flow method which was used for assessing the value of Arcus, implies that an increase in the discount rate results in a lower value of the company. For more explanation, see Section II 2.1.3.

The Norwegian authorities replied by letters of 9 June 1998 (see 98-3978 A) and 30 July 1998 (see 98-5053 A). Concerning the Authority's claim of a sub-optimal structure, it was emphasised that the possibilities for strikes and unrest among employees were a factor that had to be taken into account when assessing the possibilities for closing production in Bergen and Trondheim, and that the initial decision of not selling was rational. More details were provided on the actual use of the restructuring means. It was pointed out that manning reductions had been delayed compared to the initial plan, particularly in Bergen because of failure of the project involving Hardanger Bryggeri A/S. The discount factor that had been applied when the opening balance was established, was defended. It was explained, furthermore, that a preliminary sales agreement had been reached for the site in Trondheim.

In addressing issues related to the opening balance of Arcus, the Authority decided to consult external expertise and entered into a service contract with KPMG Management Consulting AS, Oslo, which presented a report on the valuation of Arcus (⁽⁷⁾). The report was forwarded to the Norwegian authorities in a letter of 3 November 1998 (see 98-7466 D). The Norwegian authorities commented upon the report in a letter dated 17 November 1998 (see 98-7850 A).

On 6 November 1998, the Authority received a telefax (see. 98-7556 A) from the Norwegian authorities with an attached copy of a letter from the Ministry of Trade and Industry to the board of Arcus. In the letter Arcus was informed that the State foresaw dividend payments for the year 1998 of some NOK 150 million. In arriving at this figure the Ministry referred to restructuring means which have been recorded as extra-ordinary incomes and that values would materialise through sale of fixed assets.

2. The Arcus Group

2.1. *Establishment and organization*

The Norwegian Government decided to establish Arcus AS as a holding company with limited liabilities, 100 % owned by the State (⁽⁸⁾). It was also decided to establish two wholly owned subsidiaries of Arcus AS; Arcus Produkter AS and Arcus Disttibusjon AS. To prepare for the splitting up of A/S Vinmonopolet, the Arcus Group of companies was established in September 1995 with an initial equity of NOK 50 000, owned by A/S Vinmonopolet.

The fission of A/S Vinmonopolet implied that assets and liabilities related to production and distribution were transferred to Arcus AS which in turn made a further distribution to the two daughter companies. Assets and liabilities related to the retail monopoly remained in A/S Vinmonopolet. Share capital and other equity capital in A/S Vinmonopolet were split in relation to the estimated values that remained in the retail monopoly and those transferred to Arcus. It was decided that the ownership of Arcus should be transferred from A/S Vinmonopolet to the Ministry of Industry and Energy as of 1. January 1996. With effect as of the same date, A/S Vinmonopolet transferred assets and liabilities to Arcus which took up its production and distribution activities. As compensation for the values transferred to Arcus, the State, by the new owner, the Ministry of Industry and Energy, received shares in the holding company.

The main activities of the Arcus companies are as follows:

Arcus Produkter AS holds the exclusive right (previously held by A/S Vinmonopolet) to produce spirits in Norway. The company's production activities cover, in addition to fabrication of spirits, also bottling of wine and spirits of domestic and foreign origin. The company sells its products to the retail monopoly, to hotels and restaurants and to tax-free shops. In addition, it produces for exports and sells spirits for technical and medicinal use.

(⁽⁷⁾) KPMG Management Consulting AS: Review of valuation - Arcus Group of Companies. Oslo 2 May 1997.

(⁽⁸⁾) Propositions to Parliament, St prp No 49 (1994-95), and St prp No 11 (1995-96).

The activities of Arcus Distribusjon AS, which in January 1998 changed name to Vectura AS, are imports, storage and distribution of alcoholic beverages. The company sells its services to producers, other wholesalers, and importers of such produces and delivers goods to the retail monopoly and to hotels and restaurants.

Arcus AS is the holding company which, in addition to exercising its ownership functions, also takes care of common services on behalf of the group. Like finance/accounting, information technology and human resource management. Two new subsidiaries have been established since Arcus started its activities. Arcus Eiendom ANS was established 9 September 1996 to take care of the administration of Arcus' properties. Exar AS was established 13 January 1998 to be in charge of Arcus' production facilities in Bergen. Exar AS is reported⁽⁹⁾ not to be carrying out any activities.

The Arcus group of companies was established with three plants and storage facilities in Oslo, Bergen and Trondheim, respectively, and a plant for rectification of spirits in Hamar.

2.2. Opening balance

Preparing for the fission of A/S Vinmonopolet, the owner, the Ministry of Health and Social Affairs, requested a consultant, Deloitte and Touche (D&T), to prepare a report with proposals for an opening balance for the activities that were to be separated from A/S Vinmonopolet. The D&T report⁽¹⁰⁾, dated 25 September 1995, formed the basis for the Norwegian Government's proposal to Parliament⁽¹¹⁾ concerning the establishment of an opening balance for Arcus. Figures in the opening balance, as presented to Parliament, were identical to corresponding figures in the D&T report. Specifications of the opening balance are reproduced in Table 1. The proposal which was presented in November 1995, referred to an opening balance which should lie established as of 1 January 1996. A final opening balance could not be established until the final accounts for A/S Vinmonopolet for 1995 were established. Figures from the final opening balance are also reproduced in Table 1. In the opening balance details were specified for each of the three companies within the Arcus Group, Arcus Produksjon A/S, Arcus Distribusjon A/S, and the holding company, Arcus A/S. For the purpose of this Decision, figures are presented only for the consolidated Arcus Group.

Table 1

Opening balances for the Arcus Group

	<i>(in million NOK)</i>	
	As proposed/estimated ⁽¹⁾	Final ⁽²⁾
<i>Assets:</i>		
Cash and deposits	410	343
Other short-term claims and stocks	230	249
Sum current assets	640	592
Long-term claims	0	1
Property, plant and equipment	175	175
Fixed assets	175	176
Total assets	815	768

⁽⁹⁾ Arcus Annual report 1997.

⁽¹⁰⁾ *Op. cit.*

⁽¹¹⁾ Proposition to Parliament, St prp No 11 (1995-96).

<i>(in million NOK)</i>		
	As proposed/estimated ⁽¹⁾	Final ⁽²⁾
<i>Liabilities:</i>		
Short-term debt	175	132
Long-term debt	27	23
Restructuring costs	226	226
Environmental obligation	30	30
Sum liabilities	458	411
<i>Equity:</i>		
Share capital	203	203
Other equity	154	154
Total equity	357	357
Total liabilities and equity	815	768
⁽¹⁾ Sources: St. prp No 11 (1995-96) D&T report ⁽²⁾ Source: Arcus, Annual Report 1996		

The establishment of the opening balance was based on the following principles and assumptions:

D&T made its valuation of the Arcus Group based on the discounted cash flow method. In short, this method implies that a future flow of incomes and expenditures is estimated based on assumptions on market developments, operating costs, etc. The value of the activities is set equal to the sum of expected future net revenues discounted to their present value. The discount factor represents a required rate of return. Calculations were based on the assumption that the existing plant structure, with facilities in Oslo/Hamar, Bergen and Trondheim should be maintained.

Deloitte and Touche calculated the present value of the operating activities of Arcus (Arcus Produkter AS and Arcus Distribusjon AS) to NOK 203 million. This value determined the estimated value of the fixed assets of Arcus, which was gauged to be NOK 175 million when other assets and liabilities were taken into account. Share capital was set equal to the calculated present value of NOK 203 million.

Splitting up of working capital in the former A/S Vinmonopolet implied that Arcus was to be provided with an amount of NOK 154 million, reflected as part of 'Cash and deposits', and entered as 'Other equity', implying a total equity of NOK 357 million (203 + 154). In accordance with the principles of the demerger, NOK 230 million was entered as 'Other short-term claims and stocks'. Regular debt (short-term and long-term) was recorded at NOK 202 million (175 + 27).

Restructuring costs following the break-up of the former monopoly were estimated at NOK 236.7 million. For more details, see Section II 2.2 below. This sum was discounted and set to NOK 226 million which was entered as a liability in the proposed opening balance. To cover these costs the same amount was assumed to be transferred to Arcus from A/S Vinmonopolet. NOK 226 million were therefore entered under 'Cash and deposits' in the proposed opening balance. The costs of restructuring were in this way separated from the assessment of the present value of the Group.

An environmental obligation at Arcus' property in Trondheim was estimated to the amount of NOK 30 million, see also Section II 2.3 below. To cover these costs a similar amount was also assumed to be transferred from A/S Vinmonopolet. In the proposed opening balance NOK 30 million were therefore added to 'Cash and deposits'. The environmental obligation was furthermore, like the restructuring costs, entered as a liability.

As a result of these operations, the proposed opening balance was established with total liabilities amounting to NOK 458 million. Equity was set at NOK 357 million. With estimated current assets at NOK 640 million, fixed assets were determined to be NOK 175 million. This value represented the estimated value of Arcus' various properties, production facilities and equipment.

The proposed opening balance was the basis for the decisions that actually were taken. Arcus was set up with an equity of NOK 357 million of which NOK 203 million were share capital. The value of fixed assets in the form of properties, plants and equipment was set at NOK 175 million. NOK 256 million were transferred from A/S Vinmonopolet to cover restructuring costs and environmental obligations. As can be seen from Table 1, the only difference of some magnitude between the proposed opening balance and the final one was a reduction in regular debt (mostly short-term) and, for practical purposes, a corresponding reduction in current assets.

In its proposition to Parliament ⁽¹²⁾, the Norwegian Government stated that Arcus was expected to give a satisfactory return on equity, expressed as minimum 10 to 12 % after taxes.

2.3. Costs for A/S Vinmonopolet

The estimated value of Arcus implied that its projected future cash flow could not suffice to earn a return on the capital in A/S Vinmonopolet's accounts as recorded before the demerger. It was therefore decided to write down the capital of A/S Vinmonopolet in the accounts for 1995. The value of fixed capital was written down with NOK 476 million from an original value of NOK 791 million to NOK 315 million ⁽¹³⁾. The latter remaining capital value was in turn split between fixed assets recorded in Arcus' opening balance and fixed assets remaining in the retail monopoly. The extra-ordinary depreciation costs of NOK 476 million were recorded in the accounts of A/S Vinmonopolet in 1995 in addition to the transfers of NOK 256 million to cover restructuring and environmental obligations. Hence, as a result of the demerger, extra-ordinary costs of NOK 732 million were entered in the books of A/S Vinmonopolet in 1995, see Table 2.

Table 2

Extra-ordinary costs for A/S Vinmonopolet 1995

	(NOK million)
Appropriations for restructuring	226
Appropriations for environmental obligations	30
Depreciation of fixed assets	476
Total	732

Source: A/S Vinmonopolet, Annual Report 1995.

⁽¹²⁾ Proposition to Parliament, St prp No 11 (1995-96).

⁽¹³⁾ A/S Vinmonopolet, Annual Report 1995.

2.4. Liquidation value

Upon request from the Authority, the Norwegian authorities presented an estimated liquidation value of the assets being transferred to Arcus. The estimate is reproduced in Table 3.

Table 3

Liquidation value of Arcus

	(in million NOK)
Current assets	640
Properties	355
Net sales value production equipment	70
Fixed assets	425
Total assets	1 065
Short-term debt	175
Long-term debt	27
Environmental obligation	30
Dismissals, etc.	406
Other close-down costs	40
Total obligations	678
Liquidation value	387

Source: Letter from the Ministry of Industry and Energy, 7 May (ref. 96-2662 A)

The value of properties was estimated by a recognised appraiser. Net sales value of production equipment was estimated by Arcus. Costs related to dismissals were estimated on the basis of the D&T report and previous agreements between A/S Vinmonopolet and its employees. Other close-down costs were estimated by Arcus.

2.5. Market presence, trade and economic results

According to the new regime for trade in alcoholic beverages in Norway which was implemented from the beginning of 1996, licenses for distribution, exportation and importation of alcoholic beverages were to be issued by Norwegian authorities⁽¹⁴⁾. No licenses had yet been issued by 1 January 1996. Therefore, Arcus Distribusjon AS started its activities in 1996 in a *de facto* monopoly situation for an interim period. Other operators obtained later in 1996 rights to carry out importation, exportation and distribution of alcoholic beverages. In 1997 Arcus Distribusjon AS had a market share of 65 % of total deliveries of alcoholic beverages to the retail monopoly and the hotel and restaurant sector⁽¹⁵⁾.

⁽¹⁴⁾ Ot.prp. No 51 1994-95, Forslag til lov om endringer i alkoholoven (ny bevillingsordning for engrossalg av alkoholholdig drikk mv) part II.

⁽¹⁵⁾ Arcus Annual Report 1997.

Arcus Produkter AS' share of total sales of wine and liquor in Norway declined in 1996 and 1997 compared to the corresponding shares held by the former A/S Vinmonopolet.. The decline in market shares concerned to a lesser extent Arcus' own brands, compared with its supply of other brands imported in bulk and bottled by the company. In 1997 more than 33 % of combined sales of wine and spirits to final consumers in Norway were produced or bottled by Arcus Produkter AS⁽¹⁶⁾. Exports were for 1996 reported to amount to 5 % of total sales⁽¹⁷⁾ with Germany as the main market.

As there is practically no wine production in Norway and as Arcus Produkter AS has a monopoly on production of spirits, it follows that all spirits and practically all wine purchased by the Arcus companies in bulk or in bottles are imported. Countries within the European Economic Area are among the major countries of origin for the products in question.

Arcus Annual report for 1996 shows that Arcus' total revenues after deductions for excise duties amounted to NOK 1296 million. Operating result amounted to NOK 26,6 million. Net income from financial operations was NOK 13,7 million. NOK 62,1 million from the restructuring provision was recorded as extra-ordinary income, bringing the annual result to NOK 102,4 million. NOK 16,1 million⁽¹⁸⁾ was set off as dividend, see table 4.

In 1997, Arcus reported total revenues net of excises to NOK 1245 million. As current operating costs were higher than current revenues, the operating result turned out with a negative value of NOK 12,8 million. Arcus recorded nevertheless in the same year a positive overall result of NOK 27,8 million. This was achieved by net financial income amounting to NOK 10,7 million and by recording NOK 39,0 million (of which NOK 38,3 million from the restructuring provision) as extra-ordinary income, while extraordinary costs of NOK 9,1 million were deducted. No dividends were paid in 1997.

Table 4

The Arcus Group: economic results 1996 and 1997

	<i>(in million NOK)</i>	
	1996	1997
Current revenues	1 296,1	1 244,6
Current costs	1 269,5	1 257,4
Operating result	26,6	(12,8)
Net financial income	13,7	10,7
<i>Extra-ordinary items:</i>		
Part of restructuring provision, recorded as income	62,1	38,3
Other income	0,0	0,7
Costs, depreciation daughter companies	0,0	(9,1)
Total result	102,4	7,8
<i>Allocated to:</i>		
Dividends	16,1	0,0
Funds	86,3	27,8

Sources: Arcus Annual Reports 1996 and 1997.

⁽¹⁶⁾ Arcus Annual Report 1997.

⁽¹⁷⁾ Arcus Annual Report 1996.

⁽¹⁸⁾ Equal to 4.5 % of Arcus equity capital according to the opening balance (NOK 357 million).

II. APPRECIATION

1. Principles

1.1. *Product coverage*

The Authority notes that Arcus' activities are related to production and trade in goods that fall within the scope of the EEA Agreement (see Article 8, Article 23(b) and Protocols 3, 8 and 47 to the EEA Agreement). Such goods include amongst others beer and spirituous beverages, as these products are listed in tables I and II to Protocol 3 to the EEA Agreement⁽¹⁹⁾.

Accordingly, the transfer of assets to Arcus from A/S Vinmonopolet falls for consideration under the State aid rules of the EEA Agreement and of the Surveillance and Court Agreement. Moreover, it is recalled that the State aid rules also apply to the services sector.

1.2. *Article 61(1)*

Article 61(1) of the EEA Agreement reads as follows:

'Save as otherwise provided in this Agreement, any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of this Agreement'.

This implies that for a measure to constitute State aid within the meaning of Article 61(1) of the EEA Agreement it must:

1. be granted through State resources in any form whatsoever;
2. favour certain undertakings or the production of certain goods;
3. distort or threaten to distort competition and affect trade between Contracting Parties.

State resources

The measures presently to be examined, all involve the use of State resources as they concern assets, i.e. fixed assets and financial resources transferred to Arcus from A/S Vinmonopolet, a wholly State-owned company. It is established case law⁽²⁰⁾ that resources transferred from a State owned company like A/S Vinmonopolet, to the same extent as resources transferred directly from the State, may fall within the notion of aid granted 'through State resources' in the meaning of Article 61(1) EEA. As resources may be 'in any form whatsoever' it implies that both financial and fixed assets as well as other advantages are covered by Article 61(1) EEA. The first condition is therefore fulfilled for all the measures considered in the present Decision, in so far as they are found to contain financial advantages.

Measures favouring certain undertakings

As to the second condition, it is obvious that in so far as the measures imply the provision of financial means or fixed assets on favourable terms, the beneficiary would be certain undertakings, namely the undertakings in the Arcus Group.

⁽¹⁹⁾ Most wines, on the other hand fall outside the general scope of the EEA Agreement. See the following Advisory Opinions of the EFTA Court in relation to the material scope of the EEA Agreement *Restmark*, case E-1/94, Report of the EFTA Court 1 January 1994-30 June 1995 (paragraphs 36-43); *Wilhelmsen*, case E-6/96, Report of the EFTA Court 1997 (paragraphs 17-33).

⁽²⁰⁾ Case 78/76 *Steinike and Weinlig v Germany* [1977] ECR 595, Case C-305/89 *Italy v Commission (Alfa Romeo)* [1991] ECR I-1603, Case 303/88, *Italy v. Commission (ENI-Lanerossi)* [1991] ECR I-1433

Effect on competition and trade

Spirits produced by Arcus Produkter AS are in direct competition on the Norwegian market and on export markets with similar beverages produced in other EEA countries. Arcus Produkter AS imports spirits and wine in bulk for bottling and resale. Vectura AS (former Arcus Distribusjon AS) is the main operator on the Norwegian market concerning wholesale and distribution of spirits and wine of foreign or domestic origin. These activities are carried out in competition with other enterprises engaged in importation and trade of such beverages. As regards market presence, trade and economic result, reference is made to Section I.2.5 of this Decision.

Any financial advantages involved in the financing of Arcus will therefore distort or threaten to distort competition and affect trade within the territory covered by the EEA Agreement, and thereby constitute State aid in the meaning of Article 61(1) of the EEA Agreement. Provided such advantages are involved, the third condition is fulfilled.

The remaining issue to be addressed in relation to Article 61(1) of the EEA Agreement is thus to determine whether, and to what extent, the measures involved in the Norwegian Government's financing of Arcus imply that Arcus has been 'favoured', and thus to identify and quantify possible elements of State aid. The results of the Authority's examination are presented in Section II.2 of this Decision.

1.3. *The market economy investor principle*

In assessing whether State aid is involved in financial transactions between an EFTA State and a public enterprise, the Authority applies the so-called market economy investor principle which is established in Chapters 19 and 20 of the Procedural and Substantive Rules in the Field of State Aid adopted by the Authority on 19 January 1994⁽²¹⁾ (State Aid Guidelines). This principle intends to ensure that public and private enterprises in similar sectors and in comparable economic and financial situations are treated equally with respect to financial allocations and different forms of public intervention. If public funds to public enterprises are provided on terms more favourable (i.e. in economic terms more cheaply) than a private owner would provide them to a private enterprise in a comparable financial and competitive position, then the public enterprise would be receiving an advantage from their proprietors not available to private enterprises. Unless a more favourable provision of public funds is treated as aid, and evaluated with respect to the derogations of the Agreement, then the principle of neutrality of treatment between public and private enterprises is infringed⁽²²⁾.

The Authority, in accordance with paragraph 20.3(2) of the State aid guidelines, applies the 'market economy investor principle' 'as a benchmark to determine both whether aid is involved and if so, quantify it'. (emphasis added)

Based on elaborations by the Court of Justice of the European Communities⁽²³⁾, the test to be applied by the Authority concerns, 'whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional policy and sectoral considerations, would have subscribed the capital in question', ref. State Aid Guidelines paragraph 20.3(4). (emphasis added)

⁽²¹⁾ OJ No L 231, 13.9.1994 and EEA Supplement to the OJ No 32, 13.9.1994.

⁽²²⁾ Ref. Article 125 of the EEA Agreement.

⁽²³⁾ Case 234/84 Belgium v Commission (Meura) [1986] ECR 2263, point 14, Case 40/85 Belgium v. Commission (Boch II) [1986] ECR 2321, paragraph 13.

The Court of Justice of the European Communities, in further elaborating on the market economy investor principle, has stated that the conduct of a private investor with which the intervention of a public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral and guided by prospects of profitability in the longer term.⁽²⁴⁾

2. Assessment of State aid elements

2.1. *The value of fixed assets transferred from A/S Vinmonopolet to Arcus*

2.1.1. Introductory comments

The Authority considers that the valuation method applied by the Norwegian authorities and as presented in the D&T report, the discounted cash-flow method, is appropriate for evaluating investments where the investor has a long-term interest such as the Norwegian Government in the case under consideration.

The results of a valuation of a company, as the one carried out by the Norwegian authorities in the case at hand, depend on a number of assumptions that are subject to judgement. It is not the Authority's aim to replace the investor's judgement⁽²⁵⁾. Therefore, the Authority has not questioned the numerous detailed assumptions and calculations in the D&T report related to market forecasts, assumed mark-ups, projected costs and liquidity needs. The Authority has, however, noted that Deloitte and Touche in its report expresses the view that the calculation of the value of Arcus is conservative. This is explained both in relation to the Norwegian Companies Act's rules for prudent assessment of fixed assets, but also because of the presumption that the company would not be put up for sale in the market. It is also stated that rather strong measures would be required by the Norwegian Government in its policies to limit consumption of alcohol to the extent consistent with the assumptions on market growth entailed in Deloitte and Touche's calculations, implying that market forecasts are conservative.

Concerning individual items in the opening balance, the Authority has found no reason to object to the recorded values for short-term claims and stocks, nor for short- and long-term regular debt. The same goes for the equity injection of NOK 154 million to cover the need for working capital. These items are assumed to reflect a rational distribution of assets and liabilities as a result of the demerger at hand, and to provide means to meeting current liquidity needs. The Authority has, however, objections to the valuation of fixed assets and the compensation the State received in the form of share capital for the transfer of these assets, see Sections II.2.1.2-2.1.4. Transfers to cover liabilities related to restructuring and environmental obligations are dealt with separately below.

When examining the valuation of Arcus and of whether State aid in that context has been awarded, there is, no question of the Authority using the benefit of hindsight, see State aid guidelines point 20.5(2). The Authority has accordingly based its examination on the information available to the Norwegian authorities at the time when the assets were transferred from A/S Vinmonopolet to Arcus.

⁽²⁴⁾ Case C-305/89 Italy v. Commission (Alfa Romeo) [1991] ECR I-1603, paragraph 20.

⁽²⁵⁾ State Aid Guidelines, point 20.5(1).

2.1.2. Sub-optimal structure

The Authority stated in its decision to open the investigation procedure that the estimated value of Arcus' equity capital, NOK 357 million, referred to a calculation based on what must be considered as a sub-optimal structure for the Arcus Group.

The Authority's examination has confirmed the above observation. Information contained notably in the D&T report⁽²⁶⁾ and A/S Vinmonopolet's business plan, shows that the Norwegian authorities based their valuation on a commercially inferior production structure for Arcus, i.e. a production structure which would not maximise the present value of Arcus' income from operations. In this context it is recalled that the opening balance was based on an assumption that existing plant structure should be maintained.

A/S Vinmonopolet's business plan was presented in 1995 and showed that bottling of wine and spirits would be much more costly in Bergen and Trondheim than in Arcus' new facilities in Oslo⁽²⁷⁾. It was therefore clear already in the autumn of 1995, that it would not be justifiable on commercial grounds to continue Arcus' production activities in Bergen and Trondheim.

Thus, it is noted in the D&T report that the return on Arcus' production activities would not suffice to cover the estimated market rents in Bergen and Trondheim. It is also made clear in Annex 1 of the D&T report, that Arcus would realise a capital gain if it decided to sell the facilities in Bergen and Trondheim. It must as well be assumed that Arcus alternatively could obtain additional income by letting out these facilities or employing them in new commercial activities on its own account.

D&T presented in their report calculations of economic gains of a centralisation of production activities at the new facilities in Oslo. Applying the discounted cash flow method, an additional present value of such a more economical structure, including the value of sales revenue from properties, was estimated at NOK 202 million. This estimate was not based on an immediate closing down of activities in Bergen and Trondheim. In fact, the estimate was based on the assumption that these production facilities would be sold in 1999. It was furthermore assumed that certain investments in Oslo would have to be undertaken, that some additional restructuring costs would occur and that there would be savings as a result of reduced personnel costs.

In addressing the issue of costs related to the demerger of A/S Vinmonopolet, see also Table 2 above, D&T expresses in their report that these costs partly stem from the fact that Arcus was supposed to undertake 'softer' restructuring measures, than an independent company operating in the market could afford. This is confirmed in the letter of 9 June 1998, referred to above, where the Norwegian authorities' motivation in opting for a sub-optimal structure is expressed as to avoid possible strikes and unrest among employees.

The Norwegian authorities claimed in their letter dated 13 December 1996 that it was not possible to demonstrate that there would in the future be over-capacity at the plants that could result in additional earnings, nor any likelihood that the company would be in position in the foreseeable future to restructure its activities with the aim to reduce costs. A restructuring of production plants could therefore not be included in the opening balance. However, the Authority has noted with reference to A/S Vinmonopolet's Annual report for 1995 and Arcus' Annual report for 1996, that new automatic warehouse facilities in Oslo were ready and taken into use as early as 1 November 1995. New production facilities in Oslo, including facilities designed for receiving wine and spirits in bulk and three new production lines for bottling were tested and adapted during the autumn of 1995. From 1 January 1996 these various facilities were fully operative.

⁽²⁶⁾ D&T report, page 59 and Annex 1.

⁽²⁷⁾ PA Consulting, *op.cit.*

The Authority considers with reference to the facts referred to above, that the Norwegian authorities' assessment was at variance with how a rational market investor would have acted on the basis of the information available at the time Arcus was established ⁽²⁸⁾. Indeed, it should have appeared as evident that over-capacity would occur relatively soon, which would make the facilities in Bergen and Trondheim available for alternative activities or sale in a foreseeable future. As set out above, the D&T report actually presented alternative calculations in respect of this scenario.

As referred to above, the Norwegian authorities pointed out in its letter of 9 June 1998 that protests from employees were a factor to take into account, underpinning the rationale for the original decision. However, according to the State aid guidelines, as referred to in section II.1.3. above, social considerations alone would not justify maintenance of a suboptimal production structure. Moreover, a rational investor would not incur costs as in the case at hand, by maintaining an inefficient production structure, if not resulting benefits exceeded the costs. The Norwegian authorities have in no way substantiated that any benefits from avoiding possible unrest among employees would exceed the costs of keeping the inefficient production structure. These costs, which are equal to the gains from a rational production structure, were, as pointed out above, calculated, to NOK 202 million by D&T based *inter alia* on an assumption that the actual restructuring would be carried out more than three years after the analysis was made and relevant decisions were taken.

Moreover, and as pointed out in Section II.2.2 the appropriation of NOK 226 million to cover restructuring costs is a further proof of the undervaluation of fixed assets and equity in the opening balance of Arcus. The estimated present value of the projected flow of future net revenues was set at NOK 203 million. In such a case it does not make economic sense to allocate NOK 226 million to cover restructuring costs, when there are substantial values to be realized in cast of liquidation of the undertakings even after obligations to all employees are met, see section II.4. above. Only a higher estimated present value could defend such an allocation.

In conclusion, the decision to maintain production activities in Bergen and Trondheim was at variance with the market economy investor principle.

It is stressed in the D&T report that the estimated additional value of NOK 202 million of a more rational production structure was very uncertain. There is, however, nothing in the report stating that the estimate was biased in any direction. The Authority would like to point out that assessments of the kind undertaken in the D&T report, be it calculation of original value or additional value, are based on a number of uncertain assumptions. Uncertainty implies that there is a likelihood both for better and for worse results than forecast. Altogether, the Authority has found no reason to deviate from the forecast of additional value of NOK 202 million as presented in the D&T report, except for a special element related to the environmental obligation at the site in Trondheim.

The additional value of NOK 202 million was arrived at amongst others on an assumption of sale of the property in Trondheim in 1999 at an estimated NOK 45 million. In this amount NOK 4 million were deducted and assumed to reflect environmental liabilities, see section II.2.3. below, As a separate environmental liability of NOK 30 million was entered in the opening balance, NOK 4 million, calculated to NOK 3 million in present value terms, should be added to the estimated additional value of NOK 202 million.

The valuation of Arcus as a going concern should have been based on an economic structure reflecting the most economic use of the assests. The Authority has therefore drawn the conclusion, based on calculations presented in the D&T report and relying on the market economy investor principle, that fixed assets and equity in Arcus' opening balance were set NOK 205 million too low. In this context reference is also made to the stated conservative nature of the assessments which were undertaken when the opening balance was established.

⁽²⁸⁾ It may as well be noted that bottling and production previously carried out in Bergen were transferred to Oslo by 1 July 1997. Similar activities were transferred from Trondheim to Oslo by 30 June 1998.

2.1.3. Cost of capital

The cost of capital, i.e. the price at which an investor would be willing to provide funds to a company, is the benchmark against which an operation has to be evaluated when assessing whether the return on an equity investment or the interest charged is acceptable to a private investor. The standard methodology used by analysts to calculate the cost of capital is the Capital Asset Pricing Model (CAPM).

Arcus' cost of capital in the D&T report was based on calculations applying standard CAPM methodology. The capital cost (discount rates) were, however, multiplied by a factor of 1,35 to compensate for the poor liquidity of the Arcus shares (a so-called liquidity premium ref. D&T report, page 62). The capital costs were set to respectively 10,3 % per annum for production of wine and spirits, 12,2 % per annum for production of technical spirits and 11,9 % per annum for distribution activities.

Valuations of long-term projects and investments in companies based on the discounted cash-flow method are sensitive to the discount rate. If the cost of capital is set too high, then the value of a project or a company as measured by the present value of its cash flow will be estimated at a too low level. Conversely, the value will be too high if the cost of capital is set too low.

A liquidity premium is normally added to the required rate of return in relation to investment in shares not quoted on the stock exchange. Such a premium can be seen as a compensation for difficulties in selling the shares. For an investor with a long-term horizon in relation to an acquisition and without any plans for sale in the foreseeable future, a liquidity premium would be insignificant. When a transaction, in particular, involves a whole company and not only certain shares, accounting with a liquidity premium is even less relevant.

In its letter to Norway of 11 May 1998, the Authority stated that it is not relevant for investors with a long investment horizon to require compensation for the costs associated with the poor liquidity of asset to be acquired. The Authority referred also to the fact that the reference (and discount) rates of interest for Norway were respectively, 8,19 % in 1995 and 7,00 % in 1996, i.e. significantly lower than the ones used in the D&T report.

Referring to the market economy investor principle as elaborated by the Court of Justice of the European Communities as referred to in section II.1.3. above, the Authority has come to the conclusion that the transfer of A/S Vinmonopolet's assets to Arcus should be assessed from the view of an investor having longer-term goals. There is no information in the file to suggest that the Norwegian Government perceived ownership of Arcus to be of a short-term nature or that it was guided by short term profit considerations in its financing of Arcus it has therefore been found to be inconsistent with the approach of an investor with long-term goals, for the Norwegian Government to require compensation for the poor liquidity of Arcus' shares. The Authority considers that the liquidity premium that was set to 35 % in the D&T report, should be eliminated and that Arcus' cost of capital should be adjusted accordingly. Corrected for this factor and in the light of the various risk factors involved, the Authority can accept the capital cost factors applied in the D&T report.

The required correction of the capital costs implies that the present value of Arcus' net cash flow from assets was under-estimated by NOK 59 million ⁽²⁹⁾.

2.1.4. Conclusions

The considerations in points 2.1.2 and 2.1.3 imply that Arcus' opening balance did not reflect the best estimate of the real value of the assets transferred from A/S Vinmonopolet. This refers to the additional value of Arcus' fixed assets according to their best use (NOK 205 million) and the capital cost factor (NOK 59 million), all in all representing an undervaluation amounting to NOK 264 million.

⁽²⁹⁾ Estimated by the Authority's services based on the cash-flows presented in Chapter 12 of the D&T report and applying discount rates of 7,6 %, 9,0 % and 8,8 % for production of wine and spirits, technical spirits, and distribution, respectively

This implies that the Norwegian authorities in effect allowed Arcus at the time of the transaction to acquire the fixed assets in question for less than their real value. The implication of the undervaluation of assets transferred to Arcus is that the value of the shares the State received as compensation for the assets was correspondingly undervalued by NOK 264 million.

The assets transferred from A/S Vinmonopolet were therefore provided to Arcus on terms more favourable than a private owner would provide to an enterprise in a comparable financial and competitive position, see State Aid Guidelines point 20.3.(1). This amounts to a transfer of assets from A/S Vinmonopolet, a State-owned enterprise, to Arcus without the State being compensated for the full value. In fact, the transaction implied that A/S Vinmonopolet through the demerger incurred depreciation costs, see Table 2, that were set NOK 264 million too high. In conclusion, the transaction was carried out on terms which involved State aid within the meaning of Article 61(1) of the EEA Agreement amounting to NOK 264 million.

2.2. Restructuring costs

In the autumn of 1995 it was clear that Arcus would be facing costs related to organisational changes and that the companies in the Arcus Group would need to undertake certain investments *inter alia* in order to meet the new market situation ⁽³⁰⁾. Estimates of Arcus' restructuring costs were presented in Chapter 9 of the D&T report, see Table 5.

Table 5

Estimated restructuring costs

<i>(in NOK million)</i>			
Cost categories	1996	1997	Total
Reduced manning	75,2	40,5	115,7
Early retirement	29,0	0,0	29,0
Training measures ⁽¹⁾	10,0	10,0	20,0
Up-grading/profiling of products ⁽²⁾	19,5	0	19,5
Consultancy help, legal advice ⁽³⁾	15,0	15,0	30,0
Misc. investments ⁽⁴⁾	22,5	0,0	22,5
Total	171,2	65,5	236,7 ⁽⁵⁾

⁽¹⁾ Training to qualify employees for work outside Arcus or A/S Vinmonopolet,

⁽²⁾ Costs related to new labels, uniforms, advertisements, respraying of cars, licence fees and re-registration costs and costs related to the registration of the Arcus trademark in other countries.

⁽³⁾ Costs related to *inter alia* new IT systems, legal advice, upgrading of documentation, logistics and IT management establishment of product, marketing and sales departments.

⁽⁴⁾ Costs related *inter alia* the separation of offices and administration between A/S Vinmonopolet and Arcus.

⁽⁵⁾ This sum was discounted to arrive at a restructuring provision of NOK 226 million. The latter amount was made available as of 1 January 1996 and was foreseen to earn interest covering the total restructuring needs.

Source: D&T report

⁽³⁰⁾ D&T Report, Chapter 9.

A/S Vinmonopolet entered in 1993 and in 1995 into two protocols on personnel management with the local trade unions ⁽³¹⁾. Both protocols expired automatically on 31 December 1997. The protocol from 1993 concerned notably matters related to internal recruitment and transfers of personnel, compensation rules regarding transfers and lay-offs, early retirement, personnel reductions and training measures. The protocol from 1995 was an addendum to the protocol from 1993 and concerned notably measures triggered by the Norwegian Government's decision of 13 February 1995 to abolish A/S Vinmonopolet's exclusive rights regarding importation and wholesale of wine and spirits. The latter protocol contains more detailed provisions concerning compensation in the case of early retirement, training measures to acquire skills regarding activities outside the former alcohol monopoly, unpaid leave, and job related insurance.

The estimated restructuring costs in the D&T report were based on assumptions consistent with the level of manning assumed in the valuation. Rights and obligations following from the two protocols agreed in 1993 and 1995, were also taken into account. The restructuring provision was placed at Arcus' disposal. It was up to the company itself to decide on how to spend the allocated means.

The restructuring measures foreseen in the D&T report implied that Arcus' manning would be reduced by 245 employees, i.e. from 621 to 376 persons ⁽³²⁾. 65 per cent of the planned reductions were foreseen to take place in 1996 and the rest in 1997. During 1996 and 1997 some 150 employees have resigned or been dismissed and replacements with personnel with e.g. marketing competence have taken place. Arcus reported to have 685 employees at the end of the 1996 and 716 employees at the end of 1997 ⁽³³⁾. Arcus' manning was therefore at the end of 1997 significantly above the level indicated in the Norwegian Government's proposition ⁽³⁴⁾ to the Norwegian Parliament where a reduction in manning was foreseen. By the end of 1997, Arcus' level of manning had in fact increased since the separation from A/S Vinmonopolet.

The Authority has examined the information provided by Norway on how the restructuring provision has been used by Arcus, see Table 6 below.

Table 6

Allocation of the restructuring provision

<i>(in NOK million)</i>			
Cost categories	1996	1997	Total
Reduced manning	5,7	6,4	12,1
Early retirement	17,2	19,9	37,1
Sum personnel related costs	22,9	26,3	49,2
Training measures	1,2	0,5	1,7
Up-grading/profiling of products	9,5	0	9,5
Consultancy help, legal advice	7,8	0	7,8
Misc. investments	0,7	0	0,7

⁽³¹⁾ 'Protokoll - Tiltak ved personaltilpasninger i Vinmonopolet av 11.6.1993' and 'Tilleggsprotokoll om tiltak ved personaltilpasninger i Vinmonopolet av 8.6.1995'

⁽³²⁾ D&T report. pp. 39 and 42.

⁽³³⁾ See Arcus Annual Report 1997, p. 8.

⁽³⁴⁾ St.prp. No 11 1995-96.

(in NOK million)

Cost categories	1996	1997	Total
Sum other restructuring costs	19,2	0,5	19,7
Sum restructuring costs	42,1	26,8	68,9
Balance beginning of year	226,0	121,8	n.a.
– Sum restructuring costs	(42,1)	(26,8)	(68,9)
– Allocations as extraordinary income	(62,1)	(38,3)	100,4
= Balance end of year	121,8	56,7	n.a.

Source: Ministry of Trade and Industry

The Authority accepts that a rational market economy investor guided by prospects of profitability in the longer term might set aside even relatively large sums of money to protect the value of his investments without this constituting aid in the meaning of Article 61(1) of the EEA Agreement.

However, the allocated restructuring means were substantial in relation to the assets involved. This is particularly evident if the restructuring provision is compared to the opening balance and the estimated liquidation value of the company. The liquidation value of Arcus was estimated at NOK 387 million after legal obligations towards employees and other close-down costs had been deducted, see Table 3. Faced with such an amount a rational investor would not have injected NOK 226 million only to observe that the value of the company after that injection was not more than NOK 357 million. Only if the real value of the assets was substantially higher, would a provision of this magnitude make sense from an economic point of view. This underscores what has been pointed out above, namely that the opening balance did not reflect the real value of the company.

As referred to, the undervaluation of NOK 264 million of the assets transferred to Arcus implied a corresponding undervaluation of the shares the state received in compensation. Accordingly, in the view of the Authority, Arcus equity should have been set to NOK 621 million (357 + 264), including the provision of NOK 226 million to cover estimated restructuring needs. Before this provision was made, Arcus' value as a going concern would have been estimated at NOK 395 million (621-226), which would have exceeded the estimated liquidation value of NOK 387 million. The Authority has therefore not raised any objections in principle to setting up a substantial provision to cover costs related to restructuring.

However, the Authority considers that a rational investor only would have provided such financing under certain conditions that are not fully met in the case at hand. There were, when Arcus was established, significant uncertainties both regarding the amounts of actual restructuring costs that would materialise and when actual payments for restructuring costs might fall due. In such a situation, the Authority considers that it could be rational to set aside a given sum from the start-up, but a rational investor would not accept to cover restructuring costs before they were due and to provide means beyond what was needed for this purpose.

The Authority has not found it established by the Norwegian authorities that there were any specific conditions attached to the restructuring provision. The amount was, as far as the Authority understands, made at Arcus' own disposal and Arcus has even recorded significant amounts of the restructuring provision as extra-ordinary income. In other words, parts of the restructuring provision cannot be seen as anything different from operating aid which normally is incompatible with Article 61 of the EEA Agreement.

The restructuring measures were supposed to be carried out in the first two years of Arcus' operations. It was foreseen (see Table 5) that more than 70 % of the restructuring cost would be recorded in the first year of the planned restructuring period. The Authority has noted that the restructuring period of two years corresponded to the duration of the original protocols agreed between A/S Vinmonopolet and the local trade unions. The Authority has also noted that there were delays in the Government's granting of licences to those that wanted to enter the market as competitors to Arcus. Therefore, Arcus remained in a *de facto* monopoly situation for a substantial part of 1996. As the Authority understands the matter, delays in granting licences were outside Arcus' control. The Authority accepts therefore that Arcus has faced certain unforeseen obstacles regarding the time needed to carry out the planned restructuring and personnel reductions.

The Norwegian authorities reported in their letter dated 9 June 1998 (ref. 98-3978-A) that some of the obligations related to the original protocols with the trade unions were not carried out within their expiry date of 31 December 1997. It was also informed that Arcus had entered into two new agreements amending the original protocols⁽³⁵⁾, in respectively 1997 and 1998. Both agreements concern personnel employed by A/S Vinmonopolet before 11 June 1993 and obligations related to the same restructuring process as the original protocols. Obligations following from the agreements would, according to the Norwegian authorities, have to be met in the course of 1998. The Authority considers that it may be justified to use means of the restructuring provision in 1998 to finance personnel related restructuring costs in accordance with the principles of the original protocols between A/S Vinmonopolet and the local trade unions.

Concerning the use of the restructuring provision and in accordance with the market economy investor principle, the Authority makes the following conclusions:

- Arcus' use of the provision to cover costs related to reduced manning and early retirement, accounting to NOK 49,2 million for 1996 and 1997 (See Table 6), does not constitute aid. The costs in question refer to expenses related to costs associated with A/S Vinmonopolet's contractual obligations⁽³⁶⁾ towards its former employees;
- Arcus' use of the restructuring provision to cover costs related to upgrading/profiling of products, *inter alia*, change of name, logo, labels, and initial retraining of personnel have been found to be commercially justified start up costs. Likewise, Arcus use of the restructuring provision to cover, *inter alia* consultancy costs related to the business plan, legal advice, logistics, IT management and organisational changes in Arcus Produkter AS and Arcus Distribusjon AS concern investments needed to adapt Arcus to new market conditions. Arcus use of the provision for the above purposes in 1996 and 1997, amounting to NOK 19,7 million does not constitute State aid;
- Arcus' use of parts of the restructuring provision remaining at the end of 1997, NOK 56,7 million, see Table 6, to cover personnel related restructuring costs in 1998 up to the date of this Decision due to delays in manning reductions, will similarly not constitute aid, insofar as the costs in question refer to obligations that arise from the original protocols between A/S Vinmonopolet and the local trade unions to the benefit of the employees;

⁽³⁵⁾ 'Tilleggsavtale 2 - Tilleggsprotokoll Tiltak ved personaltilpasninger i Arcus-selskapene av 12. februar 1997' and 'Avtale om tiltak i forbindelse med personalmessige tilpasninger i Arcus Gruppe, Oslo og Hamar av 11.mai 1998'

⁽³⁶⁾ 'Protokoll - Tiltak ved personaltilpasninger i Vinnmonopoler av 11.6.1993' and 'Tilleggsprotokoll om tiltak ved personaltilpasninger i Vinmonopolet av 8.6.1993'

- Arcus has allocated in 1996 and 1997 altogether NOK 100,4 million of the restructuring provision as extra-ordinary income. The Norwegian authorities have not presented any economic justification for allowing Arcus to record part of the restructuring provision as extra-ordinary income. The amount of NOK 100,4 million plus accumulated interest on restructuring means (NOK 226 million from the start) not used for restructuring purposes calculated from 1 January 1996 and on the basis of the reference rate of interest which applies to Norway⁽³⁷⁾, constitutes aid in the meaning of Article 61(1). The same conclusion must be drawn concerning those parts of the restructuring provision which were remaining at the end of 1997 and which have not in 1998 until the date of this Decision, been recorded to cover personnel related restructuring costs.

2.3. *Environmental obligations*

A/S Vinmonopolet transferred to Arcus together with the restructuring provision an environmental provision of NOK 30 million. The Norwegian authorities have explained the provision of such Financing by referring to expected costs related to clean up of pollution in the ground water under parts of the facilities in Trondheim. The pollution stems from old, contaminated industrial waste, and from Arcus' or A/S Vinmonopolet's activities.

The Authority has noted that at the time of assessment of the opening balance for Arcus, two different estimates of costs related to the environmental obligation existed. An independent appraiser assessing the value of the property in Trondheim, ref. Section II 2.1.2. above, calculated with an obligation amounting to NOK 4 million. The Authority is not aware of any detailed presumptions for this assessment. The other estimate was made by A/S Vinmonopolet. On the basis of a detailed assessment of various cost factors A/S Vinmonopolet estimated the costs to NOK 30 million. This estimate was partly based on previous assessments made by the Norwegian Geological Institute.

Besides rather different estimates of what the costs of cleaning up would amount to, there was at the time of establishment of Arcus, and still is according to the Authority's information, very uncertain when a request from the environmental authorities to clean up the site would possibly materialise. The Authority has noted that certain preventive measures were undertaken at the property in 1992-93 and that the situation is currently surveyed and assessed in cooperation with the environmental authorities⁽³⁸⁾.

The Authority recognises that there is an environmental obligation attached to Arcus' property in Trondheim. Applying the market economy investor principle the Authority can, however, not see that it was justified to provide Arcus with NOK 30 million to cover such an obligation. Faced with a rather uncertain liability, not knowing when in the future it possibly might materialise, a rational investor would not have provided the allocated means.

In conclusion, the Authority does not object to the fact that an environmental obligation was reflected in the opening balance of Arcus and that it was recorded at NOK 30 million. But the financial advantage of receiving on 1 January 1996 an appropriation of NOK 30,0 million plus accumulated interest on this amount calculated as from the same date on the basis of the reference rate of interest which applies to Norway, constitutes aid in the meaning of Article 61(1).

⁽³⁷⁾ The type of interest to be applied as the reference rate of interest in Norway is stated in Chapter 33.2 (former Chapter 27(3)(f)) of the State aid guidelines. The actual interest rates to be applied are as follows: For 1996: 7,00 %, from 1.1.1997 to 30.5.1997: 6,24 %, from 1.6.1997 to 31.12.1997: 5,05 %, from 1.1.1998 to 30.5.1998: 5,63 %, from 1.6.1998 onwards: 6,75 %

⁽³⁸⁾ Ref. Arcus Annual Reports 1996 and 1997.

3. Articles 61(2) and 61(3)

The Authority has not received any information from the Norwegian authorities indicating that they consider any of the exemption clauses under Articles 61(2) or 61(3) of the EEA Agreement to be applicable, the Norwegian position being that no aid was involved in the setting-up of Arcus. Having found that the establishment of Arcus indeed comprised elements of aid in the meaning of Article 61(1) EEA, the Authority has considered these elements for possible exemptions under other paragraphs of Article 61.

The Authority cannot consider the aid to Arcus as compatible with the functioning of the EEA Agreement pursuant to Article 61(2), since the aid does not correspond to any of the cases provided for under those provisions. The same applies to Article 61(3)(b) and (d), as the facts of the case clearly indicate that those provisions are not relevant.

Article 61(3)(a) and (c) EEA provide for exemptions in respect of aid to promote or facilitate the development of certain regions. The aid to Arcus does not qualify for exemptions laid down in those provisions, in so far as they relate to regional aid, nor have the Norwegian authorities put forward any such regional arguments in support of the aid measures. The Authority notes in particular that Arcus' facilities are located in Oslo/Hamar, Bergen and Trondheim, i.e. areas that have not been authorised for regional aid under Article 61(3)(a) and (c).

With regard to the exemption pursuant to Article 61(3)(c) for 'aid to facilitate the development of certain economic activities', the Authority may consider rescue and restructuring aid as compatible with the functioning of the EEA Agreement if it meets a number of conditions, see State aid guidelines, Chapter 1b on aid for rescuing and restructuring firms in difficulty. However, as Arcus cannot be regarded as having been in difficulty, these Guidelines are not applicable. Even the part of the restructuring provision that has been defined above as State aid, was not used for restructuring purposes. Thus, that aid, too, is found incompatible with Article 61 of the EEA Agreement.

According to Chapter 15 of the State Aid Guidelines, the Authority may subject to specified conditions authorise aid for environmental protection. As no explicit requirement to undertake any clean-up operation has materialised after Arcus was established, there is no ground for exempting the whole or part of the environmental provision described in section II2.3. above.

4. Breach of procedural obligations

The measures which in Parts II 2.1, 2.2. and 2.3. of this Decision have been found to constitute aid, have not been notified to the Authority. The measures have been put into effect without initial approval by the Authority. As unnotified aid, the aid in question is unlawful on procedural grounds by infringing the last sentence of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, ref. State aid guidelines Chapters 3 and 6. The aid is also incompatible with the functioning of the EEA Agreement as none of the exemptions provided for in Articles 61(2) and (3) of the Agreement are applicable, ref. point II.3 above.

In negative decisions on cases of unlawful aid the EFTA Surveillance Authority orders for the purpose of restoring the *status quo*, as a rule, the EFTA State concerned to reclaim the aid from the recipient.

5. Recovery

The Authority has concluded that Arcus received fixed assets that were undervalued by NOK 264 million and that the State was compensated with shares undervalued by the same amount. A correct opening balance would have shown fixed assets and share value NOK 264 million above the recorded figures. The aid of NOK 264 million shall be recovered. In the circumstances of the case, with, the view of restoring *status quo*, the recovery can be in the form of the State receiving NOK 264 million in increased share capital, recorded in a corrected opening balance as of 1 January 1996.

The estimated figure of a corrected value of Arcus as of 1 January 1996 is largely based on an assumption that measures achieving a rational production structure and property management were to be undertaken in 1999. In view of this and of actual developments no recovery of dividends is called for in the financial years 1996 and 1997.

Appropriation of means to cover restructuring costs, allocated as extra-ordinary income in 1996 and 1997, altogether NOK 100,4 million shall be paid back to the State. Remaining means by 31 December 1997 to cover restructuring costs, not used to cover personnel related restructuring costs in 1998 until the date of this Decision, shall be paid back to the State Interest accrued on restructuring means not used for restructuring purposes calculated from 1 January 1996 onwards shall be paid back to the State. The interest rate to be applied is the reference rate of interest for Norway, as referred to above in section II.2.2. (see footnote 42).

The environmental provision of NOK 30 million shall be paid back to the State with accrued interests applying the reference rate of interest for Norway, as from 1 January 1996.

6. Reporting

The Transparency Directive⁽³⁹⁾ obliges the EFTA States to ensure that the flow and uses of all public funds to public undertakings whose turnover excluding taxes is ECU 40 million⁽⁴⁰⁾ or higher, are made transparent.

The Authority considers it necessary, for the purpose of monitoring compliance with Article 61 of the EEA Agreement, to request the Norwegian authorities to supply, in respect of Arcus, information of the kind listed in Articles 1 and 3 of the Transparency Directive, and in addition copies of Arcus' annual reports and the protocols from Arcus' annual shareholders' meetings, and a statement on the Norwegian authorities' dividend policies concerning Arcus.

The requested information referred to above, shall be provided within 15 working days of the date of the publication of Arcus' annual report and in any case, not later than six months after the end of the financial year,

HAS ADOPTED THIS DECISION:

1. The public assistance to companies in the Arcus group consisting of;

- (a) assets transferred from A/S Vinmonopolet at an acquisition value NOK 264 million below the commercial value,
- (b) NOK 100,4 million of a restructuring provision of NOK 226 million,
- (c) remaining means of the restructuring provision, NOK 56,7 million, at the end of 1997, in so far as they have not been used to cover personnel related restructuring costs in 1998 up to the date of this Decision,

⁽³⁹⁾ The act referred to in point 1 of Annex XV to the EEA Agreement (Commission Directive 80/723 of 25 June 1980) on the transparency of financial relations between Member States and public undertakings

⁽⁴⁰⁾ Some NOK 350 million applying current exchange rates

- (d) an environmental provision of NOK 30 million related to polluted land-fill at Arcus' properties in Trondheim, and
- (e) accrued interests on restructuring means not used for restructuring purposes, referred to in points (b) and (c), and on the environmental provision referred to in point (d),

constitutes State aid within the meaning of Article 61(1) of the EEA Agreement. Moreover, it has been awarded in contravention to the procedural requirements of Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, and does not qualify for exemptions according to Articles 61(2) or 61(3) of the same Agreement. Consequently, the assistance is incompatible with the functioning of the Agreement.

2. Norway shall carry out the following corrective measures:

- (a) The aid of NOK 264 million received by an undervaluation of fixed assets transferred to Arcus shall be recovered. This can be done by the State receiving NOK 264 million in increased share capital, recorded in a corrected opening balance as of 1 January 1996.
- (b) The part of the restructuring provision, which has been recorded as extra ordinary income in 1996 and 1997, amounting to NOK 100,4 million shall be recovered.
- (c) Remaining means of the restructuring provision, NOK 56,7 million at the end of 1997, in so far as they have not been used to cover personnel related restructuring costs in 1998 up to the date of this Decision, shall be recovered.
- (d) The environmental provision of NOK 30 million shall be recovered.
- (e) Interest accrued on restructuring means of NOK 226 million not used for restructuring purposes calculated from 1 January 1996 onwards shall be recovered. Interest accrued on the environmental provision of NOK 30 million calculated as from 1 January 1995 onwards shall be recovered. The interest rate to be applied shall be the reference rate of interest for Norway (see State aid guidelines, Chapter 33.2 and the interest rates specified in section II2.2. of this Decision). Interests shall run until the date of the recovery.
- (f) Compensation and repayment shall be made in accordance with the procedures and provisions of Norwegian law.

3. The Norwegian Government shall keep the Authority informed on a regular annual basis of its financial relations with Arcus by providing the information of the kind referred to in Articles 1 and 3 of the Act referred to in point I of Annex XV to the EEA Agreement (Commission Directive 80/723/EEC), and in addition copies of Arcus' annual reports and the protocols from Arcus' annual shareholders' meetings, and a statement on the Government's dividend policies concerning Arcus.

The requested information shall be provided within 15 working days of the date of the publication of Arcus' annual report and in any case, not later than six months after the end of the financial year.

- 4. The Norwegian Government shall inform the Authority within two months of the date of the notification of this Decision, of the measures taken to comply therewith.
- 5. This Decision, which shall be authentic in the English language, is addressed to Norway.

Done at Brussels, 3 December 1998.

For the EFTA Surveillance Authority

Knut ALMESTAD

President
