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

COUNCIL COMMON POSITION
of 30 September 1999
on the extension of Common Position 1999/206/CFSP concerning Ethiopia and Eritrea
(1999/650/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof,

Having regard to Common Position 1999/206/CFSP of 15 March 1999 defined by the Council on the basis of Article J.2 of the Treaty on European Union, concerning Ethiopia and Eritrea ⁽¹⁾,

Whereas in the light of the considerations in Article 3 of Common Position 1999/206/CFSP, the said Common Position should be further extended,

HAS ADOPTED THIS COMMON POSITION:

Article 1

Common Position 1999/206/CFSP shall be extended until 31 March 2000.

It shall be kept under constant review.

Article 2

This Common Position shall take effect on the date of its adoption.

Article 3

This Common Position shall be published in the Official Journal.

Done at Brussels, 30 September 1999.

For the Council
The President
T. HALONEN

⁽¹⁾ OJ L 72, 18.3.1999, p. 1.

I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 2095/1999
of 1 October 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:

- (1) 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;

- (2) 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 2 October 1999.

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

Done at Brussels, 1 October 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 1 October 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	52,5
	999	52,5
0707 00 05	628	125,1
	999	125,1
0709 90 70	052	54,7
	999	54,7
0805 30 10	052	70,2
	388	61,2
	512	61,0
	524	61,5
	528	63,1
	999	63,4
0806 10 10	052	105,9
	064	55,0
	400	228,3
	999	129,7
0808 10 20, 0808 10 50, 0808 10 90	064	37,9
	388	54,7
	400	46,2
	800	185,5
	804	67,1
	999	78,3
0808 20 50	052	86,2
	064	58,3
	388	181,1
	999	108,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2645/98 (OJ L 335, 10.12.1998, p. 22). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 2096/1999
of 1 October 1999
amending Regulation (EC) No 1897/1999 on a special intervention measure for cereals in Finland
and Sweden

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 Regulation (EC) No 1253/1999 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 2513/98 ⁽⁴⁾,

- (1) Whereas Commission Regulation (EC) No 1897/1999 ⁽⁵⁾, opens an invitation to tender for the refund for the export of oats produced in Finland and Sweden to all third countries; whereas, in the present situation, it is appropriate to increase the quantity put up for tender;

- (2) 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

Article 1(1) of Regulation (EC) No 1897/1999 is hereby amended as follows:

'1. A special intervention measure in the form of an export refund shall be implemented in respect of 400 000 tonnes of oats produced in Finland and Sweden and intended for export from Finland and Sweden to all third countries.

Article 13 of Regulation (EEC) No 1766/92 and the provisions adopted for the application of that Article shall apply, *mutatis mutandis*, to the said refund.'

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, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 160, 26.6.1999, p. 18.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 313, 21.11.1998, p. 16.

⁽⁵⁾ OJ L 233, 3.9.1999, p. 10.

COMMISSION REGULATION (EC) No 2097/1999
of 1 October 1999
prohibiting fishing for redfish by vessels flying the flag of Portugal

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 2846/98 ⁽²⁾, and in particular Article 21(3) thereof,

- (1) Whereas Council Regulation (EC) No 67/1999 of 18 December 1998 laying down for 1999 certain conservation and management measures for fishery resources in the Convention Area as defined in the Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries ⁽³⁾ lays down quotas for redfish for 1999;
- (2) Whereas, in order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;
- (3) Whereas, according to the information received by the Commission, catches of redfish in the waters of ICES divisions XIV, XII, V (Community fishing waters and areas beyond fisheries jurisdiction of the coastal States) by vessels flying the flag of Portugal or registered in Portugal have exhausted the quota allocated for 1999;

whereas Portugal prohibited fishing for this stock from 13 September 1999; whereas this date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of redfish in the waters of ICES divisions XIV, XII, V (Community fishing waters and areas beyond fisheries jurisdiction of the coastal States) by vessels flying the flag of Portugal or registered in Portugal are hereby deemed to have exhausted the quota allocated to Portugal for 1999.

Fishing for redfish in the waters of ICES divisions XIV, XII, V (Community fishing waters and areas beyond the fisheries jurisdiction of the coastal States) by vessels flying the flag of Portugal or registered in Portugal is hereby prohibited, as are the retention on board, transshipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

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 from 13 September 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 13, 18.1.1999, p. 145.

COMMISSION REGULATION (EC) No 2098/1999
of 1 October 1999
amending Regulation (EC) No 1685/95 on arrangements for issuing export licences for wine sector products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 1677/1999 ⁽²⁾, and in particular Articles 52(3) and 55(8) thereof,

- (1) Whereas, in order to reassess the export refund arrangements and revise the arrangements for managing export licences, an assessment must be made of the situation on the market in wine at the beginning of the 1999/2000 wine year and a detailed evaluation made of the refund arrangements and the system for requesting and issuing export licences in the sector. A sufficiently long period for reflection should be allowed before export licence applications can be submitted so that the wine year in question does not commence before the adjustments to the arrangements can be made. The date for the submission of new applications should be put back from 8 to

15 October 1999 and Commission Regulation (EC) No 1685/95 ⁽³⁾, as last amended by Regulation (EC) No 1610/1999 ⁽⁴⁾, should be amended accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

In the final sentence of Article 1a(3) of Regulation (EC) No 1685/95, the date '8 October 1999' is replaced by '15 October 1999'.

Article 2

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

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 84, 27.3.1987, p. 1.
⁽²⁾ OJ L 199, 30.7.1999, p. 8.

⁽³⁾ OJ L 161, 12.7.1995, p. 2.
⁽⁴⁾ OJ L 190, 23.7.1999, p. 18.

COMMISSION REGULATION (EC) No 2099/1999**of 1 October 1999****providing for the grant of private storage aid fixed in advance for carcasses and half-carcasses of lamb in Ireland, Finland and the United Kingdom**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheep meat and goat meat ⁽¹⁾, and in particular Article 12(1) and (4) thereof,

- (1) Whereas Commission Regulation (EEC) No 3446/90 of 27 November 1990 laying down detailed rules for granting private storage aid for sheep meat and goat meat ⁽²⁾, as last amended by Regulation (EC) No 3533/93 ⁽³⁾, lays down in particular detailed rules where the amount of aid is fixed at a flat rate in advance;
- (2) Whereas Commission Regulation (EEC) No 3447/90 of 28 November 1990 on special conditions for the granting of private storage aid for sheep meat and goat meat ⁽⁴⁾, as last amended by Regulation (EC) No 40/96 ⁽⁵⁾, lays down in particular the minimum quantities per contract;
- (3) Whereas the application of Article 12(1) of Regulation (EC) No 2467/98 may result in a decision to grant private storage aid; whereas that Article provides for the application of these measures on the basis of the situation of each quotation zone; whereas, in view of the particularly difficult market situation in Ireland, Finland and the United Kingdom, the conditions laid down in that Article have been met; whereas, as a consequence, it has been judged opportune to initiate such a procedure;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Subject to the provisions of Regulation (EEC) No 3447/90, applications may be submitted between 4 October and 12 November 1999 for aid for the private storage of carcasses and half carcasses of lamb up to a limit of 250 tonnes in Ireland, 100 tonnes in Finland and 2 350 tonnes in the United Kingdom.

Applications submitted after the day on which the total quantity applied for exceeds the quantities referred to in the preceding subparagraph shall not be accepted. Quantities in respect of which applications are lodged on the day the overall limit is exceeded in a Member State shall be reduced proportionally.

2. The level of aid for the minimum storage period of three months shall be EUR 1 400 per tonnes. The actual storage period shall be chosen by the storer. This period may extend from a minimum of three months to a maximum of seven months. If the storage period is greater than three months the aid shall be increased on a daily basis by EUR 1,45 per tonnes per day.

Article 2

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

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 312, 20.11.1998, p. 1.

⁽²⁾ OJ L 333, 30.11.1990, p. 39.

⁽³⁾ OJ L 321, 23.12.1993, p. 9.

⁽⁴⁾ OJ L 333, 30.11.1990, p. 46.

⁽⁵⁾ OJ L 10, 13.1.1996, p. 6.

COMMISSION REGULATION (EC) No 2100/1999
of 1 October 1999
prohibiting fishing for saithe by vessels flying the flag of Sweden

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 2846/98 ⁽²⁾, and in particular Article 21(3) thereof,

- (1) Whereas Council Regulation (EC) No 51/1999 of 18 December 1998 allocating, for 1999, certain catch quotas between Member States for vessels fishing in the Norwegian exclusive economic zone and the fishing zone around Jan Mayen ⁽³⁾ amended by Commission Regulation (EC) No 1619/1999 ⁽⁴⁾, lays down quotas for saithe for 1999;
- (2) Whereas, in order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated;
- (3) Whereas, according to the information received by the Commission, catches of saithe in the waters of ICES division IV (Norwegian waters south of 62 °N) by vessels flying the flag of Sweden or registered in Sweden have

exhausted the quota allocated for 1999; whereas Sweden has prohibited fishing for this stock from 18 September 1999; whereas this date should be adopted in this Regulation also,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of saithe in the waters of ICES division IV (Norwegian waters south of 62 °N) by vessels flying the flag of Sweden or registered in Sweden are hereby deemed to have exhausted the quota allocated to Sweden for 1999.

Fishing for saithe in the waters of ICES division IV (Norwegian waters south of 62 °N) by vessels flying the flag of Sweden or registered in Sweden is hereby prohibited, as are the retention on board, transshipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

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 from 18 September 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 358, 31.12.1998, p. 5.

⁽³⁾ OJ L 13, 18.1.1999, p. 67.

⁽⁴⁾ OJ L 192, 24.7.1999, p. 14.

COMMISSION REGULATION (EC) No 2101/1999
of 1 October 1999
amending Regulation (EEC) No 3536/91 setting the latest time of entry into storage for skimmed-
milk powder sold under Regulation (EEC) No 3398/91

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 7(5) thereof,

Whereas:

- (1) Commission Regulation (EEC) No 3536/91 ⁽³⁾, as last amended by Regulation (EC) No 1996/1999 ⁽⁴⁾, limited the quantity of skimmed-milk powder released for sale to that taken into storage before 1 August 1996;

- (2) in view of the quantity still available and the market situation, that date should be amended to 1 October 1996;

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

HAS ADOPTED THIS REGULATION:

Article 1

In Article 1 of Regulation (EEC) No 3536/91, '1 August 1996' is hereby replaced by '1 October 1996'.

Article 2

This Regulation shall enter into force on 2 October 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28.6.1968, p. 13.

⁽²⁾ OJ L 206, 16.8.1996, p. 21.

⁽³⁾ OJ L 335, 6.12.1991, p. 8.

⁽⁴⁾ OJ L 247, 18.9.1999, p. 8.

COMMISSION REGULATION (EC) No 2102/1999**of 1 October 1999****fixing the maximum aid for concentrated butter for the 211th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 7a(3) thereof,

Whereas:

- (1) in accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community ⁽³⁾, as last amended by Regulation (EC) No 124/1999 ⁽⁴⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; whereas the end-use security must be fixed accordingly;

- (2) in the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly;
- (3) the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 211th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

- | | |
|---------------------|-----------------|
| — maximum aid: | 117 EUR/100 kg |
| — end-use security: | 129 EUR/100 kg. |

Article 2

This Regulation shall enter into force on 2 October 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28.6.1968, p. 13.

⁽²⁾ OJ L 206, 16.8.1996, p. 21.

⁽³⁾ OJ L 45, 21.2.1990, p. 8.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

**COMMISSION REGULATION (EC) No 2103/1999
of 1 October 1999**

fixing the minimum selling price for skimmed-milk powder for the 138th individual invitation to tender issued under the standing invitation to tender referred to in Regulation (EEC) No 3398/91

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 7(5) thereof,

Whereas:

- (1) pursuant to Commission Regulation (EEC) No 3398/91 of 20 November 1991 on the sale by invitation to tender of skimmed-milk powder for the manufacture of compound feedingstuffs ⁽³⁾, as last amended by Regulation (EC) No 124/1999 ⁽⁴⁾, intervention agencies have put up for sale by standing invitation to tender certain quantities of skimmed-milk powder held by them;
- (2) according to Article 8 of the said Regulation, in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed or a decision shall be taken to make no award; whereas the amount of the processing security shall also be fixed taking account of the difference between the market price of skimmed-milk powder and the minimum price fixed;

- (3) in the light of the tenders received, the minimum selling price should be fixed at the level specified below and the processing security determined accordingly;
- (4) the measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 138th individual invitation to tender pursuant to Regulation (EEC) No 3398/91, in respect of which the time limit for the submission of tenders expired on 28 September 1999, the minimum selling price and the processing security are fixed as follows:

- | | |
|--------------------------|--------------------|
| — minimum selling price: | EUR 199,52/100 kg, |
| — processing security | EUR 40,00/100 kg. |

Article 2

This Regulation shall enter into force on 2 October 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28.6.1968, p. 13.

⁽²⁾ OJ L 206, 16.8.1996, p. 21.

⁽³⁾ OJ L 320, 22.11.1991, p. 16.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

**COMMISSION REGULATION (EC) No 2104/1999
of 1 October 1999**

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 39th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular Article 6(3) and (6) and Article 12(3) thereof,

Whereas:

- (1) the intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽³⁾, as last amended by Regulation (EC) No 494/1999 ⁽⁴⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter; whereas Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter

and concentrated butter; whereas it is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted; the amount(s) of the processing securities must be fixed accordingly;

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum aid and processing securities applying for the 39th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 2 October 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28.6.1968, p. 13.

⁽²⁾ OJ L 206, 16.8.1996, p. 21.

⁽³⁾ OJ L 350, 20.12.1997, p. 3.

⁽⁴⁾ OJ L 59, 6.3.1999, p. 17.

ANNEX

to the Commission Regulation of 1 October 1999 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 39th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		95	91	—	91
	Butter < 82 %		92	88	—	—
	Concentrated butter		117	113	117	113
	Cream		—	—	40	38
Processing security	Butter		105	—	—	—
	Concentrated butter		129	—	129	—
	Cream		—	—	44	—

COMMISSION REGULATION (EC) No 2105/1999**of 1 October 1999****fixing the maximum purchasing price for butter for the 247th invitation to tender carried out under the standing invitation to tender governed by Regulation (EEC) No 1589/87**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1587/96 ⁽²⁾, and in particular the first subparagraph of Article 7a(1) first indent and Article 7a(3) thereof,

Whereas:

- (1) Article 5 of Commission Regulation (EEC) No 1589/87 of 5 June 1987 on the sale by tender of butter to intervention agencies ⁽³⁾, as last amended by Regulation (EC) No 124/1999 ⁽⁴⁾, provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to

the intervention price applicable and that it may also be decided not to proceed with the invitation to tender;

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 247th invitation to tender issued under Regulation (EEC) No 1589/87, for which tenders had to be submitted not later than 28 September 1999, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 2 October 1999.

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

Done at Brussels, 1 October 1999.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 148, 28.6.1968, p. 13.

⁽²⁾ OJ L 206, 16.8.1996, p. 21.

⁽³⁾ OJ L 146, 6.6.1987, p. 27.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 December 1998

on the measure which Ireland is planning to implement in favour of employers for the refund of social security contributions paid in respect of seafarers employed on certain categories of ships not being required to be registered in a Member State

(notified under document number C(1998) 4278)

(Only the English text is authentic)

(Text with EEA relevance)

(1999/651/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to the Community guidelines on state aid to maritime transport ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the above provisions,

Whereas:

1. Procedure

By letter dated 15 May 1997, registered in the Commission on 20 May 1997, Ireland notified the Commission of the aid N 322/97. By letters dated 30 June and 8 September 1997 the Commission sent requests, for further information. A bilateral meeting took place on 9 July 1997. By letters registered in the Commission on 31 July, 27 October, 7, 13, 19 and 27 November 1997 as well as 2, 4, 8 and 10 December 1997, the Irish authorities furnished the Commission with supplementary information.

By letter dated 20 January 1998, the Commission informed Ireland of its decision:

- to authorise aid in respect of type (1) vessels,
- not to object to the refund of contributions paid in respect of old-age pensions to self employed contributors and formerly self employed voluntary contributors aged 56 years on 6 April 1998 since it does not constitute aid, and
- to initiate the procedure laid down in Article 93(2) of the EC Treaty in respect of aid towards type-2 ships (type-2 measure) under the Social Welfare (Consolidated Contributions and Insurability) (Amendment) (No 2) Refunds) Regulations, 1997.

The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the measure.

By letter of 23 February 1998, registered in the Commission on 24 February 1998, Ireland provided the Commission with its comments as regards the abovementioned Article 93(2) procedure. On several occasions thereafter bilateral contacts have taken place between representatives of the Commission and the Irish authorities.

The Commission has received no comments from other Member States or from interested parties.

⁽¹⁾ OJ C 205, 5.7.1997, p. 5.

⁽²⁾ OJ C 103, 4.4.1998, p. 15.

2. Detailed description of the aid measure

(a) The type-2 measure

That part of the N 322/97 scheme in respect of which the Commission opened the procedure provides for the refund to employers of up to 100 % of the social security contributions paid in respect of the employment of EC seafarers on board ships engaged in merchant shipping at sea which are the subject of a letting on charter without crew by a lessor not resident in Ireland (type-2 vessels).

Type-2 vessels, which are chartered in and managed from within Ireland, are not required to fly the flag of a Member State in the framework of the aforementioned measure. For background purposes it should be recalled that type-1 vessels are ships owned as to not less than 51 % by a person or persons resident in Ireland and which are required to be registered in Ireland.

(b) Budget and duration

The aid budget to be spent on the type-2 measure has been notified as an amount in common with the budget for the type-1 measure (approved in the Commission decision earlier mentioned). The total budget foreseen for both measures is IEP 8 million, to be spent at a rate of IEP 2 million per annum over a four year aid period beginning on 6 April 1996 and ending on 5 April 2000. Since according to the indications of the Irish authorities there was at the time of notification only one type-2 vessel qualifying for the type-2 measure and since no other ships are expected to come on stream in the near future, only a small amount of this total budget would be attributed to the type-2 measure.

Funds for this measure are made available through tax payments previously levied.

(c) Recipients

The aid recipients of the Irish social security reimbursement are employers who employ seafarers on board the aforementioned type-2 vessels engaged in merchant shipping at sea.

(d) Objective

According to the Irish authorities, the introduction of the refund of social security contributions and its application to the aforementioned vessels is an important element of a strategy for the Irish shipping sector which is aimed at:

- retaining and attracting new tonnage to the register,
- strengthening the economic link between Irish shipowning and operating interests and the state, and

- promoting quality EU standard shipping.

(e) Possible effect of the aid

By refunding to employers their social security contributions paid in respect of the employment of seafarers being tax liable in Ireland on board type-2 vessels, the Irish authorities intend to support Irish shipping companies.

(f) Grounds for initiating the procedure

Considering that the type-2 measure does not require qualifying vessels to be registered in a Member State (that is, fly the flag of a Member State) as required by the guidelines on state aid to maritime transport, it appeared to the Commission that there were serious doubts regarding the compatibility of this measure with the common market. Therefore, in its letter dated 20 January 1998, the Commission decided to initiate the procedure provided for in Article 93(2) of the EC Treaty in respect of the type-2 measure described above.

3. Comments from Ireland

Ireland replied to the Article 93(2) procedure by raising two issues in particular:

- the case of the type-2 vessel m.v. *Normandy*, and
- the argument that the type-2 measure should be subject to point 3.1 rather than to subsection 3.2 of the guidelines.

(a) Type-2 vessels

As regards the procedure opened under Article 93(2) of the EC Treaty in respect of ships subject to the type-2 measure, Ireland noted that there is only one vessel qualifying for the type-2 measure, the m.v. *Normandy*, which is at present on short-charter letting to the Irish Continental Group plc, Ferryport, Dublin, from January 1998 to October 1999.

In their comments to the Commission, the Irish authorities further mention that they consider the charter contract of the *Normandy* complies with the spirit of the Guidelines even though the vessel flies the flag of the Bahamas.

The arguments for that contention are summarised below.

- (i) An EU registered (Swedish) company ultimately owns the vessel.
- (ii) The vessel is crewed solely by EU nationals (predominantly Irish and UK), 150 in low season and 250 in peak season.
- (iii) The vessel is marketed and managed by an EU company, Irish Ferries, from Dublin and Rosslare as well as from Liverpool for the UK trade. These activities support a substantial number of jobs for EU nationals in Dublin and Rosslare and in related companies in mainland Europe.

- (iv) The vessel serves a marginal and peripheral route between Rosslare in Ireland and the mainland of Europe, which is important for intra-EU tourism and trade links. This link, which commenced in 1973, was under threat from economic forces and due to the introduction of new safety rules which precluded continued use of the existing vessel on the route.

The economic viability of the route remains questionable. Nevertheless, Irish Ferries has chartered the m.v. *Normandy* for a period of 21 months in order to keep the link open and to assess its future viability. The Irish Government fully supports the maintenance of this route for strategic reasons (as an alternative to the land route through the UK) and also as a contribution to the general policy of increasing the use of short sea shipping routes in the EU.

- (v) The current charter is a temporary measure (until October 1999). In the course of sourcing a replacement vessel for the Rosslare route, Irish Ferries made bids to purchase two vessels with the intention of placing them under the Irish flag. In the event, the bids were not successful. The only vessel which could be sourced with sufficient bed space for the route was the m.v. *Normandy*.

When the charter expires in 1999, Irish Ferries will have the opportunity to negotiate with the owners of the vessel regarding its flag. Alternatively, if the route's viability can be proven it may be possible for Irish Ferries to purchase a vessel for the route, which could then be placed under the Irish flag. Therefore the current position should be regarded as provisional since it will only apply until October 1999.

- (vi) The vessel is one of a fleet of vessels which the company operates between Ireland, the UK and France, all other vessels in the fleet being on the Irish register.

Furthermore, as regards type-2 vessels in general, the Irish authorities pointed out that type-2 vessels are vessels in respect of which it can be shown that all the requirements of the Merchant Shipping Acts 1894 to 1996 (which lay down the requirements for Irish registration of vessels), have been complied with as if they had been registered under that part of Irish legislation.

The Irish authorities therefore mention that the 'type-2 vessel' m.v. *Normandy* is treated under Irish law for the purposes of the state aid in an analogous way to an Irish registered ship.

(b) *The applicability of the Guidelines to the type-2 measure*

As regards the applicable section of the Community guidelines on state aid to maritime transport, Ireland argues that the levying of employers' social insurance on company payrolls should be looked on as a form of corporate taxation, quite unlike personal taxes such as employees' social insurance and income tax. Ireland regards the flexibility implicit in point 3.1 of the guidelines on the 'fiscal treat-

ment of shipowning companies' as applicable in the present case where the employer's contribution (pay-related social insurance — PRSI) is levied on the total seafarer payroll of the company.

Ireland submits that there is a strong case that the more flexible regime implicit in point 3.1 should apply particularly to concessions in the area of taxes which are levied on shipping companies in respect of employment. The primary added value of EU shipping can often be the employment of EU seafarers; reductions in costs of employment through such concessions are the most effective and targeted instruments available to attain that objective.

While the aid in question is not aimed at repatriation of management in terms of management and ancillary services, since these are already located within the EU, it will help to consolidate the Company's position with a well-grounded EU base and serve to maintain and consolidate that base, thereby avoiding the need for repatriation at some later stage.

4. Assessment of the measure

(a) *Legal basis of the assessment*

Articles 92 and 93 of the Treaty contain the rules on the compatibility of state aids with the common market.

The Community guidelines on state aid to maritime transport provide guidance as regards the compatibility with the common market, in accordance with Article 92 of the Treaty, of state aid measures in favour of the maritime transport sector.

(b) *Compatibility of the measure*

(i) *Existence of state aid*

Article 92(1) of the Treaty provides that 'any aid granted by a Member State 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 Member States, be incompatible with the common market'.

The refunding of contributions for the social protection of seafarers results in the state receiving less income and must therefore be considered to be granted through state resources. Since the type-2 measure favours only the maritime sector it is to be considered as sector-specific. Furthermore, maritime transport being a sector with a strong international and intra-Community element, a public subsidy to this sector risks distorting competition and affecting maritime transport activities in other Member States. It follows that the aforementioned social security refund is therefore to be considered as state aid within the meaning of Article 92(1) of the Treaty.

(ii) Point 3.2 of the guidelines

The Community guidelines on state aid to maritime transport provide in point 3.2 that aid in the form of the alleviation of the burden of social security contributions in respect of social security contributions of Community seafarers should be allowed, provided those seafarers are employed on board ships registered in a Member State. The guidelines allow such aid up to a maximum of 100 % relief from contributions. On the basis of this provision the Commission opened the Article 93(2) procedure in respect of the type-2 measure, since type-2 vessels are not bound to be registered in a Member State.

(iii) Applicability of point 3.2 of the guidelines

Summarising the comments on the Article 93(2) procedure mentioned above, Ireland argues that the levying of employers' social insurance on companies' payrolls should be looked on as a form of corporate taxation, quite unlike personal taxes such as employees' social insurance and income tax. Ireland would also regard the flexibility implicit in point 3.1 of the guidelines on the fiscal treatment of shipowning companies (providing for the possibility of an exception to the normally required EU flag link under certain circumstances) as applicable in the present case where the employer's contribution (PRSI) is levied on the total seafarer payroll of the company.

As regards this argument it has to be noted that Chapter 3 of the guidelines specifically deals with the issue of 'Fiscal and social measures to improve competitiveness'. It is divided into point 3.1, which deals with the 'Fiscal treatment of shipowning companies', and point 3.2 which deals with 'Labour-related costs'.

Point 3.1 deals with the compatibility with the common market of certain state aid measures such as those relating to a tonnage tax or accelerated depreciation on investment. Only for such measures do the guidelines provide that they may exceptionally be applicable to the entire fleet operated by a Community shipowner provided a certain number of criteria are fulfilled.

Point 3.2 however deals with the compatibility with the common market of state aid measures relating to different types of labour-related costs, which are defined as being the following:

- reduced rates of contributions for the social protection of Community seafarers employed on board ships registered in a Member State, and

- reduced rates of income tax for Community seafarers on board ships registered in a Member State.

The fact that employment cost reductions in the form of reduced rates of contribution for social protection and income tax reductions are dealt with in a special and distinct point of the guidelines clearly shows the Commission's intention to separate these issues from point 3.1 which deals with other measures such as the tonnage tax.

It follows that for the purpose of applying the guidelines, any scheme providing for the refund of contributions for the social protection of seafarers cannot be seen as a fiscal incentive within the meaning of point 3.1 but must be seen as a labour-related measure within the meaning of point 3.2.

It should be noted that the Irish argument according to which type-2 vessels are subject to Irish law as if they had been registered in Ireland is not sufficient to fulfil the requirement of point 3.2 of the guidelines, which provides that qualifying ships must be registered in a Member State. Even though the refund is intended to be limited to Community seafarers (masters and seamen liable to social security contributions in Ireland), as in the approved measure concerning type-1 vessels and as required by point 3.2 of the guidelines, the aforementioned requirement that ships be registered in a Member State is not fulfilled.

In this respect it should further be noted that the guidelines have identified the low tax environment in certain third countries as the main incentive for shipping companies to flag out their vessels and have analysed the various negative consequences resulting from that trend. To halt that trend and to remedy the situation, the guidelines permit Member States to introduce fiscal and social relief measures in order to improve the competitiveness of shipping under their flags. The Commission considered, when drawing up those guidelines, that measures to reduce labour costs of seafarers, such as those at issue here, should only be applied in respect of seafarers employed on ships registered in Member States. To diverge from that policy would not provide a sufficient incentive to shipowners to operate under Member State flags and could be construed as state aid to improve the competitiveness of non-EU shipping.

The type-2 measure, as proposed by Ireland, which comprises no flag link, must therefore be considered to be incompatible with the aforementioned Community guidelines on state aid to maritime transport.

(iv) The case of the m.v. *Normandy*

As regards the m.v. *Normandy*, which according to the Irish authorities is presently the only type-2 vessel qualifying for the proposed type-2 measure, it should be noted that during several bilateral contacts subsequent to the opening of the Article 93(2) procedure, the Irish authorities have indicated that an agreement may be found between the shipowner and the ship operator to reflag the vessel under the Irish flag. However, such an agreement has not taken place and no commitments as regards such a move have been provided to the Commission.

5. Conclusions

In conclusion, the aid scheme as regards type-2 vessels should be held to be incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Ireland is planning to implement in favour of employers in respect of the employment of seafarers on ships engaged in merchant shipping at sea which are the

subject of a letting on charter without crew by a lessor not resident in Ireland is incompatible with Article 92 of the EC Treaty.

That aid may accordingly not be implemented.

Article 2

Ireland shall inform the Commission, within two months following notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to Ireland.

Done at Brussels, 9 December 1998.

For the Commission

Neil KINNOCK

Member of the Commission

COMMISSION DECISION

of 15 September 1999

confirming the measures notified by Belgium pursuant to Article 6(6) of Directive 94/62/EC of the European Parliament and the Council on packaging and packaging waste

(notified under document number C(1999) 2919)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(1999/652/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 94/62/EC of the European Parliament and the Council of 20 December 1994 on packaging and packaging waste ⁽¹⁾, and in particular Article 6(6) thereof,

Having consulted the Committee set up by Directive 94/62/EC,

Whereas:

Under that provision, the Commission is to confirm such measures after appropriate verification.

2. The measures notified

On 13 July 1996 Belgian authorities notified to the Commission, in the context of the procedure established by Council Directive 83/189/EC ⁽²⁾, a draft Cooperation Agreement on the prevention and management of packaging waste (notification 96/240/B).

I. PROCEDURE**1. Directive 94/62/EC**

Directive 94/62/EC, based on Article 95 (ex Article 100a) of the Treaty, aims to harmonise national measures concerning the management of packaging and packaging waste in order to prevent any impact thereof on the environment or to reduce such impact, thus providing a high level of environmental protection, and to ensure the functioning of the internal market and to avoid obstacles to trade as well as distortions and restrictions of competition within the Community. To this end, Article 6(1) of the Directive lays down, *inter alia*, quantified targets to be achieved by Member States for recovery and recycling of packaging waste.

Article 6(1)(a) establishes that, no later than 30 June 2001, between 50 % as a minimum and 65 % as a maximum by weight of the packaging waste will be recovered. Pursuant to Article 6(1)(b), within this general target, and within the same time limit, between 25 % as a minimum and 45 % as a maximum by weight of the totality of packaging materials contained in packaging waste will be recycled, with a minimum of 15 % by weight for each packaging material.

Article 6(6) introduces a monitoring procedure to ensure coherence between the different strategies chosen by Member States, particularly with a view to ensure that targets set in one Member State do not hinder compliance by other Member States with the Directive or represent distortions of the internal market.

In Belgium, the Federal State has only competence to transpose Directive 94/62/EC as regards product-related issues (such as, for instance, Article 9 and Annex II). The fixing of targets for recovery and recycling of the packaging materials contained in the packaging waste, as laid down in Article 6 of Directive 94/62/EC, comes into the exclusive competence of the regions. In order to ensure a coherent and consistent transposition and implementation of Directive 94/62/EC and in particular its Article 6, the three Belgian regions deemed it necessary to conclude the Cooperation Agreement on the prevention and management of packaging waste. This Agreement is a legally binding act and constitutes the transposition measure as regards Article 6 of Directive 94/62/EC. This Cooperation Agreement sets out the obligation for economic operators (packaging fillers and users, including importers in case the packaging was filled outside Belgium) to takeback and recycle/recover the packaging materials contained in the packaging waste put on the market (Article 6 of the Cooperation Agreement), either individually or by contracting a third party (Articles 7(1) of the Cooperation Agreement), and to achieve quantified targets for recycling and recovery (Article 3(2) of the Cooperation Agreement). Economic operators shall communicate to the Interregional Commission for Packaging how they intend to fulfil such an obligation. For household packaging, this is without prejudice of the rights of the competent public authorities in charge of waste collection in public streets. The Interregional Commission shall evaluate and, if appropriate, approve or refuse the way by which economic operators intend to fulfil their obligation set out in Article 6 of the Cooperation Agreement (Article 7(2) of the Cooperation Agreement). Economic operators can be relieved from the obligation to take back and recycle/recover packaging, by signing a

⁽¹⁾ OJ L 365, 31.12.1994, p. 10.

⁽²⁾ OJ L 109, 26.4.1983, p. 8. Directive as amended by Directive 98/34/EC (OJ L 204, 21.7.1998, p. 37).

contract with a 'organisme agréé' (agreed body, Article 8 of the Cooperation Agreement) committing themselves to measures which will allow the agreed body to meet its recycling and recovery targets. Such agreed bodies have, besides achieving the quantified targets set out in Article 3(2) of the Cooperation Agreement, to fulfil a number of requirements concerning their legal and financial situation (Articles 9 to 15 of the Cooperation Agreement).

Its Article 3(2) sets out the following global minimum rates, by weight, of recycling and recovery of packaging waste:

- for 1998: 45 % recycling — 70 % recovery
- for 1999: 50 % recycling — 80 % recovery.

These recycling and recovery rates are to be achieved by the concerned economic operators, via the above-described system, in each of the three regions, i.e. Flanders, Wallonia and Brussels, both as regards household packaging waste and as regards industrial packaging waste.

An annex to the draft Cooperation Agreement was included in the notification, containing a summary of the measures taken in order to ensure compliance with the conditions set out in Article 6(6) of Directive 94/62/EC. These measures consist of:

- an analysis of the recovery capacities in relation to each packaging waste stream for the future years. This analysis is described in full in section II(a)
- a description of the provisions aimed at avoiding trade distortions. They consist of a progressive implementation of the legislation as well as of a permanent monitoring procedure, to be exerted by the Interregional Commission for Packaging and by each individual Regional Government, which shall supervise the setting up of the necessary collection infrastructures. A periodical control is also foreseen, in the context of both the yearly budget approval procedure for the agreed bodies as well as of the efficiency monitoring procedure of the recycling and recovery operators.

An analysis of the different waste streams was carried out in a study on the 'ecological standardisation of packaging in Belgium' which was transmitted to the Commission with the notification and was then circulated by the Commission to all other Member States.

On 14 October 1996 the Commission, commenting on the notified draft according to the procedure established by Directive 83/189/EEC, acknowledged that Belgium intended to make use of Article 6(6) of Directive 94/62/EC. Two Member States also reacted to the Belgian notification 96/2408. On 11

October 1996 France sent a detailed opinion on various aspects of the notified draft, mentioning *inter alia*, that the recycling and recovery rates foreseen in the draft Cooperation Agreement for 1999 required the procedure under Article 6(6) to be applied prior to the adoption of such targets. On 14 October 1999 also Finland commented on the notification but it did not touch on the issue of Article 6(6).

On 20 December 1997 responding to the detailed opinion of France, Belgium provided a detailed analysis of the present industrial capacities, demonstrating that the conditions set out in Article 6(6) were complied with.

The Cooperation Agreement was adopted by means of a Decree of 21 January 1997 of the Flanders Region, a Decree of 16 January 1997 of the Walloon Region and an Ordinance of 24 January 1997 of the Brussels Region (all published in the *Moniteur* of 5 March 1997). The final text of the measures was communicated to the Commission on 30 April 1997.

3. Opinions

Article 6(6) states that the Commission shall take a decision, after a verification of the measures in cooperation with Member States. To this end, the Commission consulted the Member States on this notification in the context of the Committee established by Article 21 of Directive 94/62/EC. This consultation procedure was deemed to be the most appropriate and no Member State expressed disagreement in this respect. A first exchange of views took place during the Committee meeting of 21 April 1997. Member States were then invited to send written comments to the Commission by 31 May 1997. Austria, Belgium, Denmark, France, Ireland, the Netherlands and the United Kingdom submitted written contributions. The matter was discussed again during the committee meeting of 4 September 1997.

No Member State contended that the Belgian measures could create internal market distortions or hinder compliance by other Member States with the Directive.

Several Member States made the point that a specific procedure, laying down the kind of information that Member States should provide when notifying a measure under Article 6(6), should be agreed on between them and the Commission. However, a number of difficulties were recognised, particularly pertaining to the assessment of recovery and recycling capacities which exist on the open international market and to the fact that it is not always possible to foresee whether certain measures will have as an effect that the maximum targets of Directive 94/62/EC will be exceeded.

France considered it difficult for the Commission and for Member States to take a position on this matter in the absence of the common methodology to be used for setting up the database (according to Article 12 of Directive 94/62/EC), since until that moment there will be difficulties in calculating the achieved targets. France therefore suggested to wait until the common methodology was available in order to take a decision on the notification from Belgium⁽¹⁾.

⁽¹⁾ As regards this question, it is established that the completion of databases is to be developed in line with Decision 97/138/EC to ensure compliance with the objectives of the Directive and the future setting up of a common methodology, but this is not a condition for confirming measures in the context of Article 6(6).

In the committee meeting there was a general consensus on the need to constantly monitor the effect of measures in order to identify and face possible trade distortions, should any arise. The United Kingdom indicated that providing information on economic aspects such as past levels and projections of reprocessing and of reprocessing capacities, of imports and exports of packaging waste, as well on historical prices over time would be useful. However, there was also general consensus on the fact that, in the procedure, a primary role was to be played by Member States which feared their compliance with the Directive would be hindered by measures adopted by other Member States. Should a measure exceeding the maximum targets of the Directive result in compliance problems for other Member States, it was primarily up to the latter to make this situation known so that appropriate countermeasures could be taken. The Commission invites Member States to submit immediately any information on adverse effects as set out in Article 6(6) on their territory, whenever such a situation arises.

The United Kingdom also suggested that the effects of any higher target in existence should be examined during the planned review of Article 6(1) targets, to be completed no later than 1 January 2001.

II. ASSESSEMENT

In view of the delay which would be caused if the Commission was to wait for the data in accordance with Commission Decision 97/138/EC⁽¹⁾, and taking into account the fact that no adverse effect concerning the elements mentioned in Article 6(6) has been reported, the Commission considers it unnecessary to postpone the present decision as suggested by France.

Article 6(6) of Directive 94/62/EC allows Member States to go beyond targets set in Article 6(1)(a) and 6(1)(b) if the Member State provides to this effect appropriate capacities for recycling and recovery. The measures must be taken in the interest of a high level of environmental protection and on the condition that they avoid distortions of the internal market and do not hinder compliance by other Member States with the Directive. Nor may they constitute an arbitrary means of discrimination or a disguised restriction on trade between Member States.

In this case, Belgium has asked for a derogation from Article 6(1)(a) and (b).

The Commission has consulted the Member States and no objections to the Belgian measures have been raised.

(a) *Appropriate capacities for recovery and recycling*

This requirement is interpreted by the Commission as not imposing on Member States total self sufficiency with respect to recycling and recovery. Member States may also have recourse to capacities located in other Member States and third countries in order to fulfil their recycling and recovery targets.

This, however, makes it difficult to carry out a precise quantification of available capacities, since recycling takes place in an open international market.

This criterion also serves the purpose of ensuring that measures taken in one Member State do not result in problems of compliance with the Directive for other Member States; therefore it should be seen in conjunction with the other criteria laid down in Article 6(6). In practice, compliance with this criterion is a signal for compliance with criteria (b) and (c) below. In particular, if targets are set exceeding those laid down in Article 6(1), it should be ensured that this is not to the detriment of collection and recycling schemes in other Member States.

As regards the Belgian notified measures, the information provided by the Belgian Government to the Commission and to the other Member States indicated that the exceeding of the targets of Directive 94/62/EC does not exert as a consequence any disturbance on the market for recyclates in other Member States. More specifically, the information provided by Belgium indicate that a recycling rate of 55 % of glass packaging had already been achieved in 1997 and that no capacity problems exist for absorbing the brown and green glass packaging waste arising. Recycling capacities are ensured by the existence in Belgium of a site capable of recycling 160 000 tonnes of glass per year as well as of five treatment sites which produce secondary material which is demanded both by Belgian and foreign recyclers. White glass is exported to foreign industries which are willing to buy such wastes.

Similarly, no capacity problems exist for metal packaging, given that 3,5 million tonnes of ferrous metals are consumed yearly in Belgium by the steel industry and 1,27 million tonnes of such materials are imported. As regards non ferrous metals, Belgium has a capacity exceeding 500 000 t/year.

For mechanical recycling of synthetic materials, Belgian authorities indicate the existence of several companies which altogether in 1997 already guaranteed the recycling of 50 000 tonnes of materials per year. The number of economic operators in this industry indicates a market which can further expand, particularly in the sectors of work roads, public amenities and sewage pipes. Belgium envisages achieving a mechanical recycling rate of 15 % for plastic packaging waste and geneting the remaining fraction to municipal waste incinerators or cement kilns. Energy recovery in cement kilns concerned 10 000 tonnes of plastic waste in 1997 but recovery capacity may be increased up to 60 000 to 80 000 tonnes per year. Sufficient recovery capacities also exist in municipal waste incinerators equipped with heat recovery devices as well as in steel production sites.

A recycling capacity of over one million tonnes per year already existed in 1997 for paper and board. Industry from this sector needs to import waste paper in order to be profitable, therefore no recycling capacity problems exist.

⁽¹⁾ OJ L 52, 22.2.1997, p. 22.

The Commission finds that Belgium provides appropriate capacities for recovery and recycling.

(b) Potential distortions of the internal market

The Commission has assessed the measures as notified by Belgium and finds that the recycling and recovery rates as well as the collection, system imposed on the operators by the legislation do not appear to cause, at present, distortions of the internal market. This Decision is without prejudice to the full application of Community Law, particularly as regards the free movement of goods. The consultation of the other Member States revealed that no Member State considers that the Belgian measure could lead to market distortions. Belgian authorities state that such risks do not exist in the light of the small size of the Belgian market and of the progressive application of the notified measures. In this respect, a monitoring body has been set up.

The Commission does not dispose of any other element showing that the Belgian recycling and recovery targets would lead to arbitrary market distortions.

(c) Non-hindrance of compliance by other Member States with the Directive

The purpose of this criterion is to avoid recycling and recovery capacities of Member States being filled by packaging waste collected in other Member States. This is particularly relevant for those Member States which have not yet started recycling of packaging waste on a large scale and where the infrastructure for collection is still to be set up or completed.

The assessment of the notified measures in the light of this criterion should primarily be made taking into account the opinion of the Member States whose compliance with the targets of the Directive could be endangered by measures set up in other Member States. No Member State expressed concern that compliance with the Directive could be hindered by the measures notified by Belgium. The Commission has either become aware or been made aware of any compliance problem caused by the Belgian measures to other Member States.

In assessing whether exceeding the recycling target by Belgium could result in recovery or recycling capacities in other Member States being exploited, thereby resulting in potential compliance problems by other Member States with the targets of the Directive, the Commission also takes into account the fact that Belgium only produces about 3 % of the packaging waste produced in the Community. Therefore, in the Commission's view, there is no real risk that this would result in problems for other Member States in complying with the targets of Directive 94/62/EC.

(d) No arbitrary means of discrimination

The Belgian measures apply without distinction to all packaging waste, whether arising from domestic or imported products. The Commission has consulted the Member States: the

information obtained is not indicative of any arbitrary discrimination.

(e) No disguised restriction on trade between Member States

This concept refers to possible restrictions on imports of products from other Member States and to indirect protection of domestic production. Wastes are goods which fall under the scope of Articles 28 to 30 of the Treaty and consequently measures taken in the field of waste management are also capable, in certain circumstances, of restricting trade or protecting domestic production. The Commission therefore needs to assess whether undesired effects are avoided by setting targets in such a way that no indirect favouritism of domestic production or distribution occurs. However, the content of the Belgian measures and their application do not seem to allow for the conclusion that restrictions on trade are caused by the Belgian notified measures.

III. CONCLUSION

The Commission, in the light of the information provided by Belgium and of the outcome of the consultation of the Member States described in the above considerations, concludes that the measures notified by Belgium pursuant to Article 6(6) of Directive 94/62/EC should be confirmed since it has been verified that:

- appropriate capacities for recovery and recycling exist in Belgium,
- the measures do not lead to distortions of the internal market,
- the measures do not hinder compliance by other Member States with the Directive,
- the measures do not constitute an arbitrary means of discrimination,
- the measures do not constitute a disguised restriction on trade between Member States,

HAS ADOPTED THIS DECISION:

Article 1

The measures notified by Belgium which exceed the maximum recovery and recycling target laid down respectively in Article 6(1)(a) and (b) of Directive 94/62/EC are hereby confirmed.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 15 September 1999.

For the Commission

Ritt BIERREGAARD

Member of the Commission