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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 716/2000
of 5 April 2000
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 6 April 2000.

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

Done at Brussels, 5 April 2000.

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 5 April 2000 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	135,0
	204	101,4
	624	194,4
	999	143,6
0707 00 05	052	113,0
	068	127,3
	628	149,6
	999	130,0
0709 90 70	052	84,0
	204	38,2
	999	61,1
0805 10 10, 0805 10 30, 0805 10 50	052	54,1
	204	36,4
	212	43,3
	220	33,7
	624	51,2
	999	43,7
0805 30 10	052	35,3
	220	72,1
	999	53,7
0808 10 20, 0808 10 50, 0808 10 90	388	102,2
	400	92,6
	404	96,8
	508	83,4
	512	91,3
	528	89,4
	720	66,3
	804	102,9
	999	90,6
0808 20 50	388	72,5
	512	77,2
	528	75,0
	720	107,7
	999	83,1

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2543/1999 (OJ L 307, 2.12.1999, p. 46). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 717/2000**of 5 April 2000****fixing the maximum export refund for white sugar for the 34th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1489/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the second subparagraph of Article 18(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1489/1999 of 7 July 1999 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽²⁾, requires partial invitations to tender to be issued for the export of this sugar.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1489/1999 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.

- (3) Following an examination of the tenders submitted in response to the 34th partial invitation to tender, the provisions set out in Article 1 should be adopted.
- (4) 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 34th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1489/1999 the maximum amount of the export refund is fixed at EUR 50,830 kg.

Article 2

This Regulation shall enter into force on 6 April 2000.

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

Done at Brussels, 5 April 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 172, 8.7.1999, p. 27.

COMMISSION REGULATION (EC) No 718/2000**of 5 April 2000****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 (EC) No 2038/1999 of 13 September 1999 on the common organization of the market in sugar ⁽¹⁾,

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 ⁽²⁾, and in particular Articles 1(2) and 3(1) thereof,

Whereas:

- (1) 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 ⁽³⁾. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; 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. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) 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. 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.
- (4) 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. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) 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.
- (6) 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.
- (7) 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. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) 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.
- (9) 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 6 April 2000.

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 12.

⁽³⁾ 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, 5 April 2000.

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⁾	7,97	—	0,24
1703 90 00 ⁽¹⁾	8,18	—	0,03

⁽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 719/2000**of 5 April 2000****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 (EC) No 2038/1999 of 13 September 1999 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the third subparagraph of Article 18(5) thereof,

Whereas:

- (1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 651/2000 ⁽²⁾, as amended by Regulation (EC) No 677/2000 ⁽³⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 651/2000 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 (EC) No 2038/1999, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 651/2000 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 April 2000.

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

Done at Brussels, 5 April 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 252, 25.9.1999, p. 1.

⁽²⁾ OJ L 79, 30.3.2000, p. 15.

⁽³⁾ OJ L 81, 1.4.2000, p. 17.

ANNEX

to the Commission Regulation of 5 April 2000 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	42,69 ⁽¹⁾
1701 11 90 9910	41,80 ⁽¹⁾
1701 11 90 9950	⁽²⁾
1701 12 90 9100	42,69 ⁽¹⁾
1701 12 90 9910	41,80 ⁽¹⁾
1701 12 90 9950	⁽²⁾
	— EUR/1 % of sucrose × 100 kg —
1701 91 00 9000	0,4641
	— EUR/100 kg —
1701 99 10 9100	46,41
1701 99 10 9910	47,63
1701 99 10 9950	45,44
	— EUR/1 % of sucrose × 100 kg —
1701 99 90 9100	0,4641

⁽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 19 (4) of Regulation (EC) No 2038/1999.

⁽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 720/2000**of 5 April 2000****amending the rates of the refunds applicable to certain products from the milk sector exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1255/1999 of 17 May 1999 on the common organisation of the markets in the milk and milk products sector ⁽¹⁾, and in particular Article 31(3) thereof,

Whereas:

- (1) The rates of the refunds applicable from 1 April 2000 to the products listed in the Annex, exported in the form of goods not covered by Annex I to the Treaty, were fixed by Commission Regulation (EC) No 690/2000 ⁽²⁾.

- (2) It follows from applying the rules and criteria contained in Regulation (EC) No 690/2000 to the information at present available to the Commission that the export refunds at present applicable should be altered as shown in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of refund fixed by Regulation (EC) No 690/2000 are hereby altered as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 6 April 2000.

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

Done at Brussels, 5 April 2000.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 81, 1.4.2000, p. 40.

ANNEX

to the Commission Regulation of 5 April 2000 amending the rates of the refunds applicable to certain milk products exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description	Rate of refund
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):	
	(a) On exportation of goods of CN code 3501	—
	(b) On exportation of other goods	68,95
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3):	
	(a) Where goods incorporating, in the form of products assimilated to PG 3, reduced-price butter or cream obtained pursuant to Regulation (EC) No 2571/97 are exported	72,38
	(b) On exportation of other goods	88,82
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):	
	(a) Where goods containing reduced-price butter or cream which have been manufactured in accordance with the conditions provided for in Regulation (EC) No 2571/97 are exported	67,35
	(b) On exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	169,60
	(c) On exportation of other goods	162,35

COMMISSION REGULATION (EC) No 721/2000
of 5 April 2000
amending Regulation (EC) No 552/2000 fixing the export refunds on pigmeat

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁾, as last amended by Regulation (EC) No 3290/94 ⁽²⁾, and in particular Article 13(12) thereof,

Whereas:

- (1) Commission Regulation (EC) No 552/2000 ⁽³⁾ fixes the export refunds on pigmeat.
- (2) Commission Regulation (EC) No 800/1999 ⁽⁴⁾ lays down common detailed rules for the application of the system of export refunds on agricultural products.
- (3) Refunds should be granted only on products that are allowed to circulate freely within the Community. Therefore, to be eligible for a refund, products should be required to bear the health mark laid down in Council Directive 64/433/EEC ⁽⁵⁾, as last amended by Directive 95/23/EC ⁽⁶⁾, Council Directive 94/65/EC ⁽⁷⁾ and Council Directive 77/99/EEC ⁽⁸⁾, as last amended by Directive 97/76/EC ⁽⁹⁾.

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

HAS ADOPTED THIS REGULATION:

Article 1

The following paragraph is added to Article 1 of Regulation (EC) No 552/2000:

'The products concerned must comply with the relevant provisions on health marks laid down in:

- Chapter XI of Annex I to Directive 64/433/EEC,
- Chapter VI of Annex I to Directive 94/65/EC,
- Chapter VI of Annex B to Directive 77/99/EEC.'

Article 2

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

It shall apply to the payment declarations referred to in Article 26(1) of Regulation (EC) No 800/1999 and to the export declarations referred to in Article 5(2) of Regulation (EC) No 800/1999 accompanied by an export licence issued after 14 April 2000.

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

Done at Brussels, 5 April 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 1.

⁽²⁾ OJ L 349, 31.12.1994, p. 105.

⁽³⁾ OJ L 67, 15.3.2000, p. 30.

⁽⁴⁾ OJ L 102, 17.4.1999, p. 11.

⁽⁵⁾ OJ L 121, 29.7.1964, p. 2012/64.

⁽⁶⁾ OJ L 243, 11.10.1995, p. 7.

⁽⁷⁾ OJ L 368, 31.12.1994, p. 10.

⁽⁸⁾ OJ L 26, 31.1.1977, p. 85.

⁽⁹⁾ OJ L 10, 16.1.1998, p. 25.

COMMISSION REGULATION (EC) No 722/2000
of 5 April 2000
on the issuing of import licences for bananas under the tariff quotas and for traditional ACP
bananas for the second quarter of 2000 (second period)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas ⁽¹⁾, as last amended by Regulation (EC) No 1257/1999 ⁽²⁾,

Having regard to Commission Regulation (EC) No 2362/98 of 28 October 1998 laying down detailed rules for the implementation of Council Regulation (EEC) No 404/93 regarding imports of bananas into the Community ⁽³⁾, as amended by Regulation (EC) No 756/1999 ⁽⁴⁾, and in particular Article 18(2) thereof,

Whereas:

- (1) Article 2 of, and the Annex to, Commission Regulation (EC) No 592/2000 ⁽⁵⁾ fix the quantities available for the second quarter of 2000 under the second period for the submission of applications provided for in Article 18 of Regulation (EC) No 2362/98.
- (2) Pursuant to Article 18(2) of Regulation (EC) No 2362/98, on the basis of applications submitted during the second period, the quantities for which licences may be

issued for the origins concerned should be determined forthwith.

- (3) This Regulation should apply immediately to permit licences to be issued as quickly as possible,

HAS ADOPTED THIS REGULATION:

Article 1

Import licences shall be issued under the arrangements for the importation of bananas, tariff quotas arrangements and arrangements for traditional ACP bananas for the second quarter of 2000 (second period) in respect of new applications as referred to in Article 18 of Regulation (EC) No 2362/98:

1. for the quantity indicated in the licence application multiplied, for the origin 'Panama', by the reduction coefficient 0,2745;
2. for the quantity indicated in the licence application for an origin other than that mentioned in point 1.

Article 2

This Regulation shall enter into force on 6 April 2000.

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

Done at Brussels, 5 April 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 47, 25.2.1993, p. 1.

⁽²⁾ OJ L 160, 26.6.1999, p. 80.

⁽³⁾ OJ L 293, 31.10.1998, p. 32.

⁽⁴⁾ OJ L 98, 13.4.1999, p. 10.

⁽⁵⁾ OJ L 71, 18.3.2000, p. 8.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 27 March 2000

on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet'

(2000/265/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the first sentence of the second subparagraph of Article 2(1) of the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen *acquis* into the framework of the European Union (hereinafter 'the Schengen Protocol'),

Whereas:

- (1) The Deputy Secretary-General of the Council was authorised by Decision 1999/870/EC ⁽¹⁾ to act, in the context of the integration of the Schengen *acquis* within the European Union, as representative of certain Member States for the purposes of concluding contracts relating to the installation and the functioning of the communication infrastructure for the Schengen environment (hereinafter 'Sisnet') and to manage such contracts.
- (2) The financial obligations arising under those contracts are not borne by the general budget of the European Union; therefore, the provisions of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽²⁾ do not apply.
- (3) It is therefore necessary to establish specific rules to define the detailed procedures for establishing and implementing the budget required to meet any expenses incurred in the course of concluding the contracts, the obligations arising under those contracts once concluded, for recovering the contributions to be paid by the States concerned and for the presentation and auditing of the accounts.

- (4) It is also necessary to set out the rules applicable to the conclusion of these contracts.

- (5) This Decision is a development of the Schengen *acquis* within the meaning of the Schengen Protocol,

HAS DECIDED AS FOLLOWS:

CHAPTER I

General principles

Article 1

For the purposes of this Financial Regulation, the 'budget' is the instrument which sets out forecasts of, and authorises in advance, for each financial year, the revenue and expenditure required to meet the obligations arising under the contracts referred to in Decision 1999/870/EC.

Article 2

This Financial Regulation lays down detailed rules for the conclusion of contracts relating to Sisnet and for the establishment and implementation of the budget required in relation to such contracts.

Article 3

1. The budget shall be subdivided into titles covering the budget relating to the preparatory steps leading to the conclusion of the contracts in question, including any costs incurred during the preparation of the call for tenders in respect of Sisnet, the installation budget and the operating budget for the Sisnet. If necessary, each title shall be subdivided into chapters and articles.

⁽¹⁾ OJ L 337, 30.12.1999, p. 41.

⁽²⁾ OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC) No 2673/1999 (OJ L 326, 18.12.1999, p. 1).

2. Appropriations opened under each title may not be assigned to other expenditure titles.

Article 4

The budget appropriations shall be used in accordance with the principles of sound financial management, and in particular those of economy and cost-effectiveness.

Article 5

No revenue shall be collected and no expenditure effected unless credited to, or charged against, an article in the budget.

Without prejudice to Article 17, no expenditure may be committed or authorised in excess of the authorised appropriations.

Article 6

1. Subject to Article 17, all revenue and expenditure shall be entered in full in the budget and in the accounts without any adjustment against each other. Total revenue shall cover total expenditure.

2. The financial year shall run from 1 January to 31 December.

3. Any budget contributions by the States referred to in Article 25 paid before the beginning of the financial year which they concern shall be credited to the budget for that financial year.

4. The expenditure of a financial year shall be entered in the accounts for that year on the basis of expenditure for which the financial controller received authorisation no later than 31 December and for which the corresponding payments were made by the accounting officer before the following 15 January.

5. The allotted appropriations may be used solely to cover expenditure properly entered into and paid under the financial year for which they were granted, save as otherwise provided in Article 7, and to cover the debts relating to preceding financial years for which no appropriation was carried forward.

Article 7

1. The following rules shall govern the utilisation of appropriations:

- (a) appropriations still uncommitted at the end of the financial year for which they were entered shall, as a rule, lapse;
- (b) appropriations in respect of payments still outstanding at 31 December by virtue of commitments duly entered into between 1 January and 31 December shall be carried over automatically to the next financial year only.

2. Notwithstanding paragraph 1, the Deputy Secretary-General of the Council may forward to the Schengen Information System Working Group, hereafter referred to as the 'SIS Working Group', before 31 January, duly substantiated requests to carry over to the next financial year appropriations not

committed at 31 December, when the appropriations provided for the headings concerned in the budget for the following financial year do not cover requirements.

The carry-over of such appropriations may be proposed only for exceptional reasons.

In exercising his powers to implement the budget, the Deputy Secretary-General shall, depending on management requirements, endeavour to use first the appropriations authorised for the current financial year and not use the appropriations carried over until the former are exhausted.

The SIS Working Group shall act on such requests for carrying-over by 1 March at the latest.

3. Appropriations carried over from one financial year to the following lapse if still uncommitted at the end of the financial year to which they were carried over.

4. A list of the appropriations to be carried forward automatically pursuant to paragraph 1(b) shall be forwarded to the SIS Working Group for information before 1 March.

5. For the purpose of implementing the budget, the utilisation of appropriations carried forward shall be shown separately, for each budget item, in the accounts for the current financial year.

CHAPTER II

Establishment of the budget

Article 8

1. The budget shall be drawn up in euro.

2. The Deputy Secretary-General shall forward the preliminary draft budget to the SIS Working Group before 30 September and attach an explanatory memorandum.

3. The SIS Working Group shall deliver its opinion on that preliminary draft.

4. The Deputy Secretary-General shall establish the draft budget and forward it by 31 October to the States referred to in Article 25.

5. The Member States referred to in Article 25, meeting within the Council, shall adopt the budget before the end of the year.

6. The decision to adopt the budget, duly notified by the Deputy Secretary-General to the States referred to in Article 25, shall mark the point at which those States' contributions fall due.

Article 9

1. If the budget has not been finally adopted at the beginning of the financial year:

- (a) payments may be made for up to one twelfth, each month, of the total appropriations authorised for each budget title for the preceding financial year; and

(b) the contributions of the States referred to in Article 25 may be called up for up to one twelfth, each month, of the contributions paid under the last duly adopted budget.

2. Each decision to use an expenditure and revenue twelfth, up to a total of three twelfths of the amounts entered in the last duly adopted budget, shall be taken by the Deputy Secretary-General, who shall forward it by letter to the States referred to in Article 25.

3. Above the limit of three twelfths of the amounts entered in the last duly adopted budget, any decision to authorise payments and call up contributions shall be taken by the Member States referred to in Article 25, meeting within the Council.

4. Any measures taken pursuant to paragraphs 1, 2 and 3 shall be terminated immediately on final adoption of the budget.

Article 10

1. Any draft supplementary or amending budgets shall be submitted, examined and adopted in the same form and using the same procedure as the budget whose estimates they are amending.

2. An amending budget shall be submitted on an annual basis, in the month following the closure of the accounts as laid down in Article 46(1), with the aim of entering the balance of the budget outturn from the previous financial year as revenue in the case of a positive balance or expenditure if the balance is negative.

Article 11

The budget may be released to the public.

CHAPTER III

Implementation of the budget and accountancy

Article 12

The budget shall be implemented in accordance with the principle that the authorising officer and the accounting officer are different individuals. The duties of authorising officer, accounting officer and financial controller shall be mutually incompatible.

Article 13

1. The task of authorising officer for revenue and expenditure shall be carried out by a Director-General at the General Secretariat of the Council. The authorising officer shall implement the budget on behalf of the Deputy Secretary-General and within the limits of the appropriations allotted he may delegate his powers to a Director.

2. The authorising officer may decide on transfers between articles within each chapter. With the agreement of the SIS Working Group, he may decide on transfers between chapters

within the same title. The SIS Working Group shall give its agreement under the same conditions as for adopting its opinion on the budget.

Article 14

The task of financial controller shall be carried out by the Council's Financial Controller in accordance with the rules applicable to the latter's duties.

Article 15

The receipt of revenue and the disbursement of expenditure shall be carried out by an accounting officer from Directorate-General A at the General Secretariat of the Council.

Article 16

1. For the collection of any amount owing pursuant to Article 25, or of any debt due to the States concerned by a third party relating to the conclusion, installation and functioning of Sisnet, the issue of a recovery order by the authorising officer shall be required. Recovery orders shall be forwarded to the accounting officer, who shall submit them to the financial controller for approval.

2. The purpose of this approval shall be to establish that:

- (a) the revenue has been booked to the correct budget item;
- (b) the recovery order is in order and conforms to the relevant provisions;
- (c) the supporting documents are in order;
- (d) the debtor, or the competent authority of the debtor State, are correctly described;
- (e) the due date is indicated;
- (f) the principles of sound financial management referred to in Article 4 have been applied;
- (g) the amount and currency of the sum to be recovered are correct.

3. The accounting officer shall assume responsibility for the recovery orders duly drawn up.

Article 17

Notwithstanding Articles 5 and 6:

- 1. the following deductions may be made from all bills, invoices or statements, which shall then be passed for payment of the net amount:
 - (a) fines imposed on a party to a contract on an accepted tender;
 - (b) adjustment of amounts paid in error, which may be achieved by means of deduction beforehand when another validation of the same type is being effected under the title, chapter, article and financial year in respect of which the excess payment was made.

Discounts, refunds and rebates on invoices and bills shall not be recorded as separate revenue;

2. the following sums may be reused under the heading to which the initial expenditure was charged:

— revenue arising from refund of amounts paid in error against appropriations entered in the budget.

Sums must be reused before the end of the financial year following that in which the revenue was collected.

Article 18

1. Any measure likely to involve expenditure against the budget must first be the subject of a proposal for a commitment of expenditure from the authorising officer to the accounting officer, showing the purpose, the amount involved, the budget item to which the expenditure is to be charged and the creditor. The proposal shall be submitted by the accounting officer to the financial controller for approval.

2. The purpose of this approval shall be to establish that:

- (a) the proposal for commitment has been presented in accordance with paragraph 1;
- (b) the expenditure has been charged to the correct budget item;
- (c) the appropriations are available in the budget;
- (d) the principles of sound financial management referred to in Article 4 have been applied;
- (e) the expenditure is in order and conforms to the relevant provisions.

Article 19

1. The purpose of validation of expenditure by the authorising officer shall be:

- (a) to verify the creditor's claim;
- (b) to determine or verify the existence and the amount of the sum due;
- (c) to verify the conditions under which the payment falls due;
- (d) to verify that purchases or services rendered are as ordered.

2. The authorising officer may have the verifications carried out under his responsibility.

Article 20

1. The authorising officer shall authorise the accounting officer, by the issue of a payment order ('authorisation'), to pay an item of expenditure which has been validated.

2. The authorisation shall state:

- (a) the financial year against which the payment shall be charged;
- (b) the budget title, chapter and article;
- (c) the amount to be paid, in figures and in words, and the currency of payment;

(d) the name and address of the creditor;

(e) the purpose of the expenditure;

(f) the method of payment;

(g) the numbers and dates of the relevant approvals of commitment.

3. The payment order shall be dated and signed by the authorising officer.

4. The accounting officer shall submit the payment order, together with the original supporting documents, to the financial controller for approval.

5. The purpose of this approval shall be to establish that:

- (a) the payment order was properly issued;
- (b) the payment order agrees with the commitment of expenditure and the amount thereof is correct, taking account of the principles of sound financial management referred to in Article 4;
- (c) the expenditure is charged to the correct item in the budget;
- (d) the appropriations are available in the budget title or article concerned;
- (e) the supporting documents are in order, and
- (f) the creditor is correctly named and described.

6. Any expenditure must be covered beforehand by contributions from the States referred to in Article 25 or, failing those, by a bank loan. The costs of a pre-financing loan in the event of non-payment of contributions shall be divided among the States in default, pro rata to their unpaid contributions and taking into account the length of arrears.

Article 21

Payments shall be effected through the bank account opened in accordance with Article 17 of Council Decision 1999/323/EC ⁽¹⁾ in the name of the Secretary-General of the Council. Bank transfer orders executed pursuant to this Financial Regulation shall require the joint signature of two officials nominated by the Deputy Secretary-General, of whom one shall be the accounting officer.

Article 22

Should the financial controller refuse to give the approval laid down in Articles 16, 18 or 20 and the authorising officer maintain his proposal, the matter shall be referred to the Deputy Secretary-General. Except in cases where the availability of appropriations is in doubt, the Deputy Secretary-General may, in a duly reasoned decision, overrule the refusal and confirm the recovery order, expenditure commitment or payment order. The Deputy Secretary-General shall within one month inform the Court of Auditors of any such decision. The decision shall be enforceable as from the date approval was refused.

⁽¹⁾ OJ L 123, 13.5.1999, p. 51.

Article 23

The liability to disciplinary action of the authorising officer, financial controller, and accounting officer in the event of failure to comply with the provisions of this Financial Regulation shall be as laid down in the Staff Regulations of Officials of the European Communities.

Article 24

The accounts shall be kept by the double-entry method on the basis of the calendar year. They shall show all revenue and expenditure for the financial year.

CHAPTER IV

States' contributions*Article 25*

1. Budget revenue shall consist of financial contributions from the following Member States: Belgium, Denmark, Germany, Greece, Spain, France, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland and Sweden, as well as Iceland and Norway.

2. These States' financial contributions shall be laid down in the budget and expressed in euro.

Article 26

The States referred to in Article 25 shall supply their financial contributions to the Deputy Secretary-General in accordance with the following formula.

The scale of contributions to be paid by the Member States referred to in Article 25, on the one hand, and by Iceland and Norway, on the other hand, shall be calculated annually on the basis of the share of each Member State concerned and of Iceland and Norway in the total gross domestic product (GDP) for the preceding year of all the States referred to in Article 25. The scale of contributions by the Member States concerned shall be calculated annually, taking into account the contributions of Iceland and Norway, on the basis of the ratio of the VAT resources paid by each of those Member States to the total VAT resources of the European Communities, as established in the last amendment of the budget of the Union during the preceding financial year.

Article 27

1. The Deputy Secretary-General shall forward requests for contributions to each State referred to in Article 25 by letter through the national administrations whose details have been notified to him.

2. The letter concerned shall contain the following information:

- (a) the decision to adopt the budget or, in the event of Article 9 being invoked, the decision to call up contributions by provisional twelfths;

- (b) the amount to be paid by each State, calculated in euro in accordance with the scale referred to in Article 26;

- (c) the details necessary for paying the contribution.

3. Contributions shall be paid into the bank account referred to in Article 21.

4. The contributions shall be payable in euro.

Article 28

1. The States referred to in Article 25 shall be required to pay 25 % of their contribution by 15 February, 1 April, 1 July and 1 October at the latest.

2. Should a State have defaulted on its financial obligations, the existing Community rules on interest chargeable in the event of late payment of contributions to the budget of the Union shall apply by analogy, without prejudice to any costs which must be borne by such State pursuant to the provisions of Article 20(6).

CHAPTER V

Conclusion of contracts*Article 29*

1. Contracts for the purchase or hiring of goods or for the provision of services shall be in writing.

2. All such contracts for which the estimated value equals or exceeds the thresholds set out in Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts ⁽¹⁾ or Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts ⁽²⁾ shall be concluded after an invitation to tender has been issued in accordance with the provisions of those Directives, including any further amendments which may be agreed to them (hereinafter the 'Council Directives on public procurement procedures').

3. Contracts for which the estimated value of the contract in question does not exceed the thresholds set out in the Council Directives on public procurement procedures may be made by private treaty. In such cases, the Member States referred to in Article 25 shall none the less be bound, as far as possible and by all appropriate means, to enable suppliers who are likely to be able to supply the goods and services in question to compete.

4. Invitations to tender shall, as a general rule, be published by the General Secretariat of the Council on behalf of the Member States referred to in Article 25 in all the Member States.

5. The tendering procedures and selection and award criteria shall be determined and governed by the provisions of the Council Directives on public procurement procedures, as supplemented by the provisions of this Financial Regulation.

⁽¹⁾ OJ L 199, 9.8.1993, p. 1.

⁽²⁾ OJ L 209, 24.7.1992, p. 1. Directive as last amended by Directive 97/52/EC of the European Parliament and of the Council (OJ L 328, 28.11.1997, p. 1).

6. Every invitation to tender shall be prepared by the General Secretariat of the Council on behalf of the Member States referred to in Article 25 and shall, in particular:

- (a) specify the procedure for submitting tenders and stipulate how they are to be presented, including, in particular, any requirement as to the use of a standard reply form;
- (b) make reference to the general conditions applicable to the contract concerned (supplies or services), where appropriate, and to any document containing conditions specifically applicable to the particular contract concerned;
- (c) include a clause stating that the submission of a tender implies acceptance of the relevant conditions;
- (d) specify the terms under which an inspection may be made, where appropriate, to be set out in detail in the case of on-the-spot inspections;
- (e) specify the period during which a tender will remain valid and may not be varied in any respect;
- (f) specify the penalties for failure to comply with the provisions of the contract;
- (g) specify the details which must be contained in the invoices (or in the relevant supporting documents);
- (h) prohibit any contact between the Deputy Secretary-General and his staff, representatives of the Governments of the Member States referred to in Article 25, representatives of the Governments of Iceland and Norway and tenderers on matters related to that invitation to tender save, by way of special exception, under the following conditions:

before the closing date for the submission of tenders:

- (i) at the instance of tenderers:
additional information solely for the purpose of clarifying the nature of the invitation to tender may be communicated to all tenderers;
- (ii) at the instance of the Deputy Secretary-General:
if the Member States referred to in Article 25, or Iceland and Norway, or the General Secretariat of the Council notice an error, a lack of precision, an omission or any other type of clerical defect in the text of the invitation to tender, the General Secretariat may, in a manner identical with that applicable in respect of the original invitation to tender, inform the persons concerned accordingly;
- (iii) after the tenders have been opened and at the instance of the Member States referred to in Article 25, Iceland or Norway, or the General Secretariat of the Council, if some clarification is required in connection with a tender, or if obvious clerical errors contained in the tender must be corrected, the General Secretariat may contact the tenderer.

Article 30

In every case where contact has been made under the conditions provided for in Article 29(6)(h), a 'Note for the file' shall be drawn up and such contact shall be mentioned in the report to be submitted subsequently to the Advisory Committee referred to in Article 36.

Article 31

No discrimination shall be practised between nationals of Member States and of Iceland and Norway on grounds of nationality in respect of contracts entered into by the Deputy Secretary-General on behalf of the Member States referred to in Article 25.

Article 32

Where there are general conditions applicable to the proposed contract, they shall be attached to the invitation to tender. Any document containing conditions specifically applicable to the particular contract concerned shall also be attached.

Article 33

Tenderers may submit tenders:

- (a) by post:
in which case the invitation to tender must specify that the relevant date shall be that on which the tender is posted, as evidenced by the postmark. Tenders submitted by post must be registered; or
- (b) by hand-delivery to the Council General Secretariat direct or by any agent of the tenderer, including private messenger services:
in which case the invitation to tender must state the date by which tenders must be submitted and specify the department within the Council General Secretariat to which they must be delivered against a signed and dated receipt.

The date must be the same in both cases.

In order to maintain secrecy and to avoid any difficulties, the invitation to tender must include a provision as follows:

'Tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope shall bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words "Call for tenders — Not to be opened by the Registry". If self-adhesive envelopes are used they must be sealed with adhesive tape and the sender must sign across this tape.'

Article 34

Every tender must be opened.

The tenders shall be opened together by a committee appointed for this purpose by the Deputy Secretary-General. It shall be composed of three high level officials from different directorates of the Council General Secretariat. The financial controller must be informed of the opening of the tenders. The financial controller or his representative shall be present as an observer.

The committee shall draw up a report of the opening of the tender, to be signed by all its members.

Each page of each tender shall be initialled by at least one member of the committee. The committee shall make a written record of the tenders received, listing, in particular, all the documents which have been received from each tenderer in connection with the tender.

Article 35

Every tender shall be assessed by the Member States referred to in Article 25, together with Iceland and Norway. A report, approved unanimously by these States, shall be presented by the competent official within the Council General Secretariat designated by the authorising officer or by an alternate, also designated by the authorising officer, to the Advisory Committee referred to in Article 36.

This report shall include in particular:

- (a) a statement of the reasons for the elimination of any of the tenders;
- (b) a technical and financial assessment of each tender, including a comparative table of unit prices;
- (c) the grounds for the choice of tenderer recommended.

Article 36

Contracts to be concluded by the Deputy Secretary-General on behalf of the Member States referred to in Article 25 and by the appropriate representatives of Iceland and Norway after an invitation to tender has been issued shall first be submitted for the opinion of an Advisory Committee on procurements and contracts.

Article 37

The Advisory Committee referred to in Article 36 shall include one representative from each Member State referred to in Article 25, together with one representative from each of Norway and Iceland. The Member States referred to in Article 25, together with Iceland and Norway, shall ensure that the representatives selected have adequate expertise in informatics and/or financial matters and/or legal matters. Representatives must not have participated in the assessment of the files to be submitted to the Advisory Committee. A representative of the financial controller shall be present as observer.

The Advisory Committee shall, by simple majority, elect a Chairman and a deputy Chairman from among its representatives.

The Advisory Committee shall deliver an opinion as to whether the procedure leading to the selection of tenderer is in order and, in general, on the proposed terms of the contract.

Any other problem concerning the matter forming the subject of this chapter may be referred to the said Advisory Committee for an opinion.

The Advisory Committee shall endeavour to adopt its opinions by consensus. If such consensus is not possible, the Advisory Committee shall adopt its opinions by a simple majority of its representatives. A quorum of 11 shall be required for the proceedings to be valid. In the event of a tied vote, the Chairman shall have the casting vote.

The General Secretariat of the Council shall provide secretarial assistance to the Advisory Committee as necessary.

Article 38

The Advisory Committee shall draw up its own rules of procedure, by analogy with the rules of procedure of the Advisory

Committee on Procurements and Contracts of the Council of the European Union.

Article 39

The Advisory Committee shall be required to give its opinion, in a purely advisory capacity, on:

- (a) all proposed contracts for supplies or services, including studies, for which the estimated value equals or exceeds the thresholds in the Council Directives on public procurement procedures;
- (b) any proposed agreement supplementary to any contract as referred to in point (a) whenever there are significant changes, particularly when the effect of such supplementary agreement would be to alter the amount involved in the original contract;
- (c) any proposed supplementary agreement the effect of which would be to raise the total amount involved in a contract already concluded above the thresholds referred to in point (a);
- (d) questions arising at the time of conclusion or in the course of performance of contracts (e.g. cancellation of orders, requests for remission of penalties for delay, departures from the specifications and general conditions of contract), should the matter be sufficiently serious to justify a request for an opinion;
- (e) at the request of one of the Member States referred to in Article 25 or of Iceland or Norway, or of a member of the Advisory Committee, or of the Deputy Secretary-General, proposed contracts involving an amount below the thresholds referred to in point (a), where they consider that such contracts involve questions of principle or are of a special nature.

Article 40

The files submitted to the Advisory Committee for an opinion pursuant to Article 39(b) to (e), shall also be accompanied by a report approved unanimously by the Member States referred to in Article 25, as well as Iceland and Norway.

Article 41

The opinions of the Advisory Committee shall be signed by its chairman. In order to avoid delays in the process as a result of the intervention of the Advisory Committee, the Member States referred to in Article 25, as well as Iceland and Norway, may, if they deem it necessary, impose a reasonable deadline by which an opinion must be furnished. Opinions shall be communicated to the Deputy Secretary-General and to the Member States referred to in Article 25, as well as to Iceland and Norway. Following due consideration of that opinion, the Member States referred to in Article 25, as well as Iceland and Norway, shall take a final decision on the case by unanimity. Once that decision has been taken, the contract or contracts which form the subject of each case shall be concluded by the Deputy Secretary-General on behalf of the Member States referred to in Article 25 and by the appropriate representatives of Iceland and Norway.

Article 42

All the tenderers shall be informed by the General Secretariat of the Council of the decision taken with regard to their tenders.

Article 43

1. Contracts may be made against an invoice or bill of costs where the expected value of the goods or services does not exceed EUR 2 000.

2. By way of guarantee of the performance of contracts, suppliers, contractors or providers of services may be required by a warranty clause to make a preliminary deposit. Such deposit must cover not only the entire period of the guarantee but also a period long enough to allow the guarantee to be invoked. The deposit must, in principle, consist of a payment in euro made to a bank account specifically opened for that purpose in the name of the General Secretariat of the Council. Such deposit may only be lodged with a first-class credit institution in a sight- or short-term deposit account denominated in euro.

3. The amount of the deposit shall be fixed according to the usual trade terms and conditions.

4. The provision of such security shall be obligatory where the value of the contract concerned equals or exceeds the thresholds set out in the Council Directives on public procurement procedures.

5. This security may be replaced by a joint and several personal guarantee given by a third party approved by the accounting officer. The guarantee shall, in principle, be denominated in euro and must comply with the same rules as the guarantee referred to in paragraph 2.

6. Where a contract has not been performed or completion has been late, the Deputy Secretary-General shall ensure that the Member States referred to in Article 25, as well as Iceland and Norway, are adequately compensated in respect of all damages, interests and costs by the deduction of the amount from the deposit, whether this has been lodged directly by the supplier or contractor or by a third party.

Article 44

The usual supporting documents accompanying the first order to pay drawn up pursuant to a contract requiring the provision of a deposit shall be supplemented by a copy, certified true by the accounting officer, of the receipt issued when the deposit was paid, or by a copy, certified true by the accounting officer, of a declaration from the establishment or third party providing the guarantee.

Article 45

Deposits shall be repaid, or the guarantees referred to in Article 43 given in place thereof released, by the Deputy Secretary-General in accordance with the provisions of the applicable

contract or guarantee, except in cases of non-performance or late performance as referred to in Article 43(6).

CHAPTER VI

Presenting and auditing the accounts*Article 46*

1. The Deputy Secretary-General shall, within two months from the end of the budget implementation period, draw up a revenue and expenditure account and a balance sheet and transmit them to the SIS Working Group.

2. The revenue and expenditure account shall cover all revenue and expenditure transactions relating to the preceding financial year. It shall be submitted in the same form and following the same subdivisions as the budget.

3. The following shall be attached to the account:

(a) a statement showing the situation of each of the States referred to in Article 25 as regards payment of its financial contribution, and

(b) an appropriation transfer statement.

4. The balance sheet shall show the budget assets and liabilities as at 31 December of the preceding financial year.

Article 47

1. The Court of Auditors shall be asked to audit the accounts.

2. The Deputy Secretary-General shall forward the revenue and expenditure account and the balance sheet to the Court of Auditors within 15 days following the period laid down in Article 46(1).

3. The purpose of the audit by the Court of Auditors shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner in accordance with the contracts to be managed, the budget and this Financial Regulation.

4. The Deputy Secretary-General shall provide the Court of Auditors with every facility it may consider necessary in order to carry out its task.

Article 48

The revenue and expenditure account, balance sheet and report by the Court of Auditors, accompanied where appropriate by the Deputy Secretary-General's comments, shall be submitted by 1 July to the States referred to in Article 25. The Member States referred to in Article 25, meeting within the Council, shall give a discharge to the Deputy Secretary-General in respect of the budget's implementation.

CHAPTER VII

Final provisions*Article 49*

The introduction of the provisions of the Schengen *acquis* concerning the Schengen information system for a State other than those referred to in Article 25 (hereinafter referred to as 'other State') shall entail:

- (a) readjustment of the share of contributions of the States referred to in Article 25 as laid down in Article 26;
- (b) adjustment of the contributions of the States referred to in Article 25 in order to establish the contribution payable by the other State to the operation of Sisnet for the whole of the current financial year;
- (c) adjustment of the contributions of the States referred to in Article 25 in order to establish the proportion of earlier Sisnet installation costs to be borne by the other State. This percentage shall be calculated on the basis of the ratio of the VAT resources paid by the other State to the total VAT resources of the European Communities for the earlier financial years in which the necessary Sisnet installation costs have been incurred. The percentage contribution shall be the subject of a 'credit note' to the States referred to in Article 25 for an amount pro rata to their share as calculated in accordance with Article 26. The other States may choose to allocate the amount concerned towards their share of the budget or request reimbursement.

Article 50

1. This Financial Regulation shall apply to the adoption of the budget with respect to the revenue and expenditure required to meet the obligations arising out of any action taken

pursuant to Article 1 of Decision 1999/870/EC, for the financial year in which this Regulation enters into force.

2. By derogation from Article 8, for the purposes of the budget referred to in paragraph 1, the Deputy Secretary-General of the Council shall forward the preliminary draft budget to the SIS Working Group as soon as possible after the adoption of this Financial Regulation. Following the delivery of the opinion of the SIS Working Group and the establishment of the draft budget, the Member States referred to in Article 25, meeting within the Council, shall adopt the budget without delay.

3. By derogation from Article 28, for the purposes of the budget referred to in paragraph 1, the States referred to in Article 25 shall be required to pay their contribution in accordance with a schedule to be determined by the Member States referred to in Article 25 at the time of adoption of this budget.

Article 51

1. This Decision shall take effect from the date of its adoption.
2. It shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 27 March 2000.

For the Council

The President

F. GOMES

COUNCIL DECISION**of 30 March 2000**

authorising the Kingdom of the Netherlands to apply a reduced rate of excise duty to certain mineral oils, when used for specific purposes, in accordance with the procedure provided for in Article 8(4) of Directive 92/81/EEC

(2000/266/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ⁽¹⁾, and in particular Article 8(4) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Pursuant to Article 8(4) of Directive 92/81/EEC, the Council, acting unanimously on a proposal from the Commission may authorise any Member State to introduce further exemptions or reductions in the excise duty charged on mineral oils for specific policy considerations.
- (2) The Dutch authorities have informed the Commission that they wish to apply a differential rate of excise duty for LPG used by waste-collection, drain-suction and street-cleaning vehicles as part of a plan to reduce NOx emissions in the urban environment by reducing the use of diesel fuel.
- (3) The other Member States have been informed thereof.
- (4) The Commission and all the Member States accept that the application of a differential rate of excise duty for LPG used by the said vehicles will not give rise to distortions of competition or hinder the operation of the internal market.
- (5) The Commission regularly reviews reductions and exemptions to check that they are compatible with the operation of the internal market or with Community policy on the protection of the environment.
- (6) The Kingdom of the Netherlands has requested authorisation to apply a differential rate of excise duty for LPG used by waste-collection, drain-suction and street-cleaning vehicles of NLG 125,56 per 1 000 kg from 1 May 2000. The Council is to review its application on the basis of a proposal from the Commission no later than 31 December 2002, when the authorisation granted by this Decision expires,

HAS ADOPTED THIS DECISION:

Article 1

In accordance with Article 8(4) of Directive 92/81/EEC and notwithstanding the obligations imposed by Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils ⁽²⁾, and in particular the minimum rates laid down in Article 7 thereof, the Kingdom of the Netherlands is hereby authorised to apply a differential rate of excise duty for LPG used by waste-collection, drain-suction and street-cleaning vehicles from 1 May 2000 to 31 December 2002.

⁽¹⁾ OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 94/74/EG (OJ L 365, 31.12.1994, p. 46).

⁽²⁾ OJ L 316, 31.10.1992, p. 19. Directive as amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 March 2000.

For the Council
The President
J. SÓCRATES

COUNCIL DECISION
of 30 March 2000
appointing a German member of the Economic and Social Committee

(2000/267/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 15 September 1998 appointing the members of the Economic and Social Committee for the period from 21 September 1998 to 20 September 2002 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Mr Wolfgang Warburg, of which the Council was informed on 21 October 1999;

Having regard to the nominations submitted by the German Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Ms Ursula Derwein is hereby appointed a member of the Economic and Social Committee in place of Mr Wolfgang Warburg for the remainder of his term of office, which runs until 20 September 2002.

Done at Brussels, 30 March 2000.

For the Council

The President

J. SÓCRATES

⁽¹⁾ OJ L 257, 19.9.1998, p. 37.

COUNCIL DECISION
of 30 March 2000
appointing a Swedish member of the Economic and Social Committee

(2000/268/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 15 September 1998 appointing the members of the Economic and Social Committee for the period from 21 September 1998 to 20 September 2002 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Ms Anita Harriman, of which the Council was informed on 12 March 1999;

Having regard to the nominations submitted by the Swedish Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Ms Inger Persson is hereby appointed a member of the Economic and Social Committee in place of Ms Anita Harriman for the remainder of her term of office, which runs until 20 September 2002.

Done at Brussels, 30 March 2000.

For the Council

The President

J. SÓCRATES

⁽¹⁾ OJ L 257, 19.9.1998, p. 37.

COUNCIL DECISION
of 30 March 2000
appointing a German member of the Economic and Social Committee

(2000/269/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 15 September 1998 appointing the members of the Economic and Social Committee for the period from 21 September 1998 to 20 September 2002 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Mr Klaus Schmitz, of which the Council was informed on 21 December 1999;

Having regard to the nominations submitted by the German Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Mr Heinz Putzhammer is hereby appointed a member of the Economic and Social Committee in place of Mr Klaus Schmitz for the remainder of his term of office, which runs until 20 September 2002.

Done at Brussels, 30 March 2000.

For the Council

The President

J. SÓCRATES

⁽¹⁾ OJ L 257, 19.9.1998, p. 37.

COUNCIL DECISION
of 30 March 2000
appointing a Spanish member of the Economic and Social Committee

(2000/270/EC, Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 258 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 166 thereof,

Having regard to the Council Decision of 15 September 1998 appointing the members of the Economic and Social Committee for the period from 21 September 1998 to 20 September 2002 ⁽¹⁾,

Whereas a member's seat on that Committee has fallen vacant following the resignation of Ms Amaia Betelu Bazo, of which the Council was informed on 16 February 2000;

Having regard to the nominations submitted by the Spanish Government,

Having obtained the opinion of the Commission of the European Communities,

HAS DECIDED AS FOLLOWS:

Sole Article

Ms Laura González de Txabarri Etxaniz is hereby appointed a member of the Economic and Social Committee in place of Ms Amaia Betelu Bazo for the remainder of her term of office, which runs until 20 September 2002.

Done at Brussels, 30 March 2000.

For the Council
The President
J. SÓCRATES

⁽¹⁾ OJ L 257, 19.9.1998, p. 37.

COMMISSION

COMMISSION DECISION

of 30 September 1998

on aid granted by Germany to SKET Verseilmaschinenbau GmbH

(notified under document number C(1998) 3022)

(Only the German text is authentic)

(Text with EEA relevance)

(2000/271/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),

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

Having given the interested parties, pursuant to Article 93(2), a period in which to submit their comments,

Whereas:

I

On 15 March 1995 the Commission decided to initiate proceedings under Article 93(2) of the EC Treaty in respect of State aid for SKET Schwermaschinenbau Magdeburg GmbH, Magdeburg (SKET SMM) ⁽¹⁾. The proceedings also concerned the SKET SMM subsidiaries, i.e. Entstaubungstechnik Magdeburg GmbH, Magdeburg (ETM) and Drahtziehmaschinenwerk Grüna GmbH, Chemnitz (DZM). The aid in question had been received by SKET SMM before, and in the course of, its privatisation and restructuring. Previously, SKET SMM had already received aid, to which the Commission had not objected (NN 46/93 and NN 95/93). The proceedings were given the number C 16/95.

On 30 July 1996 the Commission decided to extend the C 16/95 proceedings to the State aid paid since the initiation decision, which was not covered by that decision ⁽²⁾. The

investors (Oestmann & Borchert Industriebeteiligungen GbR) had withdrawn from the restructuring plan at the end of 1995, and a new plan with additional aid had been notified. The new plan envisaged, *inter alia*, the creation of several successor companies which would operate those profitable parts of the SKET SMM operation which could be salvaged from the bankrupt company. SKET Verseilmaschinenbau GmbH was one of the successor companies.

SKET SMM was forced in October 1996 to file for a *Gesamtvollstreckungsverfahren* (GV) (bankruptcy proceedings in the new *Länder*). The plan which was the subject of the initiation decision of 30 July 1996 had thus not been able to restore SKET SMM to viability. On 26 July 1997 the Commission adopted the negative final Decision 97/765/EC with regard to the aid for SKET SMM ⁽³⁾. The GV did not apply to the two subsidiaries ETM and DZM, which were transferred to the Federal Office for Special Unification-related Tasks (the BvS). Decision 97/765/EC terminated case C 16/95 in respect only of that part of SKET SMM which was covered by the GV. The case was therefore split into three separate parts, as follows: C 16a/95 for SKET SMM, C 16b/95 for ETM and C 16c/95 for DZM.

To reflect the new reality that the successor companies to SKET SMM were taking independent courses, each of the successor companies was allocated a separate aid number to reflect this. SKET Verseilmaschinenbau GmbH was allocated NN 124/97. The present Decision relates only to SKET Verseilmaschinenbau GmbH.

⁽¹⁾ OJ C 215, 19.8.1995, p. 8 and OJ C 298, 9.10.1996, p. 2.

⁽²⁾ OJ C 298, 9.10.1996, p. 2.

⁽³⁾ OJ L 314, 8.11.1997, p. 20.

On 5 November 1997 the Commission decided to initiate the Article 93(2) procedure in respect of aid measures to SKET Verseilmaschinenbau GmbH and the file was assigned the case number C 72/97. By letter dated 28 November 1997 (SG(97) D/9912) the Commission advised Germany of its decision. The contents of this letter were published in the *Official Journal of the European Communities* on 18 March 1998 ⁽⁴⁾.

By letter dated 5 December 1997 (and registered as received on the same date by the Commission), Germany advised the Commission that the privatisation of SKET Verseilmaschinenbau GmbH had occurred and provided some details of the privatisation. By letter dated 26 January 1998 (and registered as received on 27 January 1998 by the Commission), Germany replied to the Commission's letter of 28 November 1997 and also provided additional details on the privatisation of SKET Verseilmaschinenbau GmbH. The Commission submitted further queries on 14 May 1998 to the German authorities, who replied by letter dated 26 May 1998 (registered as received on the same day by the Commission).

II

SKET Verseilmaschinenbau GmbH is based in Magdeburg, Saxony-Anhalt, Germany. In 1997 it employed some 35 persons, had a turnover of DEM 20 800 000 and a balance sheet total of DEM 29 400 000.

SKET Verseilmaschinenbau GmbH was entered as a company in the Magdeburg trade register on 8 November 1996 with a share capital of DEM 50 000. The sole shareholder was the BvS. On 22 November 1996, SKET Verseilmaschinenbau GmbH entered into an agreement with the liquidator of SKET SMM to take over various assets of the cable-making machinery operation of SKET SMM. The assets, including second-hand office equipment, old software and intellectual property were acquired at their market value and paid for from money awarded to SKET Verseilmaschinenbau GmbH by the BvS by way of capital provision. The transfer was confirmed by a notarially certified contract on 27 March 1997.

SKET Verseilmaschinenbau GmbH is an engineering company specialising in the design and development of cable and wire making machines of all types made to meet individual customer requirements. It can complete entire systems on a turnkey basis. Consequently, it provides all the services associated with the development, design, supervision of manufacture, construction and assembly, installation and commissioning of custom-built cable-making machinery. It is to be noted that at the time of privatisation the firm engaged in all

stages involved in the manufacture of machinery and plants for the production of cable, except that of actual manufacture. For this, it relied on the services of a mechanical engineering firm. Under the proposed restructuring plan it will acquire some productive capacity.

The type of cable products which can be produced on the machinery designed and developed by SKET Verseilmaschinenbau GmbH range from steel wire, corded steel, stressed steel cable for mechanical purposes such as for reinforcing tyres and use in stressed concrete to copper and aluminium cable and wire products for electronic communications or energy transmission purposes such as in telephone lines, high voltage cable and undersea cable.

III

The general market for machine manufacture is extremely diversified and the subsector for cable and wire making machinery is dependent on the condition of the markets downstream. The general market for machine manufacture was affected by the recession at the end of 1994. Although growth returned in 1995, the extent to which it may continue in coming years is unclear. A clearer view of the state and prospects for the cable and wire making machinery subsector can be gauged by reference to demand for cable and wire products ⁽⁵⁾.

The market for cable- and wire-making machinery is worldwide. This means that not only is there direct trade between Member States in these products but that undertakings in different Member States are also competing for market shares in third countries ⁽⁶⁾. Demand for this type of machinery is dependent on the condition of downstream markets and, because cable and wire are important both for communications and energy transmission, demand is determined by the general state of the economy. Demand for cabling and wire is also particularly dependent on the state of the automotive industry. In the long term, increased demand for energy and communications, coupled with deregulation, and an associated increase in competing networks will ensure steady growth. However, it is to be noted that the growth in demand for optical fibre will mean that demand for metal-based wires in the telecommunications industry will not increase as much as in the past. Geographically speaking, as a result of the changes in central and eastern Europe and growth in South-East Asia and the People's Republic of China, these areas are also becoming increasingly important sales markets. The sector is also characterised by a growing specialisation in high-tech products, with customer service gaining in importance as a value-added element. The sector was affected by the recession in 1992 to 1993, but the sector began its recovery in 1994 and growth continued into 1995. The general upward trend should continue from 1997 onwards ⁽⁷⁾.

Since the recovery in 1994, the relevant market has therefore apparently not suffered from structural overcapacity despite the impact of the recession.

⁽⁵⁾ On the state of the general machine manufacturing sector, see *Panorama of EU Industry 1997*, Volume 2, pages 13-23 to 13-29.

⁽⁶⁾ Intra-Community trade exceeds trade with third countries, see *Panorama of EU Industry 1997*, Volume 2, page 15-5.

⁽⁷⁾ On the state of the market for cable and wire, see *Panorama of EU Industry 1997*, Volume 2, pages 15-3 to 15-7 and 15-4 to 15-17.

⁽⁴⁾ OJ C 83, 18.3.1998, p. 10.

IV

The economic environment in which SKET SMM was originally designed to operate was that of a centralised command economy. In terms of product range, SKET SMM was a conglomerate manufacturing various products, including rolling mills, wire and cable producing equipment and machines for processing oil seeds. Such a diverse and fragmented structure meant that as its economic environment changed into that of a competitive market, attempts to privatise SKET SMM as a single economic unit undertaking met with no success. The restructuring of the conglomerate had been started early on, but had not been completed when the Commission reached a negative decision regarding the aid measures to SKET SMM notified in 1994. The measures also concerned the potentially profitable components of the conglomerate, one of which was the cable-making machinery operation. By the time SKET SMM filed for bankruptcy proceedings in October 1996, Germany had modified its original strategy and had resolved to extract the potentially profitable activities from the conglomerate, which were to be continued as smaller, autonomous economic units.

In order to achieve this, the BvS set up a commercially inactive coordinating company, SKET Management- und Vertriebsgesellschaft GmbH ⁽⁸⁾, to supervise the restructuring and preparation for privatisation of five commercially autonomous companies, also owned by the BvS. All were small- or medium-sized enterprises. SKET Management- und Vertriebsgesellschaft GmbH, acting on the instructions of the BvS, was entrusted with the task of finding investors and negotiating the privatisation of the five salvaged undertakings. In April 1998, the last of the five companies was privatised and the process of dismantling the SKET Management- und Vertriebsgesellschaft GmbH began. The five salvaged businesses (*Auffanggesellschaften*) are:

- SKET Maschinen- und Anlagenbau GmbH ⁽⁹⁾
- SKET Walzwerkstechnik GmbH ⁽¹⁰⁾
- SKET Ölsaantentechnik GmbH (later renamed Cimbria SKET GmbH) ⁽¹¹⁾
- SKET Maschinenbau-EDV GmbH ⁽¹²⁾
- SKET Verseilmaschinenbau GmbH.

(In addition to these, there are the two subsidiaries, ETM and DZM, which were transferred to the BvS prior to the opening of bankruptcy proceedings against SKET SMM.)

V

On 6 November 1997 an agreement for the sale of the shares in SKET Verseilmaschinenbau GmbH was concluded between the BvS, as vendor, and Mr Johannes Erich Wilms, the purchaser. The sale was on the basis of open public tender, the purchaser's tender being the best offer submitted in response thereto.

⁽⁸⁾ State aid case number NN 67/97.

⁽⁹⁾ State aid case number C 69/97

⁽¹⁰⁾ State aid case number C 70/97

⁽¹¹⁾ State aid case number NN 125/97

⁽¹²⁾ Aid to this firm was approved by the Commission in May 1998 (Case number NN 126/97).

The purchase price of DEM 1 has been paid to the BvS. The other obligations accepted by the purchaser as part of the privatisation involve taking over by 31 August 1998 existing guarantees in the amount of DEM 6 700 000 originally granted by the BvS (the investor having lodged DEM 3 000 000 at the time of privatisation as a security against this commitment), releasing the BvS from another guarantee of DEM 876 000 and a commitment to invest DEM 6 500 000 in the restructuring of the company (secured by 75 % penalty payments in the event of a failure to do so). The investor may not distribute any profits or other sums from SKET Verseilmaschinenbau GmbH before 31 December 2000.

The investor, Mr Johannes Erich Wilms, is the sole owner of several small- to medium-sized companies making up the Wilms Group. The Group, which has its main office in Menden, North Rhine-Westphalia, Germany operates in three sectors: electric cable and connection manufacturing, environmental technology (for example, technology for filtering and sewage works) and machine construction. [...] ^(*). With the exception of one Austrian subsidiary, the Group is entirely based in Germany. The Wilms Group employs some 1 500 people.

VI

The original problems related to the operation of SKET Verseilmaschinenbau GmbH when it was a component of SKET SMM were a consequence of being part of an unwieldy and fragmented industrial conglomerate not run according to market principles.

The first step in the restructuring programme was to separate the cable machine operation from SKET SMM. In order to do this, the resources comprising the cable-making machine production operation needed to be preserved for possible separation from the failing SKET SMM, reorganised on a stand-alone basis and then transferred to SKET Verseilmaschinenbau GmbH, which would continue to implement the restructuring measures. The new company acquired staff, machinery, technical equipment and office equipment from the liquidator of SKET SMM. Thirty-five employees were involved and the equipment included old office equipment (originally acquired for DEM 1 000 000) and software (originally acquired for DEM 200 000) acquired for DEM 150 000 as well as intellectual property rights, also acquired for DEM 150 000.

A further problem concerned the acceptance by SKET Verseilmaschinenbau GmbH, of five contracts originally awarded to SKET SMM. Payment under the contracts had already been made to SKET SMM in advance of their completion and the sums then became part of the assets of the bankrupt company. Consequently, SKET Verseilmaschinenbau GmbH will make a loss on these contracts. However, from SKET Verseilmaschinenbau GmbH's point of view, it must fulfil the contracts to secure its customer base and commercial reputation.

The final phases of the restructuring operation envisaged under the restructuring plan consist of a strategic reorientation, in particular a shift to production, and full incorporation into the Wilms Group.

The strategic reorientation involved switching from a purely engineering operation to an operation which includes a manufacturing capacity, so that SKET Verseilmaschinenbau GmbH can develop and deliver turnkey systems with full service support from initial design and development through to final on-site commissioning of installed systems. The acquisition of production capacity requires additional premises (at an estimated cost of DEM 3 100 000) and an increase in the workforce to 50 in 2001. In addition, the product range has been expanded to include extruder machines. The cost of the new equipment is estimated at DEM 600 000. Entry into the market for the development and manufacture of extruders will cost an estimated DEM 1 400 000. In addition, a simplified set of common components will be developed to reduce costs. Parts of minimal importance for the operations or where quality need not be a major consideration will be outsourced. Furthermore, the purchase of materials and components and final production will be based to a greater extent on just-in-time strategies. The costs for promoting the company's products are estimated at DEM 600 000. In addition, as it is important for this type of operation to be able to demonstrate techniques and machinery to clients, an estimated further DEM 800 000 is to be invested in constructing demonstration models and prototypes. On this basis, the total cost of this final phase of the restructuring is estimated at DEM 6 500 000.

The integration into the Wilms Group operation will cut costs as a result of the introduction of standardised processes and common standards as well as common components at the Group level. It is also intended that other companies in the Wilms Group's machine manufacturing operation (which are not active in the same sector as SKET Verseilmaschinenbau GmbH) will be able to supply aggregate components which can be incorporated by SKET Verseilmaschinenbau GmbH into its final products. In addition, the buying-in of materials will be centralised within the group, although SKET Verseilmaschinenbau will still retain a purchasing department. The financial control and personnel departments will also be centralised. SKET Verseilmaschinenbau GmbH will also be integrated into the investor's sales and distribution network. Further measures will be taken in respect of cooperation at the research and development stage. This final phase of restructuring will be completed by 1999.

VII

The aid measures under consideration are as follows:

Source	Type	DEM
Bvs	Payment towards capital provision	5 000 000
Bvs	Loan in respect of the cable machine operation of SKET SMM and subsequent waiver of right to repayment thereof	500 000
Bvs	Loan for prefinancing of contracts and subsequent waiver of right to repayment thereof	1 000 000
Bvs	Payment towards final restructuring costs	1 750 000
Total		8 250 000

There is also the guarantee of DEM 6 700 000 which was taken over by the investor on 31 August 1998 (secured by the deposit of DEM 3 000 000 when the company was privatised). It is to be noted that, as well as paying by means of a security, the investor assumed responsibility for the guarantee in April 1998 and that SKET Verseilmaschinenbau GmbH therefore enjoyed the benefit of this guarantee for only some four months.

VIII

The aid measures identified above fall within the scope of Article 92(1) of the EC Treaty for the following reasons.

SKET Verseilmaschinenbau GmbH is an undertaking operating in a sector in which the relevant market extends across Member States, and trade between Member States is therefore affected. Aid by its very nature tends to distort competition. The aid measures granted to the company by Germany therefore fall within the scope of Article 92(1) of the EC Treaty. Article 92(2) and (3) of the EC Treaty provides for the possibility of exemption of aid falling within the scope of Article 92(1). For the reasons set out below, the only basis for exempting the restructuring aid to SKET Verseilmaschinenbau GmbH, a firm in difficulty, is Article 92(3)(c).

The aid was granted to an undertaking which the BvS had founded when bankruptcy proceedings were initiated against another economic entity. Although operating through the legal person of SKET SMM GmbH, this latter entity was in reality a cluster of diverse economic operations which had been undergoing restructuring over a period of several years. The new undertaking, SKET Verseilmaschinenbau GmbH, is a continuation of part of the cable-making machinery operation of SKET SMM. The BvS strategy, as modified, was to provide the new company with capital and funds in order to privatise it on a stand-alone basis. The distinguishing feature of this arrangement is that SKET SMM GmbH, which had been in continuous State ownership since 1990, could never have been privatised as a single or as a group economic unit. These circumstances distinguish this case from those involving the creation of *Auffanggesellschaften* following the failure of a company already privatised.

At the moment of its creation, SKET Verseilmaschinenbau GmbH was not viable. The cable-making machinery operation of SKET SMM was not founded and operated as an autonomous commercial enterprise, but was embedded in a vast and unwieldy conglomerate. Therefore, it was necessary to extract the operation from the bankrupt company and to restructure it to make it attractive for sale on the market.

That the aid granted to SKET Verseilmaschinenbau GmbH, which took over parts of the assets and resources of a bankrupt company, may be treated as restructuring aid is justifiable both in view of the particular historic and economic circumstances of the companies, which found themselves being compelled to readjust rapidly from a centralised economic system to a market system, and in view of the role played by the BvS (the organisation which took over from the *Treuhandanstalt*) in this readjustment.

In view of these considerations, the Commission considers the derogation in Article 92(3)(c) of the EC Treaty relevant. In order to meet the requirements for a derogation under this heading, the aid must satisfy the criteria set out in the guidelines for rescue and restructuring aid (the Guidelines) (*).

The Commission considers that aid for rescue and restructuring may contribute to the development of economic activities without adversely affecting trade against the Community interest if the conditions set out in Section 3 of the Guidelines are met, and will therefore authorise such aid under those conditions. Where the firms to be rescued or restructured are located in assisted areas, the Commission will take regional considerations under subparagraphs (a) and (c) of Article 92(3) into account as described in paragraph 3.2.3 of the Guidelines.

The measures notified by Germany in 1996 amounted to DEM 18 100 000 and were intended to be restructuring aid.

IX

To satisfy the criteria set out in the Guidelines, all restructuring plans must restore the long-term viability and health of the firm within a reasonable time scale and on the basis of realistic assumptions.

(*) Business secret.

The problems faced by the operation which was eventually to become SKET Verseilmaschinenbau GmbH and the measures required to address them were outlined above. These included identifying the core, profitable activity of the operation and then extracting it together with the relevant assets from the old operation as a going concern. This also entailed completing contracts in respect of cable-making equipment awarded to SKET SMM. The final phase of the restructuring comprised establishing test facilities and integration into the Wilms Group.

On the basis of the figures provided by Germany, SKET Verseilmaschinenbau GmbH should begin to make a small operating profit in 1999:

(1 000 DM)

	1997	1998	1999	2000	2001
Operating income	20 800	27 700	26 000	30 600	33 500
Material costs	17 600	16 700	19 100	21 900	23 600
Personnel costs	2 500	2 900	3 300	3 700	3 800
Written off	100	380	620	700	600
Other operating costs	7 200	3 700	3 200	3 500	4 025
Result before interest	300	-450	580	980	1 215
Extraordinary sums	-800	-400	-400	-500	-550
Pre-tax result	-400	-780	280	580	756

The projected increase in turnover from 1999 onwards appears realistic. SKET Verseilmaschinenbau GmbH began to secure profitable contracts even prior to privatisation, and negotiations for several further contracts for 1999 were also being conducted. This improved position has been consolidated by the integration into the Wilms Group and will be enhanced by the acquisition of manufacturing capacity.

In view of the foregoing, the Commission concludes that its concerns expressed in the initiation of proceedings have been addressed and that the criterion in the Guidelines concerning the restoration to profitability is satisfied.

X

A further condition under the Guidelines for restructuring aid to be acceptable is that measures are taken to offset, as far as possible, adverse effects on competitors. Where there is a structural excess of production capacity in a relevant market in the Community served by the recipient, the restructuring plan must make a contribution, proportionate to the amount of aid received, to the restructuring of the industry serving the relevant market in the European Community by irreversibly reducing or closing capacity. Where, on the other hand, there is no structural excess of production capacity in a relevant market in the Community served by the recipient, the Commission will normally not require a reduction of capacity in return for the aid.

The Commission notes that the recipient firm is located in an area covered by Article 92(3)(a) of the EC Treaty ⁽¹³⁾. Under the Guidelines, where overcapacity needs to be reduced in regions eligible for aid pursuant to Article 92(3)(a) of the EC Treaty, the Commission may adopt a more flexible approach and accept a smaller reduction than it would in other regions ⁽¹⁴⁾.

⁽¹³⁾ OJ C 368, 23.12.1994, p. 12.

⁽¹⁴⁾ See State aid case N 464/93.

However, there is no overcapacity identifiable by the Commission in the market in which SKET Verseilmaschinenbau GmbH is operating ⁽¹⁵⁾. Therefore, there is no need for SKET Verseilmaschinenbau GmbH to reduce capacity in order to comply with the Guidelines.

The Wilms Group is active in related markets, that of the production of cable and wiring and the production of cable and wire-making machinery. The incorporation of SKET Verseilmaschinenbau GmbH into the Group will therefore have elements both of vertical integration and concentration. Given the relatively stable levels of probable consumption of cable and wiring in the Community over the last few years, this suggests that the Wilms Group, enlarged by the acquisition of SKET Verseilmaschinenbau, will have a market share within the European Union of less than 1 %. Given that the geographic market is global, the overall market share should be even smaller ⁽¹⁶⁾. Nor has the Commission reason to believe that the enlarged Group will acquire a market share in the production of cable and wire-making machinery affording it market power. Therefore, such concentration as may occur under the privatisation will have a negligible impact on the market, and the element of vertical integration cannot be used to extend market power gained at one level of the market either upstream or downstream.

It is to be noted that no comments were received from third parties in response to publication of the contents of the letter to Germany announcing the Commission's decision to initiate proceedings ⁽¹⁷⁾. It is further to be noted that the initial notification related to a much higher aid package and no private investor seemed forthcoming at that time.

In view of the foregoing, the Commission concludes that its concerns expressed in the initiation of proceedings have been addressed and that the criterion concerning no undue distortion of competition is satisfied.

XI

A further condition under the Guidelines for restructuring aid to be acceptable is that the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view. The investor is also expected to make a significant contribution to the restructuring plan from its own resources.

In this case, the total aid package from the BvS amounts to DEM 8 250 000. This amount is made up of a subsidy of DEM 5 000 000 awarded by the BvS in order to equip SKET Verseilmaschinenbau GmbH with capital. A further element of the package consists of what was initially a loan of DEM 1 000 000 in order to cover expenses incurred in carrying out contracts. The right to repayment was then waived. SKET Verseilmaschinenbau GmbH has also benefited from a loan to the liquidator of SKET SMM in the amount of DEM 500 000 to extract the cable-making machinery operation from SKET SMM repayment of which was also waived during the privatisation. Finally, SKET Verseilmaschinenbau GmbH will also benefit from a payment of DEM 1 750 000 to be out paid in tranches in respect of the final phase of restructuring. There is also a guarantee in the amount DEM 6 700 000 granted until 31 August 1998 and taken over by the investor in advance of that date in April 1998.

Although the purchase price was only DEM 1, the investor was committed to taking over guarantees from the BvS in the amount DEM 6 700 000 by 31 August 1998 (a commitment secured by the sum of DEM 3 000 000 lodged at the time of privatisation, with the investor assuming full responsibility for the guarantee in April 1998) and is also committed to investing DEM 6 500 000 in SKET Verseilmaschinenbau GmbH (a commitment secured in the event if non-performance by penalty payments of 75 %). The investor may not distribute any profits or other sums from SKET Verseilmaschinenbau GmbH before 31 December 2000. In addition the investor has committed to maintaining 40 jobs until June 1999, increasing staff to 50 by 2001. The total restructuring costs therefore amount to DEM 21 450 000, of which the private investor is contributing some 60 %. The investor's contribution may therefore be regarded as reasonable. In view of the foregoing, the Commission concludes that its concerns expressed in the initiation of proceedings have been addressed and that the criterion concerning the proportionality of aid is satisfied.

⁽¹⁵⁾ See Section 3.2.3 of the Guidelines.

⁽¹⁶⁾ See *Panorama of EU Industry 1997*, Volume 2, pages 13-23 to 13-29 in conjunction with pages 15-3 to 15-7 and 15-4 to 15-17.

⁽¹⁷⁾ See *Panorama of EU Industry 1997*, Volume 2, pages 15-14 to 15-17.

XII

The company must fully implement the restructuring plan that was submitted to and accepted by the Commission and must discharge any other obligations required by the Decision. Otherwise, unless the original Decision is amended following a new notification from the Member State, the Commission will take steps to require the recovery of the aid. Part of the restructuring of SKET Verseilmaschinenbau GmbH had occurred prior to its privatisation. The investor is committed to implementing the rest of the restructuring plan. This is demonstrated by its commitment to investing DEM 6 500 000 in the new subsidiary, secured by penalty payments, and it has also taken over full responsibility for an existing guarantee from the BvS in advance of the date for which this was envisaged.

XIII

In view of the foregoing, the Commission finds that the restructuring aid to SKET Verseilmaschinenbau GmbH may be regarded as compatible with the common market, provided it satisfies the conditions set out in the guidelines on State aid for rescuing and restructuring firms in difficulty,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by Germany to SKET Verseilmaschinenbau GmbH comprising:

- (a) the payment to the company by way of provision of capital (DEM 5 000 000)
- (b) the loan in respect of the cable machine operation and the waiver of repayment thereof (DEM 500 000)
- (c) the loan to finance performance of contracts and the waiver of repayment thereof (DEM 1 000 000)
- (d) the payment in respect of the final phase of restructuring (DEM 1 750 000)
- (e) the performance guarantee by the BvS (DEM 6 700 000) subsequently taken over by the investor in April 1998

is compatible with the common market in accordance with Article 92(3)(c) of the EC Treaty and Article 61 (3)(c) of the EEA Agreement.

Article 2

In accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty (1994), Germany shall submit a detailed annual report on the implementation of the restructuring plan.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 30 September 1998.

For the Commission

Karel VAN MIERT

Member of the Commission

COMMISSION DECISION
of 24 March 2000
approving the programme of new olive-tree planting in France

(notified under document number C(2000) 807)

(Only the French text is authentic)

(2000/272/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, and in particular Article 4 thereof,

Having regard to Commission Regulation (EC) No 2366/98 of 30 October 1998 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/1999, 1999/2000 and 2000/2001 marketing years ⁽²⁾, as amended by Regulation (EC) No 1273/1999 ⁽³⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 4 of Regulation (EC) No 1638/98 provides that no aid under the common organisation of the market in oils and fats in force from 1 November 2001 may be paid to live growers in respect of additional olive trees and the relevant areas planted after 1 May 1998 and those not covered by a cultivation declaration at a date to be determined. However, pursuant to the same Article, additional olive trees planted in connection with the conversion of old olive plantations and new plantings on areas covered by programmes approved by the Commission may be taken into account within certain limits to be determined.
- (2) Article 4 of Regulation (EC) No 1638/98 provides for a programme to be approved by the Commission covering 3 500 ha in France.
- (3) The French national programme of new plantings forwarded on 29 June 1999 by the French authorities to the Commission for approval contains the information specified in Article 4(3) of Regulation (EC) No 2366/98. The programme covers the whole area provided for in Article 4 of Regulation (EC) No 1638/98.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS DECISION:

Article 1

The French national programme for new planting of 3 500 hectares of olive groves provided for in Article 4 of Regulation (EC) No 1638/98 is hereby approved.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 24 March 2000.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 210, 28.7.1998, p. 32.

⁽²⁾ OJ L 293, 31.10.1998, p. 50.

⁽³⁾ OJ L 151, 18.6.1999, p. 12.