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I

(Acts whose publication is obligatory)

**DECISION No 521/2001/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 26 February 2001**

**extending certain programmes of Community action in the field of public health adopted by
Decisions No 645/96/EC, No 646/96/EC, No 647/96/EC, No 102/97/EC, No 1400/97/EC and
No 1296/1999/EC and amending those Decisions**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

102/97/EC of the European Parliament and of the
Council ⁽⁷⁾.

Having regard to the Treaty establishing the European
Community, and in particular Article 152 thereof,

(3) The following expire at the end of 2001:

Having regard to the proposal from the Commission ⁽¹⁾,

— the programme of Community action on health
monitoring, adopted by Decision No 1400/97/EC of
the European Parliament and of the Council ⁽⁸⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

— the programme of Community action on pollution-
related diseases, adopted by Decision No 1296/
1999/EC of the European Parliament and of the
Council ⁽⁹⁾.

Having consulted the Committee of the Regions,

Acting in accordance with the procedure laid down in Article
251 of the Treaty ⁽³⁾,

(4) In its Resolution of 8 June 1999 on the future
Community action in the field of public health ⁽¹⁰⁾, the
Council stressed the need for continuity of Community
action in the field of public health in the light of the
perspective of expiry of existing programmes.

Whereas:

(1) A number of programmes of Community action within
the framework for action in the field of public health are
to expire shortly.

(2) The following expire at the end of 2000:

(5) In its Communication of 15 April 1998 to the European
Parliament, the Council, the Economic and Social
Committee and the Committee of the Regions on the
development of public health policy in the European
Community, the Commission indicated that existing
public health programmes will be coming to an end
from the end of year 2000 onwards and stressed that
there is a need to ensure that there is no vacuum in
Community policy in this important field. The subse-
quent debate on that communication resulted in a
consensus among the Community institutions in favour
of developing a new health strategy with an overall
public health programme of action.

- the programme of Community action on health
promotion, information, education and training,
adopted by Decision No 645/96/EC of the European
Parliament and of the Council ⁽⁴⁾,
- the action plan to combat cancer, adopted by
Decision No 646/96/EC of the European Parliament
and of the Council ⁽⁵⁾,
- the programme of Community action on the preven-
tion of AIDS and certain other communicable
diseases, adopted by Decision No 647/96/EC of the
European Parliament and of the Council ⁽⁶⁾,
- the programme of Community action on the preven-
tion of drug dependence, adopted by Decision No

(6) While a new strategy and proposals for a new, overall,
public health programme are being considered, the
present programmes in the public health area should be
extended until the end of 2002 in order to avoid any
interruption in the Community action concerned.

⁽¹⁾ OJ C 365 E, 19.12.2000, p. 135.

⁽²⁾ Opinion delivered on 29 November 2000 (not yet published in the
Official Journal).

⁽³⁾ Opinion of the European Parliament of 13 December 2000 (not yet
published in the Official Journal) and Council Decision of 29
January 2001.

⁽⁴⁾ OJ L 95, 16.4.1996, p. 1.

⁽⁵⁾ OJ L 95, 16.4.1996, p. 9.

⁽⁶⁾ OJ L 95, 16.4.1996, p. 16.

⁽⁷⁾ OJ L 19, 22.1.1997, p. 25.

⁽⁸⁾ OJ L 193, 22.7.1997, p. 1.

⁽⁹⁾ OJ L 155, 22.6.1999, p. 7.

⁽¹⁰⁾ OJ C 200, 15.7.1999, p. 1.

- (7) For the programmes which are due to expire on 31 December 2000, provision should be made for a two-year extension over two successive years for the period from 1 January 2001 to 31 December 2001 and for the period from 1 January 2002 to 31 December 2002, respectively, and for the annual division of the financial framework implementing the programmes in question.
- (8) In order to ensure a smooth and effective transition of Community actions from the existing programmes to the overall programme for health being adopted, this Decision for an extension should ensure, in specifying the extension of the financial framework of the programmes, a balanced distribution of financial aid among the action programmes.
- (9) This Decision should be repealed from the date of entry into force of a new Decision of the European Parliament and of the Council adopting a Community action programme in the field of public health.
- (10) The Agreement on the European Economic Area (EEA) provides for greater cooperation in the field of public health between the Community and its Member States, on the one hand, and the countries of the European Free Trade Association participating in the EEA (EFTA/EEA countries), on the other. Provision should also be made to open the programmes in the field of public health to participation of the associated central and eastern European countries in accordance with the conditions established in the Europe Agreements, in their additional protocols and in the decisions of the respective Association Councils, of Cyprus, funded by additional appropriations in accordance with the procedures to be agreed with that country, as well as of Malta and Turkey, funded by additional appropriations, in accordance with the provisions of the Treaty.
- (11) In extending the programmes, account should be taken of the communication of 15 June 2000 from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, on the health strategy of the European Community, the Council Conclusions of 26 November 1998 on the future framework for Community action in the field of public health⁽¹⁾, the Council Resolution of 8 June 1999 on the future Community action in the field of public health⁽²⁾, the European Parliament Resolution of 10 March 1999⁽³⁾, the opinion of the Economic and Social Committee of 9 September 1998⁽⁴⁾ and the opinion of the Committee of the Regions of 19 November 1998⁽⁵⁾. Account should also be taken of the interim report from the Commission of 14 October 1999 to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the programmes of Community action on the prevention of cancer, AIDS and certain other communicable diseases, and drug dependence within the framework for action in the field of public health, and the interim report from the Commission of 22 March 2000 to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on the implementation of the programme of Community action on health promotion, information, education and training (1996-2000).
- (12) This Decision lays down, for the period of extension of the action programmes, a financial framework constituting the prime reference, within the meaning of point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁽⁶⁾, for the budgetary authority during the annual budgetary procedure.
- (13) Decisions No 645/96/EC, No 646/96/EC, No 647/96/EC, No 102/97/EC, No 1400/97/EC and No 1296/1999/EC should be amended to take account of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽⁷⁾.
- (14) The action programmes should be monitored and continuously evaluated by the Commission acting in cooperation with the Member States,

HAVE DECIDED AS FOLLOWS:

Article 1

Decision No 645/96/EC is hereby amended as follows:

- in Article 1(1) the date '31 December 2000' shall be replaced by '31 December 2002';
- in Article 2(1) the words 'in accordance with Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';
- Article 3(1) shall be replaced by the following:

'1. The financial framework for the implementation of the programme for the period from 1 January 1996 to 31 December 2000 shall be EUR 35 million, for the period from 1 January 2001 to 31 December 2001, EUR 7,27 million, and for the period from 1 January 2002 to 31 December 2002, EUR 7,27 million.'
- Article 5 shall be replaced by the following:

'Article 5

Implementing measures

The measures necessary for the implementation of this Decision, relating to the matters referred to below shall be adopted in accordance with the management procedure referred to in Article 5a(3):

⁽¹⁾ OJ C 390, 15.12.1998, p. 1.

⁽²⁾ OJ C 200, 15.7.1999, p. 1.

⁽³⁾ OJ C 175, 21.6.1999, p. 135.

⁽⁴⁾ OJ C 407, 28.12.1998, p. 21.

⁽⁵⁾ OJ C 51, 22.2.1999, p. 53.

⁽⁶⁾ OJ C 172, 18.6.1999, p. 1.

⁽⁷⁾ OJ L 184, 17.7.1999, p. 23.

- (a) an annual work programme indicating the priorities for action;
- (b) the arrangements, criteria and procedures for selecting and financing projects under the programme, including those involving cooperation with international organisations competent in the field of public health and participation of the countries referred to in Article 6(2);
- (c) the evaluation procedure;
- (d) the arrangements for dissemination and transfer of results;
- (e) the arrangements for cooperating with the institutions and organisations referred to in Article 2(2).

The necessary measures for implementing this Decision as regards other matters shall be adopted in accordance with the advisory procedure referred to in Article 5a(2).;

5. the following Article shall be inserted:

'Article 5a

Committee

- 1. The Commission shall be assisted by a Committee.
- 2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- 3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

- 4. The Committee shall adopt its rules of procedure.;

6. in Article 6:

- (a) in paragraph 1 the words 'in accordance with the procedure laid down in Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';

- (b) paragraph 2 shall be replaced by the following:

'2. This programme shall be open to participation by the following countries:

- (a) the EFTA/EEA countries in accordance with the conditions provided for in the EEA Agreement;
- (b) the associated countries of central and eastern Europe in accordance with the conditions laid down in the Europe Agreements, the Additional Protocols to these Agreements and the decisions of the relevant Association Councils;
- (c) Cyprus which shall be funded by additional appropriations, in accordance with procedures to be agreed with this country;
- (d) Malta and Turkey which shall be funded by additional appropriations in accordance with the provisions of the Treaty.;

7. Article 7 shall be replaced by the following:

'Article 7

Monitoring and evaluation

1. In implementing this Decision the Commission, acting in cooperation with the Member States, shall take all the necessary measures to ensure the monitoring and evaluation of the actions of the programme, as provided for in Article 1.

2. The Commission shall submit to the European Parliament and the Council an interim report in July 1998 and a final report upon completion of the programme. These reports shall include the results of the evaluation referred to in paragraph 1. These reports shall also be submitted to the Economic and Social Committee and the Committee of the Regions.'

Article 2

Decision No 646/96/EC is hereby amended as follows:

- 1. in Article 1(1) the date '31 December 2000' shall be replaced by '31 December 2002';
- 2. in Article 2(1) the words 'in accordance with the procedures laid down in Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';
- 3. Article 3(1) shall be replaced by the following:

'1. The financial framework for implementation of this plan for the period from 1 January 1996 to 31 December 2000 shall be EUR 64 million, for the period from 1 January 2001 to 31 December 2001 EUR 13,3 million and for the period from 1 January 2002 to 31 December 2002 EUR 13,3 million.;

- 4. Article 5 shall be replaced by the following:

'Article 5

Implementing measures

The necessary measures for implementing this Decision, relating to the matters referred to below, shall be adopted in accordance with the management procedure referred to in Article 5a(3):

- (a) an annual work programme indicating the priorities for action;
- (b) the simplification and improvement of this plan's basic administrative procedures, which shall be duly published;
- (c) the arrangements, criteria and procedures for selecting and financing projects under this action plan, including those involving cooperation with international organisations competent in the field of public health and participation of the countries referred to in Article 6(2);
- (d) the evaluation procedure;

- (e) the arrangements for the dissemination and transfer of results;
- (f) the arrangements for cooperating with the institutions and organisations referred to in Article 2(2).

The necessary measures for the implementation of this Decision as regards other matters shall be adopted in accordance with the advisory procedure referred to in Article 5a(2).;

5. the following Article shall be inserted:

'Article 5a

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

4. The Committee shall adopt its rules of procedure.;

6. in Article 6:

- (a) in paragraph 1 the words 'in accordance with the procedure laid down in Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';

- (b) paragraph 2 shall be replaced by the following:

'2. This plan shall be open to participation by the following countries:

- (a) the EFTA/EEA countries in accordance with the conditions provided for in the EEA Agreement;
- (b) the associated countries of central and eastern Europe in accordance with the conditions laid down in the Europe Agreements, the Additional Protocols to these Agreements and the decisions of the relevant Association Councils;
- (c) Cyprus which shall be funded by additional appropriations, in accordance with procedures to be agreed with this country;
- (d) Malta and Turkey which shall be funded by additional appropriations in accordance with the provisions set of the Treaty.;

7. Article 7(2) shall be replaced by the following:

- '2. The Commission shall submit to the European Parliament and the Council an interim report in July 1998 and a final report upon completion of this plan. The reports shall

highlight, in particular, the complementarity between this action and others provided for in Article 4. The Commission shall incorporate into these reports the results of the evaluations. It shall also send the reports to the Economic and Social Committee and the Committee of the Regions.'

Article 3

Decision No 647/96/EC is hereby amended as follows:

1. in Article 1(1) the date '31 December 2000' shall be replaced by '31 December 2002';
2. in Article 2(1) the words 'in accordance with Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';
3. Article 3(1) shall be replaced by the following:

'1. The financial framework for implementation of this programme for the period from 1 January 1996 to 31 December 2000 shall be EUR 49,6 million, for the period from 1 January 2001 to 31 December 2001 EUR 10,07 million and for the period from 1 January 2002 to 31 December 2002 EUR 10,07 million.;

4. Article 5 shall be replaced by the following:

'Article 5

Implementing measures

The necessary measures for implementing this Decision relating to the matters referred to below shall be adopted in accordance with the management procedure referred to in Article 5a(3):

- (a) an annual work programme indicating priorities for action;
- (b) the arrangements, criteria and procedures for selecting and financing projects under this programme, including those involving cooperation with the international organisations competent in the field of public health and participation of the countries referred to in Article 6(2);
- (c) the evaluation procedure;
- (d) the arrangements for dissemination and transfer of results;
- (e) the arrangements for cooperating with the institutions and organisations referred to in Article 2(2).

The necessary measures for the implementation of this Decision as regards other matters shall be adopted in accordance with the advisory procedure referred to in Article 5a(2).;

5. the following Article shall be inserted:

'Article 5a

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

4. The Committee shall adopt its rules of procedure.;
6. in Article 6:
- (a) in paragraph 1 the words 'in accordance with the procedure laid down in Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';
 - (b) paragraph 2 shall be replaced by the following:

'2. This programme shall be open to participation by the following countries:

 - (a) the EFTA/EEA countries in accordance with the conditions provided for in the EEA Agreement;
 - (b) the associated countries of central and eastern Europe in accordance with the conditions laid down in the Europe Agreements, the Additional Protocols to these Agreements and the decisions of the relevant Association Councils;
 - (c) Cyprus which shall be funded by additional appropriations, in accordance with procedures to be agreed with this country;
 - (d) Malta and Turkey which shall be funded by additional appropriations in accordance with the provisions of the Treaty.;
7. Article 7(2) shall be replaced by the following:

'2. The Commission shall submit to the European Parliament and the Council an interim report in July 1998 and a final report upon completion of this programme. It shall incorporate into these reports the results of the evaluations. It shall also send the reports to the Economic and Social Committee and the Committee of the Regions.'

Article 4

Decision No 102/97/EC is hereby amended as follows:

1. in Article 1(1) the date '31 December 2000' shall be replaced by '31 December 2002';

2. in Article 2(1) the words 'in accordance with Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';

3. Article 3(1) shall be replaced by the following:

'1. The financial framework for the implementation of the programme for the period from 1 January 1996 to 31 December 2000 shall be EUR 27 million, for the period from 1 January 2001 to 31 December 2001, EUR 5,38 million, and for the period from 1 January 2002 to 31 December 2002, EUR 5,38 million.;

4. Article 5 shall be replaced by the following:

'Article 5

Implementing measures

The measures necessary for implementing this Decision, relating to the matters referred to below, shall be adopted in accordance with the management procedure referred to in Article 5a(3):

- (a) an annual work programme indicating the priorities for action;
- (b) the arrangements, criteria and procedures for selecting and financing projects under the programme, including those involving cooperation with international organisations competent in the field of public health and participation of the countries referred to in Article 6(2);
- (c) the evaluation procedure;
- (d) the arrangements for dissemination and transfer of results;
- (e) the arrangements for cooperating with the institutions and organisations referred to in Article 2(2).

The necessary measures for the implementation of this Decision as regards other matters shall be adopted in accordance with the advisory procedure referred to in Article 5a(2).;

5. The following Article shall be inserted:

'Article 5a

Committee

1. The Commission shall be assisted by a Committee.
2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

4. The Committee shall adopt its rules of procedure.;

6. in Article 6:

(a) in paragraph 1 the words 'in accordance with the procedure laid down in Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';

(b) paragraph 2 shall be replaced by the following:

'2. This programme shall be open to participation by the following countries:

(a) the EFTA/EEA countries in accordance with the conditions provided for in the EEA Agreement;

(b) the associated countries of central and eastern Europe in accordance with the conditions laid down in the Europe Agreements, the Additional Protocols to these Agreements and the decisions of the relevant Association Councils;

(c) Cyprus which shall be funded by additional appropriations, in accordance with procedures to be agreed with this country;

(d) Malta and Turkey which shall be funded by additional appropriations in accordance with the provisions of the Treaty.;

7. Article 7(2) shall be replaced by the following:

'2. The Commission shall submit to the European Parliament and the Council an interim report in July 1998 and a final report upon completion of the programme. It shall incorporate into these reports the results of the evaluations. It shall also forward these reports to the Economic and Social Committee and the Committee of the Regions.'

Article 5

Decision No 1400/97/EC is hereby amended as follows:

1. in Article 1(1) the date '31 December 2001' shall be replaced by '31 December 2002';

2. in Article 2(1) the words 'in accordance with Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';

3. Article 3(1) shall be replaced by the following:

'1. The financial framework for the implementation of the programme for the period from 1 January 1997 to 31 December 2001 shall be EUR 13,8 million and for the period from 1 January 2002 to 31 December 2002, EUR 4,4 million.;

4. Article 5 shall be replaced by the following:

'Article 5

Implementing measures

The measures necessary for implementing this Decision, relating to the matters referred to below shall be adopted in

accordance with the management procedure referred to in Article 5a(3):

(a) an annual work programme indicating the priorities for action;

(b) the arrangements, criteria and procedures for selecting and financing projects under the programme, including those involving cooperation with international organisations competent in the field of public health and participation of the countries referred to in Article 6(2);

(c) the evaluation procedure;

(d) the provisions applicable to reporting of the data, conversion thereof and other methods for making the data comparable in order to achieve the objective referred to in Article 1(2);

(e) the arrangements for dissemination and transfer of results;

(f) the arrangements for cooperating with the institutions and organisations referred to in Article 2(2);

(g) the provisions for the definition and selection of indicators;

(h) the provisions for the content specifications necessary for the setting up and operation of the networks.

The necessary measures for the implementation of this Decision as regards other matters shall be adopted in accordance with the advisory procedure referred to in Article 5a(2).;

5. the following Article shall be inserted:

'Article 5a

Committee

1. The Commission shall be assisted by a Committee.

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 4 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at two months.

4. The Committee shall adopt its rules of procedure.;

6. in Article 6:

(a) in paragraph 1 the words 'in accordance with the procedure laid down in Article 5' shall be replaced by the words 'in accordance with the procedures laid down in Article 5a(2) and (3)';

(b) paragraph 2 shall be replaced by the following:

'2. This programme shall be open to participation by the following countries:

- (a) the EFTA/EEA countries in accordance with the conditions provided for in the EEA Agreement;
- (b) the associated countries of central and eastern Europe in accordance with the conditions laid down in the Europe Agreements, the Additional Protocols to these Agreements and the decisions of the relevant Association Councils;
- (c) Cyprus which shall be funded by additional appropriations, in accordance with procedures to be agreed with this country;
- (d) Malta and Turkey which shall be funded by additional appropriations in accordance with the provisions of the Treaty.'

Article 6

Decision No 1296/1999/EC is hereby amended as follows:

- 1. in Article 1(1) the date '31 December 2001' shall be replaced by '31 December 2002';
- 2. in Article 2(1) the words 'in accordance with Article 5' shall be replaced by the words 'in accordance with the procedure laid down in Article 5a(2)';
- 3. Article 4(1) shall be replaced by the following:

'1. The financial framework for the implementation of the programme for the period from 1 January 1999 to 31 December 2001 shall be EUR 3,9 million and for the period from 1 January 2002 to 31 December 2002, EUR 1,3 million.';
- 4. Article 5 shall be replaced by the following:

'Article 5

Implementing measures

The measures necessary for implementing this Decision, relating to the matters referred to below, shall be adopted in accordance with the advisory procedure referred to in Article 5a(2):

- (a) the work programme;
- (b) the criteria and procedures for selecting and financing projects under the programme;
- (c) the procedure for monitoring and continuous evaluation referred to in Article 7.';

5. the following Article shall be inserted:

'Article 5a

Committee

- 1. the Commission shall be assisted by a committee.
- 2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.
- 3. The committee shall adopt its rules of procedure.'
- 6. in Article 6:
 - (a) in paragraph 1 the words 'in accordance with the procedure laid down in Article 5' shall be replaced by the words 'in accordance with the procedure laid down in Article 5a(2)',
 - (b) paragraph 2 shall be replaced by the following:

'2. This programme shall be open to participation by the following countries:

 - (a) the EFTA/EEA countries in accordance with the conditions provided for in the EEA Agreement;
 - (b) the associated countries of central and eastern Europe in accordance with the conditions laid down in the Europe Agreements, the Additional Protocols to these Agreements and the decisions of the relevant Association Councils;
 - (c) Cyprus which shall be funded by additional appropriations, in accordance with procedures to be agreed with this country;
 - (d) Malta and Turkey which shall be funded by additional appropriations in accordance with the provisions of the Treaty.'

Article 7

Entry into force

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

It shall apply from 1 January 2001.

Done at Brussels, 26 February 2001.

For the European Parliament

The President

N. FONTAINE

For the Council

The President

A. LINDH

COMMISSION REGULATION (EC) No 522/2001
of 16 March 2001
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 17 March 2001.

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

Done at Brussels, 16 March 2001.

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 16 March 2001 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	119,1
	204	59,4
	212	94,4
	999	91,0
0707 00 05	052	148,6
	999	148,6
0709 10 00	220	233,7
	999	233,7
0709 90 70	052	116,0
	204	125,7
	999	120,8
0805 10 10, 0805 10 30, 0805 10 50	052	66,2
	204	46,0
	212	56,1
	220	58,8
	624	52,6
	999	55,9
0805 30 10	600	60,6
	999	60,6
0808 10 20, 0808 10 50, 0808 10 90	039	91,2
	388	104,8
	400	88,7
	404	71,3
	508	91,3
	512	83,4
	528	93,5
	720	104,1
	728	89,2
	999	90,8
	999	90,8
0808 20 50	388	77,0
	512	66,8
	528	72,0
	999	71,9

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 523/2001**of 16 March 2001****fixing the maximum aid for concentrated butter for the 243rd special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

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

- (2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 243rd special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

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

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 45, 21.2.1990, p. 8.

⁽⁴⁾ OJ L 16, 21.1.1999, p. 19.

**COMMISSION REGULATION (EC) No 524/2001
of 16 March 2001**

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 71st individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs ⁽³⁾, as last amended by Regulation (EC) No 635/2000 ⁽⁴⁾, to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price

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

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

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices and the maximum aid and processing securities applying for the 71st individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 350, 20.12.1997, p. 3.

⁽⁴⁾ OJ L 76, 25.3.2000, p. 9.

ANNEX

to the Commission Regulation of 16 March 2001 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 71st individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

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

COMMISSION REGULATION (EC) No 525/2001**of 16 March 2001****fixing the maximum purchasing price for butter for the 24th invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 2771/1999**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Commission Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 10 thereof,

Whereas:

- (1) Article 13 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽³⁾, as last amended by Regulation (EC) No 213/2001 ⁽⁴⁾, provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the interven-

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

- (2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 24th invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 13 March 2001, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 333, 24.12.1999, p. 11.

⁽⁴⁾ OJ L 37, 7.2.2001, p. 1.

**COMMISSION REGULATION (EC) No 526/2001
of 16 March 2001**

fixing the maximum buying-in price and the quantities of beef to be bought in under the 263rd partial invitation to tender as a general intervention measure pursuant to Regulations (EEC) No 1627/89 and (EC) No 284/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, and in particular Article 17(8) thereof,

Whereas:

(1) Commission Regulation (EC) No 562/2000 of 15 March 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef ⁽²⁾, as amended by Regulation (EC) No 2734/2000 ⁽³⁾, lays down buying standards. Pursuant to the above Regulation, an invitation to tender was opened under Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender ⁽⁴⁾, as last amended by Regulation (EC) No 376/2001 ⁽⁵⁾, and Article 1 of Commission Regulation (EC) No 284/2001 of 9 February 2001 opening intervention in accordance with Article 47(5) of Regulation (EC) No 1254/1999 ⁽⁶⁾.

(2) Article 13(1) of Regulation (EC) No 562/2000 lays down that a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received. In accordance with Article 36 of that Regulation, only tenders quoting prices not exceeding the maximum buying-in price and not exceeding the average national or regional market price, plus the amount referred to in Article 6(2) of Regulation (EC) No 2734/2000 are to be accepted.

(3) Once tenders submitted in respect of the 263rd partial invitation to tender have been considered pursuant to Article 47(8) of Regulation (EC) No 1254/1999, and taking account of the requirements for reasonable support of the market and the seasonal trend in slaugh-

terings and prices, the maximum buying-in price and the quantities which may be bought in should be fixed. The differences in prices found within the framework of Article 47(2) of the said Regulation make it necessary to set different maximum buying-in prices in Spain and in the other Member States.

(4) Article 7 of Regulation (EC) No 2734/2000 also opens buying-in of carcasses and half-carcasses of store cattle and lays down special rules in addition to those laid down for the buying-in of other products. The differences in prices found within this framework make it necessary to set different maximum buying-in prices in Spain and in the other Member States.

(5) In the light of developments, this Regulation should enter into force immediately.

(6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

Under the 263rd partial invitation to tender opened pursuant to Regulations (EEC) No 1627/89 and (EC) No 284/2001:

(a) for category A:

(i) in the Member States or regions thereof meeting the conditions laid down in Article 47(2) of Regulation (EC) No 1254/1999:

— the maximum buying-in price shall be EUR 221,00/100 kg of carcasses or half-carcasses of quality R3 offered in Spain and EUR 224,50/100 kg of carcasses or half-carcasses of quality R3 offered in the other Member States,

— the maximum quantity of carcasses and half-carcasses accepted shall be 29 663,5 t,

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 68, 16.3.2000, p. 22.

⁽³⁾ OJ L 316, 15.12.2000, p. 45, Regulation as last amended by Regulation (EC) No 371/2001 (OJ L 55, 26.2.2001, p. 44).

⁽⁴⁾ OJ L 159, 10.6.1989, p. 36.

⁽⁵⁾ OJ L 55, 26.2.2001, p. 49.

⁽⁶⁾ OJ L 41, 10.2.2001, p. 24.

- (ii) in the Member States or regions thereof meeting the conditions laid down in Article 47(5) of Regulation (EC) No 1254/1999:
- the maximum buying-in price shall be EUR 200,00/100 kg of carcasses or half-carcasses of quality R3,
 - the maximum quantity of carcasses and half-carcasses accepted shall be 430 t;
- (b) for category C:
- the maximum buying-in price shall be EUR 224,00/100 kg of carcasses or half-carcasses of quality R3,
 - the maximum quantity of carcasses and half-carcasses accepted shall be 90 t;
- (c) for carcasses and half-carcasses of store cattle as referred to in Article 7 of Regulation (EC) No 2734/2000:
- the maximum buying-in price shall be EUR 343,00/100 kg of carcasses or half-carcasses, offered in Spain and EUR 379/100 kg of carcasses or half-carcasses offered in the other Member States,
 - the maximum quantity of carcasses and half-carcasses shall be 613 t.
- Article 2*
- This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 527/2001**of 16 March 2001****concerning tenders submitted in response to the invitation to tender for the export to certain third countries of wholly milled round grain A rice issued in Regulation (EC) No 2281/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2281/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 9 to 15 March 2001 in response to the invitation to tender for the export refund on wholly milled round grain A rice to certain third countries issued in Regulation (EC) No 2281/2000.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 7.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 528/2001
of 16 March 2001**

concerning tenders submitted in response to the invitation to tender for the export to certain third European countries of wholly milled round, medium and long grain A rice issued in Regulation (EC) No 2282/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued under Commission Regulation (EC) No 2282/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, to make no award.

(3) On the basis of the criteria laid down in Article 13 of Regulation (EC) No 3072/95 a maximum refund should not be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 9 to 15 March 2001 in response to the invitation to tender for the export refund on wholly milled round, medium and long grain A rice to certain third European countries issued in Regulation (EC) No 2282/2000.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 10.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

**COMMISSION REGULATION (EC) No 529/2001
of 16 March 2001**

**fixing the maximum export refund on wholly milled round grain, medium grain and long grain A
rice in connection with the invitation to tender issued in Regulation (EC) No 2283/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2283/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2283/2000 is hereby fixed on the basis of the tenders submitted from 9 to 15 March 2001 at 236,00 EUR/t.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 13.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 530/2001**of 16 March 2001****fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2284/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 13 (3) thereof,

Whereas:

- (1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2284/2000 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EEC) No 584/75 ⁽⁴⁾, as last amended by Regulation (EC) No 299/95 ⁽⁵⁾, allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain rice falling within CN code 1006 30 67 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2284/2000 is hereby fixed on the basis of the tenders submitted from 9 to 15 March 2001 at 315,00 EUR/t.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 260, 14.10.2000, p. 16.

⁽⁴⁾ OJ L 61, 7.3.1975, p. 25.

⁽⁵⁾ OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 531/2001**of 16 March 2001****concerning tenders submitted in response to the invitation to tender for the export of husked long grain rice to the island of Réunion referred to in Regulation (EC) No 2285/2000**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Regulation (EC) No 1667/2000 ⁽²⁾, and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion ⁽³⁾, as amended by Regulation (EC) No 1453/1999 ⁽⁴⁾, and in particular Article 9 (1) thereof,

Whereas:

- (1) Commission Regulation (EC) No 2285/2000 ⁽⁵⁾ opens an invitation to tender for the subsidy on rice exported to Réunion.
- (2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to decide, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95

and on the basis of the tenders submitted, to make no award.

- (3) On the basis of the criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89, a maximum subsidy should not be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders submitted from 12 to 15 March 2001 in response to the invitation to tender referred to in Regulation (EC) No 2285/2000 for the subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98.

Article 2

This Regulation shall enter into force on 17 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 193, 29.7.2000, p. 3.

⁽³⁾ OJ L 261, 7.9.1989, p. 8.

⁽⁴⁾ OJ L 167, 2.7.1999, p. 19.

⁽⁵⁾ OJ L 260, 14.10.2000, p. 19.

COMMISSION REGULATION (EC) No 532/2001
of 16 March 2001
amending Regulation (EC) No 2561/1999 laying down the marketing standard for peas

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 2826/2000 ⁽²⁾, and in particular Article 2(2) thereof,

Whereas:

- (1) The Annex to Commission Regulation (EC) No 2561/1999 of 3 December 1999 laying down the marketing standard for peas ⁽³⁾ contains provisions concerning the definition, classification, presentation and marking of peas.
- (2) In order to ensure transparency on the world market, those provisions should be amended to make a clear distinction between shelling peas and peas intended for consumption with the pod. The standard recommended for peas by the United Nations Economic Commission for Europe makes such a distinction and adapts the classification criteria and marking rules to the characteristics of each of these two groups of peas. Furthermore,

peas intended for consumption with the pods are marketed with the ends removed, and the standard should be adapted to such trade practice.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2561/1999 is replaced by the Annex to this Regulation.

Article 2

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

It shall apply from the first day of the second month following the month of its entry into force.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 1.

⁽²⁾ OJ L 328, 23.12.2000, p. 2.

⁽³⁾ OJ L 310, 4.12.1999, p. 7.

ANNEX

STANDARD FOR PEAS

I. DEFINITION OF PRODUCE

This standard applies to peas of varieties (cultivars) grown from *Pisum sativum* L. to be supplied fresh to the consumer, peas for industrial processing being excluded.

According to the type of consumption, peas are classified in two groups:

- shelling peas (round peas, wrinkled peas) intended for consumption without the pod,
- mangetout peas and sugar snap peas intended for consumption with the pod.

II. PROVISIONS CONCERNING QUALITY

The purpose of the standard is to define the quality requirements for peas after preparation and packaging.

A. Minimum requirements

In all classes, subject to the special provisions for each class and the tolerances allowed:

(i) the pods must be:

- intact; however mangetout and sugar snap peas that have had their ends removed are allowed,
- sound; produce affected by rotting or deterioration such as to make it unfit for consumption is excluded,
- clean, practically free of any visible foreign matter (including parts of the flowers),
- free from hard filaments or films in mangetout peas and sugar snap peas,
- practically free from pests,
- practically free from damage caused by pests,
- free of abnormal external moisture,
- free of any foreign smell and/or taste,

(ii) the seeds must be:

- fresh,
- sound; produce affected by rotting or deterioration such as to make it unfit for consumption is excluded,
- practically free from pests,
- practically free from damage caused by pests,
- free of any foreign smell and/or taste,
- normally developed in shelling peas.

The development and condition of peas must be such as to enable them:

- to withstand transport and handling, and
- to arrive in satisfactory condition at the place of destination.

B. Classification

Peas are classified in two classes defined below:

(i) *Class I*

Peas in this class must be of good quality. They must be characteristic of the variety and/or the commercial type.

The pods must be:

- fresh and turgid,
- free from damage caused by hail,
- free from damage caused by heating.

For shelling peas:

- the pods must be:
 - with peduncles attached,
 - well filled, containing at least five seeds;

- the seeds must be:
 - well formed,
 - tender,
 - succulent and sufficiently firm, i.e., when squeezed between two fingers they should become flat without disintegrating,
 - at least half the full-grown size but not full grown,
 - non-farinaceous,
 - undamaged, without cracks in the skin of the seeds;
- the following slight defects of the pod, however, may be allowed, provided these do not affect the general appearance of the produce, the quality, the keeping quality and presentation in the package:
 - slight skin defects, injuries and bruises,
 - slight defects in shape.
 - slight defects in colouring.

For mangetout peas and sugar snap peas:

- the seeds if present must be small and underdeveloped,
- the following very slight defects of the pod, however, may be allowed, provided these do not affect the general appearance of the produce, the quality, the keeping quality and presentation in the package:
 - very slight skin defects, injuries and bruises,
 - very slight defects in shape,
 - very slight defects in colouring.

(ii) *Class II*

This class includes peas which do not qualify for inclusion in class I but satisfy the minimum requirements specified above.

For shelling peas:

- the pods must contain at least three seeds,
- they may be riper than those in class I, but over-mature peas are excluded,
- the following defects may be allowed provided the peas retain their essential characteristics as regards the quality, the keeping quality and presentation:
 - defects of the pods:
 - skin defects, injuries and bruises provided they are not progressive and there is no risk of the seeds being affected,
 - defects in shape,
 - defects in colouring,
 - some loss of freshness, excluding wilted pods;
 - defects of the seeds:
 - a slight defect in shape,
 - a slight defect in colouring,
 - be slightly harder,
 - be slightly damaged.

For mangetout peas and sugar snap peas:

- the seeds if present can be slightly more developed than in class I,
- the following defects of the pods may be allowed provided the peas retain their essential characteristics as regards the quality, the keeping quality and presentation:
 - slight skin defects, injuries and bruises,
 - slight defects in shape, including those due to the seed formation,
 - slight defects in colouring,
 - some loss of freshness, excluding wilted and uncoloured pods.

III. PROVISIONS CONCERNING SIZING

Sizing is not compulsory for peas.

IV. PROVISIONS CONCERNING TOLERANCES

Tolerances in respect of quality shall be allowed in each package for produce not satisfying the requirements of the class indicated.

(i) *Class I*

10 % by weight of peas not satisfying the requirements of the class, but meeting those of class II or, exceptionally, coming within the tolerances of that class.

(ii) *Class II*

10 % by weight of peas satisfying neither the requirements of the class nor the minimum requirements, with the exception of produce affected by rotting, progressive diseases or any other deterioration rendering it unfit for consumption.

V. PROVISIONS CONCERNING PRESENTATION

A. **Uniformity**

The contents of each package must be uniform and contain only peas of the same origin, variety or commercial type, and quality.

The visible part of the contents of the package must be representative of the entire contents.

B. **Packaging**

Peas must be packed in such a way as to protect the produce properly.

The materials used inside the package must be new, clean and of a quality such as to avoid causing any external or internal damage to the produce. The use of materials, particularly of paper or stamps bearing trade specifications is allowed provided the printing or labelling has been done with non-toxic ink or glue.

Packages must be free of all foreign matter.

VI. PROVISIONS CONCERNING MARKING

Each package must bear the following particulars, in letters grouped on the same side, legibly and indelibly marked, and visible from the outside:

(A) **Identification**

Packer and/or dispatcher: name and address or officially issued or accepted code mark. However, where a code mark is used, the reference 'packer and/or dispatcher (or equivalent abbreviations)' has to be indicated in close proximity to the code mark.

(B) **Nature of produce**

- 'shelling peas', 'mangetout peas', 'sugar snap peas', or equivalent denominations if the contents are not visible from the outside,
- 'trimmed', 'topped and tailed' or other indications, for mangetout or sugar snap peas that have their peduncle and/or blossom end removed, where appropriate.

(C) **Origin of produce**

- Country of origin and, optionally, district where grown, or national, regional or local place name.

(D) **Commercial specifications**

- Class.

(E) **Official control mark (optional)**

**COMMISSION REGULATION (EC) No 533/2001
of 16 March 2001**

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1706/98 of 20 July 1998 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EEC) No 715/90 ⁽¹⁾, and in particular Article 30 thereof,

Having regard to Commission Regulation (EC) No 1918/98 of 9 September 1998 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 1706/98 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States and repealing Regulation (EC) No 589/96 ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.
- (2) The applications for import licences submitted between 1 and 10 March 2001, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.
- (3) The quantities in respect of which licences may be applied for from 1 April 2001 should be fixed within the scope of the total quantity of 52 100 tonnes.

- (4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽³⁾, as last amended by Directive 97/79/CE ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

The following Member States shall issue on 21 March 2001 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

United Kingdom:

- 1 600 tonnes originating in Botswana,
- 200 tonnes originating in Namibia,
- 490 tonnes originating in Zimbabwe.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of April 2001 for the following quantities of boned beef and veal:

Botswana:	13 786 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	3 363 tonnes,
Zimbabwe:	5 100,050 tonnes,
Namibia:	11 110 tonnes.

Article 3

This Regulation shall enter into force on 21 March 2001.

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

Done at Brussels, 16 March 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 215, 1.8.1998, p. 12.
⁽²⁾ OJ L 250, 10.9.1998, p. 16.

⁽³⁾ OJ L 302, 31.12.1972, p. 28.
⁽⁴⁾ OJ L 24, 30.1.1998, p. 31.

II

(Acts whose publication is not obligatory)

COUNCIL

DECISION No 3/2001 OF THE EU-ESTONIA ASSOCIATION COUNCIL

of 19 February 2001

amending Protocol 3 to the Europe Agreement with Estonia concerning the definition of the concept of 'originating products' and methods of administrative cooperation

(2001/211/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Estonia, of the other part ⁽¹⁾, signed in Luxembourg on 12 June 1995, and in particular Article 38 of Protocol 3 thereto,

Whereas:

- (1) Some technical amendments are in order to correct anomalies between the different language versions of the text.
- (2) The list of insufficient working and processing needs to be amended to ensure proper interpretation and to take account of the need to include some operations not covered previously by this list.
- (3) The provisions for the temporary use of flat rates in cases where drawback is prohibited or exemptions from customs duties are granted need to be prolonged until 31 December 2001.
- (4) The need has arisen to provide for a system of accounting segregation of originating and non-originating materials, subject to authorisation by customs authorities.
- (5) The provisions concerning the amounts expressed in euro need to be revised in order to clarify the procedure and to provide greater stability for the level of the amounts in national currencies.
- (6) To take account of the lack of production of a certain material within the countries concerned, a correction should be made to the list of working and processing

requirements which non-originating materials have to fulfil to qualify for originating status,

HAS DECIDED AS FOLLOWS:

Article 1

Protocol 3 concerning the definition of originating products and methods of administrative cooperation is hereby amended as follows:

1. Article 1(i) shall be replaced by the following:

'(i) "added value" shall be taken to be the ex-works price minus the customs value of each of the materials incorporated which originate in the other countries referred to in Article 3 and 4 or, where the customs value is not known or cannot be ascertained, the first verifiable price paid for the materials in the Community or Estonia;'

2. Article 7 shall be replaced by the following:

'Article 7

Insufficient working or processing

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 6 are satisfied:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

⁽¹⁾ OJ L 68, 9.3.1998, p. 3.

- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to colour sugar or form sugar lumps;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds;
- (n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- (o) a combination of two or more operations specified in subparagraphs (a) to (n);
- (p) slaughter of animals.

2. All operations carried out either in the Community or in Estonia on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.;

3. the last sentence of Article 15(6), shall be replaced by the following:

'The provisions of this paragraph shall apply until 31 December 2001.;

4. the following Article shall be inserted:

'Article 20a

Accounting segregation

1. Where considerable cost or material difficulties arise in keeping separate stocks of originating and non-originating materials which are identical and interchangeable, the customs authorities may, at the written request of those concerned, authorise the so-called "accounting segregation" method to be used for managing such stocks.

2. This method must be able to ensure that, for a specific reference period, the number of products obtained which could be considered as "originating" is the same as that which would have been obtained if there had been physical segregation of the stocks.

3. The customs authorities may grant such authorisation, subject to any conditions deemed appropriate.

4. This method is recorded and applied on the basis of the general accounting principles applicable in the country where the product was manufactured.

5. The beneficiary of this facilitation may issue or apply for proofs of origin, as the case may be, for the quantity of products which may be considered as originating. At the request of the customs authorities, the beneficiary shall provide a statement of how the quantities have been managed.

6. The customs authorities shall monitor the use made of the authorisation and may withdraw it at any time whenever the beneficiary makes improper use of the authorisation in any manner whatsoever or fails to fulfil any of the other conditions laid down in this Protocol.;

5. in the first sentence of Article 22(1), the following shall be inserted after the term 'exporter':

'hereinafter referred to as "approved exporter";;

6. Article 30 shall be replaced by the following:

'Article 30

Amounts expressed in euro

1. For the application of the provisions of Article 21(1)(b) and Article 26(3) in cases where products are invoiced in a currency other than euro, amounts in the national currencies of the countries referred to in Articles 3 and 4 equivalent to the amounts expressed in euro shall be fixed annually by each of the countries concerned.

2. A consignment shall benefit from the provisions of Article 21(1)(b) or Article 26(3) by reference to the currency in which the invoice is drawn up, according to the amount fixed by the country concerned.

3. The amounts to be used in any given national currency shall be the equivalent in that currency of the amounts expressed in euro as at the first working day of October. The amounts shall be communicated to the European Commission by 15 October and shall apply from 1 January the following year. The European Commission shall notify all countries concerned of the relevant amounts.

4. A country may round up or down the amount resulting from the conversion into its national currency of an amount expressed in euro. The rounded-off amount may not differ from the amount resulting from the conversion by more than 5 %. A country may retain unchanged its national currency equivalent of an amount expressed in euro if, at the time of the annual adjustment provided for in paragraph 3, the conversion of that amount, prior to any rounding-off, results in an increase of less than 15 % in the national currency equivalent. The national currency equivalent may be retained unchanged if the conversion were to result in a decrease in that equivalent value.

5. The amounts expressed in euro shall be reviewed by the Association Committee at the request of the Community or Estonia. When carrying out this review, the Association Committee shall consider the desirability of preserving the effects of the limits concerned in real terms. For this purpose, it may decide to modify the amounts expressed in euro.;

7. Annex II shall be amended as follows:

The entry for HS heading 5309 to 5311 shall be replaced by:

'5309 to 5311	Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn: — Incorporating rubber thread — Other	Manufacture from single yarn ⁽¹⁾ Manufacture from ⁽¹⁾: — coir yarn, — jute yarn, — natural fibres, — man-made staple fibres not carded or combed or otherwise prepared for spinning, — chemical materials or textile pulp, or — paper or Printing accompanied by at least two preparatory or finishing operations (such as scouring, bleaching, mercerising, heat setting, raising, calendering, shrink resistance processing, permanent finishing, decatizing, impregnating, mending and burling) where the value of the unprinted fabric does not exceed 47,5 % of the ex-works price of the product	
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⁽¹⁾ For special conditions relating to products made of a mixture of textile materials, see Introductory Note 5.'

Article 2

This Decision shall enter into force on the day of its adoption.

It is applicable from 1 January 2001.

Done at Brussels, 19 February 2001.

For the Association Council

The President

T. H. ILVES

COMMISSION

COMMISSION DECISION

of 16 May 2000

on the aid scheme implemented by Italy to assist large firms in difficulty (Law No 95/1979 converting Decree Law No 26/1979 on special measures for the extraordinary administration of large firms in crisis)

(notified under document number C(2000) 1403)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2001/212/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽¹⁾, and in particular Article 14 thereof,

Having regard to the decision of 28 July 1999⁽²⁾ in which the Commission invited the Italian authorities and other interested parties to submit their comments on its intention to withdraw its decisions of 13 December 1994 proposing appropriate measures to the Italian Republic regarding the extraordinary administration of large firms in crisis and of 22 January 1997 initiating the Article 88(2) procedure with regard to the Law on the extraordinary administration of large firms in a state of insolvency,

Having regard to the Commission Decision of 28 July 1999 in which it initiated the procedure under Article 88(2) in respect of aid C 68/99 (ex NN 96/99, ex C 7/97 and ex E 13/92),

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to those comments,

Whereas:

I. PROCEDURE

- (1) The Commission became aware in 1982 of Law No 95 of 3 April 1979 converting and amending Decree-Law No 26 of 30 January 1979 on special measures for the extraordinary administration of large firms in crisis (Law No 95/1979). However, no formal decision was taken under Article 88 (formerly Article 93) of the EC Treaty.
- (2) In 1983, following discussions with the Italian authorities, the Commission accepted a verbal undertaking that Law No 95/1979 would no longer be applied.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ Letter to the Italian authorities of 12 August 1999 (OJ C 245, 28.8.1999, p. 27).

- (3) In 1988 the Commission asked the Italian authorities for information, owing to the effect the measures provided for in the Law were having on the level of employment.
- (4) By letter of 30 July 1992, the Commission informed the Italian Government of its decision to examine Law No 95/1979 under Article 88(1) (formerly Article 93(1)) of the EC Treaty in order to determine the appropriate measures required by the progressive development or the functioning of the common market.
- (5) The Commission communicated the appropriate measures to the Italian authorities in 1995 ⁽³⁾.
- (6) Among the appropriate measures proposed by the Commission as part of the constant review provided for in Article 88(1) was the requirement that all new plans to grant aid under the Law in question were to be notified under the Community guidelines on state aid for rescuing and restructuring firms in difficulty ⁽⁴⁾.
- (7) In their reply of 9 March 1995, the Italian authorities agreed only to notify cases in which State guarantees were granted and refused to regard the other measures provided for in Law No 95/1979 as aid.
- (8) By letter of 25 March 1997, the Commission informed Italy of its decision to initiate proceedings under Article 88(2) of the EC Treaty in respect of the scheme provided for in the abovementioned Law.
- (9) The Commission decision to initiate proceedings was published in the *Official Journal of the European Communities* ⁽⁵⁾. The Commission invited interested third parties to submit their comments on the measures in question. No such comments were received.
- (10) By letter of 28 April 1997 from the Minister for Industry, a complete version of which was received on 8 July 1997, the Italian authorities communicated their comments.
- (11) In 'Rinaldo Piaggio-Ifitalia-Dornier', the Court of Justice of the European Communities considered the question 'whether a system such as that established by Law No 95/1979 must be classified as a new or as an existing aid' (...) in view of its relevance 'to the resolution of the dispute in the main proceedings, bearing in mind the inferences which the national court may have to draw (...) from the absence of any prior notification to the Commission of the aid system (...) in issue' ⁽⁶⁾.
- (12) In paragraphs 45 et seq. of the same judgment, the Court rejected the position of the Commission, which, whilst recognising that Law No 95/1979:
- (a) was promulgated after the entry into force of the Treaty, and
- (b) was not notified to it in accordance with Article 88(3) of the Treaty;
- had however classified the scheme as 'existing State aid'.
- (13) The Court held that the Commission's position could not be accepted since the answer to the question to the Court 'cannot depend on a subjective assessment by the Commission' (paragraphs 46 and 47 of the grounds).

⁽³⁾ OJ C 395, 31.12.1994, p. 4; Commission letter SG(95)D/351, 13.1.1995.

⁽⁴⁾ OJ C 368, 23.12.1994, p. 12.

⁽⁵⁾ OJ C 192, 24.6.1997, p. 4.

⁽⁶⁾ Judgment in Case C-295/97 [1999] ECR I-3735, paragraph 25. The case concerned a reference for a preliminary ruling by the Tribunale di Genova (Italy) under Article 234 (formerly Article 177) of the EC Treaty.

- (14) Following that judgment, the Commission, by letter of 12 August 1999 ⁽⁷⁾, announced its intention of withdrawing its two previous decisions proposing appropriate measures and initiating the Article 88(2) procedure, giving the Italian authorities and other interested parties the opportunity to present their comments, and initiated proceedings under Article 88(2) in respect of the aid provided for in Law No 95/1979, which would henceforth be entered in the register of non-notified aid.
- (15) The Italian authorities sent their comments on the procedure by letter of 14 September 1999, registered as received on 20 September 1999, and their comments on the substance by letter of 2 November 1999, registered as received on 5 November 1999.
- (16) Two interested parties, Ecotrade SpA and Cordifin SpA, sent their comments to the Commission by letter of 17 September 1999, registered as received on 21 September 1999.
- (17) The comments were forwarded to the Italian authorities by letter of 7 October 1999.

II. DESCRIPTION

- (18) The principal aim of extraordinary administration ('whilst avoiding bankruptcy') ⁽⁸⁾ is to ensure the continuation of productive activity and preserve the unity of the operational complex in order to maintain existing employment and production levels ('conservative' measures). The subsidiary aim is to satisfy creditors (protection of creditors' rights). The extraordinary administration procedure was established by Decree-Law No 26 of 30 January 1979, ⁽⁹⁾ as amended and converted into Law No 95/1979 ⁽¹⁰⁾ and subsequently amended on several occasions ⁽¹¹⁾. Leaving aside the very large number of minor changes made, the essential elements of the procedure are described in recitals 19 to 27.
- (19) Article 1 of the Law in question identifies firms subject to the extraordinary administration procedure on the basis of two factors:

1. the number of employees: not fewer than 300, employed for at least one year;
2. debt exposure: indebtedness towards credit institutions, special credit institutions, social welfare and social security institutions or bodies in which the State has a majority holding five times greater than the paid-up capital, currently equivalent to a minimum of ITL 85,277 billion (EUR 44 million) ⁽¹²⁾.

From 1993 onwards, Article 1A included other categories of firms in the list of those covered by extraordinary administration.

⁽⁷⁾ OJ C 245, 28.8.1999, p. 28.

⁽⁸⁾ Article 1 of Law No 95/1979.

⁽⁹⁾ Published in Italian Official Gazette No 36, 6.2.1979.

⁽¹⁰⁾ Published in Italian Official Gazette No 94, 4.4.1979.

⁽¹¹⁾ In particular by the following acts: Law No 445 of 13.8.1980 (Official Gazette No 226, 19.8.1980); Law No 119 of 31.3.1982 (Official Gazette No 90, 1.4.1982); Law No 696 of 19.12.1983 (Official Gazette No 348, 21.12.1983); Decree-Law No 62 of 9.4.1984 (Official Gazette No 101, 11.4.1984), amended and converted into Law No 212 of 9.6.1984 (Official Gazette No 158, 9.6.1984); Decree-Law No 835 of 9.12.1986 (Official Gazette No 286, 10.12.1986), amended and converted into Law No 19 of 6.2.1987 (Official Gazette No 32, 9.2.1987); Decree-Law No 336 of 4.9.1987 (Official Gazette No 207, 5.9.1987), amended and converted into Law No 452 of 3.11.1987 (Official Gazette No 258, 4.11.1987); Decree-Law No 17 of 23.1.1993 (Official Gazette No 19, 25.1.1993), amended and converted into a No 80 of 25.3.1993 (Official Gazette No 71, 26.3.1993); Decree-Law No 532 of 23.12.1993 (Official Gazette No 300, 23.12.1993), amended and converted into Law No 111 of 17.2.1994 (Official Gazette No 42, 21.2.1994); Law No 128 of 24.4.1998 (published in Ordinary Supplement No 88 to Official Gazette No 104, 7.5.1998).

⁽¹²⁾ The debt limit is updated at 30 April each year, most recently on 30 April 1999 by decree of the Minister for Industry (Italian Official Gazette No 108, 11.5.1999).

- (20) As regards the procedural aspect, Article 1 provides that, when a court finds that a firm is insolvent or has failed to pay the wages for at least three months, the Minister for Industry, Commerce and Craft Trades, in agreement with the Minister for the Treasury, adopts a decree imposing extraordinary administration ⁽¹³⁾.
- (21) The procedure is carried out by one or three trustees appointed by the Minister for Industry, Commerce and Crafts and under the latter's supervision. A supervisory committee composed of three or five members is set up.
- (22) Under Article 2 of the Law, the Minister may, pursuant to the Decree establishing the extraordinary administration procedure and taking account of the interests of creditors, authorise the firm to remain in business for an initial period of two years. Although optional, authorisation is the normal consequence of the procedure. The initial period may be extended for a further period not exceeding two years. Further extensions have been authorised for specific periods in special cases.
- (23) The trustee draws up as part of a restructuring plan a management plan which the Interministerial Committee for Industrial Policy (CIPI) checks for compliance with national industrial policy ⁽¹⁴⁾. It should be noted that the plan is submitted not before but after the decision to initiate the extraordinary administration procedure.
- (24) Under Article 2A, the Treasury may guarantee all or some of the debts which a firm in extraordinary administration contracts with credit institutions in order to finance day-to-day management and to bring back on stream or add to industrial plant, buildings and equipment.
- (25) Article 3 of the Law provides that the same extraordinary administration procedure is applicable to groups, in particular the firms controlling or controlled by the firm in extraordinary administration or firms subject to the same management as the latter, even if their circumstances do not warrant an extraordinary administration procedure.
- (26) The end of the procedure demonstrates its task of conservation ⁽¹⁵⁾, which takes precedence over the protection of creditors' rights, inasmuch as the proceeds of a bankrupt's assets will be allocated to creditors only after payment of the costs of extraordinary administration and day-to-day management, including debts incurred, within the meaning of Articles 111 and 212 of the Italian Bankruptcy Law.
- (27) The extraordinary administration procedure ends if a composition is accepted, if total assets are distributed, if credit is exhausted, if there are insufficient assets or if the firm is once again able to fulfil its obligations and hence return to financial equilibrium.

III. COMMISSION DECISION OF 28 JULY 1999

- (28) By decision of 28 July 1999, communicated to the Italian authorities by letter of 12 August 1999, the Commission:
- requested the Italian Government and other interested parties to submit their comments on the withdrawal of the Commission decisions of 13 December 1994 proposing appropriate measures under Article 88(1) to the Italian Republic and of 22 January 1997 initiating the Article 88(2) procedure in respect of the Law on the extraordinary administration of large firms in a state of insolvency,

⁽¹³⁾ The decree is similar to that which initiates the administrative compulsory winding-up procedure. It is defined in case-law as a mandatory act ('atto dovuto').

⁽¹⁴⁾ It is clear from this that the Law is strongly imbued with the interventionist spirit prevalent at the time it was adopted.

⁽¹⁵⁾ It is significant that Article 2(2) of Law No 95/1979 expressly states that, where possible, the unity of the operational complex, including the parts to be transferred, must be preserved.

- initiated the Article 88(2) procedure in respect of the scheme established by the abovementioned Law which would in future be registered as non-notified aid.
- (29) The Commission based its reasons for the action referred to in the first indent of the preceding paragraph on the 'Piaggio' judgment (see recitals 11 to 13), from which it must draw the appropriate conclusions.
- (30) In its reasons for the action referred to in the second indent of paragraph 28, the Commission expressed its doubts as to the compatibility of the scheme provided for in Law No 95/1979, pointing out in particular that it maintained the doubts referred to in its earlier Decision of 22 January 1997 initiating the procedure. In support of its analysis pointing to the existence of aid elements in the Law in question, it also referred to the case law in *Ecotrade Srl v AFS* (see recital 32), specifying that, in its opinion, the aid did not a priori qualify for any of the derogations provided for in the Treaty, notably those concerning aid for rescuing and restructuring firms in difficulty.
- (31) The reasons for the decision of 22 January 1997 initiating the formal procedure under Article 88 may be summarised as follows:
- the Law concerns large firms in a state of insolvency,
 - extraordinary administration is at the discretion of the administration, especially as regards the continuation of business,
 - unlike bankruptcy, the aim is to protect the firm, on the basis of the public interest in safeguarding employment in particular, from the usual consequences of insolvency by allowing it to remain in operation,
 - this is reflected in the system of judicial protection. Extraordinary administration is subject only to the control of the administrative court, which is empowered to deal solely with the legality of administrative acts and has no right to monitor the economic desirability of transactions,
 - the legislative provisions in question clearly specify that extraordinary administration is an exception to bankruptcy procedures,
 - aid to large firms in difficulty distorts in a particular manner trade and competition in the common market,
 - extraordinary administration has a number of financial advantages involving the use of State resources (exemption from individual enforcement measures and suspension of interest payments on debts towards the tax authorities and social security bodies, exemption from the payment of fines and penalties for nonpayment of compulsory social security contributions, suspension of fines for delayed payment of income tax, symbolic registration charge on transfers of ownership of firms, freezing of amounts owed to other public bodies or companies, possible Treasury guarantee),
 - the scheme does not provide for the notification of individual cases of aid, contrary to the Community guidelines for rescue and restructuring aid,
 - extension of the Law to controlling and controlled firms (groups), which has a more serious impact on competition.
- (32) In *Ecotrade v AFS*, ⁽¹⁶⁾ the Court of Justice concluded that 'application to an undertaking (...) of a system of the kind introduced by Law No 95/1979, and derogating from the rules of ordinary law relating to insolvency, is to be regarded as giving rise to the grant of State aid, where it is established that the undertaking:
- has been permitted to continue trading in circumstances in which it would not have been permitted to do so if the rules of ordinary law relating to insolvency had been applied, or

⁽¹⁶⁾ Judgment in Case C-200/97 [1998] ECR I-7907, paragraph 45.

- has enjoyed one or more advantages, such as a State guarantee, a reduced rate of tax, exemption from the obligation to pay fines and other pecuniary penalties or waiver in practice of public debts wholly or in part, which could not have been claimed by another insolvent undertaking in connection with the application of the rules of ordinary law relating to insolvency.'

IV. COMMENTS BY ITALY

- (33) The Italian authorities sent their comments on the procedure and the substance by letter of 14 September 1999, registered as received on 20 September 1999, and on the substance alone by letter of 2 November 1999, registered as received on 5 November 1999.

Comments on the procedure

- (34) In their first letter, the Italian authorities raised a question of procedure. They challenged the Commission's decision to withdraw all the acts relating to the rules on extraordinary administration on the ground that Law No 95/1979 constituted existing aid and to initiate at the same time the Article 88(2) procedure. According to the Italian authorities, withdrawal of the existing procedure should in any event take place before any new procedure is initiated and not at the same time.
- (35) In addition, while the Commission may be required to withdraw its decisions of 13 December 1994 and 22 January 1997 in view of the 'Piaggio' judgment, it would have no real interest in seeking comments from the Member States and other interested parties in the absence of a margin of discretion.

Comments on the substance

- (36) In the same letter the Italian authorities stressed that the concept of existing aid, which has evolved as Community law has been developed, must include a third category (*tertium genus*) consisting of schemes where a Commission assessment of compatibility changes over time in keeping with new case-law ⁽¹⁷⁾. Furthermore, the Commission was aware of Law No 95/1979, even though it was never notified, at least as early as 1982 but decided to examine it in detail only in 1992 in view of the development of the common market. At the same time, the position of the Italian Government developed along similar lines as of when it agreed to give prior notification of each case in which a public guarantee was granted for company debt.
- (37) The reservations of the Italian authorities are, in their view, also justified by the fact that they claim to have informed the Commission that the aid scheme had been revoked at the same time as a new extraordinary administration procedure was introduced with the adoption of Decree-Law No 170 of 8 July 1999 ⁽¹⁸⁾ in response to the proceedings initiated (C 7/97).
- (38) In their second letter, the Italian authorities gave an elastic interpretation of the Court's judgment in 'Rinaldo Piaggio', stating that the Court had concluded that the scheme introduced by Law No 95/1979 could, rather than necessarily must, give rise to the granting of aid in cases where certain conditions were fulfilled, and in particular if it were found that the firm had been to remain in operation in circumstances in which it would normally have been wound up, or where it enjoyed one or more of the following advantages:
- granting of a Treasury guarantee,
 - exemption from payment of fines and pecuniary penalties in the event of non-payment of compulsory social security contributions,

⁽¹⁷⁾ The other two categories consist of aid existing before the EC Treaty (or the accession of the Member State in question) and aid declared compatible by a Commission decision and implemented lawfully.

⁽¹⁸⁾ Italian Official Gazette, 9.8.1999.

- suspension of enforcement measures in respect of company tax debts towards the tax authorities,
- payment of a symbolic registration charge of ITL 1 million (EUR 516) on transfers of ownership.

It would be for the national courts to verify that each case qualified as aid under the Court's guidelines.

- (39) In view of that interpretation, it would be contrary to the ruling of the Court to initiate an Article 88(2) procedure in respect of the law in general and not its actual application, especially as the procedure would no longer serve any purpose as a result of the fact that Law No 95/1979 has in the meantime been revoked and could not therefore be notified in advance with a view to its future application.
- (40) With regard to the substantive aspects of the scheme, the Italian authorities simply repeated the content of the letter of 28 April 1997 from the Minister for Industry, a full version of which was received on 8 July 1997 and in which they submitted their comments following the decision to initiate procedure C 7/97 (ex E 13/92), notified by letter SG(97) D/2286 of 25 March 1997.

The document contained the following comments:

- extraordinary administration is consistent with the traditional procedures provided for in the law on bankruptcy (which in Italy goes back to 1942), in particular as regards the temporary carrying-on of business ('esercizio provvisorio') ⁽¹⁹⁾ and the fact that debtors are dispossessed of their assets and no longer have the right to manage or dispose of them,
 - it is limited to large firms and its extension to groups of firms is justified by the economic and social impact which, at least as regards SMEs, is easier to manage through the bankruptcy procedure,
 - extraordinary administration differs from bankruptcy in that, in general, it is aimed at keeping the firm afloat with a view to restructuring and restoring viability so that it can be sold rather than broken up into separate entities. In their comments of 5 November 1999, the Italian authorities define insolvency as a neutral condition which is not inconsistent with such aims and indeed is specifically recognised as a typical indicator of a firm in difficulty ⁽²⁰⁾. Furthermore, as the effect of the two procedures (extraordinary administration and bankruptcy) is the same, i.e. the continued presence of the insolvent firm on the market, it is irrelevant whether the aim is to protect creditors or workers, since aid must be assessed on the basis of its potential to distort competition and not on the basis of its stated aim.
- (41) In its notice of 25 March 1997, the Commission challenged the claim that it was normal for a firm in difficulty and placed under extraordinary administration to continue its business, whereas the temporary carrying-on of business was an exception in bankruptcies. The Italian authorities replied as follows:
- the aim of preserving the status quo is inherently neutral and only the actual granting of public resources could give the firm in question an illegal advantage and hence distort the market,
 - other European countries have procedures similar to extraordinary administration, notably the French system of 'compulsory administration' (redressement judiciaire), which is aimed at protecting the firm's assets and provides a significant margin of discretion,

⁽¹⁹⁾ Article 90 of the Italian Bankruptcy Law.

⁽²⁰⁾ See in particular the definition of a firm in difficulty in paragraphs 5(c) and 6 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999, p. 2).

- the procedure launched by the court with the adoption of the statement of insolvency is applied automatically and in general to all firms meeting the size requirements. Authorisation to continue business forms the essence of the procedure and the means for restoring the firm's viability, i.e. profitability. It is always subject to the legitimate interests of the creditors,
- while acknowledging that there was an element of discretion, the Italian authorities stated that it was exercised in the interests of the creditors and was therefore irrelevant to the question of whether the scheme was compatible with Articles 87 and 88 of the EC Treaty.

(42) With regard to the elements allegedly constituting State aid, Italy commented as follows:

- as regards the Treasury guarantee, originally the only quantifiable aid element recognised by them, the Italian authorities had already agreed, by letter of 9 March 1995 in reply to the Commission letter proposing appropriate measures under Article 88(1), to notify individual cases in which the guarantee was given. In the meantime, they had amended Law No 95/1979 in order to include a counterpart in the form of a market premium to be borne by the recipient firm,
- exemption from payment of fines and penalties in the event of non-payment of compulsory social security contributions relates only to fines imposed up to the entry into force of the Law in 1986 ⁽²¹⁾,
- suspension of enforcement measures in respect of company tax debts towards the tax authorities does not, according to the Italian authorities, prejudice the rights of the State as a preferential creditor as much as it would seem since its preferred status, which enables its claims to be met by means of an individual enforcement measure from the proceeds of the sale of the bankrupt's assets, is simply a procedural privilege deriving from the legal action since the State secures only its share of those proceeds,
- payment of a fixed registration charge of ITL 1 million (EUR 516) on transfers of ownership was, according to the Italian authorities, introduced only for any third parties acquiring a firm's assets and does not therefore benefit the insolvent firm ⁽²²⁾,
- the suspension of interest payments on amounts owed to social security institutions forms part of standard bankruptcy procedure and is an automatic consequence of a declaration of insolvency.

V. COMMENTS FROM THIRD PARTIES

- (43) Comments from two interested parties ⁽²³⁾ were received by letter registered on 21 September 1999. Both parties agree with the position taken by the Commission in its letter of 12 August 1999 ⁽²⁴⁾.

VI. ASSESSMENT OF THE PROCEDURAL ISSUES

- (44) As regards the Italian comments on the procedure followed by it, the Commission points out that, as the Court of Justice ruling in 'Piaggio' had rejected its position that Law No 95/1979 constituted State aid, it was required to draw the appropriate conclusions regarding the acts adopted on 13 December 1994 and 22 January 1997. As the ruling was neither an action for annulment pursuant to Article 230 of the Treaty nor an action for assessment of validity pursuant to Article 234 of the

⁽²¹⁾ For a complete list of the amendments to Law No 95/1997, see footnote 11.

⁽²²⁾ However, the tax on transfers of ownership in general amounts to 3 % of the value of the firm.

⁽²³⁾ Ecotrade SpA and Cordifin SpA.

⁽²⁴⁾ See footnote 7.

Treaty, it was required to allow the Italian Government and interested parties to submit their comments on the manner in which it planned to follow up the ruling, i.e. by withdrawing the acts adopted previously. The Italian authorities, through their comments on the lack of any real interest on the part of the Commission in seeking the comments of the Member State and interested parties in view of the absence of a margin of discretion, have failed to take that situation into account.

- (45) The claim by the Italian authorities that the old procedure must be withdrawn before the new one is initiated rather than at the same time constitutes a form of inflexible formality whose sole practical effect is to lengthen the procedure. The approach taken by the Commission guarantees that, since the two decisions are successively covered by its decision of 28 July 1999, which in turn is covered by the present decision, it will examine the compatibility of the non-notified aid scheme established by Law No 95/1979 only once it has decided to withdraw its previous decisions of 1994 and 1997. This approach also ensures an economy of procedure that directly benefits the definitive clarification of the scheme in the light of the State aid rules. Indeed, it entails an economy of the procedure in Article 9 of Regulation (EC) No 659/1999, even if it is not directly applicable in the present case.

VII. ASSESSMENT OF THE SUBSTANCE

- (46) The Italian authorities have not presented any arguments calling into question the conclusions the Commission intended to draw from the Court ruling that Law No 95/1979 was not existing aid, namely, that its decisions of 13 December 1994 (proposal for appropriate measures) and 22 January 1997 (first initiation of proceedings) should be withdrawn. For their part, the interested parties that submitted comments shared the view taken by the Commission in its Decision of 28 July 1999. The Commission therefore confirms its intention formally to withdraw its 1994 and 1997 Decisions.
- (47) That said, it would point out that Law No 95/1979 has already been the subject of several Commission Decisions, including two concerning matters covered by the ECSC Treaty, which can usefully be examined in order to gain a better understanding of its operation.

— Decision 96/434/EC of 20 March 1996, ⁽²⁵⁾ in which the Commission concluded that State aid was present in the provisions of Law No 80/93 ⁽²⁶⁾ amending Law No 95/1979 and providing for the application of the extraordinary administration procedure to firms whose insolvency is caused by the obligation to repay to the State or to public bodies or companies in which the public authorities have a majority holding a sum of not less than 51 % of paid-up capital and, in any event, not less than ITL 50 billion (EUR 26 million), pursuant to Decisions taken by the Community institutions under Articles 87 and 88 of the EC Treaty. The measure in question was declared incompatible with the common market. By letter of 10 June 1998, registered as received on 12 June 1998, Italy stated that the provisions had been revoked,

— Decision 96/515/ECSC of 27 March 1996 ⁽²⁷⁾ in which the Commission concluded that aid within the meaning of Article 4(c) of the ECSC Treaty had been granted to Acciaierie a Ferriere di Servola (AFS) in the form of a guarantee covering an amount of ITL 26,5 billion (EUR 14 million), without any premium being paid, under Article 2a (Treasury guarantee) of Law No 95/1979. In its decision, the Commission found that the aid was illegal and incompatible with the common market for coal and steel, and ordered the Italian authorities to recover it,

⁽²⁵⁾ OJ L 180, 19.7.1996, p.31. It concerns Case C 59/94 (ex NN 125/94). According to the information provided by the Italian authorities, the only specific case in which Law No 80/93 was applied was in Nuova Cartiera di Arbatax.

⁽²⁶⁾ Article 1 of Decree-Law 17 of 23 January 1993, converted into Law No 80 of 25 March 1993; See footnote 11.

⁽²⁷⁾ OJ L 216, 27.8.1996, p. 11.

— Decision 97/754/ECSC of 30 April 1997, ⁽²⁸⁾ in which the Commission concluded that a series of measures benefiting Ferdofin Siderurgica Srl, and in particular suspension of the payment of considerable debts towards certain public bodies, pursuant to Law No 95/1979 constituted aid within the meaning of Article 4(c) of the ECSC Treaty. In its Decision, the Commission stated that the aid was incompatible with the common market for coal and steel and ordered the Italian authorities to recover the aid already paid and to suspend Law No 95/1979 as regards the failure by Ferdofin Siderurgica Srl to pay debts contracted with public enterprises and bodies.

- (48) The first task is to identify, within the legal framework of the extraordinary administration procedure, the measures that are not general measures and then to decide whether they are covered by Article 87(1) of the EC Treaty.
- (49) Law No 95/1979 shares certain features with the bankruptcy procedure and contains a number of aid elements, ⁽²⁹⁾ although it does derogate from the bankruptcy procedure, which, in principle, applies to most firms. The Law on extraordinary administration reflects the crisis that affected large industrial firms in Italy and Europe in the 1970s, its chief aim being to maintain employment levels through a restructuring plan intended to allow the firm to survive and to avoid being immediately wound up.
- (50) Law No 95/1979 refers back in certain respects to the Italian Bankruptcy Law ⁽³⁰⁾ and, where it provides for the application without derogation of the latter's mechanisms, the mechanisms and procedures constitute general measures and are not in any way selective. On the other hand, the Law contains specific provisions, including the granting to identifiable recipients of a number of special advantages involving public resources. Such cases would constitute State aid within the meaning of Article 87(1) of the EC Treaty.
- (51) In *Ecotrade v AFS* (see recital 32 of this decision), which concerned the application of Law No 95/1979, ⁽³¹⁾ the Court analysed the latter, identified the elements that did not constitute general measures and, by virtue of their characteristics, concluded that they constituted aid granted by the State.
- (52) Before considering each of those elements, the Court found that the Law was intended to apply selectively to large industrial undertakings in difficulties which owed particularly large debts to certain, mainly public, classes of creditors (paragraph 38 of the grounds).
- (53) The first element identified was the decision placing the firm in difficulties under extraordinary administration and permitting it to continue trading. The Court established that the decisions of the Minister for Industry in this respect were taken with regard as far as possible to the interests of the creditors and, in particular, to the prospects for increasing the value of the firm's assets. They were also influenced, as the Italian Government itself acknowledged, by the concern to maintain the firm's economic activity in the light of national industrial policy considerations. Hence, the legislation authorising the continuation of trading was liable to place the firms to which it applied in a more favourable situation than others, inasmuch as it enabled them to continue trading in circumstances in which that would not be allowed if the usual insolvency rules were applied, since those rules were decisive when it came to protecting creditors' interests. In view of the class of firms covered by the

⁽²⁸⁾ OJ L 306, 11.11.1997, p. 25.

⁽²⁹⁾ See footnote 16.

⁽³⁰⁾ Royal Decree No 267 of 16 March 1942 (Bankruptcy Law). Article 1 of law No 95/1979 refers to Articles 5, 6, 195 et seq. and 237 of the Bankruptcy Law; Article 2 refers to Articles 35 and 212 of that Law and Article 3 to Articles 67, 198 and 206, etc.

⁽³¹⁾ In *Piaggio* (see footnote 6) the Court considered on its own initiative whether a system of the kind introduced by Law No 95/1979 and derogating from the rules of ordinary law relating to insolvency should be regarded as State aid within the meaning of Article 92 (now Article 87) of the Treaty. Its conclusions in this respect confirmed those reached in *Ecotrade*

legislation and the scope of the discretion enjoyed by the Minister, the legislation meets the condition of specificity. Lastly, the Court pointed out that, in view of the priority accorded to debts connected with the pursuit of economic activity, authorisation to continue trading might, in those circumstances, involve an additional burden for the public authorities if it were in fact established that the State or public bodies were among the chief creditors of the firm in difficulties, all the more so because, by definition, that firm owed debts of considerable value (paragraphs 39 to 41 of the grounds).

(54) The Court also identified the following advantages:

- the grant of a guarantee under Article 2A of Law No 95/1979 ⁽³²⁾,
- extension of the prohibition and suspension of all individual actions for enforcement to tax debts and penalties, interest and increases in cases of belated payment of company tax ⁽³³⁾,
- exemption from the obligation to pay fines and pecuniary penalties in the case of failure to pay social security contributions ⁽³⁴⁾,
- application of a preferential rate where all or part of the firm is transferred ⁽³⁵⁾ (a flat-rate registration charge of ITL 1 million, whereas the normal rate of the registration charge is 3 % of the value of the property sold).

The Court emphasised that such advantages might also entail an additional burden for the public authorities and that this could be otherwise only if it were shown that placing a firm under special administration and allowing it to continue trading did not in actual fact entail an additional burden for the State, compared to the situation that would have arisen had the usual insolvency rules been applied (paragraphs 42 and 43 of the grounds).

(55) On the basis of that analysis, the Commission concludes that, as regards the first element ⁽³⁶⁾, the reasoning of the Court (which stresses that authorisation to continue trading might involve an additional burden for the public authorities if it were in fact shown that the State or public bodies were among the chief creditors of the firm in difficulties) may be interpreted as meaning that it would be further necessary to prove in the case in question that public resources are involved as a result of the effective increase in the burden on the State. The Commission would point out in this respect that the Court itself ascertained the effective existence of such charges by virtue of the aim of Law No 95/1979, which applies selectively to large industrial firms in difficulties owing particularly large debts to certain, mainly public, classes of creditors.

(56) The Italian authorities do not challenge this analysis in their comments: their argument is that the analysis should not concern the Law in general but its specific application. Such an approach would be to ignore the fact that an aid scheme is involved and that, as a result, the analysis (as to whether it is State aid and, if necessary, whether it is compatible with the common market) concerns the scheme itself and its machinery in particular, without it being necessary or justified to analyse each individual case in order to reach a decision.

⁽³²⁾ The Italian authorities, which had consistently maintained that the only State aid in the scheme was the guarantee and finally agreed in March 1995 to notify all cases in which a guarantee had been granted, introduced the payment of a premium.

⁽³³⁾ Article 4 of Law No 544/1981 amending Law No 95/1979.

⁽³⁴⁾ Second paragraph of Article 3 of Decree-Law No 835/1986, converted into Law No 19/1987 of 6 February 1987, further amending Law No 95/1979 (Italian Official Gazette No 32, 9.2.1987).

⁽³⁵⁾ Article 5A of Law No 95/1979.

⁽³⁶⁾ Authorisation to continue trading in circumstances in which that would not be allowed if the usual insolvency rules were applied.

- (57) As regards the other 'advantages' identified by the Court, the Commission notes that, as regards the 'involvement of State resources', it is not disputed that the guarantee granted under Article 2A of Law No 95/1979 constitutes State aid; the Italian authorities have consistently regarded it as such ⁽³⁷⁾. As for the other 'advantages', the Commission repeats, as stated above, that they are part of a scheme which must be analysed as such, without it being necessary or justified to analyse each individual case. In this respect it might be assumed from the Court's reasoning that an additional burden is placed on the public authorities, an assumption which can be ruled out only if it can be shown that the advantages should not entail an additional burden for the State, compared to the situation that would have arisen had the usual insolvency rules been applied. No such evidence was provided by the Italian authorities in their comments on the 'advantages' arising out of Law No 95/1979. They did not challenge that conclusion with regard to the suspension of individual enforcement actions and simply stated that the measure would not adversely affect the rights of the State, as a preferred creditor, to the extent it might appear to do. Nor did they challenge the conclusion with regard to the exemption from the payment of fines and pecuniary penalties, pointing out simply that the exemption related only to penalties imposed prior to the date of entry into force of the 1986 Law. Lastly, they did not challenge the view that the registration charge on transfers of ownership is an advantage.
- (58) In short, it must be concluded that the various advantages arising out of Law No 95/1979 constitute State aid within the meaning of Article 87(1) of the EC Treaty ⁽³⁸⁾.
- (59) Once it has been ascertained that State aid is involved, it is necessary to consider whether the aid scheme qualifies for a derogation under Article 87(2) and (3), thereby averting the ban in Article 87(1).
- (60) Article 87(2) defines the forms of aid that are compatible with the Treaty. In view of the nature and purpose of the scheme in question and its geographical coverage, it is clear that the derogations in Article 87(2)(a), (b) and (c) are not applicable in the present case.
- (61) Article 87(3) lists the categories of aid that may be regarded as being compatible with the common market. Compatibility with the Treaty must be assessed from the standpoint of the Community as a whole and not in a purely domestic context. In order to safeguard the proper functioning of the common market and having regard to the principle in Article 3(g) of the Treaty, the exceptions in Article 87(3) must be construed narrowly.
- (62) With regard to the derogations in Article 87(3)(b) and (d), it is clear that the scheme in question is not intended to promote an important project of common European interest, to remedy a serious disturbance in the Italian economy or to promote culture and heritage conservation. As regards the regional development derogations in Article 87(3)(a) and (c), it is clear that the scheme applies without distinction to all Italian regions.
- (63) As regards the derogation in Article 87(3)(c) for aid to facilitate the development of certain activities, it is clear that the aid scheme is not intended to facilitate the development of a particular economic area or promote initiatives to assist small and medium-sized businesses, research and development, environmental protection, job creation or training, in accordance with the Community guidelines on State aid for small and medium-sized enterprises, research and development, environmental protection, employment and training.

⁽³⁷⁾ They subsequently imposed the payment of a premium for the guarantee before agreeing in March 1995 to notify the Commission of all cases in which the guarantee is granted.

⁽³⁸⁾ The *de minimis* rules (OJ C 68, 6.3.1996, p. 9) clearly do not apply in the present case.

(64) The purpose of the scheme is to adopt extraordinary administration measures to assist large firms in difficulties. The Commission has defined its policy on rescue and restructuring aid and specified the conditions in which it considers that such aid can contribute to the development of economic activities without affecting trade to an extent contrary to the general interest. The relevant guidelines in force when the Commission took its decision on 28 July 1999 to initiate proceedings under Article 88(3) of the Treaty provided (as specifically stated in the decision) for the possibility of authorising rescue or restructuring aid only for small and medium-sized firms, since for large firms individual notification of all aid was mandatory and approval of a scheme was ruled out ⁽³⁹⁾. This is why the Commission stressed when initiating the proceedings that it believed that the scheme was incompatible. The new guidelines also rule out the possibility of a scheme being authorised for large firms ⁽⁴⁰⁾. They do, however, provide that the Commission will examine all rescue and restructuring aid granted without its approval and hence in breach of Article 88(3) of the Treaty in order to determine its compatibility with the common market under the guidelines in force when the aid was granted ⁽⁴¹⁾.

(65) The first time the Commission set out its policy on aid for rescuing and restructuring firms in difficulty was in 1978 in the Eighth Report on Competition Policy (point 228). The policy ⁽⁴²⁾ concerned the aid arrangements introduced by Member States in order to provide credit required by certain firms which they could not otherwise obtain either for a limited period to provide for a study of restructuring/conversion opportunities (rescue aid) or to keep them in business until the restructuring/conversion can take effect (restructuring aid).

— Rescue aid granted simply to keep firms in business while the causes of their difficulties are identified and a remedy worked out must observe the following conditions:

- they must consist of cash aid in the form of loan guarantees or loans bearing normal commercial interest rates.
- they must be restricted to the amount needed to keep a firm in business (for example, covering wage costs and routine supplies),
- they must be paid only for the time needed (generally six months) to devise the necessary and feasible recovery measures,
- they must be warranted on the grounds of serious social difficulties and keeping the firm in operation must not have any adverse effects on the industrial situation in other Member States.

— As regards restructuring aid, the Commission stated that it must be strictly conditional on the implementation of a sound restructuring or conversion programme which effectively restores the viability of the production concerned in the long term and that its intensity and amount must be restricted to the strict amount needed for supporting the firm during the transitional period before such a programme takes effect. The period involved must therefore be limited and the assistance gradually reduced.

Lastly, in the case of both rescue and restructuring aid, the Commission required that the industrial programmes drawn up for their application or individual significant cases of application be notified in advance.

(66) In view of the various arrangements of the scheme provided for in Law No 95/1979, it is clear that the conditions set out above have not been satisfied:

⁽³⁹⁾ See footnote 4, paragraphs 4.1 and 4.2.

⁽⁴⁰⁾ See footnote 20, paragraph 4.1 of the guidelines.

⁽⁴¹⁾ See footnote 20, paragraph 7.5 of the guidelines.

⁽⁴²⁾ As confirmed and expanded in the subsequent guidelines of 1994 and 1999.

- either as regards rescue aid: the guarantee provided for in Article 2A applies to debts arising out of the continued operation of the firm and is not limited to a loan guarantee. The other measures cannot in any way be regarded as loans bearing a normal commercial interest rate. There is no machinery to guarantee that the aid granted under the scheme is restricted to the strict minimum needed by the firm to remain in business. The period in which the scheme is applicable to a given firm is initially two years, renewable for another two years. While the scheme is designed to safeguard the firms in question in view of their social importance, it has no mechanism providing or guaranteeing that any imbalances caused in other Member States will be taken into account,
 - or as regards restructuring aid: while the application of the criteria in force in 1979 required firms receiving aid to carry out reorganisation measures including in some cases the closure of industrial plants in sectors suffering from structural overcapacity, the specific aim of the scheme is to preserve the firm's entire production complex. In the case of extraordinary administration, no reference is made when the management plan is approved (Article 2 of the Law) to financial restructuring, which is a strategic element as important as the reorganisation and rationalisation of the industrial activities. Nor does any element of the scheme or, for the rest, any of the comments from the Italian authorities point to the conclusion that the scheme guarantees that the firm will regain economic and financial viability (e.g. by ensuring that cover for amortisation costs and financial charges as well as a minimum return on the capital invested are obtained), that it avoids undue distortions of competition (e.g. by selling production capacity) or that it ensures proportionality between the aid granted and the benefits obtained from restructuring (e.g. by avoiding excessive reductions in the firm's financial charges).
- (67) Lastly, the Italian authorities have not requested the benefit of any derogation under Article 87 of the Treaty.
- (68) In view of the foregoing, it must be concluded that the scheme does not qualify for a derogation under Article 87 and cannot therefore be regarded as being compatible with the common market. Accordingly, the prohibition provided for in Article 87(1) is applicable.
- (69) By letter of 24 July 1998, registered as received on 28 July 1998, the Italian authorities provided the Commission with the first elements of a new draft reform, the Italian Parliament having instructed the Government on 8 July 1998 to revoke the existing scheme and, at the same time, to adopt new rules for the extraordinary administration procedure. Law No 95/1979 was eventually revoked on 30 June 1999.

VIII. RECOVERY OF THE AID

- (70) Since, in cases of unlawful aid incompatible with the market, undistorted competition should be restored, Article 14(1) of Regulation (EC) No 659/1999 provides that 'where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'. The same provision also states, however, that 'the Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law'.
- (71) In the present case, the Commission considers that the general principle of law applicable is that of the protection of legitimate expectation. This should be examined in relation to the Member State which applied the scheme and to which this Decision is addressed as well as, in view of the particular features of the case, to the firms that benefited from the scheme.

- (72) The Commission had specifically informed the Italian authorities, first by letter of 30 July 1992 (see recital 4), that the measures in question would be treated as 'existing aid', an approach it subsequently confirmed when it proposed appropriate measures to those authorities under Article 88(1). Thus, from the moment it notified its official position in 1992, the Commission fostered the legitimate expectation on the part of the Italian authorities that the aid in question would henceforth be regarded and treated by the Commission as existing aid. After the entry into force of the scheme, the Italian authorities could not have had any legitimate expectation that it was lawful and compatible with the common market (they were fully aware of not having notified it under Article 88(3)), therefore they were justified from that date onwards in regarding new applications of the Law as lawful and compatible. On account of the legitimate expectation thus created in the Member State, the Commission cannot order it to recover the aid granted under the scheme after notification of its Decision of 30 July 1992.
- (73) As regards the interested parties in general and the firms that received aid in particular, the Commission decision ⁽⁴³⁾ to propose appropriate measures in respect of the scheme provided for in Law No 95/79 gave them the legitimate expectation that the aid was 'existing aid'. The consequences were twofold:
- All those who benefited from the scheme after the date of publication of the decision were entitled, by virtue of that decision, to have a legitimate expectation concerning the 'lawful' and 'compatible' benefits of the scheme, thereby preventing the Commission from requiring the Member State to recover the aid granted to them.
 - All those who benefited from the scheme before the Decision was published were entitled to have a legitimate expectation that the closing of the procedures provided for by the Treaty in respect of the aid scheme from which they benefited meant that the aid would never have to be repaid. In cases of 'existing aid', the Commission can, under Article 88(1) and (2), only propose to the Member State concerned the appropriate measures required by the progressive development or by the functioning of the common market and, if the Member State rejects them, initiate the formal procedure at the end of which the Commission may decide to impose the appropriate measures, but only as regards the future. The recipients, in whom the Commission had not, until that date, created a legitimate expectation as to the 'lawfulness' and 'compatibility' of the scheme, could legitimately expect that Commission Decisions on the scheme would relate only to the future and would not call into question earlier applications. The recipients were justified in this respect in entering into the accounts any reserves constituted to repay aid granted. In view of the legitimate expectation thus created, the Commission cannot require the Member State to recover the aid already granted.

IX. CONCLUSIONS

- (74) The Commission finds therefore that:
- (a) the decision of 13 December 1994 proposing appropriate measures to Italy and the decision of 22 January 1997 initiating the Article 88(2) procedure in respect of the Law on the administration of large firms in crisis should be withdrawn;
 - (b) Law No 95/1979 establishing urgent measures for the extraordinary administration of large firms in crisis introduced a State aid scheme for the firms in question which was unlawfully implemented by Italy in breach of its obligations under Article 88(3) of the Treaty;
 - (c) on the basis of the finding in (b), the scheme in question is incompatible with the common market pursuant to Article 87(1) of the EC Treaty as it does not qualify for any of the derogations in Article 87(2) and (3);

⁽⁴³⁾ See footnote 3.

- (d) the aid scheme provided for in Law No 95/1979 was revoked by Decree-Law No 270/1999;
- (e) there are no grounds for requiring Italy to recover from the recipient firms the aid already granted,

HAS ADOPTED THIS DECISION:

Article 1

The Commission decisions of 13 December 1994 proposing appropriate measures to the Italian Republic and of 22 January 1997 initiating the procedure provided for in Article 88(2) of the Law on the administration of large firms in crisis are hereby withdrawn.

Article 2

The scheme provided for in Law No 95/1979 converting Decree-Law No 26/1979 on urgent measures for the extraordinary administration of large firms in crisis, which was introduced in Italy for large firms in crisis, is unlawful and incompatible with the common market.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 May 2000.

For the Commission

Mario MONTI

Member of the Commission
