

English edition

## Legislation

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## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 2414/2001  
of 7 December 2001**

**amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(b)(i) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Whereas:

(1) Regulation (EEC) No 539/2001 <sup>(2)</sup> includes Romania among the third countries whose nationals are exempted from visa requirements, but makes the application of the visa exemption to Romanian nationals conditional on a decision to be taken at a later stage by the Council. That decision is to be taken on the basis of a report which the Commission was to present to the Council by 30 June 2001 at the latest and which was to be accompanied by any recommendations that might be appropriate.

(2) In its report of 29 June 2001, the Commission notes the undeniable progress made by Romania as regards illegal immigration from its country, its visa policy and the controls at its borders. The Commission also sets out the commitments entered into by Romania in this field. The Commission concludes by recommending to the Council that Romanian nationals be exempted from the visa requirement as from 1 January 2002.

(3) In order to apply the visa exemption to Romanian nationals, the provisions of Regulation (EC) No 539/2001 which provisionally maintain the visa requirement should be deleted.

(4) Pursuant to Article 1 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the

European Community, Ireland and the United Kingdom are not participating in the adoption of this Regulation. Consequently, without prejudice to Article 4 of that Protocol, the provisions of this Regulation do not apply to Ireland or to the United Kingdom.

(5) As regards the Republic of Iceland and the Kingdom of Norway, this Decision constitutes a development of the provisions of the Schengen acquis falling within the area referred to in Article 1(B) of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis <sup>(3)</sup>,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 539/2001 is hereby amended as follows

1. The twelfth recital shall be replaced by the following:

‘(12) This Regulation provides for full harmonisation as regards the third countries whose nationals are subject to the visa requirement for the crossing of Member States' external borders and those whose nationals are exempt from that requirement.’

2. Article 1(2) shall be replaced by the following:

‘Nationals of third countries on the list in Annex II shall be exempt from the requirement set out in paragraph 1 for stays of no more than three months in all.’

<sup>(1)</sup> Opinion delivered on 29 November 2001 (not yet published in the Official Journal).

<sup>(2)</sup> OJ L 81, 21.3.2001, p. 1.

<sup>(3)</sup> OJ L 176, 10.7.1999, p. 31.

3. Article 8 shall be replaced by the following:

‘Article 8

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

4. The following shall be deleted from Annex II:

- the asterisk against Romania;
- the footnote referring to Article 8(2).

*Article 2*

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

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 7 December 2001.

*For the Council*

*The President*

M. VERWILGHEN

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**COUNCIL REGULATION (EC) No 2415/2001  
of 10 December 2001**

**amending Regulation (EC) No 2666/2000 on assistance for Albania, Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia and Regulation (EC) No 2667/2000 on the European Agency for Reconstruction**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Whereas:

- (1) The European Community is committed to providing financial assistance to the Former Yugoslav Republic of Macedonia, including in support of the implementation of the Framework Agreement of 13 August 2001.
- (2) The situation in the country requires the efficient and speedy delivery of Community assistance which is best facilitated through local implementation.
- (3) The European Agency for Reconstruction, hereinafter called the 'Agency', established under Regulation (EC) No 2667/2000 <sup>(3)</sup>, has broad experience and is well placed to deliver Community assistance.
- (4) Regulation (EC) No 2666/2000 <sup>(4)</sup> and Regulation (EC) No 2667/2000 should therefore be amended to extend the Agency's activities to the Former Yugoslav Republic of Macedonia.
- (5) Implementation of Community assistance in the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia decided upon under other instruments may be delegated by the Commission to the Agency.
- (6) The Treaty does not provide, for the adoption of this Regulation, powers other than those under Article 308,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 2666/2000 is hereby amended as follows: in Article 4(1) and (2) 'Federal Republic of Yugoslavia' shall be

replaced by 'Federal Republic of Yugoslavia and for the Former Yugoslav Republic of Macedonia'.

*Article 2*

Regulation (EC) No 2667/2000 is hereby amended as follows:

1. Article 1 is replaced by the following:

*'Article 1*

1. The Commission may delegate the following tasks to an Agency:

- (i) implementation of Community assistance provided for in Article 1 of the Regulation (EC) No 2666/2000 to the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia;
- (ii) implementation of Community assistance decided by the Commission on the basis of other available instruments for the countries concerned. In such cases this shall be done in accordance with the provisions of the relevant Regulations and Article 2(1)(b) and (c), Article 2(2), (3) and (4), Article 4 and Article 5(1)(a) to (c) and (h) of this Regulation shall not apply.

2. The European Agency for Reconstruction, hereinafter referred to as the "Agency", shall be set up to that end with the aim of implementing the Community assistance referred to in paragraph 1.'

2. In Article 2(1)(b) 'Federal Republic of Yugoslavia' shall be replaced by 'Federal Republic of Yugoslavia and of the Former Yugoslav Republic of Macedonia'.

3. In Article 4(10) 'Federal Republic of Yugoslavia' shall be replaced by 'Federal Republic of Yugoslavia and to the Former Yugoslav Republic of Macedonia'.

4. In the first subparagraph of Article 7(3) 'Federal Republic of Yugoslavia' shall be replaced by 'Federal Republic of Yugoslavia and of the Former Yugoslav Republic of Macedonia'.

5. In the second subparagraph of Article 7(3) 'Federal Republic of Yugoslavia' shall be replaced by 'Federal Republic of Yugoslavia and to the Former Yugoslav Republic of Macedonia'.

6. In Article 15 'Federal Republic of Yugoslavia' shall be replaced by 'Federal Republic of Yugoslavia and for the Former Yugoslav Republic of Macedonia'.

<sup>(1)</sup> OJ C 332 E, 27.11.2001, p. 338.

<sup>(2)</sup> Opinion delivered on 29 November 2001 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 306, 7.12.2000, p. 7.

<sup>(4)</sup> OJ L 306, 7.12.2000, p. 1.

*Article 3*

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

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

Done at Brussels, 10 December 2001.

*For the Council*

*The President*

L. MICHEL

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**COMMISSION REGULATION (EC) No 2416/2001**  
**of 11 December 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 <sup>(1)</sup>, as last amended by Regulation (EC) No 1498/98 <sup>(2)</sup>, 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 12 December 2001.

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

Done at Brussels, 11 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 337, 24.12.1994, p. 66.

<sup>(2)</sup> OJ L 198, 15.7.1998, p. 4.

## ANNEX

**to the Commission Regulation of 11 December 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables**

(EUR/100 kg)

| CN code                                        | Third country code <sup>(1)</sup> | Standard import value |
|------------------------------------------------|-----------------------------------|-----------------------|
| 0702 00 00                                     | 052                               | 46,7                  |
|                                                | 204                               | 75,2                  |
|                                                | 999                               | 61,0                  |
| 0707 00 05                                     | 052                               | 139,7                 |
|                                                | 220                               | 225,9                 |
|                                                | 628                               | 169,6                 |
| 0709 90 70                                     | 999                               | 178,4                 |
|                                                | 052                               | 123,5                 |
|                                                | 204                               | 154,2                 |
| 0805 10 10, 0805 10 30, 0805 10 50             | 999                               | 138,8                 |
|                                                | 052                               | 52,0                  |
|                                                | 204                               | 60,3                  |
|                                                | 388                               | 25,0                  |
|                                                | 508                               | 23,4                  |
|                                                | 528                               | 31,0                  |
| 0805 20 10                                     | 999                               | 38,3                  |
|                                                | 052                               | 84,0                  |
|                                                | 204                               | 64,1                  |
| 0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90 | 999                               | 74,0                  |
|                                                | 052                               | 69,6                  |
|                                                | 204                               | 44,3                  |
|                                                | 464                               | 141,1                 |
| 0805 30 10                                     | 999                               | 85,0                  |
|                                                | 052                               | 43,4                  |
|                                                | 388                               | 58,7                  |
|                                                | 600                               | 50,4                  |
| 0808 10 20, 0808 10 50, 0808 10 90             | 999                               | 50,8                  |
|                                                | 060                               | 34,7                  |
|                                                | 400                               | 85,3                  |
|                                                | 404                               | 106,4                 |
|                                                | 720                               | 105,0                 |
|                                                | 728                               | 116,3                 |
| 0808 20 50                                     | 999                               | 89,5                  |
|                                                | 052                               | 103,1                 |
|                                                | 064                               | 71,1                  |
|                                                | 400                               | 110,5                 |
|                                                | 720                               | 112,0                 |
|                                                | 999                               | 99,2                  |

<sup>(1)</sup> 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 2417/2001  
of 11 December 2001**

**amending Regulation (EC) No 1500/2001 increasing to 100 000 tonnes the quantity of barley held  
by the Finnish intervention agency for which a standing invitation to tender for export has been  
opened**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals<sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000<sup>(2)</sup>, and in particular Article 5 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2131/93<sup>(3)</sup>, as last amended by Regulation (EC) No 1630/2000<sup>(4)</sup>, lays down the procedures and conditions for the disposal of cereals held by the intervention agencies.
- (2) Commission Regulation (EC) No 1500/2001<sup>(5)</sup> opened a standing invitation to tender for the export of 50 000 tonnes of barley held by the Finnish intervention agency. Finland informed the Commission of the intention of its intervention agency to increase by 50 000 tonnes the quantity for which a standing invitation to tender for export has been opened. The total quantity of barley held by the Finnish intervention agency for which a standing invitation to tender for export has been opened should be increased to 100 000 tonnes.
- (3) This increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in

store. Annex I to Regulation (EC) No 1500/2001 must therefore be amended.

- (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*

Regulation (EC) No 1500/2001 is hereby amended as follows:

1. Article 2 is replaced by the following:

*'Article 2*

1. The invitation to tender shall cover a maximum of 100 000 tonnes of barley to be exported to all third countries with the exception of the United States, Canada and Mexico.
2. The regions in which the 100 000 tonnes of barley are stored are stated in Annex I to this Regulation.'
2. Annex I is replaced by the Annex hereto.

*Article 2*

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

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

Done at Brussels, 11 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 191, 31.7.1993, p. 76.

<sup>(4)</sup> OJ L 187, 26.7.2000, p. 24.

<sup>(5)</sup> OJ L 199, 24.7.2001, p. 3.

## ANNEX

## ANNEX I

| (tonnes)         |          |
|------------------|----------|
| Place of storage | Quantity |
| Kirkniemi        | 3 200    |
| Kokemäki         | 20 000   |
| Koria            | 3 900    |
| Loimaa           | 17 081   |
| Turenki          | 29 289   |
| Hämeenlinna      | 14 448   |
| Mustio           | 7 216    |
| Perniö           | 4 866'   |

**COMMISSION REGULATION (EC) No 2418/2001  
of 11 December 2001**

**amending Regulation (EC) No 668/2001 increasing to 1 500 199 tonnes the quantity of barley held  
by the German intervention agency for which a standing invitation to tender for export has been  
opened**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals <sup>(1)</sup>, as last amended by Regulation (EC) No 1666/2000 <sup>(2)</sup>, and in particular Article 5 thereof,

Whereas:

- (1) Commission Regulation (EEC) No 2131/93 <sup>(3)</sup>, as last amended by Regulation (EC) No 1630/2000 <sup>(4)</sup>, lays down the procedures and conditions for the disposal of cereals held by the intervention agencies.
- (2) Commission Regulation (EC) No 668/2001 <sup>(5)</sup> opened a standing invitation to tender for the export of 999 858 tonnes of barley held by the German intervention agency. Germany informed the Commission of the intention of its intervention agency to increase by 500 341 tonnes the quantity for which a standing invitation to tender for export has been opened. The total quantity of barley held by the German intervention agency for which a standing invitation to tender for export has been opened should be increased to 1 500 199 tonnes.
- (3) This increase in the quantity put out to tender makes it necessary to alter the list of regions and quantities in

store. Annex I to Regulation (EC) No 668/2001 must therefore be amended.

- (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*

Regulation (EC) No 668/2001 is hereby amended as follows:

1. Article 2 is replaced by the following:

*'Article 2*

1. The invitation to tender shall cover a maximum of 1 500 199 tonnes of barley to be exported to all third countries with the exception of the United States, Canada and Mexico.
2. The regions in which the 1 500 199 tonnes of barley are stored are stated in Annex I to this Regulation.'
2. Annex I is replaced by the Annex hereto.

*Article 2*

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

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

Done at Brussels, 11 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 181, 1.7.1992, p. 21.

<sup>(2)</sup> OJ L 193, 29.7.2000, p. 1.

<sup>(3)</sup> OJ L 191, 31.7.1993, p. 76.

<sup>(4)</sup> OJ L 187, 26.7.2000, p. 24.

<sup>(5)</sup> OJ L 93, 3.4.2001, p. 20.

## ANNEX

## ANNEX I

| (tonnes)                                                                         |          |
|----------------------------------------------------------------------------------|----------|
| Place of storage                                                                 | Quantity |
| Schleswig-Holstein/Hamburg/Niedersachsen/<br>Bremen/Mecklenburg-Vorpommern       | 576 416  |
| Nordrhein-Westfalen/Hessen/Rheinland-Pfalz/<br>Saarland/Baden-Württemberg/Bayern | 135 359  |
| Berlin/Brandenburg/Sachsen-Anhalt/Sachsen/<br>Thüringen                          | 788 424' |

**COMMISSION REGULATION (EC) No 2419/2001****of 11 December 2001****laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 3508/92 of 27 November 1992 establishing an integrated administration and control system for certain Community aid schemes <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 495/2001 <sup>(2)</sup>, and in particular Article 12 thereof,

Whereas:

- (1) The integrated administration and control system for certain Community aid schemes system established by Regulation (EEC) No 3508/92 (hereinafter 'the integrated system') has proven to be an effective and efficient means for the implementation of the direct payment schemes first introduced as a result of the reform of the common agricultural policy in 1992 and further developed under the Agenda 2000 measures. Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes <sup>(3)</sup>, as last amended by Regulation (EC) No 2721/2000 <sup>(4)</sup>, has been amended on various occasions since its entry into force. Moreover, experience, and in particular the introduction of electronic tools for the management of the schemes, has shown that various provisions of that Regulation should be reviewed. Since further amendments are to be made, Regulation (EEC) No 3887/92 should be replaced by this Regulation in the interests of clarity and rationalisation.
- (2) For the sake of effective control and to prevent the submission of multiple aid applications to different Paying Agencies within one Member State, the Member States should provide for a single system to record the identity of farmers submitting aid applications subject to the integrated system. The Member States should, however, be given a transitional period for the introduction of that system.
- (3) In the light of the different identification systems throughout the Community, the Member States should be authorised to set up systems for the identification of

areas by means of units other than agricultural parcels. This possibility should be accompanied by certain obligations in order to ensure that the identification is reliable. Moreover, each Member State should, for the sake of effective monitoring, determine the minimum size of agricultural parcel that may be declared in an area aid application.

- (4) The concepts of 'agricultural parcel' and 'forage area' should be clarified to ensure that parcels are correctly declared and identified.
- (5) Provision should be made regarding the content of area aid applications. For the sake of effective controls, any kind of area use should be declared in the area aid application. However, where the Member States have introduced administration and control systems for other area-related Community aid schemes which are compatible with the integrated system according to Article 9a of Regulation (EEC) No 3508/92, the Member States should be given the possibility to derogate from this requirement.
- (6) There is a need to lay down special provisions for the particular situation regarding producer groups in the sheepmeat and goatmeat sector as defined in Article 1(2) of Council Regulation (EEC) No 3493/90 of 27 November 1990 laying down general rules for the granting of premiums to sheepmeat and goatmeat producers <sup>(5)</sup>, as last amended by Regulation (EC) No 2825/2000 <sup>(6)</sup>.
- (7) An area aid application submitted only for the purpose of declaring permanent pasture does not necessarily have to be submitted to the competent authorities within the same delays as area aid applications in general, in particular because the management of the control programme of permanent pasture does not have to be carried out following the same time-schedule as the control of arable crop areas. The Member States should, therefore, be able to provide for such area aid applications to be submitted later than the date fixed in accordance with Article 6(2) of Regulation (EEC) No 3508/92. However, the date to be fixed by the Member State should not be later than 1 July.

<sup>(1)</sup> OJ L 355, 5.12.1992, p. 1.

<sup>(2)</sup> OJ L 72, 14.3.2001, p. 6.

<sup>(3)</sup> OJ L 391, 31.12.1992, p. 36.

<sup>(4)</sup> OJ L 314, 14.12.2000, p. 8.

<sup>(5)</sup> OJ L 337, 4.12.1990, p. 7.

<sup>(6)</sup> OJ L 328, 23.12.2000, p. 1.

- (8) Farmers should be entitled to amend their area aid applications until the latest date for sowing in accordance with Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops <sup>(1)</sup>, as last amended by Regulation (EC) No 1038/2001 <sup>(2)</sup>, provided that all the particular requirements under the relevant sectoral rules are respected and that the competent authority has not yet informed the farmer of errors contained in the aid application, nor notified an on-the-spot control which reveals errors, in relation to the part affected by the amendment.
- (9) Farmers applying only for aid which is not linked to area should be exempted from the requirement to submit an area aid application.
- (10) In order to facilitate the administration of the various livestock aid schemes concerned, common provisions should be made concerning the details to be included in livestock aid applications.
- (11) Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 <sup>(3)</sup> requires keepers of bovine animals to communicate data concerning these animals to a computerised database. Article 21 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal <sup>(4)</sup>, as last amended by Regulation (EC) No 1512/2001 <sup>(5)</sup>, stipulates that aids may only be paid for animals that are properly identified and registered in accordance with Regulation (EC) No 1760/2000. The computerised database has also gained far-reaching importance as far as the management of the aid schemes is concerned. Farmers submitting applications under the aid schemes concerned should therefore be given access to the relevant information in due time.
- (12) The Member States should be authorised to make use of the information contained in the computerised database with a view to introducing simplified application procedures provided that the computerised database is reliable. It should therefore be provided that the information contained in the computerised database may form part of the aid application.
- (13) According to new forms of communication, the Member States should be able to adopt national provisions permitting communications to be made by the farmer under the integrated system to be submitted electronically.
- (14) Where aid applications contain obvious errors they should be adjustable at any time.
- (15) Respect for the time limits for the submission of aid applications and for the amendment of area aid applications is indispensable to enable the national administrations to programme and, subsequently, carry out effective checks on the correctness of the aid applications. Provision should, therefore, be made regarding the time limits within which late submissions are acceptable. Moreover, a reduction should be applied to encourage farmers to respect the time limits. Where a farmer only has to declare permanent pasture and, therefore, has to submit an area aid application, checks may be programmed differently. For these cases lower reductions may be provided for and a longer delay should be foreseen. Where the Member States make use of the possibility to set a later date for the submission of an area aid application that only relates to permanent pasture, submission of applications after the date fixed by the Member State should, however, no longer be admissible.
- (16) Farmers should be entitled to withdraw their aid applications or parts thereof at any time provided that the competent authority has not yet informed the farmer of any errors contained in the aid application nor notified an on-the-spot control which reveals errors in relation to the part affected by the withdrawal.
- (17) Compliance with the provisions on the aid schemes managed under the integrated system should be effectively monitored. To this end, and to have a harmonised level of monitoring in all Member States, it is necessary to set out in detail the criteria and technical procedures for carrying out administrative and on-the-spot checks in respect both of area and livestock aid. Where appropriate, the Member States should undertake to combine the various controls under this Regulation as well as those provided for under other Community provisions at the same time.
- (18) The minimum number of farmers to be checked on the spot under the various aid schemes should be determined. In relation to farmers applying for aids under the various bovine schemes an integrated holding-based approach should be foreseen.

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 1.

<sup>(2)</sup> OJ L 145, 31.5.2001, p. 16.

<sup>(3)</sup> OJ L 204, 11.8.2000, p. 1.

<sup>(4)</sup> OJ L 160, 26.6.1999, p. 21.

<sup>(5)</sup> OJ L 201, 26.7.2001, p. 1.

- (19) The sample of the minimum rate of on-the-spot checks should be drawn partly on the basis of a risk analysis and partly at random. The main factors to be taken into consideration for the risk analysis should be specified.
- (20) The determination of significant irregularities should require an increase in the level of the on-the-spot checks during the current and the following year to reach an acceptable level of assurance of the correctness of the aid applications concerned.
- (21) On-the-spot checks of farmers submitting aid applications do not necessarily have to be carried out on each individual animal or agricultural parcel. Checks on a sample basis may, in certain cases, be carried out. However, where this is allowed the sample should be extended to a degree that guarantees a reliable and representative level of assurance. In some cases the sample may have to be extended to a full control. The Member States should establish the criteria for the selection of the sample to be checked.
- (22) In order for the on-the-spot check to be effective it is important for the staff carrying out the checks to be informed of the reason for the selection for the on-the-spot check. The Member States should keep records of such information.
- (23) In order to enable the national authorities as well as any competent Community authority to follow up on-the-spot checks carried out the details of checks should be recorded in a control report. The farmer or a representative should be given the opportunity to sign the report. However, in the case of checks by means of remote-sensing the Member States should be allowed to provide for this right only in cases where the check reveals irregularities. Moreover, irrespective of the kind of on-the-spot check carried out, the farmer should receive a copy of the report if irregularities are found.
- (24) On-the-spot checks of areas, as a general rule, consist of two parts, the first of which relates to verifications and measurements of declared agricultural parcels on the basis of graphic material, aerial photography and so forth. The second part consists of a physical inspection of the parcels to verify the declared crop and its quality as well as the actual size of the agricultural parcels. Where necessary, measurements should be carried out. The physical inspection in the field may be carried out on the basis of a sample.
- (25) Detailed rules regarding the determination of areas and the measurement methods to be used should be laid down. In relation to the determination of the area of agricultural parcels eligible for area payments, experience has shown that it is necessary to define the acceptable width of certain features of the fields, in particular hedges, ditches and walls. In view of specific environmental needs, it is appropriate to provide some flexibility within the limits taken into account when the regional yields were fixed in accordance with Regulation (EC) No 1251/1999.
- (26) The conditions for the use of remote sensing for on-the-spot checks should be laid down and provision should be made for physical checks to be carried out in cases where photo-interpretation does not lead to clear results.
- (27) The timing and the minimum content of on-the-spot checks of farmers applying for livestock aid should be specified in order to ensure a harmonised control level in all Member States. In order to check effectively the correctness of declarations in aid applications and notifications to the computerised database it is essential to carry out a major part of such on-the-spot checks whilst animals still have to be kept on farm under the retention obligation.
- (28) The proper identification and registration of bovine animals is an eligibility condition pursuant to Article 21 of Regulation (EC) No 1254/1999. It should, therefore, be ensured that Community aid is granted only for bovines identified and registered in accordance with Regulation (EC) No 1760/2000. Such checks should also be carried out in respect of bovine animals not yet claimed but which could be subject to an aid application in the future. Due to the set-up of several of the bovine aid schemes, such bovine animals are, in many cases, only claimed for aid after they have already left the holding.
- (29) Special provision should be made for checks to be carried out in slaughterhouses in order to check that animals claimed for aid are eligible and that the information contained in the computerised database is correct. The Member States should be authorised to apply two different bases for selecting slaughterhouses for such checks.
- (30) As far as the slaughter premium granted after export of bovine animals is concerned, special provisions are necessary along with Community control provisions relating to export in general because of the differences in the control purposes.
- (31) The control provisions foreseen in relation to the livestock aid should also, where appropriate, apply as regards additional payments pursuant to Article 15 of Regulation (EC) No 1254/1999.
- (32) To protect the Community's financial interests effectively adequate measures should be adopted to combat irregularities and fraud. Separate provisions should be made for the area aid schemes on the one hand and the livestock aid schemes on the other, due to the different natures of these aid schemes.

- (33) Reductions and exclusions should be established having regard to the principle of proportionality and the special problems linked to cases of force majeure as well as exceptional and natural circumstances. Such reductions and exclusions should be graded according to the gravity of the irregularity committed and should go as far as the total exclusion from one or several aid schemes for a specified period.
- (34) Provision for reductions and exclusions should take into account the particularities of the various aid schemes subject to the integrated system. In relation to area aid applications, irregularities normally affect parts of areas, and overdeclarations in respect of one parcel may be off-set against underdeclarations of other parcels of the same crop-group. As far as livestock aid applications are concerned, irregularities lead to the ineligibility of the animal concerned. In respect of area aid applications, where irregularities are found, it should be foreseen that within a certain margin of tolerance aid applications should only be adjusted and reductions only start to apply once this margin has been exceeded. In respect of applications for livestock aid, reductions should be foreseen as from the first animal found with irregularities but, irrespective of the level of the reduction, there should be a less harsh sanction where three animals or less are found with irregularities. In all other cases the severity of the sanction should depend on the percentage of animals found with irregularities.
- (35) Special provisions are necessary to take into account the particularities of farmers applying for livestock aid and declaring forage area for that purpose. Where an overdeclaration of such areas does not lead to a higher payment for livestock no penalties should be foreseen.
- (36) Farmers should be allowed to replace suckler cows, heifers and dairy cows within the limits allowed under the relevant sectoral rules.
- (37) In relation to the bovine aid schemes and the compliance with the system for the identification and registration of bovine animals set out in Regulation (EC) No 1760/2000, provision should be made in respect of bovine animals already claimed for aid on the one hand and for bovine animals not yet claimed but which could be subject to an aid application in the future, on the other. Such bovine animals not yet claimed constitute a potential risk to the European Agricultural Guidance and Guarantee Fund (EAGGF). Due to the structure of the aid schemes, once such animals are subject to an aid application non-compliance with the system may often not be detected. Moreover, compliance with the system for the identification and registration of bovine animals is essential in order to introduce simplified application procedures based on the computerised database. Compliance with that system before aid application is actually submitted is therefore essential to protect effectively the Community's financial interests. The principle that obvious errors may be adjusted at any time should, however, also apply to erroneous notifications to, or entries into the elements of that system.
- (38) Where, due to natural circumstances, a farmer is unable to fulfill the retention obligations under the sectoral rules, reductions and exclusions should not be applied.
- (39) Due to the importance of slaughterhouses for the proper functioning of some of the bovine aid schemes, provision should also be made for cases where slaughterhouses, gross negligently or intentionally, issue false certificates or declarations.
- (40) As far as irregularities are concerned as regards the additional payments provided for in Article 14 of Regulation (EC) No 1254/1999 the Member States should provide for sanctions which should be equivalent to those provided for in relation to the area and livestock aid schemes unless this is inappropriate. In this latter case the Member States should provide for suitable equivalent sanctions.
- (41) Reductions and exclusions should, as a general rule, not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.
- (42) Farmers who give notice to the competent national authorities at any time of incorrect aid applications should not be subject to any reductions or exclusions irrespective of the reason of the incorrectness, provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and the authority has not already informed the farmer of any irregularity in the application. The same should apply in relation to incorrect data contained in the computerised database.
- (43) Where various reductions have to be applied in relation to the same farmer they should apply independently from each other and individually. Moreover, the reductions and exclusions provided for under this Regulation should apply without prejudice to additional sanctions under any other provisions of Community or national law.

- (44) The management of small amounts is a burdensome task for the competent authorities of the Member States. It is therefore appropriate to authorise the Member States not to pay amounts of aid that are below a certain minimum limit and not to request reimbursement of incorrectly paid amounts when the sums involved are minimal.
- (45) Where, as a consequence of force majeure or exceptional circumstances, a farmer is not able to fulfill the obligations provided for under the sectoral rules, he should not lose his right to the aid payment. It should be specified which cases may, in particular, be recognized by the competent authorities as cases of exceptional circumstances.
- (46) In order to ensure uniform application of the principle of good faith throughout the Community, where amounts unduly paid are recovered, the conditions under which that principle may be invoked should be laid down without prejudice to the treatment of the expenditure concerned in the context of the clearance of accounts under Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy<sup>(1)</sup>.
- (47) Rules should be established laying down who is entitled to the aid in certain cases where a holding is transferred.
- (48) As a general rule the Member States should take any further measures necessary to ensure a proper functioning of this Regulation. The Member States should give each other mutual assistance where necessary.
- (49) The Commission should, where appropriate, be informed of any measures taken by the Member States to introduce changes to their implementation of the integrated system. In order to enable the Commission to monitor the integrated system effectively, the Member States should send it certain annual control statistics.
- (50) The measures provided for in this Regulation are in accordance with the opinion of the Fund Committee,

shall be without prejudice to specific provisions laid down in the Regulations covering the individual aid schemes.

## Article 2

### Definitions

For the purposes of this Regulation the following definitions shall apply:

- (a) 'System for the identification and registration of bovine animals': the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000;
- (b) 'Ear tag': the ear tag to identify animals individually, as referred to in point (a) of Article 3 and in Article 4 of Regulation (EC) No 1760/2000;
- (c) 'Computerised database': the computerised database as referred to in point (b) of Article 3 and in Article 5 of Regulation (EC) No 1760/2000;
- (d) 'Animal passport': the animal passport to be issued as referred to in point (c) of Article 3 and Article 6 of Regulation (EC) No 1760/2000;
- (e) 'Register': the register kept by the keepers of animals in accordance with Article 4 of Council Directive 92/102/EEC<sup>(2)</sup> or point (d) of Article 3 and Article 7 of Regulation (EC) No 1760/2000 respectively;
- (f) 'Elements of the system for the identification and registration of bovine animals': the elements referred to in Article 3 of Regulation (EC) No 1760/2000;
- (g) 'Identification code': the identification code as referred to in Article 4(1) of Regulation (EC) No 1760/2000;
- (h) 'Irregularities': any non-compliance with the relevant rules for the granting of the aid in question;
- (i) 'Area aid application': application for the payment of aids under aid schemes as referred to in Article 1(1)(a) and (b)(iii) of Regulation (EEC) No 3508/92 and including the declaration of any other uses of area, in particular the declaration of forage area for the purposes of livestock aid applications;
- (j) 'Livestock aid application': applications for the payment of aids under aid schemes referred to in Article 1(1)(b)(i) and (ii) of Regulation (EEC) No 3508/92;
- (k) 'Use': the use of area in terms of the type of crop or ground cover or the absence of a crop;
- (l) 'Bovine aid schemes': aid schemes referred to in Article 1(1)(b)(i) of Regulation (EEC) No 3508/92;

HAS ADOPTED THIS REGULATION:

## TITLE I

### GENERAL

#### Article 1

#### Scope

This Regulation lays down detailed rules for applying the integrated administration and control system (hereinafter 'the integrated system') established by Regulation (EEC) No 3508/92. It

<sup>(1)</sup> OJ L 160, 26.6.1999, p. 103.

<sup>(2)</sup> OJ L 355, 5.12.1992, p. 32.

- (m) 'Ovine/caprine aid scheme': aid scheme referred to in Article 1(1)(b)(ii) of Regulation (EEC) No 3508/92;
- (n) 'Claimed bovine animals': bovine animals subject to a live-stock aid application under the bovine aid schemes;
- (o) 'Unclaimed bovine animals': bovine animals not yet subject to a livestock aid application but potentially eligible for aid under the bovine aid schemes;
- (p) 'Retention period': period during which an animal for which aid has been claimed has to be kept on the holding, as provided for in the following provisions:
  - Article 5 and Article 9(1) of Commission Regulation (EC) No 2342/1999 <sup>(1)</sup>, in relation to the special premium for male bovines,
  - Article 16 of Regulation (EC) No 2342/1999 in relation to the suckler cow premium,
  - Article 37 of Regulation (EC) No 2342/1999 in relation to the slaughter premium,
  - Article 1(3) of Commission Regulation (EEC) No 2700/93 <sup>(2)</sup>, in relation to aids paid for ovines and caprines;
- (q) 'Animal keeper': any natural or legal person responsible for animals whether on a permanent or on a temporary basis, including during transportation or at a market;
- (r) 'Area determined': the area for which all conditions laid down in the rules for the granting of the aid have been met;
- (s) 'Animal determined': an animal for which all conditions laid down in the rules for the granting of the aid have been met;
- (t) 'Premium period': period to which aid applications refer irrespective of the moment of their submission.

#### Article 3

### Identification of farmers applying for aid under the integrated system

The Member States shall introduce a single system to record the identity of each farmer who submits an aid application subject to the integrated system.

#### Article 4

### Identification and minimum size of agricultural parcels

1. The identification system referred to in Article 4 of Regulation (EEC) No 3508/92 shall operate at agricultural parcel level. The Member States may provide that another unit, such as the cadastral parcel or production block, be used instead of the agricultural parcel. In such cases the Member States shall ensure that agricultural parcels are reliably identified and in

particular shall require area aid applications to be furnished with particulars or accompanied by documents specified by the competent authority that enable each agricultural parcel to be located and measured.

2. Each Member State shall determine the minimum size of agricultural parcels in respect of which an application may be made. However, the minimum size may not exceed 0,3 ha.

#### Article 5

### General principles in respect of agricultural parcels

1. For the purposes of this Regulation:

- (a) a parcel that both contains trees and is used for crop production covered by Article 1 of Regulation (EEC) No 3508/92 shall be considered an agricultural parcel provided that the production envisaged can be carried out in a similar way as on parcels without trees in the same area;
- (b) where a forage area is used in common, the competent authorities shall notionally allocate it between the individual farmers in proportion to their use or right of use of it;
- (c) each forage area must be available for rearing animals for a minimum period of seven months, starting on a date to be determined by the Member State, which must be between 1 January and 31 March.

2. Where a forage area is situated in a Member State other than that of the farmer's principal place of business that area shall be deemed at the request of the farmer to be part of that farmer's holding provided that:

- (a) it is situated in the immediate vicinity of the holding, and
- (b) a major part of all the agricultural land used by that farmer is situated in the Member State in which he has his principal place of business.

#### TITLE II

### AID APPLICATIONS

#### CHAPTER I

### Area aid applications

#### Article 6

### Requirements pertaining to area aid applications

1. An area aid application shall contain all information necessary to establish eligibility for the aid, in particular:

- (a) the identity of the farmer;

<sup>(1)</sup> OJ L 281, 4.11.1999, p. 30.

<sup>(2)</sup> OJ L 245, 1.10.1993, p. 99.

(b) particulars permitting identification of all agricultural parcels on the holding, their area expressed in hectares to two decimal places, location, use, whether the agricultural parcel is irrigated, and the aid scheme concerned;

(c) a statement by the farmer that he is aware of the requirements pertaining to the aid in question.

2. An area aid application submitted by a farmer who is a member of a producer group as defined in Article 1(2) of Regulation (EEC) No 3493/90, and who, in respect of the same calendar year applies for both aid under the ovine/caprine aid scheme and for aid under another Community scheme shall specify all the agricultural parcels used by the producer group. In such cases the forage area shall be notionally allocated between the farmers concerned in proportion to their individual limits as determined in accordance with Article 6 of Council Regulation (EC) No 2467/98 <sup>(1)</sup>, valid on 1 January of the year concerned.

3. If an area aid application relates only to permanent pasture the Member State concerned may provide that it may be submitted by a date later than that fixed in accordance with Article 6(2) of Regulation (EEC) No 3508/92 which shall not be after 1 July.

The third subparagraph of Article 6(2) of Regulation (EEC) No 3508/92 shall apply *mutatis mutandis*.

#### Article 7

##### Declarations in relation to particular uses

1. Uses of area listed in the Annex to Regulation (EEC) No 3508/92 shall be declared separately.

2. Uses of area not listed in Article 1(1) or in the Annex to Regulation (EEC) No 3508/92 shall be declared under one or more 'other uses' headings.

3. The Member States may provide that paragraphs 1 and 2 do not apply where such information is made available to the competent authorities in the framework of other administration and control systems that guarantee compatibility with the integrated system in accordance with Article 9a of Regulation (EEC) No 3508/92.

#### Article 8

##### Amendments of area aid applications

1. Subject to paragraph 3, after the expiry of the time limit for the submission of area aid applications individual agricultural parcels not yet declared in the aid application may be added and changes regarding the use or aid scheme may be made provided that the requirements under the sectoral rules applicable to the aid scheme concerned are respected.

<sup>(1)</sup> OJ L 312, 20.11.1998, p. 1.

2. The addition of agricultural parcels and amendments in accordance with paragraph 1 shall be notified to the competent authority in writing no later than the date laid down for sowing in, or fixed in accordance with Regulation (EC) No 1251/1999.

The third subparagraph of Article 6(2) of Regulation (EEC) No 3508/92 shall apply *mutatis mutandis*.

3. Where the competent authority has already informed the farmer of irregularities in the aid application or where it has given notice to the farmer of its intention to carry out an on-the-spot check and where this on-the-spot check reveals irregularities, additions and amendments in accordance with paragraphs 1 and 2 shall not be authorised in respect of the agricultural parcels affected by the irregularities.

#### Article 9

##### Exemption from area aid applications

An area aid application need not be submitted by farmers applying for any of the following livestock aids:

- (a) the deseasonalisation premium provided for in Article 5 of Regulation (EC) No 1254/1999;
- (b) the slaughter premium provided for in Article 11 of Regulation (EC) No 1254/1999;
- (c) the special premium for male bovine animals and/or the suckler cow premium, where the farmer is exempt from the stocking rate requirement pursuant to Article 12(1) of Regulation (EC) No 1254/1999, provided that the farmer does not apply for the extensification payment provided for in Article 13 of that Regulation;
- (d) the aid provided for under the ovine/caprine aid scheme.

#### CHAPTER II

##### Livestock aid applications

#### Article 10

##### Requirements pertaining to livestock aid applications

1. A livestock aid application shall contain all information necessary to establish eligibility for the aid, in particular:

- (a) the identity of the farmer;
- (b) a reference to the area aid application if this has already been submitted;
- (c) the number of animals of each type in respect of which any aid is applied for and, for bovines, the identification code of the animals;
- (d) where applicable, an undertaking by the farmer to keep the animals referred to in point (c) on his holding during the retention period and information on the location or locations where the animals will be held including the period or periods concerned;

- (e) where applicable, the individual limit or individual ceiling for the animals concerned;
- (f) where applicable, the individual milk reference quantity available to the farmer on 31 March or, if the Member State concerned decides to make use of the derogation provided for in Article 44a of Regulation (EC) No 2342/1999, on 1 April of the calendar year concerned; where this quantity is unknown on the date on which the application is submitted, it shall be notified to the competent authority at the earliest opportunity;
- (g) a statement by the farmer that he is aware of the requirements pertaining to the aid in question.

If the animal is moved to another location during the retention period the farmer shall inform the competent authority in writing in advance.

2. The Member States shall guarantee every animal keeper the right to obtain from the competent authority without constraint at reasonable intervals and without excessive delay information on the data relating to him and his animals kept in the computerised database. When submitting his aid application, the farmer shall declare that this data is correct and complete or he shall rectify any incorrect or add missing data.

3. The Member States may decide that some of the information referred to in paragraph 1 need not be included in the aid application, where it has already been communicated to the competent authority.

The Member States may in particular introduce procedures by which data contained in the computerised database may be used for the purpose of the aid application provided that the computerised database offers the level of assurance and implementation necessary for the proper management of the aid schemes involved.

4. The Member States may provide that some of the information referred to in paragraph 1 can or shall be forwarded via a body or bodies approved by them. However, the farmer shall remain responsible for the data transmitted.

### CHAPTER III

#### **Common provisions**

##### *Article 11*

#### **Electronic transmission**

1. The Member States may permit communications required under this Regulation from the farmer to the competent authorities to be made by electronic transmission. In this event, appropriate measures shall be taken to ensure that:

- (a) the farmer is unambiguously identified and complies with all requirements;
- (b) all the necessary accompanying documents are received by the competent authorities within the same time limits as in the case of transmission by non-electronic means;
- (c) there is no discrimination between farmers using non-electronic means of submission and those opting for electronic transmission.

2. Notifications to the computerised database shall have the effect of an electronic transmission within the meaning of paragraph 1 provided that the computerised database offers the level of assurance and implementation necessary for the proper management of the aid schemes involved.

##### *Article 12*

#### **Adjustments of obvious errors**

Without prejudice to Articles 6 to 11, an aid application may be adjusted at any time after its submission, in cases of obvious errors recognised by the competent authority.

##### *Article 13*

#### **Late submission**

1. Except in cases of force majeure and exceptional circumstances within the meaning of Article 48, submission of an area aid application or a livestock aid application after the time limits laid down in the relevant sectoral rules shall lead to a 1 % reduction per working day in the amounts to which the farmer would have been entitled if the aid application had been lodged within the time limit.

If the delay amounts to more than 25 calendar-days the application shall be considered inadmissible.

Late submission of an area aid application that only relates to permanent pasture shall lead to a reduction of half a percent per working day in the amounts to which the farmer would have been entitled under the aid schemes concerned. Where such aid applications are submitted after 1 July they shall be considered inadmissible.

However, where the Member States make use of the possibility provided for in Article 6(3), no reductions shall apply in respect of aid applications submitted before the date fixed by the Member State. Aid applications submitted thereafter shall be considered inadmissible.

2. Submission of an amendment to an area aid application after the latest date for sowing as referred to in Article 8(2) shall lead to a 1 % reduction per working day in the amounts relating to the actual use of the agricultural parcels concerned.

Amendments to an area aid application shall only be admissible until the latest date for submission of an area aid application as specified in paragraph 1. However, where that date is earlier than, or the same as, the latest date for sowing as referred to in Article 8(2), amendments to an area aid application shall be considered inadmissible after that latest date for sowing.

3. Late submission of an area aid application shall not entail reductions or exclusions from the livestock aids referred to in Article 9.

4. As regards forage areas, where the area aid application is submitted late the resulting reduction shall be in addition to any other reduction applicable to the late submission of applications for aid referred to in Articles 12 and 13 of Regulation (EC) No 1254/1999.

#### Article 14

### Withdrawal of aid applications

1. An aid application may be totally or partially withdrawn at any time.

However, where the competent authority has already informed the farmer of irregularities in the aid application or where the competent authority has given notice to the farmer of its intention to carry out an on-the-spot check and where this on-the-spot check reveals irregularities withdrawals shall not be authorised in respect of the parts of the aid application affected by the irregularities.

2. Withdrawals in accordance with paragraph 1 shall put the claimant into the position he was in before he submitted the aid application or part of the aid application in question.

#### TITLE III

### CHECKS

#### Article 15

### General principle

Administrative and on-the-spot checks shall be made in such a way as to ensure effective verification of compliance with the terms under which aids are granted.

#### CHAPTER I

### Administrative checks

#### Article 16

### Cross-checks

The administrative checks referred to in Article 8(1) of Regulation (EEC) No 3508/92 shall include in particular:

- (a) cross-checks on declared agricultural parcels and animals in order to avoid undue multiple granting of the same aid in respect of the same calendar or marketing year and to prevent any undue cumulation of aid granted under Community aid schemes involving declarations of areas;
- (b) cross-checks by means of the computerised database to verify eligibility for the aid.

#### CHAPTER II

### On-the-spot checks

#### Section I

#### Common provisions

#### Article 17

### General principles

1. On-the-spot checks shall be unannounced. However, provided that the purpose of the control is not jeopardized, advance notice limited to the strict minimum necessary may be given. Such notice shall, except in duly justified cases, not exceed 48 hours.
2. Where appropriate, the on-the-spot checks provided for in this Regulation, as well as any other checks provided for in Community rules, shall be carried out at the same time.
3. The application or applications concerned shall be rejected if the farmer or his representative prevent an on-the-spot check from being carried out.

#### Article 18

### Control rate

1. The total number of on-the-spot checks carried out each year shall cover at least:
  - (a) 5 % of all farmers submitting area aid applications;
  - (b) 5 % of all farmers submitting livestock aid applications under the bovine aid schemes, except where the computerised database does not offer the level of assurance and implementation necessary for the proper management of the aid schemes involved, in which case the percentage shall be increased to 10 %. These on-the-spot checks shall also cover at least 5 % of all animals per aid scheme for which aid is applied for;
  - (c) 10 % of all farmers submitting livestock aid applications under the ovine/caprine aid scheme.
2. Should on-the-spot checks reveal significant irregularities in the context of a given aid scheme or in a region or part of a region the competent authority shall appropriately increase the number of on-the-spot checks during the current year and shall, moreover, appropriately increase the percentage of farmers to be checked on-the-spot in the following year.

3. Where it is provided that particular elements of an on-the-spot check may be carried out on the basis of a sample this sample must guarantee a reliable and representative level of control. The Member States shall establish the criteria for the selection of the sample. If the checks on that sample reveal irregularities, the extent and scope of the sample shall be extended appropriately.

#### Article 19

##### Selection of applications to be checked on the spot

1. Farmers subjected to on-the-spot checks shall be selected by the competent authority on the basis of a risk analysis and an element of representativeness of the aid applications submitted. The risk analysis shall take account of:

- (a) the amount of aid involved;
- (b) the number of agricultural parcels and the area or number of animals for which aid is requested;
- (c) changes from the previous year;
- (d) the findings of checks made in past years;
- (e) cases of non-compliance with Regulation (EC) No 1760/2000;
- (f) those farmers who are either just above or below ceilings or limits relevant for the granting of aids;
- (g) replacements of animals pursuant to Article 37;
- (h) other factors to be defined by the Member States.

To provide the element of representativity, the Member States shall select randomly between 20 % and 25 % of the minimum number of farmers to be subject to on-the-spot checks.

2. The competent authority shall keep records on the reasons for the selection of each farmer for an on-the-spot check. The inspector carrying out the on-the-spot check shall be informed accordingly prior to the commencement of the on-the-spot check.

#### Article 20

##### Control report

1. Every on-the-spot check shall be the subject of a control report which makes it possible to review the details of the checks carried out. The report shall indicate in particular:

- (a) the aid schemes and applications checked;
- (b) the persons present;
- (c) the agricultural parcels checked, the agricultural parcels measured, the results of the measurements per measured agricultural parcel and the measuring methods used;

(d) the number and type of animals found and, where applicable, the ear-tag numbers, entries in the register and in the computerised database and any supporting documents checked, the results of the checks and, where applicable, particular observations in respect of individual animals and/or their identification code;

(e) whether notice was given to the farmer of the visit and, if so, the period of advance notification;

(f) indication of any further control measures carried out.

2. The farmer or his representative shall be given the opportunity to sign the report to attest his presence at the check and to add observations. Where irregularities are found the farmer shall receive a copy of the control report.

Where the on-the-spot check is carried out by means of remote sensing in accordance with Article 23, the Member States may decide not to give the farmer or his representative the opportunity to sign the control report if no irregularities are revealed during the check by remote-sensing.

#### Section II

##### On-the-spot checks of area aid applications

#### Article 21

##### Elements of the on-the-spot checks

On-the-spot checks shall cover all the agricultural parcels for which aid is requested under aid schemes within the meaning of Article 1(1) of Regulation (EEC) No 3508/92. However, the actual inspection in the field as part of the on-the-spot check may be limited to a sample of at least half of the agricultural parcels for which applications have been submitted.

#### Article 22

##### Determination of areas

1. Agricultural parcel areas shall be determined by any appropriate means defined by the competent authority which ensure measurement of a precision at least equivalent to that required for official measurements under the national rules. The competent authority shall set a tolerance margin taking account of the measuring method used, the accuracy of the official documents available, local factors such as slope and shape of parcel and the provisions of paragraph 2.

2. The total area of an agricultural parcel may be taken into account provided that it is fully utilized according to the customary standards of the Member State or region concerned. In other cases the area actually utilized shall be taken into account.

In respect of those regions where certain features, in particular hedges, ditches and walls, are traditionally part of good agriculture cropping or utilisation practices, the Member States may decide that the corresponding area is to be considered part of the fully utilised area on condition that it does not exceed a total width to be determined by the Member States. This width must correspond to a traditional width in the region in question and shall not exceed 2 metres.

The Member States may, after prior notification to the Commission, allow a width greater than 2 metres if those areas were taken into account for the fixing of the yields of the regions concerned.

3. The eligibility of agricultural parcels shall be verified by any appropriate means. To this end additional proof shall be requested where necessary.

#### Article 23

#### Remote sensing

1. If a Member State makes use of remote sensing on all or part of the sample referred to in Article 18(1)(a) the following rules shall apply:

- (a) the zones to be controlled by remote sensing shall, as far as possible, be selected taking account of appropriate risk factors to be determined by the Member State;
- (b) the provisions of Article 19 shall apply only where not all farmers submitting aid applications and falling within the respective zone are subjected to on-the-spot checks.

2. As far as the controls by remote-sensing are concerned the Member State shall:

- (a) perform photo interpretation of satellite images or aerial photographs of all agricultural parcels to be checked with a view to recognizing the ground cover and measuring the area;
- (b) check on the spot all applications for which photo interpretation does not make it possible to verify the accuracy of the declaration to the satisfaction of the competent authority.

3. If a Member State makes use of remote sensing the additional checks referred to in Article 18(2) shall be carried out by means of traditional on-the-spot checks if it is no longer possible to carry them out by means of remote sensing within the current year.

### Section III

On-the-spot checks of livestock aid applications

#### Article 24

#### Timing of on-the-spot checks

1. The minimum rate of on-the-spot checks provided for in Article 18(1)(b), for aid schemes other than those provided for in Article 4(6) and Article 11 of Regulation (EC) No 1254/1999, shall be conducted throughout the retention period for at least one of the aid schemes concerned.

2. At least 50 % of the minimum rate of on-the-spot checks provided for in Article 18(1)(c) shall be conducted throughout the retention period. However, the minimum rate of on-the-spot checks shall be fully conducted throughout the retention period in Member States where the system established by Directive 92/102/EEC as concerns ovines and caprines, in particular in relation to the identification of animals and the proper keeping of registers, is not fully implemented and applied.

#### Article 25

#### Elements of the on-the-spot checks

1. On-the-spot checks shall cover all livestock for which aid applications have been submitted under the aid schemes to be checked and, in the case of checks of the bovine aid schemes, also the unclaimed bovine animals.

2. On-the-spot checks shall include in particular:

- (a) a check that the number of animals present on the holding for which aid applications have been submitted and the number of unclaimed bovine animals corresponds to the number of animals entered in the registers and, in the case of bovine animals, to the number of animals notified to the computerised database;
- (b) in relation to the bovine aid schemes, checks
  - of the correctness of entries in the register and the notifications to the computerised database on the basis of a sample of supporting documents such as purchase and sales invoices, slaughter certificates, veterinary certificates and, where applicable, animal passports, in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,
  - that information held in the computerised database corresponds to the information given in the register on the basis of a sample in relation to animals for which aid applications were submitted in the 12 months prior to the on-the-spot check,
  - that all animals present on the holding and still kept under the retention obligation are eligible for the aid claimed,

— that all bovine animals present on the holding are identified by ear-tags and accompanied, where applicable, by animal passports and that they are recorded in the register and have been duly notified to the computerised database. These checks shall be made individually for each individual male bovine still kept under the retention obligation for which an application has been submitted for the special beef premium with the exception of those submitted in accordance with Article 4(6) of Regulation (EC) No 1254/1999. In all other cases the check on correct recording in the animal passports, the register and notification to the database may be made on the basis of a sample;

- (c) in relation to the ovine/caprine aid scheme, a check on the basis of the register that all the animals for which aid applications were submitted in the 12 months prior to the on-the-spot check have been kept on the holding throughout the retention period and a check of the correctness of entries in the register on the basis of a sample of supporting documents such as purchase and sales invoices and veterinary certificates.

#### Article 26

#### **Control-measures as regards on-the-spot checks in slaughterhouses**

1. As regards the special beef premium provided for in Article 4(6) of Regulation (EC) No 1254/1999 and the slaughter premium provided for in Article 11 of that Regulation, on-the-spot checks shall be carried out in the slaughterhouses. In this case the Member States shall carry out on-the-spot checks either:

- (a) in at least 30 % of all slaughterhouses, selected on the basis of a risk analysis, in which case the controls shall cover a sample of 5 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check, or
- (b) in at least 20 % of those slaughterhouses which have been approved beforehand according to particular criteria of reliability to be determined by the Member States and are selected on the basis of a risk analysis, in which case the controls shall cover a sample of 2 % of the total number of bovine animals which have been slaughtered in the slaughterhouse concerned during the 12 months prior to the on-the-spot check.

These on-the-spot checks shall comprise a posteriori scrutiny of documents, a comparison with the entries in the computerised database and checks of summaries relating to the slaughter certificates, or information in place thereof, which were sent to other Member States in accordance with Article 35(3) of Regulation (EC) No 2342/1999.

2. On-the-spot checks in the slaughterhouses shall comprise physical checks of slaughtering procedures carried out on the day of the on-the-spot check on the basis of a sample. Where necessary, it shall be checked whether the carcasses presented for weighing are eligible for aid.

#### Article 27

#### **Control-measures as regards the premium granted after export**

1. As regards the slaughter premium granted for bovine animals exported to third countries in accordance with Article 11 of Regulation (EC) No 1254/1999 all loading operations shall be subject to on-the-spot checks, which shall be carried out as follows:

- (a) at the time of loading, it shall be verified that all bovine animals are identified by ear-tags. Furthermore, at least 10 % of the bovine animals so verified shall be checked individually with a view to verifying their identification;
- (b) at the time of the departure from the Community territory:
- where an official customs seal has been applied to the means of transport, it shall be checked that the seal is undamaged. If the seal is undamaged a sample check shall only be carried out if there are doubts as to the regularity of the load,
  - where no official customs seal has been applied to the means of transport or where a customs seal is damaged, at least 50 % of bovine animals that were individually checked at the time of loading shall be checked again.

2. The animal passports shall be surrendered to the competent authority in accordance with Article 6(5) of Regulation (EC) No 1760/2000.

3. The paying agency within the meaning of Article 4(2) of Regulation (EC) No 1258/1999 which is responsible for the payment of the premium shall scrutinize the aid applications on the basis of the payment files and other available information, paying particular attention to the documents relating to the export and the comments of the competent control authorities and shall check whether the animal passports have been surrendered in accordance with paragraph 2.

#### Article 28

#### **Special provisions as regards additional payments**

As regards the additional payments provided for in Article 15 of Regulation (EC) No 1254/1999 the Member State shall, where appropriate, apply the provisions of this Title. If the application of those provisions is not appropriate because of the structure of the additional payment scheme, the Member States shall provide controls ensuring a control level equivalent to that laid down in this Regulation.

*Article 29***Special provisions as regards the control report**

1. Where Member States carry out on-the-spot checks pursuant to this Regulation in conjunction with inspections pursuant to Commission Regulation (EC) No 2630/97 <sup>(1)</sup>, the control report provided for in Article 20 shall be supplemented by reports in accordance with Article 2(5) of that Regulation.

2. With regard to the checks in slaughterhouses provided for in Article 26(1), the control report provided for in Article 20 may consist of an indication in the slaughterhouse accounts showing which animals have been subject to the checks.

With regard to the checks provided for in Article 26(2), the report shall include, inter alia, the identification numbers, the carcass weights and dates of the slaughter in relation to all animals slaughtered and checked on the day of the on-the-spot check.

3. With regard to the checks provided for in Article 27, the control report may consist only of an indication of the animals so checked.

4. Where on-the-spot checks conducted in accordance with this Regulation reveal cases of non-compliance with the provisions of Title I of Regulation (EC) No 1760/2000, copies of the control report provided for in Article 20 shall be sent without delay to the authorities responsible for the implementation of Regulation (EC) No 2630/97.

## TITLE IV

**BASIS FOR THE CALCULATION OF THE AID, REDUCTIONS AND EXCLUSIONS**

## CHAPTER I

***Findings in relation to area aid applications****Article 30***General principles**

For the purpose of this chapter the following crop-groups shall be distinguished:

<sup>(1)</sup> OJ L 354, 30.12.1997, p. 23.

(a) forage areas declared for the purposes of Article 12 of Regulation (EC) No 1254/1999;

(b) forage areas other than pasture-land and other than areas used for the production of arable-crops within the meaning of Article 13(3)(b) of Regulation (EC) No 1254/1999 declared for the purposes of Article 13 of that Regulation;

(c) pasture land within the meaning of Article 13(3)(c) of Regulation (EC) No 1254/1999 declared for the purposes of Article 13 of that Regulation;

(d) permanent pasture land declared for the purposes of Article 19 of Council Regulation (EC) No 1255/1999 <sup>(2)</sup>;

(e) crop areas for which a different aid rate is applicable;

(f) set-aside areas and, where applicable, set-aside areas for which a different aid-rate is applicable.

*Article 31***Basis of calculation**

1. If the area of a crop group determined is found to be greater than that declared in the aid application, the area declared shall be used for calculation of the aid.

2. Without prejudice to reductions and exclusions in accordance with Articles 32 to 35, if the area declared in an area aid application exceeds the area determined for that crop group as a result of administrative or on-the-spot checks the aid shall be calculated on the basis of the area determined for that crop group.

3. The calculation of the maximum eligible area for the area payments to arable crop producers shall be made on the basis of the area of set-aside land determined and on a pro rata basis for each crop concerned. However, payments to arable crop producers shall, in relation to the area of set-aside land determined, only be reduced to the level corresponding to the area which would be needed to produce 92 tonnes of cereals in accordance with Article 6(7) of Regulation (EC) No 1251/1999.

4. If a farmer has been unable to comply with his obligations as a result of force majeure or exceptional circumstances within the meaning of Article 48, he shall retain his right to aid in respect of the area eligible at the time when the case of force majeure or the exceptional circumstance occurred.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 48.

*Article 32***Reductions and exclusions in cases of overdeclaration**

1. If, in respect of a crop-group, the area declared exceeds the area determined in accordance with Article 31(2) the aid shall be calculated on the basis of the area determined reduced by twice the difference found if that difference is more than either 3 % or two hectares but no more than 20 % of the area determined.

If the difference is more than 20 % of the area determined, no area-linked aid shall be granted for the crop-group concerned.

2. If, in respect of the overall area determined covered by an application for aid under the aid schemes referred to in Article 1(1)(a) of Regulation (EEC) No 3508/92, the area declared exceeds the area determined in accordance with Article 31(2) by more than 30 %, the aid to which the farmer would have been entitled pursuant to Article 31(2) shall be refused for the calendar year in question under those aid schemes.

If the difference is more than 50 %, the farmer shall be excluded once again from receiving aid up to an amount equal to that to be refused under the first subparagraph. This amount shall be off-set against aid payments under any of the aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

*Article 33***Intentional non-compliance**

Where differences between the area declared and the area determined in accordance with Article 31(2) result from irregularities committed intentionally, the aid to which the farmer would have been entitled pursuant to Article 31(2) shall not be granted for the calendar year in question under the aid scheme concerned.

Moreover, where that difference is more than 20 % of the area determined, the farmer shall be excluded once again from receiving aid up to an amount equal to that to be refused under the first subparagraph. This amount shall be off-set against aid payments under any of the aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

*Article 34***Calculation of forage area for premiums referred to in Article 12 of Regulation (EC) No 1254/1999**

1. Articles 31, 32(1) and 33 shall apply to the calculation of the forage-area for the granting of the aids referred to in Article 12 of Regulation (EC) No 1254/1999.

2. Where a difference of more than 50 % is found between the area declared and the area determined in accordance with Article 31(2), the farmer shall, in the framework of aid applications he lodges in the course of the three calendar years following the calendar year of the finding, be excluded once again in respect of a forage area equal to the area for which aid is refused under the second subparagraph of Article 32(1).

3. Reductions and exclusions in accordance with paragraphs 1 and 2 shall only apply if the area declared resulted, or would have resulted, in a higher payment.

*Article 35***Calculation of forage area for the extensification payment in accordance with Article 13 of Regulation (EC) No 1254/1999**

1. Extensification payments as provided for in Article 13 of Regulation (EC) No 1254/1999 may not be granted for a greater number of animals than that for which the premiums referred to in Article 12 of that Regulation may be paid after application of Article 34 of this Regulation.

2. Without prejudice to paragraph 1, the forage area concerned shall be determined in accordance with Article 31.

If the ceiling of the stocking density factor is not exceeded in relation to the area thus determined the area determined shall be the basis for the calculation of the extensification payment.

If the ceiling is exceeded, the total amount of aid to which the farmer is entitled following aid applications under aid schemes referred to in Article 12 of Regulation (EC) No 1254/1999 submitted during the calendar year in question, shall be reduced by 50 % of the amount the farmer has, or would otherwise have, received as extensification payment.

3. Where the difference between the area declared and the area determined results from irregularities committed intentionally and where the ceiling of the stocking density factor is exceeded in relation to the area determined, the total amount of aid referred to in paragraph 2 shall be refused. In this case, the second subparagraph of Article 33 shall, moreover, apply accordingly.

## CHAPTER II

**Findings in relation to livestock aid applications**

## Article 36

**Basis of calculation**

1. Where an individual limit or individual ceiling is applicable, the number of animals shown in the aid applications shall be reduced to the limit or ceiling set for the farmer concerned.

2. In no case may aid be granted for a number of animals greater than that shown in the aid application.

3. Without prejudice to Articles 38 and 39, if the number of animals declared in an aid application exceeds that determined as a result of administrative or on-the-spot checks, the aid shall be calculated on the basis of the animals determined.

However, if a farmer has been unable to comply with his retention obligation as a result of force majeure or exceptional circumstances within the meaning of Article 48, he shall retain his right to aid in respect of the number of animals eligible at the time when the case of force majeure or the exceptional circumstance occurred.

4. Where cases of non-compliance with the system for the identification and registration for bovine animals are found the following shall apply:

- (a) a bovine animal which has lost one of the two eartags shall be regarded as determined provided that it is clearly and individually identified by the other elements of the system for the identification and registration of bovine animals;
- (b) where the irregularities found relate to incorrect entries in the register or the animal passports, the animal concerned shall only be deemed as not determined if such errors are found on at least two checks within a period of 24 months. In all other cases the animals concerned shall be deemed as not determined already after the first finding.

The provisions of Article 12 shall apply in relation to entries in, and notifications to, the system for the identification and registration of bovine animals.

## Article 37

**Replacement**

1. Bovine animals present on the holding shall only be regarded as determined if they are identified in the aid application. However, suckler cows or heifers in respect of which aid is claimed in accordance with Article 6(2) or Article 10(1) of Regulation (EC) No 1254/1999 and dairy cows in respect of which aid is claimed in accordance with Article 13(4) of that Regulation may be replaced during the retention period within

the limits provided for in those Articles without the loss of the right to the payment of the aid applied for.

2. Replacements pursuant to paragraph 1 shall occur within 20 days following the event necessitating the replacement and shall be entered in the register not later than three days after the day of replacement. The competent authority to which the aid application was submitted shall be informed within ten working days after the replacement.

## Article 38

**Reductions and exclusions in respect of bovine animals claimed for aid**

1. Where, in respect of an application for aid under the bovine aid schemes, a difference is found between the number of animals declared and that determined in accordance with Article 36(3), the total amount of aid to which the farmer is entitled under those schemes for the premium period concerned shall be reduced by the percentage to be established in accordance with paragraph 3, if no more than 3 animals are found with irregularities.

2. If more than 3 animals are found with irregularities the total amount of aid to which the farmer is entitled under those schemes for the premium period concerned shall be reduced by:

- (a) the percentage to be established in accordance with paragraph 3, if this is not more than 10 %, or
- (b) twice the percentage to be established in accordance with paragraph 3, if this is more than 10 % but not more than 20 %.

If the percentage established in accordance with paragraph 3 is more than 20 %, the aid to which the farmer would have been entitled pursuant to Article 36(3) shall be refused under those schemes for the premium period concerned.

If the percentage established in accordance with paragraph 3 is more than 50 %, the farmer shall, moreover, be excluded once again from receiving aid up to an amount equal to that to be refused under the first subparagraph. This amount shall be off-set against aid payments under the bovine aid schemes to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

3. In order to establish the percentages referred to in paragraphs 1 and 2, the bovine animals claimed under all bovine aid schemes during the premium period concerned and found with irregularities shall be divided by all bovine animals determined for the premium period concerned.

4. Where differences between the number of animals declared and that determined in accordance with Article 36(3) result from irregularities committed intentionally the aid to which the farmer would have been entitled pursuant to Article 36(3) shall be refused under the bovine aid scheme or schemes concerned for the premium period in question.

Where the difference established in accordance with paragraph 3 is more than 20 %, the farmer shall be excluded once again from receiving aid up to an amount equal to that to be refused under the first subparagraph. This amount shall be off-set against aid payments under the bovine aid schemes to which the farmer is entitled in the context of applications he lodges in the course of the three calendar years following the calendar year of the finding.

#### Article 39

##### **Non-compliance with the provisions concerning the identification and registration of unclaimed bovine animals**

1. Where cases of non-compliance with the provisions of the system for the identification and registration of bovine animals are found as a result of an on-the-spot check concerning unclaimed bovine animals, the total amount of aid to which the farmer is entitled pursuant to Article 36(3) under the bovine aid schemes for the premium period concerned, where appropriate after the application of reductions in accordance with Article 38, shall, except in cases of force majeure or exceptional circumstances within the meaning of Article 48, be reduced by an amount to be calculated on the basis of the formula set out in paragraph 2.

The same shall apply where more bovine animals have been entered in, or notified to, the elements of the system for the identification and registration of bovine animals than are present on the holding.

Article 36(4) shall apply *mutatis mutandis*.

2. The calculation referred to in paragraph 1 shall be carried out according to the following formula:

$$\frac{a}{b} \times \frac{b+c}{2c} \times d$$

In this formula the symbols shall mean:

a = the number of cases of non-compliance with the system for the identification and registration of bovine animals;

b = the number of bovine animals present on the holding at the time of the on-the-spot check;

c = the average number of bovine animals on the holding during the year in which the on-the-spot check is carried out by applying *mutatis mutandis* the methods used for the purposes of Article 32 of Regulation (EC) No 2342/1999;

d = the total amount of aid to which the farmer is entitled pursuant to Article 36(3) under the bovine aid schemes for the premium period concerned, where appropriate after

the application of reductions in accordance with Article 38.

3. Where several on-the-spot checks are carried out in respect of the same farmer in the course of one year any reductions to be applied according to paragraph 1 shall be calculated on the basis of the arithmetical average of the results established for each on-the-spot check.

4. If the non-compliance referred to in paragraph 1 is committed intentionally, no aid shall be granted under the aid scheme or schemes concerned for the premium period in question.

#### Article 40

##### **Reductions and exclusions in respect of ovines/caprines claimed for aid**

Where, in respect of applications for aid under the ovine/capraine aid scheme, a difference is found between the number of animals declared and that determined in accordance with Article 36(3), Article 38(2), (3) and (4) shall apply *mutatis mutandis* as from the first animal in respect of which irregularities are found.

#### Article 41

##### **Natural circumstances**

The reductions and exclusions provided for in Articles 38 and 40 shall not apply in cases where, owing to the impact of natural circumstances on the herd or flock, the farmer cannot meet his commitment to keep the animals in respect of which aid is claimed throughout the retention period, provided that he has informed the competent authority in writing within ten working days of finding any reduction in the number of animals.

Without prejudice to the actual circumstances to be taken into account in individual cases, the competent authorities may recognise, in particular, the following cases of natural circumstances of the herd or flock:

- (a) death of an animal as a consequence of a disease;
- (b) death of an animal following an accident for which the farmer cannot be held responsible.

#### Article 42

##### **False certificates and declarations issued by slaughterhouses**

As regards the declarations or certificates issued by slaughterhouses in connection with the slaughter premium in accordance with Article 35 of Regulation (EC) No 2342/1999, if it is found that the slaughterhouse gave a false certification or declaration as a result of serious negligence or intentionally, the Member State concerned shall apply appropriate national sanctions. Where such irregularities are found a second time the slaughterhouse involved shall be excluded for a period of at least one year from the right to make declarations or to issue certificates valid for premium purposes.

## Article 43

**Findings in relation to additional payments**

As regards the additional payments provided for in Article 14 of Regulation (EC) No 1254/1999 the Member States shall provide for reductions and exclusions which shall, in substance, be equivalent to those provided for in this Title.

## CHAPTER III

**Common provisions**

## Article 44

**Exceptions from the application of reductions and exclusions**

1. The reductions and exclusions provided for in this Title shall not apply where the farmer submitted factually correct information or where he can show otherwise that he is not at fault.

2. The reductions and exclusions provided for in this Title shall not apply with regard to those parts of the aid application as to which the farmer informs the competent authority in writing that the aid application is incorrect or has become incorrect since it was lodged, provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check and that the authority has not already informed the farmer of any irregularity in the application.

The information given by the farmer as referred to in the first subparagraph shall have the effect that the aid application is adjusted to the actual situation.

## Article 45

**Amendments and adjustments of entries in the computerised database**

1. In respect of claimed bovine animals, Article 44 shall apply from the time the aid application is submitted to errors and omissions in relation to entries in the computerised database.

2. In respect of unclaimed bovine animals the reductions and exclusions provided for in Article 39 shall not apply if the farmer communicates amendments and adjustments of entries in the computerised database to the competent authority provided that the farmer has not been informed of the competent authority's intention to carry out an on-the-spot check.

## TITLE V

**GENERAL PROVISIONS**

## Article 46

**Minimum payments**

The Member States may decide not to grant any aid if the amount per aid application does not exceed EUR 50.

## Article 47

**Accumulation of sanctions**

1. Reductions and exclusions under this Regulation shall apply independently from each other and individually.

2. Subject to Article 6 of Council Regulation (EC) No 2988/95 <sup>(1)</sup>, the reductions and exclusions under this Regulation shall be without prejudice to additional sanctions pursuant to any other provisions under Community or national law.

## Article 48

**Force majeure and exceptional circumstances**

1. Cases of force majeure and of exceptional circumstances with relevant evidence to the satisfaction of the competent authority shall be notified in writing to the authority within ten working days of the date on which the farmer is in a position to do so.

2. Exceptional circumstances may be recognized by the competent authority in cases such as, for example:

- (a) the death of the farmer;
- (b) long-term professional incapacity of the farmer;
- (c) a severe natural disaster gravely affecting the holding's agricultural land;
- (d) the accidental destruction of livestock buildings on the holding;
- (e) an epizootic affecting part or all of the farmer's livestock.

## Article 49

**Recovery of undue payments**

1. If undue payment is made, the farmer shall repay the amount in question plus interest calculated in accordance with paragraph 3.

2. The Member States may decide that recovery of an undue payment is to be made by deduction of that amount from any advances or payments under aid schemes referred to in Article 1(1) of Regulation (EEC) No 3508/92 made to the farmer following the date of the decision to recover. However, the farmer may repay the amount without waiting for the deduction.

3. Interest shall be calculated for the period elapsing between the notification of the repayment obligation to the farmer and either repayment or deduction.

The rate of interest applicable shall be calculated according to the provisions of national law but shall not be lower than the interest rate applicable for the recovery of amounts under national provisions.

<sup>(1)</sup> OJ L 312, 23.12.1995, p. 1.

4. The repayment obligation referred to in paragraph 1 shall not apply if the payment was made by error of the competent authority itself or of another authority and if the error could not reasonably have been detected by the farmer.

However, where the error relates to factual elements relevant for the calculation of the payment concerned, the first subparagraph shall only apply if the decision to recover was not communicated within 12 months of the payment.

5. The repayment obligation referred to in paragraph 1 shall not apply if the period which elapsed between the date of the payment of the aid and that of the first notification to the beneficiary by the competent authority concerning the undue nature of the payment concerned is more than ten years.

However, the period referred to in the first subparagraph shall be limited to four years if the beneficiary acted in good faith.

6. Amounts to be recovered as a consequence of the application of reductions and exclusions pursuant to Article 13 and Title IV shall be subject to a prescription period of four years.

7. Paragraphs 4 and 5 shall not apply in the case of advances.

8. The Member States may decide not to recover amounts of EUR 100 or less, not including interest, per farmer and per premium period, provided that their national law provides for non-recovery in such cases.

#### Article 50

##### **Transfer of holdings**

1. For the purposes of this Article:

- (a) the 'transfer of a holding' means the sale, lease or any similar type of transaction in respect of the production units concerned;
- (b) 'transferor' means the farmer whose holding is transferred to another farmer;
- (c) 'transferee' means the farmer to whom the holding is transferred.

2. Where a holding is transferred in its entirety from one farmer to another farmer after an aid application has been lodged and before all the conditions for granting the aid have been fulfilled, no aid shall be granted to the transferor in respect of the transferred holding.

3. The aid applied for by the transferor shall be granted to the transferee where:

- (a) within a period of the transfer to be determined by the Member States the transferee informs the competent authority of the transfer and requests payment of the aid;
- (b) the transferee presents any evidence required by the competent authority;

- (c) all the conditions for granting the aid are fulfilled in respect of the holding transferred;

4. Once the transferee informs the competent authority of the transfer of the holding and requests payment of the aid in accordance with point (a) of paragraph 3:

- (a) all rights and obligations of the transferor resulting from the legal relationship between the transferor and the competent authority generated by the aid application shall be conferred on the transferee;
- (b) all actions necessary for the granting of the aid and all declarations made by the transferor prior to the transfer shall be attributed to the transferee for the purpose of applying the relevant Community rules;
- (c) the holding transferred shall be considered, where appropriate, as a separate holding in respect of the marketing year or premium period in question.

5. Where an aid application is lodged after the actions necessary for the granting of the aid have been performed and a holding is transferred in its entirety from one farmer to another farmer after those actions have started but before all the conditions for granting the aid have been fulfilled, the aid may be granted to the transferee provided the conditions in points (a) and (b) of paragraph 3 are fulfilled. In this case, point (b) of paragraph 4 shall apply.

6. The Member States may decide, where appropriate, to grant the aid to the transferor. In this event:

- (a) no aid shall be granted to the transferee, and
- (b) the Member States shall ensure analogous application of the requirements set out in paragraphs 2 to 5.

#### Article 51

##### **Additional measures and mutual assistance between Member States**

1. The Member States shall take all further measures required for the proper application of this Regulation and shall give the mutual assistance needed for the purposes of checks required pursuant to this Regulation. In this respect the Member States may, where this Regulation does not provide for appropriate reductions and exclusions, also provide appropriate national sanctions against producers or other marketing participants such as slaughterhouses or associations involved in the procedure for granting aid in order to ensure the compliance with control requirements such as the current herd register of the holding or the respect of notification obligations.

2. As far as necessary or provided, the Member States shall assist one another mutually to ensure effective controls, and to ensure the check on the authenticity of documents submitted and/or the accuracy of the data exchanged.

*Article 52***Notifications**

1. Where the Member States introduce changes to their implementation of the integrated system they shall inform the Commission thereof.

2. The Member States shall send the Commission by 31 March each year at the latest, for arable crops, and by 31 August each year at the latest, for animal premiums, a report covering the previous calendar year and, in particular, relating to the following areas:

- (a) the state of implementation of the integrated system;
- (b) the number of applications as well as the total area and total number of animals broken down by individual aid scheme within the meaning of Article 1 of Regulation (EEC) No 3508/92;
- (c) the number of applications as well as the total area and total number of animals covered by checks;
- (d) the result of the checks carried out, indicating the reductions and exclusions applied pursuant to Title IV.

At the same time as the notifications referred to in the first subparagraph in respect of animal premiums are sent to the Commission, the Member States shall also notify the total number of beneficiaries who received aids under aid schemes falling within the scope of the integrated system.

In exceptional situations the Member States may, in agreement with the Commission, derogate from the dates mentioned in the first subparagraph.

3. The Member States shall inform the Commission of national measures taken in application of this Regulation.

4. The computerised data established as a part of the integrated system shall be used to support the information specified in the framework of sectoral rules which the Member States are obliged to send to the Commission.

## TITLE VI

**TRANSITIONAL AND FINAL PROVISIONS***Article 53***Repeal**

1. Regulation (EEC) No 3887/92 is hereby repealed. However, it shall continue to apply in respect of aid applications relating to marketing years or premium periods which expire before 1 January 2002.

2. References to Regulation (EEC) No 3887/92 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

*Article 54***Entry into force**

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

2. It shall apply to aid applications relating to marketing years or premium periods starting as of 1 January 2002.

Article 3 and the second subparagraph of Article 52(2) shall apply with effect from 1 January 2003.

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

Done at Brussels, 11 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

## ANNEX

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**COMMISSION REGULATION (EC) No 2420/2001****of 11 December 2001****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 1516/96 <sup>(2)</sup>, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat <sup>(3)</sup>, as last amended by Commission Regulation (EC) No 2916/95 <sup>(4)</sup>, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin <sup>(5)</sup>, as last amended by Regulation (EC) No 2916/95, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 <sup>(6)</sup>, as last amended by Regulation (EC) No 2203/2001 <sup>(7)</sup>, fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

- (2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.

- (3) It is necessary to apply this amendment as soon as possible, given the situation on the market.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

*Article 2*

This Regulation shall enter into force on 12 December 2001.

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

Done at Brussels, 11 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ L 282, 1.11.1975, p. 49.

<sup>(2)</sup> OJ L 189, 30.7.1996, p. 99.

<sup>(3)</sup> OJ L 282, 1.11.1975, p. 77.

<sup>(4)</sup> OJ L 305, 19.12.1995, p. 49.

<sup>(5)</sup> OJ L 282, 1.11.1975, p. 104.

<sup>(6)</sup> OJ L 145, 29.6.1995, p. 47.

<sup>(7)</sup> OJ L 296, 14.11.2001, p. 5.

## ANNEX

to the Commission Regulation of 11 December 2001 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

## ‘ANNEX I

| CN code    | Description                                                                                                                                                  | Representative price<br>(EUR/100 kg) | Security referred to in<br>Article 3(3)<br>(EUR/100 kg) | Origin <sup>(1)</sup> |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------------------------|-----------------------|
| 0207 12 90 | Chickens, plucked and drawn, without heads and feet and without necks, hearts, livers and gizzards, known as “65 % chickens”, or otherwise presented, frozen | 112,8                                | 2                                                       | 01                    |
| 0207 14 10 | Boneless cuts of fowl of the species <i>Gallus domesticus</i> , frozen                                                                                       | 211,6                                | 27                                                      | 01                    |
|            |                                                                                                                                                              | 211,6                                | 27                                                      | 02                    |
|            |                                                                                                                                                              | 192,6                                | 34                                                      | 03                    |
|            |                                                                                                                                                              | 258,7                                | 12                                                      | 04                    |
|            |                                                                                                                                                              | 292,5                                | 2                                                       | 05                    |
| 0207 14 60 | Chicken legs and cuts thereof, frozen                                                                                                                        | 109,0                                | 10                                                      | 01                    |
| 0207 14 70 | Other parts of chicken, frozen                                                                                                                               | 210,0                                | 22                                                      | 01                    |
| 0207 27 10 | Boneless cuts of turkeys, frozen                                                                                                                             | 283,7                                | 4                                                       | 01                    |
| 0207 36 15 | Boneless cuts of ducks and guinea fowls, frozen                                                                                                              | 309,8                                | 3                                                       | 03                    |
| 1602 32 11 | Preparations of uncooked fowl of the species <i>Gallus domesticus</i>                                                                                        | 220,6                                | 20                                                      | 01                    |
|            |                                                                                                                                                              | 213,6                                | 22                                                      | 02                    |

<sup>(1)</sup> Origin of imports:

- 01 Brazil
- 02 Thailand
- 03 China
- 04 Argentina
- 05 Chile.

**COMMISSION REGULATION (EC) No 2421/2001  
of 11 December 2001  
fixing the export refunds on poultrymeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat <sup>(1)</sup>, as last amended by Commission Regulation (EC) No 2916/95 <sup>(2)</sup>, and in particular Article 8(3) thereof,

Whereas:

- (1) Article 8 of Regulation (EEC) No 2777/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) It follows from applying these rules and criteria to the present situation on the market in poultrymeat that the refund should be fixed at an amount which would permit Community participation in world trade and

would also take account of the nature of these exports and their importance at the present time.

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

HAS ADOPTED THIS REGULATION:

*Article 1*

The list of product codes for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2777/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

*Article 2*

This Regulation shall enter into force on 12 December 2001.

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

Done at Brussels, 11 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 282, 1.11.1975, p. 77.

<sup>(2)</sup> OJ L 305, 19.12.1995, p. 49.

## ANNEX

## to the Commission Regulation of 11 December 2001 fixing the export refunds on poultrymeat

| Product code    | Destination | Unit of measurement | Amount of refund |
|-----------------|-------------|---------------------|------------------|
| 0105 11 11 9000 | A02         | EUR/100 pcs         | 1,00             |
| 0105 11 19 9000 | A02         | EUR/100 pcs         | 1,00             |
| 0105 11 91 9000 | A02         | EUR/100 pcs         | 1,00             |
| 0105 11 99 9000 | A02         | EUR/100 pcs         | 1,00             |
| 0105 12 00 9000 | A02         | EUR/100 pcs         | 2,15             |
| 0105 19 20 9000 | A02         | EUR/100 pcs         | 2,15             |
| 0207 12 10 9900 | V01         | EUR/100 kg          | 28,00            |
| 0207 12 10 9900 | A24         | EUR/100 kg          | 28,00            |
| 0207 12 90 9190 | V01         | EUR/100 kg          | 28,00            |
| 0207 12 90 9190 | A24         | EUR/100 kg          | 28,00            |
| 0207 12 90 9990 | V01         | EUR/100 kg          | 28,00            |
| 0207 12 90 9990 | A24         | EUR/100 kg          | 28,00            |
| 0207 14 20 9900 | V03         | EUR/100 kg          | 5,00             |
| 0207 14 60 9900 | V03         | EUR/100 kg          | 5,00             |
| 0207 14 70 9190 | V03         | EUR/100 kg          | 5,00             |
| 0207 14 70 9290 | V03         | EUR/100 kg          | 5,00             |

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

The other destinations are defined as follows:

V01 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, the United Arab Emirates, Jordan, Yemen, Lebanon, Iraq, Iran

V03 All destinations except the United States of America and zones A24 and A26.

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 25 July 2001

**on the State aid implemented by France in the form of development assistance for the cruise vessel 'Le Levant', built by Alstom Leroux Naval for operation in Saint-Pierre-et-Miquelon**

(notified under document number C(2001) 2435)

(Only the French text is authentic)

(Text with EEA relevance)

(2001/882/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 the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding <sup>(1)</sup>, and in particular Article 4(7) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(2)</sup>,

Whereas:

observations submitted by the legal representatives of Compagnie des Îles du Levant (hereinafter referred to as 'CIL') in the context of the procedure. The Commission asked further questions in a letter dated 26 February 2001, to which France replied by letters dated 30 April 2001 and 11 June 2001.

- (2) By letter SG(99)D/9733 dated 2 December 1999, the Commission informed France that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* <sup>(3)</sup>. The Commission invited interested parties to submit their comments on the aid.
- (4) The comments received were forwarded by the Commission to France, which was given the opportunity to react.

## I. PROCEDURE

- (1) From an article published in *Lloyds List*, the Commission learned in late 1998 that the cruise vessel *Le Levant*, built by Alstom Leroux Naval in France at a contract price of FRF 228,55 million, had been financed by means of tax concessions available to investors financing the building of the vessel. This aid had not been notified to the Commission. In response to the Commission's enquiries, France provided information about the project by letter dated 12 May 1999. The Commission asked additional questions by letter dated 4 June 1999, to which France replied by letter dated 19 August 1999. France submitted observations by letters dated 12 January and 14 June 2000, the latter letter commenting on the

## II. DETAILED DESCRIPTION ON THE AID

- (5) The aid was granted in 1996, when the cruise vessel *Le Levant* was acquired by a group of private investors who put it into joint ownership on the initiative of [...] <sup>(\*)</sup>. The vessel was then leased to CIL, which is a subsidiary of the French company Compagnie des Îles du Ponant registered in Wallis and Futuna. The investors were authorised to deduct their investment from their taxable income. These tax concessions enabled CIL to operate the vessel on attractive terms. The investors have the

<sup>(1)</sup> OJ L 380, 31.12.1990, p. 13.

<sup>(2)</sup> OJ C 33, 5.2.2000, p. 6.

<sup>(3)</sup> See footnote 2.

<sup>(\*)</sup> Business secret.

right and obligation to sell back their shares to [...] after five years, i.e. at the beginning of 2004. CIL in turn has the right and obligation to buy the shares from [...] at a price which will enable the value of the aid to be passed on to it. As a condition of the aid, CIL is required to operate the vessel for a minimum of five years, essentially to and from St-Pierre-et-Miquelon, and for 160 days a year.

(6) The aid was granted under a tax scheme, the Loi Pons, allowing tax concessions for investments in the French overseas departments and territories. This scheme was approved by the Commission in 1992.

(7) France has informed the Commission that the aid in this case is identical to the aid granted for the vessel *Tahiti Nui* (*Paul Gauguin*), for which the Commission estimated the tax concessions to have a net grant equivalent of 34 % <sup>(4)</sup>. The aid represented by the tax concessions was thus FRF 78 million (EUR 11,9 million).

(8) The Commission had doubts concerning the estimated economic benefits for Saint-Pierre-et-Miquelon. The project was expected to create 55 jobs on board the vessel, but there was no guarantee that the crew would be residents of the islands. Moreover, the overall economic benefits (originally estimated by France at FRF 12 million per annum over the five-year period during which CIL was required to operate the vessel essentially to and from the islands) were lower than the total amount of aid, a fact which gave rise to questions concerning its proportionality. The Commission also had doubts as to whether the aid really was development assistance since the vessel seems to have called in at Saint-Pierre-et-Miquelon much less often than originally envisaged.

(9) The Commission therefore doubted whether the conditions of Article 4(7) of Directive 90/684/EC had been met and decided to initiate the procedure laid down in Article 88(2) of the Treaty.

### III. COMMENTS FROM INTERESTED PARTIES

(10) The Commission has received comments from CIL's legal representatives.

(11) They argued that the company should not be regarded as the beneficiary of the aid since it is currently responsible only for operating the vessel, at its own risk, on behalf of the vessel's joint owners (private investors hold 99,73 % of the shares, with the rest being held by CIL).

It will buy the vessel at its market value, but only if certain economic, legal and financial conditions are met. They also argued that, since the relevant legal framework was the Shipbuilding Aid Directive, the aid should be regarded as aid to shipbuilding and that in previous similar cases (and notably in its decision relating to Renaissance Financial <sup>(5)</sup>) the Commission had considered the aid beneficiary to be the shipyard.

### IV. COMMENTS FROM FRANCE

(12) France transmitted its comments by letters of 12 January 2000, 14 June 2000, 30 April 2001 and 11 June 2001. The letter of 14 June 2000 was concerned with the comments of interested parties and provided additional information. The letter of 30 April 2001 clarified the movements of the vessel and contained a new estimate of the financial benefits to the islands, while the letter of 11 June 2001 explained the contractual arrangements between the investors, CIL and the organising financial institution [...].

(13) In their initial comments, the French authorities had stressed that, because of climatic conditions, the vessel clearly had to be operated away from Saint-Pierre-et-Miquelon waters in winter. Although no guarantee had been given, priority would be given to recruiting crew members who were Saint-Pierre-et-Miquelon residents. There would, in any case, be benefits in terms of indirect job creation on the islands as a result of the vessel's stopovers there. On the basis of 50 visits a year (passenger reception, embarkation and disembarkation, ship supplies, etc.), such benefits would represent an additional 11 or 12 jobs. Other jobs might also be created by infrastructure projects and by dint of the fact that other cruise operators seemed interested in visiting the islands. The French authorities also argued that, in assessing the proportionality of the aid, account should be taken of the fact that, although CIL was obliged to operate the vessel for only five years in the area, it could be used for much longer given the interest in Arctic cruises, so that any assessment should be based on a minimum of ten years. Finally, they reaffirmed the importance of the project given the high level of unemployment on the islands and the need for economic diversification away from fishing.

<sup>(4)</sup> OJ C 279, 25.10.1995, p. 3; State aid C 8/95.

<sup>(5)</sup> Case C-37/98 (OJ L 292, 13.11.1999, p. 23).

- (14) In further observations concerning the comments received from CIL's legal representatives, the French authorities indicated that the original estimate of 55 jobs related to direct employment on board the vessel, whereas the additional 11 or 12 jobs were part-time jobs in 1999 and, like the estimate of 55 direct jobs, were based on the operation of the vessel to and from the islands for 160 days a year. In their most recent letter, the French authorities confirmed that the ship had visited the islands less often than envisaged and that the economic impact was thus lower than expected but that there had in any case been positive economic effects for the islands.
- (15) On the matter of the aid beneficiary, the French authorities disagreed with CIL's legal representatives. They pointed out that the objective of the Loi Pons was to help operators develop their overseas activities by compensating them for the particular handicaps they faced in that regard. In the case at issue, the operator would be able to acquire ownership of the vessel on attractive terms (at a price that would allow the value of the aid to be passed on to CIL). The French authorities also pointed out that the Commission had agreed in the past not to challenge such projects carried out in overseas territories. Thus, in a similar procedure initiated in 1995, the Commission had indicated in its letter SG(97)D/500 of 23 January 1997 that the application of the law was limited solely to vessels intended for the overseas departments. Consequently, vessels such as the *Club Med II* or, more recently, the *Tahiti Nui* will be able to continue to benefit from Article 4(7) of the Shipbuilding Directive if they are assigned mainly to the overseas territories. The French authorities also pointed out that, in the Renaissance Financial case (C-37/98) <sup>(6)</sup>, the Commission had taken the same line.

## V. ASSESSMENT OF THE AID

- (16) The aid granted for the vessel in question must be assessed in the light of Article 4(7) of the Council Directive of 21 December 1990 on aid to shipbuilding given that it concerns aid for shipbuilding granted as development assistance in 1996 under an aid scheme (the Loi Pons) approved in 1992.
- (17) Under Article 4(7) of the Shipbuilding Directive, aid granted as development assistance to a developing country may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the

Understanding on Export Credits for Ships or with any later addendum or corrigendum to that Agreement (hereinafter referred to as the 'OECD criteria'). The Commission must verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the said Agreement.

- (18) As communicated to Member States by Commission letter SG(89)D/311 of 3 January 1989, development-aid projects must comply with the following OECD criteria:
- vessels must not be operated under a flag of convenience,
  - in the event that the aid cannot be classified as public development aid for the purposes of the OECD, the donor must confirm that the aid is part of an intergovernmental agreement,
  - the donor must give appropriate assurances that the real owner is resident in the recipient country and that the recipient company is not a non-operational subsidiary of a foreign company (for the purposes of the Directive, eligible recipient countries include not only developing countries classified as such by the OECD but also all overseas countries and territories associated with the European Union, including the French overseas territories),
  - the recipient must give undertakings not to sell the ship without governmental approval.
- (19) Also, the aid granted must include a concessionary element of 25 % at least.

- (20) In addition, as indicated above, the Commission must also verify that the project has a genuine development content. In Case C-400/92 concerning German development aid for the Chinese company Cosco, the Court established that the Commission is obliged to verify the development content of the project separately from the OECD criteria. It follows that the Commission's assessment must include verification that projects have a genuine development objective and that they would not be viable without the aid (i.e. that the aid is necessary).

## Application of the criteria to the present case

- (21) As the Commission indicated when the Article 88(2) procedure was initiated, the project meets the OECD criteria for the following reasons:
- *Le Levant* will be operated under the French flag; the requirement that it not be operated under a flag of convenience is thus met,

<sup>(6)</sup> See footnote 5.

- Saint-Pierre-et-Miquelon is on the list of countries eligible for development aid annexed to the Commission letter SG(89)D/311 to Member States,
  - the operator (and eventual owner) is registered in Wallis et Futuna. This is not the 'recipient country' (which is Saint-Pierre-et-Miquelon). However, since both groups of islands are on the Commission's list of countries eligible for development aid, the aid cannot be objected to on this ground. Furthermore, CIL appears not to be a non-operational subsidiary of a foreign company,
  - the vessel cannot be resold without the approval of the French authorities since the aid is granted on the condition that CIL actually operates the vessel for at least five years mainly to and from Saint-Pierre-et-Miquelon and then buys it from the investors in mainland France and continues to operate it,
  - the aid intensity exceeds 25 %.
- (22) However, the development criterion is not met in this case. The key point is that the French estimates of the economic benefits are based on the assumption that the vessel will call in at Saint-Pierre-et-Miquelon 50 times per season (over the 160 days from late May to the end of October during which climatic conditions in the area permit cruising). The figure of 50 port visits is clearly stated in a table estimating the economic benefits for the islands.
- (23) The reality is very different. According to information submitted by the French authorities in their letter of 30 April 2001, nine cruises were undertaken in 1999 and 11 in 2000 which included Saint-Pierre-et-Miquelon in their itinerary (as starting/finishing point). Since the cruises either departed or arrived in Saint-Pierre, there were only 11 stopovers in the port of Saint-Pierre in the 1999 and 2000 seasons combined, and not 100 as initially estimated by the French authorities.
- (24) According to the same letter, 18 cruises to or from Saint-Pierre were planned for 2001, including include five new mini-cruises that both arrive and depart from Saint-Pierre. This gives a total of 12 stopovers at the port of Saint-Pierre in 2001 compared with the 50 initially estimated.
- (25) On the basis of the figures for 1999 and 2000, the Commission has concluded that the assumptions underlying the calculation of the economic benefits for Saint-Pierre-et-Miquelon were wrong. It has therefore recalculated the estimated economic benefits, using the French figures but taking into account the much lower number of port visits.
- (26) With regard to the direct economic benefits, the French estimates are that spending linked to operation of the vessel would be FRF 10,8 million per annum. Local spending by passengers is estimated at FRF 1,2 million per annum. In both cases, the data are based on 50 port visits a year. However, as indicated above, the vessel visited the port only 5,5 times a year in 1999 and 2000. It plans to make 12 visits this year.
- (27) Given the nature of the economic benefits envisaged in the calculations (food, equipment, port fees, etc.), it can be assumed that they are proportional to the number of visits to the port. The benefits are put at FRF 12 million a year on the basis of 50 visits. Assuming that the economic calculations made by France are correct with regard to the impact of the ship's visits and taking into account the number of visits in 1999 and 2000, the benefit to the islands would amount to 5,5/50 or 11 % of the initial estimates. For 2001, the benefits would be 12/50 or 24 % of the initial estimates.
- (28) Over each of the last two years, the real benefits would therefore have been 11 % of FRF 12 million, i.e. FRF 1,32 million. According to the French authorities, some 760 passengers embarked or disembarked at Saint-Pierre in each of these two years. Assuming an economic impact of FRF 1,32 million, this would imply spending of FRF 1 700 per person, which seems reasonable given that passengers are not likely to spend more than one night on the islands before or after a cruise.
- (29) For 2001, the benefits can be estimated at 24 % of FRF 12 million, i.e. FRF 2,88 million. For the next two years, the cruise schedule is not known. Taking the figure for 2001, the total economic benefit to Saint-Pierre-et-Miquelon over the five years 1999-2003 would be  $1,32 + 1,32 + 3 \times (2,88)$ , i.e. FRF 11,28 million. Since the total value of the aid is FRF 78 million, this is almost seven times greater than the economic benefit to the islands.
- (30) As far as direct jobs are concerned, the French authorities have stated that priority would be given to employing residents of Saint-Pierre-et-Miquelon among the 55 crew. However, the only information that has been provided is that four former fishermen from the islands have been trained to work on the ship. The presumption must be that the crew does not to any large extent come from the islands.

- (31) The claims concerning other indirect benefits (the development of infrastructure and the possibility of other cruise operators visiting the islands) have not been and probably cannot be quantified. Moreover, they are not directly relevant to the development character of this particular project or to the proportionality of the aid involved. It is therefore not necessary to take them into account in this assessment.
- (32) Finally, the Commission cannot accept the argument put forward by the French authorities to the effect that a longer period than five years should be taken into account since there is no obligation on CIL to continue operating the vessel to or from Saint-Pierre-et-Miquelon after that period.
- (33) In the light of the foregoing, the Commission therefore concludes that it has not been possible to establish that this project was indeed a development project. The alleged benefits in terms of direct job creation have not been substantiated and are not based on realistic assumptions. Moreover, the alleged direct economic benefits are significantly less than the aid involved, resulting in a clear lack of proportionality between the aid and the intended economic impact.
- (34) The Commission finds that France has unlawfully implemented the aid in question in breach of Article 88(3) of the Treaty. The aid is not consistent with the Shipbuilding Directive and is therefore incompatible with the common market. It must therefore be recovered with interest.

#### **Beneficiary of the aid**

- (35) There remains the question of which party is the main beneficiary of the aid. This point was mentioned when the procedure was initiated. At that time, the Commission noted that the immediate beneficiaries of the quantifiable aid were the investors receiving the tax concessions. This analysis is still valid.
- (36) According to the French authorities, the investors obtained advantages from the tax concessions and they are still the owners of the vessel under the terms of the joint ownership. They will continue to enjoy these advantages for some five years following the delivery of the vessel (i.e. until the beginning of 2004). The vessel will then have to be sold at a price which, according to the available information, will transfer the aid to the operator CIL. It is thus clear that CIL will be the main final beneficiary of the aid once the ship has been sold to it at an advantageous price.
- (37) The shipyard can be said to have benefited indirectly in that the aid enabled it to obtain an order that it might not otherwise have won.

#### **Recovery of the aid**

- (38) Since the unlawful and incompatible aid has already been granted, it must be recovered in order to restore effective competition and, to that end, interest must be charged from the date on which it was made available to the beneficiary until such time as it is recovered.
- (39) In the light of the above analysis, there is no doubt that it is the investors, as the direct beneficiaries and current owners of the vessel, which should repay the aid. Although it is doubtful whether any of the private individual investors holding the 738 shares can be held responsible for the misuse of the aid, they have nevertheless benefited and continue to benefit from the tax concessions as owners of a vessel which was bought on attractive terms.
- (40) If the ship had been sold to CIL at below the market price and if the aid had thus been transferred to it, it would be CIL that would have to repay the aid. Since this transfer will not take place before mid-2003, the operator CIL cannot be considered liable to repay the aid at this stage.
- (41) As for the shipyard, no recovery should take place from it under the current circumstances. In this respect, it is useful to explain why there is a provision on development assistance in the Seventh Shipbuilding Directive. The reason is that it opens up the possibility of granting a higher level of aid than that allowed for other shipbuilding contracts. Such higher levels of aid can be declared compatible if the OECD rules are respected. It is clear from those rules that they are addressed to the aid donor, the shipowner and the developing country, but not to the shipyard. If the OECD's substantive rules, including the development criteria, are breached, it would not be reasonable to accuse the shipyard since it cannot be held responsible for the operation of the ship after delivery,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The State aid which France has implemented in the form of tax concessions and as development assistance for the cruise vessel *Le Levant*, built by Alstom Leroux Naval for operation in the French overseas territory of Saint-Pierre-et-Miquelon, cannot be regarded as genuine development assistance within the meaning of Article 4(7) of Council Directive 90/684/EEC on aid to shipbuilding and is therefore incompatible with the common market.

*Article 2*

1. France shall take all necessary measures to discontinue and recover from the investors, as the direct beneficiaries and current owners of the cruise vessel, the aid referred to in Article 1 and unlawfully made available to the beneficiary.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

*Article 3*

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

*Article 4*

This Decision is addressed to the French Republic.

Done at Brussels, 25 July 2001.

*For the Commission*

Mario MONTI

*Member of the Commission*

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**COMMISSION DECISION**  
**of 6 December 2001**  
**amending Decision 2001/650/EC on the granting of aid for the production of table olives in Spain**

*(notified under document number C(2001) 3918)*

**(Only the Spanish text is authentic)**

(2001/883/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats <sup>(1)</sup>, as last amended by Regulation (EC) No 1513/2001 <sup>(2)</sup>, and in particular Article 5(4) thereof,

Whereas:

- (1) Article 5 of Commission Decision 2001/650/EC of 9 August 2001 on the granting of aid for the production of table olives in Spain <sup>(3)</sup> provides for the lodging of a declaration to supplement the crop declaration or, as appropriate, a new declaration. To harmonise procedures and avoid the use of different supporting documents for olive oil and table olives, the same standard crop declaration should be used.
- (2) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Oils and Fats,

*Article 1*

Decision 2001/650/EC is amended as follows:

In Article 5, the first and second subparagraphs are replaced by the following:

‘For the purposes of granting the aid for the production of table olives, growers must have lodged a crop declaration in accordance with Articles 1, 2 and 3 of Regulation (EC) No 2366/98 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/1999, 1999/2000 and 2000/2001 marketing years.’

*Article 2*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 6 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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<sup>(1)</sup> OJ L 72, 30.9.1966, p. 3025/66.

<sup>(2)</sup> OJ L 201, 26.7.2001, p. 4.

<sup>(3)</sup> OJ L 229, 25.8.2001, p. 20.

**COMMISSION DECISION**  
**of 6 December 2001**  
**amending Decision 2001/658/EC on the granting of aid for the production of table olives in Italy**

*(notified under document number C(2001) 3927)*

**(Only the Italian text is authentic)**

(2001/884/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats <sup>(1)</sup>, as last amended by Regulation (EC) No 1513/2001 <sup>(2)</sup>, and in particular Article 5(4) thereof,

Whereas:

- (1) Article 5 of Commission Decision 2001/658/EC of 10 August 2001 on the granting of aid for the production of table olives in Italy <sup>(3)</sup> provides for the lodging of a declaration to supplement the crop declaration or, as appropriate, a new declaration. To harmonise procedures and avoid the use of different supporting documents for olive oil and table olives, the same standard crop declaration should be used.
- (2) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Oils and Fats,

*Article 1*

Decision 2001/658/EC is amended as follows:

In Article 5, the first and second subparagraphs are replaced by the following:

‘For the purposes of granting the aid for the production of table olives, growers must have lodged a crop declaration in accordance with Articles 1, 2 and 3 of Regulation (EC) No 2366/98 laying down detailed rules for the application of the system of production aid for olive oil for the 1998/1999, 1999/2000 and 2000/2001 marketing years.’

*Article 2*

This Decision is addressed to the Italian Republic.

Done at Brussels, 6 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

<sup>(1)</sup> OJ 172, 30.9.1966, p. 3025/66.

<sup>(2)</sup> OJ L 201, 26.7.2001, p. 4.

<sup>(3)</sup> OJ L 231, 29.8.2001, p. 16.

## COMMISSION DECISION

of 6 December 2001

**conferring management of aid on implementing agencies for pre-accession measures in agriculture and rural development in the Republic of Latvia in the pre-accession period**

(2001/885/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1266/1999 of 21 June 1999 on co-ordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89<sup>(1)</sup>, and in particular Article 12(2) thereof,

Having regard to Commission Regulation (EC) No 2222/2000<sup>(2)</sup> of 7 June 2000 laying down financial rules for the application of Council Regulation (EC) No 1268/1999<sup>(3)</sup> on Community support for pre-accession measures for agriculture and rural development in the applicant countries of central and eastern Europe in the pre-accession period, and in particular Article 3(2) thereof,

Whereas:

- (1) In accordance with Article 4(5) of Regulation (EC) No 1268/1999 of 21 June 1999 on Community support for pre-accession measures for agriculture and rural development in the Applicant Countries of central and eastern Europe in the pre-accession period, a Programme for Agriculture and Rural Development was approved by Commission Decision C(2000) 3097-final on 25 October 2000 for the Republic of Latvia.
- (2) The government of the Republic of Latvia and the Commission, acting on behalf of the European Community, have signed on 25 January 2001 the Multi-annual Financing Agreement laying down the technical, legal and administrative framework for the execution of the Sapard Programme.
- (3) Regulation (EC) No 1266/1999 provides that the *ex ante* approval requirement referred to in Article 12(1) of Regulation (EC) No 1266/1999 may be waived on the basis of a case-by-case analysis of national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance; Regulation (EC) No 2222/2000 provides for detailed rules for the carrying out of said analysis.
- (4) The Competent authority of the Republic of Latvia has appointed on the one hand, the Rural Support Service for the implementation of measures 'Modernisation of

agriculture machinery, equipment and construction of buildings'; 'Afforestation of agricultural lands'; 'Improvement of agricultural and fisheries product processing and marketing'; 'Development and diversification of economic activities providing for alternative income', 'Improvement of general rural infrastructure' and 'Training' as defined in the Programme for Agriculture and Rural Development that was approved by Commission Decision C(2000) 3097-final on 25 October 2000 for the Republic of Latvia and, on the other, the Ministry of Finance, National Fund, for the financial functions it is due to perform in the framework of the implementation of the Sapard programme.

- (5) Pursuant to Regulation (EC) No 1266/1999 and Regulation (EC) No 2222/2000, the Commission has analysed the national and sectorial programme/project management capacity, financial control procedures and structures regarding public finance and has established that, for the implementation of the aforementioned measures, the Republic of Latvia complies with the provisions of Articles 4 to 6 and of the Annex to the Regulation (EC) No 2222/2000 of 7 June 2000, with the minimum conditions set out in the Annex to the Regulation (EC) No 1266/1999.
- (6) In particular, the Rural Support Service has implemented the following key accreditation criteria satisfactorily: written procedures, segregation of duties, pre-project approval and pre-payment checks, payment procedures, accounting procedures, computer security, internal audit, and, where appropriate, public procurement provisions.
- (7) On 16 of November 2001 the Latvian authorities provided a list of eligible expenditure in conformity with Article 4(1), section B of the Multi Annual Financial Agreement and the Commission did not raise objections to this list.
- (8) The Ministry of Finance, National Fund has implemented the following criteria satisfactorily for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Republic of Latvia: audit trail, treasury management, receipt of funds, disbursement to beneficiaries, computer security and internal audit.

<sup>(1)</sup> OJ L 161, 26.6.1999, p. 68.

<sup>(2)</sup> OJ L 253, 7.10.2000, p. 5.

<sup>(3)</sup> OJ L 161, 26.6.1999, p. 87.

- (9) It is therefore appropriate to waive the *ex ante* approval requirement referred to in Article 12(1) of Regulation (EC) No 1266/1999 and to confer on the Rural Support Service and on the Ministry of Finance, National Fund in the Republic of Latvia the management of aid on a decentralised basis.
- (10) However, since the verifications carried out by the Commission are based on an operational but not operating system, it is at this stage appropriate to confer the management of the Sapard Programme on the Rural Support Service and on the Ministry of Finance, National Fund on a provisional basis.
- (11) The full conferral of management of the Sapard Programme is only envisaged after further verifications in order to ensure that the system operates satisfactorily have been carried out and after any recommendations the Commission may issue, with regard to the conferral of management of aid on the Rural Support Service and on the Ministry of Finance, National Fund, have been implemented,

HAS DECIDED AS FOLLOWS:

*Article 1*

The requirement of *ex ante* approval by the Commission of project selection and contracting by the Republic of Latvia is hereby waived.

*Article 2*

Management of the Sapard Programme is conferred on a provisional basis to:

1. the Rural Support Service of the Republic of Latvia, Republikas laukums 2, Riga LV 1981 for the implementation of the measures: 'Modernisation of agriculture machinery, equipment and construction of buildings'; 'Afforestation of agricultural lands'; 'Improvement of agricultural and fisheries product processing and marketing'; 'Development and diversification of economic activities providing for alternative income'; 'Improvement of general rural infrastructure' and 'Training' as defined in the Programme for Agricultural and Rural Development that was approved by Commission Decision C(2000) 3097-final on 25 October 2000; and
2. the Ministry of Finance, National Fund, located at Smilšu iela 1, Riga LV1919, Republic of Latvia, for the financial functions it is due to perform in the framework of the implementation of the Sapard programme for the Republic of Latvia.

Done at Brussels, 6 December 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*