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Legislation

Contents

I Acts whose publication is obligatory

Commission Regulation (EC) No 308/2002 of 19 February 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

- ★ **Commission Regulation (EC) No 309/2002 of 19 February 2002 opening tariff quotas for the year 2002 for imports into the European Community of products originating in the Republic of Poland 3**

II Acts whose publication is not obligatory

Council

2002/135/EC:

- ★ **Decision No 5/2001 of the EU-Poland Association Council of 28 September 2001 amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Polish Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/94 adopting the rules of procedure of the Association Council 6**

2002/136/EC:

- ★ **Decision No 6/2001 of the EU-Poland Association Council of 25 October 2001 adopting the terms and conditions for the participation of the Republic of Poland in the Culture 2000 programme 8**

- ★ **Decision No 6/2001 of the EU-Slovak Republic Association Council of 22 November 2001 adopting the implementing rules for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2), pursuant to Article 64(3), of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and in Article 8(1)(iii) and (2), pursuant to Article 8(3), of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement** 11

- ★ **Decision No 2/2001 of the EC-Cyprus Association Council of 20 December 2001 amending Decision No 1/73 of the Association Council laying down the rules of procedure of the Association Council and establishing the Association Committee and the Customs Cooperation Committee** 15

- ★ **Decision No 3/2001 of the EC-Cyprus Association Council of 27 December 2001 amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Cypriot Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/73 adopting the rules of procedures of the Association Council** 16

- ★ **Decision No 1/2001 of the EC-Turkey Association Council of 4 January 2002 amending Decision No 3/64 of the Association Council setting up the Association Committee** 18

- ★ **Decision No 1/2001 of the EC-Malta Association Council of 9 January 2002 amending Decision No 1/72 of the Association Council laying down the rules of procedure of the Association Council and establishing the Association Committee and the Customs Cooperation Committee** 19

Commission

- ★ **Commission Decision of 18 July 2001 on the State aid implemented by the Netherlands in favour of Valmont Nederland BV ⁽¹⁾ (notified under document number C(2001) 2231)** 20

- ★ **Commission Decision of 18 July 2001 on the State aid which Germany is planning to implement for Automobilmanufaktur Dresden GmbH ⁽¹⁾ (notified under document number C(2001) 2348)** 25

- ★ **Commission Decision of 19 February 2002 on the clearance of the accounts of certain paying agencies in Spain in respect of expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the financial year 2000 (notified under document number C(2002) 519)** 32

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 308/2002
of 19 February 2002
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, as last amended by Regulation (EC) No 1498/98 ⁽²⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 February 2002.

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

Done at Brussels, 19 February 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 19 February 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	112,6
	204	108,0
	212	103,1
	999	107,9
0707 00 05	052	189,6
	068	127,8
	220	175,4
	999	164,3
0709 10 00	220	242,2
	999	242,2
0709 90 70	052	174,1
	204	84,7
	999	129,4
0805 10 10, 0805 10 30, 0805 10 50	052	51,4
	204	53,8
	212	48,5
	220	46,7
	421	30,4
	508	22,3
	624	76,3
	999	47,1
0805 20 10	052	83,4
	204	78,3
	999	80,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	64,9
	204	49,8
	220	59,3
	464	140,4
	600	112,1
	624	86,4
	999	85,5
	052	55,0
0805 50 10	600	54,0
	999	54,5
0808 10 20, 0808 10 50, 0808 10 90	060	41,6
	400	118,4
	404	92,0
	508	112,1
	528	102,6
	720	121,6
	728	124,5
	999	101,8
	388	105,3
	400	136,3
0808 20 50	528	96,4
	720	144,1
	999	120,5

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 309/2002**of 19 February 2002****opening tariff quotas for the year 2002 for imports into the European Community of products originating in the Republic of Poland**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3448/93 of 6 December 1993 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products ⁽¹⁾, as last amended by Regulation (EC) No 2580/2000 ⁽²⁾, and in particular Article 7(2) thereof,

Having regard to Council Decision 2002/63/EC of 23 October 2001 relating to the conclusion of a Protocol adjusting trade aspects of the Europe Agreement between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part, to take account of the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union and the outcome of the Uruguay Round negotiations on agriculture, including improvements to the existing preferential arrangements ⁽³⁾, and in particular Articles 2 and 6 of that Protocol,

Whereas:

- (1) Protocol 3 on trade in processed agricultural products, as amended by the Protocol adjusting the Europe Agreement with the Republic of Poland, provides for the granting of annual tariff quotas for imports of products originating in the Republic of Poland.
- (2) Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽⁴⁾, as last amended by Regu-

lation (EC) No 993/2001 ⁽⁵⁾, consolidated the arrangements for managing the tariff quotas to be used in chronological order of the dates of acceptance of the declarations for release for free circulation.

- (3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for horizontal questions concerning trade in processed agricultural products not listed in Annex I,

HAS ADOPTED THIS REGULATION:

Article 1

The annual quotas for products originating in the Republic of Poland, set out in the Annex to this Regulation, are hereby opened from 1 January 2002 to 31 December 2002 under the conditions set out in the said Annex.

Article 2

The Community tariff quotas referred to in Article 1 shall be managed by the Commission in accordance with the provisions of Articles 308a to 308c of Regulation (EEC) No 2454/93.

Article 3

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

It shall apply from 1 January 2002.

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

Done at Brussels, 19 February 2002.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 318, 20.12.1993, p. 18.

⁽²⁾ OJ L 298, 25.11.2000, p. 5.

⁽³⁾ OJ L 27, 30.1.2002, p. 1.

⁽⁴⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁵⁾ OJ L 141, 28.5.2001, p. 1.

ANNEX

Quotas applicable to imports of products originating in Poland open for 2002

Serial No	CN code	Description	Quota for 2002 (tonnes)	Rate of duty applicable
09.5401	ex 0403 0403 10 51 0403 10 53 0403 10 59 0403 10 91 0403 10 93 0403 10 99 0403 90 71 0403 90 73 0403 90 79 0403 90 91 0403 90 93 0403 90 99	Buttermilk, curdled milk and cream, yogurt, kephir and other fermented or acidified milk and cream, whether or not concentrated or containing added sugar or other sweetening matter or flavoured or containing added fruit, nuts or cocoa:	23	RAC ⁽¹⁾
09.5403	ex 1704 1704 10 1704 90 30 1704 90 55 1704 90 71 1704 90 75 ex 1704 90 99 (TARIC Code 10)	Sugar confectionery (including white chocolate), not containing cocoa:	7 180	RAC ⁽¹⁾
09.5404	ex 1806 1806 10 20 1806 20 10 1806 20 30 1806 20 50 1806 20 70 1806 20 80 1806 20 95 1806 31 00 1806 32 10 1806 32 90 1806 90 11 1806 90 19 1806 90 31 1806 90 39 1806 90 50 1806 90 60 1806 90 70 1806 90 90	Chocolate and other food preparations containing cocoa:	5 016	RAC ⁽¹⁾
09.5405	ex 1902 1902 11 00 1902 19 10 1902 19 90 1902 20 91 1902 20 99 1902 30 10 1902 30 90 1902 40 10 1902 40 90	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagne, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:	525	RAC ⁽¹⁾
09.5407	1903 00 00	Tapioca and substitutes therefor prepared from starch, in the form of flakes, grains, pearls, siftings or similar forms	59	RAC ⁽¹⁾

Serial No	CN code	Description	Quota for 2002 (tonnes)	Rate of duty applicable
09.5408	1905	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty cachets of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products	2 295	RAC ⁽¹⁾
09.5409	ex 2001 2001 90 40 ex 2004 2004 10 91 ex 2005 2005 20 10 ex 2008 2008 99 91	Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid: Yams, sweet potatoes and similar edible parts of plants containing 5 % or more weight of starch Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, frozen, other than products of heading 2006: Potatoes other than cooked, in the form of flour, meal or flakes Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006: Potatoes in the form of flour, meal or flakes Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Yams, sweet potatoes and similar edible parts of plants, containing 5 % or more by weight of starch	36	RAC ⁽¹⁾
09.5411	ex 2101 2101 12 98 2101 20 98	Extracts, essences and concentrates, of coffee, tea or maté, and preparations with a basis of these products or with a basis of coffee, tea or maté; roasted chicory and other roasted coffee substitutes, and extracts, essences and concentrates thereof: Preparations with a basis of extracts, essences or concentrates of coffee or with a basis of coffee, other than those of CN code 2101 12 92 Preparations with a basis of tea or maté, other than those with a basis of extracts, essences and concentrates of tea or maté	23	RAC ⁽¹⁾
09.5413	ex 2101 2101 30 19 2101 30 99	Extracts, essences and concentrates of coffee, tea or maté, and preparations with a basis of these products or with a basis of coffee substitutes, and extracts, essences and concentrates thereof: Roasted coffee substitutes other than roasted chicory Extracts, essences and concentrates of roasted coffee substitutes other than roasted chicory	450	RAC ⁽¹⁾
09.5415	ex 2106 2106 90 10	Food preparations not elsewhere specified or included: Cheese fondues	675	RAC ⁽¹⁾

⁽¹⁾ RAC = Reduced agricultural components applicable within the quota quantity limits. Imports exceeding these quantities are subject to the agricultural components (AC) shown in the Common Customs Tariff.

II

(Acts whose publication is not obligatory)

COUNCIL

**DECISION No 5/2001 OF THE EU-POLAND ASSOCIATION COUNCIL
of 28 September 2001**

amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Polish Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/94 adopting the rules of procedure of the Association Council

(2002/135/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other part⁽¹⁾, and in particular Article 107 thereof,

Whereas:

- (1) Dialogue and cooperation between the regional and local authorities in the European Community and those in Poland can make a major contribution to the development of their relations and to the integration of Europe.
- (2) It seems appropriate that such cooperation should be organised at the level of the Committee of the Regions, of the one part, and of the Polish Liaison Committee for Cooperation with the Committee of the Regions, of the other part, by setting up a Joint Consultative Committee.
- (3) It follows that the rules of procedure of the Association Council, adopted by Decision No 1/94, need to be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The following Articles shall be added to the rules of procedure of the Association Council:

'Article 18

A Joint Consultative Committee (hereinafter referred to as the "Committee") is hereby established with the task of assisting the Association Council with a view to promoting dialogue and cooperation between the regional and local authorities in the European Community and regional (woje-

wództwo level) and local (powiat and gmina level) authorities in Poland (hereinafter referred to as "Polish regional and local authorities"). Such dialogue and cooperation shall be aimed in particular at:

1. preparing Polish regional and local authorities for activity in the framework of future membership of the European Union;
2. preparing Polish regional and local authorities for their participation in the work of the Committee of the Regions after the accession of Poland;
3. exchanging information on current issues of mutual interest, in particular on the up-to-date state of play concerning Community regional policy and accession process as well as preparation of Polish regional and local authorities for these policies;
4. encouraging multilateral structured dialogue between (a) Polish regional and local authorities and (b) regions from EU Member States, including through networking in specific areas where direct contacts and cooperation between Polish regional and local authorities and regional and local authorities from EU Member States might prove the most effective way of solving particular problems;
5. providing regular exchange of information on inter-regional cooperation between Polish regional and local authorities and regional and local authorities from EU Member States;
6. encouraging exchange of experience and knowledge in the field of regional policy and structural interventions, between (a) Polish regional and local authorities, and (b) regional and local authorities from EU Member States, in particular know-how and techniques concerning preparation of regional and local development plans or strategies and most efficient use of Structural Funds;

⁽¹⁾ OJ L 348, 31.12.1993, p. 2.

7. assisting Polish regional and local authorities by means of information exchange in practical implementation of the principle of subsidiarity in all aspects of life on regional and local level;
8. discussing any other relevant matters proposed by any side, as they may arise in the context of implementation of the Europe Agreement and in the framework of the pre-accession strategy.

Article 19

The Committee shall comprise eight representatives of the Committee of the Regions, on the one hand, and eight representatives of the Polish Liaison Committee for Cooperation with the Committee of the Regions, on the other hand. An equal number of alternate members shall be appointed.

The Committee shall carry out its activities on the basis of consultation by the Association Council or, as concerns the promotion of the dialogue between the regional and local authorities, on its own initiative.

The Committee may make recommendations to the Association Council.

Members shall be chosen to ensure that the Committee is as faithful a reflection as possible of regional and local authorities in both the European Community and Poland.

The Committee shall adopt its Rules of Procedure.

The Committee shall meet at intervals which it shall itself determine in its Rules of Procedure.

The Committee shall be co-chaired by a member of the Committee of the Regions and a member of the Polish

Liaison Committee for Cooperation with the Committee of the Regions.

Article 20

The Committee of the Regions, on the one hand, and the Polish Liaison Committee for Cooperation with the Committee of the Regions, on the other hand, shall each defray the expenses they incur by reason of their participation in the meetings of the Committee with regard to staff, travel and subsistence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents shall be borne by the Committee of the Regions, with the exception of expenditure in connection with interpreting or translation into or from Polish, which shall be borne by the Polish Liaison Committee for Cooperation with the Committee of the Regions.

Other expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.'

Article 2

This Decision shall enter into force on the first day of the second month following the date of its adoption.

Done at Brussels, 28 September 2001.

For the Association Council

The President

W. BARTOSZEWSKI

DECISION No 6/2001 OF THE EU-POLAND ASSOCIATION COUNCIL
of 25 October 2001
adopting the terms and conditions for the participation of the Republic of Poland in the Culture
2000 programme

(2002/136/EC)

THE ASSOCIATION COUNCIL,

HAS DECIDED AS FOLLOWS:

Having regard to the Additional Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Poland, of the other ⁽¹⁾, concerning Poland's participation in Community programmes, and in particular Articles 1 and 2 thereof,

Whereas:

- (1) According to Article 1 of the Additional Protocol, Poland may participate in Community framework programmes, specific programmes, projects or other actions in particular in the field of culture.
- (2) According to Article 2 of the said Protocol, the terms and conditions for the participation of Poland in this area are to be decided by the Association Council,

Article 1

Poland shall participate in the Culture 2000 programme according to the terms and conditions set out in Annexes I and II which shall form an integral part of this Decision.

Article 2

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

It shall apply for the duration of the Culture 2000 programme, starting from 1 January 2001.

Done at Brussels, 25 October 2001.

For the Association Council

The President

W. CIMOSZEWICZ

⁽¹⁾ OJ L 317, 30.12.1995, p. 35.

ANNEX I

Terms and conditions for the participation of the Republic of Poland in the Culture 2000 programme

1. Poland will participate in the activities of the Culture 2000 programme (hereinafter called 'the programme') in conformity, unless otherwise provided for in this Decision, with the objectives, criteria, procedures and deadlines as defined in Decision No 508/2000/EC of the European Parliament and of the Council of 14 February 2000 establishing the programme.
 2. To participate in the programme, Poland will pay each year a contribution to the general budget of the European Union according to the detailed arrangements described in Annex II. If necessary in order to take into account programme developments, or the evolution of Poland's absorption capacity, the Association Committee is entitled to adapt this contribution, so as to avoid a budgetary imbalance in the implementation of the programme.
 3. The terms and conditions for the submission, assessment and selection of applications related to eligible institutions, organisations and individuals of Poland will be the same as those applicable to eligible institutions, organisations and individuals of the Community. Polish experts may be taken into consideration by the Commission when appointing independent experts according to the relevant provisions of the decision establishing the Programme to assist it in the project evaluation.
 4. With a view to ensuring the Community dimension of the programme, in order to be eligible for Community financial support, projects and activities will have to include at least a partner from one of the Member States of the Community.
 5. The maximum amount of financial support for the activities of the Cultural Contact Points will not exceed 50 % of the total budget for its activities.
 6. Without prejudice to the responsibilities of the Commission of the European Communities and the Court of Auditors of the European Communities in relation to the monitoring and evaluation of the programme pursuant to Article 8 of Decision No 508/2000/EC, the participation of Poland in the programme will be continuously monitored on a partnership basis involving the Commission of the European Communities and Poland. Poland will submit to the Commission relevant reports and take part in other specific activities set out by the Community in that context.
 7. In conformity with the Community's Financial Regulations, contractual arrangements concluded with, or by, entities of Poland shall provide for controls and audits to be carried out by, or under the authority of, the Commission and the Court of Auditors. As far as financial audits are concerned, they may be carried out for the purpose of controlling such entities' income and expenditures, related to the contractual obligations towards the Community. In a spirit of cooperation and mutual interest, the relevant authorities of Poland shall provide any reasonable and feasible assistance as may be necessary or helpful under the circumstances to perform such controls and audits.
 8. Without prejudice to the procedures referred to in Article 5 of Decision No 508/2000/EC, representatives of Poland will participate as observers in the Management Committee for the points which concern them. This committee shall meet without the presence of representatives of Poland for the rest of the points, as well as at the time of voting.
 9. The language to be used in all sorts of contacts with the Commission, as regards the application process, contracts, reports to be submitted and other administrative arrangements for the programme, will be one of the official languages of the Community.
 10. The Community and Poland may terminate activities under this Decision at any time upon 12 months' notice in writing. Projects and activities in progress at the time of termination shall continue until their completion under the conditions laid down in this Decision.
-

ANNEX II

Financial contribution of the Republic of Poland to Culture 2000

1. The financial contribution to be paid by Poland to the general budget of the European Union to participate in the programme will be the following:

(in EUR)

Year 2001	Year 2002	Year 2003	Year 2004
1 546 225	1 546 225	1 546 225	1 546 225

2. Poland will pay the contribution mentioned above, partly from the Polish national budget, and partly from Poland's PHARE National Programme. Subject to a PHARE separate programming procedure, the requested PHARE funds will be transferred to Poland by means of a separate Financing Memorandum. Together with the part coming from Poland's State budget, these funds will constitute Poland's national contribution, out of which it will make payments in response to annual calls for funds from the Commission.
3. PHARE funds will be requested according to the following schedule:

(in EUR)

Year 2001	Year 2002	Year 2003	Year 2004
1 370 304	1 301 781	1 136 352	1 068 832

The remaining part of the contribution of Poland will come from the Polish State budget.

4. The Financial Regulation applicable to the general budget of the European Communities will apply, in particular to the management of the contribution of Poland.

Travel costs and subsistence costs incurred by representatives and experts of Poland for the purposes of taking part as observers in the work of the committee referred to in Annex I(8) or other meetings related to the implementation of the programme shall be reimbursed by the Commission on the same basis as and in accordance with the procedures currently in force for non-governmental experts of the Member States of the European Union.

5. After the entry into force of this Decision and at the beginning of each following year, the Commission will send to Poland a call for funds corresponding to its contribution to the budget of the programme under this Decision.

This contribution shall be expressed in euro and paid into a euro bank account of the Commission.

Poland will pay its contribution according to the call for funds:

- by 1 May for the part financed from its national budget, provided that the call for funds is sent by the Commission before 1 April, or at the latest one month after the call for funds is sent if later,
- by 1 May for the part financed from PHARE, provided that the corresponding amounts have been sent to Poland by this time, or at the latest within a period of 30 days after these funds have been sent to Poland.

Any delay in the payment of the contribution shall give rise to the payment of interest by Poland on the outstanding amount from the due date. The interest rate corresponds to the rate applied by the European Central Bank, on the due date, for its operations in euro, increased by 1,5 percentage points.

**DECISION No 6/2001 OF THE EU-SLOVAK REPUBLIC ASSOCIATION COUNCIL
of 22 November 2001**

adopting the implementing rules for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2), pursuant to Article 64(3), of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and in Article 8(1)(iii) and (2), pursuant to Article 8(3), of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement

(2002/137/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and in particular Article 64(3) thereof,

Having regard to Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement, and in particular Article 8(3) thereof,

Whereas:

- (1) Article 64(3) of the Europe Agreement lays down that the Association Council is, within three years of the entry into force of the Agreement, to adopt the necessary rules for the implementation of paragraphs 1 and 2 of that Article.
- (2) It is recalled that, in accordance with Article 64(2) of the Europe Agreement, the concept of 'public aid' as contained in Article 64(1)(iii) of the Europe Agreement is to be assessed on the basis of criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community, and thus covers any aid granted by the State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it may affect trade between the European Community and the Slovak Republic (State aid).
- (3) The Slovak Republic will appoint a national institution or administration to become a monitoring authority with responsibility for State aid matters.
- (4) This monitoring authority will be responsible for the analysis of existing and future individual aid awards and aid programmes in the Slovak Republic and will give an opinion as to their compatibility with Article 64(1)(iii) and (2) of the Europe Agreement, and Article 8(1)(iii),

(2) and (4) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement.

- (5) The Slovak Republic will, when providing for the necessary rules to ensure effective supervision, ensure in particular that the monitoring authority receives in due time all the relevant information from the other Government departments at central, regional and local level.
- (6) The Commission of the European Communities will, under the relevant Community programmes, assist the monitoring authority by providing for documentation, training, study tours and other relevant technical assistance,

HAS DECIDED AS FOLLOWS:

Article 1

The implementing rules for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2) pursuant to Article 64(3) of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and in Article 8(1)(iii) and (2) pursuant to Article 8(3) of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement, as attached to this Decision, are hereby adopted.

Article 2

These implementing rules shall enter into force on the first day of the month following their adoption.

Done at Brussels, 22 November 2001.

For the Association Council
The President
L. MICHEL

IMPLEMENTING RULES

for the application of the provisions on State aid referred to in Article 64(1)(iii) and (2), pursuant to Article 64(3), of the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Slovak Republic, of the other part, and in Article 8(1)(iii) and (2), pursuant to Article 8(3), of Protocol 2 on European Coal and Steel Community (ECSC) products to that Agreement

SURVEILLANCE OF STATE AID BY MONITORING AUTHORITIES

Article 1

Surveillance of State aid by monitoring authorities

Subject to the procedural rules in force in the European Community ('the Community') and the Slovak Republic, the granting of State aid shall be surveyed and assessed as to its compatibility with the Europe Agreement by the responsible monitoring authorities in the Community and the Slovak Republic, respectively. The monitoring authority in the Community shall be the Commission of the European Communities ('the Commission'), and in the Slovak Republic the Public Aid Office.

GUIDANCE FOR DEALING WITH CASES

Article 2

Criteria for compatibility

1. The assessment of compatibility of individual aid awards and aid programmes with the Europe Agreement, as provided for in Article 1 of these rules, shall be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community, including the present and future secondary legislation, frameworks, guidelines and other relevant administrative acts in force in the Community, as well as the case-law of the Court of First Instance and the Court of Justice of the European Communities and any decision taken by the Association Council pursuant to Article 4(3).

Insofar as the aid awards or aid programmes are destined for products covered by Protocol 2 to the Europe Agreement, the first subparagraph of this paragraph shall apply in full with the exception that the assessment shall not be made on the basis of the criteria arising from the application of the rules of Article 87 of the Treaty establishing the European Community but on the basis of the criteria arising from the application of the rules on State aid of the Treaty establishing the European Coal and Steel Community.

2. The monitoring authority of the Slovak Republic shall be informed of any acts relating to the adoption, abolition or modification of the Community criteria of compatibility referred to in paragraph 1, in so far as these are not published but are specifically brought to the attention of all Member States.

3. Where such changes do not encounter objections from the Slovak Republic within three months from the date of receiving the official information about them, they shall become criteria of compatibility as provided for in paragraph 1 of this Article. Where such changes encounter objections from the Slovak Republic and having regard to the approximation of legislation as provided for in the Europe Agreement, consultations shall take place, in accordance with Articles 7 and 8 of these rules.

4. The same principles shall apply in respect of other significant changes in Community policy on State aids.

Article 3

De minimis aid

Aid programmes or individual aid awards which do not involve export aid and which fall below the threshold applicable in the Community for *de minimis* aid⁽¹⁾ shall be considered as having only a negligible effect on competition and trade between the Parties and shall therefore not be treated under these rules. This Article does not apply to the industries covered by the Treaty establishing the European Coal and Steel Community, to shipbuilding, to transport nor to aid towards expenditure in connection with agriculture or fisheries.

Article 4

Derogations

1. In accordance with and within the limits of Article 64(4)(a) of the Europe Agreement, the Slovak Republic shall be regarded as an area identical to those areas of the Community referred to in Article 87(3)(a) of the Treaty establishing the European Community.

2. The monitoring authorities shall jointly evaluate the maximum aid intensities and specific regional coverage of areas in the Slovak Republic eligible for national regional aid. They shall submit a joint proposal to the Association Committee which shall establish a decision to this effect.

⁽¹⁾ Currently the Community *de minimis* aid ceiling, according to Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (OJ L 10, 13.1.2001, p. 30), is a total of EUR 100 000 per firm over any three-year period.

3. The monitoring authorities may, if necessary and at the request of the Slovak Republic, jointly evaluate problems raised by the implementation of the Community *acquis* in the field of State aids awarded by the Slovak Republic as it completes transition to a market economy. The evaluation of such problems shall not relate to the agricultural sector, fisheries, coal and steel, nor to sensitive sectors (automobiles, man-made fibres and shipbuilding) for which specific Community arrangements exist. Where appropriate, the monitoring authorities shall submit a joint proposal to the Association Council, which may adopt a decision.

PROCEDURES FOR CONSULTATION AND PROBLEM-SOLVING

Article 5

Examination of certain aid

1. Where the amount of the aid in question amounts to over EUR 3 million, aid programmes or individual aid awards, whether or not covered by frameworks and guidelines in the Community, may be referred by the relevant monitoring authority to the subcommittee dealing with competition policy and State aids for examination. The subcommittee may submit a report to the Association Committee which may adopt appropriate decisions or recommendations concerning the compatibility of the aid programme or aid award with the Europe Agreement and these rules.

2. The principal purpose of such decisions or recommendations shall be to avoid the resorting to commercial defence measures as a consequence of the aid in question.

3. The Association Committee may decide to extend further the possibility of examination as provided for in this Article.

Article 6

Request for information

Whenever the monitoring authority of a Party becomes aware of the fact that an aid programme or individual aid award appears to affect important interests of that Party, it may request information about this from the authority responsible. In any event, both monitoring authorities shall endeavour to keep each other informed of important developments that may be of practical interest for the other.

Article 7

Consultation and comity

1. Whenever the Commission or the monitoring authority of the Slovak Republic considers that the award of State aid on the territory for which the other authority is responsible substantially affects its important interests, it may request

consultation with the other authority, and consequently it may request that the other Party's monitoring authority initiate any appropriate procedures with a view to taking remedial action. This is without prejudice to any action under the respective Parties' relevant legislation and does not hamper the full freedom of ultimate decision of the authority so addressed, within the framework of the Europe Agreement.

2. The monitoring authority so addressed shall give full and sympathetic consideration to such views and factual material as may be presented by the requesting authority and in particular to the alleged harmful effects on the important interests of the requesting Party.

3. Without prejudice to their rights and obligations, the monitoring authorities involved in consultations under this Article shall endeavour to find, within three months, a mutually acceptable solution in the light of the respective important interests involved.

Article 8

Problem-solving

1. Where consultations under Article 7 do not lead to a mutually acceptable solution, an exchange of views shall take place within the subcommittee dealing with competition policy and State aids established in the framework of the Europe Agreement at the request of one Party within three months following the request.

2. Where this exchange of views does not lead to a mutually acceptable solution, or after the expiration of the period referred to in paragraph 1, the matter may be submitted to the Association Committee which may make appropriate recommendations for the settlement of these cases.

3. These procedures shall be without prejudice to any action under Article 64(6) of the Europe Agreement and Article 8(6) of Protocol 2 on European Coal and Steel Community (ECSC) products to the Europe Agreement. Trade instruments should however only be used as a last resort.

Article 9

Secrecy and confidentiality of information

1. With respect to Article 64(7) of the Europe Agreement, neither monitoring authority is required to provide information to the other authority if disclosure of that information to the requesting authority is prohibited by the law of the authority possessing the information.

2. Each monitoring authority agrees to maintain the confidentiality of any information provided to it in confidence by the other authority.

TRANSPARENCY

*Article 10***Inventory**

1. Under the relevant Community programmes, the Commission shall assist the Slovak Republic to draw up and thereafter update an inventory of its aid programmes and individual aid awards, established on the same basis as in the Community, in order to ensure and continuously improve transparency.

2. The Commission shall provide the Slovak Republic with regular information on the documentation it produces with a similar aim in relation to the Member States of the Community.

*Article 11***Mutual information**

Both Parties shall ensure transparency in the domain of State aid by providing for appropriate publications and the exchange of information on State aid policy on a regular and reciprocal basis.

MISCELLANEOUS

*Article 12***Administrative assistance (languages)**

The Commission and the monitoring authority of the Slovak Republic shall provide for practical arrangements for mutual assistance or any other appropriate solution concerning in particular the question of translations.

**DECISION No 2/2001 OF THE EC-CYPRUS ASSOCIATION COUNCIL
of 20 December 2001**

**amending Decision No 1/73 of the Association Council laying down the rules of procedure of the
Association Council and establishing the Association Committee and the Customs Cooperation
Committee**

(2002/138/EC)

THE EC-CYPRUS ASSOCIATION COUNCIL,

Having regard to the Association Agreement, and in particular Article 14(3) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The following subparagraph shall be added to Article 14 of the rules of procedure attached to Decision No 1/73 of the Association Council (Article 2) setting up the Association Committee, as follows:

‘The Commission of the European Communities shall chair the Committee and provide the secretariat on behalf of the European Community. The Chairman of the Committee may, in agreement with the two parties, shorten the time limits specified in Article 8(1) and (2), in order to take account of the requirements of a particular case.’

Done at Brussels, 20 December 2001.

For the Association Council

The President

L. MICHEL

**DECISION No 3/2001 OF THE EC-CYPRUS ASSOCIATION COUNCIL
of 27 December 2001**

amending, through the setting up of a Joint Consultative Committee between the Committee of the Regions and the Cypriot Liaison Committee for Cooperation with the Committee of the Regions, Decision No 1/73 adopting the rules of procedures of the Association Council

(2002/139/EC)

THE ASSOCIATION COUNCIL,

Having regard to the Agreement establishing an Association between the European Economic Community and the Republic of Cyprus, and in particular Article 14(3) thereof,

Whereas:

- (1) Dialogue and cooperation between the regional and local authorities of the European Community and those of the Republic of Cyprus can make a major contribution to the development of their relations and to the integration of Europe.
- (2) It seems appropriate that such cooperation should be organised at the level of the Committee of the Regions, of the one part, and of the Cypriot Liaison Committee for Cooperation with the Committee of the Regions, of the other part, by the setting up of a Joint Consultative Committee.
- (3) This means that the rules of procedure of the Association Council, adopted by Decision No 1/73, need to be amended accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The following Articles shall be added to the rules of procedure of the Association Council:

'Article 20

A Joint Consultative Committee (hereinafter referred to as the "Committee") is hereby established with the task of assisting the Association Council with a view to promoting dialogue and cooperation between the regional and local authorities of the European Community and those of the Republic of Cyprus. Such dialogue and cooperation shall be aimed in particular at:

1. preparing Cypriot local authorities for activity in the framework of future membership of the European Union;
2. preparing Cypriot local authorities for their participation in the work of the Committee of the Regions after accession of the Republic of Cyprus;
3. exchanging information on current issues of mutual interest, in particular on the up-to-date state of play concerning regional and environmental policies of the

European Community and the accession process as well as preparation of Cypriot local authorities for these policies;

4. encouraging multilateral structured dialogue between, on the one hand, Cypriot local authorities and, on the other hand, regions and local authorities from Member States of the European Community, including through networking in specific areas where direct contacts and cooperation between them might prove the most effective way of solving particular problems;
5. providing regular exchange of information on inter-regional cooperation between regional and local authorities from the Republic of Cyprus and from Member States;
6. encouraging exchange of experience and knowledge in the field of regional and environmental policies and structural interventions between, on the one hand, Cypriot local authorities and, on the other hand, regions and local authorities from Member States of the European Community, in particular with regard to know-how and techniques concerning preparation of regional and local development plans or strategies and the most efficient use of Structural Funds;
7. assisting Cypriot local authorities by means of information exchange in practical implementation of the principle of subsidiarity in all aspects of life on regional and local level;
8. discussing any other relevant matters proposed by either side, as they may arise in the context of implementation of the Association Agreement and in the framework of the pre-accession strategy.

Article 21

The Committee shall comprise eight representatives of the Committee of the Regions of the European Community, on the one hand, and eight representatives of the Cypriot Liaison Committee for Cooperation with the Committee of the Regions, on the other hand. An equal number of alternate members shall be appointed.

The Committee shall carry out its activities on the basis of consultation by the Association Council or, as concerns the promotion of the dialogue between the regional and local authorities, on its own initiative.

The Committee may make recommendations to the Association Council.

Members shall be chosen to ensure that the Committee is as faithful a reflection as possible of the various levels of regional and local authorities in both the European Community and the Republic of Cyprus.

The Committee shall adopt its rules of procedure.

The Committee shall meet at intervals, which it shall itself determine in its rules of procedure.

The Committee shall be co-chaired by a member of the Committee of the Regions of the European Community and a member of the Cypriot Liaison Committee for Cooperation with the Committee of the Regions.

Article 22

The Committee of the Regions of the European Community, on the one hand, and the Cypriot Liaison Committee for Cooperation with the Committee of the Regions on the other hand, shall each defray the expenses they incur by reason of their participation in the meetings of the Committee with regard to staff, travel and subsist-

ence expenditure and to postal and telecommunications expenditure.

Expenditure in connection with interpreting at meetings, translation and reproduction of documents in any official languages of the European Union shall be borne by the Committee of the Regions.

Expenditure relating to the material organisation of meetings shall be borne by the Party which hosts the meetings.'

Article 2

This Decision shall enter into force on the first day of the second month following the date of its adoption.

Done at Brussels, 27 December 2001.

For the Association Council

The President

L. MICHEL

DECISION No 1/2001 OF THE EC-TURKEY ASSOCIATION COUNCIL
of 4 January 2002
amending Decision No 3/64 of the Association Council setting up the Association Committee
(2002/140/EC)

THE EC-TURKEY ASSOCIATION COUNCIL,

Having regard to the Association Agreement, and in particular Article 24(3) and (4) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The following subparagraph shall be added to Article 2 of Decision No 3/64 of the Association Council setting up the Association Committee, as follows:

'The Commission of the European Communities shall chair the Committee and provide the secretariat on behalf of the European Community. The Chairman may, in agreement with the two parties, shorten the time limits specified in Article 7(1) and (2) of Decision No 1/64 of the Association Council, in order to take account of the requirements of a particular case.'

Done at Brussels, 4 January 2002.

For the Association Council

The President

J. PIQUÉ I CAMPS

**DECISION No 1/2001 OF THE EC-MALTA ASSOCIATION COUNCIL
of 9 January 2002**

**amending Decision No 1/72 of the Association Council laying down the rules of procedure of the
Association Council and establishing the Association Committee and the Customs Cooperation
Committee**

(2002/141/EC)

THE EC-MALTA ASSOCIATION COUNCIL,

Having regard to the Association Agreement, and in particular Article 14(3) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

The following subparagraph shall be added to Article 14 of the rules of procedure attached to Decision No 1/72 of the Association Council (Article 2) setting up the Association Committee:

‘The Commission of the European Communities shall chair the Committee and provide the secretariat on behalf of the European Community. The Chairman of the Committee may, in agreement with the two parties, shorten the time limits specified in Article 8(1) and (2), in order to take account of the requirements of a particular case.’

Done at Brussels, 9 January 2002.

For the Association Council

The President

J. BORG

COMMISSION

COMMISSION DECISION

of 18 July 2001

on the State aid implemented by the Netherlands in favour of Valmont Nederland BV

(notified under document number C(2001) 2231)

(Only the Dutch version is authentic)

(Text with EEA relevance)

(2002/142/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 called on interested parties to submit their comments pursuant to the provisions cited above ⁽¹⁾ and having regard to their comments,

Whereas:

31270 on 15 February 2000), 22 August 2000 (registered as A/36991 on 24 August 2000) and 5 September 2000 (registered as A/37421 on 13 September 2000). At two meetings on 14 April 1999 and 23 May 2000 the Netherlands authorities provided further information.

1. PROCEDURE

(1) In the spring of 1998 the Commission became aware of press articles alleging that between 1993 and 1995 municipalities had misused money of the province of North Brabant in various ways in order to attract companies ⁽²⁾. It requested information by letter of 1 April 1998 (D/51488). The Netherlands authorities replied by letter of 2 July 1998, registered as A/35148 on 6 July. The Commission asked for further information and reminded the Netherlands Government of these requests by letters of 29 October 1998 (D/54414), 21 December 1998 (D/55299), 31 March 1999 (D/51425), 2 August 1999 (D/63284), 6 September 1999 (D/63682), 27 October 1999 (D/64481), 24 January 2000 (D/50335) and 30 August 2000 (D/54456). The Netherlands authorities provided the requested information by letters of 19 January 1999 (registered as A/30448 on 19 January 1999), 23 August 1999 (registered as A/36473 on 25 August 1999), by e-mail of 29 November 1999 and by letters of 10 February 2000 (registered as A/

(2) After being contacted by the parent company of the Netherlands recipient, the Vice-Chairman of the Committee on International Relations of the United States House of Representatives intervened in the case. In his letter of 11 July 2000 to the Head of the Commission Delegation in Washington and to the Netherlands Ambassador in the United States, he sought assistance in resolving the matter as the land sale at issue had been concluded six years previously, in 1994. The Commission replied by letter of 11 August 2000, commenting on the need for control of State aid by the European Commission and stressing the importance of the principle that unlawful aid is recovered from the recipient by the competent authorities.

(3) By decision of 18 October 2000, the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty with respect to the aid measures. By letter dated 7 November 2000 (D/108153), it informed the Netherlands of this decision. After asking for a two-week extension of the deadline (letter of 5 December 2000, registered as A/40420 on 11 December 2000), which was granted by letter of 18 December 2000 (D/56227), the Netherlands reacted to the decision by letter of 12 December 2000 (registered as A/30329 on 8 January 2001). The decision was published in the *Official Journal of the European Communities* ⁽³⁾, inviting interested third parties to submit their comments on the aid.

⁽¹⁾ OJ C 37, 3.2.2001, p. 44.

⁽²⁾ 'Gedeputeerden werkten mee aan U-bocht', Brabants Dagblad, 6 March 1998; 'U-bocht rammelde flink', Brabants Dagblad, 10 March 1998; 'U-bocht strijdig met regels EU', Brabants Dagblad, 10 March 1998.

⁽³⁾ OJ C 37, 3.2.2001, p. 44.

- (4) The Commission received one comment from an interested party, namely the recipient of the aid (letter of 20 February 2001, registered as A/31474 on the same date). It forwarded the comment to the Netherlands by letter of 13 March 2001 (D/51072). This letter also contained several questions with regard to the aid measures. After asking for a six-week extension of the deadline (letter of 17 April 2001, registered as A/33188 on 20 April 2001) and after the Commission granted a shorter extension by letter of 30 April 2001 (D/51755), the Netherlands authorities sent their reaction and the answers by letter of 14 May 2001 (registered as A/33915 on 17 May 2001).

2. DETAILED DESCRIPTION OF THE AID

2.1. The recipient

- (5) Valmont is a subsidiary of Valmont Industries Inc., a United States-based company manufacturing mechanised irrigation equipment, posts for lighting, transport, utility and communication applications, and custom coated and fabricated products for various industrial uses. It operates 21 manufacturing plants in four continents. Its annual turnover in 2000 was USD 846 million. The company has about 5 500 employees. Within the EU it operates production sites in the Netherlands, France, Spain and Germany ⁽¹⁾.
- (6) In 1991 Valmont Industries Inc., bought the Netherlands company Nolte BV, which since the 1940s had produced poles for public lighting and for traffic signs. The company now operates under the name of Valmont Nederland BV and its current product range includes several types of steel or aluminium posts between 3 m and 80 m high or even higher, to be used for all kinds of traditional and modern purposes ⁽²⁾. In 1994 the company bought 3 ha of land on which a new production site was set up.

2.2. Aid via the land sale

- (7) In 1993 and 1994 the Province of North Brabant invested NLG 20 million (EUR 9,1 million) in strengthening the economic structure and improving the business climate in the province. The financial resources were used to tackle infrastructure bottlenecks on industrial estates in the province. The projects were carried out by the municipalities, which received money from the province for this purpose. In fact, some municipalities had already earmarked resources of their own for these projects. The provincial money consequently enabled them to use these resources for other purposes. This practice was labelled the 'U-turn' ('U-bocht'). The

province had stipulated that the municipalities must not use these resources for direct (financial) aid to companies.

- (8) In 1994 the Province of North Brabant made available NLG 400 000 to the municipality of Maarheeze (now part of the municipality of Cranendonck) for the infrastructure project 'Philipscomplex/Den Engelsman'. The project involved expansion and improvement of the infrastructure of the industrial estate at a total cost of NLG 1 469 000 (EUR 666 000). The municipality had already earmarked financial resources for this project which were subsequently used for other purposes. In this case the municipality used the provincial money to write off the accumulated losses of the municipal department responsible for managing the industrial estate, enabling the land to be sold at a lower price. In 1994 the municipality of Maarheeze subsequently sold 3 ha of land to Nolte BV, now Valmont Nederland BV (hereinafter 'Valmont'), for NLG 900 000 (EUR 408 402); this works out at NLG 30 (EUR 13,61) per m².

- (9) The Netherlands Government provided a land valuation report by an independent expert dated 4 December 1998. According to the report, the price of land in Maarheeze at the time was NLG 42,50 (EUR 19,29) per m². On the basis of this price, the value of the land would be NLG 1 275 000 (EUR 578 570). The Commission therefore assumed that the land sale contained an aid element of NLG 375 000 (EUR 170 168). Following the meeting with the Commission on 14 April 1999, the Dutch authorities requested the company to pay back the supposed aid element (after subtracting the *de minimis* amount of EUR 100 000 ⁽³⁾, however). The company has so far refused to do so.

2.3. Aid via the construction of a car park on the premises of Valmont

- (10) In addition, the municipality paid NLG 250 000 (EUR 113 445) for the construction of a public car park on the premises of Valmont.

2.4. Grounds for initiating the procedure of Article 88(2) of the EC Treaty

- (11) As the municipality of Maarheeze was not located in an assisted area within the meaning of Article 87(3)(a) or (c), the Commission doubted whether the measures were compatible with Community legislation. No other justifications seemed applicable. The Commission also had doubts regarding the public nature of the car park.

⁽¹⁾ www.valmont.com.

⁽²⁾ www.valmont.nl.

⁽³⁾ Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996, p. 9). This notice has been replaced by Commission Regulation (EC) No 69/2001 (OJ L 10, 13.1.2001).

3. COMMENTS FROM THE NETHERLANDS

- (12) The Netherlands authorities submitted a land valuation report from 1994. Unfortunately, this report was not made available earlier. It was commissioned by Valmont in order to obtain bank financing secured by the valued property. The valuation in fact relates to both the buildings and the land. According to this report, the value of the land would be NLG 1 050 000 (EUR 476 000), which corresponds to NLG 35 (EUR 15,88) per m². The valuer for the 1994 report commented on the difference with the 1998 report in a new note that was attached to the submission by the Netherlands. The difference would be attributable in part to the fact that this report gives a valuation of the land when it was no longer undeveloped, resulting in a lower value. The 1994 report also contains a correction for conveyancing costs. Moreover, the valuer for the 1994 report maintains that the 1998 report does not take into account the fact that about one third of the land is not directly accessible from the public highway.
- (13) The Netherlands authorities also submitted declarations by three companies that regularly use the car park and maintained that it was available for use by other companies as well. This would be confirmation that the car park is a public one. The municipality and Valmont had concluded a 'gentleman's agreement' on the public use of the car park and this agreement is strictly enforced. The municipality has the powers to enforce the agreement as the land use plan does not allow buildings on this part of the land. If Valmont wished to use the car park for buildings, it would have to seek an exemption from the land use plan from the local administration, something which would be refused by virtue of the agreement. In this way, continued use of this part of the land as a public car park would be ensured.

4. COMMENTS FROM INTERESTED PARTIES

- (14) Following publication of the decision to open the procedure, the Commission received comments only from the recipient company, Valmont. In its letter Valmont endorses the arguments put forward by the Netherlands authorities. In particular it stresses the new information in the land valuation report prepared in 1994 and states that the amount of aid calculated on this basis would remain below the *de minimis* threshold of EUR 100 000. Valmont also confirms that the car park is used by

several companies in Valmont's vicinity. It does not receive payments from any of the users for their use of the car park. It concludes that the car park meets the definition of 'public' or 'semi-public' property for the purposes of Community State aid rules.

5. ASSESSMENT OF THE AID

5.1. The aid element in the price of the land

- (15) Sales of land and buildings by public authorities may contain State aid in favour of the buyers. The Commission communication on State aid elements in sales of land and buildings by public authorities⁽¹⁾ sets out a general approach that is to be used to establish whether there is such an element of State aid. Although the land sale took place before the communication was adopted, the same principles apply since the communication clarifies a policy that, at the time of the adoption, had already existed for more than ten years⁽²⁾. However, the Commission is aware that the case law on this point was still limited at the time of the land sale and it does not expect the transaction to have complied with the precise content of the communication.
- (16) Point 2(a) of the communication gives public authorities the option of using an independent evaluation of the land price prior to the sale negotiations in order to establish the market value. The market price thus established is the minimum price that can be agreed without granting State aid. In the present case, there are two valuation reports. Both reports were drawn up after the sale.
- (17) In this case, the Commission cannot rely on the 1994 report. This report gives an evaluation of the complete premises, including the building. It does not give an estimate of the value of the land as sold by the municipality, i.e. undeveloped. This is illustrated by the method by which the land value is arrived at: the value is calculated by taking the total value at sale minus building costs. The fact that the report makes a correction for conveyancing costs also shows that it does not relate to the situation in which Valmont bought the land but to the theoretical situation in which Valmont would sell it.

⁽¹⁾ OJ C 209, 10.7.1997, p. 3.

⁽²⁾ The Commission already declared in 1963 that Article 92 was applicable to the sale of land and buildings for free or on particularly favourable conditions. See the answer to Written Question No 48 by Mr Burgbacher (OJ 125, 17.8.1963, p. 2235/63).

- (18) The 1998 report bases its calculation on the 1994 prices of other land sales by the municipality concerned and of land sales by other parties. In his subsequent comment, the valuer for the 1994 report maintains that the 1998 report does not take into account the fact that about one third of the land is not directly accessible from the public highway. However, this claim is not supported by evidence. The 1998 report explicitly states that the valuers visited the site in order to get an impression of the location, accessibility, quality and marketability of the land. Therefore, on the basis of the information available, the Commission can rely on this report. As it concludes that the market price for the land sold to Valmont was NLG 42,50 (EUR 19,29) per m², the aid element in the land sale amounts to NLG 375 000 (EUR 170 168) in favour of the buyer.
- (19) In the Commission's view, this benefit is caught by the prohibition under Article 87(1). It is specific to the buyer, Valmont. It is granted through State resources as the land is sold directly by the local authorities. It can be expected to affect trade between Member States as Valmont and its parent company Valmont Industries Inc. are active in sectors where the products are traded internationally.
- (21) Valmont is, it is true, the main beneficiary but three letters from firms in Valmont's vicinity confirm that they make regular use of the car park free of charge for parking their trailers, and the Netherlands authorities confirmed that it is available for use by other firms as well. One of these letters shows that the alternative for this company would be for its trailers to be parked near drivers' homes. Furthermore, the municipality can strictly enforce its 'gentleman's agreement' with Valmont and guarantee that this part of the land will continue to be used as a car park by means of its powers under the land use plan. Accordingly, the car park has to be regarded as 'partly private' or 'semi-public'.
- (22) In view of the foregoing observations, the Commission regards half of the costs of constructing the car park as normal business costs. The fact that the municipality paid the full costs of the car park constitutes a specific benefit for the company which, like the land sale, is caught by the prohibition in Article 87(1). This benefit must be considered to amount to at least NLG 125 000 (EUR 56 723).

5.3. Appraisal of the compatibility of the aid

5.2. The aid element in the car park

- (20) Generally, the Commission assumes that the provision of a public car park does not represent any benefit for a particular company since the costs of such investment are usually financed out of local taxes, to which the companies and private persons benefiting themselves contribute. In this case, however, Valmont must be regarded as the main beneficiary of the car park. It is probable that Valmont is the main user of the car park on its own premises. Moreover, if the municipality had not constructed the car park, Valmont would itself have had to finance the provision of sufficient parking space. Given the kind of activities in which Valmont is engaged, namely the manufacture of various types of aluminium and steel posts between 3 m and 80 m high, it is clear that Valmont needs substantial parking space. In addition, the car park is separated from the street by a fence, with the result that an occasional passer-by does not have the impression that it is a public car park. Apart from the three letters from firms that use the car park, the Netherlands authorities have not produced any proof of the public use of the car park. The 'gentleman's agreement' on the use of the car park by other firms is not sufficient for it to be regarded as a public car park.
- (23) The Commission has assessed whether the exemptions set out in Article 87(2) and (3) of the EC Treaty apply. Aid may be deemed compatible with the common market under Article 87(2). However, the aid measures (a) do not have a social character and are not granted to individual consumers, (b) are not designed to make good the damage caused by natural disasters or exceptional occurrences and (c) are not required in order to compensate for the economic disadvantages caused by the division of Germany. The exemptions in Article 87(3)(a), (b) and (d), which relate to the promotion of the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, to projects of common European interest and to the promotion of culture and heritage conservation, do not apply either.
- (24) Nor did the Netherlands authorities attempt to justify the aid on the grounds enumerated above.
- (25) The first part of the exemption in Article 87(3)(c), which refers to aid to facilitate the development of certain economic activities, does not apply since the aid did not serve such purposes as research and development, the environment or investment by small and medium-sized enterprises. The aid does not relate to a specific project to be carried out by the recipient that could be seen as promoting the common interest. The Commission has

based its assessment on the fact that the proposed aid was designed to ensure investment in the municipality of Maarheeze. Thus, it scrutinised the aid in the light of the regional guidelines that are based on the second part of the exemption in Article 87(3)(c), namely aid to facilitate the development of certain economic areas. However, the municipality of Maarheeze was not located in a region eligible for regional aid at the time of the land sale. Consequently, the exemption in Article 87(3)(c) does not apply.

- (26) Since none of the exemptions in Article 87 apply, the aid measure is incompatible with the common market.
- (27) If the aid proves incompatible with the common market, the Commission is required, in accordance with the ruling given by the Court of Justice in Case 70/72 ⁽¹⁾, upheld in Cases 310/85 ⁽²⁾ and C-5/89 ⁽³⁾, to require the Member State to recover from the recipient all aid granted unlawfully. This measure is necessary in order to restore the previous situation and to remove all the financial benefits which the firm receiving the unlawful aid has improperly enjoyed since the date on which the aid was paid. Recovery of the incompatible and unlawful aid is an obligation imposed on the Commission by Council Regulation (EC) No 659/1999 ⁽⁴⁾.
- (28) The aid must be repaid without delay in accordance with the procedure laid down by Netherlands law provided that it allows the immediate and effective execution of the Commission Decision. The aid includes interest calculated from the date on which it was granted to the date on which it is actually recovered. Interest is calculated on the basis of the commercial rate, with reference to the rate used to calculate the grant equivalent of regional aid.

6. CONCLUSIONS

- (29) The sale of 3 ha of land in 1994 by the local authorities contains a State aid element of NLG 375 000 (EUR 170 168).
- (30) The construction of the car park on the premises of Valmont, which was financed by the municipality, contains a State aid element of NLG 125 000 (EUR 56 723).
- (31) The Netherlands has breached Article 88(3) of the EC Treaty by implementing the measures without proper notification.

- (32) Both aid measures are incompatible with the common market and the aid has to be recovered from the recipient,

HAS ADOPTED THIS DECISION:

Article 1

The land transaction and the construction of the car park on the premises of the company contain elements of State aid within the meaning of Article 87(1) of the EC Treaty in favour of Valmont. These aid elements amount to NLG 375 000 (EUR 170 168) and NLG 125 000 (EUR 56 723) respectively.

Article 2

The aid elements referred to in Article 1 are incompatible with the common market.

Article 3

1. The Netherlands shall take all necessary measures to recover from the recipient the unlawful aid referred to in Article 2.
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 the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient 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 4

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

Article 5

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 18 July 2001.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁾ Case 70/72 *Commission v. Germany* [1973] ECR 813.

⁽²⁾ Case 310/85 *Deufil GmbH und Co. KG v. Commission* [1987] ECR 901.

⁽³⁾ Case C-5/89, *Commission v. Germany* [1990] ECR I-3437.

⁽⁴⁾ OJ L 83, 27.3.1999, p. 1.

COMMISSION DECISION
of 18 July 2001
on the State aid which Germany is planning to implement for Automobilmanufaktur Dresden GmbH

(notified under document number C(2001) 2348)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/143/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 called on interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) After a meeting on 8 July 1999, Germany gave notification by letter dated 5 July 1999, registered as received on 9 July, of planned aid in respect of an investment project by Automobilmanufaktur Dresden GmbH (AMD), a wholly owned subsidiary of Volkswagen AG (VW).
- (2) The Commission addressed additional questions to Germany by letter dated 3 August 1999. After a request from Germany for an extension of the deadline for a reply, Germany partly answered the questions by letter dated 5 October 1999 (registered as received on 6 October) 1999. By letter dated 21 October 1999, the Commission gave its comments. By letter dated 17 November 1999 (registered as received on 18 November 1999), Germany provided additional information.
- (3) By letter dated 3 February 2000, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. Its objections relate to the claim by Germany that the exemption in Article 87(2)(c) of the EC Treaty applies, the mobility of the investment, a number of assumptions in the cost-benefit analysis submitted by Germany that do not appear to comply with Commission practice, and the notified amount of aid and aid intensity.

- (4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on interested parties to submit their comments.
- (5) The Commission received no comments from interested parties.
- (6) By letter dated 3 April 2000 (registered as received on 4 April 2000), Germany submitted comments on the opening of the investigation procedure. After a letter requesting clarifications was sent to Germany on 13 September 2000, an on-site visit on 28 and 29 November 2000, a reminder from the Commission dated 22 December 2000 and a request from Germany for an extension of the deadline for a reply dated 17 January 2001, to which the Commission agreed on 23 January 2001, Germany sent additional information by letter dated 2 February 2001 (registered as received on 7 February 2001).

II. DETAILED DESCRIPTION OF THE AID

- (7) The Volkswagen group is active in the motor vehicle sector and sells passenger cars through its four main brands: Volkswagen, Audi, Seat and Skoda. In the European Union and the central and eastern European countries (CEECs), Volkswagen operates plants in Germany, Belgium, Spain, Portugal, Slovakia, Hungary and the Czech Republic. The company decided to produce under the brand Volkswagen a completely new model that would compete with the Audi A8, the Mercedes S Class, the BMW 7 Series and Jaguar (limousine).
- (8) The beneficiary of the aid is AMD. VW developed a concept known as 'gläserne Manufaktur' (transparent factory) which allows the customer to observe the final assembly of his vehicle on site by highly skilled personnel. The assembly plant is to be built in a town which is characterised by a combination of engineering, tradition and culture. Germany announced that, following a comparative assessment of different sites, VW had decided to locate the transparent factory in Dresden.

⁽¹⁾ OJ C 78, 18.3.2000, p. 8.

⁽²⁾ See footnote 1.

- (9) The investment will take place in several places: the bodyshop and paintshop will be located in Mosel on a previously used and now abandoned site next to VW's existing plant. An intermediate storage centre will be established in Dresden-Friedrichstadt and the transparent factory in which the assembly takes place is to be built close to the historical centre of Dresden, on the Straßburger Platz. Germany notified all of the investments as 'greenfield' investments within the meaning of the Community framework for State aid to the motor vehicle industry ⁽¹⁾ (hereinafter the 'motor vehicle framework') and stated that the project does not entail the creation of an overall project within the meaning of point 2.1(e) of the motor vehicle framework.
- (10) According to Germany, the investment could be carried out at alternative sites, namely in Prague and the VW group's existing Kvasiny plant in the Czech Republic. On completion of the project, installed capacity in Dresden will be 37 500 units per year. According to Germany, a total of approximately 2 000 new jobs will be created in AMD.
- (11) According to the initial notification of 5 July 1999, the planned aid amounts to DEM 194 million (net present value: DEM 174 million), resulting in an aid intensity of 13,42 %. The cost-benefit analysis in the notification puts at 37,1 % the intensity of the locational handicap, comparing both Mosel and Dresden with a comparable investment made at the alternative sites identified in the Czech Republic. According to the additional information submitted by Germany on 5 October 1999, Mosel would face a 180,4 % handicap in relation to Kvasiny, while Dresden would face one of 19,7 % in relation to Prague.
- (12) Following the opening of the investigation procedure, Germany provided updated figures on the planned aid and revised the data in the cost-benefit analysis. On the basis of these figures, Mosel faces a 35,2 % locational handicap in relation to Kvasiny, while Dresden faces one of 21,8 % in relation to Prague. Regional aid amounting to around DEM 190,5 million (net present value: DEM 171 million) is to be granted to AMD under the approved 'Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur' (GA) — 27. Rahmenplan (27th outline plan for the joint Federal Government/Länder scheme for improving regional economic structures) and under the approved 'Investitionszulagengesetz 1999' (1999 Investment Allowance Law). The aid will be paid over time in the light of progress with the investment project.
- (13) Mosel is situated in an assisted region for the purposes of Article 87(3)(a) of the EC Treaty that has a regional aid ceiling of 35 % gross grant equivalent (gge). Both locations in Dresden are also located in an Article 87(3)(a) region but have a lower regional aid ceiling of 28 % gge for large enterprises. Germany has asserted that the aid is also compatible with the common market under Article 87(2)(c), whereby aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany is deemed compatible in so far as it is required in order to compensate for the economic disadvantages caused by that division.

III. COMMENTS FROM GERMANY

- (14) By letter dated 3 April 2001, Germany submitted comments on the opening of the investigation procedure which it considered sufficient for the Commission to be able to conclude the evaluation of the case.
- (15) Germany explained in more detail the conditions under which the site on which the plant in Dresden is being constructed, was sold by the city of Dresden to AMD and submitted additional documents, such as the purchase contract (extracts) and its implementing agreement (Durchführungsvertrag).
- (16) With regard to the exemption provided for in Article 87(2)(c) of the EC Treaty, Germany restated its view that this provision applies in the present case.
- (17) With regard to the mobility of the project, Germany provided additional information and stated that the production of the model in the Czech Republic was a viable and sound alternative. Given that the marketing concept provides for observation of the assembly of the car by the customer as well as a tour of the city, Prague was considered as attractive in cultural and tourism terms as Dresden. In addition, VW basically assumes that the location of the production site would not affect sales. Moreover, Germany stated that the locational choice had become less crucial as the company has managed to replace a locational image by a brand image ('Made by Volkswagen'). However, should an image-induced risk to sales arise, then, according to Germany, it would be compensated for by additional marketing expenditure. With regard to the quality of production, it is emphasised that the 'objective' quality of production is the same in all VW production locations. The 'subjective'

⁽¹⁾ OJ C 279, 15.9.1997, p. 1.

perception of the quality of cars produced by VW in the Czech Republic, such as Skoda, reaches the level of other brands in the VW group. Mention is also made of the existing production of the Audi TT model in Hungary and the assembly of the Porsche Boxster in Finland.

- (18) As regards the nature of the investment, Germany states that it considers all investments in Dresden and Mosel as new investments. A number of elements used in the cost-benefit analysis for the purpose of calculating the locational handicap were modified and quantified, such as tangible and intangible risks/factors.
- (19) Finally, Germany states that the additional production capacity for the D1 model, which is at the higher end of the range is 37 500 vehicles a year. In practice, it could not be assumed that all VW vehicles were perfectly substitutable. In this market segment there are four other major players (BMW 7 Series, Mercedes S Class, Audi A8, Jaguar) and a few smaller producers (such as Toyota Lexus). Production of the D1 model would thus have positive effects as it increases competition in this segment. The effects of the project on capacity within the meaning of the motor vehicle framework are considered small by Germany.
- (20) Following an on-site visit on 28 and 29 November 2000, Germany submitted additional information by letter dated 2 February 2001. This comprised separate, revised cost-benefit analyses for Dresden and Mosel; several points raised by the Commission when the procedure was initiated were enlarged upon. Additional documents relating to the intention to evaluate different sites were provided, together with updated figures on the investment costs, operating costs and amounts of aid. The revised cost-benefit analysis gives a locational handicap for Dresden of 21,8 % and for Mosel of 35,2 %.

IV. ASSESSMENT OF THE AID

- (21) The aid measure notified by Germany for AMD constitutes state aid within the meaning of Article 87(1) of the EC Treaty. It would be financed by the State or through state resources. Furthermore, as it constitutes a significant proportion of the funding of the project, it is liable to distort competition in the Community by giving AMD an edge over competitors. Lastly, there is extensive

trade between Member States in the motor vehicle market.

- (22) The aid is intended for a firm which manufactures and assembles cars. The firm is therefore part of the motor vehicle industry within the meaning of the motor vehicle framework.
- (23) The aid is to be granted under the 'Investitionszulagengesetz 1999' (1999 Investment Allowance Law) and the 'Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) — 27. Rahmenplan' (27th outline plan for the joint Federal Government/Länder scheme for improving regional economic structures), which were both approved by the Commission.
- (24) The motor vehicle framework stipulates that aid which the public authorities plan to grant to an individual project under an authorised aid scheme for a firm operating in the motor vehicle industry must, in accordance with Article 88(3) of the Treaty, be notified before being granted if at least one of the following thresholds is reached: (i) total cost of the project equalling EUR 50 million or (ii) total gross aid for the project, whether State aid or aid from Community instruments, equalling EUR 5 million.
- (25) Both the total cost of the project and the amount of aid exceed the notification threshold. Thus, in notifying the proposed aid for AMD, Germany has complied with the requirement arising out of Article 88(3) of the EC Treaty.
- (26) Article 87(2) of the EC Treaty specifies certain types of aid that are compatible with the common market. Germany relies on Article 87(2)(c), whereby aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany is compatible with the common market in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. According to settled case-law⁽¹⁾, the phrase 'division of Germany' refers historically to the establishment of the dividing line between the two occupied zones in 1948. Therefore, the 'economic disadvantages caused by that division' can mean only the economic disadvantages caused by the isolation which the establishment of that physical frontier entailed, such as the breaking of communication links or the loss of markets as a result of the breaking off of commercial relations between the two parts of German territory. Germany has not shown that the aid is necessary to compensate for such an economic disadvantage caused by the division of Germany. The Commission therefore considers that Article 87(2)(c) is not applicable to the planned regional aid for AMD. Article 87(2)(a) and (b) is not applicable either, in view of the nature and purpose of the aid and the location.

⁽¹⁾ Judgment of the Court of Justice of the European Communities of 19 September 2000 (Case C-156/98 Germany v. Commission [2000] ECR I-6857).

- (27) Under Article 87(3) of the EC Treaty, certain other forms of aid may be regarded as compatible with the common market. Compatibility must be assessed from the standpoint of the Community as a whole and not from that of an individual Member State. In order to safeguard the proper functioning of the common market and to respect the principle in Article 3(1)(g) of the Treaty, the exceptions in Article 87(3) must be construed narrowly. With regard to Article 87(3)(b) and (d), it is clear that the aid in question is not intended to promote the execution of an important project of common European interest, to remedy a serious disturbance in the economy of a Member State or to promote culture and heritage conservation. As regards Article 87(3)(a) and (c), the Commission notes that the different investment projects are carried out in areas of Saxony which qualify for assistance under point (a). According to the new regional-aid map in Germany, approved by the Commission on 29 July 1999 for the Article 87(3)(a) regions, the projects are located in areas with a regional-aid ceiling for large companies of 35 % gge (Mosel) and 28 % gge (Dresden).
- (28) As regards the land transaction between the city of Dresden and AMD, Germany provided additional documents and explained in its comments, on the opening of the procedure, the conditions on which the land was sold. An assessment of the value of the land was carried out by an independent evaluation committee commissioned by the city of Dresden under the applicable German law (§192 Baugesetzbuch). The value of the land ('erschließungsbeitragsfreies baureifes Land') was estimated at DEM [...] (*) per m² minus the costs necessary to render the area usable for investment (such as redevelopment, anti-pollution measures and clearance of ammunition and the like remaining from the war) and minus the loss in value due to restrictions on future use. According to the purchase contract and its implementing agreement, the site was sold at a price of DEM [...] per m² and AMD undertook to pay the necessary costs for cleaning up and preparing the site for redevelopment (amounting to DEM [...] per m²), which would otherwise have had to be borne by the city. As the total costs incurred by AMD amount to DEM [...] per m², the Commission considers that AMD has not received any aid related to the purchase of the land.
- (29) In order to decide whether regional aid under the exception in Article 87(3)(a) of the EC Treaty is compatible with the common market, the Commission must check whether the conditions specified in the motor vehicle framework have been met.
- (30) In order to authorise aid under the motor vehicle framework, the Commission, after checking that the area in question is eligible for aid under Community legislation, establishes whether the investor has considered an alternative site for its project, the aim being to ascertain the need for the aid, with particular reference to the mobility of the project.
- (31) The Commission has studied the mobility of the project. In this respect, the automotive group which is to receive the aid must prove, in a clear and convincing way, that there is an economically viable alternative to the planned location. The Commission has taken into account in its assessment that the project in question involves entirely new investment (greenfield project) in Dresden as well as the expansion, without replacement, of existing operating installations in Mosel, where a new bodyshop and paintshop are being built on a previously used and now abandoned site next to VW's existing plant. This has been confirmed by the Commission's external automotive expert following an on-site visit.
- (32) In addition, the Commission received several documents, such as copies of minutes of VW's decision-making body which show the company's intention to assess alternative sites for the production of the new model, a document comparing the two sites (Machbarkeitsstudie und Standortuntersuchung — Volkswagen D1), a site plan of the available area in Prague as well as detailed information on cost elements based on VW's actual costs at its existing plants in the Czech Republic.
- (33) Since VW already operates several car plants in central and eastern Europe, it would be technically possible to carry out the investment for the production of the new D1 model in VW's Kvasiny plant and to start assembly work at a greenfield site in Prague. As to whether Prague can be considered as a credible commercial alternative, the Commission notes that, according to the sales promotion concept of VW, the customer should combine a visit of a city possessing a rich cultural heritage with a viewing of the car assembly and delivery

(*) Confidential information.

at the plant. Both Saxony and the Czech Republic have a long tradition of car manufacturing. In addition, it can be assumed that both Dresden and Prague are equally attractive in cultural terms and would therefore fit into the planned marketing concept. Audi already assembles a top-of-the-range model (Audi TT) in Hungary.

significantly higher level of wage costs in Germany compared with the Czech Republic. Taking into account the additional information received from Germany following the opening of the procedure, the cost-benefit analysis, based on the exchange rate applicable at the time of notification, was modified in the manner described below.

- (34) However, where producing the D1 model in the Czech Republic is concerned, there still remains a possible image risk as the sales concept envisages that the customer will become acquainted with the location in central/eastern Europe. Germany acknowledged that, as a location, Prague might have an influence on potential buyers of the car and that there could be a risk that the sales volume and price could be lower compared with Dresden as a result of customers' subjective expectations. This risk, according to Germany, could however be compensated for by increased marketing expenditure. The Commission, having consulted its external automotive expert, considers it plausible that such an image risk could be mitigated by additional marketing measures. Taking into account in the cost-benefit analysis the increased marketing expenditure needed, the Prague or Kvasiny option can be considered as a credible commercial alternative. The Commission concludes therefore that the project is mobile and so can be considered eligible for regional aid since the aid is necessary to attract investment to the assisted region.
- (35) Regional aid intended for modernisation and rationalisation measures, which are generally not mobile, is not authorised in the motor vehicle sector. However, it could be granted for a transformation involving a radical change in production structures at the existing plant. The external automotive expert consulted by the Commission has confirmed that the investment in the new paintshop and bodyshop in Mosel, in an abandoned building next to VW's main operating plant in Mosel, in which the existing bodyshop and paintshop could not have been used for the completely new D1 model, qualifies as a transformation. The investments in Dresden concern greenfield projects.
- (36) The Commission has, with the help of its external automotive expert, evaluated the cost-benefit analysis presented with a view to ascertaining to what extent the proposed regional aid is suited to resolving the regional problems it seeks to alleviate. The in-depth evaluation has made it possible to clarify the points which were raised when the procedure was launched. The principal reason for the locational handicap of Dresden is the
- (37) In opening the procedure, the Commission expressed doubts as to whether it would be appropriate, as notified by Germany, to examine in the assessment of the proportionality of the aid, Saxony's locational handicap relative to the Czech Republic only on the basis of an aggregated analysis. In view of the different types of investment (greenfield in Dresden and expansion in Mosel) and in particular the different regional-aid ceilings for Dresden (28 % gge and Mosel (35 % gge), it has based its assessment of the proportionality of the aid on two separate cost-benefit analyses, one for the Dresden and Prague and one for Mosel and Kvasiny.
- (38) Germany has considered all investments in Dresden and Mosel as greenfield investments. A new plant within the meaning of the motor vehicle framework would mean a plant on a new site which has not yet been developed. In such cases, compared with plant expansion, companies are faced with the problems resulting from a lack of adequate infrastructure, organised logistics, an appropriately skilled workforce and subcontracting structures. If, however, such facilities can be provided by a unit of the same group located in close proximity to the site, the Commission regards the project as an expansion even if it is actually built on a greenfield site. Following the on-site visit, the Commission noted that the investment in the new bodyshop and paintshop is taking place in existing buildings previously used by VW Sachsen GmbH, near to its main plant in Mosel. As AMD can profit from the existing infrastructure and logistics, the Commission considers that the project is to be regarded as an expansion. Consequently, the operational handicaps in Mosel were assessed in the cost-benefit analyses over a period of three years.
- (39) On the other hand, the investments in Dresden involve greenfield projects. The Commission has noted that these investments are carried out on completely new sites, creating new jobs, and that jobs are not being transferred from VWs existing plant in Mosel. The operating handicaps in Dresden were accordingly assessed over a period of five years.

- (40) The Commission opened the procedure under Article 88(2) of the EC Treaty also in order to verify to what extent additional marketing expenditure would be needed to compensate for image risks were the vehicle to be produced in the Czech Republic. Germany acknowledged, in principle, that, if the new luxury D1 car were produced in Prague, VW might have to accept lower prices at the outset and/or the start-up curve might be lower as a result of customers' subjective expectations with regard to quality differences. Germany estimated the additional marketing expenditure to compensate for this risk at DEM [...] million in the average scenario and at DEM [...] in the worst-case scenario. As a precaution, the Commission has based its analysis on the worst-case scenario and assumed that the expenditure, which will have a significant impact on the locational handicap, would occur in particular at the start of production. Germany has allocated these additional costs to the Prague and Kvasiny sites according to the value added. Given the underlying marketing concept of the 'transparent factory', where the customer combines a visit to a city possessing a rich cultural heritage with a viewing of the final assembly of his car, the Commission considers however that these marketing costs are closely linked to the sale of the car at the assembly plant and should therefore be fully allocated as necessary additional marketing costs to the two comparator sites where the vehicles are to be assembled and delivered, i.e. Dresden and Prague.
- (41) Volkswagen acknowledged that transfer of the car from the Czech Republic could give rise to additional costs which it put at DEM [...] million. These costs were included in the calculations, it being taken into account that they might arise in particular in the years before accession. As regards quality management, Volkswagen acknowledged that, in a worst-case scenario, additional personnel costs of DEM [...] million might arise for the Prague site during a transitional period. A further DEM [...] million was included for possible start-up difficulties in Prague. All these costs were included in the cost-benefit analysis.
- (42) As regard wage costs, it has been the Commission's standard practice in cases where the comparator plant is located in central or eastern Europe to apply a convergence factor. The Commission indicated when opening the procedure that it had been its previous practice in similar cases to incorporate an annual convergence factor of 5 % in the cost-benefit analysis. Although Germany does not agree with this, the Commission considers that wages and salaries in the Czech Republic and Germany are expected to converge as the labour market in the Czech Republic expands in view of the forthcoming EU enlargement. Consequently, on the basis of the information provided by Germany, additional costs of some DEM [...] million have been taken into account for the siting of production in the Czech Republic. Even though productivity risks in the Czech Republic are considered to be relatively low by Volkswagen, the company has included in the cost-benefit analysis risk-induced costs of an estimated DEM [...] million for the worst-case scenario.
- (43) With regard to investment costs, Germany acknowledged that the [...] reduction in costs initially assumed for the Prague scenario as a result of the procurement of material from suppliers in the Czech Republic does not hold as such differences would be eliminated within the overall procurement activities of the VW group. Such cost reductions were not therefore taken into account in the assessment of the comparative handicaps of Dresden with respect to the Czech Republic.
- (44) The comparative handicaps were calculated on the basis of the eligible investment costs under the aid schemes approved by the Commission. Cost disadvantages associated with the purchase of the site in Dresden were excluded from the cost-benefit analysis. The same applies to building investments in Mosel, which Germany included in the cost-benefit analysis as non-eligible costs. As regards machinery/equipment costs in Mosel, which Germany considered to be only partly eligible, the handicap was thus reduced proportionally. As regards supplier tooling costs, the Commission has considered as eligible only those pertaining to the assisted areas in the new Länder. Following the opening of the procedure, Germany provided an estimate of supplier-tooling investments to be carried out in those areas until 2004 and the Commission has taken only these amounts into account in its assessment. This has led to a reduction in eligible costs in both locations, increasing both the 'regional handicap ratio' and the aid intensity of the project. As Germany failed to provide sufficient proof, the Commission has not taken any locational handicaps into account with regard to supplier tooling.
- (45) The above modifications in the cost-benefit analysis produce results that differ from those of the analysis initially submitted by Germany. The net present value of the locational handicap thus amounts to DEM 86,7 million in Dresden and DEM 200,46 million in Mosel. The net present value of the eligible costs in Mosel amounts to DEM 334,59 million, giving a handicap of 59,91 % as compared with Kvasiny. The net present value of the eligible costs in Dresden amounts to DEM 652,81 million, while the handicap compared with Prague is 13,28 %.

- (46) Following the opening of the procedure, Germany provided updated figures on the aid to be granted to AMD under the approved 'Gemeinschaftsaufgabe Verbesserung der regionalen Wirtschaftsstruktur (GA) — 27. Rahmenplan' (27th outline plan for the joint Federal Government/Länder scheme for improving regional economic structures) and under the approved 'Investitionszulagengesetz 1999' (1999 Investment Allowance Law). The net present value of the aid to be granted for the project in Dresden amounts to DEM 105,87 million, resulting in an aid intensity of around 16,22 % gge, and the net present value of the aid to be granted in Mosel amounts to DEM 64,85 million, resulting in an aid intensity of some 19,38 % gge.
- (47) In view of the sensitive character of the motor vehicle industry, the Commission also examines whether an adjustment of between - 2 and + 4 percentage points can be made to the allowable aid intensity in the light of the effects on the industry and competition (in particular, variations in production capacity on the relevant market in the group concerned) and in the light of assisted-area status of the relevant location. The impact on the industry is 'high' where the ratio between the capacity of the group after the investment (C(f)) and the capacity of the group before the investment (C(i)) is 1,01 or over. According to the information provided by Germany, the production capacity of the VW group amounts to [...] (**) before the investment and to [...] after the investment. Taking into account the location's assisted-area status under Article 87(3)(a) area of the EC Treaty and the high impact on the industry of the variation in the production capacity of the group, the Commission has reduced the allowable aid intensity for the projects by one percentage point, to 58,91 % for the investment in Mosel and to 12,28 % for the investment in Dresden.

V. CONCLUSION

- (48) The Commission considers that the investment project is mobile and that the aid is necessary for the realisation of the project. With regard to proportionality, it has based its assessment on two separate cost-benefit analyses for both sites, given in particular the different regional-aid ceilings in Dresden and Mosel. As regards the investment in Mosel, the expected aid intensity is lower than both the regional handicap and the regional-aid ceiling. In such a case, the motor vehicle framework stipulates that the automotive company must not receive an unjustified amount of aid; the aid should serve to compensate to a

certain extent for the financial disadvantage of the choice of location. The Commission can therefore authorise the aid up to the amount of DEM 64,85 million (net present value) as it is compatible with the common market under Article 87(3)(a) of the EC Treaty.

- (49) As regards the investment in Dresden, the aid intensity planned by Germany is 16,22 % gge. Even though this is lower than the regional aid ceiling of 35 % gge, it is higher than the locational handicap costs, as calculated in the cost-benefit analysis and modified by the downward adjustment of one percentage point to 12,28 % of the eligible investments costs. Consequently, the Commission can authorise aid equivalent to only 12,28 % of the eligible investment costs of DEM 652,81 million, which corresponds to a net present value of DEM 80,17 million. The planned aid of DEM 25,7 million is incompatible with the common market and may not be implemented,

HAS ADOPTED THIS DECISION:

Article 1

1. The aid amounting to DEM 64,85 million (net present value) which Germany is planning to implement for Automobilmanufaktur Dresden GmbH (AMD) for its investment project in Mosel is compatible with the common market within the meaning of Article 87(3)(a) of the Treaty.

2. Up to the amount of DEM 80,17 million (net present value), the aid which Germany is planning to implement for AMD for its investment project in Dresden is compatible with the common market within the meaning of Article 87(3)(a) of the Treaty.

Of this aid, an amount of DEM 25,7 million (net present value) is incompatible with the common market. It may accordingly not be implemented.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 18 July 2001.

For the Commission

Mario MONTI

Member of the Commission

(**) Confidential information; increase of some 4 %.

COMMISSION DECISION

of 19 February 2002

on the clearance of the accounts of certain paying agencies in Spain in respect of expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the financial year 2000

*(notified under document number C(2002) 519)***(Only the Spanish text is authentic)**

(2002/144/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ⁽¹⁾, as last amended by Regulation (EC) No 1287/95 ⁽²⁾, and in particular Article 5(2)(b) thereof,

Having regard to Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy ⁽³⁾, and in particular Article 7(3) thereof,

After consulting the Fund Committee,

Whereas:

- (1) Under Article 5(2)(b) of Regulation (EEC) No 729/70 and Article 7(3) of Regulation (EC) No 1258/1999, the Commission, on the basis of the annual accounts submitted by the Member States, accompanied by the information required for clearance and a certificate regarding the veracity, completeness, and accuracy of the accounts transmitted clears the accounts of the paying agencies referred to in Article 4(1) of those Regulations.
- (2) With regard to Article 7(1) of Commission Regulation (EC) No 296/96 of 16 February 1996 on data to be transmitted by the Member States and the monthly booking of expenditure financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽⁴⁾, as last amended by Regulation (EC) No 1934/2001 ⁽⁵⁾, account is taken for the financial year 2000 of expenditure incurred by the Member States between 16 October 1999 and 15 October 2000.
- (3) By Commission Decision 2001/474/EC of 8 May 2001 on the clearance of the accounts of Member States' expenditure financed by the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section, for the financial year 2000 ⁽⁶⁾, the Commission

cleared the accounts of all the paying agencies that were not listed in Annex II to that Decision. Furthermore, the Commission decided that a sum amounting to ESP 500 928 314 was to be recovered from Spain. The accounts of the paying agencies of Andalusia, Aragon, Asturias, Canary Islands, Cantabria, Castile-La Mancha, Castile-Leon, Catalonia, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarre, Basque Country and Valencia in Spain concerning expenditure financed by the EAGGF Guarantee Section for the same financial year were disjoined from that Decision. For these paying agencies, the annual accounts and the accompanying documents now permit the Commission to take a decision on the veracity, completeness, and accuracy of the accounts submitted.

- (4) Pursuant to the second subparagraph of Article 7(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section ⁽⁷⁾, as last amended by Regulation (EC) No 2025/2001 ⁽⁸⁾, the amounts which are recoverable from, or payable to, each Member State are to be deducted from, or added to, advances against expenditure from the second month following that in which the clearance-of-accounts decision is taken. By clearing the accounts of the Spanish paying agencies that could not be cleared by Decision 2001/474/EC, the Commission can also decide on the supplementary amount that has to be recovered from Spain.
- (5) In accordance with the final subparagraph of Article 5(2)(b) of Regulation (EEC) No 729/70, Article 7(3) of Regulation (EC) No 1258/1999 and Article 7(1) of Regulation (EC) No 1663/95, this Decision, adopted on the basis of accounting information, does not prejudice decisions taken subsequently by the Commission excluding from Community financing expenditure not effected in accordance with Community rules,

⁽¹⁾ OJ L 94, 28.4.1970, p. 13.

⁽²⁾ OJ L 125, 8.6.1995, p. 1.

⁽³⁾ OJ L 160, 26.6.1999, p. 103.

⁽⁴⁾ OJ L 39, 17.2.1996, p. 5.

⁽⁵⁾ OJ L 262, 2.10.2001, p. 8.

⁽⁶⁾ OJ L 167, 22.6.2001, p. 27.

⁽⁷⁾ OJ L 158, 8.7.1995, p. 6.

⁽⁸⁾ OJ L 274, 17.10.2001, p. 3.

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to the Kingdom of Spain.

Article 1

The accounts of the paying agencies of Andalusia, Aragon, Asturias, Cantabria, Catalonia, Castile-La Mancha, Castile-Leon, Canary Islands, Extremadura, Galicia, La Rioja, Madrid, Murcia, Navarre, Basque Country and Valencia in Spain concerning expenditure financed by the EAGGF Guarantee Section in respect of the financial year 2000 are hereby cleared.

Done at Brussels, 19 February 2002.

The amount recoverable from Spain is determined in the Annex to this Decision.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX

Clearance of the accounts of those Spanish paying agencies not cleared in Decision 2001/474/EC

Financial year 2000

Member State	2000 — Expenditure for the paying agencies for which the accounts are cleared = expenditure declared in the annual declaration		Reductions and suspensions for the whole financial year	Total including reductions and suspensions	Advances paid to the Member State for the financial year	Total amount to be recovered from the Member State	Amount recovered from the Member State following Decision 2001/474/EC	Amount to be recovered from (–) or paid to (+) the Member State following current Decision
	a		b	c = a + b	d	e = c – d	f	g = e – f
ES	(ESP)	911 828 431 471,00	– 1 349 447 322,00	910 478 984 149,00	911 114 796 786,00	– 635 812 637,00	– 500 928 314,00	– 134 884 323,00
ES	(EUR)	5 480 067 500,88	– 8 110 146,78	5 471 957 354,10	5 475 778 573,15	– 3 821 219,05	– 3 010 567,43	– 810 651,62