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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 604/2002
of 8 April 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 9 April 2002.

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

Done at Brussels, 8 April 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 8 April 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	164,3
	204	74,9
	212	119,7
	220	149,1
	624	152,4
	999	132,1
0707 00 05	052	130,0
	628	178,7
	999	154,3
0709 90 70	052	115,0
	204	32,0
	999	73,5
0805 10 10, 0805 10 30, 0805 10 50	052	75,0
	204	48,4
	212	48,1
	220	42,0
	624	84,8
	999	59,7
0805 50 10	052	45,3
	999	45,3
0808 10 20, 0808 10 50, 0808 10 90	039	109,2
	060	42,5
	204	97,4
	388	96,8
	400	139,7
	404	107,1
	508	83,4
	512	87,7
	524	95,7
	528	82,2
	720	127,6
	804	117,5
	999	98,9
0808 20 50	388	84,4
	400	78,8
	512	64,8
	528	83,1
	999	77,8

⁽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 605/2002
of 8 April 2002
on the supply of white sugar as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, as amended by Regulation (EC) No 1726/2001 of the European Parliament and of the Council ⁽²⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated white sugar to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied

pursuant to Council Regulation (EC) No 1292/96 as Community food aid ⁽³⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs,

HAS ADOPTED THIS REGULATION:

Article 1

White sugar shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 8 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.
⁽²⁾ OJ L 234, 1.9.2001, p. 10.

⁽³⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 192/01
2. **Beneficiary** ⁽²⁾: World Food Programme (WFP), Via Cesare Giulio Viola 68, I-00148 Roma
tel.: (39-06) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** North Korea (via China)
5. **Product to be mobilised:** white sugar ('A' or 'B' sugar)
6. **Total quantity (tonnes net):** 600
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 [C.1]
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (11.2 A 1.b, 2.b and B.4)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (V.A(3))
 - Language to be used for the markings: English
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage:** free at port of landing — container terminal
13. **Alternative delivery stage:** free at port of shipment
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** Dalian
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 7.7.2002
 - second deadline: 21.7.2002
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: 20.5-2.6.2002
 - second deadline: 3-16.6.2002
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.4.2002
 - second deadline: 7.5.2002
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, Commission européenne, Bureau: L130 7/46, B-1049 Bruxelles; telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04
22. **Export refund** ⁽⁴⁾: refund applicable on 3.4.2002, fixed by Commission Regulation (EC) No 503/2002 (OJ L 79, 22.3.2002, p. 6)

Notes:

- (¹) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50), fax (32-2) 296 20 05)
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 2298/2001 (OJ L 308, 27.11.2001, p. 16), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— health certificate.
- (⁶) Notwithstanding OJ C 114 of 29.4.1991, point V.A(3)(c) is replaced by the following: 'the words "European Community"'.

- (⁷) Since the goods may be rebagged, the supplier must provide 2 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

COMMISSION REGULATION (EC) No 606/2002
of 8 April 2002
on the supply of vegetable oil as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1292/96 of 27 June 1996 on food-aid policy and food-aid management and special operations in support of food security ⁽¹⁾, as amended by Regulation (EC) No 1726/2001 of the European Parliament and of the Council ⁽²⁾, and in particular Article 24(1)(b) thereof,

Whereas:

- (1) The abovementioned Regulation lays down the list of countries and organisations eligible for Community aid and specifies the general criteria on the transport of food aid beyond the fob stage.
- (2) Following the taking of a number of decisions on the allocation of food aid, the Commission has allocated vegetable oil to certain beneficiaries.
- (3) It is necessary to make these supplies in accordance with the rules laid down by Commission Regulation (EC) No 2519/97 of 16 December 1997 laying down general rules for the mobilisation of products to be supplied under Council Regulation (EC) No 1292/96 as Community food aid ⁽³⁾. It is necessary to specify the time limits and conditions of supply to determine the resultant costs.
- (4) In order to ensure that the supplies are carried out for a given lot, provision should be made for tenderers to be able to mobilise either rapeseed oil or sunflower oil. The

contract for the supply of each such lot is to be awarded to the tenderer submitting the lowest tender,

HAS ADOPTED THIS REGULATION:

Article 1

Vegetable oil shall be mobilised in the Community, as Community food aid for supply to the recipient listed in the Annex, in accordance with Regulation (EC) No 2519/97 and under the conditions set out in the Annex.

The supply shall cover the mobilisation of vegetable oil produced in the Community. Mobilisation may not involve a product manufactured and/or packaged under inward processing arrangements.

Tenders shall cover either rapeseed oil or sunflower oil. Tenders shall be rejected unless they specify the type of oil to which they relate.

The tenderer is deemed to have noted and accepted all the general and specific conditions applicable. Any other condition or reservation included in his tender is deemed unwritten.

Article 2

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

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

Done at Brussels, 8 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.

⁽²⁾ OJ L 234, 1.9.2001, p. 10.

⁽³⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 191/01
2. **Beneficiary** ⁽²⁾: World Food Programme (WFP), Via Cesare Giulio Viola 68, I-00148 Roma
tel.: (39-06) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** North Korea (via China)
5. **Product to be mobilised:** refined rapeseed oil or refined sunflower oil
6. **Total quantity (tonnes net):** 2 000
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 (D.1 or D.2)
9. **Packaging** see OJ C 267, 13.9.1996, p. 1 (10.8, A, B and C.2)
10. **Labelling or marking** ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (III.A(3))
 - Language to be used for the markings: English
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market.
The mobilisation may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Specified delivery stage:** free at port of landing — container terminal
13. **Alternative delivery stage:** free at port of shipment
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** Dalian
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 14.7.2002
 - second deadline: 28.7.2002
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: 27.5-9.6.2002
 - second deadline: 10-23.6.2002
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.4.2002
 - second deadline: 7.5.2002
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, Commission européenne,
Bureau: L130 7/46, B-1049 Bruxelles; telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04
22. **Export refund:** —

LOT B

1. **Action No:** 193/01
2. **Beneficiary** ⁽²⁾: World Food Programme (WFP), Via Cesare Giulio Viola 68, I-00148 Roma
tel.: (39-06) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Angola
5. **Product to be mobilised:** refined rapeseed oil or refined sunflower oil
6. **Total quantity (tonnes net):** 1 500
7. **Number of lots:** 1 in 3 parts (B1: 600 tonnes; B2: 675 tonnes; B3: 225 tonnes)
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁶⁾: see OJ C 312, 31.10.2000, p. 1 (D.1 or D.2)
9. **Packaging:** see OJ C 267, 13.9.1996, p. 1 (10.8 A, B and C.2)
10. **Labelling or marking** ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (III.A.(3))
 - Language to be used for the markings: Portuguese
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
The mobilisation may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Specified delivery stage:** free at port of landing — container terminal
13. **Alternative delivery stage:** free at port of shipment
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** B1: Luanda; B2: Lobito; B3: Namibia
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 21.7.2002
 - second deadline: 4.8.2002
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: 3-16.6.2002
 - second deadline: 17-30.6.2002
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.4.2002
 - second deadline: 7.5.2002
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, Commission européenne,
Bureau: L130 7/46, B-1049 Bruxelles; telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04
22. **Export refund:** —

LOT C

1. **Action No:** 196/01
2. **Beneficiary** ⁽²⁾: World Food Programme (WFP), Via Cesare Giulio Viola 68, I-00148 Roma
tel.: (39-06) 6513 2988; fax: 6513 2844/3; telex: 626675 WFP I
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Somalia (via Mombasa)
5. **Product to be mobilised:** refined rapeseed oil or refined sunflower oil
6. **Total quantity (tonnes net):** 500
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 (D.1 or D.2)
9. **Packaging:** see OJ C 267, 13.9.1996, p. 1 (10.8 A, B and C.2)
10. **Labelling or marking** ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (III.A(3))
 - Language to be used for the markings: English
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market.
The mobilisation may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Specified delivery stage** ⁽⁸⁾: free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 13.5-2.6.2002
 - second deadline: 27.5-16.6.2002
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.4.2002
 - second deadline: 7.5.2002
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, Commission européenne,
Bureau: L130 7/46, B-1049 Bruxelles; telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04
22. **Export refund:** —

LOT D

1. **Action No:** 193/00
2. **Beneficiary** ⁽²⁾: EuronAid, PO Box 12, 2501 CA Den Haag, Nederland
tel.: (31-70) 33 05 757; fax: 36 41 70 1; telex: 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Burkina Faso
5. **Product to be mobilised:** refined rapeseed oil or refined sunflower oil
6. **Total quantity (tonnes net):** 45
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁴⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 (D.1 or D.2)
9. **Packaging** ⁽⁷⁾: see OJ C 267, 13.9.1996, p. 1 (10.8 A, B and C.2)
10. **Labelling or marking** ⁽⁵⁾: see OJ C 114, 29.4.1991, p. 1 (III.A.(3))
 - Language to be used for the markings: French
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
The mobilisation may not involve a product manufactured and/or packaged under inward-processing arrangements.
12. **Specified delivery stage** ⁽⁸⁾: free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 13.5-2.6.2002
 - second deadline: 27.5-16.6.2002
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 23.4.2002
 - second deadline: 7.5.2002
20. **Amount of tendering guarantee:** EUR 15 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, Commission européenne,
Bureau: L130 7/46, B-1049 Bruxelles; telex: 25670 AGREC B; fax: (32-2) 296 70 03/296 70 04
22. **Export refund:** —

Notes:

- (¹) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50; fax (32-2) 296 20 05).
 - (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
 - (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
 - (⁴) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
 - health certificate.
 - (⁵) Notwithstanding OJ C 114, 29.4.1991, point III.A(3)(c) is replaced by the following: 'the words "European Community"'.

The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
 - (⁶) Tenders shall be rejected unless they specify the type of oil to which they relate.
 - (⁷) Shipment to take place in 20-foot containers, condition FCL/FCL.

The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of cans belonging to each action number as specified in the invitation to tender.

The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko, Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.
 - (⁸) The tenderer's attention is drawn to the second subparagraph of Article 7(6) of Regulation (EC) No 2519/97.
-

COMMISSION REGULATION (EC) No 607/2002**of 8 April 2002****on the issue of system B export licences in the fruit and vegetables sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1961/2001 of 8 October 2001 on detailed rules for implementing Council Regulation (EC) No 2200/96 as regards export refunds on fruit and vegetables ⁽¹⁾, and in particular Article 6(6) thereof,

Whereas:

- (1) Commission Regulation (EC) No 226/2002 ⁽²⁾ fixes the indicative quantities for system B export licences other than those sought in the context of food aid.
- (2) In the light of the information available to the Commission today, there is a risk that the indicative quantities laid down for the current export period for lemons will shortly be exceeded. This overrun will prejudice the

proper working of the export refund scheme in the fruit and vegetables sector.

- (3) To avoid this situation, applications for system B licences for lemons exported after 8 April 2002 should be rejected until the end of the current export period,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for system B export licences for lemons submitted pursuant to Article 1 of Regulation (EC) No 226/2002, export declarations for which are accepted after 8 April 2002 and before 15 May 2002, are hereby rejected.

Article 2

This Regulation shall enter into force on 9 April 2002.

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

Done at Brussels, 8 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 268, 9.10.2001, p. 8.

⁽²⁾ OJ L 38, 8.2.2002, p. 8.

II

(Acts whose publication is not obligatory)

EUROPEAN PARLIAMENT

DECISION OF THE EUROPEAN PARLIAMENT

of 14 March 2002

amending Decision 94/262/ECSC, EC, Euratom on the regulations and general conditions governing the performance of the Ombudsman's duties

(2002/262/EC, ECSC, Euratom)

THE EUROPEAN PARLIAMENT,

Having regard to the Treaty establishing the European Community and in particular Article 195(2) thereof,

Having regard to the Treaty establishing the European Coal and Steel Community and in particular Article 20 D(4) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community and in particular Article 107 D(4) thereof,

Having regard to the European Parliament resolution of 17 November 2000 on the modification of the European Parliament's decision of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties ⁽¹⁾,

Having regard to the opinion of the Commission,

With the approval of the Council,

Whereas:

- (1) Pursuant to Article 22, paragraph 5, of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽²⁾, the Ombudsman is treated as an institution for the purposes of that Regulation.
- (2) Council Regulation (EC, ECSC, Euratom) No 2673/1999 amending the Financial Regulation created a specific section for the Ombudsman in the general budget of the European Union and amended the provisions of the Financial Regulation relative thereto accordingly.
- (3) It is therefore necessary to amend European Parliament Decision 94/262/ECSC, EC, Euratom of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties ⁽³⁾ since it provides for the budget of the Ombudsman to be placed in an annex to Section I (Parliament) of the general budget of the European Communities.
- (4) Articles 12 and 16 of that decision must therefore be deleted.

⁽¹⁾ OJ C 223, 8.8.2001, p. 366.

⁽²⁾ OJ L 356, 31.12.1977, p. 1. Regulation amended by Regulation (EC, ECSC, Euratom) No 2673/1999 (OJ L 326, 18.2.1999, p. 1).

⁽³⁾ OJ L 113, 4.5.1994, p. 15.

HEREBY DECIDES:

Article 1

Articles 12 and 16 of decision 94/262/ECSC, EC, Euratom shall be deleted.

Article 2

This decision shall be published in the *Official Journal of the European Communities*.

Article 3

This decision shall take effect on the date of its publication.

It shall be applicable with effect from 1 January 2000.

Done at Strasbourg, 14 March 2002.

For the European Parliament
The President
P. COX

COUNCIL

COUNCIL DECISION

of 25 March 2002

authorising the Netherlands to apply a differentiated rate of excise duty to low-sulphur petrol in accordance with Article 8(4) of Directive 92/81/EEC

(2002/263/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) The Netherlands has requested authorisation to apply a differentiated rate of excise duty to low-sulphur (50 ppm) petrol from 1 October 2002.
- (2) The other Member States have been informed of this request by the Netherlands authorities.
- (3) The differentiation of excise duty proposed by the Netherlands authorities, worth EUR 0,0136 per litre, must be available to all users of low-sulphur petrol. This measure complies with the minimum rates of excise duty referred to in Articles 3 and 4 of Council Directive 92/82/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils ⁽²⁾.
- (4) The derogation is sought on environmental grounds in particular the benefits in terms of air quality are known.
- (5) Low-sulphur petrol complies with the environmental criterion (50 ppm) laid down in Directive 98/70/EC of the European Parliament and of the Council of 13

October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC ⁽³⁾. Under Article 3 of that Directive, the use of 50 ppm diesel will normally be compulsory from 1 January 2005. The derogation should therefore expire on 31 December 2004, subject to the application of Article 8(5) of Directive 92/81/EEC.

- (6) On the information available at present, neither the Commission nor the Member States consider that the application of a differentiated rate of excise duty on low-sulphur fuel will cause distortions of competition affecting the common interest or hinder the operation of the single market.

- (7) The Commission periodically reviews reductions and exemptions to check that they do not distort competition or the operation of the internal market and are not incompatible with Community environmental policy,

HAS ADOPTED THIS DECISION:

Article 1

The Netherlands is hereby authorised to apply a differentiated rate of excise duty to low-sulphur (50 ppm) petrol from 1 October 2002 to 31 December 2004.

⁽¹⁾ OJ L 316, 31.10.1992, p. 12. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.94, p. 46).

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

⁽³⁾ OJ L 350, 28.12.1998, p. 58. Directive amended by Commission Directive 2000/71/EC (OJ L 287, 14.11.2000, p. 46).

Article 2

The reduction in excise duty referred to in Article 1 not exceeding EUR 0,0136 per litre of fuel, must comply with the terms of Directive 92/82/EEC, and in particular the minimum rates laid down in Articles 3 and 4 thereof.

Article 3

This authorisation shall expire on 31 December 2004.

Article 4

This Decision is addressed to the Netherlands.

Done at Brussels, 25 March 2002.

For the Council

The President

A. M. BIRULÉS Y BERTRÁN

COUNCIL DECISION**of 25 March 2002**

authorising Denmark to apply a differentiated rate of excise duty to heavy fuel oil and heating oil used by certain firms, in accordance with Article 8(4) of Directive 92/81/EEC

(2002/264/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) Denmark has requested authorisation to apply a differentiated rate of excise duty to heavy fuel oil and heating oil used by energy-intensive firms to produce heating and hot water, excluding the mineral oils referred to in Article 8(2)(f) of Directive 92/81/EEC.
- (2) The other Member States have been notified of Denmark's request.
- (3) The aim of the differentiated rate of duty is partly to compensate for the fact that the actual tax is much higher than was intended when the national measures were adopted increasing the CO₂ and energy taxes on the use of heavy fuel oil and heating oil to produce heating and hot water.
- (4) The reduced rate is granted to firms which agree to improve their energy efficiency. The financial details of the application are as follows:

	Heavy fuel oil (1 000 kg)	Heating oil (1 000 l)
Community minimum	EUR 13	EUR 0
Tax before energy-saving agreement	DKK 320 EUR 43,0	DKK 270 EUR 36,3
Tax after energy-saving agreement	DKK 249,6 EUR 33,5	DKK 210,6 EUR 28,3
Differentiation	DKK 70,4 EUR 9,5	DKK 59,4 EUR 8,0

The zero-rate for heating oil is authorised by the second paragraph of Article 5(3) of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties (92/82/EEC) on mineral oils ⁽²⁾. In Denmark, the monitoring charge is DKK 50 (EUR 6,7) per 1 000 litres of heating oil.

- (5) The differentiated rate of excise duty proposed by Denmark therefore complies with the minimum rates referred to in Articles 5 and 6 of Directive 92/82/EEC.

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

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

- (6) The requested exemption is in keeping with environmental policy. In particular, the reduced rate is granted only to firms which agree to improve their energy efficiency.
- (7) On the basis of information available, except for the agricultural sector, the Commission and all the Member States consider that the application of differentiated rates of excise duty to heavy fuel oil and heating oil will not result in a distortion of competition contrary to the common interest nor will it hinder the operation of the internal market.
- (8) The exemptions should be granted for a limited duration. A period of six years, with the possibility of an extension, is compatible with the requirements of Community tax policy.
- (9) The Commission periodically reviews reductions and exemptions to check that they will not distort competition, hinder the operation of the internal market or be incompatible with Community policy on protection of the environment,

HAS ADOPTED THIS DECISION:

Article 1

Denmark is hereby authorised to apply a differentiated rate of excise duty, from 1 February 2002 to 31 January 2008, to heavy fuel oil and heating oil used by energy-intensive firms to produce heating and hot water.

The maximum amount of the authorised differentiation in the excise duty is EUR 0,0095 per kg on heavy fuel oil and EUR 0,008 per litre on heating oil.

Article 2

The reductions in excise duty referred to in Article 1 must comply with the terms of Directive 92/82/EEC, and in particular the minimum rates laid down in Articles 5 and 6 thereof.

Article 3

This Decision shall be without prejudice to Article 8(2)(f) of Directive 92/81/EEC.

Article 4

This Decision shall expire on 31 January 2008.

Article 5

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 25 March 2002.

For the Council

The President

A. M. BIRULÉS Y BERTRÁN

COUNCIL DECISION**of 25 March 2002****authorising Italy to apply a differentiated rate of excise duty to fuels containing biodiesel in accordance with Article 8(4) of Directive 92/81/EEC**

(2002/265/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) As part of a pilot project covering the period 1 July 1998 to 30 June 2001, Italy conducted a trial on the conditions for the use of biodiesel. Exemption from excise duty was granted for a maximum of 125 000 tonnes of biodiesel per year. By letter of 23 April 2001, the Italian authorities applied to the Commission for a derogation allowing them to apply an exemption from excise duty on biodiesel and other biofuels in accordance with Article 8(4) of Directive 92/81/EEC, for a period of three years from 1 July 2001 to 30 June 2004. In order to obtain the information it required to evaluate the request, the Commission sent additional questions by letters dated 16 May and 8 August 2001, to which the Italian authorities replied on 17 July and 28 September 2001 respectively. A meeting was held between Commission representatives and the Italian authorities on 15 October 2001. A letter from the Italian authorities on 22 October 2001 enabled the Commission to finalise its evaluation of the application for a derogation. Pending approval by the Council of the requested exemption, Italy has suspended the tax reduction scheme.
- (2) Italy has applied for a differentiated rate of excise duty to be authorised on biodiesel used as an additive to diesel in quantities of less than 5 % and as a motor fuel mixed with diesel in a proportion of approximately 25 %, mainly for the use of urban service vehicle fleets. In the latter case, in view of the high percentage contained in the mixture, checks should be carried out on the adjustment of engines to the fuel to avoid excessive emission of pollutants.
- (3) The other Member States have been notified of this request.
- (4) The development of renewable energies and biofuels in particular has been encouraged since 1985 by the Community. Council Directive 85/536/EEC of 5 December 1985 on crude oil savings through the use of substitute fuel components in petrol ⁽²⁾ stresses the role of biofuels in reducing Member States' dependence on oil imports and authorises the incorporation into petrol of up to 5 % of ethanol by volume and up to 15 % of ETBE by volume. Under Council Decisions 93/500/EEC ⁽³⁾ and 98/352/EC ⁽⁴⁾ and Decision 646/2000/EC of the European Parliament and of the Council ⁽⁵⁾, the Altener programme on promoting renewable energies in the Community was adopted with the aim of securing a market share for biofuels of 5 % of total motor vehicle fuel consumption by 2005. The 1997 White Paper on renewable sources of energy further recommended setting an objective of the production of 18 million tonnes of liquid biofuels by 2010 as part of an overall goal of doubling

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

⁽²⁾ OJ L 334, 12.12.1985, p. 20. Directive as last amended by Directive 87/441/EEC (OJ L 238, 21.8.1987, p. 40).

⁽³⁾ OJ L 235, 18.9.1993, p. 41.

⁽⁴⁾ OJ L 159, 3.6.1998, p. 53.

⁽⁵⁾ OJ L 79, 25.10.2000, p. 1.

the share of renewables in EU energy consumption by the same year. The Commission's Green Paper 'Towards a European strategy for energy supply security' stresses the key role of tax instruments in achieving these aims by reducing the difference in cost price between biofuels and competing products. Lastly, on 7 November 2001, the Commission adopted an action plan and two proposals for directives on encouraging the use of substitute fuels in the transport sector, starting with regulatory and tax measures designed to promote biofuels.

- (5) The derogations requested by the Italian authorities are therefore in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment and ensuring security of energy supply.
- (6) The reductions in excise duty proposed by Italy are proportional to the percentage of biofuel contained in the final product. Moreover, the effective rates of excise duty are higher than the applicable Community minimum rates, in accordance with Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils ⁽¹⁾:

Condition of use	5 % biodiesel mix	25 % biodiesel mix
Community minimum	EUR 245 / 1 000 l	EUR 245 / 1 000 l
Effective excise rate applied to final product (July 2001 to June 2002)	EUR 362,6 / 1 000 l	EUR 286,3 / 1 000 l

- (7) The Italian programme is of a limited duration of three years. An annual quota of 300 000 tonnes of biodiesel will be eligible for the differentiated rate of excise duty.
- (8) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or hinder the operation of the internal market and are not incompatible with Community policy on protection of the environment, energy and transport,

HAS ADOPTED THIS DECISION:

Article 1

1. Italy is authorised to apply differentiated rates of excise duty on mixtures used as motor fuels containing 5 % or 25 % of biodiesel until 30 June 2004.
2. The reduction in excise duty may not be greater than the amount of excise duty payable on the volume of biofuels present in the products eligible for the reduction.
3. The rates of duty applicable to the mixtures referred to in paragraph 1 must comply with the terms of Directive 92/82/EEC, and in particular the minimum rate laid down in Article 5 thereof.

Article 2

The reduction in excise duty shall be adjusted to take account of changes in the price of raw materials to avoid over-compensating for the extra costs involved in the manufacture of biofuels.

⁽¹⁾ OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

Article 3

This Decision shall expire on 30 June 2004.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 March 2002.

For the Council

The President

A. M. BIRULÉS Y BERTRÁN

COUNCIL DECISION**of 25 March 2002****authorising France to apply a differentiated rate of excise duty to biofuels in accordance with Article 8(4) of Directive 92/81/EEC**

(2002/266/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

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

Having regard to the proposal from the Commission,

Whereas:

- (1) By letter dated 17 November 2000, France requested authorisation to apply a differentiated rate of excise duty to vegetable oil esters incorporated into domestic heating fuel and diesel, and to ethyl alcohol derivatives (where the alcohol component is of agricultural origin) incorporated into premium grade or regular petrol. The ethyl alcohol derivative principally concerned is ethyl tertiary butyl ether (ETBE), an oxygenated compound made up of alcohol of agricultural origin and of isobutene, a product resulting from oil refining.
- (2) Following the Commission's requests for further information, France supplied the details necessary for examination of the matter in letters dated 18 January and 21 February 2001.
- (3) The other Member States have been notified of this request.
- (4) The Commission had to ask for the matter to be raised by the Council, by letter dated 19 April 2001, in accordance with the third paragraph of Article 8(4) of Directive 92/81/EEC.
- (5) The Commission and the Council have been encouraging the development of renewable energies, and biofuels in particular, since 1985. Council Directive 85/536/EEC of 8 December 1985 on crude oil savings through the use of substitute fuel components in petrol⁽²⁾ stresses the role of biofuels in reducing Member States' dependence on oil imports and authorises the incorporation into petrol of up to 5 % of ethanol by volume and up to 15 % of ETBE by volume. Under Council Decisions 93/500/EEC⁽³⁾ and 98/352/EC⁽⁴⁾ and Decision 646/2000/EC of the European Parliament and of the Council⁽⁵⁾, the Altener programme on promoting renewable energies in the

Community was adopted with the aim of securing a market share for biofuels of 5 % of total motor vehicle fuel consumption by 2005. The 1997 White Paper on renewable sources of energy further recommended setting an objective of the production of 18 million tonnes of liquid biofuels by 2010 as part of an overall goal of doubling the share of renewables in EU energy consumption by the same year. The Commission's Green Paper Towards a European strategy for energy supply security stresses the key role of tax instruments in achieving these aims by reducing the difference in cost price between biofuels and competing products. On 12 March 1997, the Commission submitted a proposal for a directive restructuring the Community framework for the taxation of energy products which envisages the possibility of an exemption for biofuels outside the context of a pilot project within the meaning of Article 8(2)(d) of Directive 92/81/EEC. Lastly, on 7 November 2001, the Commission adopted an action plan and two proposals for directives on encouraging the use of substitute fuels in the transport sector, starting with regulatory and tax measures designed to promote biofuels.

- (6) The exemption requested by the French authorities is therefore in line with the Community's policy of developing the biofuel sector, in the interests of protecting the environment and ensuring security of energy supply.
- (7) The French legal arrangement is based on Article 25 of the amending finance law of 1997, on Decree No 98-309 of 22 April 1998 laying down the requirements for participation in the invitation to tender for the release for home use in France of biofuels giving rise to a reduction in domestic consumption tax, and on the decision of 22 April 1998 setting up the Committee for the examination of authorisation requests by biofuel production units.
- (8) This arrangement, which has been in force since 1 November 1997, was established on the basis of the Commission decision of 9 April 1997 (hereinafter 'the decision of 9 April 1997') declaring that the domestic tax reductions on vegetable oil esters and ETBE constituted State aid compatible with the common market. The 1997 decision stated that the scheme concerned qualified as a pilot project.

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

⁽²⁾ Directive published in OJ L 334, 12.12.1985, p. 20. Directive as last amended by Directive 87/441/EEC (OJ L 238, 21.8.1987, p. 40).

⁽³⁾ OJ L 235, 18.9.1993, p. 41.

⁽⁴⁾ OJ L 159, 3.6.1998, p. 53.

⁽⁵⁾ OJ L 79, 25.10.2000, p. 1.

- (9) The 1997 French legal arrangement for the differentiation of excise duties (hereinafter 'the 1997 arrangement' is not limited in time. It provides for the issue by the French authorities of an authorisation allowing a reduction in excise duties for approved warehousekeepers carrying out the mixing of biofuels and mineral oils. Authorisations are granted for a period of three to nine years from the date of issue.
- (10) Details of the 1997 arrangement are given in the table below:

	Common factors	Vegetable oil esters	Ethyl alcohol derivatives
Number of beneficiaries	Depends on the number of requests for authorisation deemed eligible by the Examining Committee	Five factories authorised	Three factories authorised
Amount of reduction per beneficiary	Depends on the volume authorised	EUR 35,06 (FRF 230)/hl or EUR 396,64 (FRF 2 601,8)/t	EUR 50,23 (FRF 329,5)/hl or EUR 297,35 (FRF 1 950,5)/t
Annual budgetary expenditure anticipated		Volume of 350 000 t proposed at first invitation to tender in 1997: a ceiling of FRF 911 million. Authorisation actually granted: 317 500 t; maximum annual expenditure of FRF 826 million.	Volume of 270 000 t of ETBE proposed at first invitation to tender in 1997: a ceiling of FRF 527 million. Authorisation actually granted: 219 000 t; maximum annual expenditure of FRF 427 million.

- (11) The 1997 arrangement complies with the minimum rates of excise duty referred to in Articles 3, 4 and 5 of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils ⁽¹⁾, as indicated in the following table:

	Vegetable oil esters	Vegetable oil esters	Ethyl alcohol derivatives
Condition of use	incorporated into diesel (5 %)	incorporated into heating fuel (5 %)	incorporated into unleaded premium grade petrol (15 %)
Community minimum	EUR 245/1 000 l	EUR 18/1 000 l	EUR 287/1 000 l
Effective excise rate applied to mixture	FRF 2 436,8/1 000 l EUR 371,8/1 000 l	FRF 245,0/1 000 l EUR 37,4/1 000 l	FRF 3 352,0/1 000 l EUR 511/1 000 l

- (12) On the entry of biofuels into refineries under customs control (tax production or storage warehouse) where they are to be incorporated into petroleum products, an exemption certificate is issued to the operator carrying out the operation for an amount corresponding to the volume received multiplied by the exemption rate. These certificates are then set against the declarations of release for home use of petroleum products.
- (13) Where the mixing is carried out in a Member State other than France, the document accompanying the product states that the petroleum product contains a biofuel and specifies its nature. When the excise duty falls due in France, an exemption certificate is issued for an amount corresponding to the volume of biofuel contained in the petroleum product multiplied by the exemption rate.
- (14) The exemption requested under Article 8(4) of Directive 92/81/EEC is based on the 1997 arrangement. However, it will be adapted to take account both of this Decision
- and the Commission's final decision on the compatibility of the State aids to promote biofuels.
- (15) Exceptionally, in view of the specific and unique circumstances of the case, this Decision must be applied with effect from 1 November 1997 and relate also to the exemptions granted since the entry into force of the 1997 arrangement.
- (16) According to the decision of 9 April 1997, the domestic tax reductions on vegetable oil esters and ETBE constituted State aid compatible with the common market. That decision stipulated that the scheme concerned qualified as a pilot project and therefore came within the scope of Article 8(2)(d) of Directive 92/81/EEC which allows Member States to apply for exemptions or reductions in the rate of excise duty applied to mineral oils used in the field of pilot projects for the technological

⁽¹⁾ Directive published in OJ L 316, 31.10.1992, p. 19. Directive as last amended by Directive 94/74/EC (OJ L 365, 31.12.1994, p. 46).

development of more environmentally-friendly products, in particular in relation to fuels from renewable resources. A specific decision authorising differentiated rates of excise duty based on Article 8(4) of Directive 92/81/EEC was not therefore considered necessary. In the light of the legal context and the Community legislative policy referred to in the fifth recital above, therefore, the economic operators who received the domestic tax reductions provided for by the 1997 arrangement can be considered as having acted in good faith.

(17) In its judgment of 27 September 2000 in Case T-184/87 (*BP Chemicals v. Commission*)⁽¹⁾ the Court of First Instance of the European Communities annulled the part of the decision of 9 April 1997 relating to the ETBE sector.

(18) That case related to an application to annul the decision of 9 April 1997 submitted by BP Chemicals, the main European producer of synthetic ethanol. The Court dismissed as inadmissible the application against the 1997 decision as that decision related to measures applicable to the esters sector. The Court concluded that the measures relating to the esters sector did not bring about a significant change in the applicant's legal situation and consequently did not affect its interests. In relation to the measures applicable to the ETBE sector, the Court considered that the Commission had infringed Article 8(2)(d) of Directive 92/81/EEC by deciding that the contested scheme could be regarded as a pilot project within the meaning of that Article. The Court concluded that, by infringing Article 8(2)(d) of Directive 92/81/EEC, the Commission had exceeded the powers conferred on it by Article 93(3) of the Treaty.

(19) Paragraph 78 of the Court's judgment states that there is no reason why a decision cannot be adopted by the Council in accordance with Article 8(4) of Directive 92/81/EEC on tax exemption schemes to promote the market penetration of biofuels. The Court did not therefore find the exemption illegal on substantive grounds but considered that the procedure in Article 8(4) of the Directive should be applied.

(20) As a result of the annulment of the part of the decision of 9 April 1997 relating to the ETBE sector, therefore, that part of the dossier reverts in law to the stage prior to the adoption of the annulled decision, i.e. in 1997.

(21) Moreover, even if the Court's judgment does not concern the esters sector, on account of the inadmissibility of that part of the application, it nevertheless seems logical that the measures applicable to the esters sector would likewise not be part of pilot projects within the meaning of Article 8(2)(d) of Directive 92/81/EEC. The current application by the French authorities is,

accordingly, the logical consequence of the partial annulment of the Commission decision of 9 April 1997 insofar as it puts the exemption into the appropriate procedural framework.

(22) Following the Court's ruling, on 29 November 2000 the Commission initiated the procedure provided for by Article 88(2) of the Treaty in relation to State aid C 64/2000 (French biofuels)⁽²⁾ concerning the ETBE sector. The French national legal arrangement is being examined in this context with effect from its entry into force on 1 November 1997.

(23) Exemptions unlimited in time cannot be authorised. A period of six years is sufficient in economic terms to meet the planning needs of investment projects in the case in question. Individual exemptions of a maximum duration of six years from the date of issue of the authorisation would be appropriate for biofuel production units. The biofuel production units must have received authorisation from the French authorities by 31 December 2003 at the latest.

(24) Distortions of competition should be limited and the incentive of a reduction in costs for producers and distributors of biofuels maintained, in particular by the implementation of excise reduction mechanisms adapted to changes in raw material prices.

(25) The Commission regularly reviews reductions and exemptions to check that they do not distort competition or hinder the operation of the internal market and are not incompatible with Community policy on protection of the environment, energy and transport,

HAS ADOPTED THIS DECISION:

Article 1

1. France is hereby authorised to grant permits for the application of a differentiated rate of excise duty to the fuel mixture 'petrol/ethyl alcohol derivatives whose alcohol component is of agricultural origin'.

2. France is hereby authorised to grant permits for the application of a differentiated rate of excise duty to the fuel mixture 'diesel/vegetable oil esters'.

3. To allow a reduction in excise duty on blends incorporating vegetable oil esters and ethyl alcohol derivatives which are used as fuel within the meaning of Directive 92/81/EEC, the French authorities must issue the necessary permits to the biofuel production units concerned by 31 December 2003 at the latest.

⁽¹⁾ 2000 ECR II-3145

⁽²⁾ OJ C 60, 24.2.2001, p. 4.

The authorisations will be valid for a maximum of six years from the date of issue.

The reduction specified in the authorisation may be applied after 31 December 2003 until the expiry of the authorisation. It may not be extended.

4. The reductions in excise duties shall not exceed EUR 35,06/hl or EUR 396,64/t for vegetable oil esters and EUR 50,23/hl or EUR 297,35/t for ethyl alcohol derivatives used in the mixtures referred to in paragraph 1.

5. The rates of duty applicable to the mixtures referred to in paragraph 1 must comply with the terms of Directive 92/82/EEC, and in particular the minimum rates laid down in Articles 4 and 5 thereof.

Article 2

1. France is hereby authorised to grant permits for the application of a differentiated rate of excise duty to the mixture 'domestic heating fuel/vegetable oil esters'.

2. To allow a reduction in excise duty on blends incorporating vegetable oil esters and used as fuel within the meaning of Directive 92/81/EEC, the French authorities must issue the necessary permits to the biofuel production units concerned by 31 December 2003 at the latest.

The authorisations will be valid for a maximum of six years from the date of issue.

The reduction specified in the authorisation may be applied after 31 December 2003 until the expiry of the authorisation, but may not be extended.

3. The reductions in excise duties shall not exceed EUR 35,06/hl or EUR 396,64/t for the vegetable oil esters used in the mixtures referred to in paragraph 1.

4. The rates of duty applicable to the mixture referred to in paragraph 1 must comply with the terms of Directive 92/82/EEC, and in particular the minimum rate laid down in Article 3 thereof.

Article 3

The reductions in excise duty shall be adjusted to take account of changes in the price of raw materials to avoid over-compensating for the extra costs involved in the manufacture of biofuels.

Article 4

This Decision shall apply with effect from 1 November 1997. It shall expire on 31 December 2003.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 25 March 2002.

For the Council

The President

A. M. BIRULÉS Y BERTRÁN

COMMISSION

COMMISSION DECISION

of 23 October 2001

on the measure and State aid implemented by Spain for Santana Motor

(notified under document number C(2001) 3061)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2002/267/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⁾,

Whereas:

(3) On 3 May 1999 the Commission raised further questions with a view to gaining a better understanding of Santana's objectives and identifying the public financing involved. A visit was made to Linares (province of Jaén, Andalusia) on 26 and 27 May 1999, after which a meeting was held in Brussels on 29 July 1999, chiefly to discuss questions relating to the regional aid. By letters dated 1 July, 30 July and 17 November 1999 and 4 January 2000, the Spanish authorities supplied partial replies to the questions raised by the Commission, which requested additional information on 22 March 2000. The Spanish authorities responded to that request on 17 April 2000, and a meeting was held in Brussels on 12 May 2000. Following this, Spain addressed on 24 May 2000 a letter to the Commission amending the initial notification.

I. PROCEDURE

(1) After learning through press reports that a public guarantee covering a bank loan had been granted to Santana Motor SA (hereinafter Santana) by the Regional Government of Andalusia, the Commission sent Spain requests for additional information on 2 July, 9 October and 8 December 1998. Letters from Spain dated 11 August and 23 November 1998 and 12 February 1999 enabled the Commission to establish that the guarantee in question had been granted in June 1998. The case was consequently registered as unnotified aid under number NN 24/99.

(2) A meeting was held on 13 April 1999 between representatives of the Spanish authorities, Santana and the Commission. During the meeting, a number of documents were handed to the Commission, including the company's medium-term strategic plan. This referred to planned investment aid and a capital injection by a public body for which compliance with the market economy investor principle was not clearly demonstrated.

(4) By letter dated 28 July 2000, registered on 31 July 2000, Spain informed the Commission of its intention to implement the aid measures in favour of Santana, in accordance to Article 4(6) of Council Regulation (EC) No 659/1999 ⁽²⁾.

(5) The Commission decided on 17 August 2000 to initiate proceedings pursuant to Article 88(2) of the Treaty (decision to open the formal investigation procedure), as it found that there were doubts as to the compatibility of the measures with the common market. The Commission sent a fax to the Spanish Permanent Representation on the same date informing it of its decision to initiate proceedings. The text of the decision was then communicated to Spain by letter dated 22 August 2000, registered by the Spanish authorities on 23 August 2000. Spain submitted its comments on the initiation of proceedings on 25 September 2000.

⁽¹⁾ OJ C 328, 18.11.2000, p. 19.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

- (6) On 30 October 2000 Spain brought before the Court of Justice an action for annulment of the Commission decision to initiate proceedings, claiming that the time limit of 15 working days for the Commission to take a decision had not been respected.
- (7) By letter dated 22 November 2000, the Commission asked Spain to comment on press reports according to which the capital injection had already been carried out. In its reply of 28 December 2000, Spain confirmed that it had.
- (8) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission invited interested parties to submit their comments on the aid. No comments were received.

II. DETAILED DESCRIPTION OF THE AID

- (9) The planned aid was to be granted to the publicly owned Santana group. The Santana group is active in the motor vehicle industry mainly through two companies, the abovementioned Santana Motor SA and its subsidiary Santana Motor Andalucía SL. It generated turnover of ESP 59,5 billion in 1998 and of ESP 65,2 billion (EUR 392 million) in 1999. The Santana group sold 42 700 vehicles in 1999: 8 400 were Suzuki models (the Swift and the Baleno, for example) imported and sold on the European markets, while 34 300 vehicles were produced at the Linares plant, mainly the Samurai and Vitara four-wheel drive models. Santana achieves some 60 % of its sales outside Spain, with major outlets in France, Italy and the United Kingdom (1997 figures).
- (10) In 1998 the company developed a strategic plan for the period 1998-2006, the main objectives of which were to:
- (a) enable Santana to match the industry's competitiveness standards;
 - (b) draw up a product, sales and production programme linked to a coherent investment and financing plan;
 - (c) diversify the company's activities in order to increase its independence;
 - (d) achieve the necessary profitability; and
 - (e) find a partner with a view to privatisation.

Other aims, such as safeguarding jobs, were also set out.

- (11) The strategic plan presented by Spain provided for the commercial launch of several vehicles between 1998 and 2002, including restyling and producing new (e.g. diesel) engines for the Suzuki four-wheel drive models and producing a new model designated YR 8-Jimny. Projects that are independent of Suzuki were also envisaged, with development of the PS 10, a four-wheel drive vehicle descending from an old Santana-Land Rover model, and, under a licence with Chatenet, manufacture

of a light cabin quadricycle called the Stella. The activities of component suppliers were also to be developed, for example the production of moulds and dies in a specialised workshop. Close cooperation with Suzuki was to continue also in importing and distributing models such as the Swift, the Alto, the Wagon R and the Baleno.

- (12) A number of investments were planned within this general framework. The largest one is referred to as 'Plan 15 000' and involves investments totalling ESP 13 336 million, spread mainly over the period 1998-2002 and broken down as follows:

(ESP million)	
Project	Amount
Jimmy YR 8	9 175
PS 10	2 700
Chatenet — Stella	200
Tooling and dies workshop	100
Modification of models and engines	1 003
Miscellaneous	158
Total	13 336

- (13) In addition to Plan 15 000, Spain stated that an extra ESP 3 500 million was to be invested in restyling models over the period 2003-2006.
- (14) These investments do not involve any increase in capacity.
- (15) To finance the company's strategic plan, two measures were planned by the Spanish authorities:
- (a) a capital injection to be made by Soprea, a subsidiary of the Instituto de Fomento de Andalucía (IFA) and the company's sole shareholder; and
 - (b) regional investment aid.
- (16) The capital injection provided for in Santana's strategic plan for 1998-2006 totalled ESP 3,9 billion to be granted in three equal instalments between 1999 and 2001. The capital was to be provided entirely by Soprea.
- (17) Regional aid was planned to be granted to Santana under the 'Régimen de ayudas a la inversión y a la investigación y desarrollo' (investment and R&D aid scheme) approved by the Commission on 13 March 2000. The initial requests for aid were made in April and July 1999 in respect of three investment projects within Plan 15 000: the Jimny project, development of the PS 10 and production of the Chatenet-Stella. In its letter of 24 May 2000, Spain stated that this aid would amount to ESP 1 977 million.

⁽³⁾ See footnote 1.

(18) Furthermore, an individual public guarantee was granted to Santana by the Regional Government of Andalusia to cover a credit line to be used for purchasing equipment necessary for producing the Jimny. The credit line, granted to Santana in June 1998 by a consortium of banks ⁽⁴⁾ was used to borrow ESP 1 700 million. The general terms for drawing on that credit line were as follows:

- (a) life of the loans: seven years;
- (b) amortisation: over four years following a three-year grace period;
- (c) interest rate: the Mibor rate at the date the loan tranches were drawn plus 0,175 %.

(19) Spain considers these to be market conditions. On the other hand, the price charged to Santana for the public guarantee is 0,05 % per quarter, whereas the Spanish authorities estimate the market price of such a guarantee at between 0,5 % and 0,8 % per year, having due regard to Santana's financial situation. Consequently, regional aid of up to ESP 57 million has been granted to Santana in relation to the public guarantee covering the credit line.

(20) The total nominal amount of the aid is therefore ESP 2 034 million (present value ⁽⁵⁾: ESP 1 675 million).

III. COMMENTS FROM SPAIN

(21) On 25 September 2000 the Spanish authorities sent their comments on the initiation of proceedings. Those comments have been taken into account by the Commission.

(22) In their comments, the Spanish authorities first assert that the decision to initiate proceedings after a lengthy preliminary phase caused delays in the investment schedule, leading to the postponement of the PS 10 project and the non-implementation of the investments aimed at increasing the share of components purchased in Europe. Such delays, together with the adverse evolution of the yen/euro exchange rate, were held responsible for Santana's underperformance with respect to the targets set out in the strategic plan.

(23) With regard to the capital injection, the Spanish authorities state that the Commission had not assessed the content of the strategic plan when it decided to initiate proceedings, but confined itself to observing the consequences of the yen/euro exchange rate *a posteriori*,

a factor that is external to the plan and beyond the control of its authors.

(24) As regards the PS 10 project, the Spanish authorities affirm that during the preliminary phase of the procedure the Commission did not refer to any aid element in the capital injection, and always considered the aid to the PS 10 project as compatible aid.

(25) As regards the Chatenet-Stella project the Spanish authorities point out that the quadricycle does not fall under the Community framework for State aid to the motor vehicle industry ⁽⁶⁾ (hereinafter 'the motor vehicle framework'), as its characteristics correspond to those of a motorcycle, as shown by the technical description contained in the strategic plan.

(26) With regard to the other investments, the Spanish authorities point out that the letter of 24 May 2000 amending the initial notification only included the investment relating to the tooling and dies workshop and excluded the remaining investments.

IV. ASSESSMENT OF THE AID

(27) The assessment of the alleged aid measures considers first the capital injection and subsequently the regional measures.

The capital injection

(28) In assessing whether a transaction between a Member State and a public undertaking constitutes a normal commercial transaction or whether it consists wholly or partly of State aid, the Commission must follow the market economy investor principle. In accordance with that principle, a capital injection does not involve State aid where it is made in circumstances which would be acceptable to a market economy investor operating under normal market conditions ⁽⁷⁾.

(29) The Court of Justice also stated in its judgment of 21 March 1991 in Case C-305/89 Italy v Commission ⁽⁸⁾ that 'although the conduct of a private investor with which the intervention of the public investor pursuing economic policy aims must be compared need not be the conduct of an ordinary investor laying out capital with a view to realising a profit in the relatively short term, it must at least be the conduct of a private holding company or a private group of undertakings pursuing a structural policy — whether general or sectoral — and guided by prospects of profitability in the longer term'.

⁽⁴⁾ Caja de Ahorros y Pensiones de Barcelona; Argentaria — Caja Postal y Banco Hipotecario SA; Caja de Ahorros y Monte de Piedad de Córdoba; Dexia, Banco Local SA; Caja Provincial de Ahorros de Jaén.

⁽⁵⁾ Base year: 1998; discount rate: 6,20 %.

⁽⁶⁾ OJ C 279, 15.9.1997, p. 1.

⁽⁷⁾ See for example the Commission communication to the Member States — Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

⁽⁸⁾ [1991] ECR I-1603.

- (30) The Commission must therefore consider whether it is likely that the strategic plan presented by Santana will lead to long-term profitability of the company, and whether the measures envisaged in the strategic plan would have induced a market economy investor to provide the capital necessary for its implementation.
- (31) The Commission notes that, given Santana's dependence on imports from Japan, particular attention must be paid to the impact of foreseeable exchange-rate fluctuations on the targets set out in the strategic plan, as well as to possible measures to counterbalance such fluctuations.
- (32) In its assessment, the Commission must take into account all relevant information that was available to market economy investors at the time when the decision on the capital injection was taken. The Spanish authorities notified the intention of carrying out the capital injection at a meeting held on 13 April 1999, and provided documentation dating from January 1999 in which the capital injection was indicated as part of the strategic plan. Based on these facts, the Commission concludes that the relevant time as regards the decision on the capital injection is the beginning of 1999.
- (33) The Commission notes that the capital injection was formally approved by Santana's shareholders on 22 December 1999. However, the Commission does not consider this date as the relevant date for the assessment. This is because the December 1999 vote only ratified a decision that had already been taken by Santana's sole shareholder, Soprea. Additionally, the actual date of the formal ratification of the capital injection was probably influenced by the need to notify the measure to the Commission, and thus may not represent the timing that a private investor would have followed when deciding to invest.
- (34) The company's annual accounts show a net profit of ESP 111 million in 1997 and of ESP 3 million in 1998. However, the positive results derive from extraordinary profits that offset operating losses (ESP 1 448 million in 1997 and ESP 1 233 million in 1998). The strategic plan forecasts higher operating losses for 1999 (ESP 3 735 million), a sharp improvement in 2000 (losses of ESP 45 million), and a return to operating profits as from 2001, reaching ESP 3 092 million in 2006.
- (35) Among the factors that were to lead to improved profitability, mention was made of a sharp increase in sales (from 38 000 vehicles per year in 1998 to around 60 000 from 2001 onwards), diversification of the range (among other things with the production of the new Jimny, PS10 and Stella models), and less dependence on Suzuki (increasing the share of components purchased in Europe, and production of the PS10 and Stella models).
- (36) The increase in production volumes was to be achieved through the new Jimny model (36 000 units per year in 2005 and 2006), the PS 10 (more than 9 000 units per year from 2001 onwards) and the Stella (3 500 units per year from 2004 onwards). In addition to its own production, Santana was to import and distribute around 13 000 vehicles per year (mainly the Baleno and Gran Vitara models) produced by Suzuki.
- (37) The Commission consulted an independent automotive expert who considered that the sales forecast in the strategic plan was acceptable and would lead to satisfactory profitability in the medium term. The experts regarded the yen/euro exchange rate as the main risk factor in the strategic plan.
- (38) The Commission notes that some degree of independence from Suzuki could be achieved through production of the PS10 and Stella models. However, the company would still be highly dependent on components and finished products supplied by Suzuki. This would imply that profitability would be highly dependent on import prices, and in particular on fluctuations of the Japanese yen.
- (39) The Commission notes that Santana did not make use of financial instruments in order to reduce the risk connected with fluctuations in the exchange rate between the euro and the Japanese yen.
- (40) The Commission consulted an independent financial expert in order to assess the significance of Santana's currency exposure and to quantify the potential costs associated with hedging such exposure.
- (41) The independent financial expert considered that Santana was exposed to foreign-exchange risk and that companies similar to Santana, in terms of currency exposure, location, size, and financial expertise, would normally hedge by concluding forward foreign-exchange contracts or (less likely) currency option contracts of the standard call or put type.
- (42) The costs associated with the above financial contracts are not large compared with the size of the transaction they secure: the cost of forward contracts is low, while the cost of option contracts depends on the chosen strike price.
- (43) The independent financial expert stressed that the above financial instruments are usually used to reduce or eliminate the currency risk in the short term (up to one year), but cannot eliminate the long-term currency risk that is associated with Santana's business. The financial expert considered that companies usually do not hedge their currency positions for very long periods, but rather assess the size of their currency exposure in the light of the expected profitability of the investment opportunities they have. Indeed, investors undertake riskier investments if the profitability prospects are sufficiently high.

- (44) On the basis of the foregoing considerations, the Commission has analysed whether Santana's profitability prospects were high enough to compensate for the foreign-exchange risk it was facing. Using the profitability figures given in the January 1999 strategic plan, the Commission calculated that Santana's expected return on capital invested was higher than what other companies in the automotive industry set as their targets. These profitability prospects were clearly sufficient to compensate for the higher risk facing the company.
- (45) The Commission also analysed Santana's return on capital invested using stricter estimates of profitability. Firstly, it used the revised profit figures as communicated in the letter of 24 May 2000, where profitability after 2003 was reduced to take account of additional investments for new models. Secondly, the Commission excluded from the profit calculation certain financial items that, although accruing with certainty to the company, were by nature more similar to extraordinary items than to the result of normal operations. The return on investment resulting from this calculation was still higher than what other companies in the automotive industry set as their targets.
- (46) In the assessment of Santana's exposure to foreign-exchange risk, the Commission also looked into the management of provisions by the company. In the course of 1997 and 1998 provisions for general risks were decreased, and the sums transferred to the profit and loss account as extraordinary profits. The Commission has assessed whether such management of provisions could have weakened Santana's position in managing its foreign-exchange risk.
- (47) The Commission concluded that, although not commendable from the point of view of prudent management, the decrease in provisions could not have weakened Santana's position with regard to foreign-exchange risk. This is because provisions do not eliminate or reduce foreign-exchange risk; they only anticipate estimated financial losses in the company's books. However high the provisions, the risk is never limited to their amount. For this reason, they cannot replace currency hedging as a tool for managing foreign-exchange risk.
- (48) In the light of the foregoing considerations and of the reports from the independent automotive and financial experts, the Commission concludes that a market economy investor would probably have required sounder short-term management of the currency risk, through the use of forward foreign-exchange and currency option contracts. A market economy investor could have asked for such change in hedging policy to be implemented at little cost to the company.
- (49) At the same time, the Commission concludes that a market economy investor would have agreed to take part in the capital injection, since the profitability prospects of Santana's strategic plan were sufficiently positive to compensate for the long-term risk connected with the company's currency exposure. Indeed, at the time the investment decision was taken in early 1999, Santana offered good chances of returning to profitability in the long term on the basis of plausible forecasts regarding the evolution of the yen/euro exchange rate.
- (50) The Commission consequently takes the view that Soprea, in making the capital injection in favour of its subsidiary Santana on the basis of the company's strategic plan, was behaving as a market economy investor. The capital injection under examination therefore complies with the market economy investor principle and does not constitute State aid within the meaning of Article 87(1).
- (51) Looking at the events that occurred after the point when the capital injection was made, the Commission notes that during the first half of 1999 the exchange rate remained relatively stable at a level compatible with the targets set out in the strategic plan. During the second half of 1999 and in the course of 2000, however, the euro depreciated significantly with respect to the main international currencies, including the Japanese yen.
- (52) A number of measures were decided by Santana at the beginning of 2000, in order to offset the negative effects of the depreciation of the euro, and were communicated to the Commission by letter dated 24 May 2000. Nevertheless, the adverse effects on Santana of the depreciation of the euro after the capital injection had been decided were particularly strong and the company failed to achieve the targets set out in the strategic plan. While volatility on the international currency markets and fluctuations of the euro were expected, partly as a consequence of the creation of the common currency, the extent of the depreciation that actually took place could not have been forecast at the time the strategic plan was drawn up and implemented. It cannot, therefore, be taken into account in determining whether the market economy investor principle was complied with when the capital injection into Santana was made.

Regional aid measures

- (53) The measures in the form of investment aid and a public guarantee granted to Santana constitute State aid within the meaning of Article 87(1) of the Treaty. They would be financed by the State or through State resources; moreover, given that they represent a significant proportion of the project funding, they are likely to distort competition within the Community, giving an advantage to Santana over other companies not receiving aid. Finally, Santana is active in the motor vehicle industry, and the market for motor vehicles is characterised by extensive trade between Member States. It is clear that the measures constitute an individual application of an approved scheme; they nevertheless have to be notified, pursuant to Article 88(3) of the Treaty, in accordance with the procedural rules in the State aid field.

- (54) Article 87(2) of the Treaty lists certain types of aid that are compatible with the common market. In view of the nature and purpose of the aid, and the geographical location of the firm, subparagraphs (a), (b) and (c) are not applicable to the plan in question. Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. The Commission notes that the project is located in the region of Andalusia, which qualifies for assistance under Article 87(3)(a), with a maximum regional ceiling of 50 % net grant equivalent (nge).
- (55) To determine whether the proposed measures are compatible with the common market under the exemption provided for in Article 87(3)(a) of the Treaty, the Commission must check compliance with the conditions specified in the motor vehicle framework.
- (56) The Commission notes that the public guarantee was granted to cover a bank loan financing investment linked to production of the Jimny model. It accordingly concludes that the public guarantee must be examined as regional investment aid, in conjunction with the investment grants.
- (57) The Commission establishes first and foremost whether regional aid may be granted. To this end, it considers in particular whether the investor could have chosen an alternative site for its project, so as to demonstrate the need for the aid, with special reference to the mobility of the project. If there were no other new or existing industrial site within the group capable of receiving the proposed investment, the firm would be compelled to carry out its project in the sole plant available, even in the absence of aid. Mobility may be demonstrated by the investor on the basis of studies it has carried out with a view to taking the final location decision. The alternative site need not necessarily be located within the Community. However, the Commission checks that it is a plausible option, with special reference to the relevant markets.
- (58) The Commission checks the eligibility of the costs relating to the mobile aspects of the project. It then checks that the planned aid is in proportion to the regional problems it is intended to overcome. To this end, it usually carries out a cost-benefit analysis, except where the intensity of the planned aid is lower than the ceiling indicated in the motor vehicle framework.
- (59) The Commission has assessed the compatibility of the regional aid with the common market for each of the individual investment projects: the PS 10 project, the Chatenet-Stella project and the remaining projects (notably the Jimny project).
- (60) The PS 10 is a motor vehicle within the meaning of the motor vehicle framework. After examining the data provided by the Spanish authorities and visiting the plant, the Commission concludes that the investments for production of the PS 10 are independent of the other investments included in the strategic plan.
- (61) The total cost of the project is ESP 2 700 million (EUR 16 million) and the planned aid amounts to ESP 405 million (EUR 2,4 million). These amounts are below the thresholds above which notification is compulsory under an approved scheme⁽⁹⁾. Therefore, the project is not individually notifiable.
- (62) The Chatenet-Stella project involves an investment of ESP 200 million (EUR 1,2 million) and concerns the production under licence of a light cabin quadricycle. After examining its technical characteristics⁽¹⁰⁾, the Commission concludes that the Stella is not a motor vehicle and therefore does not fall within the scope of the motor vehicle framework. As a consequence, the aid to the project must be assessed under the regional aid guidelines.
- (63) The regional aid element in the project (EUR 0,18 million) was granted under an approved scheme and is therefore compatible with the common market.
- (64) The regional aid planned for the remaining projects consists firstly of direct investment aid amounting to ESP 1 542 million (present value: ESP 1 255 million). Secondly, State aid is involved in the loan guarantee, which enabled productive equipment to be purchased for the Jimny assembly line. In accordance with the analysis set out in the decision initiating proceedings, the Commission concludes that Santana could have secured the loan in question even without a public guarantee. However, the Commission finds that the price of 0,05 % per quarter charged to Santana for the public guarantee is lower than the market price. On the basis of information provided by the Spanish authorities, the Commission estimates the market cost of a guarantee identical to that granted to Santana at between 0.5 % and 0.8 % per year.

⁽⁹⁾ The thresholds are EUR 50 million for the nominal cost of the investment project or EUR 5 million total gross aid.

⁽¹⁰⁾ The Stella specifications for unladen mass, engine power and maximum speed are in line with the technical characteristics laid down in Article 1(3) of Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles (OJ L 225, 10.8.1992, p. 72). This Directive was last amended by Parliament and Council Directive 2000/7/EC (OJ L 106, 3.5.2000, p. 1).

- (65) The difference between the cost of the public guarantee and the market price for an identical guarantee thus amounts to a maximum of ESP 57 million (EUR 0,34 million) for the duration of the project. The additional data provided by the Spanish authorities in their letter of 22 December 1999 do not alter this assessment, in particular because the examples given relate to loans contracted in July and September 1999, i.e. over a year after the public guarantee was obtained. The Commission has to assess the aid according to the specific conditions obtaining at the time it was granted.
- (66) The aid for the remaining projects therefore amounts to a total of ESP 1 312 million in present value. This aid should have been notified to the Commission under Article 88(3) of the Treaty. The public loan guarantee was granted to Santana in June 1998 without first having been authorised by the Commission, and must therefore be deemed illegal.
- (67) In the decision initiating proceedings, the Commission analysed whether the project in question is mobile, particularly taking into account the fact that Santana has only one assembly plant, at Linares. Although this situation is not unique, it is unusual for motor vehicle manufacturers. In accordance with the analysis set out in the decision initiating proceedings, the Commission takes the view that the recipient of the aid is a business group bringing together Santana and Suzuki and that this business group did have the alternative of choosing other Suzuki plants in the world for producing the vehicles and then supplying the Community market by means of imports.
- (68) The Commission therefore concludes that the Jimny project is mobile. The mobile investments involved amount to ESP 9 175 million (present value: ESP 8 213 million). A linked investment in the tooling and dies workshop amounting to ESP 100 million (present value: ESP 93 million) is also to be regarded as mobile since it has been demonstrated that the company could have subcontracted this activity.
- (69) Other investments included in the strategic plan are not mobile. These are: the investment relating to modification of models and engines (ESP 1 003 million), miscellaneous activities (ESP 158 million), and a number of measures to modernise the industrial processes and the product range over the period 2003-2006 (ESP 3 500 million). These investments cannot therefore be taken into consideration in calculating the allowable aid intensity, and the Spanish authorities' letter of 24 May 2000 amending the notification did not in fact include these investments in the computation of the aid intensity.
- (70) Total mobile investments (Jimny project plus tooling and dies workshop) amount to ESP 8 306 million in present value, while the total aid planned (regional aid and bank guarantee) amounts to ESP 1 312 million in present value. The resulting intensity of the aid is 15,8 % gross grant equivalent (gge).
- (71) As for the proportionality of the aid, the motor vehicle framework states that if the intensity of the planned regional aid is not more than 20 % of the regional ceiling for the period 2000-2006, a cost-benefit analysis will not be required by the Commission in so far as the new regional maps have lower ceilings than those for the period 1994-1999.
- (72) According to the new regional map for Spain approved on 14 April 2000, Linares is located in an assisted area under Article 87(3)(a) of the Treaty where regional aid can normally be allowed up to a ceiling of 50 % nge (69 % gge) for large firms. The old ceiling was 60 % nge. This means that the threshold above which a cost-benefit analysis is required is 13,8 % gge.
- (73) The Commission notes that the aid with an intensity of 15,8 % gge which the Spanish authorities have planned to grant for the Jimny project is higher than the threshold above which a cost-benefit-analysis is required. Therefore, Spain would still have to demonstrate the proportionality of the aid by means of a cost-benefit analysis.
- (74) Insofar as the total amount of the regional aid granted to Santana does not exceed 13,8 % of the eligible investment, a cost-benefit analysis is not necessary and the aid involved can be deemed compatible with the common market. The maximum amount of aid that can be granted is ESP 1 146 228 000 in present value. Any aid granted to Santana over and above that amount is to be considered incompatible.

V. CONCLUSIONS

- (75) The Commission finds that Spain has unlawfully implemented the aid linked to the public guarantee covering a bank loan granted to Santana by the Regional Government of Andalusia in breach of Article 88(3) of the Treaty.
- (76) However, the Commission finds that the regional aid that Spain has planned to grant to Santana is partially compatible with the common market under Article 87(3)(a) of the Treaty for the following reasons: the aid amounting to ESP 405 million for the PS 10 project is not individually notifiable. The Stella project does not relate to the manufacture of a motor vehicle within the meaning of the motor vehicle framework. Since it is granted under an approved scheme, the aid amounting

to ESP 30 million is compatible with the common market. The aid for the Jimny project is compatible insofar as it does not exceed 13,8 % of the eligible investment of ESP 8 306 million in present value (calculated using a discount rate of 6,2 % from base year 1998). The maximum amount of aid that can be granted is ESP 1 146 228 000 in present value.

- (77) The capital injection of ESP 3 900 million was carried out in accordance with the market economy investor principle and therefore does not constitute aid.
- (78) Any additional State aid for the investment projects in question is incompatible with the common market.
- (79) In view of the characteristics of the projects, the Commission calls on the Spanish authorities, pursuant to point 2.3 of the motor vehicle framework, to present to the Commission a detailed report on the implementation of the project,

HAS ADOPTED THIS DECISION:

Article 1

The capital injection made by Soprea, a subsidiary of the Instituto de Fomento de Andalucía (IFA), into Santana Motor SA and amounting to ESP 3 900 million does not constitute aid within the meaning of Article 87(1) of the Treaty.

The State aid which Spain has planned to implement for Santana Motor SA at Linares for the PS10 and Stella projects is compatible with the common market.

The State aid which Spain has planned to implement for Santana Motor SA at Linares for the Jimny and related projects is compatible with the common market within the meaning of Article 87(3)(a) of the Treaty, up to a maximum intensity of 13,8 % gross grant equivalent of the eligible investment

amounting to ESP 8 306 million in present value (calculated using a discount rate of 6,2 % from base year 1998).

Implementation of the aid, amounting to not more than ESP 1 146 228 000 in present value (calculated using a discount rate of 6,2 % from base year 1998), is accordingly authorised.

Article 2

Any State aid in addition to the aid referred to in Article 1 that Spain plans to grant to Santana Motor SA for the Jimny and related projects is incompatible with the common market.

Article 3

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

Article 4

Spain shall present, in December each year until the project is completed, a report on the state of progress and financial implementation of the project and general compliance with the conditions set out in the notification of the aid in question.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 23 October 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 8 April 2002

recognising in principle the completeness of the dossiers submitted for detailed examination in view of the possible inclusion of nicobifen, tritosulfuron and bifenazate in Annex I to Council Directive 91/414/EEC concerning the placing of plant-protection products on the market

(notified under document number C(2002) 1306)

(Text with EEA relevance)

(2002/268/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant-protection products on the market ⁽¹⁾, as last amended by Commission Directive 2001/103/EC ⁽²⁾, and in particular Article 6(3) thereof,

Whereas:

- (1) Directive 91/414/EEC provides for the development of a Community list of active substances authorised for incorporation in plant protection products.
- (2) A dossier for the active substance nicobifen was submitted by BASF AG, Germany, to the authorities of Germany on 26 April 2001 with an application to obtain its inclusion in Annex I to Directive 91/414/EEC. For tritosulfuron an application was submitted by BASF AG, Germany, to the authorities of Germany on 8 June 2001. For the active substance bifenazate an application was submitted by Crompton Europe Ltd, to the authorities of the Netherlands on 23 July 2001.
- (3) The authorities of Germany and the Netherlands have indicated to the Commission that, on preliminary examination, the dossiers for the active substances concerned appear to satisfy the data and information requirements of Annex II to Directive 91/414/EC. The dossiers submitted appear also to satisfy the data and information requirements of Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance concerned. In accordance with Article 6(2) of Directive 91/414/EC, the dossiers were subsequently forwarded by the respective applicants to the Commission and other Member States, and were referred to the Standing Committee on Plant Health.
- (4) It should be formally confirmed that the dossiers are considered as satisfying in principle the data and information requirements provided for in Annex II and, for at least one plant protection product containing the active substance concerned, the requirements of Annex III to Directive 91/414/EC.
- (5) This Decision should not prejudice the right of the Commission to request the applicant to submit further data or information to the Member State designated as

Rapporteur in respect of a given substance in order to clarify certain points in the dossier.

- (6) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

The dossiers concerning the active substances identified in the Annex to this Decision, which were submitted to the Commission and the Member States with a view to obtaining the inclusion of those substances in Annex I to Directive 91/414/EEC, satisfy in principle the data and information requirements set out in Annex II to Directive 91/414/EEC.

The dossiers also satisfy the data and information requirements set out in Annex III to Directive 91/414/EEC in respect of one plant protection product containing the active substance, taking into account the uses proposed.

Article 2

The rapporteur Member States shall pursue the detailed examination for the dossiers concerned and shall report the conclusions of their examinations accompanied by any recommendations on the inclusion or non-inclusion of the active substance concerned in Annex I of Directive 91/414/EEC and any conditions related thereto to the Commission as soon as possible and at the latest within one year of the date of notification to them of this Decision. The rapporteur Member State shall inform the applicants of the substances listed in the Annex of this Decision.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 8 April 2002.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 313, 30.11.2001, p. 37.

ANNEX

ACTIVE SUBSTANCES CONCERNED BY THIS DECISION

No	Common name, CIPAC identification No	Applicant	Date of application	Rapporteur Member State
1	Nicobifena CIPAC No 673	BASF AG, Germany	26 April 2001	DE
2	Tritosulfuron CIPAC No 735	BASF AG, Germany	8 June 2001	DE
3	Bifenazate CIPAC No 736	Crompton Europe Ltd	23 July 2001	NL