

Official Journal

of the European Communities

ISSN 0378-6978

L 140

Volume 45

30 May 2002

English edition

Legislation

Contents

Acts adopted pursuant to Title V of the Treaty on European Union

2002/406/CFSP:

- ★ **Council Joint Action of 27 May 2002 on financial support for the international negotiating process leading to the adoption of an international code of conduct against ballistic missile proliferation** 1

I *Acts whose publication is obligatory*

- ★ **Regulation (EC) No 889/2002 of the European Parliament and of the Council of 13 May 2002 amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents ⁽¹⁾** 2
- Commission Regulation (EC) No 890/2002 of 29 May 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables 6
- Commission Regulation (EC) No 891/2002 of 29 May 2002 fixing certain indicative quantities and individual ceilings for the issuing of licences for importing bananas into the Community under the tariff quotas for the third quarter of 2002 8
- ★ **Commission Regulation (EC) No 892/2002 of 29 May 2002 setting, for the 2002/03 marketing year, the amount of the aid for peaches and pears for processing under Council Regulation (EC) No 2201/96** 9
- ★ **Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on undesirable substances in animal feed** 10
- Council statement** 22

Council

2002/407/EC:

- ★ **Decision No 2/2002 of the EU-Czech Republic Association Council of 27 March 2002 adopting the general terms and conditions for the participation of the Czech Republic in Community programmes** 23

Commission

2002/408/EC:

- ★ **Commission Decision of 24 May 2002 on the sale of Community olive oil residues held by the Italian intervention agency (notified under document number C(2002) 1642)** 25

EUROPEAN ECONOMIC AREA

EFTA Surveillance Authority

- ★ **EFTA Surveillance Authority Decision No 308/2000/COL of 30 October 2001 introducing new Guidelines on the application of the EEA State aid provisions to State aid and risk capital, and amending for the 29th time the Procedural and Substantive Rules in the Field of State Aid** 27

Corrigenda

- ★ **Corrigendum to Council Regulation (EC) No 163/2002 of 28 January 2002 extending the definitive anti-dumping duty imposed by Regulation (EC) No 368/98 on imports of glyphosate originating in the People's Republic of China to imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, and terminating the investigation in respect of imports from one Malaysian and one Taiwanese exporting producer (OJ L 30 of 31.1.2002)** 38
- ★ **Corrigendum to Council Regulation (EC) No 311/2002 of 18 February 2002 imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea (OJ L 50 of 21.2.2002)** 38
- ★ **Corrigendum to Commission Directive 2002/42/EC of 17 May 2002 amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC as regards the fixing of maximum levels for pesticide residues (bentazone and pyridate) in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables (OJ L 134 of 22.5.2002)** 39
- ★ **Corrigendum to the Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, on Conformity Assessment and Acceptance of Industrial Products (PECA) (OJ L 135 of 17.5.2001)** 39

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL JOINT ACTION
of 27 May 2002
on financial support for the international negotiating process leading to the adoption of an
international code of conduct against ballistic missile proliferation

(2002/406/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

- (1) On 14 May 2001 the Council adopted conclusions on missile non-proliferation.
- (2) On 16 June 2001 the Göteborg European Council adopted a declaration on the prevention of proliferation of ballistic missiles, underlining its commitment to the fight against ballistic missile proliferation based on the universalisation of the international code of conduct (hereafter referred to as 'the ICOC').
- (3) The Union has been actively promoting the process of universalisation of the ICOC.
- (4) A first meeting on the ICOC was organised by the French Government in Paris on 7 and 8 February 2002 and the Union wishes to facilitate the holding of a second meeting in Madrid, by offering financial support to that effect,

HAS ADOPTED THIS JOINT ACTION:

Article 1

1. In order to facilitate the international negotiating process to finalise the ICOC leading to an International Conference for its adoption no later than 2002, the European Union will contribute to the financial support for the holding of a second meeting on the ICOC in Madrid. This meeting will be chaired

by the Presidency of the European Union in close coordination with the chair of the first meeting.

2. Financial support shall cover costs of organising, staging and hosting the conference, with the exception of expenses for travel and accommodation incurred by the participants.

Article 2

1. The financial reference amount for the implementation of Article 1 shall be EUR 55 000.

2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the procedures and rules applicable to the general budget of the European Union.

Article 3

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

It shall apply until 31 December 2002.

Article 4

This Joint Action shall be published in the Official Journal.

Done at Brussels, 27 May 2002.

For the Council

The President

M. ARIAS CAÑETE

I

(Acts whose publication is obligatory)

REGULATION (EC) No 889/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 13 May 2002
amending Council Regulation (EC) No 2027/97 on air carrier liability in the event of accidents
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof,

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

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

Following consultation of the Committee of the Regions,

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

Whereas:

- (1) In the framework of the common transport policy, it is important to ensure a proper level of compensation for passengers involved in air accidents.
- (2) A new Convention for the Unification of Certain Rules Relating to International Carriage by Air was agreed at Montreal on 28 May 1999 setting new global rules on liability in the event of accidents for international air transport replacing those in the Warsaw Convention of 1929 and its subsequent amendments ⁽⁴⁾.
- (3) The Warsaw Convention will continue to exist alongside the Montreal Convention for an indefinite period.
- (4) The Montreal Convention provides for a regime of unlimited liability in the case of death or injury of air passengers.
- (5) The Community has signed the Montreal Convention indicating its intention to become a party to the agreement by ratifying it.

(6) It is necessary to amend Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in the event of accidents ⁽⁵⁾ in order to align it with the provisions of the Montreal Convention, thereby creating a uniform system of liability for international air transport.

(7) This Regulation and the Montreal Convention reinforce the protection of passengers and their dependants and cannot be interpreted so as to weaken their protection in relation to the present legislation on the date of adoption of this Regulation.

(8) In the internal aviation market, the distinction between national and international transport has been eliminated and it is therefore appropriate to have the same level and nature of liability in both international and national transport within the Community.

(9) In compliance with the principle of subsidiarity, action at Community level is desirable in order to create a single set of rules for all Community air carriers.

(10) A system of unlimited liability in case of death or injury to passengers is appropriate in the context of a safe and modern air transport system.

(11) The Community air carrier should not be able to avail itself of Article 21(2) of the Montreal Convention unless it proves that the damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents.

(12) Uniform liability limits for loss of, damage to, or destruction of, baggage and for damage occasioned by delay, which apply to all travel on Community carriers, will ensure simple and clear rules for both passengers and airlines and enable passengers to recognise when additional insurance is necessary.

⁽¹⁾ OJ C 337 E, 28.11.2000, p. 68 and OJ C 213 E, 31.7.2001, p. 298.

⁽²⁾ OJ C 123, 25.4.2001, p. 47.

⁽³⁾ Opinion of the European Parliament of 5 April 2001 (OJ C 21, 24.1.2002, p. 256) Council Common Position of 19 December 2001 (OJ C 58 E, 5.3.2002, p. 8) and Decision of the European Parliament of 12 March 2002.

⁽⁴⁾ OJ L 194, 18.7.2001, p. 38.

⁽⁵⁾ OJ L 285, 17.10.1997, p. 1.

- (13) It would be impractical for Community air carriers and confusing for their passengers if they were to apply different liability regimes on different routes across their networks.
 - (14) It is desirable to relieve accident victims and their dependants of short-term financial concerns in the period immediately after an accident.
 - (15) Article 50 of the Montreal Convention requires parties to ensure that air carriers are adequately insured and it is necessary to take account of Article 7 of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁽¹⁾ in complying with this provision.
 - (16) It is desirable to provide basic information on the liability rules applicable to every passenger so that they can make additional insurance arrangements in advance of travel if necessary.
 - (17) It will be necessary to review the monetary amounts set down in this Regulation in order to take account of inflation and any review of the liability limits in the Montreal Convention.
 - (18) To the extent that further rules are required in order to implement the Montreal Convention on points that are not covered by Regulation (EC) No 2027/97, it is the responsibility of the Member States to make such provisions,
- (b) "Community air carrier" shall mean an air carrier with a valid operating licence granted by a Member State in accordance with the provisions of Regulation (EEC) No 2407/92;
 - (c) "person entitled to compensation" shall mean a passenger or any person entitled to claim in respect of that passenger, in accordance with applicable law;
 - (d) "baggage", unless otherwise specified, shall mean both checked and unchecked baggage with the meaning of Article 17(4) of the Montreal Convention;
 - (e) "SDR" shall mean a special drawing right as defined by the International Monetary Fund;
 - (f) "Warsaw Convention" shall mean the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague on 28 September 1955 and the Convention supplementary to the Warsaw Convention done at Guadalajara on 18 September 1961;
 - (g) "Montreal Convention" shall mean the "Convention for the Unification of Certain Rules Relating to International Carriage by Air", signed at Montreal on 28 May 1999.

2. Concepts contained in this Regulation which are not defined in paragraph 1 shall be equivalent to those used in the Montreal Convention.;

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 2027/97 is hereby amended as follows:

1. the title shall be replaced by the following:

'Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air.;

2. Article 1 shall be replaced by the following:

'Article 1

This Regulation implements the relevant provisions of the Montreal Convention in respect of the carriage of passengers and their baggage by air and lays down certain supplementary provisions. It also extends the application of these provisions to carriage by air within a single Member State.;

3. Article 2 shall be replaced by the following:

'Article 2

1. For the purpose of this Regulation:

- (a) "air carrier" shall mean an air transport undertaking with a valid operating licence;

4. Article 3 shall be replaced by the following:

'Article 3

1. The liability of a Community air carrier in respect of passengers and their baggage shall be governed by all provisions of the Montreal Convention relevant to such liability.

2. The obligation of insurance set out in Article 7 of Regulation (EEC) No 2407/92 as far as it relates to liability for passengers shall be understood as requiring that a Community air carrier shall be insured up to a level that is adequate to ensure that all persons entitled to compensation receive the full amount to which they are entitled in accordance with this Regulation.;

5. the following Article shall be inserted:

'Article 3a

The supplementary sum which, in accordance with Article 22(2) of the Montreal Convention, may be demanded by a Community air carrier when a passenger makes a special declaration of interest in delivery of their baggage at destination, shall be based on a tariff which is related to the additional costs involved in transporting and insuring the baggage concerned over and above those for baggage valued at or below the liability limit. The tariff shall be made available to passengers on request.;

6. Article 4 shall be deleted;

⁽¹⁾ OJ L 240, 24.8.1992, p. 1.

7. Article 5 shall be replaced by the following:

'Article 5

1. The Community air carrier shall without delay, and in any event not later than fifteen days after the identity of the natural person entitled to compensation has been established, make such advance payments as may be required to meet immediate economic needs on a basis proportional to the hardship suffered.

2. Without prejudice to paragraph 1, an advance payment shall not be less than the equivalent in euro of 16 000 SDRs per passenger in the event of death.

3. An advance payment shall not constitute recognition of liability and may be offset against any subsequent sums paid on the basis of Community air carrier liability, but is not returnable, except in the cases prescribed in Article 20 of the Montreal Convention or where the person who received the advance payment was not the person entitled to compensation.';

8. Article 6 shall be replaced by the following:

'Article 6

1. All air carriers shall, when selling carriage by air in the Community, ensure that a summary of the main provisions governing liability for passengers and their baggage, including deadlines for filing an action for compensation and the possibility of making a special declaration for baggage, is made available to passengers at all points of sale, including sale by telephone and via the Internet. In order to comply with this information requirement, Community air carriers shall use the notice contained in the Annex. Such summary or notice cannot be used as a basis for a claim for compensation, nor to interpret the provisions of this Regulation or the Montreal Convention.

2. In addition to the information requirements set out in paragraph 1, all air carriers shall in respect of carriage by air provided or purchased in the Community, provide each passenger with a written indication of:

- the applicable limit for that flight on the carrier's liability in respect of death or injury, if such a limit exists,
- the applicable limit for that flight on the carrier's liability in respect of destruction, loss of or damage to baggage and a warning that baggage greater in value than this figure should be brought to the airline's attention at check-in or fully insured by the passenger prior to travel;
- the applicable limit for that flight on the carrier's liability for damage occasioned by delay.

3. In the case of all carriage performed by Community air carriers, the limits indicated in accordance with the information requirements of paragraphs 1 and 2 shall be

those established by this Regulation unless the Community air carrier applies higher limits by way of voluntary undertaking. In the case of all carriage performed by non-Community air carriers, paragraphs 1 and 2 shall apply only in relation to carriage to, from or within the Community.';

9. Article 7 shall be replaced by the following:

'Article 7

No later than three years after the date on which Regulation (EC) No 889/2002 (*) begins to apply, the Commission shall draw up a report on the application of this Regulation. In particular, the Commission shall examine the need to revise the amounts mentioned in the relevant Articles of the Montreal Convention in the light of economic developments and the notifications of the ICAO Depositary.

(*) OJ L 140, 30.5.2002, p. 2.';

10. the following Annex shall be added:

'ANNEX

Air carrier liability for passengers and their baggage

This information notice summarises the liability rules applied by Community air carriers as required by Community legislation and the Montreal Convention.

Compensation in the case of death or injury

There are no financial limits to the liability for passenger injury or death. For damages up to 100 000 SDRs (approximate amount in local currency) the air carrier cannot contest claims for compensation. Above that amount, the air carrier can defend itself against a claim by proving that it was not negligent or otherwise at fault.

Advance payments

If a passenger is killed or injured, the air carrier must make an advance payment, to cover immediate economic needs, within 15 days from the identification of the person entitled to compensation. In the event of death, this advance payment shall not be less than 16 000 SDRs (approximate amount in local currency).

Passenger delays

In case of passenger delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for passenger delay is limited to 4 150 SDRs (approximate amount in local currency).

Baggage delays

In case of baggage delay, the air carrier is liable for damage unless it took all reasonable measures to avoid the damage or it was impossible to take such measures. The liability for baggage delay is limited to 1 000 SDRs (approximate amount in local currency).

Destruction, loss or damage to baggage

The air carrier is liable for destruction, loss or damage to baggage up to 1 000 SDRs (approximate amount in local currency). In the case of checked baggage, it is liable even if not at fault, unless the baggage was defective. In the case of unchecked baggage, the carrier is liable only if at fault.

Higher limits for baggage

A passenger can benefit from a higher liability limit by making a special declaration at the latest at check-in and by paying a supplementary fee.

Complaints on baggage

If the baggage is damaged, delayed, lost or destroyed, the passenger must write and complain to the air carrier as soon as possible. In the case of damage to checked baggage, the passenger must write and complain within seven days, and in the case of delay within 21 days, in both cases from the date on which the baggage was placed at the passenger's disposal.

Liability of contracting and actual carriers

If the air carrier actually performing the flight is not the same as the contracting air carrier, the passenger has the right to address a complaint or to make a claim for damages against either. If the name or code of an air carrier is indicated on the ticket, that air carrier is the contracting air carrier.

Time limit for action

Any action in court to claim damages must be brought within two years from the date of arrival of the aircraft, or from the date on which the aircraft ought to have arrived.

Basis for the information

The basis for the rules described above is the Montreal Convention of 28 May 1999, which is implemented in the Community by Regulation (EC) No 2027/97 (as amended by Regulation (EC) No 889/2002) and national legislation of the Member States.'

Article 2

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

It shall apply from the date of its entry into force or from the date of the entry into force of the Montreal Convention for the Community, whichever is the later.

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

Done at Brussels, 13 May 2002.

For the European Parliament

The President

P. COX

For the Council

The President

J. PIQUÉ I CAMPS

COMMISSION REGULATION (EC) No 890/2002**of 29 May 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 30 May 2002.

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

Done at Brussels, 29 May 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 29 May 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	40,0
	204	35,8
	999	37,9
0707 00 05	052	94,8
	220	154,8
	999	124,8
0709 90 70	052	89,0
	999	89,0
0805 10 10, 0805 10 30, 0805 10 50	052	50,0
	204	48,2
	220	86,6
	388	66,9
	600	53,2
	624	78,8
	999	64,0
	388	62,4
0805 50 10	512	50,0
	528	59,6
	999	57,3
	388	84,3
0808 10 20, 0808 10 50, 0808 10 90	400	101,9
	404	114,1
	508	73,2
	512	81,9
	524	83,4
	528	76,1
	720	156,5
	804	106,7
	999	97,6
	052	434,6
0809 20 95	400	303,6
	999	369,1

⁽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 891/2002**of 29 May 2002****fixing certain indicative quantities and individual ceilings for the issuing of licences for importing bananas into the Community under the tariff quotas for the third quarter of 2002**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 404/93 of 13 February 1993 on the common organisation of the market in bananas⁽¹⁾, as last amended by Regulation (EC) No 2587/2001⁽²⁾, and in particular Article 20 thereof,

Whereas:

- (1) Article 14(1) of Commission Regulation (EC) No 896/2001 of 7 May 2001 laying down detailed rules for applying Council Regulation (EEC) No 404/93 as regards the arrangements for importing bananas into the Community⁽³⁾, as last amended by Regulation (EC) No 349/2002⁽⁴⁾, provides for the possibility of fixing an indicative quantity, expressed as the same percentage of quantities available under each of the tariff quotas, for the purposes of issuing import licences for the first three quarters of the year.
- (2) The data relating, on the one hand, to the quantities of bananas marketed in the Community in 2001, and in particular actual imports, especially during the third quarter, and, on the other hand, to the outlook for supply and consumption on the Community market in the same quarter of 2002 call for the fixing of indicative quantities for quotas A, B and C that ensure satisfactory supply to the Community as a whole and continuity of trade flows between the production and marketing sectors.
- (3) On the basis of the same data, the ceiling on the quantities for which individual operators can submit licence applications in respect of the third quarter of 2002 should be fixed for the purposes of Article 14(2) of Regulation (EC) No 896/2001.

- (4) Since this Regulation must apply before the beginning of the period for the submission of licence applications in respect of the third quarter of 2002, it should enter into force immediately.

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

HAS ADOPTED THIS REGULATION:

Article 1

The indicative quantity provided for in Article 14(1) of Regulation (EC) No 896/2001 for banana imports under the tariff quotas provided for in Article 18 of Regulation (EEC) No 404/93 shall be equal to 23 % of the quantities available for traditional and non-traditional operators under tariff quotas A/B and C for the third quarter of 2002.

Article 2

The quantity referred to in Article 14(2) of Regulation (EC) No 896/2001 that may be authorised for banana imports under the tariff quotas provided for in Article 18 of Regulation (EEC) No 404/93 shall be equal to 23 % of the reference quantity established pursuant to Articles 4 and 5 of Regulation (EC) No 896/2001 for traditional operators under tariff quotas A/B and C and 23 % of the quantity determined and notified pursuant to Article 9(3) of Regulation (EC) No 896/2001 for non-traditional operators under tariff quotas A/B and C for the third quarter of 2002.

Article 3

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

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

Done at Brussels, 29 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 47, 25.2.1993, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 13.

⁽³⁾ OJ L 126, 8.5.2001, p. 6.

⁽⁴⁾ OJ L 55, 26.2.2002, p. 17.

COMMISSION REGULATION (EC) No 892/2002**of 29 May 2002****setting, for the 2002/03 marketing year, the amount of the aid for peaches and pears for processing under Council Regulation (EC) No 2201/96**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ⁽¹⁾, as last amended by Regulation (EC) No 1239/2001 ⁽²⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Article 2(3) of Commission Regulation (EC) No 449/2001 of 2 March 2001 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables ⁽³⁾, as amended by Regulation (EC) No 1343/2001 ⁽⁴⁾, stipulates that the Commission is to publish the amount of the aid for peaches and pears after verification of compliance with the thresholds fixed in Annex III to Regulation (EC) No 2201/96.
- (2) The average quantity of peaches processed under the aid scheme during the three previous marketing years is lower than the Community threshold. The aid to be applied for the 2002/03 marketing year in each Member State concerned is the amount fixed in Article 4(2) of Regulation (EC) No 2201/96.
- (3) The average quantity of pears processed under the aid scheme during the three previous marketing years is higher than the Community threshold. The aid to be applied for the 2002/03 marketing year is the amount fixed in Article 4(2) of Regulation (EC) No 2201/96 in the Member States in which the threshold was not exceeded and, for the other Member States concerned, that amount less the overrun of the threshold in each of

them, after allocation of the quantities not processed in accordance with the third subparagraph of Article 5(2) of that Regulation.

- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Products Processed from Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

Article 1

For the 2002/03 marketing year, the aid referred to in Article 2 of Regulation (EC) No 2201/96 shall be:

- (a) for peaches: EUR 47,70/tonne;
- (b) for pears:
 - EUR 54,27 tonne in Greece,
 - EUR 161,70 tonne in Spain,
 - EUR 135,59 tonne in France,
 - EUR 151,52 tonne in Italy,
 - EUR 157,56 tonne in the Netherlands,
 - EUR 161,70 tonne in Austria,
 - EUR 161,70 tonne in Portugal.

Article 2

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

It shall apply to the 2002/03 marketing year.

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

Done at Brussels, 29 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 171, 26.6.2001, p. 1.

⁽³⁾ OJ L 64, 6.3.2001, p. 16.

⁽⁴⁾ OJ L 181, 4.7.2001, p. 16.

DIRECTIVE 2002/32/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 7 May 2002
on undesirable substances in animal feed

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152(4)(b) thereof,

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

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽³⁾, in the light of the joint text approved by the Conciliation Committee on 26 March 2002,

Whereas:

- (1) Many amendments need to be made to Council Directive 1999/29/EC of 22 April 1999 on the undesirable substances and products in animal nutrition ⁽⁴⁾. In the interests of clarity and efficiency the said Directive should be recast.
- (2) Livestock production occupies a very important place in farming in the Community and satisfactory results in terms of public and animal health, animal welfare, the environment and the livestock producers' finances depend to a large extent on the use of appropriate good quality feedingstuffs.
- (3) Rules on feedingstuffs are needed to ensure agricultural productivity and sustainability and to make it possible to ensure public and animal health, animal welfare and the environment. In addition, there is a need for comprehensive regulation on hygiene in order to guarantee good quality feedingstuffs on individual farms even when they are not commercially produced.
- (4) The same rules concerning the quality and safety of products intended for animal feed have to apply to the quality and safety of water consumed by the animals. Although the definition of feedingstuffs does not preclude water being considered as feedingstuff, it is not included in the non-exhaustive list of main feed mate-

rials, laid down by Council Directive 96/25/EC of 29 April 1996 on the circulation and use of feed materials ⁽⁵⁾. The issue of water to be considered as feedingstuffs needs to be examined in the framework of that Directive.

- (5) It has been established that additives can contain undesirable substances. The scope of the Directive should therefore be extended to cover additives.
- (6) Products intended for animal feed may contain undesirable substances which can endanger animal health or, because of their presence in livestock products, human health or the environment.
- (7) It is impossible to eliminate fully the presence of undesirable substances but it is important that their content in products intended for animal feed should be reduced, with due regard to the substances' acute toxicity, bio-accumulability and degradability, in order to prevent undesirable and harmful effects. It is at present inappropriate to fix this content below the levels detectable by methods of analysis to be defined for the Community.
- (8) The methods for determining residues of undesirable substances are becoming increasingly sophisticated, so that even quantities of residues which are negligible for animal and human health can be detected.
- (9) Undesirable substances may be present in products intended for animal feed only in accordance with the conditions laid down in this Directive and may not be used in any other way for the purposes of animal feed. This Directive should therefore apply without affecting other Community provisions on feedingstuffs, and particularly the rules applicable to compound feedingstuffs.
- (10) This Directive must apply to products intended for animal feed as soon as they enter the Community. It must therefore be stipulated that the maximum levels of undesirable substances that are set apply in general from the date on which the products intended for animal feed are put into circulation or used, at all stages, and in particular as soon as they are imported.

⁽¹⁾ OJ C 89 E, 28.3.2000, p. 70 and OJ C 96 E, 27.3.2001, p. 346.

⁽²⁾ OJ C 140, 18.5.2000, p. 9.

⁽³⁾ Opinion of the European Parliament of 4 October 2000 (OJ C 178, 22.6.2001, p. 160), Council Common Position of 17 September 2001 (OJ C 4, 7.1.2002, p. 1) and Decision of the European Parliament of 12 December 2001 (not yet published in the Official Journal). Decision of the European Parliament of 10 April 2002 and Decision of the Council of 22 April 2002.

⁽⁴⁾ OJ L 115, 4.5.1999, p. 32.

⁽⁵⁾ OJ L 125, 23.5.1996, p. 35. Directive as last amended by European Parliament and Council Directive 2000/16/EC (OJ L 105, 3.5.2000, p. 36).

- (11) Products intended for animal feed must be sound, genuine and of merchantable quality and therefore when correctly used must not represent any danger to human health, animal health or to the environment or adversely affect livestock production. Using or putting into circulation products intended for animal feed which contain levels of undesirable substances that exceed the maximum levels laid down in Annex I must therefore be prohibited.
- (12) The presence of certain undesirable substances in complementary feedingstuffs must be limited by fixing appropriate maximum levels.
- (13) While in certain cases a maximum level is fixed, taking account of background levels, continued effort is still needed to restrict the presence of some specific undesirable substances to the lowest possible levels in products intended for animal feed so as to reduce their presence in the feed and food chain. It should therefore be permitted, under this Directive, to lay down action thresholds well below the maximum levels fixed. Where such action thresholds are exceeded, investigations must be carried out to identify the sources of the undesirable substances and steps taken to reduce or eliminate such sources.
- (14) Where animal or human health or the environment is endangered, Member States should be allowed temporarily to reduce the fixed maximum permissible levels, to fix maximum levels for other substances or to prohibit the presence of such substances in products intended for animal feed. In order to ensure a uniform application, any amendments to Annex I to this Directive should be decided on by emergency Community procedure, on the basis of supporting documents and the precautionary principle.
- (15) Products intended for animal feed that satisfy the requirements of this Directive may not be subject to restrictions on entry into circulation, as regards the level of undesirable substances they contain, other than those provided for in this Directive and in Council Directive 95/53/EC of 25 October 1995 fixing the principles governing the organisation of official inspections in the field of animal nutrition ⁽¹⁾.
- (16) Member States must make appropriate monitoring arrangements pursuant to Directive 95/53/EC to ensure that the requirements regarding undesirable substances are met when products intended for animal feed are used or circulated.
- (17) An appropriate Community procedure is needed for adapting the technical provisions in the Annexes to this Directive in the light of developments in scientific and technical knowledge.
- (18) In order to facilitate implementation of the proposed measures, there should be a procedure for close cooperation between the Member States and the Commission within the Standing Committee for Feedingstuffs set up by Decision 70/372/EEC ⁽²⁾.
- (19) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽³⁾.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

1. This Directive deals with undesirable substances in products intended for animal feed.
2. This Directive shall apply without prejudice to the provisions in:
 - (a) Council Directive 70/524/EEC of 23 November 1970 concerning additives in feedingstuffs ⁽⁴⁾;
 - (b) Council Directive 96/25/EC and Council Directive 79/373/EEC of 2 April 1979 on the marketing of compound feedingstuffs ⁽⁵⁾;
 - (c) Council Directive 76/895/EEC of 23 November 1976 relating to the fixing of maximum levels for pesticide residues in and on fruit and vegetables ⁽⁶⁾, Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽⁷⁾, Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin ⁽⁸⁾ and Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽⁹⁾, where these residues are not listed in Annex I to this Directive;

⁽²⁾ OJ L 170, 3.8.1970, p. 1.

⁽³⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁴⁾ OJ L 270, 14.12.1970, p. 1. Directive as last amended by Commission Regulation (EC) No 2205/2001 (OJ L 297, 15.11.2001, p. 3).

⁽⁵⁾ OJ L 86, 6.4.1979, p. 30. Directive as last amended by the European Parliament and Council Directive 2002/2/EC (OJ L 63, 6.3.2002, p. 23).

⁽⁶⁾ OJ L 340, 9.12.1976, p. 26. Directive as last amended by Commission Directive 2000/57/EC (OJ L 244, 29.9.2000, p. 76).

⁽⁷⁾ OJ L 221, 7.8.1986, p. 37. Directive as last amended by Commission Directive 2002/23/EC (OJ L 64, 7.3.2002, p. 13).

⁽⁸⁾ OJ L 221, 7.8.1986, p. 43. Directive as last amended by Directive 2002/23/EC.

⁽⁹⁾ OJ L 350, 14.12.1990, p. 71. Directive as last amended by Directive 2002/23/EC.

⁽¹⁾ OJ L 265, 8.11.1995, p. 17. Directive as last amended by Directive 2001/46/EC of the European Parliament and of the Council (OJ L 234, 1.9.2001, p. 55).

- (d) Community legislation concerning veterinary matters relating to public health and animal health;
- (e) Council Directive 82/471/EEC of 30 June 1982 concerning certain products used in animal nutrition ⁽¹⁾;
- (f) Council Directive 93/74/EEC of 13 September 1993 on feedingstuffs intended for particular nutritional purposes ⁽²⁾.

Article 2

For the purposes of this Directive:

- (a) 'feedingstuffs' shall mean products of vegetable or animal origin, in their natural state, fresh or preserved, and products derived from the industrial processing thereof, and organic or inorganic substances, used singly or in mixtures, whether or not containing additives, for oral animal feeding;
- (b) 'feed materials' shall mean various products of vegetable or animal origin, in their natural state, fresh or preserved, and products derived from the industrial processing thereof, and organic or inorganic substances, whether or not containing additives, which are intended for use in oral animal feeding either directly as such or, after processing, in the preparation of compound feedingstuffs or as substrates for premixtures;
- (c) 'additives' shall mean additives as defined in Article 2(a) of Council Directive 70/524/EEC;
- (d) 'premixtures' shall mean mixtures of additives or mixtures of one or more additives with substances used as carriers, intended for the manufacture of feedingstuffs;
- (e) 'compound feedingstuffs' shall mean mixtures of feed materials, whether or not containing additives, which are intended for oral animal feeding as complete or complementary feedingstuffs;
- (f) 'complementary feedingstuffs' shall mean mixtures of feedingstuffs which have a high content of certain substances and which, by reason of their composition, are sufficient for a daily ration only if used in combination with other feedingstuffs;
- (g) 'complete feedingstuffs' shall mean mixtures of feedingstuffs which, by reason of their composition, are sufficient for a daily ration;
- (h) 'products intended for animal feed' shall mean feed materials, premixtures, additives, feedingstuffs and all other products intended for use or used in animal feed;
- (i) 'daily ration' shall mean the average total quantity of feedingstuffs, calculated on a moisture content of 12 %, required daily by an animal of a given species, age class and yield, to satisfy all its needs;
- (j) 'animals' shall mean animals belonging to species normally fed and kept or consumed by man as well as animals living freely in the wild in cases where they are fed with feedingstuffs;
- (k) 'putting into circulation' or 'circulation' shall mean the holding of products intended for animal feed for the purposes of sale, including offering for sale, or any other form of transfer, whether free or not, to third parties, and the sale or other forms of transfer themselves;
- (l) 'undesirable substance' shall mean any substance or product, with the exception of pathogenic agents, which is present in and/or on the product intended for animal feed and which presents a potential danger to animal or human health or to the environment or could adversely affect livestock production.

Article 3

1. Products intended for animal feed may enter for use in the Community from third countries, be put into circulation and/or used in the Community only if they are sound, genuine and of merchantable quality and therefore when correctly used do not represent any danger to human health, animal health or to the environment or could adversely affect livestock production.

2. In particular, products intended for animal feed shall be deemed not to be in conformity with paragraph 1 if the level of undesirable substances they contain does not comply with the maximum levels laid down in Annex I.

Article 4

1. Member States shall prescribe that the undesirable substances listed in Annex I may be tolerated in products intended for animal feed only subject to the conditions laid down therein.

2. In order to reduce or eliminate sources of undesirable substances of products intended for animal feed, Member States, in cooperation with economic operators, shall carry out investigations to identify the sources of undesirable substances, in cases where the maximum levels are exceeded and in cases where increased levels of such substances are detected, taking into account background levels. For a uniform approach in cases of increased levels it may be necessary to set action thresholds to trigger such investigations. These may be laid down in Annex II.

Member States shall transmit to the Commission and the other Member States all relevant information and findings of the source and the measures taken to reduce the level or elimination of the undesirable substances. This information shall be transmitted in the frame of the annual report to be transmitted to the Commission according to the provisions of Article 22 of Directive 95/53/EC except in those cases where the information is of immediate relevance for the other Member States. In this latter case, the information shall be transmitted immediately.

⁽¹⁾ OJ L 213, 21.7.1982, p. 8. Directive as last amended by Directive 1999/20/EC (OJ L 80, 25.3.1999, p. 20).

⁽²⁾ OJ L 237, 22.9.1993, p. 23. Directive as last amended by Directive 1999/29/EC (OJ L 115, 4.5.1999, p. 32).

Article 5

Member States shall prescribe that products intended for animal feed containing levels of an undesirable substance that exceed the maximum level fixed in Annex I may not be mixed for dilution purposes with the same, or other, products intended for animal feed.

Article 6

In so far as there are no special provisions for complementary feedingstuffs, Member States shall prescribe that complementary feedingstuffs may not, taking into account the proportion prescribed for their use in a daily ration, contain levels of the undesirable substances listed in Annex I that exceed those fixed for complete feedingstuffs.

Article 7

1. Where a Member State has grounds, based on new information or a reassessment of existing information made since the provisions in question were adopted, demonstrating that a maximum level fixed in Annex I or an undesirable substance not listed therein present a danger to animal or human health or to the environment, that Member State may provisionally reduce the existing maximum level, fix a maximum level or prohibit the presence of that undesirable substance in products intended for animal feed. It shall immediately inform the other Member States and the Commission thereof, stating the grounds for its decision.

2. An immediate decision shall be taken, in accordance with the procedure laid down in Article 12, as to whether Annexes I and II should be amended.

So long as neither the Council nor the Commission has taken a decision, the Member State may maintain the measures it has implemented.

The Member State must ensure that the decision taken is made public.

Article 8

1. In accordance with the procedure laid down in Article 11, the Commission, in the light of developments in scientific and technical knowledge, shall adapt Annexes I and II.

2. Furthermore, in accordance with the procedure laid down in Article 11, the Commission:

- shall periodically adopt consolidated versions of Annexes I and II incorporating any adaptations made pursuant to paragraph 1,
- may define acceptability criteria for detoxification processes as a complement to the criteria provided for products intended for animal feed which have undergone such processes.

3. Member States shall ensure that measures are taken to guarantee the correct application of any acceptable processes pursuant to paragraph 2 and the conformity of the detoxified products intended for animal feed with the provisions of Annex I.

Article 9

Member States shall ensure that products intended for animal feed which comply with this Directive are not subject to any other restrictions on circulation as regards the presence of undesirable substances other than those provided for in this Directive and Directive 95/53/EC.

Article 10

Provisions that may have an effect upon public or animal health or on the environment shall be adopted after consultation with the appropriate Scientific Committee(s).

Article 11

1. The Commission shall be assisted by the Standing Committee for Feedingstuffs, set up by Article 1 of Decision 70/372/EEC.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 12

1. The Commission shall be assisted by the Standing Committee for Feedingstuffs, set up by Article 1 of Decision 70/372/EEC.

2. Where reference is made to this Article, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at fifteen days.

Article 13

1. The Member States shall apply at least the provisions of this Directive to products intended for animal feed produced in the Community to be exported to third countries.

2. Paragraph 1 shall not affect the right of Member States to authorise re-exportation under the conditions laid down in Article 12 of Regulation (EC) No 178/2002⁽¹⁾. The provisions of Article 20 thereof shall apply *mutatis mutandis*.

⁽¹⁾ Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1).

Article 14

1. Directive 1999/29/EC is hereby repealed as from 1 August 2003, without prejudice to the obligations of the Member States to comply with the deadlines set out in Part B of Annex III thereto for the transposition of the Directives listed in Part A of that Annex.

2. References to Directive 1999/29/EC shall be construed as references to this Directive and should be read in accordance with the correlation table in Annex III.

Article 15

Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive before 1 May 2003. They shall forthwith inform the Commission thereof.

The measures adopted shall apply as from 1 August 2003.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The

procedure for making such reference shall be adopted by Member States.

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field covered by this Directive.

Article 16

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

Article 17

The Directive is addressed to the Member States.

Done at Brussels, 7 May 2002.

For the European Parliament

The President

P. COX

For the Council

The President

R. DE RATO Y FIGAREDO

ANNEX I

Undesirable substances	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feedingstuff with a moisture content of 12 %
(1)	(2)	(3)
1. Arsenic	Feed materials with the exception of: — meal made from grass, from dried lucerne and from dried clover, and dried sugar beet pulp and dried molasses sugar beet pulp — phosphates and feedingstuffs obtained from the processing of fish or other marine animals Complete feedingstuffs with the exception of: — complete feedingstuffs for fish Complementary feedingstuffs with the exception of: — mineral feedingstuffs	2 4 10 2 4 4 12
2. Lead	Feed materials with the exception of: — green fodder — phosphates — yeasts Complete feedingstuffs Complementary feedingstuffs with the exception of: — mineral feedingstuffs	10 40 30 5 5 10 30
3. Fluorine	Feed materials with the exception of: — feedingstuffs of animal origin — phosphates Complete feedingstuffs with the exception of: — complete feedingstuffs for cattle, sheep and goats — in milk — other — complete feedingstuffs for pigs — complete feedingstuffs for poultry — complete feedingstuffs for chicks Mineral mixtures for cattle, sheep and goats Other complementary feedingstuffs	150 500 2 000 150 30 50 100 350 250 2 000 ⁽¹⁾ 125 ⁽²⁾
4. Mercury	Feed materials with the exception of: — feedingstuffs produced by the processing of fish or other marine animals Complete feedingstuffs with the exception of: — complete feedingstuffs for dogs and cats Complementary feedingstuffs except: — complementary feedingstuffs for dogs and cats	0,1 0,5 0,1 0,4 0,2

Undesirable substances	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feedingstuff with a moisture content of 12 %
(1)	(2)	(3)
5. Nitrites	Fish meal	60 (expressed as sodium nitrite)
	Complete feedingstuffs excluding: — feedingstuffs intended for pets except birds and aquarium fish	15 (expressed as sodium nitrite)
6. Cadmium	Feed materials of vegetable origin	1
	Feed materials of animal origin, except: — feedingstuffs for pets	2
	Phosphates	10 ⁽³⁾
	Complete feedingstuffs for cattle sheep and goats except: — complete feedingstuffs for calves, lambs and kids	1
	Other complete feedingstuffs except: — feedingstuffs for pets	0,5
	Mineral feedingstuffs	5 ⁽⁴⁾
	Other complementary feedingstuffs for cattle, sheep and goats	0,5
7. Aflatoxin B ₁	Feed materials with the exception of: — groundnut, copra, palm-kernel, cotton seed, babassu, maize and products derived from the processing thereof	0,05 0,02
	Complete feedingstuffs for cattle, sheep and goats with the exception of: — dairy cattle — calves and lambs	0,05 0,005 0,01
	Complete feedingstuffs for pigs and poultry (except young animals)	0,02
	Other complete feedingstuffs	0,01
	Complementary feedingstuffs for cattle, sheep and goats (except complementary feedingstuffs for dairy animals, calves and lambs)	0,05
	Complementary feedingstuffs for pigs and poultry (except young animals)	0,03
	Other complementary feedingstuffs	0,005
8. Hydrocyanic acid	Feed materials with the exception of: — linseed — linseed cakes — manioc products and almond cakes	50 250 350 100
	Complete feedingstuffs with the exception of: — complete feedingstuffs for chicks	50 10
9. Free gossypol	Feed materials with the exception of: — cotton-seed cakes	20 1 200
	Complete feedingstuffs with the exception of: — complete feedingstuffs for cattle, sheep and goats — complete feedingstuffs for poultry (except laying hens) and calves — complete feedingstuffs for rabbits and pigs (except piglets)	20 500 100 60

Undesirable substances	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feedingstuff with a moisture content of 12 %
(1)	(2)	(3)
10. Theobromine	Complete feedingstuffs with the exception of: — complete feedingstuffs for adult cattle	300 700
11. Volatile mustard oil	Feed materials with the exception of: — rapeseed cakes	100 4 000 (expressed as allyl isothiocyanate)
	Complete feedingstuffs with the exception of: — complete feedingstuffs for cattle, sheep and goats (except young animals) — complete feedingstuffs for pigs (except piglets) and poultry	150 (expressed as allyl isothiocyanate) 1 000 (expressed as allyl isothiocyanate) 500 (expressed as allyl isothiocyanate)
12. Vinal thioxazolidone (Vinyloxazolidine thione)	Complete feedingstuffs for poultry with the exception of: — complete feedingstuffs for laying hens	1 000 500
13. Rye ergot (<i>Claviceps purpurea</i>)	All feedingstuffs containing unground cereals	1 000
14. Weed seeds and unground and uncrushed fruits containing alkaloids, glucosides or other toxic substances separately or in combination including (a) <i>Lolium temulentum</i> L., (b) <i>Lolium remotum</i> Schrank, (c) <i>Datura stramonium</i> L.	All feedingstuffs	3 000 1 000 1 000 1 000
15. Castor oil plant — <i>Ricinus communis</i> L.	All feedingstuffs	10 (expressed in terms of castor-oil plants husks)
16. <i>Crotalaria</i> spp.	All feedingstuffs	100
17. Aldrin } 18. Dieldrin } singly or combined expressed as dieldrin	17. Aldrin } 18. Dieldrin } All feedingstuffs with the exception of: — fats	17. Aldrin } 18. Dieldrin } 0,01 0,2
19. Camphechlor (toxaphene)	All feedingstuffs	0,1
20. Chlordane (sum of cis- and trans-isomers and of oxychlordane, expressed as chlordane)	All feedingstuffs with the exception of: — fats	0,02 0,05
21. DDT (sum of DDT-, TDE- and DDE-isomers, expressed as DDT)	All feedingstuffs with the exception of: — fats	0,05 0,5
22. Endosulfan (sum of alpha- and beta-isomers and of endosulfansulphate expressed as endosulfan)	All feedingstuffs with the exception of: — maize — oilseeds — complete feedingstuffs for fish	0,1 0,2 0,5 0,005
23. Endrin (sum of endrin and of delta-ketoi-endrin, expressed as endrin)	All feedingstuffs with the exception of: — fats	0,01 0,05
24. Heptachlor (sum of heptachlor and of heptachlorepoxy, expressed as heptachlor)	All feedingstuffs with the exception of: — fats	0,01 0,2

Undesirable substances	Products intended for animal feed	Maximum content in mg/kg (ppm) relative to a feedingstuff with a moisture content of 12 %
(1)	(2)	(3)
25. Hexachlorobenzene (HCB)	All feedingstuffs with the exception of: — fats	0,01 0,2
26. Hexachlorocyclo-hexane (HCH)		
26.1 alpha-isomers	All feedingstuffs with the exception of: — fats	0,02 0,2
26.2 beta-isomers	Compound feedingstuffs with the exception of: — feedingstuffs for dairy cattle Feed materials with the exception of: — fats	0,01 0,005 0,01 0,1
26.3 gamma-isomers	All feedingstuffs with the exception of: — fats	0,2 2,0
27. Dioxin (sum of PCDD and PCDF), expressed in international toxic equivalent	Citrus pulp	500 pg I-TEQ/kg (upper bound detection limit) ⁽⁵⁾
28. Apricots — <i>Prunus armeniaca</i> L.	All feedingstuffs	Seeds and fruit of the plant species listed opposite as well as their processed derivatives may only be present in feedingstuffs in trace amounts not quantitatively determinable
29. Bitter almond — <i>Prunus dulcis</i> (Mill.) D.A. Webb var. <i>amara</i> (DC.) Focke (= <i>Prunus amygdalus</i> Batsch var. <i>amara</i> (DC.) Focke)		
30. Unhusked beech mast — <i>Fagus silvatica</i> L.		
31. Camelina — <i>Camelina sativa</i> (L.) Crantz		
32. Mowrah, Bassia, Madhuca — <i>Madhuca longifolia</i> (L.) Macbr. (= <i>Bassia longifolia</i> L. = <i>Illiped malabrorum</i> Engl.) <i>Madhuca indica</i> Gmelin (= <i>Bassia latifolia</i> Roxb.) = <i>Illipe latifolia</i> (Roscb.) F. Mueller		
33. Purgheira — <i>Jatropha curcas</i> L.		
34. Croton — <i>Croton tiglium</i> L.		
35. Indian mustard — <i>Brassica juncea</i> (L.) Czern. And Coss. ssp. <i>intergrifolia</i> (West.) Thell.		
36. Sareptian mustard — <i>Brassica juncea</i> (L.) Czern. And Coss. ssp. <i>juncea</i>		
37. Chinese mustard — <i>Brassica juncea</i> (L.) Czern. And Coss. ssp. <i>juncea</i> var. <i>lutea</i> Batalin		
38. Black mustard — <i>Brassica nigra</i> (L.) Koch		
39. Ethiopian mustard — <i>Brassica carinata</i> A. Braun		

⁽¹⁾ Member States may also prescribe a maximum fluorine content of 1,25 % of the phosphate content.

⁽²⁾ Fluorine content per 1 % phosphorus.

⁽³⁾ Member States may also prescribe a maximum cadmium content of 0,5 mg per 1 % phosphorus.

⁽⁴⁾ Member States may also prescribe a maximum cadmium content of 0,75 mg per 1 % phosphorus.

⁽⁵⁾ Upper bound concentrations are calculated assuming that all values of the different congeners less than the limit of detection are equal to the limit of detection.

ANNEX II

Undesirable substances	Products intended for animal feed	Action threshold in mg/kg (ppm) relative to a product intended for animal feed with a moisture content of 12 %	Comments and additional information (e.g. nature of investigations to be performed)
------------------------	-----------------------------------	--	---

(for the record)

ANNEX III

CORRELATION TABLE

Directive 1999/29/EC	This Directive
Article 1	Article 1
Article 2(a)	Article 2(a)
Article 2(b)	Article 2(b)
Article 2(c)	Article 2(g)
Article 2(d)	Article 2(f)
Article 2(e)	Article 2(e)
Article 2(f)	Article 2(i)
Article 2(g)	Article 2(j)
Article 2(h)	—
—	Article 2(c)
—	Article 2(d)
—	Article 2(h)
—	Article 2(k)
—	Article 2(l)
Article 3	Article 3
Article 4(1)	Article 4(1)
Article 4(2)	—
—	Article 4(2)
Article 5	—
Article 6	—
Article 7	Article 5
Article 8	Article 6
Article 9	Article 7
Article 10	Article 8
Article 11	Article 9
Article 12	—
—	Article 10
Article 13	Article 11
Article 14	Article 12
Article 15	Article 13

Directive 1999/29/EC	This Directive
Article 16	—
—	Article 14
—	Article 15
Article 17	Article 16
Article 18	Article 17
Annex I	Annex I
Annex II	—
Annex III	—
Annex IV	Annex II

COUNCIL STATEMENT

The Member States confirm that they shall do their utmost to ensure that the relevant measures needed to implement the Directive are adopted expeditiously within the time period laid down in Articles 14 and 15.

II

(Acts whose publication is not obligatory)

COUNCIL

**DECISION No 2/2002 OF THE EU-CZECH REPUBLIC ASSOCIATION COUNCIL
of 27 March 2002
adopting the general terms and conditions for the participation of the Czech Republic in
Community programmes**

(2002/407/EC)

THE ASSOCIATION COUNCIL,

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

Whereas:

- (1) According to Article 1 of the Additional Protocol, the Czech Republic may participate in Community framework programmes, specific programmes, projects or other actions dealing with a wide range of fields. It also provides for the addition of other Community fields.
- (2) According to Article 2 of the said Protocol, the terms and conditions for the participation of the Czech Republic in these activities should be decided by the Association Council.
- (3) The specific participating conditions, including financial implications, in each Community programme should be determined between the Commission of the European Communities and the competent authorities of the Czech Republic,

HAS DECIDED AS FOLLOWS:

Article 1

The Czech Republic may participate in all Community programmes opened to participation of candidate countries of central and eastern Europe, in accordance with the provisions adopting these programmes.

⁽¹⁾ OJ L 317, 30.12.1995, p. 45.

Article 2

The Czech Republic shall contribute financially to the European Union's general budget corresponding to the specific programmes in which the Czech Republic participates.

Article 3

The Czech Republic's representatives shall be allowed to take part, as observers and for the points which concern the Czech Republic, in the management committees responsible for monitoring the programmes to which the Czech Republic contributes financially.

Article 4

Projects and initiatives submitted by participants from the Czech Republic shall be subject, as far as possible, to the same conditions, rules and procedures pertaining to the programmes concerned, as are applied to Member States.

Article 5

The specific terms and conditions, including financial contribution, regarding the participation of the Czech Republic in each particular programme shall be determined between the Commission and the competent authorities of the Czech Republic. Should the Czech Republic apply for Community external assistance pursuant to Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of central and eastern Europe ⁽²⁾, such specific terms and conditions may be determined on the basis of a Financing Memorandum.

Article 6

This Decision shall apply for an indeterminate period.

It may be denounced by either Party by giving six months' notice in writing.

⁽²⁾ OJ L 375, 23.12.1989, p. 11. Regulation as last amended by Regulation (EC) No 2666/2000 (OJ L 306, 7.12.2000, p. 1).

Article 7

No later than three years after the date of the entry into force of this Decision, and every three years thereafter, the Association Council may review the implementation of this Decision on the basis of actual participation of the Czech Republic in one or more Community programmes.

Article 8

This Decision shall enter into force on the first day of the month following its adoption by the Association Council.

Done at Brussels, 27 March 2002.

For the Association Council

The President

J. KAVAN

COMMISSION

COMMISSION DECISION

of 24 May 2002

on the sale of Community olive oil residues held by the Italian intervention agency

(notified under document number C(2002) 1642)

(Only the Italian text is authentic)

(2002/408/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats ⁽¹⁾, as last amended by Regulation (EC) No 1513/2001 ⁽²⁾, and in particular Article 3(1) thereof,

Whereas:

(1) Under the intervention arrangements prior to 1 November 1998 olive oil was purchased by the Spanish, Greek and Italian intervention agencies. The legal basis for those arrangements was repealed with effect from 1 November 1998 by Regulation (EC) No 1638/98. However, in order to guarantee a smooth transition from the intervention buying-in arrangements to the current situation where those arrangements no longer exist and in order to release all available stocks of olive oil from Community intervention agencies, the sale of quantities still in storage in Italy should be authorised. The oil is vat-bottom residues which contain a considerable percentage of olive oil.

(2) Article 2(1) of Council Regulation (EEC) No 2754/78 of 23 November 1978 on intervention in the olive oil sector ⁽³⁾, as amended by Regulation (EEC) No 2203/90 ⁽⁴⁾, provides that Community olive oil held by intervention agencies should be put up for sale by tender, unless special conditions warrant recourse to other procedures. The olive oil residues still in storage in Italy

could not be sold under Commission Regulation (EC) No 2599/2001 of 28 December 2001 on the sale of Community olive oil residues held by the Spanish, Greek and Italian intervention agencies ⁽⁵⁾ because not enough tenders were received in Italy. Those olive oil residues should be put up for sale again. To enable the Italian authorities to find a fair solution under the conditions laid down in Regulation (EEC) No 2754/78, the sale of those residues should be authorised via direct agreement instead of via a public tendering procedure.

(3) The measures provided for in this Decision are in accordance with the opinion of the Management Committee for Oils and Fats,

HAS ADOPTED THIS DECISION:

Article 1

1. The Italian intervention agency 'Agenzia per le Erogazioni in Agricoltura', hereafter called 'AGEA', is authorised to sell by direct agreement 27,1 tonnes of Community olive oil residue held by it as a result of intervention on the Community olive oil market.

2. The product referred to in paragraph 1 must be sold before 15 July 2002.

3. The product must be delivered before 8 September 2002.

4. The Italian intervention agency shall inform the Commission as soon as possible of the outcome of the sale.

⁽¹⁾ OJ L 210, 28.7.1998, p. 32.

⁽²⁾ OJ L 201, 26.7.2001, p. 4.

⁽³⁾ OJ L 331, 28.11.1978, p. 13.

⁽⁴⁾ OJ L 201, 31.7.1990, p. 5.

⁽⁵⁾ OJ L 345, 29.12.2001, p. 43.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 24 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY

EFTA SURVEILLANCE AUTHORITY DECISION

No 308/2000/COL
of 30 October 2001

introducing new Guidelines on the application of the EEA State aid provisions to State aid and risk capital, and amending for the 29th time the Procedural and Substantive Rules in the Field of State Aid

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area ⁽¹⁾, in particular to Articles 61 to 63 thereof,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice ⁽²⁾, in particular to Article 24 and Article 1 of Protocol 3 thereof,

Whereas under Article 24 of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall give effect to the provisions of the EEA Agreement concerning State aid.

Whereas under Article 5(2)(b) of the Surveillance and Court Agreement, the EFTA Surveillance Authority shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary.

Recalling the Procedural and Substantive Rules in the Field of State Aid ⁽³⁾ adopted on 19 January 1994 by the EFTA Surveillance Authority (OJ L 231, 3.9.1994, EEA Supplement No 32).

Whereas on 23 May 2001, the European Commission adopted a Communication on State aid and risk capital (OJ C 235, 21.8.2001, p. 3).

Whereas this Communication is also of relevance for the European Economic Area.

Whereas a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area.

Whereas, according to point II under the heading 'GENERAL' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the Commission, acts corresponding to those adopted by the EC Commission, in order to maintain equal conditions of competition.

Having consulted the European Commission.

Recalling that the EFTA Surveillance Authority has consulted the EFTA States in a multilateral meeting on the subject,

HAS ADOPTED THIS DECISION:

1. The State Aid Guidelines shall be amended by adding a new Chapter 10A, State aid and risk capital, contained in Annex I to this Decision.

⁽¹⁾ Hereinafter referred to as the EEA Agreement.

⁽²⁾ Hereinafter referred to as the Surveillance and Court Agreement.

⁽³⁾ Hereinafter referred to as the State Aid Guidelines.

2. The Decision, including Annex I, shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Communities*.
3. The EFTA States shall be informed by means of a copy of the Decision, including Annex I.
4. The European Commission shall be informed, in accordance with point (d) of Protocol 27 of the EEA Agreement, by means of a copy of this Decision, including Annex I.
5. The Decision shall be authentic in the English language.

Done at Brussels, 30 October 2001.

For the EFTA Surveillance Authority

The President

Knut ALMESTAD

ANNEX I

10A. STATE AID AND RISK CAPITAL ⁽¹⁾10A.1. *Introduction*

- (1) In the Communication on State aid and risk capital ⁽²⁾ the European Commission sets out how it will apply the State aid rules to measures designed to promote risk capital. The Commission has previously expressed a general policy in favour of promoting risk capital ⁽³⁾ in the Community. It has, for example, expressed concern about the risk of Community enterprises being overdependent on debt finance ⁽⁴⁾, and emphasised the potential for growth and job creation which an increase in risk capital markets would have ⁽⁵⁾. The Commission believes that certain types of enterprises, or enterprises at certain stages of their existence, may be better served by equity or near-equity finance than by loan finance alone, given the costs of servicing debt and the risk-averse nature of many lending institutions.
- (2) In the view of the Commission an equity gap, implying that there is a persistent capital market imperfection preventing supply from meeting demand at a price acceptable to both sides, affects negatively European small and medium-sized enterprises (SMEs) compared with similar companies in North America. The gap concerns, on one hand, high-tech innovative and mostly young firms with high growth potential and, on the other hand, a wide range of firms of different ages and sectors with smaller growth potential that cannot find financing for their expansion projects without external risk capital.
- (3) The Commission also point out that risk capital provision is essentially a commercial activity involving commercial decisions. Economic and budgetary conditions are such that public funds on their own will not be able, and should not attempt, to provide the whole of the increase in risk capital activity. The key challenge is to provide the conditions under which the large reserves of private capital which exist in Europe will be used for such investment. This challenge concerns as much the development of the demand for capital by entrepreneurs as the supply of capital by investors. In addition the Commission has recognised a role for public funding of risk capital measures limited to addressing identified market failures ⁽⁶⁾.
- (4) The Authority concurs with the view expressed by the Commission. Public funding of risk capital measures will, however, inevitably raise the question of the compatibility with the State aid rules of the EEA Agreement.

10A.2. *Aim and scope of these Guidelines and relation to other guidelines*

- (1) These Guidelines have two principal aims:
 - to set out how the Authority will apply the State aid definition in Article 61(1) of the EEA Agreement to measures designed to provide or promote risk capital (risk capital measures),
 - to provide new criteria under which the Authority may authorise such measures which do constitute State aid, even if they are not compatible with the other guidelines of the Authority's State Aid Guidelines.
- (2) In addition these Guidelines aim to explain why State aid control in this area is necessary, to explain the difficulties in applying current guidelines to such measures, and to justify why the Authority considers that the new compatibility criteria are both necessary and appropriate.
- (3) Nothing in these Guidelines should be taken to call into question the compatibility of State aid measures, which meet the criteria of any other guidelines of the present State Aid Guidelines.

⁽¹⁾ This chapter corresponds in substance to the Commission Communication on State aid and risk capital (OJ C 235, 21.8.2001, p. 3). The Commission had taken a number of decisions on State aid and risk capital before its adoption of the Communication on State aid and risk capital. The Authority refers, in these Guidelines, to the same decisions as in the Commission Communication.

⁽²⁾ OJ C 235, 21.8.2001, p. 3.

⁽³⁾ In its paper "Risk capital: a key to job creation in the European Union" (SEC(1998) 552 final, 31 March 1998) the European Commission defined risk capital as equity financing to companies in their start-up and development phases, and the phrase is used with that sense in the present guideline. The term "venture capital" refers essentially to risk capital provided by investment fund (venture capital funds) established for that purpose. Such funds provide a mix of equity, mezzanine and subordinated loan finance and the term "venture capital" refers to the totality of this finance.

⁽⁴⁾ "Economic reform: report on the functioning of Community product and capital markets", COM (1999) 10, 20 January 1999.

⁽⁵⁾ "Risk capital, a key to job creation in the European Union", SEC(1998) 552 final, 31 March 1998.

⁽⁶⁾ Progress report on the risk capital action plan, COM(2000) 658 final, 18 October 2000, section 3.4.

- (4) This document in no way derogates from the provisions of the present State Aid Guidelines on State aid for rescuing and restructuring firms in difficulty.
- (5) The Authority will pay particular attention to the need to prevent the use of these guidelines to circumvent the principles laid down in existing Chapters of the present State Aid Guidelines.

10A.3. *Reasons for controlling public funding to risk capital measures*

- (1) Aside from the fact that the EEA Agreement and the Surveillance and Court Agreement impose on the Authority the requirement to control State aid within the EFTA States, and in common with other forms of public intervention, national authorities, when deciding whether to commit or to authorise public funds for measures designed to promote risk capital, should reduce as far as possible the following three distinct though connected categories of risk:
 - the risk that advantages to the beneficiaries (whether investors or enterprises) create an undue distortion of competition relative to their competitors in the European Economic Area,
 - the risk of “deadweight”, or lack of incentive effect. Some enterprises funded through publicly supported measures may have obtained finance on the same terms in any case. There is evidence of this happening though this is inevitably anecdotal. In that event public resources are being used unnecessarily,
 - the risk of “crowding out”. The presence of publicly supported measures may actually discourage other potential investors from providing capital.
- (2) Not all public measures carried out in favour of risk capital schemes fall within the definition of State aid in Article 61(1) of the EEA Agreement and therefore under the Authority's State aid control. The next section of these Guidelines therefore provides guidance as to how the Authority interprets the definition of State aid as it concerns risk capital measures.

10A.4. *Applicability of Article 61(1) to risk capital measures*

- (1) In the case of a measure in the form of a grant or loan, it is normally obvious which enterprise is potentially the beneficiary for the purpose of assessing whether State aid is involved. However, certain constructions devised to promote risk capital are more complex because the public authorities create incentives for one set of economic operators (investors) in order to provide finance to another set (for example, smaller enterprises). Depending on the design of the measure, and even if the intention of the public authorities may be only to provide benefits to the latter group ⁽⁷⁾, enterprises at either or both “levels” may be beneficiaries of State aid. Moreover, in some cases the measure provides for the creation of a fund or other investment vehicle which has an existence separate from investors and the enterprises invested in. In such cases it is also necessary to consider whether the fund or vehicle can be considered to be an enterprise benefiting from State aid.
- (2) When assessing risk capital measures the Authority will therefore have to consider the possibility that the measure may confer aid on at least three different levels:
 - aid to investors,
 - aid to any fund or other vehicle through which the measure operates (in the case of a “fund of funds” there may be more than one such level),
 - aid to the companies invested in.
- (3) In order for a measure to fall within the scope of Article 61(1) of the EEA Agreement, four cumulative criteria must be met:
 - the measure must involve the use of State resources; in the case of the direct financial participation of public authorities in risk capital measures, or tax incentives for investors, this is usually self-evident,
 - the measure must distort competition by conferring an advantage on the beneficiary; in accordance with case law of the Court of Justice of the European Communities, the Authority must assume that State aid is likely to be present whenever State resources are contributed in a manner which would not be acceptable to a private investor operating under normal market economy conditions. Where by contrast the public authorities invest on terms that would be acceptable to such an investor, no advantage is conferred and

⁽⁷⁾ The Court of Justice of the European Communities has held that Article 87 of the EC Treaty does not distinguish between the measure of State intervention concerned by reference to their causes or aims but defines them in relation to their effects (Case 173/73 *Italy v. Commission* [1974] ECR 709).

there is therefore no State aid ⁽⁸⁾. It follows that where State resources are made available on the same terms as those applying to private investors (*pari passu*) it will normally be possible to conclude that the measure does not confer an advantage. However, if the State resources are made available on more favourable terms, then an advantage will normally be present,

- that advantage must be selective, in that it is limited to certain undertakings; if a measure applies without limitation or sectoral or geographical distinction to all enterprises throughout the territory of a EFTA State, then it is not selective ⁽⁹⁾. However, any measure which, because of its nature, can only apply to a limited number of enterprises, is selective. Likewise, a measure is selective if it provides for investments to be made only in certain enterprises, for example limited by sector or by region. It should be noted that a measure which is general as regards investors (that is, it is available to all investors) may nonetheless be selective at the level of companies invested in ⁽¹⁰⁾,
 - the measure must affect trade between Contracting Parties to the EEA Agreement. Since investment of capital is an activity which is the subject of very large trade between the Contracting Parties to the EEA Agreement, and since any measure providing an advantage to investors has the declared aim of affecting their investment decisions, the Authority will normally consider that this criterion is met by risk capital measures in favour of investors. In assessing any effect on trade, the Authority needs to consider the effects across capital markets more generally, not merely on investors who may or may not have been previously operating in the market for providing equity capital to the enterprises targeted by the measure. Similarly, unless it can be shown that all investments will be made in enterprises engaged in activities which are not the subject of trade between the Contracting Parties to the EEA Agreement, the Authority will regard this criterion as met at all the levels for which the other criteria are fulfilled ⁽¹¹⁾.
- (4) There are also other Chapters of the present State Aid Guidelines which provide interpretation on whether individual measures fall within the definition of State aid and which may be relevant to risk capital measures. These include the chapters on Public authorities' holdings, on the application of the State aid rules to measures relating to direct business taxation and on State guarantees ⁽¹²⁾. The Authority will continue to apply these texts when assessing whether risk capital measures constitute State aid.
- (5) In accordance with the principles set out above, the Authority will take the following factors into account in determining whether State aid is present at each of the different levels.

(I) Aid to investors

Where a measure allows investors to participate in the equity of a company or set of companies on terms more favourable than public investors, or than if they had undertaken such investments in the absence of the measure, then those investors receive an advantage ⁽¹³⁾. This remains the case even if the investor is persuaded by the measure to confer an advantage on the company or companies concerned. The fact that owing to the existence of a market failure no investors would otherwise make such investments, is not of itself sufficient to rebut the presumption of advantage. In effect, the investors are being offered more advantageous terms to compensate them for the factors which cause market failure, and the Authority considers that such compensation must be considered as an advantage, which will constitute aid if the investors are enterprises and if the other conditions described above, notably selectivity, are met. Provided, however, that the advantage is limited to the amount necessary to overcome the factors which cause market failure, it may be considered compatible with the EEA Agreement, where it meets the principles described in section 10A.8. because of its limited effect.

(II) Aid to an intermediary vehicle or fund

In general, the Authority would tend to the view that a fund is a vehicle for the transfer of aid to investors and/or enterprises invested in, rather than being an aid beneficiary itself. However, in certain cases, notably measures involving transfers in favour of existing funds with numerous and diverse investors, the fund may have the character of an independent enterprise. In that case aid will usually be present unless the investment is made on terms which would be acceptable to a normal economic operator in a market economy and therefore provides no advantage to the beneficiary.

⁽⁸⁾ See Commission Decision of 4 October 2000 in Case N 172/2000 (Ireland) Seed and Venture Capital Found Scheme (O) C 37, 3.2.2001, p. 48).

⁽⁹⁾ This could be the case, for example, of a tax measure promoting investment in a certain class of financial instrument.

⁽¹⁰⁾ See for example the judgment by the Court of Justice of the European Communities in Case C-156/98 *Germany v. Commission* [2000] ECR I-6857.

⁽¹¹⁾ In this connection the Court of Justice of the European Communities has held that: "In the case of an aid programme the Commission may confine itself to examining the characteristics of the programme in question in order to determine whether, by reasons of the high amounts or percentages of aid, the nature of investments for which aid is granted or other terms of the programme, it gives an appreciable advantage to recipients in relation to their competitors and is likely to benefit undertakings engaged in trade between Member States" Case 248/84 *Germany v. Commission* [1987] ECR 4013, at paragraph 18 (emphasis added).

⁽¹²⁾ It should, however, be noted that guarantees granted by the State in favour of investment in risk capital are more likely to include an element of aid to the investor than is the case with traditional loan guarantees, which are normally considered to constitute aid to the borrower rather than to the lender.

⁽¹³⁾ This may be the case of measures providing finance to investors for investment in such participations, where this provision is made on conditions more favourable than market terms.

(III) Aid to the enterprises invested in

Once again the main test is whether the enterprise has received the investment on terms which would be acceptable to a private investor in a market economy. This test can, as an example, be met when the investment made through the risk capital measures is made *pari passu* with such an investor or investors. Where this is not the case, the fact that investment decisions are being taken by commercial managers of risk capital funds, or by representatives of investors, with an interest to ensure a maximum return for the fund is an important indicator, but it is not of itself conclusive. The Authority must also take into account the possibility that any advantages accorded to investors in the funds are passed on to the enterprises invested in, when the investments are not made by the fund *pari passu* with a private investor in a market economy. If a risk capital measure has reduced the risks and/or increased the rewards which investors will obtain from making a particular investment, then they may be said no longer to be operating as a normal economic operator ⁽¹⁴⁾.

- (6) Whether a measure provides aid, and at what level, will depend on its design. Some measures might for example be general measures at the level of investors but provides State aid at the level of individual enterprises ⁽¹⁵⁾, other measures could provide State aid to investors but not to the enterprises invested in, through application of the *pari passu* principle described above ⁽¹⁶⁾, and some measures could provide State aid at more than one level ⁽¹⁷⁾.
- (7) Where all aid provided to beneficiaries is *de minimis* in the sense of the *de minimis* rule and its application, then it is deemed not to meet all the criteria of Article 61(1) of the EEA Agreement. In risk capital measures the application of the *de minimis* rule is handicapped by difficulties of calculation (see also section 10A.5) and also by the fact that measures may provide aid not only to the target enterprises but also to other investors. Where these difficulties can be overcome, however, it remains applicable. If a scheme provides public capital of EUR 100 000 or less to each enterprise over a three year period then it is certain that any aid to these enterprises is within the limits set by the *de minimis* provisions of the Guidelines.

10A.5. Assessment of the compatibility of risk capital measures under the State aid rules: application of existing texts

- (1) Where measures constitute State aid, the Authority is called to assess whether they can be found compatible with the functioning of the EEA Agreement under Article 61(2) and (3). Most risk capital measures could be found to be compatible only under paragraph 3(a) (for measures applying solely in regions eligible for the derogation in that paragraph), or paragraph 3(c).
- (2) The immediate objectives of risk capital measures are likely to include the promotion of SMEs, in particular new or innovative firms, or firms with high growth potential, and/or the promotion of the development of a particular region. The Authority has already adopted texts under which State aid with such objectives can be authorised under paragraphs 61(3)(a) or (c) ⁽¹⁸⁾. The public authority devising the measure may also have the objective of encouraging more investors to become involved in the provision of this type of finance. No text on State aid in this area exists, and indeed it has not been explicitly recognised up to now as an objective capable in itself of justifying State aid. However, this does not in any way preclude the compatibility of a measure which meets the terms of other frameworks or guidelines.
- (3) One characteristic of existing guidelines authorising State aid under paragraphs 61(3)(a) or (c) is that aid is authorised up to a level representing a "grant equivalent" of a fixed percentage of certain of the beneficiary enterprise's costs. These "eligible costs" are principally fixed investments in land, buildings, new productive equipment and intangible assets (patents, know-how etc) labour costs linked to fixed asset investment, and the costs of consultancy services. Experience has shown, however, that risk capital measures can frequently not be found compatible under these rules, for some or all of the following reasons:

⁽¹⁴⁾ See, for example, Commission decision 98/476/EC (OJ L 212, 30.7.1998, p. 50). This case was the subject of the judgment in Case C-156/98 referred to in footnote 10.

⁽¹⁵⁾ See footnote 14.

⁽¹⁶⁾ See, for example, Commission decision in case N 705/99, United Kingdom High Technology Fund.

⁽¹⁷⁾ See Commission Decision 2001/406/EC in Case C 46/2000 Viridian Growth Fund (Northern Ireland) (OJ L 144, 30.5.2001, p. 23).

⁽¹⁸⁾ See the present State Aid Guidelines on Aid to Small and Medium-sized Enterprises and on National Regional Aid.

- the difficulty of establishing a “grant equivalent” of equity capital. While the Authority has established rules for determining such equivalents for loans and guarantees ⁽¹⁹⁾, it has no such formula for equity capital. Against that, the Authority believes that a technical difficulty of calculation cannot of itself suffice to make a measure incompatible with the functioning of the EEA Agreement. It is examining the options for a possible methodology in this respect, and in the meantime will be open to proposed calculation methods accompanying notifications of risk capital measures ⁽²⁰⁾,
 - the difficulty of establishing a link with eligible costs, in particular under measures which provide incentives to investors, and notably under measures in the form of funds. Such a link is not easily reconcilable with the commercial fund management which will be required by investors participating in funds and may raise verification and enforcement difficulties,
 - for measures providing aid at the level of investors, the fact that no current text provides any basis for authorising such aid.
- (4) The Authority believes that in general there are good reasons for the “eligible costs” approach. The approach provides certainty, predictability and a basis for limiting aid and for ensuring equal treatment between regions and EEA States. It has served well in the past and is likely to be the basis of most State aid control in the future. The Authority believes that good reasons are needed for departing from it.
- (5) In particular, the risk of departing from the principle is that State aid may be authorised which is merely “operating aid”, that is, aid to cover normal current expenses of a business. The Authority believes that such aid, which may isolate the beneficiary from the effects of commercial non-viability, is among the most distortive types of State aid and is authorised only in limited circumstances.
- (6) However, the Authority also believes that the fact that risk capital measures cannot be found compatible on the basis of existing guidelines, and in particular the difficulties listed above, are not in themselves a justification for finding the measures incompatible with the common market. With regard to the difficulties listed in the paragraphs above the Authority has noted that:
- the costs regarded as eligible under existing frameworks are of less importance to many young or innovative enterprises. In any case, such costs will more often be capable of being financed by loan capital; the need for equity capital is generally linked not only to assets but also to the need for working capital during an enterprise's start-up or expansion phase,
 - the lack of a link to eligible costs as defined in current texts is not necessarily evidence of operating aid, understood as aid which defrays an enterprise's normal operating expenses, and has no effect other than to keep it running. Aid with a clear incentive effect to an enterprise's start-up or expansion cannot be held to constitute operating aid in this sense, and could therefore be accepted under certain circumstances,
 - as regards aid to investors, a measure cannot be considered incompatible solely because, by involving private sector or market investors, it constitutes a State aid to them as well as to the enterprises invested in. In general, where a transfer made by the State would be compatible with the State aid rules, the Authority believes that a measure which provides a minimum incentive to other economic operators to make that same transfer should also be authorised, even if technically an aid to those operators is involved.

10A.6. *Basis for authorising risk capital measures under Article 61(3)(a) and (c) of the EEA Agreement*

- (1) The principal basis on which the Authority may authorise risk capital measures even though they fall outside the scope of existing rules is that one of the main handicaps suffered by SMEs, and in particular small enterprises and start-ups, is the difficulty in obtaining capital and credit. The chief causes of this are imperfect information, the risk-averse nature of investors and lending institutions and the limited guarantees that SMEs are in a position to offer ⁽²¹⁾. A particular obstacle to the provision of equity capital can be the high transaction and “due diligence” costs relative to the amount of capital being provided.

⁽¹⁹⁾ For example the present State Aid Guidelines on *de minimis*, on State Guarantees and on National Regional Aid.

⁽²⁰⁾ This might include a methodology based on the cost of providing a particular guarantee. See Commission decision of 28 February 2001 in Case N 551/2000 (Germany): BTU — Beteiligungskapital für kleine Technologieunternehmen (OJ C 117, 21.4.2001, p. 17).

⁽²¹⁾ See the chapter of the present State Aid Guidelines on Aid to Small and Medium-sized Enterprises (SMEs).

- (2) The Authority recognise a role for public funding of risk capital measures limited to addressing identifiable market failures. A market failure can be defined as a situation in which economic efficiency is not achieved owing to imperfections in the market mechanism. A market failure may manifest itself either in the inability of the system to produce goods which are wanted (in this case a risk capital market), or by a misallocation of resources, which could be improved in such a way that some consumers would be better off and none worse off. The externalities involved in training and research and development activity result in a market failure which justifies State aid in those areas.
- (3) As economic theory predicts that markets will usually fail in some sense except under conditions of perfect competition, the term market failure is reserved for cases where it is believed that a serious misallocation of resources has occurred. There are two main sources of market failure relevant to risk capital markets which particularly affect access to capital by SMEs and companies at the early stages of their development and which may justify public intervention:
- *imperfect or asymmetric information*: potential investors face more difficulties in gathering reliable information on the business prospects of an SME or a new company. Particularly if these are involved in highly innovative projects or risky projects, imperfect information will aggravate problems related to difficulties in the assessment of risk,
 - *transaction costs*: small deals are less attractive to investment funds due to relatively high costs for investment appraisal and other transaction costs.
- (4) The Authority believes that these factors can cause a market failure which would justify State aid. However, caution is needed. The fact that requests for finance, both debt and equity, have been turned down is not in itself an indication of market failure. Indeed, the Authority believes that there is no general risk capital market failure in the European Economic Area. It does, however, accept that there are market gaps for some types of investments, at certain stages of enterprises' lives. It also recognises that there are particular difficulties in regions qualifying for assistance under Articles 61(3)(a) and (c) ("assisted areas"). These gaps and difficulties are to some extent already recognised in existing State aid frameworks, and where these can be applied to risk capital measures the Authority will be prepared to continue to do so.
- (5) The Authority will therefore require provision of evidence of market failure before being prepared to authorise risk capital measures which fall outside the scope of existing rules. It may however be prepared to accept this is the case where each tranche of finance for an enterprise from risk capital measures which are in turn wholly or partially financed through State aid will contain a maximum of EUR 500 000, or EUR 750 000 in regions qualifying for assistance under Article 61(3)(c) or EUR 1 million in regions qualifying for assistance under Article 61(3)(a) ⁽²²⁾. This is because for small transactions the argument that market failure exists through high transaction costs is more persuasive. The fact that a market failure is recognised does not however alter the aid character of a particular measure, nor the need to assess its compatibility, in particular under the provisions of section 10A.8.
- (6) Where it is recognised that there is a market failure, the Authority will examine whether any State aid measure is proportionate to the presumed market failure it is devised to meet, and will seek to ensure that any distortion is minimised. It believes that this can best be achieved by measures which are just sufficient to ensure that market investors provide capital and which result in investment decisions being taken on a commercial basis and on terms as close as possible to those which would prevail in the normal economy.
- (7) The diversity of possible models for risk capital measures, and the relative novelty of some of the constructions being devised by EFTA States, mean that the Authority is not in a position to define rigid criteria by which to determine whether to authorise such measures. It has, however, identified certain elements which it will regard as positive, and others which it will regard as negative, in their assessment. These are set out in section 10A.8. The fact that the criteria are devised in this way reinforces the importance of all risk capital measures which constitute or which may constitute State aid being notified to the Authority under Article 1(3) of Protocol 3 to the Surveillance and Court Agreement before being put into effect, unless they are exempted from notification through an exemption like that cited at 10A.4(7). Where the Authority is in possession of a complete notification which shows that a measure contains numerous positive elements, and no negative elements, the Authority will aim to make a rapid assessment of it within the deadlines laid down in the procedural part of the present State Aid Guidelines.

⁽²²⁾ Separate injection of capital within six months of each other would be considered to be part of the same tranche, as would different injections, even over a longer period, to which a commitment is made as part of a single transaction.

10A.7. *Form of aid measure*

- (1) The Authority believes that the choice of form of an aid measure lies in general with the EFTA State. This applies equally to risk capital measures. However, and as further explained at section 10A.8, the Authority's assessment of such measures will include whether they encourage market investors to provide risk capital to the "target enterprises" and are likely to result in decisions to invest being taken on a commercial (that is, a profit-maximising) basis. The Authority believes that forms of incentives to such investors capable of producing this result, and therefore of being viewed positively under the criteria set out in section 10A.8. where they constitute State aid, include the following:
 - constitution of *investment funds* ("venture capital funds") in which the State is a partner, investor or participant, even if on less advantageous terms than other investors,
 - *grants* to venture capital funds to cover part of their administrative and management costs,
 - *other financial instruments* in favour of risk capital investors or of venture capital funds to provide extra capital for investment,
 - *guarantees* to risk capital investors or to venture capital funds against a proportion of investment losses, or guarantees given in respect of loans to investors/funds for investment in risk capital ⁽²³⁾,
 - *fiscal incentives* to investors to undertake risk capital investment.
- (2) The Authority does not intend to use the criteria in the following section to authorise measures which may provide capital to an enterprise *solely* in the form of loans (including subordinated loans and "equity loans") or other instruments which provide the investor/lender with a fixed minimum return, whether through funds or through other means. Such capital provision is not "risk capital" in the sense of the definition in footnote 3, and the Authority regards existing rules, covering notably the calculation of any aid element and the link to eligible costs, as adequate to assess such measures.
- (3) The Authority does not intend to use the criteria in the following section to authorise an ad-hoc measure providing capital to an individual enterprise.

10A.8. *Criteria for assessing compatibility*

- (1) As already explained in section 10A.6, the criteria are expressed in the form of "positive and negative elements". Not all the elements have equal weight, and in the following list the most important elements are listed first. No single element is essential, nor can any set of them be regarded as sufficient on its own to ensure compatibility. In some cases their applicability, and the weight attached to them, may depend on the form of the measure. The Authority's assessment will take account of the regional specificity of any measure and will be subject to an overall test of proportionality.

Measures will be assessed at each level. In cases where the provision of risk capital to an enterprise is linked to costs which are eligible for aid under an existing guideline, that guideline may be applied as an alternative to the principles below for assessing the aid to that enterprise, in line with paragraphs 10A.2(3) and 10A.5(2). Where the measure concerned also provides aid at the level of investors, however, such aid will still need to be assessed in accordance with the principles below.

- (2) Where the ceilings for transaction sizes set out in 10A.6(5) are met, and when only investors (or an investment vehicle) are beneficiaries of State aid under the measure, such State aid is compatible to the extent that it is proportional to the cost disadvantages addressed, such as the higher relative costs of analysis and management of small investments. The provisions of 10A.8(3) below will be used to assess whether this is so.

The Authority will require provision of evidence of market failure where the ceilings for transaction sizes set out in paragraph 10A.6(5) are exceeded.

- (3) Once market failure has been established, the Authority will examine the following elements in the assessment of a risk capital measure under the State aid provisions of the EEA Agreement:

⁽²³⁾ The second alternative is one means of intervention of the US Small Business Administration in favour of small business investment companies.

Restriction of investments, or failing that of a majority of funds invested:

- to small ⁽²⁴⁾ or even “micro” enterprises, and/or
- to medium-sized enterprises in their start-up or other early stages ⁽²⁵⁾ or in assisted areas;

will be regarded as a positive element. Access to finance for medium-sized enterprises beyond their start-up or early stages should be subject to a limit per enterprise on total funding through the measure. Restriction to smaller transaction sizes (that is to say, below EUR 500 000 or EUR 750 000 in regions qualifying for assistance under Article 61(3)(c) or EUR 1 million in regions qualifying for assistance under Article 61(3)(a)) or to a given level of demonstrated market failure will also be regarded as a positive element.

Measures should be focused on risk capital market failure. If a measure provides for the delivery of the finance to enterprises principally in the form of equity or quasi-equity then this will be regarded positively. Where measures provide significant amounts of finance in other forms, or appear not to have a significant incentive effect (that is, where it will support risk capital investments which would have happened even in the absence of the measure) this will be regarded negatively. This could be the case of measures providing further finance to an enterprise which has already received one aided injection of capital.

Decisions to invest should be profit-driven. A link between investment performance and the remuneration of those responsible for investment decisions will be a positive element. This would be assumed to be met:

- by measures under which all the capital invested in the target enterprises is provided by market economy investors, who also make the investment decision, with the aid being solely an incentive for them to do so, and
- by other measures with significant involvement of market economy investors' capital, being invested on a commercial basis (that is, only for profit) directly or indirectly ⁽²⁶⁾ in the equity of the “target enterprises”.

In the case of funds, and while each measure will be regarded on its merits and other aspects will have a bearing on the Authority's assessment, provision of at least 50 % of the funds capital would be taken to constitute “significant involvement”, or 30 % in the case of measures operating in assisted areas. Further positive elements would be:

- an agreement between a professional fund manager and participants in the fund, providing that the manager's remuneration is linked to performance and setting out the objectives of the fund and proposed timing of investments,
- the representation of market investors in decision-making, and
- the application of best practice and regulatory supervision in the management of funds.

Where no such element is present to indicate that investment decisions will be commercially driven, then this will be regarded negatively. This will be taken to be the case of measures which are so small in size as to be focussed on only a few projects, and which are not economically viable, or of measures set up solely or principally to provide finance to a particular enterprise known in advance.

The level of distortion of competition between investors and between investment funds should be minimised. The Authority will regard positively a call for tender for the establishment of any “preferential terms” given to investors, or the availability of any such terms to other investors. This availability might take the form of a public invitation to investors at the launch of an investment fund, or might take the form of a scheme (such as a guarantee scheme) which remained open to new entrants over an extended period. The means by which this positive element could be achieved will necessarily depend on the form of the measure in question. However the absence of any such check against overcompensation to investors, or a measure where the risk of losses is borne entirely by the public sector and/or where the benefits flow entirely to the other investors will be considered as a negative element.

⁽²⁴⁾ Following the Authority's definition set out in the chapter on Aid to Small and Medium-sized Enterprises (SMEs) of the present State Aid Guidelines.

⁽²⁵⁾ The European Venture Capital Association defines start-up financing as “financing provided to companies for product development and initial marketing. Companies may be in the process of being set up or may have been in business for a short time, but have not sold their products commercially”, and other early-stage as “financing to companies still in the stages of research and product development or that have completed the product development stage and require further funds to initiate commercial manufacturing and sales. They will not yet be generating a profit”.

⁽²⁶⁾ “Indirectly” should be taken to mean investment via funds or other investment vehicles.

Sectoral focus. To the extent that many private sector funds focus on specific innovative technologies or even sectors (such as health, information technology, culture) the Authority can accept a sectoral focus where this has a commercial as well as a public policy logic. In line, however, with the Authority's consistently less favourable view of sectoral State aid measures, in particular in sensitive sectors suffering from overcapacity, measures should specifically exclude the provision of aid to enterprises in the shipbuilding and ECSC sectors.

Investment on the basis of business plans. The existence for each investment of a business plan containing details of product, sales and profitability development and establishing the *ex ante* viability of the project is standard commercial practice in professional fund management and will be positively regarded. Measures providing no "exit mechanism" for the State's direct or indirect involvement in individual enterprises would be regarded negatively.

Avoidance of cumulation of aid measures to a single enterprise. If a measure provides aid to the enterprises invested in, then the Authority may request commitments from an EFTA State to assess and set limits to other forms of State aid to enterprises funded by the risk capital measure, including under authorised schemes. For such measures, and unless the EFTA State undertakes that these enterprises will receive no other State aid than *de minimis* aid, the EFTA State should propose to the Authority for examination and approval a reasonable evaluation of the aid element of the measure which will be used for applying the cumulation rules. Where capital provided to an enterprise under such a risk capital measure is used to finance initial investment, research and development costs or other costs eligible for aid under other frameworks, the EFTA State should include the aid element in the risk capital measure in applying the relevant aid ceilings.

10A.9. **Final observations**

The Authority intends to apply the terms of these Guidelines for five years. However, given that the approach of these Guidelines represents a departure from previous methods of State aid control, and that it deals with an area of rapid development in the economy of the European Economic Area, it reserves the right to adjust its approach in the light of experience. Where this would be helpful it may also provide further clarifications of its approach to particular issues.'

CORRIGENDA

Corrigendum to Council Regulation (EC) No 163/2002 of 28 January 2002 extending the definitive anti-dumping duty imposed by Regulation (EC) No 368/98 on imports of glyphosate originating in the People's Republic of China to imports of glyphosate consigned from Malaysia or Taiwan, whether declared as originating in Malaysia or Taiwan or not, and terminating the investigation in respect of imports from one Malaysian and one Taiwanese exporting producer

(Official Journal of the European Communities L 30 of 31 January 2002)

On page 8:

— in Article 1(1):

for: '(Taric code 2931 00 95*89)',

read: '(Taric code 2931 00 95*82)';

— in Article 1(2):

for: '(Taric code 2931 00 95*89)',

read: '(Taric code 2931 00 95*82)'.

Corrigendum to Council Regulation (EC) No 311/2002 of 18 February 2002 imposing a definitive anti-dumping duty on imports of certain magnetic disks (3,5" microdisks) originating in Hong Kong and the Republic of Korea

(Official Journal of the European Communities L 50 of 21 February 2002)

On page 23, in Article 1(2), in the table:

for:

'Country	Company	Rate of AD duty %	Taric additional code
Hong Kong	Jackin Magnetic Co Ltd.	7,2 %	8775
	Plantron (HK) Ltd.	6,7 %	8776
	Technosource Industrial Ltd.	13,3 %	8778
	All other exporting producers	24,7 %	8999
Republic of Korea	All exporting producers	8,1 %	—'

read:

'Country	Company	Rate of AD duty %	TARIC additional code
Hong Kong	Jackin Magnetic Co Ltd.	7,2 %	8775
	Plantron (HK) Ltd.	6,7 %	8776
	Technosource Industrial Ltd	13,3 %	8778
	All other exporting producers	27,4 %	8999
Republic of Korea	All exporting producers	8,1 %	—'

Corrigendum to Commission Directive 2002/42/EC of 17 May 2002 amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC as regards the fixing of maximum levels for pesticide residues (bentazone and pyridate) in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables

(Official Journal of the European Communities L 134 of 22 May 2002)

On page 36, footnote (p) to the table:

for: '(p) Indicates provisional maximum residue level. For those agricultural products listed in Annex II to Directive 90/642/EEC where the maximum residue levels for flupyrsulfuron-methyl, pymetrozine and azoxystrobin are indicated as provisional as "(p)", this shall mean that they are provisional in accordance with the provisions of Article 4(1)(f) of Directive 91/414/EEC. By 1 December 2005, provisional maximum residue levels for flupyrsulfuron-methyl and pymetrozine shall cease to be provisional and shall become definitive in the sense of Article 3 of Directive 90/624/EEC. For azoxystrobin this shall be 1 August 2003.'

read: '(p) Indicates provisional maximum residue level in accordance with Article 4(1)(f) of Directive 91/414/EEC: unless amended, this level will become definitive with effect from 4 years from date of coming into force of the Directive introducing this amendment.'

Corrigendum to the Protocol to the Europe Agreement establishing an Association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, on Conformity Assessment and Acceptance of Industrial Products (PECA)

(Official Journal of the European Communities L 135 of 17 May 2001)

This correction has been made by a procès-verbal of rectification signed in Brussels on 11 March 2002 by the Council as depositary.

On page 54, Annex 'Medical devices', Section II, opposite the entry 'Spain':

for: 'Ministerio de Ciencia y Tecnología,'

read: 'Ministerio de Sanidad y Consumo.'
