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⁽¹⁾ Text with EEA relevance

I

(Acts whose publication is obligatory)

**REGULATION (EC) No 437/2003 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 February 2003
on statistical returns in respect of the carriage of passengers, freight and mail by air**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 285 thereof,

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

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

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

Whereas:

- (1) To carry out the tasks entrusted to them, in the context of the Community air transport policy and that of the future development of the Common Transport Policy, the Community institutions should have at their disposal comparable, consistent, synchronised and regular statistical data on the scale and development of the carriage of passengers, freight and mail by air within the Community or to and from the Community.
- (2) There are currently no such comprehensive Community-wide statistics.
- (3) Council Decision 1999/126/EC of 22 December 1998 on the Community statistical programme 1998 to 2002 ⁽⁴⁾ has identified the need to establish such statistics.
- (4) The common data collection on a comparable or harmonised basis makes possible the provision of an integrated system with reliable, consistent and prompt information.
- (5) The data for the carriage of passengers, freight and mail by air should, where possible, be compatible with international data provided by the International Civil Aviation

Organisation (ICAO) and be made comparable, where applicable, as between Member States and for the different modes of transport.

- (6) After a certain period, the Commission should submit a report in order to allow an assessment of the application of this Regulation to be made.
- (7) In accordance with the principle of subsidiarity laid down in Article 5 of the Treaty, the creation of common statistical standards that permit the production of harmonised data is an action which can only be undertaken efficiently at Community level. Such standards should be implemented in each Member State under the authority of the bodies and institutions in charge of producing official statistics.
- (8) Council Regulation (EC) No 322/97 of 17 February 1997 on Community statistics ⁽⁵⁾ provides a reference framework for the provisions laid down by this Regulation.
- (9) The measures necessary for the implementation of this Regulation 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 ⁽⁶⁾.
- (10) The Statistical Programme Committee established by Council Decision 89/382/EEC, Euratom ⁽⁷⁾ has been consulted.
- (11) Arrangements for greater cooperation over the use of Gibraltar airport were agreed in London on 2 December 1987 by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland in a joint declaration by the Ministers of Foreign Affairs of the two countries, and such arrangements have yet to come into operation,

⁽¹⁾ OJ C 325, 6.12.1995, p. 11.

⁽²⁾ OJ C 39, 12.2.1996, p. 25.

⁽³⁾ Opinion of the European Parliament of 29 February 1996 (OJ C 78, 18.3.1996, p. 28), confirmed on 16 September 1999 (OJ C 54, 25.2.2000, p. 79), Council Common Position of 30 September 2002 (OJ C 275 E, 12.11.2002, p. 33) and Decision of the European Parliament of 18 December 2002 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 42, 16.2.1999, p. 1.

⁽⁵⁾ OJ L 52, 22.2.1997, p. 1.

⁽⁶⁾ OJ L 184, 17.7.1999, p. 23.

⁽⁷⁾ OJ L 181, 28.6.1989, p. 47.

HAVE ADOPTED THIS REGULATION:

Article 1

Objective

Member States shall establish statistical returns on the carriage of passengers, freight and mail by commercial air services as well as on civil aircraft movements to or from Community airports, except for flights by State aircraft.

Article 2

Gibraltar

1. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

2. The application of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland on 2 December 1987 come into operation. The Governments of Spain and the United Kingdom of Great Britain and Northern Ireland shall inform the Council of such date of entry into operation.

Article 3

Data collection characteristics

1. Each Member State shall collect statistical data relating to the following variables:

- (a) passengers
- (b) freight and mail
- (c) flight stages
- (d) passenger seats available
- (e) aircraft movements.

The statistical variables in each area, the nomenclatures for their classification, their periodicity of observation and the definitions are set out in Annexes I and II.

2. Each Member State shall collect all data set out in Annex I for all Community airports in its territory with traffic in excess of 150 000 passenger units annually.

A list of Community airports covered by the first subparagraph shall be drawn up by the Commission and, if necessary, updated in accordance with the procedure laid down in Article 11(2).

3. For airports, apart from those having only occasional commercial traffic, which are not covered by paragraph 2, Member States shall transmit only an annual return of the data specified in Table C1 of Annex I.

4. Notwithstanding paragraphs 2 and 3, for airports:

- (a) with fewer than 1 500 000 passenger units a year for which no collection of data corresponding to those specified in Annex I exists on the date of entry into force of this Regulation,
- (b) and for which the introduction of a new data collection system proves very difficult,

a Member State may for a limited time not exceeding three years from 1 January 2003, in accordance with the procedure laid down in Article 11(2), transmit data less complete than those referred to in Annex I.

5. Notwithstanding paragraph 2, for airports:

- (a) for which no collection of data corresponding to those specified in Table B1 of Annex I exists on the date of entry into force of this Regulation,
- (b) and for which the introduction of a new data collection system proves very difficult,

a Member State may, until 31 December 2003, in accordance with the procedure laid down in Article 11(2), transmit only existing data.

Article 4

Collection of data

1. The collection of data shall be based where possible on available sources, minimising the burden on respondents.

2. Respondents called upon by Member States to supply information shall be obliged to give true and complete information within the prescribed time limits.

Article 5

Accuracy of statistics

The collection of data shall be based on complete returns, unless other standards of accuracy are established in accordance with the procedure laid down in Article 11(2).

*Article 6***Data processing**

Member States shall use methods for data processing which ensure that the data collected under Article 3 comply with the standards of accuracy set out in Article 5.

*Article 7***Transmission of results**

1. Member States shall transmit to the Statistical Office of the European Communities the results of the data processing referred to in Article 6, including data declared confidential by the Member States pursuant to domestic legislation or practice concerning statistical confidentiality, in accordance with Regulation (EC) No 322/97.

2. The results shall be transmitted according to the data files shown in Annex I. The files and the medium to be used for transmission shall be specified by the Commission in accordance with the procedure laid down in Article 11(2).

3. The first period of observation shall begin on 1 January 2003. Transmission shall take place as soon as possible and no later than six months after the end of the period of observation.

*Article 8***Dissemination**

1. The arrangements whereby the Commission publishes or disseminates the statistical results shall be drawn up in accordance with the procedure laid down in Article 11(2).

2. The Commission shall disseminate to the Member States appropriate statistical results with a frequency similar to that laid down for the transmission of results.

*Article 9***Reports**

1. At the request of the Commission, Member States shall communicate all information concerning the methods used in the collection of data. Member States shall also, where appropriate, communicate to the Commission any substantive changes to the collection methods used.

2. After data have been collected over a period of three years, the Commission shall submit a report to the European Parliament and the Council on experience acquired in the application of this Regulation, in particular of Articles 7 and 8.

*Article 10***Implementing arrangements**

The arrangements for implementing this Regulation, including measures for adaptation to economic and technical developments, in particular:

- adaptation of the specifications in the Annexes to this Regulation,
- adaptation of the data collection characteristics (Article 3),
- the list of Community airports covered by Article 3(2),
- accuracy of statistics (Article 5),
- description of the data files, codes and the medium to be used for transmission of results to the Commission (Article 7),
- dissemination of statistical results (Article 8),

shall be laid down by the Commission in accordance with the procedure specified in Article 11(2).

*Article 11***Committee procedure**

1. The Commission shall be assisted by the Statistical Programme Committee established by Article 1 of Decision 89/382/EEC, Euratom.

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

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

3. The Committee shall adopt its Rules of Procedure.

*Article 12***Entry into force**

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

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

Done at Brussels, 27 February 2003.

For the European Parliament

The President

P. COX

For the Council

The President

M. CHRISOCHOÏDIS

ANNEX I

RECORD STRUCTURE FOR DATA TRANSMISSION TO EUROSTAT

A. FLIGHT STAGE DATABASE (AT LEAST QUARTERLY DATA)

The 'flight stage' data refer to commercial air services only.

Data file record format

Elements	Coding detail	Nomenclature	Unit
Table	2-alpha	A1	
Reporting country	2-alpha	(1) ICAO nationality letters	
Reference year	2-digit	yy	
Reference period	2-digit	(2) Statra 291 rev., April 1991	
Reporting airport	4-alpha	(3) ICAO	
Next/previous airport	4-alpha	(3) ICAO	
Arrival/departure	1-digit	1 = arrival 2 = departure	
Scheduled/non-scheduled services	1-digit	1 = scheduled 2 = non-scheduled	
Passenger services/all-freight and mail services	1-digit	1 = passenger services 2 = all-freight and mail services	
Airline information		(4) To be defined	
Aircraft type	4-alpha	(5) ICAO + taxiflight code	
Passengers on board	12-digit		Passenger
Freight and mail on board	12-digit		Tonne
Flights	12-digit		Flight
Passenger seats available	12-digit		Passenger seat

B. ON FLIGHT ORIGIN/DESTINATION DATABASE (AT LEAST QUARTERLY DATA)

The 'on flight origin and destination' data refer to commercial air services only.

Data file record format

Elements	Coding detail	Nomenclature	Unit
Table	2-alpha	B1	
Reporting country	2-alpha	(1) ICAO nationality letters	
Reference year	2-digit	yy	
Reference period	2-digit	(2) Statra 291 rev., April 1991	
Reporting airport	4-alpha	(3) ICAO	
On flight origin/destination airport	4-alpha	(3) ICAO	
Arrival/departure	1-digit	1 = arrival 2 = departure	

Elements	Coding detail	Nomenclature	Unit
Scheduled/non-scheduled services	1-digit	1 = scheduled 2 = non-scheduled	
Passenger services/all-freight and mail services	1-digit	1 = passenger services 2 = all-freight and mail services	
Airline information		(4) To be defined	
Passengers carried	12-digit		Passenger
Freight and mail loaded/unloaded	12-digit		Tonne

C. AIRPORTS DATABASE (AT LEAST ANNUAL DATA)

The 'airports data' refer to commercial air services only, with the exception of 'total aircraft movements' which refers to all aircraft movements.

Data file record format

Elements	Coding detail	Nomenclature	Unit
Table	2-alpha	C1	
Reporting country	2-alpha	(1) ICAO nationality letters	
Reference year	2-digit	yy	
Reference period	2-digit	(2) Statra 291 rev., April 1991	
Reporting airport	4-alpha	(3) ICAO	
Total passengers carried	12-digit		Passenger
Total direct transit passengers	12-digit		Passenger
Total freight and mail loaded/unloaded	12-digit		Tonne
Total aircraft movements on commercial air services	12-digit		Movement
Total aircraft movements	12-digit		Movement

CODES

1. Reporting country

The coding system to be used is derived from the ICAO index to nationality letters for location indicators.

Belgium	EB
Denmark	EK
France	LF
Germany	ED
Greece	LG
Ireland	EI
Italy	LI
Luxembourg	EL

Netherlands	EH
Portugal	LP
Spain	LE
United Kingdom	EG
Austria	LO
Finland	EF
Sweden	ES

2. Reference period

45	year
21	January to March (first quarter)
22	April to June (second quarter)
23	July to September (third quarter)
24	October to December (fourth quarter)
1 to 12	January to December (month)

3. Airports

Airports shall be coded according to the ICAO four-letter codes as listed in ICAO document 7910.

4. Airline information

Information related to the airline. The coding of this variable shall be decided in accordance with the procedure laid down in Article 11(2).

5. Aircraft type

Aircraft types shall be coded according to ICAO aircraft type designators as listed in ICAO document 8643.

ANNEX II

DEFINITIONS

Community airport

Any area in a Member State which is subject to the provisions of the Treaty and open for commercial air transport operations.

Commercial air services

An air transport flight or series of flights performed by civil aircraft for remuneration to or from Community airports. Services may be either scheduled or non-scheduled.

Scheduled services

Services possessing all the following characteristics:

1. they are performed by aircraft for the transport of passengers, freight and/or mail for remuneration, in such a manner that on each flight seats are available for individual purchase by members of the public (either directly from the airline or from its authorised agents);
2. they are operated so as to serve traffic between the same two or more airports, either:
 - (a) according to a published timetable; or
 - (b) with flights so regular or frequent that they constitute a recognisably systematic series.

Non-scheduled services

Services for remuneration other than those reported under scheduled services. Includes taxiflights.

Passenger services

All flights carrying one or more revenue passengers, and any flights listed in timetables as providing passenger services.

All-freight and mail services

Services relating to scheduled or non-scheduled services performed by aircraft carrying loads other than passengers, i.e. freight and mail.

Flights by State aircraft

Any flight in the context of military, customs, police, protocol or firefighting services.

Passenger units

For the purpose of drawing up the list of Community airports as referred to in Article 3(2) and for the transitional period referred to in Article 3(4), one passenger unit is equivalent to either one passenger or 90 kilograms of freight and mail.

Airline

An air transport undertaking with a valid operating licence. Where airlines have joint-venture or other contractual arrangements requiring two or more of them to assume separate responsibility for the offer and sale of air transport products for a flight or combination of flights, the airline actually operating the flight shall be reported.

Flight stage

A flight stage is the operation of an aircraft from take-off to its next landing. A technical stop should not result in any flight stage being classified differently. The classification of traffic, irrespective of its nature (passengers, freight and mail), shall be identical to the classification of the flight stage flown by the aircraft.

Flights

The number of flights performed between each pair of airports on a flight stage.

Passengers on board

All passengers whose journey begins or terminates at the reporting airport, including connecting passengers and direct transit passengers.

Direct transit passengers

Passengers who continue their journey on a flight having the same flight number as the flight on which they arrived.

Freight and mail on board

Any property carried on an aircraft other than stores and baggage; includes express services and diplomatic bags but not passenger baggage.

Passenger seats available

The total number of passenger seats available for sale between each pair of airports on a flight stage (excluding seats not actually available for the carriage of passengers because of maximum gross weight limitation). Where information is not available on exact aircraft seating configuration, estimated data may be provided.

On flight origin/destination

Traffic on a given flight with the same flight number subdivided by airport pairs in accordance with point of embarkation and point of disembarkation on that flight. (For passengers or freight where the airport of embarkation is not known, the aircraft origin should be deemed to be the point of embarkation; similarly, if the airport of disembarkation is not known, the aircraft destination should be deemed to be the point of disembarkation).

Passengers carried

Includes all passengers whose journey begins or terminates at the reporting airport. Excludes direct transit passengers.

Freight and mail loaded/unloaded

Any property loaded or unloaded on to or off an aircraft other than stores and baggage. Includes express services and diplomatic bags but not passenger baggage.

Total aircraft movements

All take-offs and landings by non-military aircraft. Includes aerial work flights, i.e. specialised commercial aviation operations which are performed by aircraft chiefly engaged in agriculture, construction, photography and surveying, as well as pilot training, business/executive flying and all other non-commercial flights.

Total aircraft movements on commercial air services

All take-offs and landings performed by civil aircraft for remuneration.

**COMMISSION REGULATION (EC) No 438/2003
of 10 March 2003**

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 1947/2002 ⁽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 11 March 2003.

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

Done at Brussels, 10 March 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 299, 1.11.2002, p. 17.

ANNEX

to the Commission Regulation of 10 March 2003 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	120,7
	204	66,9
	212	117,7
	624	138,6
	999	111,0
0707 00 05	052	131,7
	068	135,6
	204	74,2
	999	113,8
0709 10 00	220	86,6
	999	86,6
0709 90 70	052	160,3
	204	92,1
	999	126,2
0805 10 10, 0805 10 30, 0805 10 50	052	72,8
	204	49,1
	212	51,1
	220	46,5
	624	63,1
	999	56,5
0805 50 10	052	58,6
	600	60,8
	999	59,7
0808 10 20, 0808 10 50, 0808 10 90	039	111,1
	388	136,8
	400	109,2
	404	97,0
	508	96,9
	512	87,8
	524	82,5
	528	96,0
	720	116,0
	728	107,5
0808 20 50	999	104,1
	388	77,1
	512	72,9
	528	63,2
	999	71,1

⁽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 439/2003
of 10 March 2003
on the supply of cereals as food aid

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

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

Article 2

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

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

Done at Brussels, 10 March 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 166, 5.7.1996, p. 1.

⁽²⁾ OJ L 234, 1.9.2001, p. 10.

⁽³⁾ OJ L 346, 17.12.1997, p. 23.

ANNEX

LOT A

1. **Action No:** 84/02
2. **Beneficiary** ^(?): EuronAid, PO Box 12, 2501 CA Den Haag, Nederland; tel.: (31-70) 330 57 57; fax: 364 17 01; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Madagascar
5. **Product to be mobilised:** common wheat flour
6. **Total quantity (tonnes net):** 179
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 (A.10)
9. **Packaging** ⁽⁷⁾ ⁽⁸⁾: see OJ C 267, 13.9.1996, p. 1 (2.2 A 1.d, 2.d and B.4)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (II.B.(3))
 - Language to be used for the markings: French
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage** ⁽⁹⁾: free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 14.4-4.5.2003
 - second deadline: 28.4-18.5.2003
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 25.3.2003
 - second deadline: 8.4.2003
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, European Commission, Office: L130 7/46, B-1049 Brussels; telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04
22. **Export refund** ⁽⁴⁾: refund applicable on 5.3.2003, fixed by Commission Regulation (EC) No 391/2003 (OJ L 55, 1.3.2003, p. 44).

LOT B

1. **Action No:** 75/02
2. **Beneficiary** ^(?): EuronAid, PO Box 12, 2501 CA Den Haag, Nederland; tel.: (31-70) 330 57 57; fax: 364 17 01; telex 30960 EURON NL
3. **Beneficiary's representative:** to be designated by the beneficiary
4. **Country of destination:** Madagaskar
5. **Product to be mobilised:** maize flour
6. **Total quantity (tonnes net):** 79
7. **Number of lots:** 1
8. **Characteristics and quality of the product** ⁽³⁾ ⁽⁵⁾: see OJ C 312, 31.10.2000, p. 1 (A.11)
9. **Packaging** ⁽⁷⁾ ⁽⁸⁾: see OJ C 267, 13.9.1996, p. 1 (2.2 A 1.d, 2.d and B.4)
10. **Labelling or marking** ⁽⁶⁾: see OJ C 114, 29.4.1991, p. 1 (II.B.(3))
 - Language to be used for the markings: French
 - Supplementary markings: —
11. **Method of mobilisation of the product:** the Community market
12. **Specified delivery stage** ⁽⁹⁾: free at port of shipment
13. **Alternative delivery stage:** —
14. a) **Port of shipment:** —
b) **Loading address:** —
15. **Port of landing:** —
16. **Place of destination:**
 - port or warehouse of transit: —
 - overland transport route: —
17. **Period or deadline of supply at the specified stage:**
 - first deadline: 14.4-4.5.2003
 - second deadline: 28.4-18.5.2003
18. **Period or deadline of supply at the alternative stage:**
 - first deadline: —
 - second deadline: —
19. **Deadline for the submission of tenders (at 12 noon, Brussels time):**
 - first deadline: 25.3.2003
 - second deadline: 8.4.2003
20. **Amount of tendering guarantee:** EUR 5 per tonne
21. **Address for submission of tenders and tendering guarantees** ⁽¹⁾: M. Vestergaard, European Commission, Office: L130 7/46, B-1049 Brussels; telex 25670 AGREC B; fax (32-2) 296 70 03/296 70 04
22. **Export refund** ⁽⁴⁾: refund applicable on 5.3.2003, fixed by Commission Regulation (EC) No 391/2003 (OJ L 55, 1.3.2003, p. 44).

Notes:

- (¹) Supplementary information: Torben Vestergaard (tel. (32-2) 299 30 50; fax (32-2) 296 20 05).
- (²) The supplier shall contact the beneficiary or its representative as soon as possible to establish which consignment documents are required.
- (³) The supplier shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded. The radioactivity certificate must indicate the caesium-134 and -137 and iodine-131 levels.
- (⁴) Commission Regulation (EC) No 2298/2001 (OJ L 308, 27.11.2001, p. 16), is applicable as regards the export refund. The date referred to in Article 2 of the said Regulation is that indicated in point 22 of this Annex.
- (⁵) The supplier shall supply to the beneficiary or its representative, on delivery, the following document:
— phytosanitary certificate.
- (⁶) Notwithstanding OJ C 114 of 29 April 1991, point II.A(3)(c) or II.B(3)(c) is replaced by the following: 'the words "European Community"'.

(⁷) Since the goods may be rebagged, the supplier must provide 1 % of empty bags of the same quality as those containing the goods, with the marking followed by a capital 'R'.

(⁸) Shipment to take place in 20-foot containers, condition FCL/FCL.
The supplier shall be responsible for the cost of making the container available in the stack position at the container terminal at the port of shipment. The beneficiary shall be responsible for all subsequent loading costs, including the cost of moving the containers from the container terminal.
The supplier has to submit to the beneficiary's agent a complete packing list of each container, specifying the number of bags belonging to each action number as specified in the invitation to tender.
The supplier has to seal each container with a numbered locktainer (Oneseal, Sysko Locktainer 180 or a similar high-security seal) the number of which is to be provided to the beneficiary's representative.
- (⁹) The tenderer's attention is drawn to the second subparagraph of Article 7(6) of Regulation (EC) No 2519/97.

Before the Commission can award the supply contract, it needs various items of information about the tenderer concerned (in particular the bank account to be credited). These details are contained in a form available on the Internet at the following website:
http://europa.eu.int/comm/budget/execution/ftiers_fr.htm.

If these details are missing, the tenderer designated as the supplier may not invoke the time limit for notification referred to in Article 9(4) of Regulation (EC) No 2519/97.

You should therefore include the above form with your bid after filling in the required details.

**COMMISSION REGULATION (EC) No 440/2003
of 10 March 2003**

**amending Regulation (EEC) No 2676/90 determining Community methods for the analysis of
wines**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾, as last amended by Regulation (EC) No 2585/2001 ⁽²⁾, and in particular the first subparagraph of Article 46(3) thereof,

Whereas:

- (1) The Annex to Commission Regulation (EEC) No 2676/90 ⁽³⁾, as last amended by Regulation (EC) No 1622/2000 ⁽⁴⁾, describes analysis methods.
- (2) An analysis method for D-malic acid suitable for measuring the low levels found in wines has been developed and validated according to recognised international criteria. The International Vine and Wine Office adopted the description of this new method at its General Assembly in June 2002.
- (3) A new method for determining the carbon isotope ratio of wine ethanol or of ethanol obtained through the fermentation of grape musts, concentrated grape musts or rectified concentrated grape musts has been developed and validated according to recognised international criteria. The International Vine and Wine Office adopted the description of this new method at its General Assembly in 2001.
- (4) The use of these methods can ensure better control of wine quality and authenticity and prevent disputes caused by the application of less accurate testing

methods, particularly as regards enrichment with mixtures of sugars of various origins and the acidification of wines using malic acid.

- (5) The existing method for the dosage of D-malic acid described in the Annex to Regulation (EEC) No 2676/90 should be supplemented by the description of the procedure for determining low levels and the description of the new isotopic method for carbon in ethanol should be added.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Wine,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 2676/90 is hereby amended as follows:

1. In Chapter 20, 'D-malic acid', point 8 is replaced by Annex I hereto.
2. Chapter 45 in Annex II hereto is added.

Article 2

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

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

Done at Brussels, 10 March 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 345, 29.12.2001, p. 10.

⁽³⁾ OJ L 272, 3.10.1990, p. 1.

⁽⁴⁾ OJ L 194, 31.7.2000, p. 1.

ANNEX I

8. DOSAGE OF D-MALIC ACID (D(+)-MALIC ACID) IN WINES WITH LOW LEVELS

8.1. FIELD OF APPLICATION

The method described is applied to the dosage, by enzymatic means, of D-malic acid of wines with levels under 50 mg/l.

8.2. PRINCIPLE

The principle of the method is described in point 1. The formation of NADH after the introduction into the cuvette of 50 mg/l of D-malic acid is proportional to the quantity of D-malate present and is measured on the basis of the increase in absorbance at a wavelength of 340 nm.

8.3. REAGENTS

A 0,199 g/l D-malic acid solution plus the reagents indicated in point 2.

8.4. APPARATUS

Apparatus indicated in point 3.

8.5. PREPARATION OF THE SAMPLE

As indicated in point 4.

8.6. PROCEDURE

The procedure is as described in point 5, but with the introduction into the measuring cuvette of 50 mg/l of D-malic acid. (Introduction of 0,025 ml of 0,199 g/l D-malic acid solution, displacing the equivalent volume of water); the values obtained are decreased by 50 mg/l.

8.7. INTERNAL VALIDATION

The table below summarises the internal validation file on the method for determining the dosage of D(+)-malic acid after the addition of 50 mg/l of the isomer.

Working range	0 mg to 70 mg of D-malic acid per litre. Within these limits, the method is linear with a correlation coefficient of between 0,990 and 0,994
Limit of quantification	24,4 mg/l
Limit of detection	8,3 mg/l
Sensitivity	0,0015 abs/mg/l
Recovery ratio	87,5 to 115,0 % for white wines and 75 to 105 % for red wines
Repeatability	= 12,4 mg/l for white wines (according to the OIV method = 12,5 mg/l) = 12,6 mg/l for red wines (according to OIV method = 12,7 mg/l)
Coefficient of variation	4,2 % to 7,6 % (white wines and red wines)
Intralaboratory variability	CV=7,4 % (s = 4,4 mg/l; mean = 59,3 mg/l)

ANNEX II

45. DETERMINATION BY ISOTOPE MASS SPECTROMETRY OF THE $^{13}\text{C}/^{12}\text{C}$ RATIO IN WINE ETHANOL OR ETHANOL OBTAINED BY THE FERMENTATION OF MUSTS, CONCENTRATED MUSTS OR RECTIFIED CONCENTRATED MUSTS

1. FIELD OF APPLICATION

The method enables measurement of the $^{13}\text{C}/^{12}\text{C}$ isotope ratio in wine ethanol and ethanol obtained by fermentation of products of the vine (musts, concentrated musts, rectified concentrated musts).

2. REFERENCE STANDARDS

ISO: 5725:1994 "Accuracy (trueness and precision) of measurement methods and results: Basic method for the determination of repeatability and reproducibility of a standard measurement method".

V-PDB: Vienna-Pee-Dee Belemnite ($R_{\text{PDB}} = 0,0112372$).

Method 8 of the Annex to this Regulation: "Detecting enrichment of grape musts, concentrated grape musts, rectified concentrated grape musts and wines by application of nuclear magnetic resonance of deuterium (SNIF-NMR)."

3. TERMS AND DEFINITIONS

$^{13}\text{C}/^{12}\text{C}$: ratio of carbon 13 (^{13}C) to carbon 12 (^{12}C) isotopes for a given sample.

$\delta^{13}\text{C}$: carbon 13 content (^{13}C) expressed in parts per 1 000 (‰).

SNIF-NMR: fractionating the particular natural isotope under study by nuclear magnetic resonance.

V-PDB: Vienna-Pee-Dee Belemnite. PDB is the primary reference material for measuring natural variations of carbon 13 isotope content, consisting of calcium carbonate from a Cretaceous belemnite guard from the Pee Dee Formation in South Carolina (USA). Its $^{13}\text{C}/^{12}\text{C}$ isotope ratio or R_{PDB} is 0,0112372. PDB reserves have been exhausted for a long time, but it has remained the primary reference for expressing natural variations of carbon 13 isotope content and against which the reference material available at the International Atomic Energy Agency (IAEA) in Vienna (Austria) is calibrated. Isotopic indications of naturally occurring carbon 13 are conventionally expressed in relation to V-PDB.

m/z : mass-to-charge ratio.

4. PRINCIPLE

During photosynthesis, the assimilation of carbon dioxide by plants occurs via two principle forms of metabolism, the C_3 metabolism (Calvin cycle) and the C_4 metabolism (Hatch and Slack). These two photosynthesis mechanisms present a different type of isotope fractionation. Products of C_4 plants, such as sugars and alcohol derived from fermentation, have higher levels of carbon 13 than similar products of C_3 plants. Most plants, including vines and sugar beets, belong to the C_3 group. Sugar cane and maize belong to the C_4 group. Measuring the carbon 13 content enables the detection and evaluation of sugars of C_4 origin (sugar cane or maize isoglucose) added to grape products (grape musts, wines, etc.). The information on carbon 13 content combined with that obtained from SNIF-NMR enables the added quantities of mixtures of sugars or alcohols derived from C_3 and C_4 plants to be determined.

The carbon 13 content is determined on carbon dioxide produced during the complete combustion of the sample. The abundance of the principle isotopomers of masses 44 ($^{12}\text{C}^{16}\text{O}_2$), 45 ($^{13}\text{C}^{16}\text{O}_2$ and $^{12}\text{C}^{17}\text{O}^{16}\text{O}$) and 46 ($^{12}\text{C}^{16}\text{O}^{18}\text{O}$), resulting from the different possible combinations of isotopes ^{18}O , ^{17}O , ^{16}O , ^{13}C and ^{12}C , are determined from the ionic currents measured by three different collectors of a mass isotopic spectrometer. The contributions of isotopomers $^{13}\text{C}^{17}\text{O}^{16}\text{O}$ and $^{12}\text{C}^{17}\text{O}_2$ may be disregarded given their low levels. The ionic current for $m/z = 45$ is corrected for the contribution of $^{12}\text{C}^{17}\text{O}^{16}\text{O}$, which is calculated according to the current intensity measured for $m/z = 46$, while taking the relative abundance of ^{18}O and ^{17}O into account (Craig correction). Comparison with a reference calibrated against the international reference V-PDB permits calculation of carbon 13 content on the $\delta^{13}\text{C}$ relative scale.

5. REAGENTS

The material and the consumables depend on the apparatus (point 6) used by the laboratory. The systems generally used are based on elemental analysers. These systems can be equipped to allow the introduction of samples placed in sealed metal capsules or the injection of liquid samples through a septum using a syringe.

Depending on the type of instrument used, the following reference materials, reagents, and consumables may be used:

- reference materials
- available from the IAEA:

Name	Material	$\delta^{13}\text{C}$ relative to V-PDB (‰)
— IAEA-CH-6	Sucrose	- 10,4 ‰
— IAEA-CH-7	Polyethylene	- 31,8 ‰
— NBS22	Oil	- 29,7 ‰
— USGS24	Graphite	- 16,1 ‰

- available from the IRMM in Geel (B) (Institute for Reference Materials and Measurements):

Name	Material	$\delta^{13}\text{C}$ relative to V-PDB (‰)
— CRM/BCR 656	Wine alcohol	- 26,93 ‰
— CRM/BCR 657	Glucose	- 10,75 ‰
— CRM/BCR 660	Hydroalcoholic solution (ASV 12 %)	- 26,72 ‰

- a standard working sample with a known $^{13}\text{C}/^{12}\text{C}$ ratio calibrated against international reference materials,
- the following is an indicative list of consumables for continuous-flow systems:
 - helium for analysis (CAS 07440-59-7),
 - oxygen for analysis (CAS 07782-44-7),
 - carbon dioxide for analysis, used as a secondary reference gas for the carbon 13 content (CAS 00124-38-9),
 - oxidation reagent for the furnace of the combustion system, for example copper (II) oxide for elemental analysis (CAS 1317-38-0),
 - a desiccant to eliminate water produced in combustion, for example anhydrous for elemental analysis (magnesium perchlorate) (CAS 10034-81-8) (This is not necessary for apparatuses equipped with a water elimination system using cryogenic traps or selectively permeable capillaries).

6. APPARATUS AND EQUIPMENT

6.1. Isotope ratio mass spectrometer (IRMS)

Isotope ratio mass spectrometer (IRMS) capable of determining the relative ^{13}C content of naturally occurring CO_2 gas with an internal accuracy of 0,05 ‰ or better expressed as a relative value (point 9). Internal accuracy here is defined as the difference between two measurements of the same sample of CO_2 . The mass spectrometer used to measure isotope ratios is generally equipped with a triple collector to simultaneously measure intensities for $m/z = 44, 45$ and 46 . The isotope ratio mass spectrometer must either be equipped with a dual inlet, to alternately measure the unknown sample and a reference sample, or use an integrated system that carries out the quantitative combustion of samples and separates the carbon dioxide from the other combustion products before measurement in the mass spectrometer.

6.2. Combustion apparatus

Combustion apparatus able to quantitatively convert ethanol into carbon dioxide and eliminate all other combustion products including water, without any isotopic fractionation. The apparatus may be either a continuous-flow system integrated with the mass spectrometry apparatus (point 6.2.1) or a separate combustion system (point 6.2.2). The apparatus must permit an accuracy of at least that indicated in (point 11).

6.2.1. Continuous-flow systems

These comprise either an elemental analyser or a gas chromatograph with an online combustion system.

The following laboratory equipment is needed for systems equipped for the introduction of samples contained in metal capsules:

- calibrated microsyringe or micropipette with appropriate tips,
- balance with μg accuracy or better,
- tweezers for encapsulation,
- tin capsules for liquid samples,
- tin capsules for solid samples.

Note: in order to reduce the risk of evaporation of ethanol samples, an absorbent material (for example Chromosorb W 45-60 mesh) may be placed in the capsules, it first having been verified by means of a measurement without a sample that it does not contain a significant quantity of carbon likely to affect the results.

The following laboratory equipment is needed when using an elemental analyser equipped with a liquid injector or in the case of a combustion chromatography preparation system:

- syringe for liquids,
- flasks equipped with airtight closing systems and inert septa.

The laboratory equipment indicated in the above lists are examples and may be replaced by other equipment of equivalent performance depending on the type of combustion and mass spectrometry apparatus used by the laboratory.

6.2.2. *Separate preparation system*

The samples of carbon dioxide resulting from the combustion of the samples to be analysed and the reference sample are collected in bulbs which are then placed in the dual inlet of the spectrometer for isotopic analysis. Several combustion apparatuses described in the literature may be used:

- closed combustion system filled with circulating oxygen,
- elemental analyser with helium and oxygen flow,
- sealed glass bulb filled with copper (II) oxide as an oxidation agent.

7. PREPARATION OF SAMPLES FOR TESTS

The ethanol must be extracted from the wine before isotopic testing. This is carried out by distilling wine as described in point 3.1 of method No 8 (SNIF-NMR).

In the case of grape musts, concentrated grape musts and rectified concentrated grape musts, the sugars must be fermented in ethanol first as described in point 3.2 of method No 8.

8. PROCEDURE

All steps of the preparation must be carried out without any significant ethanol loss through evaporation that would change the isotopic composition of the sample.

The following description refers to the procedures generally used for ethanol sample combustion using commercial automated combustion systems. All other methods that ensure that all of the ethanol sample is converted into carbon dioxide without any loss of ethanol through evaporation may be used for the preparation of carbon dioxide for isotopic analysis.

Experimental procedure based on the use of an elemental analyser:

- (a) placing the samples in capsules:
 - use capsules, tweezers and a preparation tray, all of which must be clean,
 - take an appropriate-sized capsule using the tweezers,
 - introduce an appropriate amount of liquid into the capsule using a micropipette,
 - *Note:* 3,84 mg of absolute ethanol or 4,17 mg of distillate with an alcohol strength of 92 % m/m are necessary to obtain 2 mg of carbon. The appropriate quantity of distillate must be calculated on that basis, according to the quantity of carbon necessary given the sensitivity of the mass spectrometry apparatus,
 - close the capsule with the tweezers,

- each capsule must be completely sealed. If not, it must be discarded and a new capsule prepared,
 - two capsules must be prepared for every sample,
 - place the capsules in the appropriate place on the tray of the automatic sampler of the elemental analyser. Every capsule must be carefully identified by a serial number,
 - systematically place capsules containing working references at the beginning and the end of the sample series,
 - regularly insert control samples in the sample series;
- (b) checking and adjusting the elemental analysis and mass spectrometry apparatus:
- adjust the temperature of the elemental analyser furnaces and the helium and oxygen flows for optimal combustion of the sample,
 - check the elemental analysis and mass spectrometry system for leaks (for example by checking the ionic current where $m/z = 28$ for N_2),
 - adjust the mass spectrometer to measure the ionic currents where $m/z = 44, 45$ and 46 ,
 - check the system using known control samples before starting to measure the samples;
- (c) carrying out a series of measurements

The samples placed on the automatic sampler of the elemental analyser (or of the chromatograph) are introduced in turn. The carbon dioxide from each sample combustion is eluted towards the mass spectrometer which measures the ionic currents. The interfaced computer records the ionic currents and calculates the δ value for each sample (point 9).

9. CALCULATION

The purpose of the method is to measure the $^{13}C/^{12}C$ isotope ratio of ethanol extracted from wine or from products derived from grapes following fermentation. The $^{13}C/^{12}C$ isotope ratio can be expressed by its deviation from a working reference. The isotopic deviation of carbon 13 ($\delta^{13}C$) is then calculated on a delta scale per thousand ($\delta/1\ 000$) by comparing the results obtained for the sample to be measured with those for a working reference previously calibrated on the basis of the primary international reference (V-PDB). The $\delta^{13}C$ values are expressed in relation to the working reference as follows:

$$\delta^{13}C_{\text{sam}/\text{ref}} \text{ ‰} = 1\ 000 \times (R_{\text{sam}} - R_{\text{ref}})/R_{\text{ref}}$$

where R_{sam} and R_{ref} are respectively the $^{13}C/^{12}C$ isotope ratios of the sample and of the carbon dioxide used as the reference gas.

The $\delta^{13}C$ values are expressed in relation to V-PDB as follows:

$$\delta^{13}C_{\text{sam}/\text{V-PDB}} \text{ ‰} = \delta^{13}C_{\text{sam}/\text{ref}} + \delta^{13}C_{\text{ref}/\text{V-PDB}} + (\delta^{13}C_{\text{sam}/\text{ref}} \times \delta^{13}C_{\text{ref}/\text{V-PDB}})/1\ 000,$$

where $\delta^{13}C_{\text{ref}/\text{V-PDB}}$ is the previously determined isotopic deviation of the working reference from V-PDB.

Small variations may occur while measuring on line due to changes in the instrumental conditions. In this case the $\delta^{13}C$ values of the samples must be corrected according to the difference in the measured $\delta^{13}C$ value of the standard working sample and its true value, previously calibrated against V-PDB by comparison with one of the international reference materials. Between two measurements of the standard working sample, the variation, and therefore the correction to be applied to the results obtained from the samples, may be assumed to be linear. The standard working sample must be measured at the beginning and at the end of all sample series. A correction can then be calculated for each sample using linear interpolation.

10. QUALITY ASSURANCE AND CONTROL

Check that the ^{13}C value for the working reference does not differ by more than 0,5 ‰ from the admissible value. If not, the spectrometry apparatus settings should be checked and, if necessary, adjusted.

For each sample, check that the difference in the results for two capsules measured successively is less than 0,3 ‰. The final result for a given sample is the average value for the two capsules. If the deviation is greater than 0,3 ‰, the measurement must be repeated.

Checks on correct measurement can be based on the ionic current where $m/z = 44$, which is proportional to the quantity of carbon injected into the elemental analyser. Under standard conditions, the ionic current should be almost constant for the samples analysed. A significant deviation could be indicative of ethanol evaporation (for example an imperfect seal on a capsule) or instability of the elemental analyser or mass spectrometer.

11. PERFORMANCE CHARACTERISTICS OF THE METHOD (Accuracy)

An initial collaborative study (point 11.1) was carried out on distillates containing alcohol of vinous origin and cane and beet alcohol, as well as different mixtures of alcohol of those three origins. Since this study did not take into account the distillation procedure, further information from other interlaboratory studies on wine (point 11.2) and, in particular, series of proficiency tests (point 11.3) for isotopic measurements were also considered. The results show that under satisfactory conditions, and in particular those for measurement using SNIF-NMR, the different distillation systems do not produce significant variation in the determination of the $\delta^{13}\text{C}$ value of wine ethanol. The accuracy parameters observed for wine are almost identical to those obtained in the joint study on distillates (point 11.1).

11.1. Joint study on distillates

Year of interlaboratory tests: 1996
 Number of laboratories: 20
 Number of samples: Six samples in double-blind comparison
 Analyte: $\delta^{13}\text{C}$ of ethanol

Sample code	Alcohol of vinous origin	Beet alcohol	Sugar cane alcohol
A & G	80 %	10 %	10 %
B & C	90 %	10 %	0 %
D & F	0 %	100 %	0 %
E & I	90 %	0 %	10 %
H & K	100 %	0 %	0 %
J & L	0 %	0 %	100 %

Samples	A/G	B/C	D/F	E/I	H/K	J/L
Number of laboratories retained after eliminating aberrant results	19	18	17	19	19	19
Number of results accepted	38	36	34	38	38	38
Average value ($\delta^{13}\text{C}$) ‰	- 25,32	- 26,75	- 27,79	- 25,26	- 26,63	- 12,54
Sr^2	0,0064	0,0077	0,0031	0,0127	0,0069	0,0041
Repeatability standard deviation (Sr) ‰	0,08	0,09	0,06	0,11	0,08	0,06
Limit of repeatability r ($2,8 \times \text{Sr}$) ‰	0,22	0,25	0,16	0,32	0,23	0,18
S_R^2	0,0389	0,0309	0,0382	0,0459	0,0316	0,0584
Reproducibility standard deviation (S_R) ‰	0,20	0,18	0,20	0,21	0,18	0,24
Limit of reproducibility R ($2,8 \times \text{S}_\text{R}$) ‰	0,55	0,49	0,55	0,60	0,50	0,68

11.2. Interlaboratory study on two wines and one alcohol

Year of interlaboratory tests:	1996
Number of laboratories:	14 for distillation of wine of which seven also measured $\delta^{13}\text{C}$ of wine ethanol, Eight for measuring $\delta^{13}\text{C}$ of alcohol sample,
Number of samples:	Three (white wine of 9,3 % ASV, white wine of 9,6 % ASV and alcohol of strength 93 % m/m).
Analyte:	$\delta^{13}\text{C}$ of ethanol

Samples	Red wine	White wine	Alcohol
Number of laboratories	7	7	8
Number of results accepted	7	7	8
Average value ($\delta^{13}\text{C}$) ‰	- 26,20	- 26,20	- 25,08
Reproducibility variance S_R^2	0,0525	0,0740	0,0962
Reproducibility standard deviation (S_R) ‰	0,23	0,27	0,31
Limit of reproducibility R ($2,8 \times S_R$) ‰	0,64	0,76	0,87

Different distillation systems were used by the participating laboratories. The isotopic determinations ($\delta^{13}\text{C}$) carried out in a single laboratory on the whole number of distillates returned by the participants do not reveal any aberrant values or values that differ significantly from the average values. The variation in results ($S^2 = 0,0059$) is comparable to the repeatability variances S_r^2 in the joint study on distillates (point 11.1).

11.3. Results of the exercises carried out to monitor proficiency in performing isotopic tests

Since December 1994, international proficiency tests for the determination of isotopic measurements for wine and alcohol (distillates of 96 % ASV) have been regularly organised. The results enable participating laboratories to check the quality of their analyses. Statistical results permit appreciation of the variation in measurements under conditions of reproducibility and therefore an estimation of the parameters of variance and the limit of reproducibility. The results obtained for the determination of $\delta^{13}\text{C}$ for wine and distillate ethanol are summarised in the following table:

Date	Wines				Distillates			
	N	S_R	S_R^2	R	N	S_R	S_R^2	R
December 1994	6	0,210	0,044	0,59	6	0,151	0,023	0,42
June 1995	8	0,133	0,018	0,37	8	0,147	0,021	0,41
December 1995	7	0,075	0,006	0,21	8	0,115	0,013	0,32
March 1996	9	0,249	0,062	0,70	11	0,278	0,077	0,78
June 1996	8	0,127	0,016	0,36	8	0,189	0,036	0,53
September 1996	10	0,147	0,022	0,41	11	0,224	0,050	0,63
December 1996	10	0,330	0,109	0,92	9	0,057	0,003	0,16
March 1997	10	0,069	0,005	0,19	8	0,059	0,003	0,16
June 1997	11	0,280	0,079	0,78	11	0,175	0,031	0,49
September 1997	12	0,237	0,056	0,66	11	0,203	0,041	0,57
December 1997	11	0,127	0,016	0,36	12	0,156	0,024	0,44
March 1998	12	0,285	0,081	0,80	13	0,245	0,060	0,69
June 1998	12	0,182	0,033	0,51	12	0,263	0,069	0,74
September 1998	11	0,264	0,070	0,74	12	0,327	0,107	0,91
Weighted average		0,215	0,046	0,60		0,209	0,044	0,59

N: number of participating laboratories.

11.4. Limits of repeatability and reproducibility

On the basis of the data from the different interlaboratory tests given in the above tables, the following limits of repeatability and reproducibility can be established for this method, including the distillation stage:

limit of repeatability r : 0,24

limit of reproducibility R : 0,6.'

COMMISSION REGULATION (EC) No 441/2003
of 10 March 2003
determining the world market price for unginned cotton

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Protocol 4 on cotton, annexed to the Act of Accession of Greece, as last amended by Council Regulation (EC) No 1050/2001 ⁽¹⁾,

Having regard to Council Regulation (EC) No 1051/2001 of 22 May 2001 on production aid for cotton ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) In accordance with Article 4 of Regulation (EC) No 1051/2001, a world market price for unginned cotton is to be determined periodically from the price for ginned cotton recorded on the world market and by reference to the historical relationship between the price recorded for ginned cotton and that calculated for unginned cotton. That historical relationship has been established in Article 2(2) of Commission Regulation (EC) No 1591/2001 of 2 August 2001 ⁽³⁾, as amended by Regulation (EC) No 1486/2002 ⁽⁴⁾. Where the world market price cannot be determined in this way, it is to be based on the most recent price determined.
- (2) In accordance with Article 5 of Regulation (EC) No 1051/2001, the world market price for unginned cotton is to be determined in respect of a product of specific characteristics and by reference to the most favourable

offers and quotations on the world market among those considered representative of the real market trend. To that end, an average is to be calculated of offers and quotations recorded on one or more European exchanges for a product delivered cif to a port in the Community and coming from the various supplier countries considered the most representative in terms of international trade. However, there is provision for adjusting the criteria for determining the world market price for ginned cotton to reflect differences justified by the quality of the product delivered and the offers and quotations concerned. Those adjustments are specified in Article 3(2) of Regulation (EC) No 1591/2001.

- (3) The application of the above criteria gives the world market price for unginned cotton determined hereinafter,

HAS ADOPTED THIS REGULATION:

Article 1

The world price for unginned cotton as referred to in Article 4 of Regulation (EC) No 1051/2001 is hereby determined as equalling EUR 27,882/100 kg.

Article 2

This Regulation shall enter into force on 11 March 2003.

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

Done at Brussels, 10 March 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 148, 1.6.2001, p. 1.

⁽²⁾ OJ L 148, 1.6.2001, p. 3.

⁽³⁾ OJ L 210, 3.8.2001, p. 10.

⁽⁴⁾ OJ L 223, 20.8.2002, p. 3.

COMMISSION REGULATION (EC) No 442/2003**of 10 March 2003****on the issue of import licences for high-quality fresh, chilled or frozen beef and veal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 936/97 of 27 May 1997 opening and providing for the administration of tariff quotas for high-quality fresh, chilled and frozen beef and for frozen buffalo meat ⁽¹⁾, as last amended by Regulation (EC) No 1524/2002 ⁽²⁾,

Whereas:

- (1) Regulation (EC) No 936/97 provides in Articles 4 and 5 the conditions for applications and for the issue of import licences for meat referred to in Article 2(f).
- (2) Article 2(f) of Regulation (EC) No 936/97 fixes the amount of high-quality fresh, chilled or frozen beef and veal originating in and imported from the United States of America and Canada which may be imported on special terms for the period 1 July 2002 to 30 June 2003 at 11 500 t.

- (3) It should be recalled that licences issued pursuant to this Regulation will, throughout the period of validity, be open for use only in so far as provisions on health protection in force permit,

HAS ADOPTED THIS REGULATION:

Article 1

1. All applications for import licences from 1 to 5 March 2003 for high-quality fresh, chilled or frozen beef and veal as referred to in Article 2(f) of Regulation (EC) No 936/97 shall be granted in full.

2. Applications for licences may be submitted, in accordance with Article 5 of Regulation (EC) No 936/97, during the first five days of April 2003 for 8 917,721 t.

Article 2

This Regulation shall enter into force on 11 March 2003.

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

Done at Brussels, 10 March 2003.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 137, 28.5.1997, p. 10.

⁽²⁾ OJ L 229, 27.8.2002, p. 7.

DIRECTIVE 2003/15/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 27 February 2003
amending Council Directive 76/768/EEC on the approximation of the laws of the Member States
relating to cosmetic products
(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 95 thereof,

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

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

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

Whereas:

- (1) Council Directive 76/768/EEC ⁽⁴⁾ has comprehensively harmonised the national laws relating to cosmetic products and has as its main objective the protection of public health. To this end, it continues to be indispensable to carry out certain toxicological tests to evaluate the safety of cosmetic products.
- (2) The Protocol on protection and welfare of animals annexed by the Treaty of Amsterdam to the Treaty establishing the European Community provides that the Community and the Member States are to pay full regard to the welfare requirements of animals in the implementation of Community policies, in particular with regard to the internal market.
- (3) Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes ⁽⁵⁾ has established common rules for the use of animals for experimental purposes within the Community and laid down the conditions under which such experiments must be carried out in the territory of the Member States. In particular, Article 7 of that Directive requires that animal experiments be replaced by alternative methods, when such methods exist and are

scientifically satisfactory. In order to facilitate the development and use of alternative methods in the cosmetic sector which do not use live animals, specific provisions have been introduced by Council Directive 93/35/EEC of 14 June 1993 amending for the sixth time Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products ⁽⁶⁾.

However, these provisions concern only alternative methods which do not use animals and they do not take account of alternative methods developed in order to reduce the number of animals used for experiments or to reduce their suffering. Therefore, in order to afford optimal protection to animals used for testing cosmetic products pending implementation of the prohibition of animal tests for cosmetic products and the marketing of animal-tested cosmetic products in the Community, these provisions should be amended in order to provide for the systematic use of alternative methods, which reduce the number of animals used or reduce the suffering caused, in those cases where full replacement alternatives are not yet available, as provided by Article 7(2) and (3) of Directive 86/609/EEC, when these methods offer consumers a level of protection equivalent to that of the conventional methods which they are intended to replace.

- (4) In accordance with Directive 86/609/EEC and with Directive 93/35/EEC, it is essential that the aim of abolishing animal experiments for testing cosmetic products be pursued and that the prohibition of such experiments becomes effective in the territory of the Member States. In order to ensure that this prohibition is fully implemented, it may be necessary for the Commission to bring forward further proposals to amend Directive 86/609/EEC.
- (5) Currently, only alternative methods which are scientifically validated by the European Centre for the Validation of Alternative Methods (ECVAM) or the Organisation for Economic Cooperation and Development (OECD) and applicable to the whole chemical sector are systematically adopted at Community level. However, the safety of cosmetic products and their ingredients may be ensured through the use of alternative methods which are not necessarily applicable to all uses of chemical ingredients. Therefore, the use of such methods by the whole cosmetic industry should be promoted and their adoption at Community level ensured, when such methods offer an equivalent level of protection to consumers.

⁽¹⁾ OJ C 311 E, 31.10.2000, p. 134 and OJ C 51 E, 26.2.2002, p. 385.

⁽²⁾ OJ C 367, 20.12.2000, p. 1.

⁽³⁾ Opinion of the European Parliament of 3 April 2001 (OJ C 21 E, 24.1.2002, p. 24), Council Common Position of 14 February 2002 (OJ C 113 E, 14.5.2002, p. 109) and Decision of the European Parliament of 11 June 2002 (not yet published in the Official Journal). Decision of the European Parliament of 15 January 2003 and Decision of the Council of 27 February 2003.

⁽⁴⁾ OJ L 262, 27.7.1976, p. 169. Directive as last amended by Commission Directive 2002/34/EC (OJ L 102, 18.4.2002, p. 19).

⁽⁵⁾ OJ L 358, 18.12.1986, p. 1.

⁽⁶⁾ OJ L 151, 23.6.1993, p. 32.

- (6) The safety of finished cosmetic products can already be ensured on the basis of knowledge of the safety of the ingredients that they contain. Provisions prohibiting animal testing of finished cosmetic products can therefore be incorporated into Directive 76/768/EEC. The Commission should establish guidelines in order to facilitate the application, in particular by small and medium-sized enterprises, of methods which do not involve the use of animals for assessing the safety of finished cosmetic products.
- (7) It will gradually become possible to ensure the safety of ingredients used in cosmetic products by using non-animal alternative methods validated at Community level, or approved as being scientifically validated, by ECVAM and with due regard to the development of validation within the OECD. After consulting the Scientific Committee on Cosmetic Products and Non-Food Products intended for Consumers (SCCNFP) as regards the applicability of the validated alternative methods to the field of cosmetic products, the Commission should immediately publish the validated or approved methods recognised as being applicable to such ingredients. In order to achieve the highest possible degree of animal protection, a deadline must be set for the introduction of a definitive prohibition.
- (8) The Commission should establish timetables of deadlines for the prohibition of the marketing of cosmetic products, the final formulation, ingredients or combinations of ingredients which have been tested on animals, and for the prohibition of each test currently carried out using animals, up to a maximum of six years from the date of entry into force of this Directive. In view, however, of the fact that there are no alternatives yet under consideration for tests concerning repeated-dose toxicity, reproductive toxicity and toxicokinetics, it is appropriate for the maximum deadline for the prohibition of the marketing of cosmetic products for which those tests are used to be 10 years from the date of entry into force of this Directive. On the basis of annual reports, the Commission should be authorised to adapt the timetables within the respective abovementioned maximum time limits.
- (9) Better coordination of resources at Community level will contribute to increasing the scientific knowledge indispensable for the development of alternative methods. It is essential, for this purpose, that the Community continue and increase its efforts and take the measures necessary for the promotion of research and the development of new non-animal alternative methods, in particular within its Sixth Framework Programme as set out in Decision No 1513/EC/2002 of the European Parliament and of the Council ⁽¹⁾.
- (10) The recognition by non-member countries of alternative methods developed in the Community should be encouraged. In order to achieve this objective, the Commission and the Member States should take all appropriate steps to facilitate acceptance of such methods by the OECD. The Commission should also endeavour, within the framework of European Community cooperation agreements, to obtain recognition of the results of safety tests carried out in the Community using alternative methods so as to ensure that the export of cosmetic products for which such methods have been used is not hindered and to prevent or avoid non-member countries requiring the repetition of such tests using animals.
- (11) It should be possible to claim on a cosmetic product that no animal testing was carried out in relation to its development. The Commission, in consultation with the Member States, should develop guidelines to ensure that common criteria are applied in the use of claims and that an aligned understanding of the claims is reached, and in particular that such claims do not mislead the consumer. In developing such guidelines, the Commission must also take into account the views of the many small and medium-sized enterprises which make up the majority of the 'non-animal testing' producers, relevant non-governmental organisations, and the need of consumers to be able to make practical distinctions between products on the basis of animal testing criteria.
- (12) The SCCNFP stated in its opinion of 25 September 2001 that substances classified pursuant to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽²⁾ as carcinogenic (except substances only carcinogenic by inhalation), mutagenic or toxic for reproduction, of category 1 or 2, and substances with similar potential, must not be intentionally added to cosmetic products, and that substances classified pursuant to Directive 67/548/EEC as carcinogenic, mutagenic or toxic for reproduction, of category 3, and substances with similar potential, must not be intentionally added to cosmetic products unless it can be demonstrated that their levels do not pose a threat to the health of the consumer.
- (13) Given the special risks that substances classified as carcinogenic, mutagenic or toxic for reproduction, category 1, 2 and 3, pursuant to Directive 67/548/EEC may entail for human health, their use in cosmetic products should be prohibited. A substance classified in category 3 may be used in cosmetics if the substance has been evaluated by the SCCNFP and found acceptable for use in cosmetic products.

⁽¹⁾ OJ L 232, 29.8.2002, p. 1.

⁽²⁾ OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2001/59/EC (OJ L 225, 21.8.2001, p. 1).

- (14) In order to improve the information provided to consumers, cosmetic products should bear more precise indications concerning their durability for use.
- (15) Certain substances have been identified as an important cause of contact-allergy reactions in fragrance-sensitive consumers. In order to ensure that such consumers are adequately informed, it is therefore necessary to amend the provisions of Directive 76/768/EEC to require that the presence of these substances be mentioned in the list of ingredients. This information will improve the diagnosis of contact allergies among such consumers and will enable them to avoid the use of cosmetic products which they do not tolerate.
- (16) A number of substances have been identified by the SCCNFP as likely to cause allergenic reactions and it will be necessary to restrict their use and/or impose certain conditions concerning them.
- (17) 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 ⁽¹⁾.
- (18) The provisions of Directive 93/35/EEC banning the marketing of cosmetic products containing ingredients or combinations of ingredients tested on animals should be superseded by the provisions of this Directive. In the interests of legal certainty therefore it is appropriate to apply Article 1(1) of this Directive with effect from 1 July 2002, whilst fully respecting the principle of legitimate expectations,
- (b) the marketing of cosmetic products containing ingredients or combinations of ingredients which, in order to meet the requirements of this Directive, have been the subject of animal testing using a method other than an alternative method after such alternative method has been validated and adopted at Community level with due regard to the development of validation within the OECD;
- (c) the performance on their territory of animal testing of finished cosmetic products in order to meet the requirements of this Directive;
- (d) the performance on their territory of animal testing of ingredients or combinations of ingredients in order to meet the requirements of this Directive, no later than the date on which such tests are required to be replaced by one or more validated alternative methods listed in Annex V to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (*) or in Annex IX to this Directive.

No later than 11 September 2004 the Commission shall, in accordance with the procedure referred to in Article 10(2) and after consultation of the Scientific Committee on Cosmetic Products and Non-Food Products intended for consumers (SCCNFP) establish the contents of Annex IX.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 76/768/EEC is hereby amended as follows:

1. Article 4(1)(i) shall be deleted;
2. the following Articles shall be inserted:

'Article 4a

1. Without prejudice to the general obligations deriving from Article 2, Member States shall prohibit:

- (a) the marketing of cosmetic products where the final formulation, in order to meet the requirements of this Directive, has been the subject of animal testing using a method other than an alternative method after such alternative method has been validated and adopted at Community level with due regard to the development of validation within the OECD;

2. The Commission, after consultation of the SCCNFP and of the European Centre for the Validation of Alternative Methods (ECVAM) and with due regard to the development of validation within the OECD, shall establish timetables for the implementation of the provisions under paragraph 1(a), (b) and (d), including deadlines for the phasing-out of the various tests. The timetables shall be made available to the public not later than 11 September 2004 and be sent to the European Parliament and the Council. The period for implementation shall be limited to a maximum of six years after the entry into force of Directive 2003/15/EC in relation to paragraph 1(a), (b) and (d).

(2.1) In relation to the tests concerning repeated-dose toxicity, reproductive toxicity and toxicokinetics, for which there are no alternatives yet under consideration, the period for implementation of paragraph 1(a) and (b) shall be limited to a maximum of 10 years after the entry into force of Directive 2003/15/EC.

(2.2) The Commission shall study possible technical difficulties in complying with the ban in relation to tests, in particular those concerning repeated-dose toxicity, reproductive toxicity and toxicokinetics, for which there are no alternatives yet under consideration. Information about the provisional and final results of these studies should form part of the yearly reports presented pursuant to Article 9.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

On the basis of these annual reports, the timetables established in accordance with paragraph 2 may be adapted within a maximum time limit of six years as referred to in paragraph 2 or 10 years as referred to in paragraph 2.1 and after consultation of the entities referred to in paragraph 2.

(2.3) The Commission shall study progress and compliance with the deadlines as well as possible technical difficulties in complying with the ban. Information about the provisional and final results of the Commission studies should form part of the yearly reports presented pursuant to Article 9. If these studies conclude, at the latest two years prior to the end of the maximum period referred to in paragraph 2.1, that for technical reasons one or more tests referred to in paragraph 2.1 will not be developed and validated before the expiry of the period referred to in paragraph 2.1 it shall inform the European Parliament and the Council and shall put forward a legislative proposal in accordance with Article 251 of the Treaty.

(2.4) In exceptional circumstances where serious concerns arise as regards the safety of an existing cosmetic ingredient a Member State may request the Commission to grant a derogation from paragraph 1. The request shall contain an evaluation of the situation and indicate the measures necessary. On this basis, the Commission may, after consultation of the SCCNFP and by means of a reasoned decision, authorise the derogation in accordance with the procedure referred to in Article 10(2). This authorisation shall lay down the conditions associated with this derogation in terms of specific objectives, duration and reporting of the results.

A derogation shall only be granted if:

- (a) the ingredient is in wide use and cannot be replaced by another ingredient able to perform a similar function;
- (b) the specific human health problem is substantiated and the need to conduct animal tests is justified and is supported by a detailed research Protocol proposed as the basis for the evaluation.

The decision on the authorisation, the conditions associated with it and the final result achieved shall be part of the annual report to be presented by the Commission in accordance with Article 9.

3. For the purposes of this Article:

- (a) “finished cosmetic product” means the cosmetic product in its final formulation, as placed on the market and made available to the final consumer, or its prototype.
- (b) “prototype” means a first model or design that has not been produced in batches, and from which the finished cosmetic product is copied or finally developed.

Article 4b

The use in cosmetic products of substances classified as carcinogenic, mutagenic or toxic for reproduction, of category 1, 2 and 3, under Annex I to Directive 67/548/EEC shall be prohibited. To that end the Commission shall adopt the necessary measures in accordance with the procedure referred to in Article 10(2). A substance classified in category 3 may be used in cosmetics if the substance has been evaluated by the SCCNFP and found acceptable for use in cosmetic products.

(*) OJ 196, 16.8.1967, p. 1. Directive as last amended by Commission Directive 2001/59/EC (OJ L 225, 21.8.2001, p. 1).’

3. Article 6(1)(c) shall be replaced by the following:

‘(c) The date of minimum durability shall be indicated by the words: “best used before the end of” followed by either:

- the date itself, or
- details of where it appears on the packaging.

The date shall be clearly expressed and shall consist of either the month and year or the day, month and year in that order. If necessary, this information shall be supplemented by an indication of the conditions which must be satisfied to guarantee the stated durability.

Indication of the date of durability shall not be mandatory for cosmetic products with a minimum durability of more than 30 months. For such products, there shall be an indication of the period of time after opening for which the product can be used without any harm to the consumer. This information shall be indicated by the symbol given in Annex VIIIa followed by the period (in months and/or years).’

4. Article 6(1)(g) shall be replaced by the following:

‘(g) a list of ingredients in descending order of weight at the time they are added. That list shall be preceded by the word “ingredients”. Where that is impossible for practical reasons, an enclosed leaflet, label, tape or card must contain the ingredients to which the consumer is referred either by abbreviated information or the symbol given in Annex VIII, which must appear on the packaging.

The following shall not, however, be regarded as ingredients:

- impurities in the raw materials used,
- subsidiary technical materials used in the preparation but not present in the final product,
- materials used in strictly necessary quantities as solvents or as carriers for perfume and aromatic compositions.

Perfume and aromatic compositions and their raw materials shall be referred to by the word "perfume" or "aroma". However, the presence of substances, the mention of which is required under the column "other limitations and requirements" in Annex III, shall be indicated in the list irrespective of their function in the product.

Ingredients in concentrations of less than 1 % may be listed in any order after those in concentrations of more than 1 %.

Colouring agents may be listed in any order after the other ingredients, in accordance with the colour index number or denomination adopted in Annex IV. For decorative cosmetic products marketed in several colour shades, all colouring agents used in the range may be listed, provided that the words "may contain" or the symbol "+/-" are added.

An ingredient must be identified by the common name referred to in Article 7(2) or, failing that, by one of the names referred to in Article 5a(2), first indent.

In accordance with the procedure referred to in Article 10(2), the Commission may adapt the criteria and conditions set out in Commission Directive 95/17/EC of 19 June 1995 laying down detailed rules for the application of Council Directive 76/768/EEC as regards the non-inclusion of one or more ingredients on the list used for the labelling of cosmetic products (*) under which a manufacturer may, for reasons of trade secrecy, apply not to include one or more ingredients on the abovementioned list.

(*) OJ L 140, 23.6.1995, p. 26.

5. the last sentence of Article 6(3) shall be deleted and the following subparagraph shall be added:

'Furthermore, the manufacturer or the person responsible for placing the product on the Community market may take advantage, on the product packaging or in any document, notice, label, ring or collar accompanying or referring to the product, of the fact that no animal tests have been carried out only if the manufacturer and his suppliers have not carried out or commissioned any animal tests on the finished product, or its prototype, or any of the ingredients contained in it, or used any ingredients that have been tested on animals by others for the purpose of developing new cosmetic products. Guidelines shall be adopted in accordance with the procedure referred to in Article 10(2) and published in the *Official Journal of the European Union*. The European Parliament shall receive copies of the draft measures submitted to the Committee.'

6. Article 7a(1)(d) shall be replaced by the following:

'(d) assessment of the safety for human health of the finished product. To that end the manufacturer shall take into consideration the general toxicological profile of the ingredients, their chemical structure and their level of exposure. It shall take particular account

of the specific exposure characteristics of the areas on which the product will be applied or of the population for which it is intended. There shall be *inter alia* a specific assessment for cosmetic products intended for use on children under the age of three and for cosmetic products intended exclusively for use in external intimate hygiene.

Should the same product be manufactured at several places within Community territory, the manufacturer may choose a single place of manufacture where that information will be available. In this connection, and when so requested for monitoring purposes, it shall be obliged to indicate the place so chosen to the monitoring authority or authorities concerned. In this case this information shall be easily accessible.'

7. the following point shall be added to Article 7a(1):

'(h) data on any animal testing performed by the manufacturer, his agents or suppliers, relating to the development or safety evaluation of the product or its ingredients, including any animal testing performed to meet the legislative or regulatory requirements of non-member countries.

Without prejudice to the protection, in particular, of commercial secrecy and of intellectual property rights, Member States shall ensure that the information required under (a) and (f) shall be made easily accessible to the public by any appropriate means, including electronic means. The quantitative information required under (a) to be made publicly accessible shall be limited to dangerous substances covered by Directive 67/548/EEC.'

8. in Article 8(2) and Article 8a(3), the title 'Scientific Committee on Cosmetology' shall be replaced by 'Scientific Committee for Cosmetic Products and Non-Food Products intended for Consumers';

9. Articles 9 and 10 shall be replaced by the following:

'Article 9

Every year the Commission shall present a report to the European Parliament and the Council on:

- (a) progress made in the development, validation and legal acceptance of alternative methods. The report shall contain precise data on the number and type of experiments relating to cosmetic products carried out on animals. The Member States shall be obliged to collect that information in addition to collecting statistics as laid down by Council Directive 86/609/EEC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes (*). The Commission shall in particular ensure the development, validation and legal acceptance of alternative test methods which do not use live animals;

(b) progress made by the Commission in its efforts to obtain acceptance by the OECD of alternative methods validated at Community level and recognition by non-member countries of the results of the safety tests carried out in the Community using alternative methods, in particular within the framework of cooperation agreements between the Community and these countries;

(c) the manner in which the specific needs of small and medium-sized enterprises have been taken into account.

Article 10

1. The Commission shall be assisted by the Standing Committee on Cosmetic Products.

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

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

3. The Committee shall adopt its rules of procedure.

(*) OJ L 358, 18.12.1986, p. 1.'

10. the following shall be added to Annex III, Part I:

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
'67	Amyl cinnamal (CAS No 122-40-7)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
68	Benzyl alcohol (CAS No 100-51-6)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
69	Cinnamyl alcohol (CAS No 104-54-1)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
70	Citral (CAS No 5392-40-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
71	Eugenol (CAS No 97-53-0)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
72	Hydroxy-citronellal (CAS No 107-75-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
73	Isoeugenol (CAS No 97-54-1)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
74	Amylcin namyl alcohol (CAS No 101-85-9)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
75	Benzyl salicylate (CAS No 118-58-1)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
76	Cinnamal (CAS No 104-55-2)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
77	Coumarin (CAS No 91-64-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
78	Geraniol (CAS No 106-24-1)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
79	Hydroxy-methylpentyl-cyclohexenecarboxaldehyde (CAS No 31906-04-4)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
80	Anisyl alcohol (CAS No 105-13-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
81	Benzyl cinnamate (CAS No 103-41-3)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
82	Farnesol (CAS No 4602-84-0)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
83	2-(4-tert-Butylbenzyl) propionaldehyde (CAS No 80-54-6)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
84	Linalool (CAS No 78-70-6)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
85	Benzyl benzoate (CAS No 120-51-4)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	

Reference number	Substance	Restrictions			Conditions of use and warnings which must be printed on the label
		Field of application and/or use	Maximum authorised concentration in the finished cosmetic product	Other limitations and requirements	
a	b	c	d	e	f
86	Citronellol (CAS No 106-22-9)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
87	Hexyl cinnam-aldehyde (CAS No 101-86-0)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
88	d-Limonene (CAS No 5989-27-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
89	Methyl heptin carbonate (CAS No 111-12-6)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
90	3-Methyl-4-(2,6,6-trimethyl-2-cyclohexen-1-yl)-3-buten-2-one (CAS No 127-51-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
91	Oak moss extract (CAS No 90028-68-5)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products	
92	Treemoss extract (CAS No 90028-67-4)			The presence of the substance must be indicated in the list of ingredients referred to in Article 6(1)(g) when its concentration exceeds: — 0,001 % in leave-on products — 0,01 % in rinse-off products'	

11. an Annex VIIIa shall be added, consisting of a symbol representing an open cream jar. The Commission shall, in accordance with the procedure referred to in Article 10(2) establish this symbol by 11 September 2003 at the latest.

Article 2

For the application of Article 1, point 3 as regards Article 6(1)(c), third subparagraph of Directive 76/768/EEC as well as of Article 1, point 4 as regards Article 6(1)(g), third subparagraph of Directive 76/768/EEC:

Member States shall take all necessary measures to ensure that from 11 March 2005 neither manufacturers nor importers established within the Community place on the market cosmetic products which fail to comply with this Directive.

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 September 2004. They shall forthwith inform the Commission thereof.

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 methods of making such reference shall be laid down by Member States.

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

Article 4

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

By way of derogation from Article 3, Article 1, point (1) shall apply from 1 July 2002.

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 27 February 2003.

For the European Parliament

The President

P. COX

For the Council

The President

M. CHRISOCHOÏDIS

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 9 April 2002

on measures taken by Germany providing assistance towards industrial plant to firms in Thuringia through the Landesentwicklungsgesellschaft Thüringen

(notified under document number C(2002) 1339)

(Only the German text is authentic)

(Text with EEA relevance)

(2003/162/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments ⁽¹⁾, and having regard to the comments received,

Whereas:

1. PROCEDURE

- (1) By letters dated 23 April 1997 and 6 October 1997 the Commission received information from third parties concerning the activities of Landesentwicklungsgesellschaft mbH Thüringen ('LEG Thüringen'), which might not be compatible with Community State aid legislation. By letters dated 15 May 1997 and 13 November 1997 the Commission asked Germany to supply certain further details and any other relevant information. Germany supplied additional information by letters of 1 July 1997, 7 July 1998, 13 July 1998, 23 September 1998, and 9, 18 and 30 December 1998.
- (2) By letter dated 3 March 1999 the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of aid towards industrial plant which the *Land* of Thuringia might have granted via LEG Thüringen.

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments.
- (4) The Commission received comments from interested parties and forwarded them to Germany by letter dated 6 January 2000; Germany submitted its observations on the comments by letter dated 17 September 2001.

2. DETAILED DESCRIPTION

- (5) LEG Thüringen is a private limited company (GmbH) set up in 1992 by the Government of the *Land* of Thuringia, under private law, for an indefinite period. The shareholders are the *Land* of Thuringia (with a 97,6 % holding); Landeswohnungs- und Städtebaugesellschaft Bayern GmbH, Nürnberg (1,2 %); and Wohnstatt Stadtentwicklungs- und Wohnungsbau-Gesellschaft Hessen mbH, Kassel (1,2 %).
- (6) The Government of Thuringia has given LEG Thüringen power to act in several areas ⁽³⁾. The Commission initiated the formal investigation procedure only in respect of LEG Thüringen's role in connection with industrial plant. According to its memorandum and articles of association (*Gesellschaftsvertrag*), LEG Thüringen is to provide assistance in any form in connection with tasks and measures which are in the interests of Thuringia and which seek to promote structural development, in particular building, infrastructure and economic development.

⁽²⁾ See footnote 1.

⁽³⁾ For further details see the Commission decision initiating the formal investigation, and in particular points 2.2 to 3.1 (footnote 1).

⁽¹⁾ OJ C 280, 2.10.1999, p. 8.

(7) LEG Thüringen's main task is to carry on infrastructure development work in the interests and on behalf of the *Land*. After 40 years in a socialist planned economy there are industrial sites in Thuringia which are in danger of decaying into wastelands of abandoned buildings and environmental hazards, and as part of its trade and industry work, therefore, LEG Thüringen seeks to find an economic future for these sites. It dismantles plant that is no longer needed, demolishes buildings that are not worth maintaining, renovates buildings that can usefully be kept and put to use, plans and develops sites, and then sells, rents or leases the property.

(8) In practice, therefore, LEG Thüringen buys, administers, mortgages, acts as a mediator for, sells and renovates real estate, and develops and lays out land and makes it ready for building. It may also purchase or dispose of building leases, and buy, build, operate, administer, handle and sell buildings, plants and facilities of any kind, under its own or another party's name, for its own account or for the account of others. LEG Thüringen has to maintain, take care of and modernise its fixed assets.

(9) From 1994 to mid-2000, LEG Thüringen received funding towards these activities from the Thuringian budget amounting to EUR 257 841 077 (DEM 504 293 314,57) in all. There is a special heading in the budget for the purpose. No additional payments were made.

(10) Germany has not enacted any legislation governing the work done by LEG Thüringen on industrial sites, which would formally identify these activities as State aid. There is no aid programme. Germany has accordingly drawn up a list of firms to be considered with reference to the subject matter of these proceedings.

3. GROUNDS FOR INITIATING THE PROCEDURE

(11) The Commission initiated the formal investigation procedure in respect of LEG Thüringen's activities in this area because it was not satisfied that these disposals of property or other interests always complied with the Commission communication on State aid elements in sales of land and buildings by public authorities ⁽⁴⁾.

(12) The Commission could not be certain, either, that no one-off financial assistance or funding for all or part of these projects was being allocated to LEG Thüringen's industrial plant activities from some other heading in the Thuringian budget.

(13) Nor could the Commission rule out the possibility that LEG Thüringen's activities might benefit firms in difficulty. In six cases LEG Thüringen had allowed its tenants longer deadlines for payment of rent, or had granted them loans.

4. COMMENTS FROM INTERESTED PARTIES

(14) The only firm to submit observations in the course of the formal investigation was LEG Thüringen. LEG Thüringen argued that it was a legal person established under private law, and as such had no part in the exercise of authority by the public administration of Germany or any constituent part of it; the property it had developed had always been sold on commercial terms. LEG Thüringen drew attention to a number of aspects, which it said had been misrepresented in the Commission decision to initiate the formal investigation. It argued that the decision to initiate the procedure had not allowed it to defend itself. This was an infringement of due process. By letter dated 17 September 2001 Germany stated its support for the observations submitted by LEG Thüringen and corroborated in full their factual content.

5. ASSESSMENT

5.1. Attribution to the State and use of State resources

(15) LEG Thüringen has to be considered a State body, because 97,6 % of its capital belongs to the *Land* of Thuringia, which in addition has certain powers over the running of the company conferred on it by the memorandum and articles of association; LEG Thüringen also receives funding from the budget of Thuringia. Consequently, in determining whether State aid may have reached firms from LEG Thüringen, the fact that LEG Thüringen is in the form of a limited company governed by private law does not remove it from the sphere of State aid law. No distinction should be drawn between aid granted directly by the State or a local authority and aid granted by public or private bodies established or appointed by the State or the local authority to administer the aid ⁽⁵⁾.

(16) The resources given to LEG Thüringen for its work in connection with industrial plant are granted entirely under a specific item in the *Land* budget. LEG Thüringen does not receive any additional financial resources for these activities.

⁽⁴⁾ OJ C 209, 10.7.1997, p. 3.

⁽⁵⁾ Judgment of the Court of First Instance in Case T-37/97, *Forges de Clabecq v Commission*, [1999] ECR II-0859, paragraph 3.

5.2. Assessment on a case-by-case basis

- (17) There is no aid programme covering LEG Thüringen's activities in relation to industrial plant, and no evidence has come to light in the course of the formal investigation to suggest that LEG Thüringen has taken any measures in respect of industrial plant which satisfy common criteria and apply across the board to all firms; the measures taken by LEG Thüringen have consequently to be considered case by case. Germany has submitted a list in this respect.
- (18) The list of firms submitted by Germany for examination does not allow any pattern to be discerned with respect to any specific category of recipient. Potentially, therefore, any firm may be concerned, regardless of its size, business, or financial situation.

5.3. Effect on trade

- (19) In the six cases involving loans referred to in the Commission's decision to initiate the investigation (see recital 13), Germany has shown that the aid was *de minimis* ⁽⁶⁾. Accordingly, no aid within the meaning of Article 87 of the EC Treaty is involved here.

5.4. Granting of an economic benefit to firms

- (20) The firms listed by Germany have bought or rented from LEG Thüringen land and/or buildings, which were previously renovated using State resources. The sale or rental may have meant that the State forfeited income, which would be equivalent to a transfer of public resources to the firms. The Commission must therefore examine whether in individual transactions the relevant firms received an economic advantage.

(a) Market economy investor

- (21) Germany argues that in the industrial plant area LEG Thüringen has acted as a private investor would have done ⁽⁷⁾. Its conduct in investing in old industrial sites is comparable to that of a private investor. In accordance with the doctrine of the private investor operating under market economy conditions, or private investor principle, therefore, LEG Thüringen's activities in respect of industrial plant do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.
- (22) Germany submits here that in applying the private investor principle one has to take account of exceptional economic circumstances that cannot be understood by reference to classical market laws alone. Specifically, the idea of normal market economy conditions has to be

extended to allow for the special factors affecting competition on the property market in Thuringia. The special circumstances in Thuringia are described by Germany as follows: 'there is a substantial excess of supply, with a small number of would-be buyers on the demand side.' 'The reclamation of old industrial sites (...) is suffering from a lack of potential demand.' 'At the time of the survey (...) carried out in 1995 (...) there was a large surplus of industrial building land in the new *Länder*, and this has grown further since.' 'In 1995 developed industrial sites in the new *Länder* exceeded requirements by a factor of 6,7.' 'Expanding firms seeking to penetrate the market prefer (...) newly developed sites.' 'Industrial building land in old industrial sites started to become available only at a time when the need for land was already to a great extent met by newly-developed sites, and the supply of designated industrial land was already surplus to requirements.' 'Sales of industrial land (...) peaked in 1992.' 'The development of old industrial sites was a long and difficult process, so that they began to reach the market only in the middle of the 1990s, and this alone left them at a severe disadvantage in marketing terms.' 'The price of industrial land has tended to fall'.

- (23) This analysis is confirmed by an expert report drawn up for LEG Thüringen by the market research department of the real estate firm Aengevelt, which was supplied to the Commission in the course of the formal investigation.

- (24) The Commission cannot agree that LEG Thüringen has acted as a private investor operating under market economy conditions would have done. LEG Thüringen acts as a sort of general contractor providing comprehensive management of industrial sites that are to be reclaimed for another use. LEG Thüringen operates in this respect as a property developer, which handles the entire process from purchase to utilisation. The question is, therefore, whether a private player of the same size as LEG Thüringen would in comparable circumstances have taken the same microeconomic decisions on industrial site management.

- (25) LEG Thüringen carries on the activities under examination on a market where there is already substantial excess supply of developed industrial and commercial land. LEG Thüringen is therefore consciously entering a glutted market ⁽⁸⁾, and is taking steps to restore industrial and commercial premises even though it is clear beforehand that demand will be weak or very weak. In a

⁽⁶⁾ Letter from Germany, 9 April 1999.

⁽⁷⁾ Letter from Germany, 28 July 1999.

⁽⁸⁾ LEG Thüringen was set up in 1992 at a time when 'the sale of industrial land ... had peaked': see recital 22.

heavily saturated market, to engage in precisely those activities that are already in surplus will necessarily result in market prices below the costs of acquisition and modernisation. In the circumstances it cannot be expected that the invested capital will produce a reasonable return even in the longer term. A private player pursuing profit maximisation would not follow such a market strategy.

- (26) It may be that when LEG Thüringen has disposed of industrial property it has secured a market price, if 'market price' is understood to mean the price that would-be buyers are prepared to pay for a particular site at a particular time. But that price would not necessarily be the outcome of the conduct of a private market player. In a project of this scale and complexity a private player does not ask only what price he can obtain for a particular item on a particular day.
- (27) When applying the market economy investor test, the social and regional policy objectives pursued by the *Land* of Thuringia have to be left to one side: creating and maintaining jobs, improving the attractiveness of Thuringia as an industrial location, or compensating the disadvantages suffered by old industrial sites which make them less attractive to investors than newly developed ones ⁽⁹⁾ are not relevant here ⁽¹⁰⁾.
- (28) On this point, therefore, the conclusion has to be that the market economy investor principle does not remove LEG Thüringen's industrial plant activities from the scope of Article 87 of the EC Treaty.

(b) *Communication on State aid elements in sales of land and buildings by public authorities*

- (29) The following paragraphs look at the Commission communication on State aid elements in sales of land and buildings by public authorities. If the criteria set out in the communication were complied with, aid can be ruled out. The decisions taken by the Commission in this area ⁽¹¹⁾ are a fairly close reflection of this communication (published in 1997), which can therefore be taken as a basis for assessment in the present case, which examines events that occurred as from 1992.

- (30) The communication refers explicitly only to sales. In the case of rentals and leases the Commission applies by analogy the principles set out in the communication on State aid elements in sales of land and buildings by public authorities ⁽¹²⁾.

- (31) The view taken in the communication is that where there is a sufficiently well publicised, open and unconditional bidding procedure, accepting the best or only bid, it is clear that the resulting price reflects the natural market balance. There is then no advantage to any firm, and there is consequently no State aid.

- (32) In many cases of sale and rental ⁽¹³⁾ LEG Thüringen has followed such a procedure ⁽¹⁴⁾. In these cases a sign was displayed at the site, and a prospectus or Internet or newspaper advertisement published, over a period of at least two months; in some cases the project was also presented at regional or supraregional fairs. These projects, then, were sufficiently well publicised, so that they could come to the notice of all potential buyers. The process was not confined to a particular user, so that the sale was unconditional. In most cases only one buyer came forward. Where there was more than one bidder, the best bid was accepted.

- (33) In addition to the bidding procedure, the communication allows an independent expert evaluation to be presented. In three cases, LEG Thüringen had an independent expert evaluation carried out to establish the market value, in accordance with point II.2 of the Commission communication. In two cases, Germany submitted an independent expert evaluation during the proceedings; the independent expert evaluation looks at the specific features of these cases. The market value established by the independent expert is below the selling price obtained by LEG Thüringen.

- (34) It must be concluded, therefore, that LEG Thüringen's activities in respect of the undertakings referred to in recitals 32 and 33 are in line with the Commission communication on State aid elements in sales of land and buildings by public authorities. Accordingly, they do not contain any State aid component.

⁽⁹⁾ See footnote 8: development and reclamation costs can be higher in the case of old industrial sites; there is a greater fear of inherited burdens; the image of the location may be negative; ownership can be unclear; buildings or land may be listed for preservation; delays can occur in the process of preparation for building; infrastructure may be insufficient; the possible site configurations may be restricted; and there may be disadvantages in the positioning of the site and especially the transport links available.

⁽¹⁰⁾ Judgment of the Court of Justice in Case C-40/85, *Belgium v Commission*, dated 10 July 1986 [1986] ECR 2321, paragraph 13.

⁽¹¹⁾ See Commission decision in the *Fresenius* case, OJ C 21, 25.1.1994, p. 4 and Commission Decision 98/384/EC, OJ L 171, 17.6.1998, p. 36.

⁽¹²⁾ See Commission Decision 2000/389/EC (*English Partnerships*), OJ L 145, 20.6.2000, p. 27; and Commission Decision of 12 January 2001 in the *Business Infrastructure Development* case, State aid measure N 657/1999, which can be consulted on the Internet site of the Secretariat-General of the European Commission: http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#aides.

⁽¹³⁾ Cases where the annual rent exceeded EUR 15 338,78.

⁽¹⁴⁾ The Commission has a table listing all such undertakings; see recital 10.

(c) *Comparison of the price actually paid and the undistorted market price*

(35) In the case of four transactions, the criteria set out in the Commission communication were not complied with. On the question of whether these four firms derived any economic advantage, a comparison could be made of the purchase prices actually paid with an ex-post analysis of the market. In this instance, however, a snapshot of market prices taken after the event does not provide any useful evidence, since the Commission assumes that the market price for vacant industrial land was influenced by LEG Thüringen as a result of its specific market behaviour.

(36) According to the expert report drawn up by Aengevelt, within a period of five years (mid-1993 to mid-1998), the price for the type of land being examined slumped from EUR 46 (DEM 90) per m² to EUR 13 (DEM 25,5) per m². This sharp decline in prices is no doubt due to a number of circumstances, such as the decline in investment activity in eastern Germany and cyclical factors. However, it is also evident that LEG Thüringen's massive intervention in this market segment contributed to the decline. It is a basic tenet of established economic theory that an increase in supply on an already glutted market produces this effect.

(37) The Commission cannot therefore use the very low price established for the relevant transactions (the years in question are specifically 1995, 1997 and 1998) as a guide, since such market price was artificially brought about by LEG Thüringen's behaviour on the market.

(38) Since LEG Thüringen began buying and selling industrial and commercial land on a fairly large scale⁽¹⁵⁾ only as from mid-1994, the Commission has taken this year as the reference. According to the expert evaluation carried out by the firm Aengevelt, the price of vacant industrial building land at that time was some EUR 24,5 (DEM 48) per m².

(39) Since in all four cases the transaction prices for vacant industrial land were more than EUR 24,5 per m², the Commission finds that no economic advantage accrued to these undertakings and that Article 87 of the EC Treaty does not apply,

HAS ADOPTED THIS DECISION:

Article 1

The measures examined in this Decision taken by Germany with regard to sales and rentals by Landesentwicklungsgesellschaft mbH Thüringen relating to industrial plant do not contain any State aid element and do not constitute aid within the meaning of Article 87(1) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 9 April 2002.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁵⁾ Letter from Germany, 6 July 2000.

COMMISSION DECISION
of 7 March 2003
amending Decisions 1999/283/EC and 2000/585/EC as regards Botswana

(notified under document number C(2003) 713)

(Text with EEA relevance)

(2003/163/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine, ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽¹⁾, as last amended by Regulation (EC) No 1452/2001 ⁽²⁾, and in particular Article 14(3) thereof,

Having regard to Council Directive 92/45/EC of 16 June 1992 on public health and animal health problems relating to the killing of wild game and the placing on the market of wild game meat ⁽³⁾, as last amended by Directive 97/79/EC ⁽⁴⁾, and in particular Article 16(3) thereof,

Having regard to Council Directive 92/118/EEC of 17 December 1992 laying down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A (I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC ⁽⁵⁾, as last amended by Commission Decision 2003/42/EC ⁽⁶⁾, and in particular Article 10,

Whereas:

- (1) The animal health and veterinary certification conditions for imports of fresh meat from certain African countries are laid down by Commission Decision 1999/283/EC ⁽⁷⁾, as last amended by Decision 2003/74/EC ⁽⁸⁾.
- (2) The animal and public health and veterinary certification conditions for import of wild and farmed game meat and rabbit meat from third countries are laid down by Commission Decision 2000/585/EC ⁽⁹⁾, as last amended by Decision 2003/74/EC.

- (3) An outbreak of foot-and-mouth disease was confirmed in Botswana in the approved EC zone number 6 on 7 of January 2003, with the first infection on the holding thought to be 23 December 2002, and Commission Decision 2003/74/EC was adopted to suspend exports to the Community from the whole of the country of boned fresh meat of bovine, ovine and caprine species and farmed and wild ungulates produced after the presumed date of first infection, pending further information required to support regionalisation.
- (4) The Botswanan authorities carried out emergency vaccination around the outbreak and further investigations, assessing the situation in the country. All the animals in the infected farms are being destroyed.
- (5) The outcome of this assessment shows that the infected area is located in veterinary control zones 6 and 7, in an area of about 30 km by 40 km. In addition, four farms on the periphery of this area were included in the infected area because of the possibility of contact with animals of infected farms.
- (6) No further cases of foot-and-mouth disease have been observed throughout the country.
- (7) The Botswanan authorities have informed the Community that Zones 6 and 7 are the infected areas, the surrounding zones 5, 8 and 9 are considered as buffer zones, while zones 10, 11, 12, 13 and 14 should be considered free. These free areas are separated physically from the rest of the territory by fences.
- (8) In this situation, the importation into the Community of de-boned and matured fresh meat excluding offal of bovine, ovine and caprine species and farmed and wild ungulates should be allowed from the zones 10, 11, 12, 13 and 14 irrespective of the date of slaughter.
- (9) The measures provided for in this Decision should be reviewed within three months in particular in the light of the disease evolution and further information received from the authorities of Botswana.
- (10) Decisions 1999/283/EC and 2000/585/EC should be amended accordingly.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 302, 31.12.1972, p. 28.

⁽²⁾ OJ L 198, 21.7.2001, p. 11.

⁽³⁾ OJ L 268, 14.9.1992, p. 35.

⁽⁴⁾ OJ L 24, 30.1.1998, p. 31.

⁽⁵⁾ OJ L 62, 15.3.1993, p. 19.

⁽⁶⁾ OJ L 13, 18.1.2003, p. 24.

⁽⁷⁾ OJ L 110, 28.4.1999, p. 16.

⁽⁸⁾ OJ L 28, 4.2.2003, p. 45.

⁽⁹⁾ OJ L 251, 6.10.2000, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

Annex I to Decision 1999/283/EC is replaced by the text in Annex I to this Decision.

Article 2

Annex II to Decision 1999/283/EC is replaced by the text in Annex II to this Decision.

Article 3

Annex I to Decision 2000/585/EC is replaced by the text in Annex III to this Decision.

Article 4

Annex II to Decision 2000/585/EC is replaced by the text in Annex IV to this Decision.

Article 5

The measures provided for in this Decision shall be reviewed within three months in the light of the evolution of the foot-and-mouth disease situation in Botswana.

Article 6

This Decision shall apply from 14 March 2003.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 7 March 2003.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

'ANNEX I

DESCRIPTION OF TERRITORIES OF CERTAIN AFRICAN COUNTRIES ESTABLISHED FOR ANIMAL HEALTH CERTIFICATION PURPOSES

Country	Code of territory	Version	Description of territory
Botswana	BW	01/99	The whole country
	BW-01	01/03	Veterinary disease control zones: 5, 6, 7, 8, 9, and 18.
	BW-02	01/03	Veterinary disease control zones: 10, 11, 12, 13 and 14.
Morocco	MA	01/99	The whole country
Madagascar	MG	01/99	The whole country
Namibia	NA	01/99	The whole country
	NA-01	01/00	South of the cordon fences which extends from Palgrave Point in the west to Gam in the east
Swaziland	SZ	01/99	The whole country
	SZ-01	01/01	Area west of the "red line" fences which extends northwards from the river Usutu to the frontier with South Africa west of Nkalashane and excluding the veterinary foot and mouth surveillance and vaccination control areas gazetted as a Statutory Instrument under legal notice number 51 of 2001
South Africa	ZA	01/99	The whole country
	ZA-01	03/01	Republic of South Africa excluding: — the part of the foot-and-mouth disease control area situated in the veterinary regions of Mpumalanga and Northern provinces, in the district of Ingwavuma of the veterinary region of Natal and in the border area with Botswana east of longitude 28 °, and — the district of Camperdown, in the province of KwaZulu-Natal
Zimbabwe	ZW	01/99	The whole country
	ZW-01	01/99	Veterinary regions of Mashonaland West province, Mashonaland East province (including Chikomba district), Mashonaland Central province, Manicaland province (including only Makoni district), Midlands province (including only the Gweru, Kwekwe, Shurugwi, Chirimanzu and Zvishavane districts), Masvingo province (including only the districts of Gutu and Masvingo), Matabeleland South province (including only the Insiza, Bullimamangwe, Umzingwamange, Gwanda and West Nicholson districts) and Matabeleland north province (including only the districts of Bubi and Umgusa)

ANNEX II

'ANNEX II

MODELS OF ANIMAL HEALTH CERTIFICATES TO BE REQUESTED

Country	Code	Fresh meat for human consumption								Fresh meat intended for purposes other than human consumption
		Bovine		Swine		Ovine/Caprine		Solipeds		
		MC ⁽¹⁾	SG ⁽²⁾	MC ⁽¹⁾	SG ⁽²⁾	MC ⁽¹⁾	SG ⁽²⁾	MC ⁽¹⁾	SG ⁽²⁾	
Botswana	BW	—		—		—		D		—
	BW-01	A ⁽³⁾	a	—		C ⁽³⁾	a	D		—
	BW02	A ⁽⁴⁾	a	—		C ⁽⁴⁾	a	D		—
Morocco	MA	—		—		—		D		—
Madagascar	MG	—		—		—		—		—
Namibia	NA	—		—		—		D		—
	NA-01	A	a	—		C	a	D		—
Swaziland	SZ	—		—		—		D		—
	SZ-01	A	a	—		—		D		—
South Africa	ZA	—		—		—		D		—
	ZA-01	A	a	—		C	a	D		—
Zimbabwe	ZW	—		—		—		—		—
	ZW-01	—		—		—		—		—

⁽¹⁾ MC: Model of certificate to be fulfilled: The letters (A, B, C, D) appearing on the tables are referring to the models of animal health guarantees as described in Annex III, to be applied for each product category in accordance with Article 2 of this decision; a dash "—" indicates that imports are not authorised.

⁽²⁾ SG: Supplementary guarantees. The letters (a, b, c, d) appearing on the tables are referring to the supplementary guarantees to be provided by the exporting country as described in Annex IV. These supplementary guarantees must be inserted by the exporting country in section V of each model of certificate laid down in Annex III.

⁽³⁾ Only meat produced from animals slaughtered after 7 July 2002 and before 23 December 2002 can be imported into the Community.

⁽⁴⁾ Meat produced from animals slaughtered after 7 March 2002 can be imported into the Community.'

ANNEX III

'ANNEX I

DESCRIPTION OF TERRITORIES OF CERTAIN THIRD COUNTRIES ESTABLISHED FOR ANIMAL HEALTH CERTIFICATION PURPOSES

Country	Code of territory	Version	Description of territory
Bulgaria	BG-1	—	As described in Annex I of Commission Decision 98/371/EC ⁽¹⁾ (as last amended)
	BG-2	—	As described in Annex I of Commission Decision 98/371/EC (as last amended)
	BG-3	—	As described in Annex I of Commission Decision 98/371/EC (as last amended)
Brazil	BR-1	—	As described in Annex I of Commission Decision 94/984/EC ⁽²⁾ (as last amended)
Botswana	BW-01	01/03	As described in Annex I of Commission Decision 1999/283/EC ⁽³⁾ (as last amended)
	BW-02	01/03	As described in Annex I of Commission Decision 1999/283/EC (as last amended)
Czech Republic	CZ-1	—	As described in Annex I of Commission Decision 98/371/EC (as last amended)
	CZ-2	—	As described in Annex I of Commission Decision 98/371/EC (as last amended)
Namibia	NA-01	—	As described in Annex I of Commission Decision 1999/283/EC (as last amended)
Russia	RU-1	01/99	The region of Murmansk (Murmanskaya oblast)
Swaziland	SZ-01	—	As described in Annex I of Commission Decision 1999/283/EC (as last amended)
South Africa	ZA-01	—	As described in Annex I of Commission Decision 1999/283/EC (as last amended)
Zimbabwe	ZW-01	—	As described in Annex I of Commission Decision 1999/283/EC (as last amended)
Any country appearing in the first column of Annex II	ISO code as indicated in the first column of Annex II		The whole country

⁽¹⁾ OJ L 170, 16.6.1998, p. 16.⁽²⁾ OJ L 378, 31.12.1994, p. 11.⁽³⁾ OJ L 110, 28.4.1999, p. 16.

ANNEX IV

‘ANNEX II

Animal health guarantees to be requested on certification of wild and farmed game meat and rabbit meat

Country		Code of territory	Cloven-hoofed game, excluding wild swine				Wild swine				Game birds				Wild solipeds		Leporidae (rabbit and hare)				Other wild land-mammals	
			Wild		Farmed		Wild		Farmed		Wild		Farmed									
			MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)
AR	Argentina	AR	—		—		—		—		D	8	I		—		C		H		—	
AU	Australia	AU	A	9	F		J	9	G		D	8	I		—		C		H		E	
BG	Bulgaria	BG	—		—		—		—		D		I		—		C		H		—	
		BG-1	A		F		—		—		D		I		—		C		H		—	
		BG-2	A		F		—		—		D		I		—		C		H		—	
		BG-3	—		—		—		—		D		I		—		C		H		—	
BR	Brazil	BR	—		—		—		—		—		—		—		C		H		—	
		BR-1	—		—		—		—		D	8	I		—		C		H		—	
BW	Botswana	BW	—		—		—		—		—		—		B		C		H		—	
		BW-01	A (v)	1,2	F (v)	2,3	—		—		—		—		B		C		H		—	
		BW-02	A (x)	1,2	F (x)	2,3	—		—		—		—		B		C		H		—	
CA	Canada	CA	A	9	F		J	9	G		D	8	I		—		C		H		E	
CH	Switzerland	CH	A		F		J		G		D		I		—		C		H		—	
CL	Chile	CL	A	9	F		—		—		D	8	I		—		C		H		—	
CY	Cyprus	CY	A	9	F		J	9	G		D	8	I		—		C		H		—	
CZ	Czech Republic	CZ	A		F		—		G		D		I		—		C		H		—	
		CZ-1	A		F		J		G		D		I		—		C		H		—	
		CZ-2	A		F		—		G		D		I		—		C		H		—	

Country		Code of territory	Cloven-hoofed game, excluding wild swine				Wild swine				Game birds				Wild solipeds		Leporidae (rabbit and hare)				Other wild land-mammals	
			Wild		Farmed		Wild		Farmed		Wild		Farmed									
			MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)	MC (*)	SC (!)
EE	Estonia	EE	A		F		—		—		—		—		—		C		H		E	
GL	Greenland	GL	A		F		—		—		D		—		—		C		H		E	
HR	Croatia	HR	A		F		—		—		D		I		—		C		H		—	
HU	Hungary	HU	A		F		J	7	G		D		I		—		C		H		—	
IL	Israel	IL	—		—		—	—	—		D	8	I		—		C		H		—	
LI	Lithuania	LI	A		F		—		—		D		I		—		C		H		E	
LV	Latvia	LV	A		F		—		—		—		—		—		C		H		E	
NA	Namibia	NA	—		—		—		—		—		—		B		C		H		—	
		NA-01	A	1,2	F	2,3	—		—		—		—		B		C		H		—	
NC	New Caledonia	NC	A		F		—		—		—		—		—		C		H		—	
NZ	New Zealand	NZ	A	9	F		J	9	G		D	8	I		—		C		H		E	
PL	Poland	PL	A		F		—		—		D		I		—		C		H		—	
RO	Romania	RO	A		F		—		—		D		I		—		C		H		E	
RU	Russia	RU	—		—	—	—		—		—		—	—	—		C		H		E	
		RU-1	—	—	F	5			—		—						C		H		E	
SL	Slovenia	SL	A		F		—		—		D		I		—		C		H		—	
SK	Slovak Republic	SK	A		F		—		—		D		I		—		C		H		—	
SZ	Swaziland	SZ	—		—		—		—		—		—		B		C		H		—	
		SZ-01	A	1,2	F	2,3	—		—		—		I		B		C		H		—	

Country		Code of territory	Cloven-hoofed game, excluding wild swine				Wild swine				Game birds				Wild solipeds		Leporidae (rabbit and hare)				Other wild land-mammals	
			Wild		Farmed		Wild		Farmed		Wild		Farmed									
			MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)	MC (*)	SC (1)
TH	Thailand	TH	—		—		—		—		D	8	I		—		C		H		—	
TN	Tunisia	TN	—		—		—		—		D	8	I		—		C		H		—	
US	United States of America	US	A	9	F		J	9	G		D	8	I		—		C		H		—	
UY	Uruguay	UY	—		—		—		—		—		—		—		C		H		—	
ZA	South Africa	ZA	—		—		—		—		—		—		B		C		H		—	
		ZA-01	A	1,2	F	2,3	—		—						B		C		H		—	
ZW	Zimbabwe	ZW	—		—		—		—		—		—				C		H		—	
		ZW-01	—		—		—		—								C		H		—	
Third countries, other than those above, appearing on the list of the first part of the Annex to Council Decision 79/542/EEC (2) as last amended			—		—		—		—		—		—		—		C		H		—	

(*) OJ L 146, 14.6.1979, p. 15.

(1) MC model certificate to be completed. The letters (A, B, C, D, etc.) appearing in the tables refer to the models of animal health guarantees, as described in Annex III to the present Decision, to be applied for each categories of fresh meat and origin in accordance with Article 2 of this Decision. A dash “-” indicates that imports are not authorised.

(2) SC specific conditions. The numbers (1, 2, 3, etc.) appearing in the table refer to the special conditions to be provided by the exporting country as described in Annex IV. These supplementary guarantees must be inserted by the exporting country in section V of each model of certificate set down in Annex III.

NB:

(y) Only meat produced from animals slaughtered after 7 July 2002 and before 23 December 2002 can be imported into the Community.

(x) Meat produced from animals slaughtered after 7 March 2002 can be imported into the Community.’

COMMISSION DECISION
of 10 March 2003
amending Decision 1999/466/EC establishing the officially brucellosis-free status of bovine herds
of certain Member States or regions of Member States

(notified under document number C(2003) 731)

(Text with EEA relevance)

(2003/164/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine ⁽¹⁾, as last amended by Commission Regulation (EC) No 1226/2002 ⁽²⁾, and in particular Annex A (II)(7) thereto,

Whereas:

- (1) Italy has submitted to the Commission documentation demonstrating compliance with all of the conditions provided for in Annex A (II)(7) to Directive 64/432/EEC, and in particular showing that, calculated at 31 December of each year, more than 99,8 % of the bovine herds of the Region of Emilia-Romagna have been officially free from bovine brucellosis for at least the past five consecutive years and that each bovine animal is identified in accordance with Community legislation.
- (2) This Region should consequently be declared officially brucellosis-free in accordance with Directive 64/432/EEC.

(3) Commission Decision 1999/466/EC ⁽³⁾, as last amended by Decision 2002/588/EC ⁽⁴⁾, should therefore be amended accordingly.

(4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to Decision 1999/466/EC is replaced by the text in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 10 March 2003.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 21, 29.7.1964, p. 1977/64.

⁽²⁾ OJ L 179, 9.7.2002, p. 13.

⁽³⁾ OJ L 181, 16.7.1999, p. 34.

⁽⁴⁾ OJ L 187, 16.7.2002, p. 52.

ANNEX

'ANNEX II

REGIONS OF MEMBER STATES DECLARED OFFICIALLY FREE OF BOVINE BRUCELLOSIS

Great Britain (United Kingdom)

Province Bolzano (Italy)

Region Emilia Romagna (Italy)

Islands of Pico, Graciosa, Flores and Corvo (Autonomous Region of Azores, Portugal).'

CORRIGENDA**Corrigendum to Commission Decision 2002/615/EC of 22 July 2002 amending Decision 92/486/EEC establishing the form of cooperation between the ANIMO host centre and the Member States**

(Official Journal of the European Communities L 196 of 25 July 2002)

On page 60, in Article 1:

for: "7. For the period from 1 April 2002 to 31 March 2003, the coordination authorities provided for in Article 1 shall ensure that the contracts referred to in that Article are extended for one year."

The following charge shall apply in respect of the paragraph:

— EUR 386 per unit (central unit, local unit, frontier inspection post) for all the ANIMO units listed in Decision 2002/459/EC (5).'

read: "7. For the period 1 April 2002 to 31 March 2003, the coordination authorities provided for in Article 1 shall ensure that the contracts referred to in that Article are extended for one year.

The following charge shall apply in respect of the paragraph:

— EUR 386 per unit (central unit, local unit, frontier inspection post) for all the ANIMO units listed in Decision 2002/459/EC (*).

(*) OJ L 159, 17.6.2002, p. 27."

Corrigendum to Decision No 1/2003 (2003/128/EC) of 28 January 2003 of the Committee established under the Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment on the establishment of the list of conformity assessment bodies recognised under the Agreement

(Official Journal of the European Union L 56 of 1 March 2003)

On page 9, in the title of Annex B:

for: 'LIST OF SWISS CONFORMITY ASSESSMENT BODIES',

read: 'LIST OF EUROPEAN CONFORMITY ASSESSMENT BODIES'.
