

Official Journal

of the European Union

ISSN 1725-2555

L 211

Volume 46

21 August 2003

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1469/2003
of 20 August 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 21 August 2003.

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

Done at Brussels, 20 August 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 20 August 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	64,3
	060	41,1
	999	52,7
0709 90 70	052	101,8
	999	101,8
0805 50 10	382	56,5
	388	57,7
	524	54,8
	528	57,4
	999	56,6
0806 10 10	052	118,3
	064	140,1
	400	194,3
	999	150,9
0808 10 20, 0808 10 50, 0808 10 90	039	65,0
	388	67,2
	400	80,1
	508	73,3
	512	87,6
	528	69,1
	720	61,1
	800	128,8
	804	89,1
	999	80,1
0808 20 50	052	125,5
	388	72,7
	512	81,5
	528	87,6
	800	148,4
	999	103,1
0809 30 10, 0809 30 90	052	115,5
	999	115,5
0809 40 05	064	64,7
	066	60,0
	068	77,7
	093	60,7
	094	73,3
	624	154,7
	999	81,9

⁽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 1470/2003
of 20 August 2003**

on import licences in respect of beef and veal products originating in Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

ovine and caprine animals and swine, fresh meat or meat products from third countries ⁽³⁾, as last amended by Regulation (EC) No 807/2003 ⁽⁴⁾,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2286/2002 of 10 December 2002 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EC) No 1706/98 ⁽¹⁾, and in particular Article 5 thereof,

Having regard to Commission Regulation (EC) No 1918/98 of 9 September 1998 laying down detailed rules for the application in the beef and veal sector of Council Regulation (EC) No 1706/98 on the arrangements applicable to agricultural products and certain goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States and repealing Regulation (EC) No 589/96 ⁽²⁾, and in particular Article 4 thereof,

Whereas:

- (1) Article 1 of Regulation (EC) No 1918/98 provides for the possibility of issuing import licences for beef and veal products. However, imports must take place within the limits of the quantities specified for each of these exporting non-member countries.
- (2) The applications for import licences submitted between 1 and 10 August 2003, expressed in terms of boned meat, in accordance with Regulation (EC) No 1918/98, do not exceed, in respect of products originating from Botswana, Kenya, Madagascar, Swaziland, Zimbabwe and Namibia, the quantities available from those States. It is therefore possible to issue import licences in respect of the quantities applied for.
- (3) The quantities in respect of which licences may be applied for from 1 September 2003 should be fixed within the scope of the total quantity of 52 100 tonnes.
- (4) This Regulation is without prejudice to Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine,

HAS ADOPTED THIS REGULATION:

Article 1

The following Member States shall issue on 21 August 2003 import licences for beef and veal products, expressed as boned meat, originating in certain African, Caribbean and Pacific States, in respect of the following quantities and countries of origin:

Germany:

- 70 tonnes originating in Namibia,
- 450 tonnes originating in Botswana.

United Kingdom:

- 1 000 tonnes originating in Botswana,
- 1 000 tonnes originating in Namibia,
- 80 tonnes originating in Swaziland.

Article 2

Licence applications may be submitted, pursuant to Article 3(2) of Regulation (EC) No 1918/98, during the first 10 days of September 2003 for the following quantities of boned beef and veal:

Botswana:	12 285,5 tonnes,
Kenya:	142 tonnes,
Madagascar:	7 579 tonnes,
Swaziland:	2 788 tonnes,
Zimbabwe:	9 100 tonnes,
Namibia:	5 090 tonnes.

Article 3

This Regulation shall enter into force on 21 August 2003.

⁽¹⁾ OJ L 348, 21.12.2002, p. 5.

⁽²⁾ OJ L 250, 10.9.1998, p. 16.

⁽³⁾ OJ L 302, 31.12.1972, p. 28.

⁽⁴⁾ OJ L 122, 16.5.2003, p. 36.

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

Done at Brussels, 20 August 2003.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

**COMMISSION REGULATION (EC) No 1471/2003
of 20 August 2003**

**opening the procedure for the allocation of export licences for cheeses to be exported in 2004 to
the United States of America under certain quotas resulting from the GATT Agreements**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 30 thereof,

Export licences for products falling within CN code 0406 to be exported in 2004 to the United States of America under the additional quota resulting from the agreements concluded during the Uruguay Round (hereinafter known as the UR quota) and the tariff quotas originally resulting from the Tokyo Round and granted to Austria, Finland and Sweden by the United States of America in Uruguay Round list XX (hereinafter known as the TR quota) as referred to in Annex I shall be issued in accordance with the provisions of Article 20 of Regulation (EC) No 174/1999.

Whereas:

- (1) Article 20 of Commission Regulation (EC) No 174/1999 of 26 January 1999 laying down special detailed rules of application for export refunds on milk and milk products ⁽³⁾, as last amended by Regulation (EC) No 1392/2003 ⁽⁴⁾, provides that export licences for cheese exported to the United States of America as part of the quotas under the agreements concluded during multilateral trade negotiations, may be allocated according to a special procedure by which preferred importers in the United States may be designated.
- (2) That procedure should be opened for exports during 2004 and the additional rules relating to it should be determined.
- (3) For the administration of imports the competent authorities in the USA make a distinction between the additional quota granted to the European Community under the Uruguay Round and the quotas resulting from the Tokyo Round; whereas export licences should be allocated bearing in mind, where necessary, the distribution of certain groups of products according to the nature of the quota.
- (4) In order to provide stability and security for operators lodging demands under this special regime, it is appropriate to fix the day on which applications are deemed to have been lodged for the purposes of Article 1(1) of Regulation (EC) No 174/1999.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

Article 2

1. Applications for provisional licences shall be lodged with the competent authorities from 1 to 10 September 2003 at the latest. They shall not be admissible unless they contain all the details referred to in Article 20(2) of Regulation (EC) No 174/1999 and the documents mentioned therein.

2. Where, for the same group of products referred to in Annex I, column 2, the available quantity is divided between the UR quota and the TR quota, licence applications may cover only one of those quotas and must indicate the quota concerned, specifying the identification of the group and of the quota indicated in Annex I, column 3.

3. Licence applications must cover no more than 40 % of the quantity available for the group of products indicated in Annex I, column 4, and for the quota concerned.

4. Applications shall not be admissible unless applicants declare in writing that they have not lodged other applications for the same group of products and the same quota and undertake not to do so. If an applicant lodges different applications for the same group of products and the same quota in one or more Member States, all his applications shall be deemed inadmissible.

5. The details referred to in paragraphs 1 and 2 shall be presented in accordance with the model shown in Annex II.

6. For the purposes of Article 1(1) of Regulation (EC) No 174/1999, all applications lodged within the time limit shall be deemed to have been lodged on 1 September 2003.

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 20, 27.1.1999, p. 8.

⁽⁴⁾ OJ L 197, 5.8.2003, p. 3.

Article 3

Member States shall notify the Commission within five working days of the end of the period for lodging applications of the applications lodged for each of the groups of products and, where applicable, the quotas indicated in Annex I. All notifications, including 'nil' notifications, shall be made by telex or fax on the model form shown in Annex III. Notification shall comprise for each group and, where applicable, for each quota:

- a list of applicants,
- the quantities applied for by each applicant broken down by code of the export refund nomenclature for milk products and by their description in accordance with the Harmonised Tariff Schedule of the United States of America (2003),
- the quantities of those products exported by the applicant during the previous three years,
- the name and address of the importer designated by the applicant and whether the importer is a branch of the applicant.

Article 4

The Commission shall, pursuant to Article 20(3) to (5) of Regulation (EC) No 174/1999, determine the allocation of licences without delay and shall notify the Member States thereof by 31 October 2003 at the latest.

Article 5

The information referred to in Article 3 of this Regulation and in Article 20(2) of Regulation (EC) No 174/1999 shall be verified before the full licences are issued and by 31 December 2003 at the latest.

Where it is found that incorrect information has been supplied by an operator to whom a provisional licence has been issued, the licence shall be cancelled and the security forfeited.

Article 6

This Regulation shall enter into force on the seventh 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, 20 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

Cheese to be exported to the United States of America in 2004 under certain quotas resulting from the GATT Agreements

Article 20 of Regulation (EC) No 174/1999 and Regulation (EC) No 1471/2003

Identification of group in accordance with Additional Notes in Chapter 4 of the Harmonised Tariff Schedule of the United States of America		Identification of group and quota	Quantity available for 2004	Maximum quantity per application
Note to	Group		(t)	(t)
(1)	(2)	(3)	(4)	(5)
16	Not specifically provided for (NSPF)	16 - Tokyo	908,877	363,550
		16 - Uruguay	2 346,000	938,400
17	Blue Mould	17	300,000	120,000
18	Cheddar	18	1 000,000	400,000
19	American type	19	100,000	40,000
20	Edam/Gouda	20	1 000,000	400,000
21	Italian type	21	700,000	280,000
22	Swiss or Emmenthaler cheese other than with eye formation	22 - Tokyo	393,006	157,202
		22 - Uruguay	380,000	152,000
25	Swiss or Emmenthaler cheese with eye formation	25 - Tokyo	4 003,172	1 601,268
		25 - Uruguay	1 220,000	488,000

ANNEX II

Presentation of details required pursuant to Article 20(2) of Regulation (EC) No 174/1999

Identification of the United States of America quota group applied for

Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1471/2003

Name of group indicated in column 2 of Annex I to Regulation (EC) No 1471/2003:

Origin of quota: Uruguay Round/Tokyo Round ⁽¹⁾

Name/address of applicant	Refund Nomenclature product code	Quantity applied for	Export to the United States of America				Harmonised Tariff Schedule of the USA code	Name/address of designated importer	Importer is branch of applicant	
			2000	2001	2002	Average 2000 to 2002			Yes	No
Total										

⁽¹⁾ Delete where applicable.

ANNEX III

Notification by Member State in accordance with Article 3 of Regulation (EC) No 1471/2003

Identification of the United States of America quota group applied for

Identification of group and quota referred to in column 3 of Annex I to Regulation (EC) No 1471/2003

Name of group indicated in column 2 of Annex I to Regulation (EC) No 1471/2003:

Origin of quota: Uruguay Round/Tokyo Round ⁽¹⁾

No	Name/address of applicant	Refund Nomenclature product code	Quantity applied for	Export to the United States of America				Harmonised Tariff Schedule of the USA code	Name/address of designated importer	Importer is subsidiary of applicant	
				2000	2001	2002	Average 2000 to 2002			Yes	No
1											
		Total									
2											
		Total									
3											
		Total									
4											
		Total									

⁽¹⁾ Delete where applicable.

COMMISSION REGULATION (EC) No 1472/2003**of 20 August 2003****opening and providing for the management of a Community tariff quota for grape juice and must as from the 2003/2004 marketing year**

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 806/2003 ⁽²⁾, and in particular Article 62(1) thereof,

Whereas:

- (1) Pursuant to the Agreement concluded as part of the World Trade Organisation multilateral trade negotiations, the Community undertook to open an annual tariff quota for the importation of 14 000 tonnes of grape juice and must.
- (2) Commission Regulation (EC) No 2012/96 opening and providing for the administration of a Community tariff quota for grape juice and must as from the 1996/97 marketing year ⁽³⁾, as amended by Regulation (EC) No 2499/97 ⁽⁴⁾, provided for the management of this quota on the basis of the delivery of import licences.
- (3) The management of this quota should be improved in the interest of administrative simplification and efficiency. Experience in the use of the first-come-first-served management system has been positive with other tariff quotas in the wine sector. The tariff quota for grape juice and grape must should therefore be managed in conformity with Article 62(2)(a) of Regulation (EC) No 1493/1999, and on the basis of Articles 308a, 308b and 308c of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code ⁽⁵⁾, as last amended by Regulation (EC) 1335/2003 ⁽⁶⁾.
- (4) The benefit from the tariff quota is subject to a specific end-use. Supervision of compliance with the provisions concerning the end-use should be carried out by the customs authorities in accordance with the provisions of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ⁽⁷⁾, as last amended by Regulation (EC) No 2700/2000 ⁽⁸⁾ and Regulation No 2454/93 as regards goods which are released for free circulation at a reduced rate of duty on account of their end-use.

Given the considerable reduction of the customs duties involved and the related financial risk in case of non-compliance with these rules, it is appropriate to make mandatory the requirement to lodge security covering this risk. According to the rules of Community customs legislation, the customs authorities require a single security to cover the financial risk related to any potential customs debt in respect of the goods concerned.

- (5) It is therefore appropriate to repeal Regulation (EC) No 2012/96 and to replace it with a new one.
- (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***Opening of the tariff quota**

1. A tariff quota for the importation of 14 000 tonnes of grape juice and must falling within CN codes 2009 61 90, 2009 69 11, 2009 69 19, 2009 69 51 and 2009 69 90 (hereinafter 'the tariff quota'), shall be opened each year for a period running from 1 September to 31 August of the following year.

The tariff quota shall bear the number 09.0067.

2. The grape juice and must referred to in paragraph 1 shall be used for the production of grape juice and/or non-wine sector products such as non-alcoholic drinks, jams and sauces.

The transformation of this grape juice and must shall take place within six months following the release for free circulation of the products concerned.

*Article 2***Management of the tariff quota**

The tariff quota shall be managed on a first-come-first-served basis in accordance with Articles 308a, 308b and 308c of Regulation (EEC) No 2454/93.

⁽¹⁾ OJ L 179, 14.7.1999, p. 1.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 269, 22.10.1996, p. 8.

⁽⁴⁾ OJ L 345, 16.12.1997, p. 15.

⁽⁵⁾ OJ L 253, 11.10.1993, p. 1.

⁽⁶⁾ OJ L 187, 26.7.2003, p. 16.

⁽⁷⁾ OJ L 302, 19.10.1992, p. 1.

⁽⁸⁾ OJ L 311, 12.12.2000, p. 17.

*Article 3***Customs duties**

The customs duties applicable within the tariff quota shall be the *ad valorem* duties indicated for each CN code and, in respect of the products falling within CN code 2009 69 11, the specific duty expressed in euro/kg provided for in the Common Customs Tariff of the European Communities.

*Article 4***Supervision of the end-use**

In order to obtain the benefit of the tariff quota, the goods concerned shall remain under customs supervision as set out in Article 82 of Regulation (EEC) No 2913/92 and Articles 291 to 300 of Regulation (EEC) No 2454/93.

By way of derogation from Article 293(1)(e) of Regulation (EEC) No 2454/93, the lodging of security shall be mandatory. It shall cover the difference of duty between the *erga omnes* third-country duty rate and the duty rate within the tariff quota, as set out in Article 3 of this Regulation.

*Article 5***Repeal**

Regulation (EC) No 2012/96 is hereby repealed.

*Article 6***Entry into force**

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

It shall apply from 1 September 2003.

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

Done at Brussels, 20 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission

**COMMISSION REGULATION (EC) No 1473/2003
of 20 August 2003**

amending Regulation (EC) No 2342/1999 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 on the common organisation of the market in beef and veal as regards premium schemes

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾, as last amended by Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 20 thereof,

Whereas:

- (1) Article 41 of Commission Regulation (EC) No 2342/1999 of 28 October 1999 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 on the common organisation of the market in beef and veal as regards premium schemes ⁽³⁾, as last amended by Regulation (EC) No 2381/2002 ⁽⁴⁾, lays down certain rules relating to the payment of advances. Due to exceptionally unfavourable weather conditions characterised by an intense and prolonged drought, producers in some Member States do not have enough fodder to feed the livestock on their farms. In order to allow those producers to meet the additional financial charges resulting in particular from the need to buy additional fodder, an increase in the amount of the advance for the beef special premium, the suckler cow premium, the slaughter premium and the additional payments should be authorised.

- (2) Under these circumstances, Regulation (EC) No 2342/1999 should be amended.

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

HAS ADOPTED THIS REGULATION:

Article 1

The last subparagraph of Article 41(1), regulation (EC) No 2342/1999 is replaced by the following:

'However, as regards the 2000, 2001, 2002 and 2003 calendar years, the advance on the beef special premium, the suckler cow premium, the slaughter premium and the additional payments may be paid at a rate of up to 80 % of the amount of those premiums or of those payments.'

Article 2

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

It shall apply from 16 October 2003.

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

Done at Brussels, 20 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 21.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 281, 4.11.1999, p. 30.

⁽⁴⁾ OJ L 358, 31.12.2002, p. 119.

**COMMISSION REGULATION (EC) No 1474/2003
of 20 August 2003**

setting, for the 2003/04 marketing year, the amount of aid for the cultivation of grapes intended for the production of certain varieties of dried grapes and of aid for replanting vineyards affected by phylloxera

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products ⁽¹⁾, as last amended by Commission Regulation (EC) No 453/2002 ⁽²⁾, and in particular Article 7(5) thereof,

Whereas:

- (1) The second subparagraph of Article 7(1) of Regulation (EC) No 2201/96 establishes the criteria for setting the aid for the cultivation of grapes intended for the production of dried grapes of the sultana and Muscatel varieties and currants.
- (2) The third subparagraph of Article 7(1) of that Regulation states that the amount of aid may be differentiated according to grape variety. It also states that that amount may also be differentiated according to other factors which may affect yields. In the case of sultanas an additional differentiation should therefore be provided for, between areas affected by phylloxera and other areas.
- (3) For the 2002/03 marketing year, verification of the areas used to grow the grapes referred to in the first subparagraph of Article 7(1) Regulation (EC) No 2201/96 has revealed no overrun of the maximum guaranteed area laid down in Article 2(1) of Commission Regulation (EC) No 1621/1999 of 22 July 1999 laying down detailed rules for the application of Council Regulation (EC) No 2201/96 as regards the aid for the cultivation of grapes to produce certain varieties of dried grapes ⁽³⁾, as last amended by Regulation (EC) No 1880/2001 ⁽⁴⁾.
- (4) The aid for the cultivation of those grapes should be determined for the 2003/04 marketing year.

(5) The aid to be granted to producers replanting their vineyards in order to combat phylloxera under the conditions provided for in Article 7(4) of Regulation (EC) No 2201/96 should also be determined.

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

HAS ADOPTED THIS REGULATION:

Article 1

1. For the 2003/04 marketing year the cultivation aid referred to in Article 7(1) of Regulation (EC) No 2201/96 shall be:

- (a) EUR 2 806 per hectare for areas under sultana grapes affected by phylloxera or replanted within the last five years,
- (b) EUR 3 847 per hectare for other areas under sultana grapes,
- (c) EUR 3 391 per hectare for areas under currant grapes,
- (d) EUR 969 per hectare for areas under Muscatel grapes.

2. For the 2003/04 marketing year the replanting aid referred to in Article 7(4) of Regulation (EC) No 2201/96 shall be EUR 3 917 per hectare.

3. In accordance with the second sentence of Article 7(4) of Regulation (EC) No 2201/96, the aid set in paragraph 1 shall not be paid where the aid set in paragraph 2 is paid.

Article 2

This Regulation shall enter into force on the third 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, 20 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 297, 21.11.1996, p. 29.

⁽²⁾ OJ L 72, 14.3.2002, p. 9.

⁽³⁾ OJ L 192, 24.7.1999, p. 21.

⁽⁴⁾ OJ L 258, 27.9.2001, p. 14.

COMMISSION REGULATION (EC) No 1475/2003

of 20 August 2003

on the protection of deep-water coral reefs from the effects of trawling in an area north west of Scotland

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) In accordance with Regulation (EC) No 2371/2002, the common fisheries policy is to apply the precautionary approach in taking measures to minimise the impact of fishing activities on marine ecosystems.
- (2) According to recent scientific reports, and in particular the reports of the International Council for the Exploration of the Sea, aggregations of deep-water corals (*Lophelia pertusa*) have been found and mapped in an area north west of Scotland falling within the jurisdiction of the United Kingdom. Those aggregations, known as the 'Darwin Mounds', appear to be in good conservation status but show signs of damage due to bottom-trawling operations.
- (3) Scientific reports show that such aggregations constitute habitats that host important and highly diverse biological communities. Those habitats are widely recognised as requiring priority protection. In particular, the Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention) has recently included deep-water coral reefs in a list of endangered habitats.
- (4) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽²⁾, as last amended by Directive 97/62/EC ⁽³⁾, includes reefs within the natural habitats of Community interest whose conservation requires the designation of special areas of conservation. The United Kingdom has formally expressed its intention to designate the Darwin Mounds as a special area of conservation with a view to protecting that type of habitat in fulfilment of its obligations under that Directive.

(5) The United Kingdom has called the attention of the Commission to the fact that some trawlers, in pursuing moving concentrations of deep-water fish, may concentrate in the area of the Darwin Mounds and inflict irreparable damage on these deep-water habitats.

(6) The United Kingdom has therefore requested that emergency measures be adopted under Regulation (EC) No 2371/2002 to prohibit the use of bottom-trawls in the abovementioned coral aggregations. The United Kingdom has communicated its request to the other Member States, which have not sent any comment to the Commission within the deadline.

(7) In the light of the evidence provided by the United Kingdom, it must be concluded that the conservation of the habitat in question is under serious threat and that immediate action is required. Significant fishing activities using bottom-trawls would continue in the area concerned over the coming months, before any measures could be adopted by the Council; it is therefore appropriate immediately to prohibit with immediate effect the use of bottom-trawls in the abovementioned coral aggregations by way of the emergency measures under Regulation (EC) No 2371/2002,

HAS ADOPTED THIS REGULATION:

Article 1

Vessels shall be prohibited from using bottom-trawl or similar towed nets operating in contact with the bottom of the sea in the area bounded by a line joining the following coordinates:

Latitude 59° 54' N longitude 7° 39' W

Latitude 59° 54' N longitude 6° 47' W

Latitude 59° 37' N longitude 6° 47' W

Latitude 59° 37' N longitude 7° 39' W

Article 2

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

It shall apply for six months.

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 206, 22.7.1992, p. 7.

⁽³⁾ OJ L 305, 8.11.1997, p. 42.

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

Done at Brussels, 20 August 2003.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 1476/2003
of 20 August 2003
prohibiting fishing for blue ling by vessels flying the flag of Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy ⁽¹⁾, as last amended by Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 2341/2002 of 20 December 2002 fixing for 2003 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required ⁽³⁾, as last amended by Regulation (EC) No 1407/2003 ⁽⁴⁾, lays down quotas for blue ling for 2003.
- (2) In order to ensure compliance with the provisions relating to the quantity limits on catches of stocks subject to quotas, the Commission must fix the date by which catches made by vessels flying the flag of a Member State are deemed to have exhausted the quota allocated.
- (3) According to the information received by the Commission, catches of blue ling in the waters of ICES divisions VI and VII (EC waters and waters not falling under the sovereignty or within the jurisdiction of third countries), by vessels flying the flag of Spain or registered in Spain

have exhausted the quota allocated for 2003. Spain has prohibited fishing for this stock from 11 August 2003. This date should consequently be adopted in this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Catches of blue ling in the waters of ICES divisions VI and VII (EC waters and waters not falling under the sovereignty or within the jurisdiction of third countries), by vessels flying the flag of Spain or registered in Spain are hereby deemed to have exhausted the quota allocated to Spain for 2003.

Fishing for blue ling in the waters of ICES divisions VI and VII (EC waters and waters not falling under the sovereignty or within the jurisdiction of third countries), by vessels flying the flag of Spain or registered in Spain is hereby prohibited, as are the retention on board, transshipment and landing of this stock caught by the above vessels after the date of application of this Regulation.

Article 2

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

It shall apply from 11 August 2003.

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

Done at Brussels, 20 August 2003.

For the Commission
Jörgen HOLMQUIST
Director-General for Fisheries

⁽¹⁾ OJ L 261, 20.10.1993, p. 1.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ OJ L 356, 31.12.2002, p. 12.

⁽⁴⁾ OJ L 201, 8.8.2003, p. 3.

COMMISSION REGULATION (EC) No 1477/2003
of 20 August 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 26,018/100 kg.

Article 2

This Regulation shall enter into force on 21 August 2003.

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

Done at Brussels, 20 August 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 1478/2003
of 20 August 2003
fixing the import duties in the rice sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1503/96 of 29 July 1996 laying down detailed rules for the application of Council Regulation (EC) No 3072/95 as regards import duties in the rice sector ⁽³⁾, as last amended by Regulation (EC) No 1298/2002 ⁽⁴⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Article 11 of Regulation (EC) No 3072/95 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by a certain percentage according to whether it is husked or milled rice, minus the cif import price provided that duty does not exceed the rate of the Common Customs Tariff duties.
- (2) Pursuant to Article 12(3) of Regulation (EC) No 3072/95, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market or on the Community import market for the product.
- (3) Regulation (EC) No 1503/96 lays down detailed rules for the application of Regulation (EC) No 3072/95 as regards import duties in the rice sector.

- (4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available from the source referred to in Article 5 of Regulation (EC) No 1503/96 during the two weeks preceding the next periodical fixing.
- (5) In order to allow the import duty system to function normally, the market rates recorded during a reference period should be used for calculating the duties.
- (6) Application of the second subparagraph of Article 4(1) of Regulation (EC) No 1503/96 results in an adjustment of the import duties that have been fixed as from 15 May 2003 by Commission Regulation (EC) No 832/2003 ⁽⁵⁾ as set out in the Annexes to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the rice sector referred to in Article 11(1) and (2) of Regulation (EC) No 3072/95 shall be adjusted in compliance with Article 4 of Regulation (EC) No 1503/96 and fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 21 August 2003.

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

Done at Brussels, 20 August 2003.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18.

⁽²⁾ OJ L 62, 5.3.2002, p. 27.

⁽³⁾ OJ L 189, 30.7.1996, p. 71.

⁽⁴⁾ OJ L 189, 18.7.2002, p. 8.

⁽⁵⁾ OJ L 120, 15.5.2003, p. 15.

ANNEX I

Import duties on rice and broken rice

(EUR/t)

CN code	Duties ⁽⁵⁾				
	Third countries (except ACP and Bangla- desh) ⁽⁷⁾	ACP ⁽¹⁾ ⁽²⁾ ⁽³⁾	Bangladesh ⁽⁴⁾	Basmati India and Pakistan ⁽⁶⁾	Egypt ⁽⁸⁾
1006 10 21	(7)	69,51	101,16		158,25
1006 10 23	(7)	69,51	101,16		158,25
1006 10 25	(7)	69,51	101,16		158,25
1006 10 27	(7)	69,51	101,16		158,25
1006 10 92	(7)	69,51	101,16		158,25
1006 10 94	(7)	69,51	101,16		158,25
1006 10 96	(7)	69,51	101,16		158,25
1006 10 98	(7)	69,51	101,16		158,25
1006 20 11	264,00	88,06	127,66		198,00
1006 20 13	264,00	88,06	127,66		198,00
1006 20 15	264,00	88,06	127,66		198,00
1006 20 17	264,00	88,06	127,66	14,00	198,00
1006 20 92	264,00	88,06	127,66		198,00
1006 20 94	264,00	88,06	127,66		198,00
1006 20 96	264,00	88,06	127,66		198,00
1006 20 98	264,00	88,06	127,66	14,00	198,00
1006 30 21	(7)	133,21	193,09		312,00
1006 30 23	(7)	133,21	193,09		312,00
1006 30 25	(7)	133,21	193,09		312,00
1006 30 27	(7)	133,21	193,09		312,00
1006 30 42	(7)	133,21	193,09		312,00
1006 30 44	(7)	133,21	193,09		312,00
1006 30 46	(7)	133,21	193,09		312,00
1006 30 48	(7)	133,21	193,09		312,00
1006 30 61	(7)	133,21	193,09		312,00
1006 30 63	(7)	133,21	193,09		312,00
1006 30 65	(7)	133,21	193,09		312,00
1006 30 67	(7)	133,21	193,09		312,00
1006 30 92	(7)	133,21	193,09		312,00
1006 30 94	(7)	133,21	193,09		312,00
1006 30 96	(7)	133,21	193,09		312,00
1006 30 98	(7)	133,21	193,09		312,00
1006 40 00	(7)	41,18	(7)		96,00

⁽¹⁾ The duty on imports of rice originating in the ACP States is applicable, under the arrangements laid down in Council Regulation (EC) No 2286/2002 (OJ L 345, 10.12.2002, p. 5) and amended Commission Regulation (EC) No 638/2003 (OJ L 93, 9.4.2003, p. 3).

⁽²⁾ In accordance with Regulation (EC) No 1706/98, the duties are not applied to products originating in the African, Caribbean and Pacific States and imported directly into the overseas department of Réunion.

⁽³⁾ The import levy on rice entering the overseas department of Réunion is specified in Article 11(3) of Regulation (EC) No 3072/95.

⁽⁴⁾ The duty on imports of rice not including broken rice (CN code 1006 40 00), originating in Bangladesh is applicable under the arrangements laid down in Council Regulation (EEC) No 3491/90 (OJ L 337, 4.12.1990, p. 1) and amended Commission Regulation (EEC) No 862/91 (OJ L 88, 9.4.1991, p. 7).

⁽⁵⁾ No import duty applies to products originating in the OCT pursuant to Article 101(1) of amended Council Decision 91/482/EEC (OJ L 263, 19.9.1991, p. 1).

⁽⁶⁾ For husked rice of the Basmati variety originating in India and Pakistan, a reduction of EUR/t 250 applies (Article 4a of amended Regulation (EC) No 1503/96).

⁽⁷⁾ Duties fixed in the Common Customs Tariff.

⁽⁸⁾ The duty on imports of rice originating in and coming from Egypt is applicable under the arrangements laid down in Council Regulation (EC) No 2184/96 (OJ L 292, 15.11.1996, p. 1) and Commission Regulation (EC) No 196/97 (OJ L 31, 1.2.1997, p. 53).

ANNEX II

Calculation of import duties for rice

	Paddy	Indica rice		Japonica rice		Broken rice
		Husked	Milled	Husked	Milled	
1. Import duty (EUR/tonne)	(¹)	264,00	416,00	264,00	416,00	(¹)
2. Elements of calculation:						
(a) Arag cif price (EUR/tonne)	—	273,71	209,43	246,28	306,06	—
(b) fob price (EUR/tonne)	—	—	—	219,17	278,95	—
(c) Sea freight (EUR/tonne)	—	—	—	27,11	27,11	—
(d) Source	—	USDA and operators	USDA and operators	Operators	Operators	—

(¹) Duties fixed in the Common Customs Tariff.

COMMISSION REGULATION (EC) No 1479/2003
of 20 August 2003
amending the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1104/2003 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector ⁽³⁾, as last amended by Regulation (EC) No 1110/2003 ⁽⁴⁾, and in particular Article 2(1) thereof,

Whereas:

- (1) The import duties in the cereals sector are fixed by Commission Regulation (EC) No 1448/2003 ⁽⁵⁾, as amended by Regulation (EC) No 1468/2003 ⁽⁶⁾.

- (2) Article 2(1) of Regulation (EC) No 1249/96 provides that if during the period of application, the average import duty calculated differs by EUR 5 per tonne from the duty fixed, a corresponding adjustment is to be made. Such a difference has arisen. It is therefore necessary to adjust the import duties fixed in Regulation (EC) No 1448/2003,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes I and II to the amended Regulation (EC) No 1448/2003 are hereby replaced by Annexes I and II to this Regulation.

Article 2

This Regulation shall enter into force on 21 August 2003.

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

Done at Brussels, 20 August 2003.

For the Commission
J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 158, 27.6.2003, p. 1.

⁽³⁾ OJ L 161, 29.6.1996, p. 125.

⁽⁴⁾ OJ L 158, 27.6.2003, p. 12.

⁽⁵⁾ OJ L 206, 15.8.2003, p. 8.

⁽⁶⁾ OJ L 210, 20.8.2003, p. 13.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty ⁽¹⁾ (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality	0,00
	low quality	0,00
1001 90 91	Common wheat seed	0,00
ex 1001 90 99	Common high quality wheat other than for sowing	0,00
1002 00 00	Rye	14,55
1005 10 90	Maize seed other than hybrid	58,43
1005 90 00	Maize other than seed ⁽²⁾	58,43
1007 00 90	Grain sorghum other than hybrids for sowing	24,64

⁽¹⁾ For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

⁽²⁾ The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 14 August to 19 August 2003)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Chicago	Minneapolis	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	YC3	HAD2	Medium quality (*)	Low quality (**)	US barley 2
Quotation (EUR/t)	1 34,48 (****)	78,15	169,67 (***)	159,67 (***)	139,67 (***)	115,00 (***)
Gulf premium (EUR/t)	—	12,44	—	—	—	—
Great Lakes premium (EUR/t)	22,99	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(3) of Regulation (EC) No 1249/96).

(**) A discount of 30 EUR/t (Article 4(3) of Regulation (EC) No 2378/2002).

(***) Fob Duluth.

(****) Premium of 14 EUR/t incorporated (Article 4(3) of Regulation (EC) No 1249/96).

2. Averages over the two-week period preceding the day of fixing:

Freight/cost: Gulf of Mexico–Rotterdam: 18,10 EUR/t; Great Lakes–Rotterdam: 27,47 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

COMMISSION DIRECTIVE 2003/77/EC
of 11 August 2003
amending Directives 97/24/EC and 2002/24/EC of the European Parliament and of the Council
relating to the type-approval of two- or three-wheel motor vehicles
(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two- and three-wheel motor vehicles and repealing Council Directive 92/61/EEC ⁽¹⁾, and in particular Article 17 thereof,

Having regard to Directive 97/24/EC of the European Parliament and of the Council of 17 June 1997 on certain components and characteristics of two- or three-wheel motor vehicles ⁽²⁾, as amended by Directive 2002/51/EC ⁽³⁾, and in particular Article 7 thereof,

Whereas:

- (1) Directive 97/24/EC is one of the separate Directives for the purposes of the EC type-approval procedure laid down by Council Directive 92/61/EEC ⁽⁴⁾, which is to be repealed by Directive 2002/24/EC with effect from 9 November 2003.
- (2) Directive 2002/51/EC of the European Parliament and of the Council of 19 July 2002 on the reduction of the level of pollutant emissions from two- and three-wheel motor vehicles and amending Directive 97/24/EC introduced new emission limit values for two-wheel motorcycles. Those limit values are applicable in two stages, the first stage with effect from 1 April 2003 for any type of vehicle and the second stage with effect from 1 January 2006 for new types. For the second stage, the measurement of pollutant emissions from two-wheel motorcycles is based on the use of the elementary urban test cycle laid down in UN-ECE Regulation No 40 and the extra-urban driving cycle laid down in Council Directive 70/220/EEC of 20 March 1970 on the approximation of the laws of the Member States on measures to be taken against air pollution by gases from motor vehicles ⁽⁵⁾, as last amended by Commission Directive 2002/80/EC ⁽⁶⁾.
- (3) Directive 97/24/EC, as amended by Directive 2002/51/EC, specified the Type I test cycle for measuring pollutant emissions from two- and three-wheel motor vehicles. That test cycle should be completed by the

Commission, through the Committee for Adaptation to Technical Progress established by Article 13 of Directive 70/156/EEC, and should be applicable from 2006.

- (4) It is necessary to clarify certain aspects of the Type II test data for annual roadworthiness testing, as required by Directive 2002/51/EC, and to provide for the recording of that test data in Annex VII to Directive 2002/24/EC.
- (5) Directives 97/24/EC and 2002/24/EC should therefore be amended accordingly.
- (6) The measures provided for in this Directive are in accordance with the opinion of the Committee for Adaptation to Technical Progress,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex II to Chapter 5 of Directive 97/24/EC is amended in accordance with Annex I to this Directive.

Article 2

Annex VII to Directive 2002/24/EC is amended in accordance with Annex II to this Directive.

Article 3

1. Member States shall adopt and publish, by 4 September 2004 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 4 September 2004.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

⁽¹⁾ OJ L 124, 9.5.2002, p. 1.

⁽²⁾ OJ L 226, 18.8.1997, p. 1.

⁽³⁾ OJ L 252, 20.9.2002, p. 20.

⁽⁴⁾ OJ L 225, 10.8.1992, p. 72.

⁽⁵⁾ OJ L 76, 6.4.1970, p. 1.

⁽⁶⁾ OJ L 291, 28.10.2002, p. 20.

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels, 11 August 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission

ANNEX I

Annex II to Chapter 5 of Directive 97/24/EC is amended as follows:

1. Section 2.2.1.1 is replaced by the following:

‘2.2.1.1. Type I test (checking the average value of tailpipe emissions)

For vehicle types tested against the emission limits given in row A of the Table in section 2.2.1.1.5:

- the test shall be conducted by carrying out two elementary urban cycles for pre-conditioning and four elementary urban cycles for emission sampling. The emission sampling shall begin immediately on conclusion of the final idling period of the pre-conditioning cycles and end on conclusion of the final idling period of the last elementary urban cycle.

For vehicle types tested against the emission limits given in row B of the table in section 2.2.1.1.5:

- for vehicle types with an engine capacity less than 150 cm³, the test shall be conducted by carrying out six elementary urban cycles. The emission sampling shall begin before or at the initiation of the engine start-up procedure and end on conclusion of the final idling period of the last elementary urban cycle;
- for vehicle types with an engine capacity greater than or equal to 150 cm³, the test shall be conducted by carrying out six elementary urban cycles and one extra-urban cycle. The emission sampling shall begin before or at the initiation of the engine start-up procedure and end on conclusion of the final idling period of the extra-urban cycle.’

2. The following section 2.2.1.1.7 is added:

‘2.2.1.1.7. The recorded data are completed in the relevant sections of the document referred to in Annex VII of Directive 2002/24/EC.’

3. Section 2.2.1.2.4 is replaced by the following:

‘2.2.1.2.4. The engine oil temperature at the time of the test must be recorded (applicable for 4-stroke engines only).’

4. Section 2.2.1.2.5 is replaced by the following:

‘2.2.1.2.5. The recorded data are completed in the relevant sections of the document referred to in Annex VII to Directive 2002/24/EC.’

5. Footnote (*) in the Table in section 2.2.1.1.5. is deleted.

6. The title of Appendix 1 is replaced by the following:

‘Type I test (for vehicles tested against the emission limits laid down in Row A of the Table in section 2.2.1.1.5 of this Annex)

(checking the average emission of pollutants).’

7. The following Appendix 1a is inserted:

‘Appendix 1a

Type I test (for vehicles tested against the emission limits laid down in Row B of the Table in section 2.2.1.1.5 of this Annex)

(checking the average emission of pollutants)

1. INTRODUCTION

Procedure for Type I test specified in section 2.2.1.1 of Annex II.

- 1.1. The motorcycle or motor tricycle is placed on a dynamometer equipped with a brake and flywheel. A test conducted over six elementary urban cycles lasting a total of 1 170 seconds for class I motorcycles or a test conducted over six elementary urban cycles plus one extra-urban cycle lasting a total of 1 570 seconds for class II motorcycles is carried out without interruption.

During the test the exhaust gases are diluted with air so that the flow volume of the mixture remains constant. Throughout the test a continuous flow of samples of the mixture must be passed into one or more bags so that concentrations (average test values) of carbon monoxide, unburnt hydrocarbons, oxides of nitrogen and carbon dioxide can be determined in succession.

2. OPERATING CYCLE ON THE DYNAMOMETER

2.1. **Description of cycle**

The operating cycles on the dynamometer are indicated in sub-Appendix 1.

2.2. General conditions for carrying out the cycle

Preliminary test cycles must be carried out if necessary to determine how best to actuate the accelerator and brake controls so as to achieve a cycle approximating to the theoretical cycle within the prescribed limits.

2.3. Use of the gearbox

2.3.1. Use of the gearbox is determined as follows:

2.3.1.1. At constant speed, the engine speed must as far as possible remain between 50 % and 90 % of the maximum speed. If this speed can be achieved using more than one gear, the engine is tested using the highest gear.

2.3.1.2. With respect to the urban cycle, during acceleration the engine must be tested using the gear which allows maximum acceleration. The next higher gear is engaged, at the latest, when the engine speed has reached 110 % of the speed at which the maximum rated power output occurs. If a motorcycle or motor tricycle reaches a speed of 20 km/h in first gear or 35 km/h in second gear, the next higher gear must be engaged at these speeds.

In these cases, no other change into higher gears is permitted. If, during the acceleration phase, the gears are changed at fixed motorcycle or motor tricycle speeds, the steady speed phase which follows must be performed with the gear which is engaged when the motorcycle or motor tricycle begins the steady speed phase, irrespective of the engine speed.

2.3.1.3. During deceleration, the next lower gear must be engaged before the engine reaches virtual idling speed or when the engine speed has fallen to 30 % of the speed of the maximum rated output, whichever occurs first. First gear must not be engaged during deceleration.

2.3.2. Motorcycles or motor tricycles equipped with automatic gearboxes are tested with the highest gear engaged (drive). The accelerator must be operated in such a way as to obtain as steady an acceleration as possible so that the transmission engages the different gears in the normal order. The tolerances specified in section 2.4 apply.

2.3.3. For carrying out the extra-urban cycle, the gearbox shall be used according to the manufacturer's recommendations.

The gear change points shown in Appendix 1 to this Annex do not apply; acceleration must continue throughout the period represented by the straight line connecting the end of each period of idling with the beginning of the next following period of steady speed. The tolerances given in section 2.4 apply.

2.4. Tolerances

2.4.1. The theoretical speed shall be maintained to a tolerance of ± 2 km/h during all phases. Speed tolerances greater than those prescribed are permitted during phase changes provided that the tolerances are never exceeded for more than 0,5 seconds on any one occasion, in all cases subject to the provisions of sections 6.5.2 and 6.6.3.

2.4.2. A tolerance of $\pm 0,5$ seconds above or below the theoretical times must be allowed.

2.4.3. The speed and time tolerances are combined as indicated in sub-Appendix 1.

2.4.4. The distance travelled during the cycle must be measured with a tolerance of ± 2 %.

3. MOTORCYCLE OR MOTOR TRICYCLE AND FUEL**3.1. Test motorcycle or motor tricycle**

3.1.1. The motorcycle or motor tricycle must be presented in good mechanical condition. It should have been run in and driven at least 1 000 km before the test. The laboratory may decide whether a motorcycle or motor tricycle which has travelled less than 1 000 km before the test may be accepted.

- 3.1.2. The exhaust device must not have any leaks likely to reduce the quantity of gases collected, which must equal the quantity of gases emerging from the engine.
- 3.1.3. The tightness of the intake system may be checked to ensure the carburation is not affected by an accidental intake of air.
- 3.1.4. The settings of the motorcycle or motor tricycle must be as prescribed by the manufacturer.
- 3.1.5. The laboratory may verify that the motorcycle or motor tricycle delivers the performance stated by the manufacturer, that it can be used for normal driving, and more particularly that it is capable of starting when cold and when hot.

3.2. **Fuel**

The fuel used for the test must be the reference fuel as defined in Annex IV. If the engine is lubricated by a mixture, the oil added to the reference fuel must comply as to quality and quantity with the manufacturer's recommendations.

4. TEST EQUIPMENT

4.1. **Dynamometer**

The main characteristics of the dynamometer are as follows:

Contact between roller and tyre of each driving wheel:

- diameter of roller ≥ 400 mm;
- Equation for power-absorption curve: from an initial speed of 12 km/h, the test bench must be able to reproduce, with a tolerance of ± 15 %, the power developed by the engine when the motorcycle or motor tricycle is travelling along a flat road with wind speed virtually zero. Either the power absorbed by the brakes and the internal friction of the bench must be calculated according to the provisions of section 11 of sub-Appendix 4 to Appendix 1, or the power absorbed by the brakes and the internal friction of the bench are:
- $K V^3 \pm 5$ % of P_{V50}
- Additional inertias: 10 kg and 10 kg ⁽¹⁾.

- 4.1.1. The distance effectively travelled is measured using a revolution counter driven by the roller which drives the brake and the flywheels.

4.2. **Equipment for sampling the gases and measuring their volume**

- 4.2.1. Sub-Appendices 2 and 3 of Appendix 1 contain a diagram showing the principle for collecting, diluting, sampling and measuring the volume of exhaust gases during the test.
- 4.2.2. The following sections describe the components of the test equipment (against each component is given the abbreviation used in the sketch in sub-Appendices 2 and 3 of Appendix 1). The technical service may authorise the use of different equipment provided that it gives equivalent results:
 - 4.2.2.1. a device to collect all the exhaust gases produced during the test; this is generally an open device, which maintains atmospheric pressure at the exhaust pipe(s). Nevertheless, a closed system may be used provided that the back-pressure conditions are complied with ($\pm 1,25$ kPa). The gases must be collected in such a way that there is not sufficient condensation to have a significant effect on the nature of the exhaust gases at the test temperature;
 - 4.2.2.2. a tube (Tu) connecting the exhaust-gas collection equipment and the exhaust-gas sampling system. This connecting tube and the gas-collection equipment must be made of stainless steel, or of another material which will not affect the composition of the gases collected and will resist their temperature;
 - 4.2.2.3. a heat exchanger (S_e) capable of limiting the variation in the temperature of the diluted gases at the pump inlet to within ± 5 °C for the duration of the test. This exchanger must be equipped with a pre-heating system capable of bringing the gases up to operating temperature (± 5 °C) before the test commences;

⁽¹⁾ These are additional masses which may, where appropriate, be replaced by an electronic device, provided that the equivalence of the results is demonstrated.

- 4.2.2.4. a displacement pump (P_1) to suck in the diluted gases driven by a motor which can operate at various rigorously constant speeds. The pump must guarantee constant flow of a sufficient volume in order to ensure that all the exhaust gases are sucked in. A device which uses a critical flow venturi may also be used;
- 4.2.2.5. a device which can continually record the temperature of the diluted gases entering the pump;
- 4.2.2.6. a sampling probe (S_3) attached to the outside of the gas-collection device which can collect a constant sample of the dilution air using a pump, a filter and a flow meter for the duration of the test;
- 4.2.2.7. a sampling probe S_2 , placed before the displacement pump and directed upstream of the flow of diluted gases to sample the mixture of diluted gases for the duration of the test at a constant rate of flow using, if necessary, a filter, a flow meter and a pump. The minimum rate of flow of the gases in the two sampling systems described above must be at least 150 l/h;
- 4.2.2.8. two filters (F_2 and F_3), placed after probes S_2 and S_3 respectively, designed to filter out the solid particles suspended in the flow of the sample collected in the bags. Particular care must be taken to ensure that they do not affect the concentrations of gaseous components in the samples;
- 4.2.2.9. two pumps (P_2 and P_3) to take samples from probes S_2 and S_3 respectively and to fill bags S_a and S_b ;
- 4.2.2.10. two hand-adjustable valves (V_2 and V_3) installed in series with pumps P_2 and P_3 respectively in order to regulate the flow of the sample sent into the bags;
- 4.2.2.11. two rotameters (R_2 and R_3) installed in series in the lines "probe, filter, pump, valve, bag" (S_2 , F_2 , P_2 , V_2 , S_a and S_3 , F_3 , P_3 , V_3 , S_b respectively) so that instant visual checks can be made on the flow of the sample at any moment;
- 4.2.2.12. leak-tight sampling bags to collect the dilution air and mixture of diluted gases which are of sufficient capacity not to disrupt the normal flow of sampling. These sampling bags must have automatic sealing devices on the side of the bag which can be closed rapidly and tightly, either on the sampling circuit or on the analysis circuit at the end of the test;
- 4.2.2.13. two differential pressure manometers (g_1 and g_2) installed:
 - g_1 : before pump P_1 in order to measure the difference in pressure between the mixture of exhaust gases and dilution air and the atmosphere;
 - g_2 : before and after pump P_1 in order to measure the increase in pressure exerted on the flow of gas;
- 4.2.2.14. a revolution counter to count the number of revolutions made by the rotary displacement pump P_1 ;
- 4.2.2.15. three-way valves on the sampling circuits described above to direct the flow of samples either to the atmosphere or to their respective sampling bags for the duration of the test. Rapid-action valves must be used. They must be manufactured from materials which do not affect the composition of the gases; they must also have discharge cross-sections and shapes which minimise load losses as far as technically possible.

4.3. Analytical equipment

4.3.1. *Measuring the concentration of hydrocarbons*

- 4.3.1.1. A flame-ionisation analyser is used to measure the concentration of unburnt hydrocarbons in the samples collected in bags S_a and S_b , during the test.

4.3.2. *Measuring the concentrations of CO and CO₂*

- 4.3.2.1. A non-dispersive infra-red absorption analyser is used to measure the concentrations of carbon monoxide CO and carbon dioxide CO₂ in the samples collected in bags S_a and S_b during the test.

4.3.3. *Measuring the concentration of NO_x*

- 4.3.3.1. A chemiluminescent analyser is used to measure the concentrations of oxides of nitrogen (NO_x) in the samples collected in bags S_a and S_b during the test.

4.4. Accuracy of instruments and measurements

- 4.4.1. As the brake is calibrated in a separate test, it is not necessary to indicate the accuracy of the dynamometer. The total inertia of the rotating masses, including that of the rollers and the rotating part of the brake (see section 5.2), must be given to within $\pm 2\%$.
- 4.4.2. The speed of the motorcycle or motor tricycle is measured by the speed of rotation of the rollers connected to the brake and the flywheels. It must be measurable to within ± 2 km/h from 0 to 10 km/h and to within ± 1 km/h for speeds above 10 km/h.
- 4.4.3. The temperature referred to in section 4.2.2.5 must be measurable to within ± 1 °C. The temperature referred to in section 6.1.1 must be measurable to within ± 2 °C.
- 4.4.4. The atmospheric pressure must be measurable to within $\pm 0,133$ kPa.
- 4.4.5. The drop in pressure in the mixture of diluted gases entering pump P_1 (see section 4.2.2.13) compared with atmospheric pressure must be measurable to within $\pm 0,4$ kPa. The difference in pressure of the diluted gases entering the sections before and after pump P_1 (see section 4.2.2.13) must be measurable to within $\pm 0,4$ kPa.
- 4.4.6. The volume displaced at each complete rotation of pump P_1 and the displacement value at the lowest possible pump speed, as recorded by the revolution counter, must make it possible to determine the overall volume of the mixture of exhaust gases and dilution air displaced by pump P_1 during the test to within $\pm 2\%$.
- 4.4.7. Irrespective of the accuracy with which the standard gases are determined, the measuring range of the analysers must be compatible with the accuracy required to measure the content of the various pollutants to within $\pm 3\%$.
- The flame-ionisation analyser which measures the concentration of hydrocarbons must be capable of reaching 90 % of the full scale in less than one second.
- 4.4.8. The content of the standard (calibration) gases must not differ by more than $\pm 2\%$ from the reference value of each gas. The diluent must be nitrogen.

5. PREPARING THE TEST

5.1. Road test

5.1.1. Requirement for road

The test road shall be flat, level, straight and smoothly paved. The road surface shall be dry and free of obstacles or wind barriers that might impede the measurement of the running resistance. The slope shall not exceed 0,5 % between any two points at least 2 m apart.

5.1.2. Ambient conditions for road test

During data collecting periods, the wind shall be steady. The wind speed and the direction of the wind shall be measured continuously or with adequate frequency at a location where the wind force during coastdown is representative.

The ambient conditions shall be within the following limits:

- maximum wind speed: 3 m/s
- maximum wind speed for gusts: 5 m/s
- average wind speed, parallel: 3 m/s
- average wind speed, perpendicular: 2 m/s
- maximum relative humidity: 95 %
- air temperature: 278 K to 308 K

Standard ambient conditions shall be as follows:

- pressure, p_0 : 100 kPa
- temperature, T_0 : 293 K
- relative air density, d_0 : 0,9197
- wind speed: no wind
- air volumetric mass, ρ_0 : 1,189 kg/m³

The relative air density when the motorcycle is tested, calculated in accordance with the formula below, shall not differ by more than 7,5 % from the air density under the standard conditions.

The relative air density, d_T , shall be calculated by the formula:

$$d_T = d_0 \times \frac{p_T}{p_0} \times \frac{T_0}{T_T}$$

where

d_T = relative air density under test conditions;

p_T = ambient pressure under test conditions, in kilopascals;

T_T = absolute temperature during the test, in Kelvin.

5.1.3. *Reference speed*

The reference speed or speeds shall be as defined in the test cycle.

5.1.4. *Specified speed*

The specified speed, v , is required to prepare the running resistance curve. To determine the running resistance as a function of motorcycle speed in the vicinity of the reference speed v_0 , running resistances shall be measured using at least four specified speeds, including the reference speed(s). The range of specified speed points (the interval between the maximum and minimum points) shall extend either side of the reference speed or the reference speed range, if there is more than one reference speed, by at least Δv , as defined in 5.1.6. The specified speed points, including the reference speed point(s), shall be no greater than 20 km/h apart and the interval of specified speeds should be the same. From the running resistance curve the running resistance at the reference speed(s) can be calculated.

5.1.5. *Coastdown starting speed*

The coastdown starting speed shall be more than 5 km/h above the highest speed at which coastdown time measurement begins; since sufficient time is required, for example, to settle the positions of both the motorcycle and rider and to cut the transmitted engine power off before the speed is reduced to v_1 , the speed at which the measurement of the coastdown time is started.

5.1.6. *Coastdown time measurement beginning speed and ending speed*

To ensure accuracy in measuring the coastdown time Δt , and coastdown speed interval $2\Delta v$, the beginning speed v_1 , and ending speed v_2 , in kilometres per hour, the following requirements shall be met:

$$v_1 = v + \Delta v$$

$$v_2 = v - \Delta v$$

$$\Delta v = 5 \text{ km/h for } v < 60 \text{ km/h}$$

$$\Delta v = 10 \text{ km/h for } v \geq 60 \text{ km/h}$$

5.1.7. *Preparation of test motorcycle*

5.1.7.1. The motorcycle shall conform in all its components with the production series, or, if the motorcycle is different from the production series, a full description shall be given in the test report.

5.1.7.2. The engine, transmission and motorcycle shall be properly run in, in accordance with the manufacturer's requirements.

5.1.7.3. Motorcycle shall be adjusted in accordance with the manufacturer's requirements, e.g. the viscosity of the oils, tyre pressures, or, if the motorcycle is different from the production series, a full description shall be given in the test report.

- 5.1.7.4. The mass in running order of the motorcycle shall be as defined in section 1.2 of this Annex.
- 5.1.7.5. The total test mass including the masses of the rider and the instruments shall be measured before the beginning of the test.
- 5.1.7.6. The distribution of the load between the wheels shall be in conformity with the manufacturer's instructions.
- 5.1.7.7. When installing the measuring instruments on the test motorcycle, care shall be taken to minimise their effects on the distribution of the load between the wheels. When installing the speed sensor outside the motorcycle, care shall be taken to minimise the additional aerodynamic loss.

5.1.8. *Rider and riding position*

- 5.1.8.1. The rider shall wear a well-fitting suit (one-piece) or similar clothing, a protective helmet, eye protection, boots and gloves.
- 5.1.8.2. The rider in the conditions given in 5.1.8.1 shall have a mass of $75 \text{ kg} \pm 5 \text{ kg}$ and be $1,75 \text{ m} \pm 0,05 \text{ m}$ tall.
- 5.1.8.3. The rider shall be seated on the seat provided, with his feet on the footrests and his arms normally extended. This position shall allow the rider at all times to have proper control of the motorcycle during the coastdown test.

The position of the rider shall remain unchanged during the whole measurement.

5.1.9. *Measurement of coastdown time*

- 5.1.9.1. After a warm-up period, the motorcycle shall be accelerated to the coastdown starting speed, at which point the coastdown shall be started.
- 5.1.9.2. Since it can be dangerous and difficult from the viewpoint of its construction to have the transmission shifted to neutral, the coasting may be performed solely with the clutch disengaged. Further, the tractive method of using another motorcycle for traction shall be applied to those motorcycles that have no way of cutting the transmitted engine power off during coasting. When the coastdown test is reproduced on the chassis dynamometer, the transmission and clutch shall be in the same condition on the road test.
- 5.1.9.3. The motorcycle steering shall be altered as little as possible and the brakes shall not be operated until the end of the coastdown measurement.
- 5.1.9.4. The coastdown time Δt_{ai} corresponding to the specified speed v_j shall be measured as the elapsed time from the motorcycle speed $v_j + \Delta v$ to $v_j - \Delta v$.
- 5.1.9.5. The procedure from 5.1.9.1 to 5.1.9.4 shall be repeated in the opposite direction to measure the coastdown time Δt_{bi} .
- 5.1.9.6. The average ΔT_i of the two coastdown times Δt_{ai} and Δt_{bi} shall be calculated by the following equation:

$$\Delta T_i = \frac{\Delta t_{ai} + \Delta t_{bi}}{2}$$

- 5.1.9.7. At least four tests shall be performed and the average coastdown time ΔT_j calculated by the following equation:

$$\Delta T_j = \frac{1}{n} \sum_{i=1}^n \Delta T_i$$

Tests shall be performed until the statistical accuracy, P , is equal to or less than 3 % ($P \leq 3 \%$). The statistical accuracy, P , as a percentage, is defined by:

$$P = \frac{ts}{\sqrt{n}} \times \frac{100}{\Delta T_j}$$

where:

t = coefficient given in table 1;

s = standard deviation given by the formula

$$s = \sqrt{\frac{\sum_{i=1}^n (\Delta T_i - \Delta T_j)^2}{n-1}}$$

n = the number of the test.

Table 1

The coefficient for the statistical accuracy

n	t	$\frac{t}{\sqrt{n}}$
4	3,2	1,60
5	2,8	1,25
6	2,6	1,06
7	2,5	0,94
8	2,4	0,85
9	2,3	0,77
10	2,3	0,73
11	2,2	0,66
12	2,2	0,64
13	2,2	0,61
14	2,2	0,59
15	2,2	0,57

5.1.9.8. In repeating the test, care shall be taken to start the coastdown after observing the same warm-up conditions and at the same coastdown starting speed.

5.1.9.9. The measurement of coastdown time for multiple specified speeds may be made by a continuous coastdown. In this case, the coastdown shall be repeated always from the same coastdown starting speed.

5.2. Data processing

5.2.1. Calculation of running resistance force

5.2.1.1. The running resistance force F_j , in Newton, at the specified speed v_j is calculated as follows:

$$F_j = \frac{1}{3,6}(m + m_r) \frac{2\Delta v}{\Delta T_j}$$

where:

m = test motorcycle mass, in kilograms, as tested including rider and instruments;

m_r = equivalent inertia mass of all the wheels and motorcycle parts rotating with the wheels during coastdown on the road. m_r should be measured or calculated as appropriate. As an alternative, m_r may be estimated as 7 % of the unladen motorcycle mass.

5.2.1.2. The running resistance force F_j shall be corrected in accordance with 5.2.2.

5.2.2. *Running resistance curve fitting*

The running resistance force, F , is calculated as follows:

$$F = f_0 + f_2 v^2$$

This equation shall be fitted by linear regression to the data set of F_j and v_j obtained above to determine the coefficients f_0 and f_2 ,

where:

F = running resistance force, including wind velocity resistance, if appropriate, in Newton;

f_0 = rolling resistance, in Newton;

f_2 = coefficient of aerodynamic drag, in Newton-hours squared per square kilometre [$\text{N}/(\text{km}/\text{h})^2$].

The coefficients f_0 and f_2 determined shall be corrected to the standard ambient conditions by the following equations:

$$f_0^* = f_0 [1 + K_0 (T_T - T_0)]$$

$$f_2^* = f_2 \times \frac{T_T}{T_0} \times \frac{p_0}{p_T}$$

where:

f_0^* = corrected rolling resistance at standard ambient conditions, in Newton;

T_T = mean ambient temperature, in Kelvin;

f_2^* = corrected coefficient of aerodynamic drag in Newton-hours squared per square kilometre [$\text{N}/(\text{km}/\text{h})^2$];

p_T = mean atmospheric pressure, in kilo-Pascals;

K_0 = temperature correction factor of rolling resistance, that may be determined based on the empirical data for the particular motorcycle and tyre tests, or may be assumed as follows if the information is not available: $K_0 = 6 \times 10^{-3} \text{ K}^{-1}$.

5.2.3. *Target running resistance force for chassis dynamometer setting*

The target running resistance force $F^*(v_0)$ on the chassis dynamometer at the reference motorcycle speed (v_0), in Newton, is determined as follows:

$$F^*(v_0) = f_0^* + f_2^* \times v_0^2$$

5.3. **Chassis dynamometer setting derived from on-road coastdown measurements**

5.3.1. *Requirements for equipment*

5.3.1.1. The instrumentation for the speed and time measurement shall have the accuracy specified in Table 2, (a) to (f).

Table 2

Required accuracy of measurements

	At measured value	Resolution
(a) Running resistance force, F	+ 2 %	—
(b) Motorcycle speed (v_1, v_2)	± 1 %	0,45 km/h
(c) Coastdown speed interval [$2\Delta v = v_1 - v_2$]	± 1 %	0,10 km/h
(d) Coastdown time (Δt)	$\pm 0,5$ %	0,01 s
(e) Total motorcycle mass [$m_k + m_{rid}$]	$\pm 1,0$ %	1,4 kg
(f) Wind speed	± 10 %	0,1 m/s

The chassis dynamometer rollers shall be clean, dry and free from anything which might cause the tyre to slip.

5.3.2. Inertia mass setting

- 5.3.2.1. The equivalent inertia mass for the chassis dynamometer shall be the flywheel equivalent inertia mass, m_{if} , closest to the actual mass of the motorcycle, m_a . The actual mass, m_a , is obtained by adding the rotating mass of the front wheel, m_{rf} , to the total mass of the motorcycle, rider and instruments measured during the road test. Alternatively, the equivalent inertia mass m_i can be derived from Table 3. The value of m_{rf} may be measured or calculated, in kilograms, as appropriate, or may be estimated as 3 % of m .

If the actual mass m_a cannot be equalised to the flywheel equivalent inertia mass m_i , to make the target running resistance force F^* equal to the running resistance force F_E which is to be set to the chassis dynamometer, the corrected coastdown time ΔT_E may be adjusted in accordance with the total mass ratio of the target coastdown time ΔT_{road} as follows:

$$\Delta T_{road} = \frac{1}{3,6} (m_a + m_{r1}) \frac{2\Delta v}{F^*}$$

$$\Delta T_E = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{F_E}$$

$$F_E = F^*$$

$$\Delta T_E = \Delta T_{road} \times \frac{m_i + m_{r1}}{m_a + m_{r1}}$$

with

$$0,95 < \frac{m_i + m_{r1}}{m_a + m_{r1}} < 1,05$$

and where:

ΔT_{road} = target coastdown time;

ΔT_E = corrected coastdown time at the inertia mass ($m_i + m_{r1}$);

F_E = equivalent running resistance force of the chassis dynamometer;

m_{r1} = equivalent inertia mass of the rear wheel and motorcycle parts rotating with the wheel during coastdown. m_{r1} may be measured or calculated, in kilograms, as appropriate. As an alternative, m_{r1} may be estimated as 4 % of m .

- 5.3.3. Before the test, the chassis dynamometer shall be appropriately warmed up to the stabilised frictional force F_f .
- 5.3.4. The tyre pressures shall be adjusted to the specifications of the manufacturer or to those at which the speed of the motorcycle during the road test and the motorcycle speed obtained on the chassis dynamometer are equal.
- 5.3.5. The test motorcycle shall be warmed up on the chassis dynamometer to the same condition as it was during the road test.

5.3.6. *Procedures for setting chassis dynamometer*

The load on the chassis dynamometer F_E is, in view of its construction, composed of the total friction loss F_f which is the sum of the chassis dynamometer rotating frictional resistance, tyre rolling resistance and frictional resistance to the rotating parts in the driving system of the motorcycle, and the braking force of the power absorbing unit (pau) F_{pau} , as shown in the following equation:

$$F_E = F_f + F_{pau}$$

The target running resistance force F^* in 5.2.3 should be reproduced on the chassis dynamometer in accordance with the motorcycle speed. Namely:

$$F_E(v_i) = F^*(v_i)$$

5.3.6.1. Determination of total friction loss

The total friction loss F_f on the chassis dynamometer shall be measured by the method given in sections 5.3.6.1.1 and 5.3.6.1.2.

5.3.6.1.1. Motoring by chassis dynamometer

This method applies only to chassis dynamometers capable of driving a motorcycle. The motorcycle shall be driven by the chassis dynamometer steadily at the reference speed v_0 with the transmission engaged and the clutch off. The total friction loss $F_f(v_0)$ at the reference speed v_0 is given by the chassis dynamometer force.

5.3.6.1.2. Coastdown without absorption

The method of measuring the coastdown time is regarded as the coastdown method for the measurement of the total friction loss F_f .

The motorcycle coastdown shall be performed on the chassis dynamometer by the procedure described from 5.1.9.1 to 5.1.9.4 under zero chassis dynamometer absorption, and the coastdown time Δt_i corresponding to the reference speed v_0 shall be measured.

The measurement shall be carried out at least three times, and the mean coastdown time $\overline{\Delta t}$ shall be calculated from the formula:

$$\overline{\Delta t} = \frac{1}{n} \sum_{i=1}^n \Delta t_i$$

The total friction loss $F_f(v_0)$ at the reference speed v_0 is calculated as:

$$F_f(v_0) = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{\Delta t}$$

5.3.6.2. Calculation of power absorption unit force

The force $F_{pau}(v_0)$ to be absorbed by the chassis dynamometer at the reference speed v_0 is calculated by subtracting $F_f(v_0)$ from the target running resistance force $F^*(v_0)$:

$$F_{pau}(v_0) = F^*(v_0) - F_f(v_0)$$

5.3.6.3. Chassis dynamometer setting

According to the type of chassis dynamometer, it shall be set by one of the methods described in sections 5.3.6.3.1 to 5.3.6.3.4.

5.3.6.3.1. Chassis dynamometer with polygonal function

In the case of a chassis dynamometer with polygonal function, in which the absorption characteristics are determined by load values at several speed points, at least three specified speeds, including the reference speed, shall be chosen as the setting points. At each setting point, the chassis dynamometer shall be set to the value $F_{\text{pau}}(v_j)$ obtained in 5.3.6.2.

5.3.6.3.2. Chassis dynamometer with coefficient control

5.3.6.3.2.1. In the case of a chassis dynamometer with coefficient control, in which the absorption characteristics are determined by given coefficients of a polynomial function, the value of $F_{\text{pau}}(v_j)$ at each specified speed shall be calculated by the procedure given in sections 5.3.6.1 and 5.3.6.2.

5.3.6.3.2.2. Assuming the load characteristics to be:

$$F_{\text{pau}}(v) = av^2 + bv + c$$

the coefficients a, b and c shall be determined by the polynomial regression method.

5.3.6.3.2.3. The chassis dynamometer shall be set to the coefficients a, b and c obtained in section 5.3.6.3.2.2.

5.3.6.3.3. Chassis dynamometer with F^* polygonal digital setter

5.3.6.3.3.1. In the case of a chassis dynamometer with F^* polygonal digital setter, where a CPU is incorporated in the system, F^* is input directly, and Δt_i , F_f and F_{pau} are automatically measured and calculated to set on the chassis dynamometer the target running resistance force $F^* = f_0^* + f_2^* v^2$.

5.3.6.3.3.2. In this case, several points are directly input in succession digitally by the data set of F_j^* and v_j , the coastdown is performed and the coastdown time Δt_i is measured. By automatic calculation in the following sequence by the built-in CPU, F_{pau} is automatically set in the memory at motorcycle speed intervals of 0,1 km/h, and after the coastdown test is repeated several times, the running resistance setting is computed:

$$F^* + F_f = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{\Delta t_i}$$

$$F_f = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{\Delta t_i} - F^*$$

$$F_{\text{pau}} = F^* - F_f$$

5.3.6.3.4. Chassis dynamometer with f_0^* , f_2^* coefficient digital setter

5.3.6.3.4.1. In the case of a chassis dynamometer with f_0^* , f_2^* coefficient digital setter, where a CPU is incorporated in the system, the target running resistance force $F^* = f_0^* + f_2^* v^2$ is automatically set on the chassis dynamometer.

5.3.6.3.4.2. In this case, the coefficients f_0^* and f_2^* are directly input digitally; the coastdown is performed and the coastdown time Δt_i is measured. The calculation is automatically made in the following sequence by the built-in CPU and F_{pau} is automatically set in the memory digitally at motorcycle speed intervals of 0,06 km/h to complete the running resistance setting:

$$F^* + F_f = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{\Delta t_i}$$

$$F_f = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{\Delta t_i} - F^*$$

$$F_{\text{pau}} = F^* - F_f$$

5.3.7. Verification of chassis dynamometer

5.3.7.1. Immediately after the initial setting, the coastdown time Δt_E on the chassis dynamometer corresponding to the reference speed (v_0), shall be measured by the same procedure as in 5.1.9.1 to 5.1.9.4.

The measurement shall be carried out at least three times, and the mean coastdown time Δt_E shall be calculated from the results.

- 5.3.7.2. The set running resistance force at the reference speed, $F_E(v_0)$ on the chassis dynamometer is calculated by the following equation:

$$F_E(v_0) = \frac{1}{3,6} (m_i + m_{r1}) \frac{2\Delta v}{\Delta t_E}$$

where:

F_E = set running resistance force on the chassis dynamometer;

Δt_E = mean coastdown time on the chassis dynamometer.

- 5.3.7.3. The setting error, ε is calculated as follows:

$$\varepsilon = \frac{|F_E(v_0) - F^*(v_0)|}{F^*(v_0)} \times 100$$

- 5.3.7.4. Readjust the chassis dynamometer if the setting error does not satisfy the following criteria:

$$\varepsilon \leq 2 \% \text{ for } v_0 \geq 50 \text{ km/h}$$

$$\varepsilon \leq 3 \% \text{ for } 30 \text{ km/h} \leq v_0 < 50 \text{ km/h}$$

$$\varepsilon \leq 10 \% \text{ for } v_0 < 30 \text{ km/h}$$

- 5.3.7.5. The procedure in sections 5.3.7.1 to 5.3.7.3 shall be repeated until the setting error satisfies the criteria.

5.4. Chassis dynamometer setting using the running resistance table

The chassis dynamometer can be set by the use of the running resistance table instead of the running resistance force obtained by the coastdown method. In this table method, the chassis dynamometer shall be set by the reference mass regardless of particular motorcycle characteristics.

The flywheel equivalent inertia mass m_{fi} shall be the equivalent inertia mass m_i specified in Table 3. The chassis dynamometer shall be set by the rolling resistance of front wheel "a" and the aerodynamic drag coefficient "b" specified in Table 3.

Table 3 ⁽¹⁾

Equivalent inertia mass

Reference mass m_{ref} (kg)	Equivalent inertia mass m_i (kg)	Rolling resistance of front wheel "a" (N)	Aerodynamic drag coefficient "b" (N/(km/h) ⁽¹⁾)
95 < m_{ref} ≤ 105	100	8,8	0,0215
105 < m_{ref} ≤ 115	110	9,7	0,0217
115 < m_{ref} ≤ 125	120	10,6	0,0218
125 < m_{ref} ≤ 135	130	11,4	0,0220
135 < m_{ref} ≤ 145	140	12,3	0,0221
145 < m_{ref} ≤ 155	150	13,2	0,0223
155 < m_{ref} ≤ 165	160	14,1	0,0224
165 < m_{ref} ≤ 175	170	15,0	0,0226
175 < m_{ref} ≤ 185	180	15,8	0,0227
185 < m_{ref} ≤ 195	190	16,7	0,0229
195 < m_{ref} ≤ 205	200	17,6	0,0230
205 < m_{ref} ≤ 215	210	18,5	0,0232

Reference mass m_{ref} (kg)	Equivalent inertia mass m_i (kg)	Rolling resistance of front wheel "a" (N)	Aerodynamic drag coefficient "b" (N/(km/h) ⁽¹⁾)
215 < m_{ref} ≤ 225	220	19,4	0,0233
225 < m_{ref} ≤ 235	230	20,2	0,0235
235 < m_{ref} ≤ 245	240	21,1	0,0236
245 < m_{ref} ≤ 255	250	22,0	0,0238
255 < m_{ref} ≤ 265	260	22,9	0,0239
265 < m_{ref} ≤ 275	270	23,8	0,0241
275 < m_{ref} ≤ 285	280	24,6	0,0242
285 < m_{ref} ≤ 295	290	25,5	0,0244
295 < m_{ref} ≤ 305	300	26,4	0,0245
305 < m_{ref} ≤ 315	310	27,3	0,0247
315 < m_{ref} ≤ 325	320	28,2	0,0248
325 < m_{ref} ≤ 335	330	29,0	0,0250
335 < m_{ref} ≤ 345	340	29,9	0,0251
345 < m_{ref} ≤ 355	350	30,8	0,0253
355 < m_{ref} ≤ 365	360	31,7	0,0254
365 < m_{ref} ≤ 375	370	32,6	0,0256
375 < m_{ref} ≤ 385	380	33,4	0,0257
385 < m_{ref} ≤ 395	390	34,3	0,0259
395 < m_{ref} ≤ 405	400	35,2	0,0260
405 < m_{ref} ≤ 415	410	36,1	0,0262
415 < m_{ref} ≤ 425	420	37,0	0,0263
425 < m_{ref} ≤ 435	430	37,8	0,0265
435 < m_{ref} ≤ 445	440	38,7	0,0266
445 < m_{ref} ≤ 455	450	39,6	0,0268
455 < m_{ref} ≤ 465	460	40,5	0,0269
465 < m_{ref} ≤ 475	470	41,4	0,0271
475 < m_{ref} ≤ 485	480	42,2	0,0272
485 < m_{ref} ≤ 495	490	43,1	0,0274
495 < m_{ref} ≤ 505	500	44,0	0,0275
At every 10 kg	At every 10 kg	$a = 0,088m_i$ Note: round to two decimal places	$b = 0,000015m_i$ + 0,0200 Note: round to five decimal places

(1) If the maximum speed of a vehicle as declared by the manufacturer is below 130 km/h and this speed cannot be reached on the roller bench with the test bench settings defined by Table 3, the coefficient b has to be adjusted so that the maximum speed will be reached.

5.4.1. *The running resistance force on the chassis dynamometer setting by the running resistance table*

The running resistance force on the chassis dynamometer F_E shall be determined from the following equation:

$$F_E = F_T = a + b \times v^2$$

where:

F_T = running resistance force obtained from the running resistance table, in Newton;

A = rolling resistance force of front wheel in Newton;

B = coefficient of aerodynamic drag in Newton-hours squared per square kilometre [$N/(km/h)^2$];

v = specified speed, in kilometres per hour.

The target running resistance force F^* shall be equal to the running resistance force obtained from the running resistance table F_T , because the correction for the standard ambient conditions shall not be necessary.

5.4.2. *The specified speed for the chassis dynamometer*

The running resistances on the chassis dynamometer shall be verified at the specified speed v . At least four specified speeds, including the reference speed(s), should be verified. The range of specified speed points (the interval between the maximum and minimum points) shall extend either side of the reference speed or the reference speed range, if there is more than one reference speed, by at least Δv , as defined in 5.1.6. The specified speed points, including the reference speed point(s), shall be no greater than 20 km/h apart and the interval of specified speeds should be the same.

5.4.3. *Verification of chassis dynamometer*

- 5.4.3.1. Immediately after the initial setting, the coastdown time on the chassis dynamometer corresponding to the specified speed shall be measured. The motorcycle should not be set up on the chassis dynamometer during the coastdown time measurement. When the chassis dynamometer speed exceeds the maximum speed of the test cycle, the coastdown time measurement shall start.

The measurement shall be carried out at least three times, and the mean coastdown time Δt_E shall be calculated from the results.

- 5.4.3.2. The set running resistance force $F_E(v_i)$ at the specified speed on the chassis dynamometer is calculated by the following equation:

$$F_E(v_i) = \frac{1}{3,6} m_i \frac{2\Delta v}{\Delta t_E}$$

- 5.4.3.3. The setting error at the specified speed, ε is calculated as follows:

$$\varepsilon = \frac{|F_E(v_i) - F_T|}{F_T} \times 100$$

- 5.4.3.4. The chassis dynamometer shall be readjusted if the setting error does not satisfy the following criteria:

$$\varepsilon \leq 2 \% \text{ for } v \geq 50 \text{ km/h}$$

$$\varepsilon \leq 3 \% \text{ for } 30 \text{ km/h} \leq v < 50 \text{ km/h}$$

$$\varepsilon \leq 10 \% \text{ for } v < 30 \text{ km/h}$$

The procedure given in sections 5.4.3.1 to 5.4.3.3 shall be repeated until the setting error satisfies the criteria.

5.5. **Conditioning of the motorcycle or motor tricycle**

- 5.5.1. Before the test, the motorcycle or motor tricycle must be kept in a room in which the temperature remains relatively constant between 20 °C and 30 °C. This conditioning must be carried out until the engine oil temperature and coolant, if any, are within ± 2 K of the temperature of the room.

5.5.2. The tyre pressure must be that indicated by the manufacturer for performance of the preliminary road test to set the brake. However, if the diameter of the rollers is less than 500 mm, the pressure in the tyres may be increased by 30 % to 50 %.

5.5.3. The mass on the driven wheel is the same as when the motorcycle or motor tricycle is used under normal driving conditions with a driver weighing 75 kg.

5.6. Calibration of analytical apparatus

5.6.1. Calibration of analysers

The quantity of gas at the indicated pressure compatible with the correct functioning of the equipment is injected into the analyser by means of the flow meter and discharge gauge mounted on each bottle. The apparatus is adjusted to indicate as a stabilised value, the value shown on the standard gas bottle. Starting from the setting obtained with the maximum-content bottle, the curve of the analyser's deviations is drawn as a function of the content of the various standard gas bottles used. For the regular calibration of flame-ionisation analysers, which should be done at least once a month, mixtures of air and propane (or hexane) with rated concentrations of hydrocarbon equal to 50 % and 90 % of the full scale are used. For regular calibration of non-dispersive infra-red absorption analysers, mixtures of nitrogen with CO and CO₂ respectively are measured at rated concentrations of 10 %, 40 %, 60 %, 85 % and 90 % of the full scale. For calibration of the chemiluminescent NO_x analyser, mixtures of nitrous oxide (N₂O) diluted in nitrogen with a nominal concentration of 50 % and 90 % of the full scale are used. For the test calibration, which must be carried out before each series of tests, it is necessary, for all three types of analyser, to use mixtures containing the gases to be measured to a concentration equal to 80 % of the full scale. A dilution device can be used for diluting a 100 % calibration gas to the required concentration.

6. PROCEDURE FOR DYNAMOMETER TESTS

6.1. Special conditions for carrying out the cycle

6.1.1. The temperature in the premises where the dynamometer bench is situated must be between 20 °C and 30 °C throughout the test, and must be as close as possible to the temperature of the premises where the motorcycle or motor tricycle were conditioned.

6.1.2. The motorcycle or motor tricycle must as far as possible be horizontal during the test so as to avoid any abnormal distribution of the fuel.

6.1.3. Throughout the test, a variable speed cooling blower shall be positioned in front of the motorcycle, so as to direct the cooling air to the motorcycle in a manner which simulates actual operating conditions. The blower speed shall be such that, within the operating range of 10 to 50 km/h, the linear velocity of the air at the blower outlet is within ± 5 km/h of the corresponding roller speed. And at the range of over 50 km/h, the linear velocity of the air shall be within ± 10 %. At roller speeds of less than 10 km/h, air velocity may be zero.

The abovementioned air velocity shall be determined as an averaged value of nine measuring points which are located at the centre of each rectangle dividing whole of the blower outlet into nine areas (dividing both of horizontal and vertical sides of the blower outlet into three equal parts). Each value at those nine points shall be within 10 % of the averaged value of themselves.

The blower outlet shall have a cross-section area of at least 0,4 m² and the bottom of the blower outlet shall be between 5 and 20 cm above floor level. The blower outlet shall be perpendicular to the longitudinal axis of the motorcycle between 30 and 45 cm in front of its front wheel. The device used to measure the linear velocity of the air shall be located at between 0 and 20 cm from the air outlet.

6.1.4. During the test, speed is plotted against time in order to check that the cycles have been performed correctly.

6.1.5. The temperatures of the cooling water and the crankcase oil may be recorded.

6.2. Starting up the engine

- 6.2.1. Once the preliminary operations on the equipment for collecting, diluting, analysing and measuring the gases have been carried out (see section 7.1), the engine is started up by means of the devices provided for that purpose, such as the choke, the starter valve, etc., according to the manufacturer's instructions.
- 6.2.2. The first cycle begins when the taking of samples and the measuring of the pump rotations commence.

6.3. Use of the manual choke

The choke must be cut out as soon as possible and in principle before acceleration from 0 to 50 km/h. If this requirement cannot be met, the moment of actual cut-out must be indicated. The choke must be adjusted in accordance with the manufacturer's instructions.

6.4. Idling**6.4.1. Manual-shift gearbox:**

- 6.4.1.1. During periods of idling the clutch must be engaged and the gears in neutral.
- 6.4.1.2. To enable the accelerations to be performed according to the normal cycle the vehicle must be put in first gear, with the clutch disengaged, five seconds before commencement of the acceleration following the idling period in question.
- 6.4.1.3. The first idling period at the beginning of the cycle consists of six seconds of idling in neutral with the clutch engaged and five seconds in first gear with the clutch disengaged.
- 6.4.1.4. For the idling periods during each cycle the corresponding times are 16 seconds in neutral and five seconds in first gear with the clutch disengaged.
- 6.4.1.5. The last idling period in the cycle consists of seven seconds in neutral with the clutch engaged.

6.4.2. Semi-automatic gearboxes:

the manufacturer's instructions for driving in town, or in their absence instructions applicable to manual gearboxes, must be followed.

6.4.3. Automatic gearboxes:

the selector must not be operated at any time during the test unless the manufacturer specifies otherwise. In the latter case the procedure for manual gearboxes applies.

6.5. Accelerations

- 6.5.1. Accelerations must be effected so as to ensure that the rate of acceleration is as constant as possible throughout the operation.
- 6.5.2. If the acceleration capacities of the motorcycle or motor tricycle are not sufficient to perform the acceleration cycles within the prescribed tolerances, the motorcycle or motor tricycle must be driven with the throttle completely open until the speed prescribed for the cycle has been reached; the cycle may then continue normally.

6.6. Decelerations

- 6.6.1. All decelerations must be effected by completely closing the throttle, the clutch remaining engaged. The engine must be disengaged at a speed of 10 km/h.
- 6.6.2. If the period of deceleration is longer than that prescribed for the corresponding phase, the vehicle's brakes are used to keep to the cycle.

6.6.3. If the period of deceleration is shorter than that prescribed for the corresponding phase, the timing of the theoretical cycle is restored by a steady-state or an idling period merging into the following steady-state or idling operation. In this case, section 2.4.3 is not applicable.

6.6.4. At the end of the deceleration period (stopping motorcycle or motor tricycle on the rollers) the gear is put into neutral and the clutch engaged.

6.7. **Steady speeds**

6.7.1. "Pumping" or the closing of the throttle must be avoided when passing from acceleration to the following steady speed.

6.7.2. Periods of constant speed must be achieved by keeping the accelerator position fixed.

7. PROCEDURE FOR SAMPLING, ANALYSING AND MEASURING THE VOLUME OF EMISSIONS

7.1. **Operations to be carried out before the motorcycle or motor tricycle is started up**

7.1.1. The bags for collecting the samples S_a and S_b , are emptied and sealed.

7.1.2. The rotary displacement pump P_1 is activated without starting up the revolution counter.

7.1.3. The pumps P_2 and P_3 for taking the samples are activated with the valves set to divert the gases produced into the atmosphere; the flow through valves V_2 and V_3 is regulated.

7.1.4. The recording devices for the temperature T and the pressure g_1 and g_2 are put into operation.

7.1.5. The revolution counter CT and the roller revolution counter are set to zero.

7.2. **Beginning of sampling and volume measurement**

7.2.1. The operations specified in sections 7.2.2 to 7.2.5 are performed simultaneously.

7.2.2. The diversion valves are set to collect the samples, which have previously been directed towards the atmosphere, continuously through probes S_2 and S_3 in bags S_a and S_b .

7.2.3. The moment at which the test begins is indicated on the analogue graphs which record results from the temperature gauge T and the differential pressure gauges g_1 and g_2 .

7.2.4. The counter which records the total number of revolutions of pump P_1 is started up.

7.2.5. The device referred to in section 6.1.3 which directs a flow of air at the motorcycle or motor tricycle is started up.

7.3. **End of sampling and measurement of volume**

7.3.1. At the end of the test cycle the operations described in sections 7.3.2 to 7.3.5 are performed simultaneously.

7.3.2. The diversion valves must be set to close bags S_a and S_b and to discharge into the atmosphere the samples sucked in by pumps P_2 and P_3 through probes S_2 and S_3 .

7.3.3. The moment at which the test finishes must be indicated on the analogue graphs referred to in section 7.2.3.

7.3.4. The pump P_1 revolution counter is stopped.

7.3.5. The device referred to in section 6.1.3 which directs a flow of air at the motorcycle or motor tricycle is stopped.

7.4. Analysis

- 7.4.1. The exhaust gases contained in the bag must be analysed as soon as possible and in any event not later than 20 minutes after the end of the test cycle.
- 7.4.2. Prior to each sample analysis the analyser range to be used for each pollutant must be set to zero with the appropriate span gas.
- 7.4.3. The analysers are then set to the calibration curves by means of span gases of nominal concentrations of 70 to 100 % of the range.
- 7.2.4. The analysers' zeros are then rechecked. If the reading differs by more than 2 % of the range from that set in section 7.4.2, the procedure is repeated.
- 7.4.5. The samples are then analysed.
- 7.4.6. After the analysis zero and span points are rechecked using the same gases. If these rechecks are within 2 % of those in 7.4.3, the analysis is considered acceptable.
- 7.4.7. At all points in this section the flow rates and pressures of the various gases must be the same as those used during calibration of the analysers.
- 7.4.8. The figure adopted for the concentration of each pollutant measured in the gases is that read-off after stabilisation of the measuring device.

7.5. Measuring the distance travelled

The distance S actually travelled, expressed in km, is obtained by multiplying the total number of revolutions shown on the revolution counter by the size of the roller (see section 4.1.1).

8. DETERMINATION OF THE QUANTITY OF GASEOUS POLLUTANTS EMITTED

8.1. The mass of carbon monoxide gas emitted during the test is determined by means of the formula:

$$CO_M = \frac{1}{S} \times V \times d_{CO} \times \frac{CO_c}{10^6}$$

where:

- 8.1.1. CO_M is the mass of carbon monoxide emitted during the test, expressed in g/km;
- 8.1.2. S is the distance defined in section 7.5;
- 8.1.3. d_{CO} is the density of carbon monoxide at a temperature of 0 °C and at a pressure of 101,33 kPa (= 1,250 kg/m³);
- 8.1.4. CO_c is the volume concentration of carbon monoxide in the diluted gases, expressed in parts per million and corrected to take account of pollution of the dilution air:

$$CO_c = CO_e - CO_d \left(1 - \frac{1}{DF} \right)$$

where:

- 8.1.4.1. CO_e is the concentration of carbon monoxide, measured in parts per million, in the sample of diluted gases collected in bag S_b ;
- 8.1.4.2. CO_d is the concentration of carbon monoxide, measured in parts per million, in the sample of dilution air collected in bag S_a ;
- 8.1.4.3. DF is the coefficient specified in section 8.4.

- 8.1.5. V is the total volume, expressed in m^3/test , of diluted gases at reference temperature $0\text{ }^\circ\text{C}$ ($273\text{ }^\circ\text{K}$) and reference pressure $101,33\text{ kPa}$,

$$V = V_o \times \frac{N \times (P_a - P_i) \times 273}{101,33 \times T_p + 273}$$

where:

- 8.1.5.1. V_o is the volume of gas displaced by pump P_1 during one rotation expressed in $\text{m}^3/\text{revolution}$. This volume is a function of the differential pressures between the inlet and outlet sections of the group itself,
- 8.1.5.2. N is the number of rotations made by the pump P_1 during each test cycle phase,
- 8.1.5.3. P_a is the atmospheric pressure expressed in kPa ;
- 8.1.5.4. P_i is the mean value, expressed in kPa , during performance of the four cycles of the drop in pressure in the inlet section of pump P_1 ;
- 8.1.5.5. T_p is the value, during performance of the four cycles, of the temperature of the diluted gases measured in the inlet section of pump P_1 .

- 8.2. **The mass of unburnt hydrocarbons emitted through the exhaust of the motorcycle or motor tricycle during the test is calculated by means of the formula:**

$$\text{HC}_M = \frac{1}{S} \times V \times d_{\text{HC}} \times \frac{\text{HC}_c}{10^6}$$

where:

- 8.2.1. HC_M is the mass of hydrocarbons emitted during the test, expressed in g/km ;
- 8.2.2. S is the distance defined in section 7.5;
- 8.2.3. d_{HC} is the density of hydrocarbons at a temperature of $0\text{ }^\circ\text{C}$ and a pressure of $101,33\text{ kPa}$ for an average ratio of carbon to hydrogen of $1:1,85$ ($= 0,619\text{ kg/m}^3$);
- 8.2.4. HC_c is the concentration of the diluted gases expressed in parts per million carbon equivalent (for example: the concentration of propane multiplied by 3) and corrected to take account of the dilution air:

$$\text{HC}_c = \text{HC}_e - \text{HC}_d \left(1 - \frac{1}{\text{DF}} \right)$$

where:

- 8.2.4.1. HC_e is the concentration of hydrocarbons, expressed in parts per million carbon equivalent, in the sample of diluted gases collected in bag S_b ;
- 8.2.4.2. HC_d is the concentration of hydrocarbons, expressed in parts per million carbon equivalent, in the sample of dilution air collected in bag S_a ;
- 8.2.4.3. DF is the coefficient specified in section 8.4;
- 8.2.5. V is the total volume (see section 8.1.5).

- 8.3. **The mass of oxides of nitrogen emitted through the exhaust of the motorcycle or motor tricycle during the test is calculated by means of the formula:**

$$\text{NO}_{xM} = \frac{1}{S} \times V \times d_{\text{NO}_2} \times \frac{\text{NO}_{xc} \times K_h}{10^6}$$

where:

- 8.3.1. NO_{xM} is the mass of oxides of nitrogen emitted during the test, expressed in g/km ;
- 8.3.2. S is the distance defined in section 7.5;
- 8.3.3. d_{NO_2} is the density of the oxides of nitrogen in the exhaust gases, in NO_2 equivalent, at a temperature of $0\text{ }^\circ\text{C}$ and a pressure of $101,33\text{ kPa}$ ($= 2,05\text{ kg/m}^3$);

- 8.3.4. NO_{xc} is the concentration of oxides of nitrogen in the diluted gases, expressed in parts per million and corrected to take account of the dilution air:

$$\text{NO}_{\text{xc}} = \text{NO}_{\text{xe}} - \text{NO}_{\text{xd}} \left(1 - \frac{1}{\text{DF}} \right)$$

where:

- 8.3.4.1. NO_{xe} is the concentration of oxides of nitrogen, expressed in parts per million, in the sample of diluted gases collected in bag S_{a} ;
- 8.3.4.2. NO_{xd} is the concentration of oxides of nitrogen, expressed in parts per million, in the sample of dilution air collected in bag S_{b} ;
- 8.3.4.3. DF is the coefficient specified in 8.4;
- 8.3.5. K_{h} is the correction factor for humidity:

$$K_{\text{h}} = \frac{1}{1 - 0,0329 \times H - 10,7}$$

where:

- 8.3.5.1. H is the absolute humidity in grams of water per kg of dry air:

$$H = \frac{6,2111 \times U \times P_{\text{d}}}{P_{\text{a}} - P_{\text{d}} \times \frac{U}{100 \text{ (g/kg)}}}$$

where:

- 8.3.5.1.1. U is the humidity content expressed as a percentage;
- 8.3.5.1.2. P_{d} is the saturated-water-vapour pressure, expressed in kPa, at the test temperature;
- 8.3.5.1.3. P_{a} is the atmospheric pressure in kPa;

- 8.4. **DF is a coefficient expressed by means of the formula:**

$$\text{DF} = \frac{14,5}{\text{CO}_2 + 0,5 \text{ CO} + \text{HC}}$$

where:

- 8.4.1. CO , CO_2 and HC are concentrations of carbon monoxide, carbon dioxide and hydrocarbons expressed as a percentage of the sample of diluted gases contained in bag S_{a} .

Sub-Appendix 1a

BREAKDOWN OF THE OPERATING CYCLES USED FOR THE TYPE I TEST**Operating cycle of the Elementary Urban Cycle on the dynamometer**

(see Appendix 1, section 2.1)

Engine operating cycle of the Elementary Urban Cycle for the Type I test

(see Appendix 1, sub-Appendix 1)

Operating cycle of the extra-urban cycle on the dynamometer

No of operations	Operations	Phase	Acceleration (m/s ²)	Speed (km/h)	Duration of each operation phase		Cumulative time (sec)	Gear to be used in the case of a manual gearbox
					(sec)	(sec)		
1	Idling	1			20	20	20	See section 2.3.3 of Appendix 2 — use of the gearbox over the extra-urban cycle according to the manufacturer's recommendations
2	Acceleration		0,83	0 — 15	5		25	
3	Gear change				2		27	
4	Acceleration		0,62	15 — 35	9		36	
5	Gear change	2			2	41	38	
6	Acceleration		0,52	35 — 50	8		46	
7	Gear change				2		48	
8	Acceleration		0,43	50 — 70	13		61	
9	Steady speed	3		70	50	50	111	
10	Deceleration	4	- 0,69	70 — 50	8	8	119	
11	Steady speed	5		50	69	69	188	
12	Acceleration	6	0,43	50 — 70	13	13	201	
13	Steady speed	7		70	50	50	251	
14	Acceleration	8	0,24	70 — 100	35	35	286	
15	Steady speed	9		100	30	30	316	
16	Acceleration	10	0,28	100 — 120	20	20	336	
17	Steady speed	11		120	10	20	346	
18	Deceleration		- 0,69	120 — 80	16		362	
19	Deceleration	12	- 1,04	80 — 50	8	34	370	
20	Deceleration, disengaged clutch		- 1,39	50 — 0	10		380	
21	Idling	13			20	20	400	

Engine operating cycle of the extra-urban cycle for the Type I test(see section 3 of Appendix 1 to Annex III of Directive 91/441/EEC ⁽¹⁾)⁽¹⁾ OJ L 242, 30.8.1991, p. 1.

ANNEX II

Section 2.2. of Annex VII to Directive 2002/24/EC is replaced by the following:

‘2.2. Type II

CO (g/min) ⁽¹⁾:

HC (g/min) ⁽¹⁾:

CO (% vol) at normal idle speed ⁽²⁾:

Specify the idle speed ⁽²⁾ ⁽³⁾:

CO (% vol) at high idle speed ⁽²⁾:

Specify the idle speed ⁽²⁾ ⁽³⁾:

Engine oil temperature ⁽²⁾ ⁽⁴⁾:

⁽¹⁾ Only for mopeds and for light quadricycles as defined in Article 1, paragraph 3(a).

⁽²⁾ Only for motorcycles and motor tricycles and for quadricycles as defined in Article 1, paragraph 3(b).

⁽³⁾ Mention the measurement tolerance.

⁽⁴⁾ Applicable for four-stroke engines only.’

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 3 June 2003

on the Orkney Islands Council track-record scheme

(notified under document number C(2003) 1686)

(Only the English text is authentic)

(2003/611/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),

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 14 thereof,

Having invited interested parties to submit their comments, in accordance with the first subparagraph of Article 88(2) of the EC Treaty,

Whereas:

I. PROCEDURE

- (1) In February 1999 the Commission was informed by a Member of the European Parliament of a scheme involving the purchase of quotas by Orkney Islands Council (OIC), hereinafter 'the OIC scheme', whereby the quotas acquired were to be rented to fishermen. By letter dated 25 March 1999 the Commission requested the United Kingdom authorities, hereinafter 'the UK authorities', to provide information about this scheme. Following a reminder, the UK authorities provided a response by letter dated 9 August 1999.
- (2) The Commission requested further information by letters dated 1 September 1999, 12 April 2000 and 22 June 2000. The UK authorities sent information by letters dated 6 March 2000, 9 March 2000 and 16 May 2000. However, no response to the letter dated 22 June 2000 was received. A meeting was held with the UK authorities at Commission offices on 18 October 2000.
- (3) The Commission informed the United Kingdom by letter dated 28 November 2001 of its decision to initiate, in relation to the OIC scheme, the formal investigation procedure provided for in Article 88(2) of the EC Treaty. Following mutual agreement to extend the deadline for a response, confirmed to the UK authorities by Commission letter dated 20 December 2001, the United Kingdom provided its comments on the case by letters dated 6 February and 28 February 2002.
- (4) By letter dated 7 August 2002, the Commission requested documents to which reference was made in the reply of the UK authorities dated 28 February 2002. They were received on 27 August 2002.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

- (5) The Commission's decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities* on 12 February 2002 ⁽²⁾. The Commission invited any interested parties to provide their observations on the case. Comments were received from the Scottish Fishermen's Organisation Ltd (letter dated 4 March), Mrs Sheryll Murray of Torpoint, Cornwall, (letter dated 7 March 2002) and the Aberdeen Fish Producers' Organisation Ltd (letter dated 11 March 2002). In accordance with Article 6(2) of Regulation (EC) No 659/1999, those letters were forwarded to the UK authorities to enable them to inform the Commission of their own comments on those observations. The UK authorities replied by letter dated 3 May 2002, saying in substance that the issues raised had already been dealt with in their previous replies.

II. FACTS

- (6) In the United Kingdom, national fishing quotas are allocated to three groups of fishermen: (i) the 'sector', which is made up of the fish producers' organisations (POs) on behalf of their members with vessels over 10 metres; (ii) the 'non-sector', which comprises fishermen with vessels over 10 metres but who are not members of a producers' organisation; (iii) the 'under 10-metre fleet'.
- (7) Quotas are allocated annually to the three groups on the basis of track records (the catch levels of each vessel over a certain period). Before 1999, track records were based on the catches made by fishing vessels during the three years immediately preceding each quota year. Since 1 January 1999, track records have been based on the period from 1994 to 1996. This system is known as 'fixed quota allocation' (FQA); an FQA unit represents a 100 kg track-record unit in respect of which annual quotas are allocated.
- (8) The track records, or FQA units, can be sold from one vessel to another under certain conditions. This situation is relatively specific to the United Kingdom. Except for the Netherlands, where a system of individual transferable quotas is in place, fishing quotas, or track records giving access to them, are not usually transferable. Under this system, a certain market for track records has developed within the United Kingdom. The buyers can be other fishermen or POs.
- (9) As the track records are based on catches made by fishing vessels from 1994 to 1996 and are now no longer recalculated from one year to another, fishermen are not obliged to fish all the quotas their track records entitle them to, and can keep their track records as a whole for the following years. They can fully or partly let them to other fishermen or POs. In the same way, POs which have bought such track records are allowed to let them.
- (10) It is within this context that the Orkney authorities decided in 1998 to set up the scheme in question. According to the UK authorities, the OIC scheme was set up because the Orkney fleet was unable to borrow money from commercial sources to buy track records.
- (11) The bodies involved in the OIC scheme are:
- Orkney Islands Council (OIC),
 - Shetland Fish Producers' Organisation (SFPO), which is a producers' organisation as defined in Community legislation ⁽³⁾,
 - Orkney Fisheries Association (OFA), which is an unincorporated association.
- (12) The OIC scheme operates in the following manner. Funding for the purchase of track records comes from the Reserve Fund established by the OIC. Monies for this fund come from a number of sources, in particular from surplus income of the OIC from harbour dues and fees in relation to the oil terminal and payments made by oil companies and other parties which make use of the harbour or harbour-related facilities of the Orkney Islands.

⁽²⁾ OJ C 38, 12.2.2002, p. 2.

⁽³⁾ Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products (OJ L 388, 31.12.1992, p. 1).

- (13) OIC entered into an agreement, dated 14 to 17 December 1998, with SFPO which acts as the proper holder of the track record. That agreement contains the following statements:
- 'Notwithstanding that the Track Record is held by SFPO, the Track Record shall vest in OIC and SFPO hereby assigns to OIC its whole right, title and interest in and to the Track Record such as the same shall vest absolutely in OIC and, to the extent that the Track Record shall fail to vest effectively in OIC as aforesaid, SFPO shall hold the Trust Property in trust for the benefit of OIC' (point 3.2),
 - 'During the period of this agreement, SFPO shall each year make available the quota for the utilisation by OIC ...' (point 4.2).
- (14) There is also an agreement, dated 16 to 17 December 1998, between OIC and OFA which manages the acquisition of track records and the benefits of the acquired track records. That agreement contains the following statements:
- 'OFA shall submit from time to time notification of track records which OFA considers would be suitable for OIC to acquire ...' (point 3.1),
 - 'OIC wishes that: (a) the quota be leased to eligible vessels so as to achieve maximum utilisation of the quota, (b) OFA shall collect the rental therefrom, (c) OFA shall remit to OIC the balance of the rental under deduction of the management fee ...' (point 4.1),
 - 'Eligible vessel shall mean any vessel (a) which is registered and licensed as a British fishing vessel, (b) which is in membership of OFA and (c) in relation to which 50 % of the crew members are resident in Orkney' (point 1.1),
 - '...OFA shall use all reasonable endeavours to negotiate rental agreements... (a) the rental shall be the market rental then prevailing and ... OFA shall use all reasonable endeavours to obtain a net rental in respect of any quota, after deduction of its management fee (1 %), representing a return to the OIC of no less than 7 % per annum ... on the acquisition cost of the relative track record...; (b) the period of each rental agreement shall be no longer than one year ...' (point 4.2),
 - '...OFA shall direct SFPO regarding the transfer of quotas to the lessee...' (point 4.4),
 - 'OIC shall be entitled to the rental payable under any rental agreement but OFA shall ... collect all rental from lessees and shall remit to OIC the sum specified in clause 5.4 [7 %], whether or not OFA shall have collected that sum from the lessees' (point 5.1).
- (15) According to the information sent by the UK authorities by letter dated 9 August 1999, the track records acquired cost GBP 1,543 million. No further purchases were planned under the OIC scheme. According to their next letter, dated 6 March 2000, eight vessels had benefited from the scheme; all were members of OFA.

Grounds for the formal investigation procedure

- (16) As the Orkney fleet was unable to borrow from commercial sources for the purchase of track records, the OIC scheme enabled it to obtain quotas to which it would not otherwise have been entitled. At a time when banks were not prepared to provide loans, the OIC injected fresh capital to enable this purchase. That is to say, fresh capital was invested by a public body in circumstances not acceptable to a private investor. According to the Commission's position on public capital injections, this indicates a case of State aid. Moreover, as the Commission did not receive copies of the rental agreements, despite its requests, it was not able to check whether those agreements were fixed under normal market conditions nor that there was no State aid involved in the rental agreements.
- (17) As the OIC scheme was set up in 1998, it was assessed in the light of the 1997 Guidelines for the examination of State aid to fisheries and aquaculture ⁽⁴⁾. The Commission considered that quotas and track records were by nature non-durable goods; even though they can be bought, in theory they no longer have any value at the end of the calendar year. Aid for their purchase therefore appears to be aid related to operating costs for the running of the vessels which benefit from them.

⁽⁴⁾ OJ C 100, 27.3.1997, p. 12.

As operating costs in the fisheries sector are allowed only in specific circumstances not existing here, this aid did not appear to be compatible with the common market. In addition, the Commission considered that the OIC scheme could not be considered as a scheme implemented by members of the industry, permissible under point 2.7 of the Guidelines, because its effect of ringfencing track records rather than letting the market forces work is protective in the context the industry must face and does not contribute to attaining the objectives of the common fisheries policy.

III. OBSERVATIONS OF THIRD PARTIES

The Scottish Fishermen's Organisation Ltd (SFO)

- (18) The Scottish Fishermen's Organisation Ltd (SFO) welcomes the Commission's decision to initiate the formal investigation procedure and is of the opinion that the OIC scheme is by its very nature discriminatory and contrary to the rules governing State aid. It considers that the scheme was funded by the local authorities because no commercial financing would have been provided by banks to fund such purchases, not only because track records are intangible assets but also because the asset base of the local fishermen's association could not justify lending it GBP 1,543 million. The SFO has approached commercial financial institutions for money to purchase quotas but it would have had to mortgage its assets or effectively remove the money from its working capital. It is therefore clear that the local authorities in Orkney put the local fishermen in an economically advantageous position.
- (19) The SFO also indicates that it was the intervention of the Orkney authorities which caused the cost of quotas to escalate and the development of the market for quotas. Furthermore, it believes that the minimum net rate of return of 7 % is not a binding commitment; many in the industry think that the GBP 1,543 million loan was interest-free and would eventually be written off.
- (20) In addition, the SFO maintains that the OIC scheme was designed from the outset to benefit Orkney fishermen. They had ceased to be members of their original producers' organisation (Aberdeen Fish Producers' Organisation) and set up their own local PO with membership restricted to Orkney fishermen. The conditions offered to vessels in membership of OFA to rent quotas were preferential to the conditions prevailing outwith Orkney. The SFO cites, by way of example, the case of cod. It thinks it likely that the Orkney fishermen were able to purchase quotas at a price ranging from GBP 1 000 to GBP 2 000 per tonne and, to meet the 8 % return criterion, a leasing price of a maximum of GBP 160 would have sufficed. In comparison, in the year 2001, the price paid to lease cod in mainland Britain would not have been less than GBP 350 per tonne, since the average price was around GBP 450 per tonne.
- (21) Finally, the SFO thinks that the assistance afforded to Orkney fishermen has benefited them in terms of operating expenses. Leasing expenditure is an operating cost and becomes a cost item in the vessels' balance sheet. Consequently, the OIC scheme is clearly an aid to those vessels participating in it. There has been considerable expansion in the fishing capacity of the Orkney fleet. The practical application of the scheme is such that it disadvantages fishermen in mainland Britain and indeed in the rest of the Community.

The Aberdeen Fish Producers' Organisation Ltd (AFPO)

- (22) The AFPO indicates that it had seven Orkney vessels in its membership in 1999. It had understood from verbal information that one of the attractions to Orkney vessels to establish a local PO was that quota entitlements would be acquired and made available to them under some kind of arrangement. The AFPO submitted an objection to the Scottish Executive against the creation of a new PO because it would be a very small body which could result in the unnecessary duplication of financial contributions and because the abovementioned seven vessels seldom, if ever, landed in Orkney. The Scottish Executive replied that the Orkney Fish Producers' Organisation met the criteria for official recognition and that this recognition was appropriate as fisheries are an important part of Orkney's economy.
- (23) The AFPO also mentioned that it had asked the local City Council a few years ago for preferential loans to enable it to purchase quota entitlements and that it was advised that such assistance could not be given as it was in breach of Community rules.

Mrs Sheryll Murray, Torpoint, Cornwall

- (24) Mrs Murray is a member of Cornwall County Council and mentioned that a similar scheme was discussed by this Council in January 2001. In her opinion, since the United Kingdom may manage its quotas as it wishes, there is no problem with allowing local authorities to use funds to safeguard

local Community fishing industries. She further commented on the fixing of production opportunities available to each UK vessel, which would be contrary to the common organisation of the market in fisheries products if the scheme was, in itself, contrary to this common organisation.

IV. COMMENTS FROM THE UNITED KINGDOM

- (25) In its first reply, dated 6 February 2002, the United Kingdom only forwarded comments made by the Orkney Island Council (OIC) in a letter to the Scottish Executive dated 22 January 2002. In its second reply, dated 22 February 2002, the United Kingdom sent its own comments, saying that they might equally be considered to be the comments of an interested party as referred to in the invitation which appeared in the Official Journal on 12 February.

Comments from the OIC

- (26) As a preamble to its comments, the OIC expresses concern that the European Commission has seen fit to investigate this matter notwithstanding the fact that the 'deemed consent' procedure had been carried out and complied with by the UK authorities.
- (27) The OIC questions the accuracy of the FQA market prices quoted in *Fishing News*, particularly for 2000. At that point, the market was just emerging and the values quoted could not be relied upon to determine a reasonable long-term return. It is a very volatile market and recent valuations have shown variations in price of up to 66 % in respect of the same track records. In the absence of more reliable indices, the best way of proceeding and assessing a reasonable return is to make use of more reliable alternative indices, such as rates of commercial lenders, stock market returns and government stocks. OIC gives examples of some of its other investments with a lower return obtained: temporary loans with a return of $3\frac{7}{8}\%$ on call, $3\frac{21}{32}\%$ for one month and $4\frac{1}{4}\%$ for a 12-month loan and a reserve fund investment portfolio with a return of 6,3 % before capital gains and losses for the year 2001.
- (28) The OIC refers to the Orkney County Council Act 1974 which authorises it to exercise harbour jurisdiction, in particular to Section 69(3)(e) which allows the Council to set up a reserve fund if the revenue of the harbour undertaking exceeds the money expended, this reserve fund being created 'for any purpose which, in the opinion of the Council, is solely in the interest of the County or its inhabitants'. The reserve fund is therefore not used to fund the Council's compliance with its statutory obligations, nor is it used to replace public sector contributions. It is accounted for separately and remains distinct from other accounts within the Council. The OIC refers to the Commission document 'Competition Law and the European Communities, Volume IIB, Explanation of rules applicable to State aid' in which it is stated, on page 8, that 'on the basis of the Court's judgements, a measure which originates directly or indirectly within the State, and which confers an advantage on one or more specific firms, falls outside the scope of Article 92 [now Article 87] if it imposes no extra burden on the State budget', reference being made to the judgements of the Court of Justice of the European Communities in Case 82/77 *Netherlands v Van Tiggele* (1978) ECR 25 and Joined Cases C-72/91 and C-73/91 *Sloman Neptun v Bodo Ziesemer* (1993) ECR I-887.
- (29) The OIC indicates that it had received a 7 % rate of return on its investments since the inception of the scheme to date and that this agreement was only intended to last for a year; it had thus reserved its right to adjust the rate of return in order to ensure that that rate was a commercial one. Although the rental agreements were not finalised because of the lengthy process that required to be undertaken in respect of Commission consent, their terms have been honoured. Even if it is true to say that the scheme was set up because the Orkney fleet was unable to borrow from commercial sources, the Council was aware of commercial lending secured against track records for a commercial return, a by-product of which is to assist in attracting and sustaining a fishing fleet in Orkney. In the opinion of the OIC, since the leasing of track records and the granting of funds in security of track records is more widely available, the undertakings involved in the OIC scheme have not benefited commercially from it.
- (30) The OIC believes that the scheme falls outside Article 87 on the grounds that the aid is not selective and does not affect the balance between the undertakings in receipt of aid and other undertakings. Membership of OFA is not restricted to undertakings of a particular Member State; it is merely subject to a residential and registration requirement within Orkney. This requirement can be complied with by any undertaking or resident in the Community and therefore cannot be seen to benefit one single Member State.

- (31) The OIC is of the opinion that the catch of the Orkney fleet availing themselves of the scheme is landed entirely within Scotland and is consumed almost entirely by the local market (Scotland). As operated, that scheme does not therefore distort competition between Member States.

Comments from the United Kingdom

- (32) The United Kingdom highlights the fact that the amount used for the purchase of track records (GBP 1,543 million) was provided by the Orkney Islands Council Oil Reserve Fund (ORF) which is funded as a result of a voluntary agreement with the oil companies active in the Orkney area. As these contributions to the ORF are not compulsory, the funds cannot be considered as a tax revenue or a State resource; they are not used to meet the Council's statutory obligations, nor do they replace public sector contributions. They are also accounted for separately. Referring to the judgements of the Court of Justice of the European Communities in Case 82/77 (cited above, recital 28), Joined Cases C-72/91 and C-73/91 (cited above, recital 28) and Case C-189/91 *Kirsammer-Hack v Sidal* (1993) ECR I-6185, the United Kingdom maintains that the scheme fails to meet one of the key tests for establishing the existence of aid.
- (33) According to the United Kingdom, on the basis of a comparison between the actual rate of return achieved and estimates made by a commercial quota letting agent (InterQuo Ltd), the differences between the two are within the margins tolerated by acceptable commercial practice, as the rate of return achieved under the scheme is 8 %, of which 1 % is paid to SFPO to cover its administration costs, and estimates made by InterQuo Ltd suggest that the return on investment for leasing these quotas commercially during 1999 and 2000 could have been 8,78 % and 8,27 %, respectively. The quotas were therefore leased at market rates and aid to producers did not exist. Consequently, the OIC scheme did not distort or threaten to distort competition. As for the cost of quota leasing published in *Fishing News*, the United Kingdom contends that the rates were published so infrequently that they could not provide the basis for a true assessment of this volatile market.
- (34) The United Kingdom maintains that the involvement of OIC in the administration of ORF does not constitute the direction or supervision by the State of the payments. Since the ORF is managed for the benefit of the community, there are few alternatives to its administration by the Council; alternative arrangements, such as trusts, are difficult to apply in practice because of the small population of the islands. The United Kingdom points out that the Commission has accepted that contributions made from the ORF are considered to be private contributions in the context of expenditure from the European Agriculture Guidance and Guarantee Fund (EAGGF). It follows that the payments made in this case do not represent State expenditure; nor were they directed by a body acting as an emanation of the State. The United Kingdom contends that OIC had reasonably assumed that the payments would not be considered as State aid and that this was a legitimate expectation on the part of the Council, given the status of the ORF and the fact that no similar scheme had been previously established in the Community.
- (35) Even if the Commission considers that there is State aid, the United Kingdom contends that trade between Member States is unaffected. Fishermen operate in an artificially constrained market, since the supply of fish caught by Community vessels is regulated by Community legislation (quotas) and, more importantly, quotas are allocated to Member States. Arrangements for the management of quotas are matters for the Member State; trade in UK quotas is, by definition, not possible with other Member States. Trade would have been affected only if fishing opportunities, rather than fish, had constituted the traded commodity.
- (36) In the opinion of the United Kingdom, this aid should not be considered as operating aid, or as aid implemented by the industry, as the Commission did in its preliminary examination. Track records and quota entitlements should be considered as assets. Notwithstanding the UK policy position that there was no intention of creating a 'free trade' situation in FQAs, there has always been scope for permanent transfers of quotas, something which is being formally recognised through adjustment of the Register of FQA holdings. Moreover, although security for the purchase of quotas was originally provided by the vessel, commercial lenders changed their position and considered the track records purchased as security (a letter from the Royal Bank of Scotland was attached as evidence). Track records are included within the annual accounts of many vessels and permanent transfers of quotas

are regarded by the UK Customs and Excise as a capital item for the purposes of Capital Gains Tax and Related Rollover Relief. The United Kingdom challenges the Commission's view that FQA units are 'raw products' which in theory no longer have any value at the end of the year. FQA units represent, year on year, a variable level of fish quotas and remain as a permanent share of available fishing opportunities. Therefore, if aid exists, it should not be considered as operating aid but rather as analogous with investment aid. As investment aid is not addressed in the 1997 Guidelines, it should be considered on a case-by-case basis in line with section 1.2 and its compatibility assessed with regard to the objectives of the Common Fisheries Policy.

- (37) The United Kingdom refers to the Guidelines, which state that aid must not be protective in its effect and must promote the rationalisation and efficiency of production and marketing in a way which encourages the adaptation of the industry. It also refers to the EC Treaty, which assigns to the common fisheries policy, as to the common agricultural policy, the task of ensuring a fair standard of living for the community, in particular by increasing individual earnings and assuring the availability of supplies (Article 33(1)(b) and (d)). The OIC scheme resulted in the buying and pooling of track records at a time of decreasing stocks. Such pooling can be considered to be rationalisation through the development of viable fishing enterprises in the context of decreasing fish stocks and erosion of catch entitlement. The scheme, which resulted in some of those smaller fishermen continuing in business in heavily fisheries-dependent areas where little alternative economic activity exists, could equally be consistent with the socioeconomic dimension of the common fisheries policy as required by Article 159 of the EC Treaty.
- (38) Finally, should the Commission adopt a negative decision, the United Kingdom indicates its willingness to amend the scheme as required to ensure future compliance with the rules. However, it urges the Commission to refrain from attempting any recovery from fishermen whom it may consider to have benefited from the scheme.

V. ASSESSMENT

A. Existence of State aid

- (39) Under Article 87(1) of the EC Treaty, '[s]ave as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'. Four conditions must be satisfied in order to class a measure as a State aid: first, the measure must provide some advantage to the undertakings which benefit from it; second, the aid must be granted by the State or through State resources; third, it must distort or threaten to distort competition by favouring certain undertakings; and, finally, it must affect trade between Member States.

Advantage to beneficiaries

- (40) The OIC scheme was set up because the Orkney vessel owners were unable to borrow money to buy track records. The UK authorities clearly indicated this in their letter dated 9 August 1999. Consequently, the scheme has resulted in providing quotas to SFPO, and these quotas are rented and used by those vessel owners who would otherwise not have had them at their disposal. As aid exists when an intervention results in favouring specified beneficiaries, whatever the form of intervention, there is a presumption that the OIC scheme corresponds to an aid system to fishermen to whom quotas were rented.
- (41) The present assessment is based on an analysis concerning the trade in track records and quota lease. It cannot be done, as the OIC has argued, by comparison with other investments ⁽⁹⁾. The assessment must be carried out with regard to the market concerned, with the data available for that market.

⁽⁹⁾ See recital 27.

- (42) The fishermen who benefit from the OIC scheme are fishermen who were not able to borrow money to buy track records. It has enabled them to fish against quotas to which they would otherwise not have been entitled. These acquired track records have therefore enabled them to increase their production in conditions that could otherwise not have been possible. The scheme has therefore conferred an advantage on these fishermen.
- (43) The Commission has no knowledge of the price of the quotas leased by SFPO to the Orkney fishermen. The UK authorities sent a summary sheet of the payments made to the OIC between April 1999 and January 2000; that summary shows that, as expected, the payments represented 8 % of the investment in the acquired track records (GBP 1,543 million), but it does not indicate the number of leased quotas to which the payments correspond. Although the Commission requested copies of the rental agreements, it never received them. The UK authorities replied, first, before the opening of the formal investigation procedure, that the rental agreements had been put on hold and, second, in their comments on that investigation, that the agreements had not been finalised but that their terms had been honoured. That was the justification put forward by the UK authorities for sending the Commission copies of the agreements in which the details concerning the quantities of quotas rented and the rental amounts had not yet been entered, even though the agreements had been signed by the lessees.
- (44) The Commission considers that there is a lack of coherence in the information sent by the United Kingdom. By nature, an agreement concluded by a party which commits itself to paying a certain amount of money is signed only after an understanding is reached between the parties involved on the amount in return for the quantity leased. As the agreements sent by the United Kingdom do not contain these data, the Commission must assess the evolution of the prices of purchase of quotas, of their lease and of the existence of State aid on the basis of the information available, that is to say, on the information that it has obtained from other sources.
- (45) In their first letter to the Commission, dated 9 August 1999, the UK authorities said that the track records had already been acquired. As the decision to set up the OIC scheme was taken in 1998, it was intended to be implemented from the first year of application of the new system of allocation of quotas ⁽⁶⁾. According to a House of Commons' report issued at that time on the subject ⁽⁷⁾, there was a huge tension in that particular market at that time: 'quota [more precisely "track record"] for cod was priced at GBP 1 800-2 000 per tonne; finally, rental values for cod, haddock and saithe quotas were around GBP 300 per tonne per year'.
- (46) In its observations, the Scottish Fishermen's Organisation assumed that the lease conditions to the Orkney fleet were preferential, giving the example of cod, the track record for which was probably acquired at a price of GBP 2 000 per tonne at the most and the quota for which was probably leased at around half the price charged outside Orkney (GBP 160 instead of GBP 350 per tonne) ⁽⁸⁾. The UK authorities did not make any comments about these figures.
- (47) From April to December 2000, the trade newspaper *Fishing News* regularly gave the prices for the purchase of track records (FQA units) and for the rental of quotas, the source of those figures being the Quota Trading Association of Fraserburgh. For example, the cost of track records was, per tonne, for North Sea cod, from GBP 1 800 in April down to GBP 1 500 in December and, for West Coast cod, at about GBP 1 450 all year round; for North Sea haddock, the cost of track records varied from GBP 1 900 to GBP 2 400 in April to GBP 1 700 to GBP 1 800 in December and, for West Coast haddock, from GBP 1 700 to GBP 1 900 in April to GBP 1 400 to GBP 1 500 in December. For other species, the trend was broadly the same, that is to say, prices remained stable or showed a slight decrease. As for quota rental prices, for North Sea cod, prices ranged from GBP 250 per tonne from April to September to GBP 200 in October and GBP 100 in December and, for West Coast cod, from GBP 300 in April and May, to GBP 230 from June to August, to GBP 200 in December; for North Sea haddock, they ranged from GBP 350 in April to GBP 100 in December and, for West Coast haddock, from GBP 280 to GBP 180; for other species, the prices decreased in the same way throughout the year 2000.

⁽⁶⁾ See recital 7.

⁽⁷⁾ House of Commons, Agriculture Committee, Eighth Report (1999) 'Sea Fishing', Vol. I; see points 77 to 94, and in particular, for the prices quoted, point 83.

⁽⁸⁾ See recital 20.

- (48) The OIC and the United Kingdom have pointed out that this quota market was very volatile and that the rates published by *Fishing News* could not provide a true reflection of the situation ⁽⁹⁾. However, these figures confirm the observations made in the House of Commons Report. The implementation of the new system of quota allocation in the United Kingdom in 1999 led to great tension in the track records market. It is natural that the purchase prices remained around the same level or decreased a little in the following year. As for their renting, high levels of rental are observed at the beginning of the year because it is at that time that the fishermen wish to secure the quotas they want to fish against, which creates tension in the market in question.
- (49) The UK authorities have not provided the Commission with information showing that the setting up of the OIC scheme did not lead to preferential rental conditions. If they had had such information they could easily have sent it. Given that they have not provided such information and since the Commission has information allowing it to assume that preferential rental conditions existed ⁽¹⁰⁾ and the UK authorities have not shown that information to be unreliable, it can be assumed that such preferential conditions did indeed exist and that the fishermen who benefited from the OIC scheme enjoyed a specific advantage.
- (50) State aid exists when an intervention results in favouring specified beneficiaries, whatever the form of intervention. As the intervention of the Orkney Council in the implementation of the OIC scheme has resulted in the favouring of fishing enterprises established in the Orkney Islands, the OIC scheme must have been selective in character and has thus clearly conferred an advantage upon those particular enterprises. The opinion of the OIC, as transmitted by the United Kingdom ⁽¹¹⁾ and according to which membership in OFA can be complied with by any undertaking in the Community, cannot be accepted. In practice, membership would have entailed registration of the vessel in the UK fishing vessel register, which is subject to specific obligations based on a national regime of entries and exits of the fleet, as provided for in Article 6 of Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector ⁽¹²⁾; in addition, the vessel owner would have had to be a member of OFA and 50 % of the crew would have had to reside in Orkney.

State resources

- (51) The 'State' is to be understood in the broadest possible sense, including all levels of regional and local government. In the present case, it covers the OIC. It covers also the Oil Reserve Fund (ORF) administered under the control of the Council and created under Section 69 of the Orkney County Council Act of 1974 ⁽¹³⁾. As the ORF funds remain under the control of the OIC, they constantly remain under public control and thus available to the competent public authority; they may therefore be considered as State resources. Paragraph 2 of Section 69 does indeed state that securities acquired with the funds should be managed by trustees. But, as the United Kingdom pointed out in its observations ⁽¹⁴⁾, no trust was instituted for that purpose because such an arrangement would have been difficult to apply in practice. Anyway, if a trust had been instituted, it would certainly have remained under the control of the OIC and decisions taken by the trustees would have been considered as decisions taken by the OIC, that is to say, by the State for the purposes of Article 87 of the EC Treaty.

⁽⁹⁾ See recitals 26 to 29 and 33.

⁽¹⁰⁾ See recitals 40 and 46.

⁽¹¹⁾ See recital 30.

⁽¹²⁾ OJ L 337, 30.12.1999, p. 10.

⁽¹³⁾ Section 69: '1. If in respect of any financial year the monies received by the Council on account of the revenue of the undertaking exceed the monies expended or applied by the Council in respect thereof, the Council may in respect of that year apply out of the County fund and carry to the credit of a reserve fund in respect of the undertaking such a sum as they consider reasonable not exceeding the amount of such excess.

2. Any monies for the time being standing to the credit of the reserve fund may be invested in securities in which trustees are for the time being authorised to invest trust monies including any debenture stocks or other security created by the Council.

3. Any reserve fund provided under this section may be applied: a) in making good to the County fund any deficiency at any time arising in the income of the Council from the undertaking [harbour undertaking] or, b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the undertaking, or, c) for defraying any expenditure in connection with the undertaking for which capital is properly applicable, or in providing money for repayment of loans (but not in making annual payment required to be made in respect of loans), or, d) for defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing any buildings, works, plant, vessel, equipment or article forming part of the undertakings, or, e) for any other purpose which in the opinion of the Council is solely in the interests of the County or its inhabitants.'

⁽¹⁴⁾ See recital 34.

- (52) The United Kingdom contends that the resources from the ORF are private money, which must be understood in the sense that they do not constitute State resources, because they come from a voluntary agreement and are not used to fund the Council's compliance with its statutory obligations. In addition, the Commission had already recognised that feature.
- (53) The Commission observes that this agreement, concluded on 29 April 1975 between the OIC and the Pipeline Group (Occidental of Britain, Getty Oil, Allied Chemical Ltd and Thomson Piper Petroleum Ltd), contains provisions relating to: a minimum quarterly payment with an exemption clause in case of force majeure; the renegotiation of the agreement; arbitration in case of dispute ⁽¹⁵⁾. These provisions show that the commitment to pay those sums in return for use of the islands' facilities goes beyond what could be characterised as a voluntary contribution, as in the case, for instance, of a charity organisation. If renegotiation is possible (it is stated in the related paragraph that 'the Parties recognise that the payments set out in this agreement have been agreed to as fair and equitable'), it follows that the agreement was the result of a negotiation in the course of which each party upheld its own interests; the payment made under that agreement is not like a gift made to a charitable organisation. The agreement cannot therefore be classed as a voluntary agreement, that is to say, as resulting merely from the goodwill of the oil companies towards the County of Orkney and its inhabitants.
- (54) In addition, the Commission observes that the content of the agreement did not primarily concern private interest between two undertakings. Article 295 of the Treaty is without prejudice to the rules in Member States governing the system of ownership and a public body may act as a private undertaking. But that is not the position here. The agreement states in its preamble that payments thereunder are made: 'a) in respect of any injurious affection, disturbance or depreciation of the community arising or likely to arise from oil transportation and shipment as a result of the installation and the operation of the terminal, b) towards facilitating the promotion of development in the Harbour areas and c) as contribution towards the additional expenses and costs which the Council will incur in providing increased public services as a consequence of the installation of the terminal.' It is clear, therefore, that payments made by the oil industry under this agreement do not correspond to the acquisition of goods or payments of services. For the recipient (the OIC through the ORF), it cannot be considered as money resulting from a commercial contract in which it would have been engaged. Accordingly, the payments made by the Pipeline Group cannot be considered as private money, but public money.
- (55) The United Kingdom pointed out that, in the context of the EAGGF, the Commission has previously considered the ORF funds to be private. That was stated in a letter from the Directorate-General for Agriculture, dated 28 January 2002, concerning the national financing of a project ('the Orkney Meat project') cofinanced by the EAGGF. The Commission stresses that this reply was made in a very specific context. The Scottish Executive wanted to implement this project. Before doing so, it asked the Commission department concerned if it could do so by considering a contribution from ORF as private money (a private contribution is required for implementation of that kind of EAGGF project). The Scottish Executive forwarded some information to the Commission department concerned, which replied that 'on the basis of the information provided,... the money from the ORF can be considered as being a private contribution ...'. The Commission department gave its advice on the basis of the information provided, without requesting further information and, therefore, without going into a more in-depth analysis. In the present case, however, the Commission has deepened its analysis and asked for specific information (which the United Kingdom sent). The Commission now observes that the United Kingdom had previously provided only incomplete information, which led to the reply given by the Commission department concerned by letter dated 28 January 2002. On the basis of the information now available, none of those documents indicate that the ORF is managed with any measure of autonomy and there is therefore no doubt that the ORF funds remain fully under public control.

⁽¹⁵⁾ '2. Payments: 2.1.... the Pipeline Group shall ... make payment to the Council of the following sums: ...;

4. Force majeure: If due to any act of God, war, ...the Pipeline Group are unable to ship from the Terminal a sufficient quantity of crude oil during any quarter and thereby incur liability for the minimum payment under sub-clause 2.3 hereof, the payment ... shall nevertheless be restricted to a sum calculated by reference..

5. Renegotiation: The parties recognise that the payments set out in this agreement have been agreed as fair and equitable in the light of the circumstances as presently known or anticipated by the parties. If, in the future, there should be any change in the circumstances.... they will meet and renegotiate the parts of this agreement so affected in good faith, in order, so far as possible, to restore the parties affected to their original position and, in the event of the parties thereafter failing to reach agreement, the matters in dispute between them shall be referred to arbitration in accordance with Clause 6.

6. Arbitration: Any reference or dispute between the parties hereto which may arise.... shall be determined by an arbiter appointed by the Sheriff of the Grampians, Highlands and Islands and the decision of such arbiter shall be final and binding on the parties.

7. Applicable law: The construction, validity and performance shall be governed by Scots law.'

- (56) Furthermore, as stated in Section 69 of the Orkney County Council Act, the way in which the funds are to be used is clearly defined. They are to be used in the interests of the community of the Orkney Islands, as defined by the Council, and not used as a private investor would do in a market economy, with the sole aim of deriving profit from them. That is in line with the reasons given by the United Kingdom for the setting up of the OIC scheme ⁽¹⁶⁾, according to which the scheme was created because the Orkney fleet was unable to borrow from commercial resources. The ORF funds are therefore attributable to the State for the purposes of Article 87 of the EC Treaty.
- (57) This finding is in line with the judgements in the cases referred to by the United Kingdom (Case 82/77, Joined Cases C-72/91 and C-73/91, and Case C-189/91) ⁽¹⁷⁾, in which the Court of Justice of the European Communities stated that only advantages granted from resources other than those of the State do not fall within the scope of the rules concerning State aids.

Distortion or threat to distort competition

- (58) The quotas from which the fishing enterprises have benefited under the OIC scheme have reinforced their position with regard to the other fishing enterprises, whether registered in the United Kingdom or in the other Member States. They have been allowed to land and sell more fisheries products than they would have done had they not benefited from those quotas.
- (59) The implementation of the OIC scheme has therefore affected competition conditions. It has given rights to fish for products which are sold on the Community market. The track records acquired concern fish species such as cod, haddock, saithe and whiting, which are species covered by the common organisation of the markets in the fisheries and aquaculture sector ⁽¹⁸⁾. Thus, this scheme has affected competition within the Community market.
- (60) In addition, the Scottish Fishermen's Organisation ⁽¹⁹⁾ claims that it was the setting up of the OIC scheme that triggered the escalation of the cost of quotas. The UK authorities have not countered this statement.

Impact on trade between Member States.

- (61) The question of whether trade has been affected must not be addressed with regard to the quota or track record market only, as the UK contends ⁽²⁰⁾. An aid scheme must be assessed in relation to all the effects that it could have on trade within the Community. Consequently, the OIC scheme must also be assessed with regard to its effect on trade in the products concerned, namely products of the fisheries sector, and in the products which enter into competition with fisheries products.
- (62) According to the official UK sea fisheries statistics for 1999 and 2000 ⁽²¹⁾, trade in fisheries products between the United Kingdom and the other Member States was very significant. Landings in 2000 were just under 500 000 tonnes. During the same year, exports of fish and fish products amounted to 365 000 tonnes including 233 000 tonnes to other Member States and imports of fish and fish preparations were just under 550 000 tonnes including 133 000 tonnes from other Member States.
- (63) The OIC ⁽²²⁾ has indicated that the Orkney catch is believed to be landed and consumed almost entirely within the Scottish market, but has not provided any proof that this is the case. It is only an assumption which does not tally with the significant nature of the trade exchanges just referred to. However, even if it were the case, the possibilities for enterprises established in other Member States to export their products into the United Kingdom would still be affected. The OIC scheme allows the fishermen who benefit from it to maintain a share of the market that competitors could otherwise have seized. Thus, trade between the Orkney fleet and producers from other Member States is affected.

⁽¹⁶⁾ See recital 10.

⁽¹⁷⁾ See recitals 28 and 32.

⁽¹⁸⁾ At the time of the setting up of the scheme, this common organisation of markets was regulated by Council Regulation (EC) No 3759/92 of 17 December 1992 (OJ L 388, 31.12.1992, p. 1), which was replaced on 1 January 2001 by Council Regulation No 104/2000 of 17 December 1999 (OJ L 17, 21.1.2000, p. 22).

⁽¹⁹⁾ See recital 19.

⁽²⁰⁾ See recital 35.

⁽²¹⁾ Available on the website <http://www.defra.gov.uk/>

⁽²²⁾ See recital 31.

Conclusion

- (64) The four criteria for classing these measures as State aid measures for the purposes of Article 87 of the EC Treaty are met. Since these measures concern the fisheries sector, they must be examined under the Guidelines for the examination of State aid to fisheries and aquaculture, hereinafter 'the Guidelines'. Under point 3.4 of the current Guidelines ⁽²³⁾, they must be examined under the Guidelines in force at the time of the grant of the aid. Consequently, they are examined under the 1997 Guidelines ⁽²⁴⁾.

B. Compatibility with the common market

- (65) The Commission's doubts as to the compatibility of the OIC scheme with the common market were based on the assumption that quotas and track records are, by nature, not durable goods. The aid system established by the OIC in favour of the Orkney fleet therefore appeared to the Commission as aid related to operating costs. As aid of such a type is, in principle, not compatible with the common market and as no acceptable justification was provided, the Commission raised doubts about the scheme.
- (66) In its reply, the United Kingdom indicated that 'permanent transfers of quota are regarded by Customs and Excise as a capital item for the purposes of Capital Gains Tax and related Rollover Relief. Thus, although it was first officially declared that there would not be a free trade in track records, it now appears that the UK authorities officially recognise that these track records have acquired a value as an asset. Arguably, therefore, the Commission could itself perhaps adopt that approach and consider the purchase of track records by SFPO on behalf of OIC as an investment.
- (67) Whatever the correct classification may be, the Commission does not need to discuss it. With regard to fishermen, since the period of rental of quotas is not longer than one year ⁽²⁵⁾, the rental represents an operating cost. An aid, the effect of which is on the amount of the rental, is therefore an operating aid.
- (68) According to point 1.2, fourth indent, third subindent, of the Guidelines, aid related to operating costs, which does not impose any obligation on the part of recipients is incompatible with the common market unless the aid scheme is directly linked to a restructuring plan considered to be compatible with the common market. As the OIC scheme is in no way linked to a restructuring plan as defined in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁶⁾, it cannot be considered compatible with the common market.
- (69) In addition, the UK authorities have indicated that, in so far as the OIC scheme pools track records, it could be considered to be rationalisation through the development of viable fishing enterprises in the context of decreasing fish stocks. But, as this pooling concerns SFPO, which has not been considered as a beneficiary under the current analysis, that argument is not relevant to the assessment of this aid scheme to fishermen.

C. Recovery of the aid

- (70) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. The Commission is not to require recovery of the aid if that would be contrary to a general principle of Community law.

⁽²³⁾ OJ C 19, 20.1.2001, p. 1.

⁽²⁴⁾ See footnote 4.

⁽²⁵⁾ As specified in point 4.2 of the agreement between OIC and OFA. See recital 14.

⁽²⁶⁾ OJ C 288, 9.10.1999, p. 2.

The principle of the protection of legitimate expectations is a general principle of Community law. The Commission considers that in the present case, that principle precludes recovery, for the following reasons.

While there is no necessary link between actions and decisions of the Commission in relation to the use of Community Structural Funds in the context of Regulation (EC) No 1260/1999⁽²⁷⁾ and Commission decisions regarding State aid, in the specific circumstances of this case, legitimate expectations as to the private nature of the fund in question may have been created through the combination of a number of events.

In fact, both the United Kingdom Government and the Commission consistently acted in such a way that it could reasonably be concluded that the fund is a private fund from the point of view of the rules governing Community Structural funds. Even if, legally speaking, there is no automatic link between the two issues, this may have led to a reasonable assumption on the part of the national authorities and fishermen that grants from such a fund do not fall under the rules on State aid, thus creating a legitimate expectation in this respect.

- (71) First, there is a close link between the Orkneys and the Shetlands. In fact, the fishermen of Orkney and Shetland belong to the same producer organisation. The Orkney Islands authorities and beneficiaries were therefore probably aware that an explanatory leaflet by the Scottish Executive for the implementation of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture⁽²⁸⁾ clearly indicates that grants and loans from the parallel Shetland Islands Council Charitable Trust (SICCT — see on this State aid Case C-88/2001) will not be regarded as the grant of public money, which justified the conclusion that they were to be regarded as a private contribution.

Second, in the European Regional Development Fund (ERDF) under the Highlands and Islands Objective 1 Programme 1994-1996, the funding from Shetland Leasing and Property Ltd (SLAP), which is wholly owned by the SICCT, was regarded as a private contribution. Again, it is very likely that the Orkney Islands Authorities were aware of this.

Third, the Orkney Reserve Fund itself has also been considered in practice by the UK authorities and the Commission as being of a private nature, thus making it permissible to provide a private co-financing contribution in the context of financing from the European Agriculture Guidance and Guarantee Fund (EAGGF)⁽²⁹⁾.

- (72) The Commission considers that these elements taken together have created a legitimate expectation on the part of the Orkney authorities and the bodies involved, as well as on the part of fishermen. They could assume that only private funds were involved when the fund was providing cofinancing to Community Structural Funds. In view of that, they may have wrongly assumed that the State aid rules of the Treaty do not apply, even if, legally speaking, there is no automatic link between the two issues.

On these grounds, and on the basis of Article 14(1) of Council Regulation (EC) No 659/1999, since the principle of the protection of legitimate expectations is a general principle of Community law, the recovery of the aid from which fishermen have already benefited will not be required.

- (73) But, as has been determined in this Decision, the funds involved must actually be considered State resources under the State aid rules. Therefore, the scheme is an operating aid which exists year after year for the benefit of the fishermen to whom annual quotas are rented. Since that aid is not compatible with the common market, it must be brought to an end. With that aim, all the provisions in the agreements made between OIC, OFA and SFPO which lead to preferential renting conditions must be repealed and replaced by provisions which show that the renting is made under normal market conditions. At the same time, it must be ensured that under any new arrangements thus created, neither the SFPO nor the OFA benefit from State aid.

⁽²⁷⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, OJ L 161, 26.6.1999, p. 1.

⁽²⁸⁾ OJ L 376, 31.12.1986, p. 7.

⁽²⁹⁾ See recitals 34 and 55.

VI. CONCLUSION

- (74) The Commission finds that the United Kingdom has implemented, in breach of Article 88(3) of the EC Treaty, the aid scheme entitled 'Orkney Islands Council Track Record Scheme'.
- (75) In the light of the assessment made in Paragraph V, this aid scheme is not compatible with the common market. However, the recovery of the aid is not required,

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme entitled 'Orkney Islands Council Track Record Scheme', implemented by the United Kingdom, is not compatible with the common market.

The United Kingdom shall abolish the aid scheme referred to in the previous paragraph.

Article 2

The United Kingdom shall inform the Commission, within a period of two months from the receipt of this Decision, of the measures it has taken to comply with it.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 3 June 2003.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION**of 3 June 2003****on loans for the purchase of fishing quotas in the Shetland Islands (United Kingdom)***(notified under document number C(2003) 1687)***(Only the English text is authentic)****(Text with EEA relevance)**

(2003/612/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),

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 14 thereof,

Having invited interested parties to submit their comments, in accordance with the first subparagraph of Article 88(2) of the EC Treaty,

Whereas:

I. PROCEDURE

- (1) In February 1999 the Commission was informed by a Member of the European Parliament of a scheme, hereinafter the Scheme, related to the purchase of fishing quotas in which the authorities of the Shetland Islands were involved. By letter of 25 March 1999 the Commission requested the United Kingdom authorities to provide information about the Scheme. Following a reminder, the United Kingdom authorities provided a response by letter dated 9 August 1999.
- (2) The Commission requested further information by letters of 1 September 1999, 12 April 2000 and 22 June 2000. The United Kingdom authorities sent information by letters of 6 March 2000, 16 May 2000, 17 October 2000 and 8 December 2000.
- (3) The Commission informed the United Kingdom by letter of 28 November 2001 of the Decision to initiate, in relation to the Scheme, the formal investigation procedure provided for in Article 88(2) of the EC Treaty. Following mutual agreement to extend the deadline for a response, confirmed to the United Kingdom authorities by Commission letter of 20 December 2001, the United Kingdom provided its comments on the case by letters of 6 February and 8 March 2002.
- (4) The Commission Decision to initiate the formal investigation procedure was published in the *Official Journal of the European Communities* on 12 February 2002 ⁽²⁾. The Commission invited any interested parties to provide their observations on the case. Comments were received from the Scottish Fishermen's Organisation Ltd (letters of 27 February and 18 March 2002), Mrs Sheryll Murray of Torpoint, Cornwall, (letter of 7 March 2002), the Aberdeen Fish Producers' Organisation Ltd (letter of 11 March 2002) and the Shetland Development Trust (letter of 12 March 2002). In accordance with Article 6(2) of Council Regulation (EC) No 659/1999, all the comments received were forwarded to the United Kingdom authorities to enable them to inform the Commission of their own comments on those observations. The United Kingdom authorities replied by letter of 3 May 2002, saying in substance that the issues raised had already been dealt with in the previous replies.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 38, 12.2.2002, p. 7.

- (5) By letter of 7 August 2002, the Commission requested documents to which reference was made in the letter of 12 March 2002 of the Shetland Development Trust. Those documents were received on 27 August 2002.

II. FACTS

- (6) In the United Kingdom, national fishing quotas are allocated to three groups of fishermen: (i) the 'sector', which is made up of the fish producers' organisations (POs) on behalf of their members with vessels over 10 metres; (ii) the 'non-sector', which comprises fishermen with vessels over 10 metres but who are not members of a producers' organisation; (iii) the 'under 10-metre fleet'.
- (7) Quotas are allocated annually to the three groups on the basis of track records (the catch levels of each vessel over a certain period). Before 1999, track records were based on the catches made by fishing vessels during the three years immediately preceding each quota year. Since 1 January 1999, however, track records have been based on the period from 1994 to 1996. This system is known as 'fixed quota allocation' (FQA); an FQA unit represents a 100 kg track record unit in respect of which annual quotas are allocated.
- (8) The track record, or FQA units, can be sold from one vessel to another under certain conditions. This situation is relatively specific to the United Kingdom. Except in the Netherlands, where a system of individual transferable quotas is in place, fishing quotas, or track record giving access to them, are not usually transferable. Under this system a certain market for track records has developed within the United Kingdom. The buyers can be other fishermen or POs.
- (9) As the track records are based on catches made by fishing vessels from 1994 to 1996 and are now no longer recalculated from one year to another, fishermen are not obliged to fish all the quotas their track records entitle them to, so they can keep their track records as a whole for the following years. They can fully or partly let them to other fishermen or POs. In the same way, fishermen or POs who have bought such track records are allowed to let them.
- (10) It is within this context that the Shetland authorities decided in 1998 to set up the Scheme. According to the United Kingdom authorities, this quota purchase scheme was established in order to ring-fence the quota for the benefit of fishing vessels in the fisheries dependent area of the Shetland Islands since, owing to escalating costs, the Shetland fleet had great difficulty in finding sources of commercial financing for the purchase of quotas and, also, because quotas were intangible assets which could not always be used as security.
- (11) The bodies involved in the Scheme are:
- The Shetland Islands Council (SIC);
 - Shetland Development Trust (SDT), which is a discretionary trust. SDT was set up to foster economic development in Shetland and is operated with funding from the SIC. The trustees are the councillors of the SIC plus two independent trustees. The principal source of funds is the Reserve Fund, established and operated by SIC; the Reserve Fund is funded from the surplus revenues of the Council's harbour undertaking;
 - Shetland Leasing and Property Ltd (SLAP), which is a commercial limited company operated for profit. The company's shares are wholly owned by the Shetland Islands Council Charitable Trust (SICCT), the trustees of which also are the councillors of the SIC plus two other persons. The funds of this trust originate from oil companies;
 - Shetland Fish Producers' Organisation Ltd (SFPO), which is a Producers' Organisation as defined in Community Legislation ⁽³⁾.

⁽³⁾ Council Regulation (EEC) No 3759/92 of 17 December 1992 on the common organisation of the market in fishery and aquaculture products (OJ L 388, 31.12.1992, p. 1). This Regulation is now replaced by Regulation No 104/2000 of 17 December 1999 (OJ L 17, 21.1.2000, p. 1).

- (12) The quota purchasing scheme operates in the following manner. To assist SLAP in the purchase of track records, SDT procured, in 1998, a loan of GBP 2 million for SLAP at a rate of interest equal to the return required by SLAP from SFPO for the lease of quotas to fishermen (on average 9 %). The purchases were made during the years 1998 and 1999. The track records acquired cost a total of GBP 2 million.
- (13) There is an agreement, dated 11 September 1998, between SLAP and SFPO. Under this agreement, SFPO acts on behalf of SLAP, both for the acquisition and rental of track records. This agreement contains the following statements:
- 'SFPO shall submit to SLAP from time to time notification of track record or quota which SFPO considers would be suitable for SFPO to acquire on SLAP's behalf ...' (point 2.1),
 - 'Upon payment of the purchase price ... and the acquisition on behalf of SLAP of the relevant Track Record, the ownership of all such Track Record ... shall vest in SLAP and SFPO hereby assigns to SLAP its whole right title and interest to the Track Record absolutely such that the same shall vest absolutely in SLAP and, to the extent that the Track Record shall fail to vest effectively in SLAP as aforesaid, SFPO shall hold the Trust Property in trust for the benefit of SLAP' (point 2.4),
 - 'SFPO ... shall be entitled to a management fee of all Rental Income received by it' (point 5),
 - 'SFPO shall only lease the Track Record, or any part of it, pursuant to a Rental Agreement the terms of which have first been approved by SLAP and no lease of Track Record shall be entered into with a party who is not a member of SFPO or is not a PO' (point 3.9),
 - 'In determining to whom the Track Record shall be leased SFPO shall observe the following order of priority in entering into Rental Agreements: (i) preference shall be given to persons, partnerships or companies newly established and actively operating in the fishing industry in Shetland over persons or partnerships already established in the fishing industry in Shetland, (ii) preference shall be given to persons, partnerships or companies who own and are actively operating fishing vessels registered with a port letter in Shetland, (iii) persons, partnerships or companies already established and actively operating in the fishing industry in Shetland shall be given preference to POs' (point 3.10),
 - 'SFPO shall use its best endeavours to obtain via Rental Income a minimum net return (i.e. after deduction of the Management Fee) of 9 % par annum on payments made by SLAP.' (point 3.14).
- (14) Thus, under the Scheme, SFPO, which manages the track records, was entitled to charge an extra 1 % to meet its running costs; the average minimum rental had to be 10 % so that the 9 % return could be achieved. However, in their letter of 17 October 2000, the United Kingdom authorities informed the Commission that, by a Decision adopted at a meeting of the SFPO board on 30 January 1999, this rental cost had been replaced for SFPO members by an additional levy to the normal membership levy. This normal membership levy is 1 % of the vessel's gross earnings; the additional levy was up to 4 % at the beginning of the scheme and was increased to up to 5 % from October 1999. The additional levy depends on the quantity of quota leased by a vessel from the quotas allocated in respect of the track record acquired under the scheme. A rate of 5 % applies for vessels with zero track record and a progressively reduced rate applies for vessels with an incomplete track record, this incomplete track record being measured with reference to normal track record membership criteria.
- (15) According to the United Kingdom authorities, for the track records acquired under the Scheme (GBP 2 million), the minimum 9 % return to SLAP was obtained from leasing quotas to vessels other than those in the membership of SFPO. In 1999, 77 % of the minimum return was obtained in that way.

Grounds for the formal investigation procedure

- (16) The Commission considered that the loan granted by SDT to SLAP to buy track records was made on preferential terms, in particular due to the fact that vessel owners were not able to borrow money on the terms available because track records could not be used as securities. In addition, the operation of the Scheme has had the effect of lowering the rental cost of the quotas allocated in respect of the track records acquired, as compared with normal lease costs under normal market conditions. Through the system of additional levies, the conditions offered to vessels in the membership of SFPO were preferential to the conditions offered to non-member vessels. On those grounds, the Commission considered that the Scheme resulted in an economic advantage to the fishing undertakings benefiting from it.
- (17) As the Scheme was set up in 1998, it was assessed in the light of the 1997 Guidelines for the examination of State aid to fisheries and aquaculture ⁽⁴⁾. The Commission considered that quotas and track records are by nature not durable goods; even though they can be bought, in theory they no longer have any value at the end of the calendar year. Aid for their purchase therefore appears to be aid related to operating costs for the running of the vessels which benefit from them. As operating costs in the fisheries sector are allowed only in specific circumstances which did not exist in this case, that aid did not appear to be compatible with the common market. In addition, the Commission considered that the Scheme could not be considered as a scheme implemented by members of the industry, permissible under point 2.7 of the Guidelines, because its effect of ring-fencing track records rather than letting the market forces work is protective in the context which the industry faces and does not contribute to attaining the objectives of the common fisheries policy.

III. OBSERVATIONS OF THIRD PARTIES

The Scottish Fishermen's Organisation Ltd (SFO)

- (18) The Scottish Fishermen's Organisation Ltd (SFO) welcomes the Commission's Decision to initiate the formal investigation procedure and is of the opinion that the Scheme is by its very nature discriminatory and contrary to the rules governing State aid. It considers that the Scheme was funded by the local authorities rather than by the producers' organisation because no commercial financing would have been provided by banks to fund such purchases, not only because track records are intangible assets but also because the asset base of the local producers' organisation could not justify lending it GBP 2 million. The SFO has approached commercial financial institutions for money to purchase quotas but it would have had to mortgage its assets or effectively remove the money from its working capital. It is therefore clear that the local authorities in Shetland put the local fishermen in an economically advantageous position.
- (19) The SFO also indicates that it was the intervention of the Shetland authorities which caused the cost of quota to escalate and the development of the market for quota. Furthermore, it believes that the provision requesting via rental income a minimum net return of 9 % per annum is not a legally binding commitment; many, in the industry, think that the GBP 2 million loan was interest-free and would eventually be written off.
- (20) The SFO maintains that the Scheme was designed from the outset to benefit Shetland fishermen. Enquiries were made whether mainland fishermen could join the Shetland producers' organisation and, to this day, no vessel outwith the Shetland Islands has been admitted; for the SFO, that is a clear indication that the loan was made to benefit only Shetland fishermen. In addition, when quotas have been leased to fishermen outwith Shetland, they have been made at prevailing market rates which would certainly be higher than the rate required to achieve a 10 % return. In a real sense, fishermen outwith Shetland have been subsidising the Shetland fishermen by paying higher prices and helping the Shetland organisation to achieve the 10 % return figure, but at the expense of being less competitive themselves. For example, in the case of cod, it is likely that the SFPO was able to purchase cod quotas at prices ranging from GBP 1 000 to GBP 2 000 per tonne and a leasing price no higher than GBP 200 would have been sufficient to meet the 10 % return criteria. By comparison, the normal price paid to lease cod in the year 2001 would have not been less than GBP 350 per tonne, and the average price was in the region of GBP 450 per tonne.

⁽⁴⁾ OJ C 100, 27.3.1997, p. 12.

- (21) This clearly distorts competition. As the return required on fish leased is considerably lower than elsewhere in mainland Britain, due to the absence of commercial considerations, the Scheme is clearly an aid for reducing the operating costs of the vessels participating in it. Indeed the SFO states that the Scheme has led to a considerable expansion in the fishing capacity of the Shetland fleet.

The Aberdeen Fish Producers' Organisation Ltd (AFPO)

- (22) By its letter, the AFPO explains that it considered it appropriate to inform the Commission of its experiences in relation to the quota market. Its understanding of the situation is that, whenever fishermen are interested in selling their quota entitlement, they contact the Shetland PO as a matter of course. One of its members had offered the AFPO the opportunity to purchase his North Sea and West Coast quota entitlement in 2001 on the basis of five annual payments without interest, but the AFPO did not have the finances to accept that offer and, within days, the quota entitlement had been sold to Shetland. In addition, the AFPO relates that it had meetings with the local city council and asked for preferential loans to enable it to purchase quota entitlement, but was advised that such assistance would be in breach of Community rules.

Mrs Sherryl Murray, Torpoint, Cornwall

- (23) Mrs Murray is a member of Cornwall County Council and mentions that a similar scheme was discussed by this Council in January 2001. In her opinion, since the United Kingdom may manage its quotas as it wishes, there is no problem with allowing local authorities to use funds to safeguard local Community fishing industries. She makes further comments on the fixing of production opportunities available to each United Kingdom vessel, which should be contrary to the common organisation of the market in fisheries products if the scheme is, in itself, contrary to this common organisation.

The Shetland Development Trust (SDT)

- (24) By its letter, the SDT sent information on the bodies involved in the Scheme, on their status, their objectives and their functions.
- (25) The SDT was established in 1997 in order to apply funding by investing in local industry using monies from a fund known as the Reserve Fund, which was established in the early 1980s. This Reserve Fund received surplus funds after the harbour undertaking of Sullom Voe came into profitability. The object of the trust is to assist local businesses in the Shetland Islands. According to the SDT, this trust can be described, in Scots law, as a public trust, not in the sense that it discharges public authority functions but because the potential beneficiaries are geographically linked to the Shetland Islands. However, the private source of funding and the obligation to account to private beneficiaries and third parties indicate the independent and discretionary nature of the activities of the trust. Thus, the commercial loan by the SDT to SLAP for the purchase of quota is a private transaction with no State aid implications. The SDT refers to a recent Decision adopted by the Commission Directorate-General Agriculture which considered that a similar fund operated by the Orkney Islands Council could be regarded as a private contribution.
- (26) The SICCT, which is the sole shareholder of SLAP, was created in 1976. Its first function was to receive and hold on behalf of the Shetland community disturbance receipts which the oil industry agreed to pay on a voluntary basis. This payment was structured to run for an initial period up to 31 August 2000; payments ceased on that date. The letter asserts that the SICCT is both a charitable and a public trust, and, as in the case of the SDT, the term 'public trust' must be understood not in the sense that such a trust fulfils the functions of a public authority but as indicating that the potential beneficiaries are geographically linked to the Shetland Islands. The SDT letter refers also to projects approved by the European Regional Development Fund (ERDF) under the Highlands and

Islands Objective 1 Programme 1994-1996, where the funding from SLAP was considered as being a private contribution. In addition, an explanatory leaflet, enclosed with the SICCT's letter and prepared by the Scottish Executive to facilitate the implementation of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture⁽⁵⁾, clearly indicates that grants and loans from the SICCT will not be counted as national grant, which means that it was regarded as a private contribution.

IV. COMMENTS FROM THE UNITED KINGDOM

- (27) In its first reply, dated 6 February 2002, the United Kingdom forwarded comments made by the SDT in a letter to the Scottish Executive dated 31 January 2002, with appendices attached to that letter, including in particular the documents attached to the United Kingdom authorities' letter sent to the Commission on 17 October 2000. In its second reply, dated 8 March 2002, the United Kingdom sent its own comments, saying that these might also be considered to be the comments of an interested party as referred to in the invitation which appeared in the Official Journal on 12 February 2002.

Comments from the Shetland Development Trust (SDT)

- (28) The SDT emphasises that it invests funds at a commercial rate, in a commercial quota purchase scheme developed by SLAP, the main purpose behind which was to obtain a commercial return for SLAP whilst at the same time allowing the fishing fleet access to quota at commercial rates. The Scheme does not favour local fishermen over others; each is required to pay the same commercial return to SLAP.
- (29) In the documentation attached to its letter, the SDT describes how the Scheme works, both in the case of vessels in the membership of SFPO, through the system of an extra levy in addition to the normal membership levy⁽⁶⁾ and in the case of those who are not. This documentation includes a spreadsheet which compares the financial implications for a vessel (a) if that vessel rented its entire quota outside Shetland at prevailing market rates and (b) if it obtained its quota through SFPO via the levy system, and which shows that vessels under the levy system would actually be paying slightly more per annum than they would if they went out on the market place to rent their quotas. A comparison is made for a 22-metre seiner-trawler, a member of SFPO whose track record was lodged within SFPO and whose turnover was GBP 385 000 in 1999. The comparison shows that this vessel would have paid 2,2 % per annum more under the levy system than if it had rented its fish on the open market. The SDT also gives the example, which, in its view, is not an isolated case, of the lease of 232 tonnes of haddock on 2 July 1999 to an English PO while, by September, SFPO was running short of this species and had to introduce a very tight quota for its own members; in that case, Shetland fishermen were placed at a disadvantage in comparison with other British fishermen.

Comments from the United Kingdom

- (30) The United Kingdom contends that the SDT should be regarded as a private body. It disputes any suggestion that the position of the councillors of SIC ex officio as trustees of SDT should alone result in the assimilation of the actions of SDT with the actions of a public body. According to the United Kingdom, the SDT, as initiator of the Scheme, had reasonably assumed that it would not be considered as setting up a State aid scheme.

⁽⁵⁾ OJ L 376, 31.12.1986, p. 7.

⁽⁶⁾ See recital 14.

- (31) The United Kingdom notes that commercial lending was already available for the purchase of fishing quota at the time of the inception of the scheme. A copy, enclosed with the comments, of a letter of 7 March 2002 from the Royal Bank of Scotland to SFPO indicates that the interest rate applicable to borrowing in the name of SFPO between 5 November 1998 and the end of the same year was more than 2 % above the bank's base lending rate. The loan agreement between the SDT and SLAP with a borrowing rate of 9 % was concluded in November 1998, when the base interest was 6,75 %. Thus, the United Kingdom maintains that no aid element was included in the loan granted by the SDT to SLAP in November 1998.
- (32) The United Kingdom has attached a table comparing quota rental costs for vessels when subject to direct billing and for the same vessels when subject to percentage of turnover charging. From the three examples given (a 24-metre wooden seiner-trawler, a 18,25-metre steel twin-rigger and a 24-metre steel trawler), it concludes that there was no presumption in favour of vessels subject to charging by percentage of turnover; in fact, the figures show they would have paid slightly more per annum under the levy system than if they had rented quota on the market.
- (33) However, the United Kingdom acknowledges that the existence of two separate charging systems may have made it more difficult to assess whether preferential treatment was being accorded to SFPO members. It indicates that SFPO has already taken the first steps towards introducing a system under which SFPO vessels would be charged using the same method as that applied to non-PO vessels, that is to say, on a price per tonne basis. In addition, the United Kingdom contends that the rental charges did not represent preferential treatment when compared with other prices charged by other lenders of quota in the same period. Therefore, the Scheme did not distort or threaten to distort competition and does not fall within the scope of Article 87 of the Treaty. Furthermore, according to the United Kingdom, the costs of quota leasing published from time to time in *Fishing News* cannot be considered a useful standard against which to measure the cost of leasing quotas; rates published so infrequently are not a true reflection of this volatile market.
- (34) The United Kingdom considers that, in order for the Commission to conclude that trade between Member States exists and is affected, fishing opportunities, rather than fish, would have to constitute the traded commodity. As trade in United Kingdom fishing opportunities is, by definition, not possible with other Member States, the Scheme falls outside the scope of Article 87 of the Treaty.
- (35) According to the United Kingdom, track records and quota entitlements should be considered assets. Commercial lenders now consider the track record purchased as security. Track records are included within the annual accounts of many vessels and permanent transfers of quota are regarded by United Kingdom Customs and Excise as a capital item for the purposes of Capital Gains Tax and related Rollover Relief. The United Kingdom considers that the Commission's view that FQA units are raw products is misplaced; while they represent, year on year, a variable level of fish quota, the FQA units themselves remain as a permanent share of available fishing opportunities. On that basis, any aid granted should not be considered as operating aid; rather, it is analogous with investment aid. Thus, the United Kingdom suggests that any aid should be considered on a case-by-case basis in line with Section 1.2 of the Guidelines.
- (36) The Scheme resulted in the buying and pooling of track record at a time of decreasing fish stocks. Such pooling can be considered to be rationalisation, since the quota resulting from it was made available, at market prices, to existing fishermen whose catch entitlement had been eroded through decreasing fish stocks. The development of viable fishing enterprises was thereby assured. Thus, the Scheme accelerated the adaptation of the industry to the new situation it faces. Such limited market intervention simply resulted in some of those smaller fishermen continuing in business in heavily fisheries dependent areas where little alternative economic activity exists. That could equally be considered consistent with the socioeconomic dimension of the Common Fisheries Policy as required by Article 159 of the Treaty.

- (37) Finally, if the Commission adopts a negative decision, the United Kingdom indicates its willingness to amend the scheme as required to ensure future compliance. However, it urges the Commission to refrain from attempting any recovery from fishermen whom it may consider to have benefited from the Scheme.

V. ASSESSMENT

A. Existence of State aid

- (38) Under Article 87(1) of the EC Treaty, '(save) as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'. Four conditions must be satisfied in order to class a measure as a State aid: first, the measure must provide some advantage to the undertakings which benefit from it; second, the aid must be granted by the State or through State resources; third, it must distort or threaten to distort competition by favouring certain undertakings; and, finally, it must affect trade between Member States.

Advantage to beneficiaries

- (39) The Scheme was set up because, according to the United Kingdom, the Shetland fleet had great difficulty in finding sources of commercial funding due to the escalating costs of quotas. The track records acquired have enabled vessels from the Shetland fleet to fish against quotas to which they would not otherwise have been entitled. Consequently, at first sight, the Scheme has enabled these vessels to increase their production in conditions that would not otherwise have been possible. As an aid exists whenever an intervention results in favouring specified beneficiaries, whatever the form of intervention, there is a presumption that the Scheme corresponds to an aid system to fishermen to whom quotas are rented. And, if aid does exist, the Scheme has conferred an advantage on those fishermen.
- (40) According to the United Kingdom, as well as to the information provided by the SDT and sent through the United Kingdom authorities, the existence of two separate charging systems did not lead to preferential conditions in favour of fishermen in the membership of SFPO ⁽⁷⁾.
- (41) The Commission considers that the figures given in this information are not accurate. In the case of the 22-metre seiner-trawler, quoted by the SDT ⁽⁸⁾, it is indicated that it would have paid GBP 10 680 for the leasing of quotas on the market while it would have paid GBP 19 250 under the additional levy system. The amount is calculated for quotas of different species for a global quantity of 350 tonnes, the leasing prices of which are GBP 34 per tonne for haddock, GBP 13 per tonne for whiting, GBP 38 per tonne for cod, GBP 11 per tonne for saithe, GBP 61 per tonne for monkfish and GBP 63 per tonne for 'others'. A global quantity of 350 tonnes that such a vessel needs for fishing during a whole year seems to be normal. However, from the copies of invoices addressed to vessels not in the membership of SFPO for the quotas they had leased ⁽⁹⁾, it appears that the real leasing prices were approximately 10 times higher than those indicated in the example of the 22-metre seiner-trawler, that is to say, GBP 300 per tonne for haddock in April 2000, GBP 260 and GBP 300 per tonne for haddock in June and July 2000, and GBP 450 per tonne for monkfish in July 2000. The prices quoted in *Fishing News* are at comparable levels: GBP 350 per tonne for haddock in April 2000, GBP 250 per tonne for cod in June and July 2000 and GBP 400 per tonne for monkfish in July 2000 ⁽¹⁰⁾. Consequently, the figures provided are not accurate; they do not show that vessels in the membership of SFPO paid more for lease of quotas under the additional levy system than they would have paid at market prices, as the United Kingdom contended;

⁽⁷⁾ See recitals 29 and 32.

⁽⁸⁾ In Appendix 3 of the letter of the SDT sent through the letter of the United Kingdom dated 6 February 2002.

⁽⁹⁾ In Appendix 2(a) to 2(e) to the same letter.

⁽¹⁰⁾ The fact that the prices quoted in *Fishing News* and those specified in the invoices are comparable shows that those quoted in *Fishing News* can be considered as a useful reference, contrary to what the United Kingdom authorities claimed (see above, point 33).

they in fact show that, if the real leasing prices are taken into account (by multiplying the prices indicated by around 10), vessels in membership of SFPO have to pay much less than those outwith SFPO; for example, the overall lease of quotas for the 22-metre seiner-trawler, if it were not in the membership of SFPO, would not cost GBP 10 680 but GBP 106 800, that is to say, far in excess of the cost of the lease under the additional levy system (GBP 19 250).

- (42) The same criticism can be applied to the other figures quoted by the United Kingdom. In the spreadsheet ⁽¹¹⁾ concerning a vessel requiring quotas for 365 tonnes of various species and comparing the financial implications (a) if it rents its quotas from outside Shetland at prevailing market rates or (b) if it obtains them through the SFPO via the levy system, the leasing prices quoted are also inaccurate: except in the case of haddock, for which the leasing price indicated could be accurate although lower than the abovementioned price (GBP 240 per tonne), the other prices are not reliable (GBP 10 per tonne for cod, GBP 70 per tonne for saithe, GBP 10 per tonne for whiting, GBP 10 per tonne for monkfish and GBP 10 per tonne for mixed species). The figures quoted in the table enclosed with the United Kingdom's letter of 8 March 2002 are just as inaccurate; for rental in 1999, the leasing prices were GBP 200 per tonne for haddock and GBP 200 per tonne for cod, but GBP 10 per tonne for whiting, GBP 10 per tonne for monkfish and GBP 10 per tonne for 'others'. Thus, given the inaccuracy of the figures provided, the United Kingdom has failed to provide any proof that no advantage exists in favour of fishermen who obtain quotas through the additional levy system; on the contrary, such lack of proof suggests that advantage to those fishermen does exist.
- (43) The existence of such an advantage is confirmed by the fact that, as indicated by the United Kingdom authorities in their letter of 6 March 2000, SFPO was able to produce, in 1998, 100 % of the minimum 9 % required return to SLAP from the leasing of quotas to vessels not in the membership of SFPO. Consequently, this leasing of quotas resulted in SFPO obtaining income which was not accounted for by the quotas leased through the additional levy system to the vessels in its membership. Thus, the effect of the Scheme is that aid existed in the year 1998 in favour of vessels in the membership of SFPO. For the year 1999, approximately 77 % of the minimum 9 % was provided by quotas leased to vessels not in the membership of SFPO. Consequently, in order for the conditions offered to those in the membership of SFPO not to be preferential, the proportion of quotas acquired under the Scheme and leased to those not in SFPO membership would have to have been more than 77 %, or the proportion leased to those in its membership less than 23 %. The Commission does not know the proportion of quotas leased to vessels in the membership of SFPO and the proportion leased to vessels not in its membership. However, as the Scheme was set up with the aim of providing quotas to SFPO's vessels, the Commission assumes that the proportion leased to SFPO's vessels was certainly more than 23 %, and aid therefore existed in their favour for the year 1999.
- (44) Fishermen who benefit from the Scheme are fishermen who were not able to borrow money to buy track records. It has enabled them to fish against quotas to which they would not otherwise have been entitled. The track records acquired have thus enabled them to increase their production in conditions that could not otherwise have been possible. The Scheme, which is selective in character, has conferred an advantage on those fishermen.
- (45) In its preliminary examination, the Commission also raised doubts as to the compatibility of the Scheme with the common market because of the rate of the loan granted by the SDT to SLAP (9 %) for the purchase of track records. Referring to its notice on the method for setting the reference and discount rates ⁽¹²⁾, since the United Kingdom reference rate for the year 1998 was 7,77 % and since, according to the information available to the Commission at that time, track records could not be used as securities, the Commission considered that a premium of 4 % must be added. Thus, the 9 %

⁽¹¹⁾ In Appendix 2 to the same letter of the SDT sent through the letter of the United Kingdom dated 6 February 2002.

⁽¹²⁾ OJ C 273, 9.9.1997, p. 2.

rate should not be compared to 7,77 % but to 11,77 %. The Commission therefore assumed that an aid of 2,77 % existed for the purchase of the track records. However, with the information provided afterwards⁽¹³⁾ and according to which the interest rate applied by the Royal Bank of Scotland for this purchase was 2 % above the bank's base lending rate and taking also into consideration the fact that the market in track records was just beginning, the Commission can accept that a rate of 9 % does not entail State aid. Thus, there is no advantage to SLAP or to SFPO when it acts on SLAP's behalf for the acquisition of track records.

State resources

- (46) The United Kingdom contends that the SDT should be regarded as a private body⁽¹⁴⁾. That does not prove that there is no State aid. Article 87 of the Treaty states that such an aid exists when it is granted either by the State or through State resources. Consequently, State aid could also exist when an aid measure is implemented by a body which can be categorised as private. Thus, the Commission does not need to examine the nature, private or public, of the SDT. It is the origin of the resources, the way they are used and the effect they have in the field of competition which enables it to class a measure as a State aid measure.
- (47) The Scheme was set up after the SDT procured a loan of GBP 2 million for SLAP. The SDT is funded by the Reserve Fund established by Shetland Islands Council (SIC). This Reserve Fund itself is funded from an agreement concluded on 12 July 1974 between the SIC and oil companies using the harbour facilities of Sullom Voe. This agreement states that fees are paid by these companies 'in respect of the import of crude oil and as compensation for disturbance caused thereby'. Under this agreement, the SIC must provide jetty structures and harbour facilities. There is an arbitration clause in case of any dispute between the parties. There is another agreement, dated 15 March 1978, between the SIC and the same companies which deals with the provision of jetties and their maintenance.
- (48) The 1974 agreement could be compared to an agreement concluded between two undertakings since the SIC agreed 'to provide jetty structures and appropriate harbour facilities' (Clause 6) in return for fees paid by oil companies. Since Article 295 of the Treaty is without prejudice to the rules in Member States governing the system of property ownership, a public authority may act as a private company. Thus, at first sight, in so far as it deals with the management of the harbour facilities, the SIC could be regarded as acting as a private company and the income earned as private income.
- (49) On the other hand, however, the Commission observed two things: first, fees received under this agreement also correspond to 'compensation for disturbance', namely the disturbance caused to the Shetland community and, second, there is some overlapping with the 1978 agreement as they both deal with the question of jetties. The documents sent to the Commission do not disclose exactly how this overlapping works. Nevertheless, the Commission observes that the 1974 agreement was sent by the United Kingdom, in its transmission of 23 August 2002, as the 'Disturbance Agreement'. Thus, this agreement seems to be specifically related to the disturbance caused by oil companies; that corresponds to the statement made by the United Kingdom itself in its letter of 6 March 2000: 'Oil companies in relation to the disturbance, which their use of the Islands and their resources has brought about, have applied a charitable gift to Shetland Island Council' (point 5). Thus, by receiving such monies which are directly related to the disturbances caused to the Shetland Islands population and not to the effective supplying of the service of the harbour facilities, the SIC does not act as a private company operating under normal market conditions. It acts for the general interest of the population affected by the disturbances.

⁽¹³⁾ See recitals 31 and 35.

⁽¹⁴⁾ See recital 30.

- (50) The agreement shows that the monies received cannot be considered as a true gift to that population. This agreement contains provisions relating to the payment of fees, to its review and to arbitration in case of dispute ⁽¹⁵⁾. These provisions show that the commitment to pay these sums in return goes beyond what could be characterised as a voluntary contribution. If renegotiation of the agreement is possible, it follows that the agreement was the result of a negotiation in the course of which each party upheld its own interests; the payments made under this agreement cannot be considered as true gifts. This agreement cannot be classed as a voluntary agreement in the sense of being merely the result of goodwill on the part of the oil companies towards the County of Shetland and its inhabitants. Therefore, these monies cannot be considered as private money, but public money. They must be regarded as State resources for the purposes of Article 87 of the EC Treaty.
- (51) In addition, the trustees of two trusts involved in the scheme (the SDT, and the SICCT which is the parent trust of SLAP) are the councillors of the SIC ⁽¹⁶⁾ (there are only two other trustees who are not councillors). Although the councillors act as trustees ex officio, the fact that they are nominated by the SIC means that the latter is indeed able to exercise a dominant influence over the trusts and over SLAP, as well as over the funds at their disposal. There is therefore a set of indicators showing that the decisions for the operation of the Scheme cannot be taken without regard for the requirements of the public authority.
- (52) It is clear from the foregoing that the resources used for the Scheme must be considered as attributable to the State and are State resources for the purposes of Article 87 of the Treaty.
- (53) That finding is not undermined by the fact that SLAP funding was considered as a private contribution for projects approved by the European Regional Development Fund (ERDF) under the Highlands and Islands Objective 1 Programme 1994-1996 ⁽¹⁷⁾; first, as SLAP is a limited company, the fact that it is always referred to as such in ERDF documents precluded the Commission from assuming that SLAP was funded by State resources; second, as Article 295 of the Treaty in no way prejudices the rules in Member States governing the system of property ownership, SLAP could be considered as making a private contribution to a project if it acted as a private investor operating under normal market economy conditions; the question to be addressed in that case did not concern the origin of the funds used by the owner but how it used them, that is to say, whether or not it behaved as a private investor. Nor may the finding that the Scheme is funded from State resources be called in question by the indication, in an explanatory leaflet, not dated, concerning the implementation of Council Regulation No 4028/86 of 18 December 1986 ⁽¹⁸⁾, that SICCT funds were not 'national grants', and were therefore to be considered as private funds; first, it does not appear that the Commission had knowledge of that leaflet and, second, as in the case of ERDF and SLAP, it could not assume that the SICCT was funded by State resources.

⁽¹⁵⁾ 'Clause 1: General. (b) This agreement sets forth the fees to be paid in respect of the import of crude oil into Shetland by pipeline and as compensation for disturbance caused thereby.

Clause 5: Review: The parties recognise that the payments set out in this agreement have been agreed to as fair and equitable in the light of the circumstances as presently known to or anticipated by the parties including the circumstances that the terminal is intended to be used so far as practicable, for all imports of crude oil by pipeline into Shetland. If in the future there should be any change to these circumstances such as materially to alter the financial or economic effect to the parties of the arrangements between them, then they will meet together and renegotiate the parts of the agreement affected, in good faith in order so far as possible to restore the parties affected to their original position and, in the event of the parties thereafter failing to reach agreement, the matters in dispute between them shall be referred to arbitration in accordance with Clause 9 hereof.

Clause 9: Arbitration: Any dispute between the parties touching the construction, meaning or effect of this agreement or the rights or liabilities of the parties hereunder, or any matter arising out of the same or connected therewith shall be referred to an arbiter to be agreed upon by the parties or, in default of such agreement, nominated on the application of either party by the President for the time being of the Law Society of Scotland. Any such reference shall be deemed to be a reference to arbitration within the meaning of the provisions of the Arbitration (Scotland) Act 1894 or any statutory modification or re-enactment thereof which may for the time being be in force.

Clause 10: Applicable law: The construction, validity and performance of this agreement shall be governed by Scots Law.'

⁽¹⁶⁾ See recital 11.

⁽¹⁷⁾ See recital 26.

⁽¹⁸⁾ Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ L 376, 31.12.1986). This Regulation was replaced in 1994 by Council Regulation (EC) No 3699/93 of 21 December 1993 (OJ L 346, 31.12.1993).

Distortion or threat to distort competition

- (54) The quotas from which the fishing enterprises have benefited under the Scheme have reinforced their position with regard to other fishing enterprises, whether registered in the United Kingdom or in the other Member States. They have been enabled to land and sell more products than they could have done if they had not benefited from those quotas.
- (55) The implementation of the Scheme has therefore affected competition conditions. It has given rights to fish for products which are sold on the Community market. The track records acquired concern fish species such as cod, haddock, saithe and whiting, which are species covered by the common organisation of the markets in the fisheries and aquaculture sector ⁽¹⁹⁾. Thus, the Scheme has affected competition within the Community market.
- (56) In addition, the comments made by the Scottish Fishermen's Organisation ⁽²⁰⁾ suggest that it was the intervention of the Shetland authorities in setting up the Scheme that triggered the escalation of the cost of quotas. The United Kingdom authorities have not countered this statement.

Impact on trade between Member States

- (57) The impact on trade must not be assessed with regard only to fishing opportunities, as the United Kingdom contends ⁽²¹⁾. An aid scheme must be assessed in relation to all the effects that it could have on trade within the Community. Consequently, the Scheme must also be assessed with regard to its effect on trade in the products concerned, namely products of the fisheries sector, and in the products which enter into competition with fisheries products.
- (58) According to the official United Kingdom sea fisheries statistics for 1999 and 2000 ⁽²²⁾, trade in fisheries products between the United Kingdom and the other Member States is very significant. Landings in 2000 were just slightly under 500 000 tonnes. During the same year, exports of fish and fish products amounted to 365 000 tonnes, including 233 000 tonnes to other Member States, and imports of fish and fish preparations were just under 550 000 tonnes, including 133 000 tonnes from other Member States. These figures clearly show the importance of the trade in fishing products between the United Kingdom and the other Member States.
- (59) As the Scheme has reinforced the position of the beneficiary fishing enterprises by comparison with that of other fishing enterprises, the latter must be regarded as having been affected by it. The Scheme has allowed the beneficiary fishing enterprises to maintain a share of the market that competitors could otherwise have seized. Thus, trade between the Shetland fleet and producers from other Member States is affected.

Conclusion

- (60) The four criteria for classing the Scheme as a State aid measure for fishermen for the purposes of Article 87 of the EC Treaty are met. Since the Scheme concerns the fisheries sector, it must be examined under the Guidelines for the examination of State aid to fisheries and aquaculture, hereinafter 'the Guidelines'. Under point 3.4 of the current Guidelines ⁽²³⁾, it must be examined under the Guidelines in force at the time of the grant of the aid. Consequently, it is examined under the 1997 Guidelines ⁽²⁴⁾.
- (61) On the contrary, as stated above ⁽²⁵⁾, there is no State aid in the loan granted by the SDT for the purchase of track records.

⁽¹⁹⁾ At the time of the setting up of the scheme, this common organisation of markets was regulated by Council Regulation (EC) No 3759/92 of 17 December 1992 (OJ L 388 of 31.12.1992, p. 1), which has been replaced on 1 January 2001 by Council Regulation (EC) No 104/2000 of 17 December 1999 (OJ L 17, 21.1.2000, p. 22).

⁽²⁰⁾ See recital 19.

⁽²¹⁾ See recital 34.

⁽²²⁾ Available on the website <http://www.defra.gov.uk/>

⁽²³⁾ OJ C 19, 20.1.2001, p. 1.

⁽²⁴⁾ See footnote 4.

⁽²⁵⁾ See recital 45.

B. Compatibility with the common market

- (62) The Commission's doubts as to the compatibility of the Scheme with the common market were based on the assumption that quotas and track records are, by nature, not durable goods. The aid granted under the Scheme therefore appeared to be aid related to operating costs. Since aid of that kind is, in principle, not compatible with the common market and since no acceptable justification was provided, the Commission raised doubts about the Scheme.
- (63) In its reply, the United Kingdom indicated that 'permanent transfers of quota are regarded by Customs and Excise as a capital item for the purposes of Capital Gains Tax and related Rollover Relief. Thus, although it was first officially declared that there would not be a free trade in track records, it now appears that the United Kingdom authorities officially recognise that these track records have acquired a value as an asset. Arguably, therefore, the Commission could itself perhaps adopt that approach and consider the purchase of track records as being an investment.
- (64) Whatever the correct classification may be, the Commission does not need to discuss it. With regard to fishermen, since the period of rental of quotas is not longer than one year, the rental represents in any case an operating cost. An aid, the effect of which is on the amount of the rental, is therefore an operating aid.
- (65) According to point 1.2, fourth indent, third dash, of the Guidelines, aid related to operating costs, where no obligation is imposed on the recipients, is incompatible with the common market unless the aid scheme is directly linked to a restructuring plan considered to be compatible with the common market. As the Scheme is in no way linked to a restructuring plan as defined in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ⁽²⁶⁾, it cannot be considered compatible with the common market.
- (66) In addition, the United Kingdom authorities have indicated that, in so far as the Scheme pools track records, it could be considered to be rationalisation through the development of viable fishing enterprises in the context of decreasing fish stocks. But, as this pooling concerns SFPO, which has not been considered as a beneficiary under the current analysis, that argument is not relevant to the assessment of this aid scheme to fishermen.

C. Recovery of the aid

- (67) Under Article 14(1) of Regulation 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. The Commission is not to require recovery of the aid if that would be contrary to a general principle of Community law.

The principle of the protection of legitimate expectations is a general principle of Community law. The Commission considers that in the present case, that principle precludes recovery, for the following reasons.

While there is no necessary link between actions and decisions of the Commission in relation to the use of Community Structural Funds in the context of Regulation 1260/99 ⁽²⁷⁾ and Commission decisions on State aid, in the specific circumstances of this case, legitimate expectations as to the private nature of the fund in question may have been created through the combination of a number of events.

⁽²⁶⁾ OJ C 288, 9.10.1999, p. 2.

⁽²⁷⁾ Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds, OJ L 161, 26.6.1999, p. 1.

In fact, both the United Kingdom Government and the Commission consistently acted in such a way that it could reasonably be concluded that the fund is a private fund from the point of view of the rules governing Community Structural Funds. Even if, legally speaking, there is no automatic link between the two issues, this may have led to a reasonable assumption, on the part of the national authorities and fishermen, that grants from such a fund do not fall under the rules on State aid, thus creating a legitimate expectation in this respect.

- (68) First, an explanatory leaflet by the Scottish Executive for the implementation of Council Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture clearly indicates that grants and loans from the Shetland Islands Council Charitable Trust (SICCT) will not be counted as national grant, which justified the conclusion that they would be regarded as a private contribution.

Second, in the European Regional Development Fund (ERDF) under the Highlands and Islands Objective 1 Programme 1994-1996, the funding from Shetland Leasing and Property Ltd (SLAP), which is wholly owned by the SICCT, was regarded as a private contribution.

Third, given the close links between Orkney and Shetland, the Shetland Islands authorities were probably aware of the fact that the parallel Orkney Reserve Fund (see State aid case C-87/2001) was considered in practice by the United Kingdom authorities and the Commission as being of a private nature, thus making it permissible to provide a private co-financing contribution in the context of financing from the European Agriculture Guidance and Guarantee Fund (EAGGF).

- (69) The Commission considers that these elements taken together have created a legitimate expectation on the part of the Shetland authorities and the bodies involved, as well as on the part of fishermen. They could assume that only private funds were involved when the fund was providing co-financing to Community Structural Funds. In view of that, they may have wrongly assumed that the State aid rules of the Treaty do not apply, even if, legally speaking, there is no automatic link between the two issues.
- (70) On those grounds and on the basis of Article 14(1) of Council Regulation No 659/1999, since the principle of the protection of legitimate expectations is a general principle of Community law, the recovery of the aid from which fishermen have already benefited will not be required.
- (71) However, as has been determined in this Decision, the funds involved must actually be considered as State resources under the State aid rules. Therefore, the Scheme is an operating aid which exists year after year for the benefit of the fishermen to whom annual quotas are leased under the additional levy system. Since that aid is not compatible with the common market, it must be put to an end. With that aim, all provisions which lead to preferential renting conditions must be repealed and replaced by provisions which show that the renting is made under normal market conditions, as is already the case for vessels not in membership. At the same time, it must be ensured that, under any new arrangements, the SFPO does not benefit from State aid.

VI. CONCLUSION

- (72) The Commission finds that the United Kingdom has implemented, in breach of Article 88(3) of the EC Treaty, the aid scheme entitled 'Loans for the Purchase of Fishing Quotas in the Shetland Islands'.
- (73) In the light of the assessment made in paragraph V, the Commission considers that this aid scheme is not compatible with the common market to the extent that it concerns the renting of quotas to vessels which are in the membership of SFPO. On the contrary, the Commission considers that there was no State aid involved in the loan made by the SDT to SLAP.

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme entitled 'Loans for the Purchase of Fishing Quotas in the Shetland Islands', implemented by the United Kingdom, is not compatible with the common market.

The United Kingdom shall abolish the aid scheme referred to in the first paragraph.

Article 2

The United Kingdom shall inform the Commission, within a period of two months from receipt of this Decision, of the measures it has taken to comply with it.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland

Done at Brussels, 3 June 2003.

For the Commission

Franz FISCHLER

Member of the Commission
