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Legislation

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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 102/2004
of 22 January 2004
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 23 January 2004.

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

Done at Brussels, 22 January 2004.

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 22 January 2004 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	84,9
	204	38,7
	212	121,4
	999	81,7
0707 00 05	052	140,5
	204	41,2
	999	90,9
0709 10 00	220	34,5
	999	34,5
0709 90 70	052	92,1
	204	44,3
	999	68,2
0805 10 10, 0805 10 30, 0805 10 50	052	46,8
	204	53,9
	212	56,0
	220	36,0
	448	33,3
	524	22,1
	999	41,4
0805 20 10	052	81,1
	204	91,0
	999	86,1
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	79,5
	204	93,1
	220	76,0
	464	87,2
	600	68,7
	624	73,8
	999	79,7
0805 50 10	052	60,4
	400	38,7
	600	75,9
	999	58,3
0808 10 20, 0808 10 50, 0808 10 90	052	83,4
	060	40,7
	400	114,7
	404	50,6
	720	74,2
	999	72,7
0808 20 50	060	60,9
	400	82,3
	720	66,0
	999	69,7

⁽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 103/2004

of 21 January 2004

laying down detailed rules for implementing Council Regulation (EC) No 2200/96 as regards intervention arrangements and market withdrawals in the fruit and vegetable sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables ⁽¹⁾, and in particular Article 30(6) and (7) and Article 48 thereof,

Whereas:

- (1) The experience gained from the implementation of Commission Regulation (EC) No 659/97 of 16 April 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards intervention arrangements in the fruit and vegetables sector ⁽²⁾ has shown that certain changes need to be made to those arrangements. In the interests of ensuring that the rules implementing Regulation (EC) No 2200/96 are always clear, Regulation (EC) No 659/97 should be replaced. With a view to rationalising the rules on withdrawals, Commission Regulation (EC) No 1492/97 of 29 July 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards the fixing of the conditions for the distillation of certain fruit withdrawn from the market ⁽³⁾ should also be incorporated into the new regulation. Regulations (EC) No 659/97 and (EC) No 1492/97 should therefore be repealed.
- (2) Title IV of Regulation (EC) No 2200/96 establishes the intervention arrangements for the products referred to in Article 1(2) thereof and provides for the grant of Community compensation for the products listed in Annex II thereto. Article 15(3) of the same regulation provides that operational funds may be used to finance withdrawals, particularly of products not listed in Annex II, or to pay a supplement to the Community compensation provided for in Title IV. Detailed rules should be laid down for implementing those provisions.
- (3) Since the terms 'products not put up for sale', 'market withdrawals' and 'products withdrawn from the market' are equivalent, they should be covered by a single definition. The terms 'marketed quantity' and 'marketed production' should also be covered by a single definition, which should be consistent with the term 'value of

production marketed' as used in Commission Regulation (EC) No 1433/2003 of 11 August 2003 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational funds, operational programmes and financial assistance ⁽⁴⁾ and should thus include quantities withdrawn from the market for subsequent free distribution.

- (4) It should be specified that the provisions relating to packaging requirements are to apply to products withdrawn from the market only in the case of miniature products which might otherwise be confused with products not meeting the minimum size requirements.
- (5) The marketing years for the products concerned and detailed rules on averages over a three-year period as referred to in Article 23(5) of Regulation (EC) No 2200/96 should be defined.
- (6) In order to enable the inspection authorities to plan their inspection operations, producer organisations must notify them in advance of each withdrawal operation. Those authorities will then authorise each withdrawal operation on the basis of the findings from any checks they perform. Provision should be made for those authorities to be present at the denaturing of withdrawn products which are not intended for human consumption after free distribution.
- (7) Article 23(3) of Regulation (EC) No 2200/96 determines the Community withdrawal compensation for the products listed in Annex II thereto. The arrangements for paying this compensation should permit compliance at all times with the limits laid down in Article 23 of Regulation (EC) No 2200/96 as well as payment within reasonable deadlines.
- (8) Since the withdrawals provided for in Article 15(3) of Regulation (EC) No 2200/96 are financed by the operational funds, payment should be made in accordance with Regulation (EC) No 1433/2003. In the interests of clarity, however, the maximum supplements to the Community withdrawal compensation referred to in the second subparagraph of Article 15(3) of Regulation (EC) No 2200/96 should be fixed.

⁽¹⁾ OJ L 297, 21.11.1996, p. 1. Regulation as last amended by Commission Regulation (EC) No 47/2003 (OJ L 7, 11.1.2003, p. 64).

⁽²⁾ OJ L 100, 17.4.1997, p. 22. Regulation as last amended by Regulation (EC) No 1135/2001 (OJ L 54, 9.6.2001, p. 9).

⁽³⁾ OJ L 202, 30.7.1997, p. 28.

⁽⁴⁾ OJ L 203, 12.8.2003, p. 25.

- (9) Under the first, second and third indents of Article 30(1)(a) and Article 30(1)(b) of Regulation (EC) No 2200/96, fruit and vegetables withdrawn from the market may be distributed free of charge as humanitarian aid to certain categories of the needy by charitable organisations and certain establishments and institutions, both inside the Community and outside it. The charitable organisations involved should be approved beforehand. The procedures for implementing food aid should be compatible with the general principles pursued by the Community regarding food aid in kind.
- (10) In order to facilitate the free distribution of withdrawn products, the processing of products withdrawn for free distribution should be authorised, either at the expense of the charitable organisation or through any other procedure which guarantees equal treatment of the processors concerned.
- (11) Where fruit and vegetables withdrawn from the market are intended for free distribution, the transport, sorting and packaging costs are to be borne by the Community pursuant to Article 30(6) of Regulation (EC) No 2200/96. It must be stipulated that the transport costs must be paid. Standard rates should be fixed for the payment of transport, sorting and packaging costs.
- (12) Article 30(1) of Regulation (EC) No 2200/96 provides that products withdrawn from the market may be put to certain uses other than free distribution. The Member States should be allowed to use the most appropriate destination, provided this does not distort competition among the industries concerned. For certain products withdrawn from the market, one such destination may be processing into alcohol. In order to ensure that the distillation of such products does not disturb the market in alcohol, such distillation alcohol should be denatured and intended for industrial, non-food uses.
- (13) Article 25 of Regulation (EC) No 2200/96 requires the Member States to establish a national framework for drawing up the general conditions relating to the withdrawal methods which respect the environment. The minimum content of such conditions should be defined, in order to ensure that withdrawals are conducted in conditions which respect the environment, in particular where withdrawn products are destroyed or distributed to animals by spreading on the ground.
- (14) Procedures are needed for physical and documentary checks on withdrawal operations, both at the time of withdrawal and at the end of the marketing year. In the event of infringements, detailed rules should be laid down for the recovery of sums wrongly paid and for deterrent penalties in proportion to the seriousness of the irregularity committed. Monitoring operations must cover the producer organisations and charitable organisations involved.
- (15) Since setting up the arrangements for implementing this Regulation will temporarily entail an additional administrative workload for the Member States, this Regulation should apply, depending on the products, from the first marketing year following the date of its entry into force. Moreover, the provisions relating to transmission of the producer prices provided for in Regulation (EC) No 659/97 must continue to apply until 1 July 2004, pending the adoption of new provisions in a separate act.
- (16) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Fresh Fruit and Vegetables,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL RULES

Article 1

Scope

This Regulation lays down detailed rules for implementing:

- (a) intervention as referred to in Title IV of Regulation (EC) No 2200/96 for the products listed in Annex II to that Regulation;
- (b) withdrawals from the market as referred to in Article 15(3) of Regulation (EC) No 2200/96 for products referred to in Article 1(2) of that Regulation but not listed in Annex II thereto.

Article 2

Definitions

1. For the purposes of this Regulation, 'products withdrawn from the market', 'market withdrawals' and 'products not put up for sale' mean products:

- (a) not sold through a producer organisation as referred to in Article 11 of Regulation (EC) No 2200/96, in accordance with the intervention arrangements referred to in Title IV of that Regulation;
- (b) withdrawn from the market as referred to in Article 15(2)(a) of that Regulation.

2. For each product, the 'marketed quantity' of a producer organisation, as referred to in Article 23(3) of Regulation (EC) No 2200/96, shall be the sum of:

- (a) the production of members actually sold through the producer organisation or processed by it;

- (b) the production of members of other producer organisations marketed through the producer organisation concerned in accordance with the second and third indents of Article 11(1)(c)(3) of that Regulation;
- (c) products withdrawn from the market and intended for free distribution as referred to in Article 30(1)(a) and (b) of Regulation (EC) No 2200/96.

The marketed quantity referred to in the first subparagraph shall not include the production of members of producer organisations marketed in accordance with the first, second and third indents of Article 11(1)(c)(3) of Regulation (EC) No 2200/96.

The marketed production referred to in Article 24 of Regulation (EC) No 2200/96 shall be equivalent to the marketed quantity as defined in the first subparagraph of this paragraph.

- (b) citrus fruit, for which it shall run from 1 October to 30 September the following year.

Article 5

Three-year average

The average over a three-year period referred to in Article 23(5) of Regulation (EC) No 2200/96 shall be the arithmetic mean of the withdrawals recorded as a percentage of the quantity marketed during the current marketing year and the two previous marketing years.

Article 6

CHAPTER II

MARKET WITHDRAWALS

Article 3

Marketing standards

1. Where standards have been adopted pursuant to Article 2 of Regulation (EC) No 2200/96, products withdrawn from the market must comply with those standards, except for the provisions on the presentation and marking of products. Products may be withdrawn in bulk in large-capacity crates, all sizes together, provided the minimum requirements for class II, in particular as regards quality and size, are complied with.

However, miniature produce as defined in the relevant standards must comply with the applicable marketing standards, including the provisions on the presentation and marking of products.

2. If no marketing standards have been adopted pursuant to Article 2 of Regulation (EC) No 2200/96, the minimum requirements laid down in Annex I hereto must be met. The Member States may lay down additional rules supplementing these minimum requirements.

Article 4

Marketing years

The marketing year for products qualifying for Community withdrawal compensation as referred to in Article 23(3) of Regulation (EC) No 2200/96 and products qualifying for withdrawal as referred to in Article 15(3) of that Regulation shall run from 1 January to 31 December for all products except:

- (a) apples and pears, for which it shall run from 1 August to 31 July of the following year;

Prior notification of withdrawal operations

1. Producer organisations and associations thereof shall notify the competent national authorities, by written telecommunication or electronic message, of each withdrawal operation they undertake. Such notification shall specify, in particular, the list of products taken into intervention and their chief characteristics according to the relevant marketing standards, the estimated quantity of each product concerned, their intended destination and the place where the withdrawn products may be inspected as provided for in Article 23(1). Notifications shall include a certificate attesting that the withdrawn products conform to the standards in accordance with Article 2 of Regulation (EC) No 2200/96 or, where no such standards exist, the minimum requirements laid down in Annex I hereto.

2. The Member States shall lay down the arrangements for producer organisations to make the notification provided for in paragraph 1, in particular as regards time limits.

3. Within the time limits referred to in paragraph 2, the Member States shall:

- (a) either carry out a check as referred to in Article 23(1), following which, if no irregularities are detected, it shall authorise the withdrawal operation as noted in the check;
- (b) or, in the cases referred to in Article 23(3), not carry out a check as referred to in Article 23(1), in which case it shall inform the producer organisation of this by written telecommunication or electronic message and authorise the withdrawal operation as notified.

4. The Member States shall take any measures needed to ensure that growers who do not belong to a producer organisation are actually able to benefit from the intervention arrangements provided for in Article 24 of Regulation (EC) No 2200/96.

*Article 7***Payment of Community withdrawal compensation**

1. For the products listed in Annex II to Regulation (EC) No 2200/96, the Community withdrawal compensation referred to in Articles 23, 24 and 26 of that Regulation shall be paid, provided the producer organisations referred to in Article 11 of Regulation (EC) No 2200/96 or their associations submit a payment application file to the competent authority of the Member State.

2. The Member States shall fix the minimum period to be covered by the payment application files referred to in paragraph 1.

3. The payment application files referred to in paragraph 1 shall be accompanied by supporting documents relating to:

- (a) the quantities of each product marketed since the beginning of the marketing year concerned;
- (b) the quantities of each of the products withdrawn from the market;
- (c) the net receipts earned from the withdrawn products concerned;
- (d) the final destination of each of the products concerned, in the form of a take-over certificate (or equivalent document) attesting that the withdrawn products have been taken over by a third party with a view to their free distribution, distillation, use as animal feed or industrial non-food use;
- (e) a statement that the withdrawal operations concerned have been authorised by the Member State for the quantities concerned in accordance with Article 6(3).

The quantities referred to at (a) and (b) shall be broken down as between:

- producer organisations themselves,
- individual growers not belonging to a producer organisation, on whose behalf a producer organisation has made withdrawals in accordance with Article 24 of Regulation (EC) No 2200/96.

In the case of products which have been composted or biodegraded, payment application files must contain a supporting document as drawn up by the Member States pursuant to Article 22 of this Regulation.

4. Producer organisations must send all their full payment-application files to the national authorities no later than one month after the end of the marketing year for the products concerned.

5. Where a producer organisation fails to submit its payment application files by the deadline provided for in paragraph 4, the amount of Community withdrawal compensation

paid shall be reduced by 20 % if the file is less than one month late, 50 % if it is less than three months late and 100 % if it is more than three months late.

6. When considering each application, the Member States shall ensure that the quantity not put up for sale since the beginning of the marketing year concerned does not exceed the limits laid down in Articles 23 and 24 of Regulation (EC) No 2200/96. Where those limits are exceeded, the Community withdrawal compensation shall be paid only up to those limits, and taking account of the compensation already paid. Surplus quantities shall be included when the next file is considered.

7. Subject to the penalties provided for in Articles 26 and 27, the Member States shall pay the Community withdrawal compensation to producer organisations or their associations, minus the net receipts they have earned on the products withdrawn from the market, within four months of receiving their complete payment application file.

*Article 8***Specific rules on withdrawals financed from operational funds**

1. Regulation (EC) No 1433/2003 shall apply to the payment of withdrawal compensation for products not listed in Annex II to Regulation (EC) No 2200/96 and the grant of a supplement to the Community withdrawal compensation provided for in (a) and (b) of the first subparagraph of Article 15(3) of Regulation (EC) No 2200/96.

2. Member States fixing a maximum level for the supplement to the Community withdrawal compensation according to the second subparagraph of Article 15(3) shall take account of the following factors:

- (a) withdrawals are a short-term instrument for stabilising supply of the market in fresh produce;
- (b) withdrawals may under no circumstances be used as an alternative outlet to the market;
- (c) withdrawals must not disturb the management of the market in fruit and vegetables intended for processing.

Member States shall ensure that producer organisations also take account of these factors when fixing the amount of withdrawal compensation referred to in (a) in the first subparagraph of Article 15(3) of Regulation (EC) No 2200/96.

The maximum supplements which may be paid by Member States applying the second subparagraph of Article 15(3) of Regulation (EC) No 2200/96 shall be as set out in Annex II hereto.

Article 9

Reporting data on withdrawals

1. Before the 15th day of each month, the Member States shall forward to the Commission by electronic mail, in the format drawn up by the Commission, an estimate of the products not put up for sale in the previous month, broken down by product.

2. At the end of each marketing year, the Member States shall forward to the Commission the details set out in Annex III for each product concerned.

These details shall be sent:

- (a) not later than 15 May following each marketing year in the case of tomatoes, aubergines, cauliflowers, apricots, peaches, nectarines, grapes, melons, watermelons and products not listed in Annex II to Regulation (EC) No 2200/96;
- (b) not later than 15 February following each marketing year in the case of pears, apples, lemons, sweet oranges, satsumas, clementines and mandarins.

3. If the Member States do not forward the details referred to in paragraph 2, or if the details forwarded appear incorrect in the light of objective facts in the Commission's possession, the Commission may suspend payment of the advances on the provision for expenditure referred to in Article 7(2) of Council Regulation (EC) No 1258/1999⁽¹⁾ pending provision of the requisite details.

CHAPTER III

DESTINATION OF WITHDRAWN PRODUCTS

SECTION 1

Free distribution

Article 10

Free distribution to charitable organisations

1. In accordance with the first and third indents of Article 30(1)(a) of Regulation (EC) No 2200/96, products withdrawn from the market during a given marketing year may be made available to charitable organisations approved by the Member States for free distribution, at their request.

2. Every three years, the Member States shall send the Commission by electronic mail the list of approved charitable organisations referred to in paragraph 1. The Commission shall forward these lists to all the Member States.

3. The Member States shall take the necessary steps to facilitate contacts and operations between producer organisations and approved charitable organisations.

⁽¹⁾ OJ L 160, 26.6.1999, p. 103.

Article 11

Free distribution to institutions and establishments

Products withdrawn from the market may be made available to penal institutions and social, educational and health institutions as referred to in the second indent of Article 30(1)(a), and Article 30(1)(b) of Regulation (EC) No 2200/96 and designated by the Member States.

Old people's homes, nurseries and psychiatric institutions shall be treated as belonging to the above establishments.

Article 12

Free distribution outside the Community for the benefit of vulnerable groups in third countries

1. Paragraphs 2 to 7 of this Article shall apply in the case referred to in the third indent of Article 30(1) of Regulation (EC) No 2200/96.

2. Products dispatched by the charitable organisations referred to in Article 10 as humanitarian aid shall not be eligible for export refunds. Products withdrawn from the market and then processed in accordance with Articles 13 and 14 may not be distributed in third countries by the charitable organisations concerned.

The customs export document, the transit document and any T5 document issued shall be endorsed 'without refund'.

3. The Member States may submit to the Commission a request to carry out an operation to distribute products withdrawn from the market in cases justified by an emergency. All requests must be justified by providing the following information in particular:

- (a) the country of destination and the reasons for each operation, based on the existence of a recognised humanitarian crisis, a request from the beneficiary countries and clearly identified needs of well-defined vulnerable groups;
- (b) the type of products to be supplied and their nutritional value in relation to the grounds for the operation;
- (c) the number of beneficiaries justifying the volumes to be distributed;
- (d) the beneficiary communities and groups and the planned distribution points in the third countries;
- (e) the names of the charitable organisations involved in each operation and their respective roles;
- (f) the request from the government of the country or countries of destination for the planned operation.

4. The Commission shall decide on a case-by-case basis whether to authorise the operation concerned, subject to amendments where necessary, by evaluating the justification referred to in paragraph 3 and taking account, in particular, of:

- (a) the performance guarantees;
- (b) the market situation in the Community and the third countries concerned;
- (c) the existence of a humanitarian crisis;
- (d) whether a request has been formulated by the beneficiary countries;
- (e) the existence of clearly identified needs of well-defined vulnerable groups;
- (f) compliance with the principles set out in the London Food Aid Convention ⁽¹⁾.

5. All subsequent substantial amendments to operations as referred to in paragraph 3 shall be notified to the Commission, which shall have one month in which to object to such amendments.

6. The Member States shall forward to the Commission a copy of the notification made to the Committee on Surplus Disposal of the Food and Agriculture Organisation (FAO) for each operation.

7. After each operation, the Member States shall send the Commission the information provided for in Annex IV. At its request, they shall inform the Commission about the course of each operation in the third countries.

Article 13

Processing at the expense of the charitable organisation

Any charitable organisation as referred to in Article 10 may process the products withdrawn from the market, or have them processed at its expense, for free distribution operations. All the resulting products must be distributed free of charge.

Article 14

Processing with payment in kind

1. No later than the date set by the competent national authority, interested charitable organisations, institutions and establishments referred to in Articles 10 and 11 respectively shall inform that authority of their requirements for products processed from fruit and vegetables withdrawn from the market, undertaking to take them over and distribute the full quantity free of charge.

2. Depending on their requirements as indicated in accordance with paragraph 1, the Member States may have the products that are withdrawn from the market and intended for

free distribution processed by processors accepting payment in kind. To that end, they may organise, in accordance with the terms of this Article, one or more standing invitations to tender, public auctions or other procedures as decided by the Member State which ensure that competition between interested operators takes place under equal conditions. The processed products intended for free distribution shall then be distributed by the charitable organisations, institutions or establishments concerned.

3. Member States wishing to implement a procedure referred to in paragraph 2 shall ensure that it is appropriately publicised. The processing period covered by the procedure may not exceed one year.

4. Where necessary, the Member State shall group the requirements expressed under paragraph 1 into batches of processed products.

Article 15

Draft contracts and obligations on processors

1. After implementing the procedure referred to in Article 14(2), the Member State shall draft a contract for a processor detailing, for each batch, at least the following information:

- (a) the fresh produce concerned and the period during which products withdrawn from the market may be available;
- (b) the geographical areas in which products withdrawn from the market are likely to be available;
- (c) a description of the procedure followed by the Member State to choose the processor;
- (d) the identity of the processor selected;
- (e) a detailed description of the product processed from fruit and vegetables to be supplied and its preparation for distribution, the date by which it must be supplied and the quantity which the processor undertakes to supply for a given quantity of withdrawn products available;
- (f) the identity of the charitable organisations, institutions or establishments for which the products are intended.

2. The Member State shall forward the draft contract to the Commission for approval. The Commission shall reject any draft contracts where the ratio of fresh produce to processed products is too high. The Member State shall award the contract once the Commission has approved it.

3. For each batch, the Member State shall inform the processor, as withdrawals are made, of the producer organisations from which it may obtain supplies of fresh products, and shall grant the processor priority over other possible destinations for the withdrawn products.

⁽¹⁾ OJ L 222, 24.8.1999, p. 40.

4. The processor must process all the products withdrawn from the market which are delivered to it. Any withdrawn products in excess of the quantities needed to manufacture the processed products intended for free distribution shall be payment in kind to compensate for the processor's manufacturing costs.

5. After manufacture, the processed product shall be made available to the charitable organisations, institutions or establishments concerned no later than one month after the processor receives the raw materials, in proportion to the quantity of fresh product made available to the contractor.

6. The processor shall lodge a security to ensure that the products are supplied in accordance with the tender. This security shall be based on the net weight of fresh product requested against the processed product manufactured. It shall be equivalent:

- (a) for the products referred to in Annex II to Regulation (EC) No 2200/96, to the Community withdrawal compensation referred to in Article 26 of that Regulation;
- (b) for other products, to an amount fixed by the Member State.

The security shall be released as supplies of the processed product are delivered and once the successful tenderer has provided evidence that all the fresh products made available to it against the delivery of the processed product have been processed.

Article 16

Transport costs

1. The transport costs for the free distribution of all products withdrawn from the market shall be met by the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) on the basis of the flat-rate amounts set according to the distance between the point of withdrawal and the place of delivery set out in Annex V.

In the case of free distribution outside the Community, the flat-rate amounts set out in Annex V shall cover the distance between the point of withdrawal and the point of exit from the Community.

In the case of sea transport, the Commission shall determine the transport costs which may be met on the basis of the real transport costs and the distance. The compensation thus determined may not exceed the cost of land transport over the shortest route between the place of loading and the theoretical point of exit. A correcting coefficient of 0,6 shall be applied to the amounts provided for in Annex V.

2. The transport costs shall be paid to the party which actually bears the financial cost of the transport operation in question.

Payment shall be subject to the presentation of supporting documents certifying in particular:

- (a) the names of the beneficiary organisations;
- (b) the quantity of the products concerned;
- (c) acceptance by the beneficiary organisations and the means of transport used;
- (d) the transport costs actually incurred.

Article 17

Sorting and packing costs

1. The costs of sorting and packaging fresh fruit and vegetables withdrawn from the market for free distribution as referred to in Article 30(1) of Regulation (EC) No 2200/96 shall be borne by the EAGGF Guarantee Section at the flat-rate amount of EUR 132 per tonne net weight, in the case of products put up in packages of less than 25 kilograms net weight. The cost of fresh products intended for the manufacture of processed products as referred to in Articles 13 and 14 of this Regulation shall not be borne.

2. Packages of products for free distribution shall display the European emblem, together with one or more of the following references:

- Producto destinado a su distribución gratuita [Reglamento (CE) nº 103/2004]
- Produkt určený k bezplatné distribuci [nařízení (ES) č. 103/2004]
- Produkt til gratis uddeling (forordning (EF) nr. 103/2004)
- Zur kostenlosen Verteilung bestimmtes Erzeugnis (Verordnung (EG) Nr. 103/2004)
- Tasuta jagamiseks mõeldud tooted [määrus (EÜ) nr 103/2004]
- Προϊόν προοριζόμενο για δωρεάν διανομή [κανονισμός (ΕΚ) αριθ. 103/2004]
- Product for free distribution (Regulation (EC) No 103/2004)
- Produit destiné à la distribution gratuite [règlement (CE) nº 103/2004]
- Prodotto destinato alla distribuzione gratuita [regolamento (CE) n. 103/2004]
- Produkts paredzēts bezmaksas izplatīšanai [Regula (EK) Nr. 103/2004]
- Produktas skirtas nemokamai distribucijai [Reglamentas (EB) Nr. 103/2004]

- Térítésmentes terjesztésre szánt termék (103/2004. sz. EK rendelet)
- Prodott destinat għad-distribuzzjoni bla ħlas [Regolament (KE) nru. 103/2004]
- Voor gratis uitreiking bestemd product (Verordening (EG) nr. 103/2004)
- Produkt przeznaczony do bezpłatnej dystrybucji [rozporządzenie (WE) nr 103/2004]
- Produto destinado a distribuição gratuita [Regulamento (CE) nº 103/2004]
- Výrobok určený na bezplatnú distribúciu [nariadenie (ES) č. 103/2004]
- Proizvod, namenjen za prosto razdelitev [Uredba (ES) št. 103/2004]
- Ilmaisjakeluun tarkoitettu tuote (asetus (EY) N:o 103/2004)
- Produkt för gratisutdelning (förordning (EG) nr 103/2004).

Where distribution is to take place outside the Community, the reference shall also be written in the language(s) of the third countries concerned.

Packages of fresh products to be used in the manufacture of the processed products referred to in Articles 13 and 14 shall not show these references.

3. The costs of sorting and packaging shall be paid to the producer organisations which have performed those operations.

Payment shall be subject to the presentation of supporting documents certifying in particular:

- (a) the names of the beneficiary organisations;
- (b) the quantity of the products concerned;
- (c) acceptance by the beneficiary organisations, specifying the presentation.

SECTION 2

Distillation, non-food uses and animal feed

Article 18

Common rules

1. The supply of, and award of contracts for, the products referred to in the fourth and fifth indents of Article 30(1)(a) of Regulation (EC) No 2200/96 with a view to non-food uses or for use in animal feed after processing by the feedingstuffs industry, and the products referred to in Article 30(1)(c) of that Regulation for distillation into alcohol of a strength of more than 80 % by volume shall be carried out either by a standing invitation to tender, public auction or other procedure adopted by a Member State ensuring that competition between interested operators takes place on an equal basis.

2. The supply and award of contracts referred to in paragraph 1 shall be carried out no later than three months after the beginning of the marketing year of the product in question.

3. The list of bodies designated by the Member States to carry out the supply and award referred to in paragraph 1 shall be published by the Commission in the C series of the *Official Journal of the European Union*.

4. Member States shall take the measures necessary to prevent any distortion of competition in the supply of, and award of contracts for, the products to the distilleries concerned.

5. At the Commission's request, Member States shall communicate the results of the operations covered by paragraphs 1 to 4 within seven days.

Article 19

Distillation

In the case of distillation as referred to in Article 30(1) of Regulation (EC) No 2200/96, the alcohol obtained from the products concerned shall be subject to special denaturing in accordance with Commission Regulation (EC) No 3199/93⁽¹⁾ and shall be for industrial and not food use.

Article 20

Animal feed

1. The products withdrawn from the market during a given marketing year may be delivered fresh to livestock farmers approved by the Member States at their request, in accordance with paragraph 2, for feeding to livestock. Zoos, game reserves and other enterprises having livestock to which withdrawn fresh products can suitably be fed shall be treated as livestock farmers.

2. The Member States shall approve the livestock farmers and similar undertakings. The approval shall state, for each livestock farmer or similar undertaking, the maximum quantities of withdrawn products which may be delivered, in view of the livestock concerned and the authorised methods for distributing the withdrawn products to the animals. Approval shall be given for a maximum period of three years.

SECTION 3

Obligations on recipients of products and national framework

Article 21

Undertakings by the recipients of withdrawn products

The recipients of withdrawn products referred to in Articles 10, 11 and 18 shall undertake to:

- (a) comply with this Regulation;
- (b) keep separate stock records and financial accounts for the operations in question;

⁽¹⁾ OJ L 288, 23.11.1993, p. 12.

- (c) accept the checks provided for by the Community rules;
- (d) provide the supporting documents referred to in Article 7(3)(d).

Recipients of withdrawn products intended for distillation shall also undertake not to receive additional aid for the alcohol produced from the products concerned.

Article 22

Environmental management

1. Member States shall notify the Commission by electronic mail of the national framework referred to in the third paragraph of Article 25 of Regulation (EC) No 2200/96. They shall inform the Commission of any amendments to the above framework. The Commission shall forward each framework to all the other Member States.

2. The frameworks referred to in paragraph 1 shall lay down the terms under which producer organisations are authorised to avail themselves of Article 30(2) of Regulation (EC) No 2200/96, including the composting and biodegradation processes authorised by a Member State, the procedures to be followed by the producer organisations which use them and the documents certifying the final destination of the products which must be submitted by producer organisations together with their payment applications as provided for in Article 7(3)(d) of this Regulation.

3. If a Member State authorises the livestock farmers referred to in Article 20(2) to distribute the withdrawn products to animals by spreading them on the ground on an agricultural plot, the framework shall also stipulate the terms on which farmers are authorised to avail themselves of this possibility.

CHAPTER IV

CHECKS AND PENALTIES

SECTION 1

Checks

Article 23

First-level checks

1. The Member States shall make first-level checks on withdrawal operations in each producer organisation, comprising a documentary and identity check and a physical check, where appropriate by sampling, of the weight of the products withdrawn from the market and a check on compliance with the rules in Article 3, in accordance with the procedures laid down

in Annex IV to Commission Regulation (EC) No 1148/2001 ⁽¹⁾. The check shall take place following receipt of the notification referred to in Article 6(1) of this Regulation, within the deadlines provided for in Article 6(2).

2. The first-level checks provided for in paragraph 1 shall cover 100 % of the quantity of products withdrawn from the market during the marketing year for each product. At the end of this check, the withdrawn products shall be denatured under the supervision of the competent authorities under the terms and conditions laid down by the Member State and to its satisfaction.

3. Where the first, second and third indents of Article 30(1)(a) and Article 30(1)(b) of Regulation (EC) No 2200/96 apply, the Member States may check a smaller percentage, provided it is not less than 10 % of the quantities concerned during the marketing year. The products concerned shall not be denatured in accordance with paragraph 2 of this Article. In the event that the checks reveal significant irregularities, the competent authorities shall carry out additional checks.

Article 24

Second-level checks

1. At the end of the marketing year, the Member States shall make second-level checks. They shall lay down criteria for analysing and evaluating the risk of any given producer organisation carrying out non-compliant withdrawal operations. Such criteria shall relate, among other things, to the findings of previous first- and second-level checks, and whether or not a producer organisation has some form of quality-assurance procedure. They shall use these criteria to determine for each producer organisation a minimum frequency of second-level checks.

2. The checks referred to in paragraph 1 shall comprise documentary and, if necessary, on-the-spot checks on intervention operations at the premises of producer organisations and the recipients of withdrawn products, in order to ensure that the requisite conditions for payment of Community withdrawal compensation have been complied with. These checks shall include:

- (a) the specific stock and accounting records to be kept by all producer organisations which carry out one or more withdrawal operations during the marketing year concerned;
- (b) verification of the quantities marketed as declared in the payment applications, checking in particular the stock and accounting records, the invoices and, where necessary, their veracity and ensuring that the declarations tally with the accounting and/or tax data of the producer organisations concerned;

⁽¹⁾ OJ L 153, 13.6.2001, p. 9.

(c) checks that the accounts are correct, in particular the veracity of net receipts by the producer organisations as declared in their payment applications, the proportionality of any withdrawal costs, the entries in the accounts regarding the receipt by the producer organisations of the Community withdrawal compensation and any amounts thereof paid on to members, ensuring that these tally;

(d) checks on the destination of withdrawn products as declared in the payment applications and checks to ensure that the producer organisations and recipients have complied with this Regulation.

The checks referred to in the first subparagraph shall be made each year on at least 30 % of the producer organisations concerned and the recipients associated with those organisations and, for each producer organisation concerned, at least once every five years during which withdrawals are carried out. Each check shall include a sample representing at least 5 % of the quantities withdrawn during the marketing year by the producer organisation.

The stock and accounting records referred to in (a) in the first subparagraph shall show, for each product withdrawn, the following movements (expressed in quantities):

(a) the production delivered by members of the producer organisation and by members of other producer organisations in accordance with the second and third indents of Article 11(1)(c)(3) of Regulation (EC) No 2200/96;

(b) the production delivered by operators not covered by (a);

(c) sales by the producer organisation, broken down by products prepared for the fresh market and other types of products (including raw materials for processing);

(d) products withdrawn from the market.

The checks on the destination of products referred to in (d) in the first subparagraph shall include, in particular:

(a) a sample check on the separate accounts to be kept by recipients and, where necessary, verification that these tally with the accounts required under national law;

(b) checks on compliance with the relevant environmental requirements;

(c) for distillation, checks that the product for which the contract is awarded has been processed into alcohol of a strength of more than 80 % by volume, denatured and put to an industrial use.

3. If the second-level checks reveal significant irregularities, the competent authorities shall carry out more detailed second-level checks for the marketing year concerned and shall increase the frequency of second-level checks on the producer organisations (or their associations) concerned during the following marketing year.

SECTION 2

Recovery and penalties

Article 25

Recovery

Unduly paid compensation shall be recovered, with interest, from the producer organisations, independent producers or recipients of withdrawn products concerned, in particular where:

(a) the products not put up for sale have not been disposed of as provided for in Article 30 of Regulation (EC) No 2200/96;

(b) the disposal of the products not put up for sale causes substantial environmental damage and/or does not comply with the framework referred to in Article 22 of this Regulation.

The interest rate to be applied shall be calculated in accordance with national legislation, and shall not be lower than the interest rate generally applicable to recovery under national rules.

Article 26

Financial penalties

1. If, following the notification provided for in Article 6 and a check as referred to in Article 23, irregularities are found with regard to the standards referred to in Article 2 of Regulation (EC) No 2200/96 or the minimum quality requirements set out in Annex I to this Regulation, the recipient/applicant shall be required:

(a) to pay the amount of the compensation unduly applied for, calculated on the basis of the quantities of withdrawn products not in conformity with the standards or minimum requirements, if those quantities are less than 10 % of the quantities notified pursuant to Article 6 of this Regulation;

(b) to pay the double amount of the compensation unduly applied for, calculated on the basis of the quantities of withdrawn products not in conformity with the standards or minimum requirements, if those quantities are between 10 % and 25 % of the quantities notified pursuant to Article 6 of this Regulation;

(c) to pay the amount of the compensation for the entire quantity notified pursuant to Article 6 of this Regulation, where the quantities of withdrawn products not in conformity with the standards or minimum requirements exceed 25 % of the quantity notified.

2. Except in cases of obvious error, where irregularities are found in the application of this Regulation, the recipient/applicant shall be required:

- (a) if the compensation has already been paid, in addition to recovery as provided for in Article 25:
 - (i) to pay an amount equal to the amount unduly paid, in cases of fraud;
 - (ii) to pay 50 % of the amount unduly paid, in other cases;
- (b) in cases where applications for compensation have been submitted under Article 7 but no compensation has been paid:
 - (i) to pay the compensation unduly applied for, in the case of fraud;
 - (ii) to pay 50 % of the amount unduly applied for, in other cases.

Article 27

Additional penalties

1. Where irregularities attributable to the recipients of withdrawn products are detected during checks made in accordance with Articles 23 and 24, the following shall apply:

- (a) The approval of recipients as referred to in Article 10 and Article 20(2) shall be withdrawn. This shall take effect immediately and continue for at least one marketing year, and may be extended depending on the seriousness of the irregularity. Institutions and establishments as referred to in Article 11 shall not be eligible to benefit from free distribution operations in the following marketing year.
- (b) Recipients as referred to in Articles 18, 19 and 20 shall be excluded from benefiting from the Articles concerned for at least one marketing year, which may be extended depending on the seriousness of the irregularity.
- (c) Recipients of products withdrawn from the market shall be obliged to repay the value of the products they receive, calculated in accordance with Article 3(4) of Regulation (EC) No 1433/2003, the sorting and packaging costs received and the transport costs received, plus interest calculated by reference to the time which has elapsed between receipt of the product and repayment by the beneficiary.

2. In the event of a false declaration made deliberately or through gross negligence, the Member State shall exclude the producer organisation from Community withdrawal compensation and entitlement to make withdrawals as referred to in Article 15(2)(a) of Regulation (EC) No 2200/96 for one to five marketing years following that in which the irregularity is detected, depending on the seriousness of the irregularity.

Article 28

Payment of amounts

Sums recovered, with the interest accrued and the amount of the penalty, shall be paid to the responsible paying agency and deducted from expenditure financed by the EAGGF.

Article 29

National provisions

Articles 23 to 28 shall apply without prejudice to any measures which the Member States deem necessary to ensure compliance with Title IV and Article 15 of Regulation (EC) No 2200/96 and any other penalties to be adopted pursuant to Article 48 of that Regulation.

CHAPTER V

TRANSITIONAL AND FINAL PROVISIONS

Article 30

Transitional provisions

1. As an exception to Article 4, the 2004/05 marketing year shall cover the following periods:

- (a) for melons and watermelons, from 1 April 2004 to 31 December 2004;
- (b) for cauliflowers, apricots, nectarines, peaches and table grapes, from 1 May 2004 to 31 December 2004;
- (c) for pears, from 1 June 2004 to 31 July 2005;
- (d) for apples, from 1 July 2004 to 31 July 2005;
- (e) for lemons, from 1 June 2004 to 30 September 2005.

2. For the 2002/03 and 2003/04 marketing years, the three-year period referred to in Article 5 to be taken into consideration shall be that covered by the 2002/03, 2003/04 and 2004/05 marketing years.

Article 31

Repeal

Regulations (EC) No 659/97 and (EC) No 1492/97 are hereby repealed.

However, Article 7 of Regulation (EC) No 659/97 shall apply until 1 July 2004.

References to the repealed regulations shall be construed as references to this Regulation and are to be read in conjunction with the correlation table in Annex VI.

*Article 32***Entry into force**

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

It shall apply for each product from the beginning of the first marketing year following its entry into force for the product concerned as defined in Article 4 and Article 30(1).

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

Done at Brussels, 21 January 2004.

For the Commission

Franz FISCHLER

Member of the Commission

ANNEX I

MINIMUM REQUIREMENTS FOR PRODUCTS INTENDED FOR INTERVENTION

1. Products intended for intervention must be:
 - whole,
 - sound; products affected by rotting or deterioration such as to make them unfit for consumption are excluded,
 - clean, practically free from any visible foreign matter,
 - practically free from pests and damage caused by pests,
 - free of abnormal external moisture,
 - free of any foreign taste and/or smell.
2. Products must be sufficiently developed and ripe, taking account of their type.
3. Products must be characteristic of the variety and/or commercial type.

ANNEX II

MAXIMUM SUPPLEMENTS TO THE COMMUNITY WITHDRAWAL COMPENSATION

Product	(EUR/tonne) Maximum supplement
Tomatoes	80,1
Cauliflowers	65,0
Apples	62,3
Grapes	74,3
Apricots	91,9
Nectarines	123,9
Peaches	115,4
Pears	64,4
Aubergines	36,5
Oranges	18,5
Mandarins	44,8
Clementines	7,0
Satsumas	0,0
Lemons	42,6
Melons	42,0
Water melons	27,0

ANNEX III

INTERVENTION REPORTING**Information which the Member States must transmit to the Commission at the end of each marketing year in accordance with Article 9(2)**

1. For each product listed in Annex II to Regulation (EC) No 2200/96, and for every other product concerned:
 - (a) total quantities not put up for sale (tonnes);
 - (b) the amounts of payments by the Member States (in euro or in national currency), broken down into Community withdrawal compensation, supplements to Community withdrawal compensation and compensation for withdrawal of products not listed in Annex II.
2. For each product referred to in Annex II to Regulation (EC) No 2200/96 and, at the Commission's request, certain products not listed in Annex II which have been withdrawn in significant quantities during the marketing year concerned or a previous marketing year:
 - (a) monthly breakdown of quantities not put up for sale (tonnes);
 - (b) breakdown of quantities not put up for sale (tonnes) by destination as provided for in Article 30 of Regulation (EC) No 2200/96.
3. Summary table showing quantities marketed and not put up for sale (tonnes) by recognised producer organisation and by product (listed in Annex II to Regulation (EC) No 2200/96 and, where applicable, not listed in Annex II).

ANNEX IV

INFORMATION ON FREE DISTRIBUTION OPERATIONS OUTSIDE THE COMMUNITY

Member State:

Commission decision number:

Quantity distributed (by product):

Name and headquarters of the producer organisation making the withdrawals:

Name and headquarters of the charitable organisations involved in the operation:

Name and headquarters of the processing undertaking responsible for processing the products (where applicable):

Means of transport, name and headquarters of the transporter:

Country and place of final destination:

Population group for which the products are intended, with the estimated number of beneficiaries:

Dates of withdrawal, departure and delivery of the products:

ANNEX V

TRANSPORT COSTS UNDER FREE DISTRIBUTION ARRANGEMENTS

Distance between the place of withdrawal and the place of delivery ⁽¹⁾	Transport costs (EUR/tonne)
Less than 25 km	15,5
From 25 km to 200 km	32,3
From 200 km to 350 km	45,2
From 350 km to 500 km	64,5
From 500 km to 750 km	83,9
750 km or more	102

Supplement for refrigerated transport: EUR 7,7/tonne.

⁽¹⁾ In the case referred to in Article 13, the distance between the place of withdrawal and the place of delivery of the processed product, via the place of processing.

In the case referred to in Article 14, the distance between the place of processing and the place of distribution of the processed product (fresh produce as referred to in Article 14 does not qualify for reimbursement of transport costs).

ANNEX VI

CORRELATION TABLE

Regulation (EC) No 659/97	Regulation (EC) No 1492/97	This Regulation
Article 1		Article 1
Article 2(1) Article 2(2) Article 2(3)		Article 2(1) Article 3(1) Article 3(2)
Article 3		Article 2(2)
Article 4		Article 4
Article 5(1) Article 5(2) Article 5(3)		Article 7(1) Article 7(2) and (3) Article 7(6)
Article 6(1) Article 6(2) and (3)		Article 8(1) Article 8(2)
Article 7		—
Article 8(1) Article 8(2) Article 8(3)		Article 6(1), (2) and (3) — Article 6(4)
Article 9(1) Article 9(2) Article 9(3)		Article 9(1) Article 9(2) Article 9(3)
Article 10		Article 22
Article 11(1) Article 11(2) Article 11(3)		Article 10(1) Article 21 Article 10(2)
Article 12		Article 11
Article 13		Article 10(3)
Article 14(1) Article 14(2) Article 14(3)		Article 10(1) Article 12(1) Article 12(2) to (6)
Article 14a		Article 13
Article 14b(1) Article 14b(2) Article 14b(3) Article 14b(4) Article 14b(5) Article 14b(6) Article 14b(7) Article 14b(8)		Article 14(2) and Article 15(4) Article 14(3) Article 14(1) Article 14(4) Article 15(1) and (2) Article 15(3) Article 15(5) Article 15(6)
Article 15(1) Article 15(2)		Article 16(1) Article 16(2)
Article 16(1) Article 16(2) Article 16(3)		Article 17(1) Article 17(2) Article 17(3)
Article 17(1) Article 17(2) Article 17(3) Article 17(4)		— Article 23(1) and (2) Article 24(1) and (2) Article 24(3)

Regulation (EC) No 659/97	Regulation (EC) No 1492/97	This Regulation
Article 18(1) Article 18(2) Article 18(3) Article 18(4)		— Article 23(3) — —
Article 19(1) Article 19(2) Article 19(3)		Article 25 Article 26(2) Article 28 Article 27(2)
Article 20(1) Article 20(2) Article 20(3) Article 20(4) Article 20(5) Article 20(6) Article 20(7)		Article 27(1) Article 27(1) Article 27(1) — Article 27(1) Article 25 Article 28
Article 21		Article 29
Annex I Annex II Annex III Annex IV Annex V Annex VI Annex VII Annex VIII		— — — Annex III Annex V Annex IV Annex I Annex II
	Article 1 Article 2 Article 3 Article 4 Article 5 Article 6 Article 7	Article 18(1) Article 18(2) Article 18(3) Article 19 Article 24(2) Article 18(4) Article 18(5)

COMMISSION REGULATION (EC) No 104/2004**of 22 January 2004****laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1592/2002 of the European Parliament and of the Council of 15 July 2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency ⁽¹⁾, as last amended by Commission Regulation (EC) No 1701/2003 ⁽²⁾, and in particular Article 31(3) and Article 32(5) thereof,

Whereas:

- (1) Regulation (EC) No 1592/2002 gives power to the European Aviation Safety Agency (the Agency) to take individual decisions in the fields of airworthiness and environmental certification, investigation of undertakings, payment of applicable fees and charges; it also establishes a Board of Appeal before which such individual decisions of the Agency may be appealed against.
- (2) Articles 31 and 32 of Regulation (EC) No 1592/2002 empower the Commission to adopt detailed rules concerning the number of boards of appeal, the work allocation, the qualifications required for the members of each board and the powers of individual members in the preparatory phase of the decisions as well as the voting conditions.
- (3) It is expected that the number of appeals will be quite limited at least as long as Regulation (EC) No 1592/2002 is not amended to extend its scope to flight operations and crew licensing.
- (4) The Board will examine matters for which a high level general technical experience in the domain of certification is mainly required; it is nevertheless necessary that the Board is chaired by a legally qualified member with recognised experience in Community and international law. This member should be the Chairperson.
- (5) To facilitate the handling and disposal of appeals, a rapporteur should be designated for each case, who should be responsible *inter alia* for preparing communications with the parties and for drafting decisions.
- (6) To ensure the smooth and efficient operating of the Board of Appeal, a registry should be attached to it, the personnel of which will be in charge of all support functions involving no legal or technical discretion.

- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 54(3) of Regulation (EC) No 1592/2002,

HAS ADOPTED THIS REGULATION:

Article 1**The number of boards**

For the purpose of deciding on appeals from the decisions referred to in Article 35 of Regulation (EC) No 1592/2002 a Board of Appeal is established.

Article 2**Qualifications of the members**

1. The Board of Appeal shall consist of two technically qualified members and one legally qualified member which shall be the Chairperson of the Board.
2. The technically qualified members and their alternates shall hold a university degree or an equivalent qualification and shall have substantial professional experience in the field of certification, in one or more of the disciplines set out in the Annex to this Regulation.
3. The legally qualified member and his alternate shall be a graduate in law and qualified by recognised experience in Community and international law.

Article 3**Powers of the Chairperson**

1. The Board of Appeal shall be convened by its Chairperson. The Chairperson shall ensure the quality and consistency of the Board's decisions.
2. The Chairperson shall assign the examination of an appeal to one of the Board's members as rapporteur.

Article 4**Role of the rapporteurs**

1. The rapporteur shall carry out a preliminary study of the appeal.

⁽¹⁾ OJ L 240, 7.9.2002, p. 1.

⁽²⁾ OJ L 243, 27.9.2003, p. 5.

2. The rapporteur shall ensure a close consultation and exchange of information with the parties to the proceedings. For that purpose, the rapporteur shall:

- (a) prepare communications to the parties subject to the direction of the Chairperson of the Board;
- (b) communicate any deficiencies to be remedied by a party to the proceedings;
- (c) set appropriate procedural time limits in accordance with Article 39(2) of Regulation (EC) No 1592/2002; and
- (d) sign all communications on behalf of the Board.

3. The rapporteur shall prepare internal meetings of the Board and the oral proceedings.

4. The rapporteur shall draft the decision.

Article 5

Registry attached to the Board of Appeal

1. The Executive Director shall attach a registry to the Board of Appeal. Personnel in charge of the registry shall not participate in any Agency proceedings relating to decisions that can be brought under appeal.

2. The personnel of the registry shall in particular be responsible for:

- (a) the keeping of a register initialised by the Chairperson in which all appeals and supporting documents are lodged in chronological order;
- (b) the receipt, transmission and custody of documents;
- (c) the performance of other support functions to the Board of Appeal which involve no legal or technical discretion, particularly with regard to representation, the submission of translations and notifications;

(d) the submission to the Chairperson of the Board of a report on the formal admissibility of each newly-filed appeal;

(e) where necessary, drawing up the minutes of oral proceedings.

Article 6

Deliberations

1. Only members of the Board shall participate in the deliberations; the Chairperson of the Board may, however, authorise other officers such as personnel of the registry or interpreters to attend. Deliberations shall be secret.

2. During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first and the Chairperson last.

Article 7

Voting conditions and order

1. Decisions of the Board of Appeal shall be taken by a majority of its members. In the event of a tie, the vote of the Chairperson of the Board shall be decisive.

2. If voting is necessary, votes shall be taken in the sequence provided for in Article 6(2). Abstentions shall not be permitted.

Article 8

Entry into force

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

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

Done at Brussels, 22 January 2004.

For the Commission

Loyola DE PALACIO

Vice-President

ANNEX

LIST OF DISCIPLINES

1. The following technical disciplines:

- (i) flight/performance
- (ii) structure
- (iii) hydromechanical systems
- (iv) rotor/transmission systems
- (v) electrical/HIRF/lightning
- (vi) avionics/software
- (vii) powerplant installation/fuel systems
- (viii) cabin safety/environmental systems
- (ix) noise/emissions
- (x) continued airworthiness/airworthiness directives as applied to the following products, their parts and appliances:
 - (a) large aeroplanes
 - (b) rotorcraft
 - (c) small aeroplanes
 - (d) balloons/airships/gliders/UAV's
 - (e) engines/APUs/propellers.

2. Approvals of and quality systems associated with:

- (i) design organisations
 - (ii) production organisations
 - (iii) maintenance organisations.
-

COMMISSION REGULATION (EC) No 105/2004

of 22 January 2004

fixing the rates of refunds applicable to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation (EC) No 2196/2003 ⁽²⁾, and in particular Article 27(5)(a) and (15),

Whereas:

(1) Article 27(1) and (2) of Regulation (EEC) No 1260/2001 provides that the differences between the prices in international trade for the products listed in Article 1(1)(a), (c), (d), (f), (g) and (h) of that Regulation and prices within the Community may be covered by an export refund where these products are exported in the form of goods listed in Annex V to that Regulation. Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty and the criteria for fixing the amount of such refunds ⁽³⁾, as last amended by Regulation (EC) No 740/2003 ⁽⁴⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex I to Regulation (EC) No 1260/2001.

(2) In accordance with Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.

(3) Article 27(3) of Regulation (EC) No 1260/2001 and Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lay down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.

(4) The refunds fixed under this Regulation may be fixed in advance as the market situation over the next few months cannot be established at the moment.

(5) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. It is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. The fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.

(6) In accordance with Council Regulation (EC) No 1039/2003 of 2 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Estonia and the exportation of certain agricultural products to Estonia ⁽⁵⁾, Council Regulation (EC) No 1086/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Slovenia and the exportation of certain processed agricultural products to Slovenia ⁽⁶⁾, Council Regulation (EC) No 1087/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Latvia and the exportation of certain processed agricultural products to Latvia ⁽⁷⁾, Council Regulation (EC) No 1088/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Lithuania and the exportation of certain processed agricultural products to Lithuania ⁽⁸⁾, Council Regulation (EC) No 1089/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Slovak Republic and the exportation of certain processed agricultural products to the Slovak Republic ⁽⁹⁾ and Council Regulation (EC) No 1090/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Czech Republic and the exportation of certain processed agricultural products to the Czech Republic ⁽¹⁰⁾ with effect from 1 July 2003, processed agricultural products not listed in Annex I to the Treaty which are exported to Estonia, Slovenia, Latvia, Lithuania, Slovakia or the Czech Republic are not eligible for export refunds.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 328, 17.12.2003, p. 17.

⁽³⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁴⁾ OJ L 106, 29.4.2003, p. 12.

⁽⁵⁾ OJ L 151, 19.6.2003, p. 1.

⁽⁶⁾ OJ L 163, 1.7.2003, p. 1.

⁽⁷⁾ OJ L 163, 1.7.2003, p. 19.

⁽⁸⁾ OJ L 163, 1.7.2003, p. 38.

⁽⁹⁾ OJ L 163, 1.7.2003, p. 56.

⁽¹⁰⁾ OJ L 163, 1.7.2003, p. 73.

- (7) In accordance with Council Regulation (EC) No 999/2003 of 2 June 2003 adopting autonomous and transitional measures concerning the import of certain processed agricultural products originating in Hungary and the export of certain processed agricultural products to Hungary ⁽¹⁾, with effect from 1 July 2003, the goods referred to in its Article 1(2) which are exported to Hungary shall not be eligible for export refunds.
- (8) In accordance with Council Regulation (EC) No 1890/2003 of 27 October 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Malta and the exportation of certain processed agricultural products to Malta ⁽²⁾ with effect from 1 November 2003, processed agricultural products not listed in Annex I to the Treaty which are exported to Malta, are not eligible for export refunds.
- (9) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

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

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex A to Regulation (EC) No 1520/2000 and in Article 1(1) and (2) of Regulation (EC) No 1260/2001, exported in the form of goods listed in Annex V to Regulation (EC) No 1260/2001, are fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 146, 13.6.2003, p. 10.

⁽²⁾ OJ L 278, 29.10.2003, p. 1.

ANNEX

Rates of refunds applicable from 23 January 2004 to certain products from the sugar sector exported in the form of goods not covered by Annex I to the Treaty

CN code	Description	Rate of refund in EUR/100 kg ⁽¹⁾	
		In case of advance fixing of refunds	Other
1701 99 10	White sugar	49,95	49,95

⁽¹⁾ With effect from 1 July 2003 these rates are not applicable to goods not covered by Annex I to the Treaty when exported to Estonia, Slovenia, Latvia, Lithuania, the Czech Republic or Slovakia and to the goods referred to in Article 1(2) of Regulation (EC) No 999/2003 when exported to Hungary. With effect from 1 November 2003 these rates are not applicable to goods not covered by Annex I to the Treaty when exported to Malta.

COMMISSION REGULATION (EC) No 106/2004**of 22 January 2004****fixing the rates of the refunds applicable to certain cereal and rice-products exported in the form of goods not covered by Annex I to the Treaty**

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 1784/2003⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice⁽³⁾, as last amended by Commission Regulation (EC) No 411/2002⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13(1) of Regulation (EEC) No 1766/92 and Article 13(1) of Regulation (EC) No 3072/95 provide that the difference between quotations of prices on the world market for the products listed in Article 1 of each of those Regulations and the prices within the Community may be covered by an export refund.
- (2) Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common implementing rules for granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds⁽⁵⁾, as last amended by Regulation (EC) No 740/2003⁽⁶⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 as appropriate.
- (3) In accordance with the first subparagraph of Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for each month.
- (4) The commitments entered into with regard to refunds which may be granted for the export of agricultural products contained in goods not covered by Annex I to the Treaty may be jeopardised by the fixing in advance of high refund rates. It is therefore necessary to take precautionary measures in such situations without, however, preventing the conclusion of long-term contracts. The fixing of a specific refund rate for the advance fixing of refunds is a measure which enables these various objectives to be met.
- (5) Taking into account the settlement between the European Community and the United States of America on Community exports of pasta products to the United States, approved by Council Decision 87/482/EEC⁽⁷⁾, it is necessary to differentiate the refund on goods falling within CN codes 1902 11 00 and 1902 19 according to their destination.
- (6) Pursuant to Article 4(3) and (5) of Regulation (EC) No 1520/2000, a reduced rate of export refund has to be fixed, taking account of the amount of the production refund applicable, pursuant to Council Regulation (EEC) No 1722/93⁽⁸⁾, as last amended by Commission Regulation (EC) No 1786/2001⁽⁹⁾, for the basic product in question, used during the assumed period of manufacture of the goods.
- (7) Spirituous beverages are considered less sensitive to the price of the cereals used in their manufacture. However, Protocol 19 to the Act of Accession of the United Kingdom, Ireland and Denmark provides that the necessary measures must be decided to facilitate the use of Community cereals in the manufacture of spirituous beverages obtained from cereals. Accordingly, it is necessary to adapt the refund rate applying to cereals exported in the form of spirituous beverages.
- (8) In accordance with Council Regulation (EC) No 1039/2003 of 2 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Estonia and the exportation of certain agricultural products to Estonia⁽¹⁰⁾, Council Regulation (EC) No 1086/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Slovenia and the exportation of certain processed agricultural products to Slovenia⁽¹¹⁾, Council Regulation (EC) No 1087/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Latvia and the exportation of certain processed agricultural products to Latvia⁽¹²⁾, Council Regulation (EC) No 1088/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Lithuania and the exportation of certain processed agricultural products to Lithuania⁽¹³⁾, Council Regulation (EC) No 1089/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Slovak Republic and the exportation of certain processed agricultural products to the Slovak

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 270, 21.10.2003, p. 78.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 62, 5.3.2002, p. 27.

⁽⁵⁾ OJ L 117, 15.7.2000, p. 1.

⁽⁶⁾ OJ L 106, 29.4.2003, p. 12.

⁽⁷⁾ OJ L 275, 29.9.1987, p. 36.

⁽⁸⁾ OJ L 159, 1.7.1993, p. 112.

⁽⁹⁾ OJ L 242, 12.9.2001, p. 3.

⁽¹⁰⁾ OJ L 151, 19.6.2003, p. 1.

⁽¹¹⁾ OJ L 163, 1.7.2003, p. 1.

⁽¹²⁾ OJ L 163, 1.7.2003, p. 19.

⁽¹³⁾ OJ L 163, 1.7.2003, p. 38.

Republic ⁽¹⁾ and Council Regulation (EC) No 1090/2003 of 18 June 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in the Czech Republic and the exportation of certain processed agricultural products to the Czech Republic ⁽²⁾ with effect from 1 July 2003, processed agricultural products not listed in Annex I to the Treaty which are exported to Estonia, Slovenia, Latvia, Lithuania, Slovakia or the Czech Republic are not eligible for export refunds.

(9) In accordance with Council Regulation (EC) No 999/2003 of 2 June 2003 adopting autonomous and transitional measures concerning the import of certain processed agricultural products originating in Hungary and the export of certain processed agricultural products to Hungary ⁽³⁾, with effect from 1 July 2003, the goods referred to in its Article 1(2) which are exported to Hungary are not eligible for export refunds.

(10) In accordance with Council Regulation (EC) No 1890/2003 of 27 October 2003 adopting autonomous and transitional measures concerning the importation of certain processed agricultural products originating in Malta and the exportation of certain processed agricultural products to Malta ⁽⁴⁾, with effect from 1

November 2003, processed agricultural products not listed in Annex I to the Treaty which are exported to Malta, are not eligible for export refunds.

(11) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.

(12) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex A to Regulation (EC) No 1520/2000 and listed either in Article 1 of Regulation (EEC) No 1766/92 or in Article 1(1) of Regulation (EC) No 3072/95, exported in the form of goods listed in Annex B to Regulation (EEC) No 1766/92 or in Annex B to Regulation (EC) No 3072/95 respectively, are fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 163, 1.7.2003, p. 56.

⁽²⁾ OJ L 163, 1.7.2003, p. 73.

⁽³⁾ OJ L 146, 13.6.2003, p. 10.

⁽⁴⁾ OJ L 278, 29.10.2003, p. 1.

ANNEX

Rates of the refunds applicable from 23 January 2004 to certain cereals and rice products exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product ⁽²⁾	
		In case of advance fixing of refunds	Other
1001 10 00	Durum wheat:		
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—	—
	– in other cases	—	—
1001 90 99	Common wheat and meslin:		
	– on exports of goods falling within CN codes 1902 11 and 1902 19 to the United States of America	—	—
	– in other cases:		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	—	—
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– – in other cases	—	—
1002 00 00	Rye	—	—
1003 00 90	Barley		
	– where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– in other cases	—	—
1004 00 00	Oats	—	—
1005 90 00	Maize (corn) used in the form of:		
	– starch:		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	2,919	2,919
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– – in other cases	2,919	2,919
	– glucose, glucose syrup, maltodextrine, maltodextrine syrup of CN codes 1702 30 51, 1702 30 59, 1702 30 91, 1702 30 99, 1702 40 90, 1702 90 50, 1702 90 75, 1702 90 79, 2106 90 55 ⁽⁵⁾ :		
	– – where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	2,189	2,189
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– – in other cases	2,189	2,189
	– where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– other (including unprocessed)	2,919	2,919
	Potato starch of CN code 1108 13 00 similar to a product obtained from processed maize:		
	– where Article 4(5) of Regulation (EC) No 1520/2000 applies ⁽³⁾	2,919	2,919
	– – where goods falling within subheading 2208 ⁽⁴⁾ are exported	—	—
	– in other cases	2,919	2,919

(EUR/100 kg)

CN code	Description of products ⁽¹⁾	Rate of refund per 100 kg of basic product ⁽²⁾	
		In case of advance fixing of refunds	Other
ex 1006 30	Wholly milled rice:		
	– round grain	12,400	12,400
	– medium grain	12,400	12,400
	– long grain	12,400	12,400
1006 40 00	Broken rice	3,200	3,200
1007 00 90	Grain sorghum, other than hybrid for sowing	—	—

⁽¹⁾ As far as agricultural products obtained from the processing of a basic product or/and assimilated products are concerned, the coefficients shown in Annex E to Commission Regulation (EC) No 1520/2000 shall be applied (OJ L 177, 15.7.2000, p. 1).

⁽²⁾ With effect from 1 July 2003 these rates are not applicable to goods not covered by Annex I to the Treaty when exported to the Czech Republic, Estonia, Latvia, Lithuania, Slovakia or Slovenia, and to the goods referred to in Article 1(2) of Regulation (EC) No 999/2003 when exported to Hungary. With effect from 1 November 2003 these rates are not applicable to goods not covered by Annex I to the Treaty when exported to Malta.

⁽³⁾ The goods concerned fall under CN code 3505 10 50.

⁽⁴⁾ Goods listed in Annex B to Regulation (EEC) No 1766/92 or referred to in Article 2 of Regulation (EEC) No 2825/93.

⁽⁵⁾ For syrups of CN codes NC 1702 30 99, 1702 40 90 and 1702 60 90, obtained from mixing glucose and fructose syrup, the export refund may be granted only for the glucose syrup.

COMMISSION REGULATION (EC) No 107/2004**of 22 January 2004****fixing the representative prices and the additional import duties for molasses in the sugar sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, as amended by Commission Regulation (EC) No 2196/2003 ⁽²⁾,

Having regard to Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽³⁾, as amended by Regulation (EC) No 79/2003 ⁽⁴⁾, and in particular Article 1(2) and Article 3(1) thereof,

Whereas:

- (1) Regulation (EC) No 1422/95 stipulates that the cif import price for molasses, hereinafter referred to as the 'representative price', should be set in accordance with Commission Regulation (EEC) No 785/68 ⁽⁵⁾. That price should be fixed for the standard quality defined in Article 1 of the above Regulation.
- (2) The representative price for molasses is calculated at the frontier crossing point into the Community, in this case Amsterdam; that price must be based on the most favourable purchasing opportunities on the world market established on the basis of the quotations or prices on that market adjusted for any deviations from the standard quality. The standard quality for molasses is defined in Regulation (EEC) No 785/68.
- (3) When the most favourable purchasing opportunities on the world market are being established, account must be taken of all available information on offers on the world market, on the prices recorded on important third-country markets and on sales concluded in international trade of which the Commission is aware, either directly or through the Member States. Under Article 7 of Regulation (EEC) No 785/68, the Commission may for this purpose take an average of several prices as a basis, provided that this average is representative of actual market trends.
- (4) The information must be disregarded if the goods concerned are not of sound and fair marketable quality or if the price quoted in the offer relates only to a small

quantity that is not representative of the market. Offer prices which can be regarded as not representative of actual market trends must also be disregarded.

- (5) If information on molasses of the standard quality is to be comparable, prices must, depending on the quality of the molasses offered, be increased or reduced in the light of the results achieved by applying Article 6 of Regulation (EEC) No 785/68.
- (6) A representative price may be left unchanged by way of exception for a limited period if the offer price which served as a basis for the previous calculation of the representative price is not available to the Commission and if the offer prices which are available and which appear not to be sufficiently representative of actual market trends would entail sudden and considerable changes in the representative price.
- (7) Where there is a difference between the trigger price for the product in question and the representative price, additional import duties should be fixed under the conditions set out in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (8) Application of these provisions will have the effect of fixing the representative prices and the additional import duties for the products in question as set out in the Annex to this Regulation.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and the additional duties applying to imports of the products referred to in Article 1 of Regulation (EC) No 1422/95 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 January 2004.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 328, 17.12.2003, p. 17.

⁽³⁾ OJ L 141, 24.6.1995, p. 12.

⁽⁴⁾ OJ L 13, 18.1.2003, p. 4.

⁽⁵⁾ OJ L 145, 27.6.1968, p. 12.

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

Done at Brussels, 22 January 2004.

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

ANNEX

to the Commission Regulation of 22 January 2004 fixing the representative prices and additional import duties to imports of molasses in the sugar sector

(in EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽²⁾
1703 10 00 ⁽¹⁾	5,79	0,40	—
1703 90 00 ⁽¹⁾	8,33	—	0

⁽¹⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

⁽²⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

COMMISSION REGULATION (EC) No 108/2004**of 22 January 2004****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of that Regulation. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽²⁾. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.
- (4) In special cases, the amount of the refund may be fixed by other legal instruments.
- (5) The refund must be fixed every two weeks. It may be altered in the intervening period.
- (6) The first subparagraph of Article 27(5) of Regulation (EC) No 1260/2001 provides that refunds on the products referred to in Article 1 of that Regulation may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.
- (7) The significant and rapid increase in preferential imports of sugar from the western Balkan countries since the start of 2001 and in exports of sugar to those countries from the Community seems to be highly artificial.
- (8) To prevent any abuse through the re-import into the Community of sugar products in receipt of an export refund, no refund should be set for all the countries of the western Balkans for the products covered by this Regulation.
- (9) Import duties and export refunds still apply to certain sugar products traded between the Community, of the one part, and the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, hereinafter referred to as 'new Member States', of the other part, and the level of export refunds is appreciably greater than the level of import duties. In view of the accession of these countries to the Community on 1 May 2004, the appreciable gap between the level of import duties and the level of export refunds granted for the products in question may result in speculative trade flows.
- (10) To prevent any abuse through the re-import or re-introduction into the Community of sugar products in receipt of an export refund, no refund or levy should be set for all the new Member States for the products covered by this Regulation.
- (11) In view of the above and of the present situation on the market in sugar, and in particular of the quotations or prices for sugar within the Community and on the world market, refunds should be set at the appropriate amounts.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, are hereby fixed to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 23 January 2004.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 680/2002 (OJ L 104, 20.4.2002, p. 26).

⁽²⁾ OJ L 214, 8.9.1995, p. 16.

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

Done at Brussels, 22 January 2004.

For the Commission
 Franz FISCHLER
 Member of the Commission

ANNEX

**REFUNDS ON WHITE SUGAR AND RAW SUGAR EXPORTED WITHOUT FURTHER PROCESSING
 APPLICABLE FROM 23 JANUARY 2004**

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	45,95 ⁽¹⁾
1701 11 90 9910	S00	EUR/100 kg	45,95 ⁽¹⁾
1701 12 90 9100	S00	EUR/100 kg	45,95 ⁽¹⁾
1701 12 90 9910	S00	EUR/100 kg	45,95 ⁽¹⁾
1701 91 00 9000	S00	EUR/1 % of sucrose × 100 kg product net	0,4995
1701 99 10 9100	S00	EUR/100 kg	49,95
1701 99 10 9910	S00	EUR/100 kg	49,95
1701 99 10 9950	S00	EUR/100 kg	49,95
1701 99 90 9100	S00	EUR/1 % of sucrose × 100 kg of net product	0,4995

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

The numeric destination codes are set out in Commission Regulation (EC) No 1779/2002 (OJ L 269, 5.10.2002, p. 6).

The other destinations are:

S00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999), the former Yugoslav Republic of Macedonia, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, save for sugar incorporated in the products referred to in Article 1(2)(b) of Council Regulation (EC) No 2201/96 (OJ L 297, 21.11.1996, p. 29).

⁽¹⁾ This amount is applicable to raw sugar with a yield of 92 %. Where the yield for exported raw sugar differs from 92 %, the refund amount applicable shall be calculated in accordance with Article 28(4) of Regulation (EC) No 1260/2001.

COMMISSION REGULATION (EC) No 109/2004**of 22 January 2004****fixing the maximum export refund for white sugar to certain third countries for the 19th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1290/2003**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, as amended by Commission Regulation (EC) No 2196/2003 ⁽²⁾, and in particular Article 27(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1290/2003 of 18 July 2003 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽³⁾, for the 2003/2004 marketing year, requires partial invitations to tender to be issued for the export of this sugar to certain third countries.
- (2) Pursuant to Article 9(1) of Regulation (EC) No 1290/2003 a maximum export refund shall be fixed, as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

(3) Following an examination of the tenders submitted in response to the 19th partial invitation to tender, the provisions set out in Article 1 should be adopted.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

For the 19th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1290/2003 the maximum amount of the export refund to certain third countries is fixed at 53,024 EUR/100 kg.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 328, 17.12.2003, p. 17.

⁽³⁾ OJ L 181, 19.7.2003, p. 7.

COMMISSION REGULATION (EC) No 110/2004
of 22 January 2004
fixing the export refunds on products processed from cereals and rice

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 organization of the market in cereals ⁽¹⁾, as last amended by Regulation (EC) No 1104/2003 ⁽²⁾, and in particular Article 13(3) thereof,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice ⁽³⁾, as last amended by Commission Regulation (EC) No 411/2002 ⁽⁴⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EEC) No 1766/92 and Article 13 of Regulation (EC) No 3072/95 provide that the difference between quotations or prices on the world market for the products listed in Article 1 of those Regulations and prices for those products within the Community may be covered by an export refund.
- (2) Article 13 of Regulation (EC) No 3072/95 provides that when refunds are being fixed account must be taken of the existing situation and the future trend with regard to prices and availabilities of cereals, rice and broken rice on the Community market on the one hand and prices for cereals, rice, broken rice and cereal products on the world market on the other. The same Articles provide that it is also important to ensure equilibrium and the natural development of prices and trade on the markets in cereals and rice and, furthermore, to take into account the economic aspect of the proposed exports, and the need to avoid disturbances on the Community market.
- (3) Article 4 of Commission Regulation (EC) No 1518/95 ⁽⁵⁾, as amended by Regulation (EC) No 2993/95 ⁽⁶⁾, on the import and export system for products processed from cereals and from rice defines the specific criteria to be taken into account when the refund on these products is being calculated.
- (4) The refund to be granted in respect of certain processed products should be graduated on the basis of the ash, crude fibre, tégument, protein, fat and starch content of

the individual product concerned, this content being a particularly good indicator of the quantity of basic product actually incorporated in the processed product.

- (5) There is no need at present to fix an export refund for manioc, other tropical roots and tubers or flours obtained therefrom, given the economic aspect of potential exports and in particular the nature and origin of these products. For certain products processed from cereals, the insignificance of Community participation in world trade makes it unnecessary to fix an export refund at the present time.
- (6) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (7) The refund must be fixed once a month. It may be altered in the intervening period.
- (8) Certain processed maize products may undergo a heat treatment following which a refund might be granted that does not correspond to the quality of the product; whereas it should therefore be specified that on these products, containing pregelatinized starch, no export refund is to be granted.
- (9) The Management Committee for Cereals has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(d) of Regulation (EEC) No 1766/92 and in Article 1(1)(c) of Regulation (EC) No 3072/95 and subject to Regulation (EC) No 1518/95 are hereby fixed as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2004.

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 158, 27.6.2003, p. 1.

⁽³⁾ OJ L 329, 30.12.1995, p. 18.

⁽⁴⁾ OJ L 62, 5.3.2002, p. 27.

⁽⁵⁾ OJ L 147, 30.6.1995, p. 55.

⁽⁶⁾ OJ L 312, 23.12.1995, p. 25.

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

Done at Brussels, 22 January 2004.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

to the Commission Regulation of 22 January 2004 fixing the export refunds on products processed from cereals and rice

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
1102 20 10 9200 ⁽¹⁾	C10	EUR/t	40,87	1104 23 10 9300	C10	EUR/t	33,57
1102 20 10 9400 ⁽¹⁾	C10	EUR/t	35,03	1104 29 11 9000	C10	EUR/t	0,00
1102 20 90 9200 ⁽¹⁾	C10	EUR/t	35,03	1104 29 51 9000	C10	EUR/t	0,00
1102 90 10 9100	C11	EUR/t	0,00	1104 29 55 9000	C10	EUR/t	0,00
1102 90 10 9900	C11	EUR/t	0,00	1104 30 10 9000	C10	EUR/t	0,00
1102 90 30 9100	C11	EUR/t	0,00	1104 30 90 9000	C10	EUR/t	7,30
1103 19 40 9100	C10	EUR/t	0,00	1107 10 11 9000	C13	EUR/t	0,00
1103 13 10 9100 ⁽¹⁾	C10	EUR/t	52,54	1107 10 91 9000	C13	EUR/t	0,00
1103 13 10 9300 ⁽¹⁾	C10	EUR/t	40,87	1108 11 00 9200	C10	EUR/t	0,00
1103 13 10 9500 ⁽¹⁾	C10	EUR/t	35,03	1108 11 00 9300	C10	EUR/t	0,00
1103 13 90 9100 ⁽¹⁾	C10	EUR/t	35,03	1108 12 00 9200	C10	EUR/t	46,70
1103 19 10 9000	C10	EUR/t	0,00	1108 12 00 9300	C10	EUR/t	46,70
1103 19 30 9100	C10	EUR/t	0,00	1108 13 00 9200	C10	EUR/t	46,70
1103 20 60 9000	C12	EUR/t	0,00	1108 13 00 9300	C10	EUR/t	46,70
1103 20 20 9000	C11	EUR/t	0,00	1108 19 10 9200	C10	EUR/t	48,64
1104 19 69 9100	C10	EUR/t	0,00	1108 19 10 9300	C10	EUR/t	48,64
1104 12 90 9100	C10	EUR/t	0,00	1109 00 00 9100	C10	EUR/t	0,00
1104 12 90 9300	C10	EUR/t	0,00	1702 30 51 9000 ⁽²⁾	C10	EUR/t	45,76
1104 19 10 9000	C10	EUR/t	0,00	1702 30 59 9000 ⁽²⁾	C10	EUR/t	35,03
1104 19 50 9110	C10	EUR/t	46,70	1702 30 91 9000	C10	EUR/t	45,76
1104 19 50 9130	C10	EUR/t	37,95	1702 30 99 9000	C10	EUR/t	35,03
1104 29 01 9100	C10	EUR/t	0,00	1702 40 90 9000	C10	EUR/t	35,03
1104 29 03 9100	C10	EUR/t	0,00	1702 90 50 9100	C10	EUR/t	45,76
1104 29 05 9100	C10	EUR/t	0,00	1702 90 50 9900	C10	EUR/t	35,03
1104 29 05 9300	C10	EUR/t	0,00	1702 90 75 9000	C10	EUR/t	47,94
1104 22 20 9100	C10	EUR/t	0,00	1702 90 79 9000	C10	EUR/t	33,28
1104 22 30 9100	C10	EUR/t	0,00	2106 90 55 9000	C10	EUR/t	35,03
1104 23 10 9100	C10	EUR/t	43,79				

⁽¹⁾ No refund shall be granted on products given a heat treatment resulting in pregelatinisation of the starch.

⁽²⁾ Refunds are granted in accordance with Council Regulation (EEC) No 2730/75 (OJ L 281, 1.11.1975, p. 20), as amended.

NB The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1), as amended.

The numeric destination codes are set out in Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

The other destinations are as follows:

C10 All destinations except for Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovenia and Slovakia.

C11 All destinations except for Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovenia and Slovakia.

C12 All destinations except for Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Romania, Slovenia and Slovakia.

C13 All destinations except for Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Romania, Slovenia and Slovakia.

COMMISSION REGULATION (EC) No 111/2004**of 22 January 2004****fixing the export refunds on syrups and certain other sugar products exported in the natural state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾, and in particular the second subparagraph of Article 27(5) thereof,

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(d) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Article 3 of Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽²⁾, provides that the export refund on 100 kilograms of the products listed in Article 1(1)(d) of Regulation (EC) No 1260/2001 is equal to the basic amount multiplied by the sucrose content, including, where appropriate, other sugars expressed as sucrose; the sucrose content of the product in question is determined in accordance with Article 3 of Commission Regulation (EC) No 2135/95.
- (3) Article 30(3) of Regulation (EC) No 1260/2001 provides that the basic amount of the refund on sorbose exported in the natural state must be equal to the basic amount of the refund less one hundredth of the production refund applicable, pursuant to Commission Regulation (EC) No 1265/2001 of 27 June 2001 laying down detailed rules for the application of Council Regulation (EC) No 1260/2001 as regards granting the production refund on certain sugar products used in the chemical industry ⁽³⁾ to the products listed in the Annex to the last mentioned Regulation;
- (4) According to the terms of Article 30(1) of Regulation (EC) No 1260/2001, the basic amount of the refund on the other products listed in Article 1(1)(d) of the said Regulation exported in the natural state must be equal to one-hundredth of an amount which takes account, on

the one hand, of the difference between the intervention price for white sugar for the Community areas without deficit for the month for which the basic amount is fixed and quotations or prices for white sugar on the world market and, on the other, of the need to establish a balance between the use of Community basic products in the manufacture of processed goods for export to third countries and the use of third country products brought in under inward-processing arrangements.

- (5) According to the terms of Article 30(4) of Regulation (EC) No 1260/2001, the application of the basic amount may be limited to some of the products listed in Article 1(1)(d) of the said Regulation.
- (6) Article 27 of Regulation (EC) No 1260/2001 makes provision for setting refunds for export in the natural state of products referred to in Article 1(1)(f) and (g) and (h) of that Regulation; the refund must be fixed per 100 kilograms of dry matter, taking account of the export refund for products falling within CN code 1702 30 91 and for products referred to in Article 1(1)(d) of Regulation (EC) No 1260/2001 and of the economic aspects of the intended exports; in the case of the products referred to in the said Article 1(1)(f) and (g), the refund is to be granted only for products complying with the conditions in Article 5 of Regulation (EC) No 2135/95; for the products referred to in Article 1(1)(h), the refund shall be granted only for products complying with the conditions in Article 6 of Regulation (EC) No 2135/95.
- (7) The abovementioned refunds must be fixed every month; they may be altered in the intervening period.
- (8) The first subparagraph of Article 27(5) of Regulation (EC) No 1260/2001 provides that refunds on the products referred to in Article 1 of that Regulation may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.
- (9) The significant and rapid increase in preferential imports of sugar from the western Balkan countries since the start of 2001 and in exports of sugar to those countries from the Community seems to be highly artificial in nature.

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as amended by Commission Regulation (EC) No 2196/2003 (OJ L 328, 17.12.2003, p. 17).

⁽²⁾ OJ L 214, 8.9.1995, p. 16.

⁽³⁾ OJ L 178, 30.6.2001, p. 63.

- (10) In order to prevent any abuses associated with the reimportation into the Community of sugar sector products that have qualified for export refunds, refunds for the products covered by this Regulation should not be fixed for all the countries of the western Balkans.
- (11) Import duties and export refunds still apply to certain sugar products traded between the Community, on the one hand, and the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, hereafter known as the 'new Member States', on the other, and the level of export refunds is appreciably greater than the level of import duties. In view of the accession of those countries to the Community on 1 May 2004, the appreciable gap between the level of import duties and the level of export refunds granted on the products in question may result in speculative trade movements.
- (12) In order to prevent any abuse associated with the reimport or re-introduction into the Community of sugar sector products that have qualified for export refunds, levies and refunds for the products covered by this Regulation should not be set for all the new Member States.

- (13) In view of the above, refunds for the products in question should be fixed at the appropriate amounts.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(d), (f), (g) and (h) of Regulation (EC) No 1260/2001, exported in the natural state, shall be set out in the Annex hereto to this Regulation.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission
Franz FISCHLER
Member of the Commission

ANNEX

EXPORT REFUNDS ON SYRUPS AND CERTAIN OTHER SUGAR PRODUCTS EXPORTED WITHOUT FURTHER PROCESSING APPLICABLE FROM 23 JANUARY 2004

Product code	Destination	Unit of measurement	Amount of refund
1702 40 10 9100	S00	EUR/100 kg dry matter	49,95 ⁽¹⁾
1702 60 10 9000	S00	EUR/100 kg dry matter	49,95 ⁽¹⁾
1702 60 80 9100	S00	EUR/100 kg dry matter	94,91 ⁽²⁾
1702 60 95 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4995 ⁽³⁾
1702 90 30 9000	S00	EUR/100 kg dry matter	49,95 ⁽¹⁾
1702 90 60 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4995 ⁽³⁾
1702 90 71 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4995 ⁽³⁾
1702 90 99 9900	S00	EUR/1 % sucrose × net 100 kg of product	0,4995 ⁽³⁾ ⁽⁴⁾
2106 90 30 9000	S00	EUR/100 kg dry matter	49,95 ⁽¹⁾
2106 90 59 9000	S00	EUR/1 % sucrose × net 100 kg of product	0,4995 ⁽³⁾

NB The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1).

The numeric destination codes are set out in Commission Regulation (EC) No 1779/2002 (OJ L 269, 5.10.2002, p. 6).

The other destinations are defined as follows:

S00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999), the former Yugoslav Republic of Macedonia, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, except for sugar incorporated into the products referred to in Article 1(2)(b) of Council Regulation (EC) No 2201/96 (OJ L 297, 21.11.1996, p. 29).

⁽¹⁾ Applicable only to products referred to in Article 5 of Regulation (EC) No 2135/95.

⁽²⁾ Applicable only to products referred to in Article 6 of Regulation (EC) No 2135/95.

⁽³⁾ The basic amount is not applicable to syrups which are less than 85 % pure (Regulation (EC) No 2135/95). Sucrose content is determined in accordance with Article 3 of Regulation (EC) No 2135/95.

⁽⁴⁾ The basic amount is not applicable to the product defined under point 2 of the Annex to Commission Regulation (EEC) No 3513/92 (OJ L 355, 5.12.1992, p. 12).

COMMISSION REGULATION (EC) No 112/2004
of 22 January 2004
on the issue of import licences for olive oil under the Tunisian tariff quota

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 2000/822/EC of 22 December 2000 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Republic of Tunisia concerning reciprocal liberalisation measures and amendment of the Agricultural Protocols to the EC/Tunisia Association Agreement ⁽¹⁾,

Having regard to Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats ⁽²⁾,

Having regard to Commission Regulation (EC) No 312/2001 of 15 February 2001 laying down detailed rules of application for the importation of olive oil originating in Tunisia and derogating from certain provisions of Regulations (EC) No 1476/95 and (EC) No 1291/2000 ⁽³⁾, and in particular Article 2(3) and (4) thereof,

Whereas:

- (1) Article 3(1) and (2) of Protocol No 1 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Tunisia, of the other part ⁽⁴⁾ opens a tariff quota, at a zero rate of duty, for imports of untreated olive oil falling within CN codes

1509 10 10 and 1509 10 90 wholly obtained in Tunisia and transported directly from Tunisia to the Community, up to the limit laid down for each year.

- (2) Article 1(2) of Regulation (EC) No 312/2001 also lays down the maximum monthly quantities covered by the licences to be issued.
- (3) Applications were submitted to the competent authorities in accordance with Article 2(2) of Regulation (EC) No 312/2001 for import licences covering a total quantity exceeding the limit of 1 000 tonnes laid down for January.
- (4) Under these circumstances, the Commission must set a reduction coefficient to allow the issue of licences in proportion to the quantity available,

HAS ADOPTED THIS REGULATION:

Article 1

Applications for import licences submitted on 19 and 20 January 2004 under Article 2(2) of Regulation (EC) No 312/2001 shall be accepted for 91,49 % of the quantity applied for.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 336, 30.12.2000, p. 92.

⁽²⁾ OJ L 172, 30.9.1966, p. 3025/66. Regulation as last amended by Regulation (EC) No 1513/2001 (OJ L 201, 26.7.2001, p. 4).

⁽³⁾ OJ L 46, 16.2.2001, p. 3.

⁽⁴⁾ OJ L 97, 30.3.1998, p. 1.

COMMISSION REGULATION (EC) No 113/2004
of 22 January 2004
concerning tenders notified in response to the invitation to tender for the export of oats issued in
Regulation (EC) No 1814/2003

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 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, as last amended by Regulation (EC) No 1431/2003 ⁽⁴⁾, and in particular Article 4 thereof,

Having regard to Commission Regulation (EC) No 1814/2003 of 15 October 2003 on a special intervention measure for cereals in Finland and Sweden for the marketing year 2003/04 ⁽⁵⁾, and in particular Article 9 thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland and Sweden to all third countries, with the exception of Bulgaria, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Czech Republic, Romania, Slovakia and Slovenia was opened pursuant to Regulation (EC) No 1814/2003.

- (2) According to Article 9 of Regulation (EC) No 1814/2003 the Commission may, on the basis of the tenders notified, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92, decide to make no award.
- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95, a maximum refund should not be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 16 to 22 January 2004 in response to the invitation to tender for the refund for the export of oats issued in Regulation (EC) No 1814/2003.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 158, 27.6.2003, p. 1.

⁽³⁾ OJ L 147, 30.6.1995, p. 7.

⁽⁴⁾ OJ L 203, 12.8.2003, p. 16.

⁽⁵⁾ OJ L 265, 16.10.2003, p. 25.

COMMISSION REGULATION (EC) No 114/2004
of 22 January 2004
concerning tenders notified in response to the invitation to tender for the import of maize issued
in Regulation (EC) No 2315/2003

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 1666/2000 ⁽²⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) An invitation to tender for the maximum reduction in the duty on maize imported into Portugal from third countries was opened pursuant to Commission Regulation (EC) No 2315/2003 ⁽³⁾.
- (2) Article 5 of Commission Regulation (EC) No 1839/95 ⁽⁴⁾, as last amended by Regulation (EC) No 2235/2000 ⁽⁵⁾, allows the Commission to decide, in accordance with the procedure laid down in Article 23 of Regulation (EEC) No 1766/92 and on the basis of the tenders notified, to make no award.

(3) On the basis of the criteria laid down in Articles 6 and 7 of Regulation (EC) No 1839/95 a maximum reduction in the duty should not be fixed.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 16 to 22 January 2004 in response to the invitation to tender for the reduction in the duty on imported maize issued in Regulation (EC) No 2315/2003.

Article 2

This Regulation shall enter into force on 23 January 2004.

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

Done at Brussels, 22 January 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 181, 1.7.1992, p. 21.

⁽²⁾ OJ L 193, 29.7.2000, p. 1.

⁽³⁾ OJ L 342, 30.12.2003, p. 34.

⁽⁴⁾ OJ L 177, 28.7.1995, p. 4.

⁽⁵⁾ OJ L 256, 10.10.2000, p. 13.

COUNCIL DIRECTIVE 2003/109/EC**of 25 November 2003****concerning the status of third-country nationals who are long-term residents**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 63(3) and (4) thereof,

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

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Having regard to the opinion of the Committee of the Regions ⁽⁴⁾,

Whereas:

- (1) With a view to the progressive establishment of an area of freedom, security and justice, the Treaty establishing the European Community provides both for the adoption of measures aimed at ensuring the free movement of persons, in conjunction with flanking measures relating to external border controls, asylum and immigration, and for the adoption of measures relating to asylum, immigration and safeguarding the rights of third-country nationals.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, stated that the legal status of third-country nationals should be approximated to that of Member States' nationals and that a person who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by citizens of the European Union.
- (3) This Directive respects the fundamental rights and observes the principles recognised in particular by the European Convention for the Protection of Human Rights and Fundamental Freedoms and by the Charter of Fundamental Rights of the European Union.
- (4) The integration of third-country nationals who are long-term residents in the Member States is a key element in promoting economic and social cohesion, a fundamental objective of the Community stated in the Treaty.
- (5) Member States should give effect to the provisions of this Directive without discrimination on the basis of sex, race, colour, ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, fortune, birth, disabilities, age or sexual orientation.
- (6) The main criterion for acquiring the status of long-term resident should be the duration of residence in the territory of a Member State. Residence should be both legal and continuous in order to show that the person has put down roots in the country. Provision should be made for a degree of flexibility so that account can be taken of circumstances in which a person might have to leave the territory on a temporary basis.
- (7) To acquire long-term resident status, third-country nationals should prove that they have adequate resources and sickness insurance, to avoid becoming a burden for the Member State. Member States, when making an assessment of the possession of stable and regular resources may take into account factors such as contributions to the pension system and fulfilment of tax obligations.
- (8) Moreover, third-country nationals who wish to acquire and maintain long-term resident status should not constitute a threat to public policy or public security. The notion of public policy may cover a conviction for committing a serious crime.
- (9) Economic considerations should not be a ground for refusing to grant long-term resident status and shall not be considered as interfering with the relevant conditions.
- (10) A set of rules governing the procedures for the examination of application for long-term resident status should be laid down. Those procedures should be effective and manageable, taking account of the normal workload of the Member States' administrations, as well as being transparent and fair, in order to offer appropriate legal certainty to those concerned. They should not constitute a means of hindering the exercise of the right of residence.

⁽¹⁾ OJ C 240 E, 28.8.2001, p. 79.

⁽²⁾ OJ C 284 E, 21.11.2002, p. 102.

⁽³⁾ OJ C 36, 8.2.2002, p. 59.

⁽⁴⁾ OJ C 19, 22.1.2002, p. 18.

- (11) The acquisition of long-term resident status should be certified by residence permits enabling those concerned to prove their legal status easily and immediately. Such residence permits should also satisfy high-level technical standards, notably as regards protection against falsification and counterfeiting, in order to avoid abuses in the Member State in which the status is acquired and in Member States in which the right of residence is exercised.
- (12) In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.
- (13) With regard to social assistance, the possibility of limiting the benefits for long-term residents to core benefits is to be understood in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy, parental assistance and long-term care. The modalities for granting such benefits should be determined by national law.
- (14) The Member States should remain subject to the obligation to afford access for minors to the educational system under conditions similar to those laid down for their nationals.
- (15) The notion of study grants in the field of vocational training does not cover measures which are financed under social assistance schemes. Moreover, access to study grants may be dependent on the fact that the person who applies for such grants fulfils on his/her own the conditions for acquiring long-term resident status. As regards the issuing of study grants, Member States may take into account the fact that Union citizens may benefit from this same advantage in the country of origin.
- (16) Long-term residents should enjoy reinforced protection against expulsion. This protection is based on the criteria determined by the decisions of the European Court of Human Rights. In order to ensure protection against expulsion Member States should provide for effective legal redress.
- (17) Harmonisation of the terms for acquisition of long-term resident status promotes mutual confidence between Member States. Certain Member States issue permits with a permanent or unlimited validity on conditions that are more favourable than those provided for by this Directive. The possibility of applying more favourable national provisions is not excluded by the Treaty. However, for the purposes of this Directive, it should be provided that permits issued on more favourable terms do not confer the right to reside in other Member States.
- (18) Establishing the conditions subject to which the right to reside in another Member State may be acquired by third-country nationals who are long-term residents should contribute to the effective attainment of an internal market as an area in which the free movement of persons is ensured. It could also constitute a major factor of mobility, notably on the Union's employment market.
- (19) Provision should be made that the right of residence in another Member State may be exercised in order to work in an employed or self-employed capacity, to study or even to settle without exercising any form of economic activity.
- (20) Family members should also be able to settle in another Member State with a long-term resident in order to preserve family unity and to avoid hindering the exercise of the long-term resident's right of residence. With regard to the family members who may be authorised to accompany or to join the long-term residents, Member States should pay special attention to the situation of disabled adult children and of first-degree relatives in the direct ascending line who are dependent on them.
- (21) The Member State in which a long-term resident intends to exercise his/her right of residence should be able to check that the person concerned meets the conditions for residing in its territory. It should also be able to check that the person concerned does not constitute a threat to public policy, public security or public health.
- (22) To avoid rendering the right of residence nugatory, long-term residents should enjoy in the second Member State the same treatment, under the conditions defined by this Directive, they enjoy in the Member State in which they acquired the status. The granting of benefits under social assistance is without prejudice to the possibility for the Member States to withdraw the residence permit if the person concerned no longer fulfils the requirements set by this Directive.
- (23) Third-country nationals should be granted the possibility of acquiring long-term resident status in the Member State where they have moved and have decided to settle under comparable conditions to those required for its acquisition in the first Member State.

(24) Since the objectives of the proposed action, namely the determination of terms for granting and withdrawing long-term resident status and the rights pertaining thereto and terms for the exercise of rights of residence by long-term residents in other Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved by the Community, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(25) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, and without prejudice to Article 4 of the said Protocol, these Member States are not participating in the adoption of this Directive and are not bound by or subject to its application.

(26) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not take part in the adoption of this Directive, and is not bound by it or subject to its application,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Directive determines:

- (a) the terms for conferring and withdrawing long-term resident status granted by a Member State in relation to third-country nationals legally residing in its territory, and the rights pertaining thereto; and
- (b) the terms of residence in Member States other than the one which conferred long-term status on them for third-country nationals enjoying that status.

Article 2

Definitions

For the purposes of this Directive:

- (a) 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty;
- (b) 'long-term resident' means any third-country national who has long-term resident status as provided for under Articles 4 to 7;
- (c) 'first Member State' means the Member State which for the first time granted long-term resident status to a third-country national;
- (d) 'second Member State' means any Member State other than the one which for the first time granted long-term resident status to a third-country national and in which that long-term resident exercises the right of residence;
- (e) 'family members' means the third-country nationals who reside in the Member State concerned in accordance with Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ⁽¹⁾;
- (f) 'refugee' means any third-country national enjoying refugee status within the meaning of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as amended by the Protocol signed in New York on 31 January 1967;
- (g) 'long-term resident's EC residence permit' means a residence permit issued by the Member State concerned upon the acquisition of long-term resident status.

Article 3

Scope

1. This Directive applies to third-country nationals residing legally in the territory of a Member State.
2. This Directive does not apply to third-country nationals who:
 - (a) reside in order to pursue studies or vocational training;
 - (b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
 - (c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

⁽¹⁾ OJ L 251, 3.10.2003, p. 12.

- (d) are refugees or have applied for recognition as refugees and whose application has not yet given rise to a final decision;
- (e) reside solely on temporary grounds such as au pair or seasonal worker, or as workers posted by a service provider for the purposes of cross-border provision of services, or as cross-border providers of services or in cases where their residence permit has been formally limited;
- (f) enjoy a legal status governed by the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963, the Convention of 1969 on Special Missions or the Vienna Convention on the Representation of States in their Relations with International Organisations of a Universal Character of 1975.

3. This Directive shall apply without prejudice to more favourable provisions of:

- (a) bilateral and multilateral agreements between the Community or the Community and its Member States, on the one hand, and third countries, on the other;
- (b) bilateral agreements already concluded between a Member State and a third country before the date of entry into force of this Directive;
- (c) the European Convention on Establishment of 13 December 1955, the European Social Charter of 18 October 1961, the amended European Social Charter of 3 May 1987 and the European Convention on the Legal Status of Migrant Workers of 24 November 1977.

CHAPTER II

LONG-TERM RESIDENT STATUS IN A MEMBER STATE

Article 4

Duration of residence

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

2. Periods of residence for the reasons referred to in Article 3(2)(e) and (f) shall not be taken into account for the purposes of calculating the period referred to in paragraph 1.

Regarding the cases covered in Article 3(2)(a), where the third-country national concerned has acquired a title of residence which will enable him/her to be granted long-term resident status, only half of the periods of residence for study purposes or vocational training may be taken into account in the calculation of the period referred to in paragraph 1.

3. Periods of absence from the territory of the Member State concerned shall not interrupt the period referred to in paragraph 1 and shall be taken into account for its calculation where they are shorter than six consecutive months and do not exceed in total 10 months within the period referred to in paragraph 1.

In cases of specific or exceptional reasons of a temporary nature and in accordance with their national law, Member States may accept that a longer period of absence than that which is referred to in the first subparagraph shall not interrupt the period referred to in paragraph 1. In such cases Member States shall not take into account the relevant period of absence in the calculation of the period referred to in paragraph 1.

By way of derogation from the second subparagraph, Member States may take into account in the calculation of the total period referred to in paragraph 1 periods of absence relating to secondment for employment purposes, including the provision of cross-border services.

Article 5

Conditions for acquiring long-term resident status

1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

- (a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;
- (b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

2. Member States may require third-country nationals to comply with integration conditions, in accordance with national law.

Article 6

Public policy and public security

1. Member States may refuse to grant long-term resident status on grounds of public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security, or the danger that emanates from the person concerned, while also having proper regard to the duration of residence and to the existence of links with the country of residence.

2. The refusal referred to in paragraph 1 shall not be founded on economic considerations.

Article 7

Acquisition of long-term resident status

1. To acquire long-term resident status, the third-country national concerned shall lodge an application with the competent authorities of the Member State in which he/she resides. The application shall be accompanied by documentary evidence to be determined by national law that he/she meets the conditions set out in Articles 4 and 5 as well as, if required, by a valid travel document or its certified copy.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

2. The competent national authorities shall give the applicant written notification of the decision as soon as possible and in any event no later than six months from the date on which the application was lodged. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation.

In exceptional circumstances linked to the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended.

In addition, the person concerned shall be informed about his/her rights and obligations under this Directive.

Any consequences of no decision being taken by the end of the period provided for in this provision shall be determined by national legislation of the relevant Member State.

3. If the conditions provided for by Articles 4 and 5 are met, and the person does not represent a threat within the meaning of Article 6, the Member State concerned shall grant the third-country national concerned long-term resident status.

Article 8

Long-term resident's EC residence permit

1. The status as long-term resident shall be permanent, subject to Article 9.

2. Member States shall issue a long-term resident's EC residence permit to long-term residents. The permit shall be valid at least for five years; it shall, upon application if required, be automatically renewable on expiry.

3. A long-term resident's EC residence permit may be issued in the form of a sticker or of a separate document. It shall be issued in accordance with the rules and standard model as set out in Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals⁽¹⁾. Under the heading 'type of permit', the Member States shall enter 'long-term resident — EC'.

Article 9

Withdrawal or loss of status

1. Long-term residents shall no longer be entitled to maintain long-term resident status in the following cases:

- (a) detection of fraudulent acquisition of long-term resident status;
- (b) adoption of an expulsion measure under the conditions provided for in Article 12;
- (c) in the event of absence from the territory of the Community for a period of 12 consecutive months.

2. By way of derogation from paragraph 1(c), Member States may provide that absences exceeding 12 consecutive months or for specific or exceptional reasons shall not entail withdrawal or loss of status.

3. Member States may provide that the long-term resident shall no longer be entitled to maintain his/her long-term resident status in cases where he/she constitutes a threat to public policy, in consideration of the seriousness of the offences he/she committed, but such threat is not a reason for expulsion within the meaning of Article 12.

4. The long-term resident who has resided in another Member State in accordance with Chapter III shall no longer be entitled to maintain his/her long-term resident status acquired in the first Member State when such a status is granted in another Member State pursuant to Article 23.

In any case after six years of absence from the territory of the Member State that granted long-term resident status the person concerned shall no longer be entitled to maintain his/her long-term resident status in the said Member State.

By way of derogation from the second subparagraph the Member State concerned may provide that for specific reasons the long-term resident shall maintain his/her status in the said Member State in case of absences for a period exceeding six years.

5. With regard to the cases referred to in paragraph 1(c) and in paragraph 4, Member States who have granted the status shall provide for a facilitated procedure for the re-acquisition of long-term resident status.

⁽¹⁾ OJ L 157, 15.6.2002, p. 1.

The said procedure shall apply in particular to the cases of persons that have resided in a second Member State on grounds of pursuit of studies.

The conditions and the procedure for the re-acquisition of long-term resident status shall be determined by national law.

6. The expiry of a long-term resident's EC residence permit shall in no case entail withdrawal or loss of long-term resident status.

7. Where the withdrawal or loss of long-term resident status does not lead to removal, the Member State shall authorise the person concerned to remain in its territory if he/she fulfils the conditions provided for in its national legislation and/or if he/she does not constitute a threat to public policy or public security.

Article 10

Procedural guarantees

1. Reasons shall be given for any decision rejecting an application for long-term resident status or withdrawing that status. Any such decision shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the redress procedures available and the time within which he/she may act.

2. Where an application for long-term resident status is rejected or that status is withdrawn or lost or the residence permit is not renewed, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

Article 11

Equal treatment

1. Long-term residents shall enjoy equal treatment with nationals as regards:

- (a) access to employment and self-employed activity, provided such activities do not entail even occasional involvement in the exercise of public authority, and conditions of employment and working conditions, including conditions regarding dismissal and remuneration;
- (b) education and vocational training, including study grants in accordance with national law;
- (c) recognition of professional diplomas, certificates and other qualifications, in accordance with the relevant national procedures;
- (d) social security, social assistance and social protection as defined by national law;
- (e) tax benefits;

(f) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;

(g) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;

(h) free access to the entire territory of the Member State concerned, within the limits provided for by the national legislation for reasons of security.

2. With respect to the provisions of paragraph 1, points (b), (d), (e), (f) and (g), the Member State concerned may restrict equal treatment to cases where the registered or usual place of residence of the long-term resident, or that of family members for whom he/she claims benefits, lies within the territory of the Member State concerned.

3. Member States may restrict equal treatment with nationals in the following cases:

- (a) Member States may retain restrictions to access to employment or self-employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens;
- (b) Member States may require proof of appropriate language proficiency for access to education and training. Access to university may be subject to the fulfilment of specific educational prerequisites.

4. Member States may limit equal treatment in respect of social assistance and social protection to core benefits.

5. Member States may decide to grant access to additional benefits in the areas referred to in paragraph 1.

Member States may also decide to grant equal treatment with regard to areas not covered in paragraph 1.

Article 12

Protection against expulsion

1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be founded on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

- (a) the duration of residence in their territory;
- (b) the age of the person concerned;

- (c) the consequences for the person concerned and family members;
- (d) links with the country of residence or the absence of links with the country of origin.

4. Where an expulsion decision has been adopted, a judicial redress procedure shall be available to the long-term resident in the Member State concerned.

5. Legal aid shall be given to long-term residents lacking adequate resources, on the same terms as apply to nationals of the State where they reside.

Article 13

More favourable national provisions

Member States may issue residence permits of permanent or unlimited validity on terms that are more favourable than those laid down by this Directive. Such residence permits shall not confer the right of residence in the other Member States as provided by Chapter III of this Directive.

CHAPTER III

RESIDENCE IN THE OTHER MEMBER STATES

Article 14

Principle

1. A long-term resident shall acquire the right to reside in the territory of Member States other than the one which granted him/her the long-term residence status, for a period exceeding three months, provided that the conditions set out in this chapter are met.

2. A long-term resident may reside in a second Member State on the following grounds:

- (a) exercise of an economic activity in an employed or self-employed capacity;
- (b) pursuit of studies or vocational training;
- (c) other purposes.

3. In cases of an economic activity in an employed or self-employed capacity referred to in paragraph 2(a), Member States may examine the situation of their labour market and apply their national procedures regarding the requirements for, respectively, filling a vacancy, or for exercising such activities.

For reasons of labour market policy, Member States may give preference to Union citizens, to third-country nationals, when provided for by Community legislation, as well as to third-country nationals who reside legally and receive unemployment benefits in the Member State concerned.

4. By way of derogation from the provisions of paragraph 1, Member States may limit the total number of persons entitled to be granted right of residence, provided that such limitations

are already set out for the admission of third-country nationals in the existing legislation at the time of the adoption of this Directive.

5. This chapter does not concern the residence of long-term residents in the territory of the Member States:

- (a) as employed workers posted by a service provider for the purposes of cross-border provision of services;
- (b) as providers of cross-border services.

Member States may decide, in accordance with national law, the conditions under which long-term residents who wish to move to a second Member State with a view to exercising an economic activity as seasonal workers may reside in that Member State. Cross-border workers may also be subject to specific provisions of national law.

6. This Chapter is without prejudice to the relevant Community legislation on social security with regard to third-country nationals.

Article 15

Conditions for residence in a second Member State

1. As soon as possible and no later than three months after entering the territory of the second Member State, the long-term resident shall apply to the competent authorities of that Member State for a residence permit.

Member States may accept that the long-term resident submits the application for a residence permit to the competent authorities of the second Member State while still residing in the territory of the first Member State.

2. Member States may require the persons concerned to provide evidence that they have:

- (a) stable and regular resources which are sufficient to maintain themselves and the members of their families, without recourse to the social assistance of the Member State concerned. For each of the categories referred to in Article 14(2), Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions;
- (b) sickness insurance covering all risks in the second Member State normally covered for its own nationals in the Member State concerned.

3. Member States may require third-country nationals to comply with integration measures, in accordance with national law.

This condition shall not apply where the third-country nationals concerned have been required to comply with integration conditions in order to be granted long-term resident status, in accordance with the provisions of Article 5(2).

Without prejudice to the second subparagraph, the persons concerned may be required to attend language courses.

4. The application shall be accompanied by documentary evidence, to be determined by national law, that the persons concerned meets the relevant conditions, as well as by their long-term resident permit and a valid travel document or their certified copies.

The evidence referred to in the first subparagraph may also include documentation with regard to appropriate accommodation.

In particular:

- (a) in case of exercise of an economic activity the second Member State may require the persons concerned to provide evidence:
 - (i) if they are in an employed capacity, that they have an employment contract, a statement by the employer that they are hired or a proposal for an employment contract, under the conditions provided for by national legislation. Member States shall determine which of the said forms of evidence is required;
 - (ii) if they are in a self-employed capacity, that they have the appropriate funds which are needed, in accordance with national law, to exercise an economic activity in such capacity, presenting the necessary documents and permits;
- (b) in case of study or vocational training the second Member State may require the persons concerned to provide evidence of enrolment in an accredited establishment in order to pursue studies or vocational training.

Article 16

Family members

1. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, who fulfil the conditions referred to in Article 4(1) of Directive 2003/86/EC shall be authorised to accompany or to join the long-term resident.

2. When the long-term resident exercises his/her right of residence in a second Member State and when the family was already constituted in the first Member State, the members of his/her family, other than those referred to in Article 4(1) of Directive 2003/86/EC may be authorised to accompany or to join the long-term resident.

3. With respect to the submission of the application for a residence permit, the provisions of Article 15(1) apply.

4. The second Member State may require the family members concerned to present with their application for a residence permit:

- (a) their long-term resident's EC residence permit or residence permit and a valid travel document or their certified copies;

- (b) evidence that they have resided as members of the family of the long-term resident in the first Member State;

- (c) evidence that they have stable and regular resources which are sufficient to maintain themselves without recourse to the social assistance of the Member State concerned or that the long-term resident has such resources and insurance for them, as well as sickness insurance covering all risks in the second Member State. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions.

5. Where the family was not already constituted in the first Member State, Directive 2003/86/EC shall apply.

Article 17

Public policy and public security

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public policy or public security.

When taking the relevant decision, the Member State shall consider the severity or type of offence against public policy or public security committed by the long-term resident or his/her family member(s), or the danger that emanates from the person concerned.

2. The decision referred to in paragraph 1 shall not be based on economic considerations.

Article 18

Public health

1. Member States may refuse applications for residence from long-term residents or their family members where the person concerned constitutes a threat to public health.

2. The only diseases that may justify a refusal to allow entry or the right of residence in the territory of the second Member State shall be the diseases as defined by the relevant applicable instruments of the World Health Organisation's and such other infectious or contagious parasite-based diseases as are the subject of protective provisions in relation to nationals in the host country. Member States shall not introduce new more restrictive provisions or practices.

3. Diseases contracted after the first residence permit was issued in the second Member State shall not justify a refusal to renew the permit or expulsion from the territory.

4. A Member State may require a medical examination, for persons to whom this Directive applies, in order to certify that they do not suffer from any of the diseases referred to in paragraph 2. Such medical examinations, which may be free of charge, shall not be performed on a systematic basis.

*Article 19***Examination of applications and issue of a residence permit**

1. The competent national authorities shall process applications within four months from the date that these have been lodged.

If an application is not accompanied by the documentary evidence listed in Articles 15 and 16, or in exceptional circumstances linked with the complexity of the examination of the application, the time limit referred to in the first subparagraph may be extended for a period not exceeding three months. In such cases the competent national authorities shall inform the applicant thereof.

2. If the conditions provided for in Articles 14, 15 and 16 are met, then, subject to the provisions relating to public policy, public security and public health in Articles 17 and 18, the second Member State shall issue the long-term resident with a renewable residence permit. This residence permit shall, upon application, if required, be renewable on expiry. The second Member State shall inform the first Member State of its decision.

3. The second Member State shall issue members of the long-term resident's family with renewable residence permits valid for the same period as the permit issued to the long-term resident.

*Article 20***Procedural guarantees**

1. Reasons shall be given for any decision rejecting an application for a residence permit. It shall be notified to the third-country national concerned in accordance with the notification procedures under the relevant national legislation. The notification shall specify the possible redress procedures available and the time limit for taking action.

Any consequences of no decision being taken by the end of the period referred to in Article 19(1) shall be determined by the national legislation of the relevant Member State.

2. Where an application for a residence permit is rejected, or the permit is not renewed or is withdrawn, the person concerned shall have the right to mount a legal challenge in the Member State concerned.

*Article 21***Treatment granted in the second Member State**

1. As soon as they have received the residence permit provided for by Article 19 in the second Member State, long-term residents shall in that Member State enjoy equal treatment in the areas and under the conditions referred to in Article 11.

2. Long-term residents shall have access to the labour market in accordance with the provisions of paragraph 1.

Member States may provide that the persons referred to in Article 14(2)(a) shall have restricted access to employed activities different than those for which they have been granted their residence permit under the conditions set by national legislation for a period not exceeding 12 months.

Member States may decide in accordance with national law the conditions under which the persons referred to in Article 14(2)(b) or (c) may have access to an employed or self-employed activity.

3. As soon as they have received the residence permit provided for by Article 19 in the second Member State, members of the family of the long-term resident shall in that Member State enjoy the rights listed in Article 14 of Directive 2003/86/EC.

*Article 22***Withdrawal of residence permit and obligation to readmit**

1. Until the third-country national has obtained long-term resident status, the second Member State may decide to refuse to renew or to withdraw the resident permit and to oblige the person concerned and his/her family members, in accordance with the procedures provided for by national law, including removal procedures, to leave its territory in the following cases:

- (a) on grounds of public policy or public security as defined in Article 17;
- (b) where the conditions provided for in Articles 14, 15 and 16 are no longer met;
- (c) where the third-country national is not lawfully residing in the Member State concerned.

2. If the second Member State adopts one of the measures referred to in paragraph 1, the first Member State shall immediately readmit without formalities the long-term resident and his/her family members. The second Member State shall notify the first Member State of its decision.

3. Until the third-country national has obtained long-term resident status and without prejudice to the obligation to readmit referred to in paragraph 2, the second Member State may adopt a decision to remove the third-country national from the territory of the Union, in accordance with and under the guarantees of Article 12, on serious grounds of public policy or public security.

In such cases, when adopting the said decision the second Member State shall consult the first Member State.

When the second Member State adopts a decision to remove the third-country national concerned, it shall take all the appropriate measures to effectively implement it. In such cases the second Member State shall provide to the first Member State appropriate information with respect to the implementation of the removal decision.

4. Removal decisions may not be accompanied by a permanent ban on residence in the cases referred to in paragraph 1(b) and (c).

5. The obligation to readmit referred to in paragraph 2 shall be without prejudice to the possibility of the long-term resident and his/her family members moving to a third Member State.

Article 23

Acquisition of long-term resident status in the second Member State

1. Upon application, the second Member State shall grant long-term residents the status provided for by Article 7, subject to the provisions of Articles 3, 4, 5 and 6. The second Member State shall notify its decision to the first Member State.

2. The procedure laid down in Article 7 shall apply to the presentation and examination of applications for long-term resident status in the second Member State. Article 8 shall apply for the issuance of the residence permit. Where the application is rejected, the procedural guarantees provided for by Article 10 shall apply.

CHAPTER IV

FINAL PROVISIONS

Article 24

Report and rendez-vous clause

Periodically, and for the first time no later than 23 January 2011, the Commission shall report to the European Parliament and to the Council on the application of this Directive in the Member States and shall propose such amendments as may be necessary. These proposals for amendments shall be made by way of priority in relation to Articles 4, 5, 9, 11 and to Chapter III.

Article 25

Contact points

Member States shall appoint contact points who will be responsible for receiving and transmitting the information referred to in Article 19(2), Article 22(2) and Article 23(1).

Member States shall provide appropriate cooperation in the exchange of the information and documentation referred to in the first paragraph.

Article 26

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 January 2006 at the latest. They shall forthwith inform the Commission thereof.

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

Article 27

Entry into force

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

Article 28

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 25 November 2003.

For the Council

The President

G. TREMONTI

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 September 2003

on essential requirements relating to marine radio communication equipment which is intended to be used on non-SOLAS vessels and to participate in the Global Maritime Distress and Safety System (GMDSS)

(notified under document number C(2003) 2912)

(Text with EEA relevance)

(2004/71/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity⁽¹⁾, and in particular Article 3(3)(e),

Whereas:

- (1) A number of Member States have implemented or intend to implement common safety principles and rules for radio equipment on non-SOLAS (Safety of Life At Sea) vessels.
- (2) The harmonisation of radio services should contribute to a safer navigation of non-SOLAS vessels, particular in case of distress and bad weather conditions.
- (3) Maritime Safety Committee (MSC) Circular 803 on the participation of non-SOLAS ships in the Global Maritime Distress and Safety System (GMDSS) and Resolution MSC.77(69) of the International Maritime Organisation (IMO) invite Governments to apply the Guidelines for the participation of non-SOLAS ships in the GMDSS and urges Governments to require certain features to be implemented in relation to the GMDSS on radio equipment to be used on all vessels.

- (4) The International Telecommunications Union (ITU) Radio Regulations specify certain frequencies that are designated for use by the GMDSS. All radio equipment operating on those frequencies which is intended for use in times of distress should be compatible with the designated use of those frequencies and it should provide a reasonable guarantee of assurance that it will function correctly in times of distress.

- (5) The scope of Commission Decision 2000/638/EC of 22 September 2000 on the application of Article 3(3)(e) of Directive 1999/5/EC to marine communication equipment intended to be fitted to seagoing non-SOLAS vessels and which is intended to participate in the global maritime distress and safety system (GMDSS) and not covered by Council Directive 96/98/EC on marine equipment⁽²⁾ is limited to equipment which is intended to be fitted to sea-going vessels. The scope of that Decision should be broadened to cover GMDSS equipment for use on all non-SOLAS vessels. It is considered that the high level of safety given by this Decision is relevant for all vessels and therefore the scope of the Decision should be amended so that the same requirements apply to cover the use of GMDSS equipment on vessels outside the scope of SOLAS and the Marine equipment Directive whether or not they are seagoing. Decision 2000/638/EC should therefore be replaced.

- (6) The measures set out in this Decision are in accordance with the opinion of the Telecommunications Conformity Assessment and Market Surveillance Committee,

⁽¹⁾ OJ L 91, 7.4.1999, p. 10.

⁽²⁾ OJ L 269, 21.10.2000, p. 52.

HAS ADOPTED THIS DECISION:

Article 3

Decision 2000/638/EC is repealed.

Article 1

This Decision shall apply to radio equipment intended for use on non-SOLAS vessels and intended to participate in the Global Maritime Distress and Safety System (GMDSS) as laid down in Chapter IV of the SOLAS Convention operating in

Article 4

This Decision shall apply as from 4 September 2004.

- (a) the maritime mobile service as defined in Article 1.28 of the ITU Radio Regulations, or
- (b) the maritime mobile satellite service as defined in Article 1.29 of the ITU Radio Regulations.

Article 5

This Decision is addressed to the Member States.

Article 2

Radio equipment falling within the scope of this Decision as specified in Article 1, shall be designed so as to ensure correct functioning under exposure to a marine environment, meet all the operational requirements of the GMDSS under distress conditions and provide clear and robust communications with a high degree of fidelity of the analogue or digital communications link.

Done at Brussels, 4 September 2003.

For the Commission

Erkki LIIKANEN

Member of the Commission

COMMISSION DECISION
of 5 December 2003
concerning the financial contribution by the Community towards the OIE Global Conference on
animal welfare in 2004

(2004/72/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field ⁽¹⁾, as last amended by Regulation (EC) No 806/2003 ⁽²⁾, and in particular Article 20 thereof,

Whereas:

- (1) Pursuant to Decision 90/424/EEC the Community is to undertake or assist the Member States in undertaking the technical and scientific measures necessary for the development of Community veterinary legislation and for the development of veterinary education or training.
- (2) The International Committee of the International Office of Epizootic Diseases (OIE) adopted Resolution No XIV on 29 May 2002, including animal welfare in its work-plan for the next five years.
- (3) The International Committee of the OIE adopted Resolution No XXVI on 20 May 2003, recommending that a global conference on animal welfare (the OIE Global Conference) be organised in 2004 and that OIE Member States support the organisation of that conference.
- (4) The Communication from the Commission to the Council and the European Parliament on animal welfare legislation on farmed animals in third countries and the implications for the EU ⁽³⁾ (the Communication from the Commission) suggested that the Commission with all Member States should continue fully to support and follow up on the OIE initiative.
- (5) The Council (Agriculture) in December 2002 adopted specific conclusions on animal welfare concerning mutual assistance in connection with control and international aspects ⁽⁴⁾. In those conclusions the Council welcomed the Communication from the Commission. It also recognised that the OIE is the relevant body for

developing international standards and guidelines on animal welfare and that the Community wishes actively to promote the development of global animal welfare standards and guidelines.

- (6) The elaboration and dissemination by the Community of technical and scientific material related to the OIE Global Conference is to form part of the further development of Community veterinary legislation and veterinary education or training.
- (7) The financial resources necessary for the Community contribution to the OIE Global Conference in 2004 should therefore be engaged.
- (8) This financial contribution from the Community should be granted subject to the conference planned having been efficiently carried out.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS DECIDED AS FOLLOWS:

Sole Article

The action to publish and disseminate the technical and scientific materials related to the OIE Conference on animal welfare in 2004, to be financed from budget line B 1 — 3 3 1 of the budget of the European Union for 2003 to a maximum amount of EUR 40 000 is hereby approved.

Done at Brussels, 5 December 2003.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 224, 18.8.1990, p. 19.

⁽²⁾ OJ L 122, 16.5.2003, p. 1.

⁽³⁾ COM(2002) 626 final.

⁽⁴⁾ Council of the European Union. Document 15419/02.

COMMISSION DECISION

of 15 January 2004

on a request from Germany to apply the special procedure laid down in Article 3 of Directive 93/38/EEC

(notified under document number C(2003) 5351)

(Only the German text is authentic)

(Text with EEA relevance)

(2004/73/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 93/38/EEC of 14 June 1993 coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors ⁽¹⁾, as last amended by Commission Directive 2001/78/EC ⁽²⁾, and in particular Article 3(4) thereof,

Having regard to Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons ⁽³⁾, and in particular Article 12 thereof,

Following Germany's new application of 12 November 2002 ⁽⁴⁾,

Having consulted the Advisory Committee on Public Procurement,

Whereas:

- (1) Pursuant to Article 3 of Directive 93/38/EEC, a Member State may request the Commission to provide that exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels shall not be considered to be an activity defined in Article 2(2)(b)(i) and that entities shall not be considered as operating under special or exclusive rights within the meaning of Article 2(3)(b) by virtue of carrying on one or more of these activities, provided that certain conditions are satisfied with respect to the relevant national provisions concerning such activities, that the requesting Member State guarantees that the principles of non-discrimination and competitive procurement are observed in respect of the award of contracts, and that the Commission is informed of the award of these contracts.

⁽¹⁾ OJ L 199, 9.8.1993, p. 84.

⁽²⁾ OJ L 285, 29.10.2001, p. 1.

⁽³⁾ OJ L 164, 30.6.1994, p. 3.

⁽⁴⁾ On 15 November 1991, Germany had initially made an application under Article 3 of Directive 90/531/EEC that the Commission had to reject because it was incomplete. The rule on legal protection set out in Section 57a of the Budgetary Principles Act (*Haushaltsgrundsatzgesetz*) was not deemed adequate for granting effective legal protection. This provision was not amended until 1998, with the adoption of part 4 of the Restriction of Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen*).

- (2) Member States that have fulfilled their obligations under Directive 94/22/EC are deemed to have met the requirements set out in Article 3(1) of Directive 93/38/EEC with respect to oil and gas.

- (3) In its letter of 12 November 2002, Germany asked the Commission to adopt a Decision under Article 3 of Directive 93/38/EEC on the exploitation of geographical areas for the purpose of exploring for or extracting oil, gas, coal or other solid fuels.

In this communication, Germany referred to a letter dated 15 November 1991 in which it had originally made an application under Article 3 of Directive 90/531/EEC ⁽⁵⁾, which was in force at the time. Article 3 of Directive 90/531/EEC and Article 3 of Directive 93/38/EEC, which is currently in force, are entirely equivalent, except for the reference to Directive 94/22/EC and the legal assumption it implies. This application resulted in correspondence between the Commission and the Federal Republic of Germany.

The Commission informed Germany of its initial findings in its letters of 9 July 1992 and 30 November 1992, asking for replies to a number of outstanding questions by a given date. In its letter of July 1992, the Commission pointed out that the Federal Mining Act (*Bundesberggesetz*) did not in itself satisfy all of the cumulative criteria laid down in Article 3(1). According to the wording of Article 3(1), the conditions should be set out and described in detail in national provisions having legal force. The Council and the Commission had, however, stipulated in the Council Protocol to Directive 90/531/EEC that the conditions and requirements could also be contained in laws or other general implementing instruments. A case-by-case examination of the conditions for authorisation referred to in Article 3(2) is not sufficient. Those conditions must also be laid down in laws or general implementing instruments. In its letter of November 1992, the Commission asked the German authorities to confirm that regulations adopted

⁽⁵⁾ OJ L 297, 29.10.1990, p. 1.

by the *Länder* by way of supplement to the Federal Mining Act would not only be published, but that compliance with them would be peremptory and that beneficiaries would be able to cite them as a basis for asserting their rights. In response to the draft Regulation which was presented to the Commission by way of implementation of Article 3(2), the Commission stated that the draft was in need of revision, both in substantive terms and with regard to its legal basis. Indeed, as the German authorities themselves had stated, the purpose of the Regulation is not to facilitate rules which create rights which a potential contractor can successfully cite in court in a dispute with an awarding authority which has failed in its obligation to ensure a competitive procurement procedure.

At the Commission's request, and in order to demonstrate that Article 3(1) had been transposed, the German authorities, in their letters of 14 September 1992, 25 February 1993 and 28 September 1993, submitted draft implementing provisions for the issuing of permits and authorisations under the Federal Mining Act, together with evidence of their definitive publication in the appropriate journals. These provisions are still in force, unchanged, today. The Commission's questions were also answered.

In a letter dated 28 September 1993, the German authorities informed the Commission that Directive 90/531/EEC would be implemented by means of an amendment to the second Budgetary Principles Act (*Haushaltsgrundsätzegesetz*) which came into force on 1 November 1993, and that they therefore considered the conditions laid down in Article 3(2) to have been fulfilled.

- (4) In the meantime, on 14 June 1993, Directive 93/38/EEC had been adopted, replacing Directive 90/531/EEC. Member States had to apply this Directive as from 1 July 1994 at the latest. Directive 93/38/EEC was transposed into German law at Federal level with the 'Law amending the legal provisions governing the award of Public Contracts' (*Gesetz zur Änderung der Rechtsgrundlagen für die Vergabe öffentlicher Aufträge — Vergaberechtsänderungsgesetz*) of 26 August 1998 ⁽¹⁾.

The legal-protection provision in Section 57a of the Budgetary Principles Act that the Commission had complained about in its letter of 30 November 1992 was also replaced by part 4 of the Restriction of Competition Act (*Gesetz gegen Wettbewerbsbeschränkungen*).

Section 11 of the Regulation on the Award of Public Contracts (*Vergabeverordnung*) of 9 January 2001, which is based on the Restriction of Competition Act, reproduces the provision set out in Article 3(2) of Directive 93/38/EEC and guarantees observance of the principles of non-discrimination and competitive award of contracts by contracting authorities that have obtained authorisation under the Federal Mining Act to explore for or extract oil, gas, coal or other solid fuels, particularly with respect to the information made available to

the contractors regarding their intention to award a contract and the obligation to provide the Commission with information on the award of the contracts. Since the Regulation on the Award of Public Contracts is based on Section 97(6) and Section 127 of the amended Restriction of Competition Act, the Commission's reservations set out in its letter of 30 November 1992 are no longer relevant.

- (5) With the Federal Mining Act of 13 August 1980 ⁽²⁾ and the implementing provisions for the award of permits and authorisations under the Federal Mining Act of 1993, Germany has complied with its obligations under Directive 94/22/EC.

These provisions apply not only to hydrocarbons, but also to coal and other solid fuels.

- (6) With reference to Article 3(3) of Directive 94/22/EC, Germany, on 22 October 1994 had a timely announcement ⁽³⁾ published in the *Official Journal of the European Communities* to the effect that the entire territory of Germany is, under the terms of that Article, permanently available for prospecting and exploring for and extraction of hydrocarbons provided no individual authorisations exist.
- (7) With reference to Article 5(1)(5), second sentence, of Directive 94/22/EC, Germany, on 18 March 1995 had an announcement ⁽⁴⁾ published in the *Official Journal of the European Communities*, drawing attention to the publication of the criteria in accordance with Article 5(1) in the Federal Official Journal and the Official Journals of the 16 *Länder*.
- (8) In accordance with Article 9 of Directive 94/22/EC, the Federal Government publishes an annual report entitled 'Der Bergbau in der Bundesrepublik Deutschland' (Mining in the Federal Republic of Germany), containing a list of mining authorisations. Mining authorisations contain only the information necessary for meeting the legal requirements, particularly with respect to geographical extent and duration. Under the administrative legislation in force in Germany, the granting of authorisations may not be made subject to considerations that are not permitted by law.
- (9) As regards oil and gas, the Commission assumes that Germany meets the requirements set out in Article 3(1) of Directive 93/38/EEC since, with the Federal Mining Act of 13 August 1980 and its implementing provisions, it has transposed all the provisions of Directive 94/22/EC, and hence the assumption embodied in Article 12, to the effect that the conditions set out in Article 3(1) of Directive 93/38/EEC are considered to be satisfied, comes into effect.

Article 3(2) of Directive 93/38/EEC was implemented in German law by means of Section 11 of the Regulation on the Award of Public Contracts.

The Commission has no further information on Article 3(3) of Directive 93/38/EEC.

⁽²⁾ BGBl. I p. 1310.

⁽³⁾ OJ C 294, 22.10.1994, p. 11.

⁽⁴⁾ OJ C 67, 18.3.1995, p. 7.

⁽¹⁾ Federal Official Journal (*Bundesgesetzblatt — BGBl.*) I, p. 2512.

- (10) Directive 94/22/EC regulates the granting and use of authorisations for prospecting and exploring for and extracting hydrocarbons. It does not cover coal or other solid fuels. Directives cannot simply be extended to cover other areas without prior amendment. The legal assumption embodied in Article 12 is not, therefore, applicable to coal or other solid fuels. Member States can, however, decide on their own initiative to extend the scope of Directive 94/22/EC to cover other sectors, such as coal or other solid fuels, and adopt appropriate national provisions. Since coal and other solid fuels are commodities which are comparable to petroleum and gas, and given that authorisations for the prospecting, exploration and extraction of all the said commodities are awarded by means of a similar procedure, the Commission considered it appropriate to compare the provisions of Directive 94/22/EC with those of Directive 93/38/EEC and, insofar as the two Directives were found to be mutually compatible, to determine the precise extent to which the implementation was correct with regard to coal and other solid fuels. Since the matter in hand does not concern an application of the legal assumption embodied in Article 12, the Commission must examine the relevant provisions of Article 3(1) in two stages.

First, it must examine the extent to which the provisions of Directive 93/38/EEC correspond with those of Directive 94/22/EC:

- Articles 2, 3, and 7 of Directive 94/22/EC correspond to Article 3(1)(a) of Directive 93/38/EEC,
- Article 5(1) of Directive 94/22/EC corresponds to Article 3(1)(b) of Directive 93/38/EEC,
- Article 4(a) of Directive 94/22/EC corresponds to Article 3(1)(c) of Directive 93/38/EEC,
- Article 5(2) to (5) of Directive 94/22/EC correspond to Article 3(1)(d) of Directive 93/38/EEC,
- Article 6(4) of Directive 94/22/EC corresponds to Article 3(1)(e) of Directive 93/38/EEC.

Second, it must examine the extent to which, given the correspondence between Directive 93/38/EEC and Directive 94/22/EC, the implementation for coal and other solid fuels is correct. It has already been established that the implementation for coal and other solid fuels was carried out completely and correctly with the Federal Mining Act. Since the provisions of that Act apply not only to oil and gas, but also to coal and other solid fuels,

it is to be assumed that, since the two Directives correspond, Directive 93/38/EEC has also been implemented correctly for coal and other solid fuels.

Article 3(2) of Directive 93/38/EEC was implemented in German law by Section 11 of the Regulation on the Award of Public Contracts.

The Commission has no further information on Article 3(3) of Directive 93/38/EEC,

HAS ADOPTED THIS DECISION:

Article 1

The exploitation of geographical areas in Germany for the purpose of exploring for or extracting oil, gas, coal or other solid fuels shall not, as from 15 January 2004, be considered to be an activity defined in Article 2(2)(b)(i) of Directive 93/38/EEC.

Contracting authorities shall not be considered as operating under special or exclusive rights within the meaning of Article 2(3)(b) of Directive 93/38/EEC by virtue of carrying on such activities.

Article 2

1. This Decision is based on the legal and administrative provisions in force in Germany on 15 January 2004, which implemented Directive 94/22/EC and Article 3 of Directive 93/38/EEC, and of which the Commission has been notified.
2. Germany shall notify the Commission of legal and administrative provisions amending the legal and administrative provisions referred to in paragraph 1 as soon as they have been adopted, so that the Commission will be able to examine whether this Decision should be upheld, amended or withdrawn.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 15 January 2004.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

COMMISSION RECOMMENDATION

of 9 January 2004

concerning a coordinated Community monitoring programme for 2004 to ensure compliance with maximum levels of pesticide residues in and on cereals and certain other products of plant origin*(notified under document number C(2003) 5400)***(Text with EEA relevance)**

(2004/74/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals ⁽¹⁾, as last amended by Commission Directive 2003/113/EC ⁽²⁾, and in particular Article 7(2)(b) thereof,

Having regard to Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables ⁽³⁾, as last amended by Directive 2003/113/EC, and in particular Article 4(2)(b) thereof,

Whereas:

(1) The Commission should progressively work towards a system which would permit the estimation of dietary exposure to actual pesticide. To make realistic estimations possible, data on the monitoring of pesticide residues should be available in a number of food products which constitute major components of the European diet. It is generally recognised that major components of the European diet are constituted by some 20 to 30 food products. In view of the resources available at national level for pesticide residue monitoring, Member States are only able to analyse samples of eight products each year within a coordinated monitoring programme. Pesticide uses show changes within the timescale of the three-year period. Each pesticide should thus generally be monitored in 20 to 30 food products over a series of three-year cycles.

(2) Residues of all the pesticides covered by this Recommendation should be monitored in 2004, as this will allow use of these data for the estimation of actual dietary exposure to them.

A systematic statistical approach to numbers of samples to be taken in each coordinated monitoring exercise is necessary. Such an approach has been set out by the Commission of the Codex Alimentarius ⁽⁴⁾. Based on a

binomial probability distribution it can be calculated that examination of 613 samples gives a confidence of more than 99 % detecting one sample containing pesticide residues above the limit of determination (LOD) where less than 1 % of products of plant origin contain residues above the LOD. Collection of these samples should be apportioned between Member States on the basis of population and consumer numbers, with a minimum of 12 samples per product and per year.

(3) A new guideline concerning quality control procedures for pesticide residue analysis has been published by the Commission ⁽⁵⁾. It is agreed that these guidelines should be implemented as far as possible by the analytical laboratories of the Member States and should be reviewed continuously in the light of experience gained in the monitoring programmes.

(4) Article 4(2)(a) of Directive 90/642/EEC and Article 7(2)(a) of Directive 86/362/EEC require Member States to specify the criteria applied in drawing up their national inspection programmes. Such information should include: (i) the criteria applied in determining the numbers of samples to be taken and analyses to be carried out, the reporting levels applied and the criteria by which the reporting levels have been fixed; (ii) details of accreditation under Council Directive 93/99/EEC of 29 October 1993 on the subject of additional measures concerning the official control of foodstuffs ⁽⁶⁾ of the laboratories carrying out analyses; and (iii) the number and type of infringements and the action taken.

(5) Information on the results of monitoring programmes is particularly appropriate for treatment, storage and transmission by electronic/informatic methods. Formats have been developed for supply of data by e-mail from the Member States to the Commission. Member States should therefore be able to send their reports to the Commission in the standard format. The further development of such a standard format is most effectively undertaken by the development of guidelines by the Commission.

⁽¹⁾ OJ L 221, 7.8.1986, p. 37.

⁽²⁾ OJ L 324, 11.12.2003, p. 24.

⁽³⁾ OJ L 350, 14.12.1990, p. 71.

⁽⁴⁾ Codex Alimentarius, pesticide residues in foodstuffs, Rome 1994, ISBN 92-5-203271-1; Vol. 2, page 372.

⁽⁵⁾ Document Number SANCO/10476/2003, http://europa.eu.int/comm/food/fs/ph_ps/pest/index_en.htm

⁽⁶⁾ OJ L 290, 24.11.1993, p. 14.

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

HEREBY RECOMMENDS:

1. Member States are invited to take and analyse samples for the product/pesticide residue combinations set out in Annex I, on the basis of the number of samples of each product allocated to them in Annex II, reflecting, as appropriate, the national, Community and third country share of the Member State's market.

Preferably for pesticides posing an acute risk, e.g. OP-esters, endosulfan and N-methylcarbamates, selected samples of the products: apples, tomatoes, lettuce, leek and head cabbage should also be subjected to individual analysis of the individual units in the second laboratory sample in case such pesticides are detected and particularly if it is the produce of a single producer. The number of units should be in line with Commission Directive 2002/63/EC⁽¹⁾.

Two samples should be taken. If the first laboratory sample contains a detectable residue of a targeted pesticide, the units of the second sample should be analysed individually.

2. Member States are invited to report the results of the analysis of samples tested for the product/pesticide residue combinations set out in Annex I by 31 August 2005 at the latest, indicating:
- (a) the analytical methods used and reporting levels achieved, in accordance with the quality control procedures set out in the quality control procedures for pesticide residue analysis;
 - (b) the number and type of infringements and the action taken.

The report should be produced in a format, including the electronic format, conforming to the guidance⁽²⁾ to the Member States with regard to implementation of Commission recommendations concerning coordinated Community monitoring programmes.

3. Member States are invited to send to the Commission and to all other Member States, by 31 August 2005 at the latest, all the information as required by Article 7(3) of Directive 86/362/EEC and Article 4(3) of Directive 90/642/EEC concerning the 2004 monitoring exercise to ensure, at least by check sampling, compliance with maximum pesticide residue levels including:

- (a) the results of their national programmes concerning pesticide residues;
- (b) information on their laboratories' quality control procedures and, in particular, information concerning aspects of the guidelines concerning quality control procedures for pesticide residue analysis which they have not been able to apply or have had difficulty in applying;
- (c) information on accreditation in accordance with the provisions of Article 3 of Directive 93/99/EEC (including type of accreditation, accreditation body and copy of accreditation certificate) of the laboratories carrying out the analyses;
- (d) information about the proficiency tests and ring tests in which the laboratory has participated.

4. Member States are invited to send to the Commission, by 30 September 2004 at the latest, their intended national programme for monitoring maximum pesticide residue levels fixed by Directives 90/642/EEC and 86/362/EEC for the year 2005, including information on:

- (a) the criteria applied in determining the number of samples to be taken and analyses to be carried out;
- (b) the reporting levels applied and the criteria by which the reporting levels have been fixed; and
- (c) details of accreditation, under Directive 93/99/EEC of the laboratories carrying out analyses.

Done at Brussels, 9 January 2004.

For the Commission

David BYRNE

Member of the Commission

⁽¹⁾ OJ L 187, 16.7.2002, p. 30.

⁽²⁾ Presented to and taken note of in the SCFCAH every year.

ANNEX I

Pesticide/product combinations to be monitored

Pesticide residue to be analysed for	Year		
	2004	2005 (*)	2006 (*)
Acephate	(c)	(a)	(b)
Aldicarb	(c)	(a)	(b)
Azinphos-methyl	(c)	(a)	(b)
Azoxystrobin	(c)	(a)	(b)
Benomyl group	(c)	(a)	(b)
Bromopropylate	(c)	(a)	(b)
Captan	(c)	(a)	(b)
Chlorothalonil	(c)	(a)	(b)
Chlorpyrifos	(c)	(a)	(b)
Chlorpyrifos-methyl	(c)	(a)	(b)
Cypermethrin	(c)	(a)	(b)
Cyprodinil	(c)	(a)	(b)
Deltamethrin	(c)	(a)	(b)
Diazinon	(c)	(a)	(b)
Dichlofluanid	(c)	(a)	(b)
Dicofol	(c)	(a)	(b)
Dimethoate	(c)	(a)	(b)
Diphenylamine (**)	(c)	(a)	(b)
Endosulfan	(c)	(a)	(b)
Fenhexamid	(c)	(a)	(b)
Folpet	(c)	(a)	(b)
Imazalil	(c)	(a)	(b)
Iprodione	(c)	(a)	(b)
Kresoxim-methyl	(c)	(a)	(b)
Lambda-cyhalothrin	(c)	(a)	(b)
Malathion	(c)	(a)	(b)
Maneb group	(c)	(a)	(b)
Mecarbam	(c)	(a)	(b)
Methamidophos	(c)	(a)	(b)
Metalaxyl	(c)	(a)	(b)
Methidathion	(c)	(a)	(b)

Pesticide residue to be analysed for	Year		
	2004	2005 (*)	2006 (*)
Methiocarb	(c)	(a)	(b)
Methomyl	(c)	(a)	(b)
Myclobutanil	(c)	(a)	(b)
Omethoate	(c)	(a)	(b)
Oxydemeton-methyl	(c)	(a)	(b)
Parathion	(c)	(a)	(b)
Permethrin	(c)	(a)	(b)
Phorate	(c)	(a)	(b)
Pirimiphos-methyl	(c)	(a)	(b)
Procymidone	(c)	(a)	(b)
Propyzamide	(c)	(a)	(b)
Spiroxamine	(c)	(a)	(b)
Thiabendazole	(c)	(a)	(b)
Tolylfluanid	(c)	(a)	(b)
Triazophos	(c)	(a)	(b)
Vinclozolin	(c)	(a)	(b)

(*) Indicative for 2005 and 2006, subject to programmes which will be recommended for these years.

(**) Diphenylamine should be analysed in apples and pears only.

(a) Pears, bananas, beans (fresh or frozen), potatoes, carrots, oranges/mandarines, peaches/nectarins, spinach (fresh or frozen).

(b) Cauliflower, peppers, wheat, aubergines, rice, grapes, cucumber, peas (fresh/frozen, without pod).

(c) Apples, tomatoes, lettuce, strawberries, leek, orange juice, head cabbage, rye/oats.

ANNEX II

Number of samples of each product to be taken by each Member State

Country code	Samples	Country code	Samples
A	12	IRL	12
B	12	L	12
CY	12	LT	12
CZ	12	LV	12
D	93	MT	12
DK	12	NL	17
E	45	P	12
EE	12	PL	45
EL	12	S	12
F	66	SI	12
FIN	12	SK	12
HU	12	UK	66
I	65		
Total number of samples: 613			

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

**COUNCIL DECISION 2004/75/CFSP
of 11 December 2003**

concerning the conclusion of the Agreement between the European Union and the Former Yugoslav Republic of Macedonia on the status and activities of the European Union Police Mission (EUPOL Proxima) in the Former Yugoslav Republic of Macedonia

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty on European Union, and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

- (1) On 29 September 2003, the Council adopted Joint Action 2003/681/CFSP on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL Proxima) ⁽¹⁾.
- (2) Article 13 of the Joint Action provides that the status of EUPOL Proxima staff in the Former Yugoslav Republic of Macedonia, including where appropriate the privileges, immunities and further guarantees necessary for the completion and smooth functioning of EUPOL Proxima shall be agreed in accordance with the procedure laid down in Article 24 of the Treaty on European Union.
- (3) Following the Council Decision of 24 November 2003 authorising the Secretary General/High Representative, assisting the Presidency, to open negotiations on its behalf, the Secretary General/High Representative, assisting the Presidency, negotiated an agreement with the Government of FYROM on the status and activities of the European Union Police Mission (EUPOL Proxima) in the Former Yugoslav Republic of Macedonia.
- (4) The agreement should be approved,

Article 1

The Agreement between the European Union and the Former Yugoslav Republic of Macedonia (FYROM) on the status and activities of the European Union Police Mission (EUPOL Proxima) in FYROM is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement in order to bind the European Union.

Article 3

This Decision shall be published in the *Official Journal of European Union*.

Article 4

This Decision shall take effect on the day of its adoption.

Done at Brussels, 11 December 2003.

For the Council

The President

F. FRATTINI

⁽¹⁾ OJ L 249, 1.10.2003, p. 66.

ANNEX

AGREEMENT

between the European Union and the Former Yugoslav Republic of Macedonia on the status and activities of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (EUPOL Proxima)

THE EUROPEAN UNION, hereinafter referred to as the 'EU',

on the one hand, and

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, hereinafter referred to as the 'Host Party',

on the other hand,

together hereinafter referred to as the 'Parties',

TAKING INTO ACCOUNT:

- (a) the letter from Prime Minister Crvenkovski of the Host Party dated 16 September 2003, inviting the EU to launch an advisory police mission and foreseeing an Agreement between the Government of the Host Party and the EU,
- (b) the response of the Secretary General/High Representative dated 24 October 2003 accepting the invitation,
- (c) the adoption by the Council of the European Union on 29 September 2003 of Joint Action 2003/681/CFSP on the EU Police Mission in the Host Party,
- (d) the duration of EUPOL Proxima shall be agreed between the Parties,
- (e) that under the Police Mission, EU police experts will monitor, mentor and advise the Host Party's police,
- (f) the Stabilisation and Association Agreement between the Host Party and the European Communities and their Member States, signed on 9 April 2001, containing provisions on cooperation in Justice and Home Affairs,
- (g) the positively evolving security situation in the Host Party and the contribution that the successful implementation of the EU military operation in the Host Party ('Concordia') made thereto,
- (h) the on-going activities of the Host Party, supported by the EU and the International Community, to strengthen the rule of law, particularly to promote reform of the criminal justice system, and to take further action to prevent and control organised crime and develop policing standards in accordance with internationally recognised standards,
- (i) the shared ambition that the Host Party follow a successful path to ultimate membership in the EU,
- (j) that the purpose of the privileges and immunities as provided for in this Agreement are not to benefit individuals but to ensure the efficient performance of the EU Mission,
- (k) that under the provisions of the present Agreement the rights and obligations of the Parties under international agreements and other international instruments establishing international tribunals, including the Rome Statute of the International Criminal Court, will remain unaffected,

HAVE AGREED AS FOLLOWS:

Article 1

2. For the purpose of the present Agreement, the following definitions shall apply:

Scope of application and definitions

1. The provisions of the present Agreement and any obligation undertaken by the Host Party or any privilege, immunity, facility or concession granted to the EUPOL Proxima or EUPOL Proxima personnel shall apply in the territory of the Host Party only.

- (a) 'EUPOL Proxima' means the European Union Police Mission in the Host Party established by the Council of the European Union in Joint Action 2003/681/CFSP dated 29 September 2003, including its components, forces, units, headquarters and personnel deployed in the territory of the Host Party and assigned to EUPOL Proxima.

- (b) 'Head of Mission' means the Head of Mission/Police Commissioner of EUPOL Proxima, appointed by the Council of the European Union.
- (c) 'EUPOL Proxima personnel' means the Head of Mission, personnel seconded by EU Member States and non-EU States invited by the EU to participate in EUPOL Proxima, and international staff recruited on a contractual basis by EUPOL Proxima deployed for the preparation, support and implementation of the Mission, and shall not include commercial contractors or local personnel.
- (d) 'Headquarters' means the EUPOL Proxima main headquarters in Skopje and local headquarters or duty stations at any field locations.
- (e) 'Sending State' means any EU Member State or non-EU State that has seconded personnel to EUPOL Proxima.
- (f) 'Premises' means all buildings, facilities and land required for the conduct of the activities of EUPOL Proxima, as well as for the accommodation of EUPOL Proxima personnel.

Article 2

General provisions

1. EUPOL Proxima and EUPOL Proxima personnel shall respect the laws and regulations of the Host Party, including those regarding the protection of the environment, nature and cultural heritage, and shall refrain from any action or activity incompatible with the impartial and international nature of their duties or inconsistent with the provisions of the present Agreement.
2. EUPOL Proxima shall be autonomous with regard to the execution of its functions under the present Agreement. The Host Party shall respect the unitary and international nature of EUPOL Proxima.
3. The Head of Mission shall notify the Government of the Host Party of the location of its Headquarters.
4. The Head of Mission shall regularly, and in a timely manner, inform the Government of the Host Party of the number, names, ranks (as appropriate), and nationalities of EUPOL Proxima personnel stationed in the territory of the Host Party, through the submission of a notification list to the Ministry of Foreign Affairs of the Host Party.

Article 3

Identification

1. EUPOL Proxima personnel shall be provided with and identified by an EUPOL Proxima identification card, which they shall be obliged to carry with them at all times. The relevant authorities of the Host Party shall be provided with a specimen of an EUPOL Proxima identification card.

2. The Ministry of Foreign Affairs of the Host Party shall provide identity cards to EUPOL Proxima personnel in accordance with their status as set down in Article 6 of the present Agreement.

3. Vehicles and other means of transport of EUPOL Proxima shall bear distinctive EUPOL Proxima identification markings, an example of which shall be provided to the relevant authorities of the Host Party.

4. EUPOL Proxima shall be permitted to display the flag of the EU at its main headquarters and elsewhere, alone or together with the flag of the Host Party, as decided by the Head of Mission. National flags or insignia of the constituent national elements of the EUPOL Proxima may be displayed on EUPOL Proxima premises, vehicles and uniforms, as decided by the Head of Mission.

5. The official nameplate on EUPOL Proxima premises shall appear in the official language of the Host Party with identical character size as the EUPOL Proxima appropriate language or languages.

Article 4

Border crossing, movement, and presence on the territory of the Host Party

1. EUPOL Proxima personnel and EUPOL Proxima assets and means of transport shall cross the border of the Host Party at official border crossings and via the international air corridors.
2. The Host Party shall facilitate the entry into and the departure from the territory of the Host Party for EUPOL Proxima and EUPOL Proxima personnel. Save for passport control on entry into and departure from the territory of the Host Party, EUPOL Proxima personnel, with proof of membership of the Mission, shall be exempt from passport, visa and immigration regulations and any form of immigration inspection.
3. EUPOL Proxima personnel shall be exempt from the regulations of the Host Party governing the registration and control of aliens, but shall not be considered as acquiring any right to permanent residence or domicile in the territory of the Host Party.

4. For EUPOL Proxima assets and means of transport entering, transiting or exiting the Host Party territory in support of the Mission, EUPOL Proxima shall provide a certificate of exemption accompanied by an inventory. They shall be exempt from any other customs documentation. A copy of the certificate shall be transmitted to the competent authorities when entering or exiting the Host Party. The format of the certificate shall be agreed between EUPOL Proxima and the competent authorities of the Host Party.

5. Vehicles and aircraft used in support of the Mission shall not be subject to local licensing or registration requirements. Relevant international standards and regulations shall continue to apply.

6. EUPOL Proxima personnel may drive motor vehicles in the territory of the Host Party provided they have a valid national driving licence. The Host Party shall accept as valid, without tax or fee, driving licences or permits issued to EUPOL Proxima.

7. EUPOL Proxima and EUPOL Proxima personnel together with their vehicles, aircraft or any other means of transport, equipment and supplies shall enjoy free and unrestricted movement throughout the territory of the Host Party, including its airspace. If necessary, technical arrangements may be concluded in accordance with Article 17 of the present Agreement.

8. For the purpose of the Mission, EUPOL Proxima personnel, and local personnel employed by EUPOL Proxima when travelling on official duties, may use roads, bridges and airports without payment of duties, fees, tolls, taxes or other charges.

Article 5

Immunities and privileges of EUPOL Proxima

1. EUPOL Proxima shall be granted the status equivalent to that of a diplomatic mission under the Vienna Convention on Diplomatic Relations dated 18 April 1961.

2. The EU Mission, its property, funds and assets shall enjoy immunity from the criminal, civil, and administrative jurisdiction of the Host Party, in accordance with the Vienna Convention on Diplomatic Relations.

3. The premises of EUPOL Proxima shall be inviolable. At no time shall the agents of the Host Party enter them, except with the consent of the Head of Mission.

4. The premises of EUPOL Proxima, their furnishings and other assets thereon as well as their means of transport shall be immune from search, requisition, attachment or execution.

5. The archives and documents of EUPOL Proxima shall be inviolable at all times.

6. Correspondence of EUPOL Proxima shall be granted a status equivalent to that of official correspondence granted under the Vienna Convention on Diplomatic Relations dated 18 April 1961.

7. For imported goods and services and in respect of its premises, provided these are intended for the purpose of the Mission, EUPOL Proxima shall be exempt from all national and communal dues, taxes or charges of similar nature.

8. For goods purchased and services contracted on the domestic market, provided these are intended for the purpose of the Mission, EUPOL Proxima shall be either exempt from or reimbursed by the Host Party for all national and communal dues and taxes, including VAT, and charges of similar nature according to the laws of the Host Party.

9. The Host Party shall permit entry of articles for the Mission and grant exemption from all custom duties, taxes and related charges other than charges for storage, cartage and similar services.

Article 6

Immunities and privileges of EUPOL Proxima personnel

1. EUPOL Proxima personnel, with the exception of administrative and technical staff, shall be granted all privileges and immunities equivalent to that of diplomatic agents granted under the Vienna Convention on Diplomatic Relations of 18 April 1961, subject to which the EU Member States and other Sending States shall have priority of jurisdiction. These privileges and immunities shall be granted to this EUPOL Proxima personnel during their mission, and thereafter, with respect to official acts previously performed in the exercise of their mission.

2. EUPOL Proxima's administrative and technical staff shall enjoy a status equivalent of that enjoyed, in accordance with the Vienna Convention on Diplomatic Relations, by administrative and technical staff from Sending States employed in diplomatic missions. The privileges and immunities shall be granted to EUPOL Proxima's administrative and technical staff during their mission, and thereafter, with respect to official acts previously performed in the exercise of their mission.

3. The EU Secretary General/High Representative shall, with the explicit consent of the competent authority of the Sending State, waive the immunity enjoyed by EUPOL Proxima personnel where such immunity would impede the course of justice and it can be waived without prejudice to the interests of the EU.

4. EUPOL Proxima personnel shall have the right to import free of duty or other restrictions items required for their personal use, and to export such items. EUPOL Proxima personnel, excluding administrative and technical personnel, shall have the right to purchase free of duty or other restrictions items required for their personal use, and to export such items; for goods and services purchased on the domestic market, the Host Party shall reimburse VAT and taxes according to the laws of the Host Party.

5. EUPOL Proxima personnel shall be exempt from dues and taxes in the Host Party on the emoluments and salaries they receive by reason of their employment.

Where the incidence of any form of taxation depends upon residence, periods during which personnel seconded to EUPOL Proxima and international staff recruited on a contractual basis by the EU Mission are present in the Host Party for the discharge of their duties shall not be considered as periods of residence.

Article 7

Local personnel employed by EUPOL Proxima

Local personnel employed by EUPOL Proxima who are nationals of or permanently resident in the Host Party shall enjoy a status equivalent to that enjoyed, in accordance with the Vienna Convention on Diplomatic Relations, by locally employed staff in diplomatic missions in the Host Party.

Article 8

Security

1. The Host Party, through its own capabilities, shall assume full responsibility for the security of EUPOL Proxima personnel.

2. To that end, the Host Party shall take all necessary measures for the protection, safety and security of EUPOL Proxima and EUPOL Proxima personnel. Any specific provisions, proposed by the Host Party, shall be agreed with the Head of Mission before implementation. The Host Party shall permit and support free of any charge activities relating to the medical evacuation of EUPOL Proxima personnel. If required, supplementary arrangements as referred to in Article 17 shall be concluded.

3. EUPOL Proxima shall have the right to establish, within the Mission, an armed protection element consisting of around 30 police officers, whose task is to provide an incident management capacity for exceptional cases in order to ensure the protection and possible rescue of EUPOL Proxima personnel and personnel locally employed by the Mission, as well as EUMM or OSCE personnel.

4. The abovementioned armed protection element shall have the right to use all means, including weapons, necessary to perform its tasks in accordance with specific rules to be determined by the EU. It shall not have an executive policing role.

5. The Host Party hereby permits the abovementioned armed protection element to operate throughout its territory in accordance with the provisions of the present Article.

6. Technical arrangements, as referred to in Article 17, between the Head of Mission and the relevant administrative authorities of the Host Party shall be drafted in order to agree on practical modalities for the activities of the abovementioned armed protection element.

Article 9

Uniform and arms

1. EUPOL Proxima personnel shall wear national uniform or civilian dress with distinctive EUPOL Proxima identification.

2. The wearing of uniform shall be subject to rules issued by the Head of Mission.

3. When authorised to do so by their orders, members of the EUPOL Proxima armed protection element may carry arms and ammunitions.

Article 10

Cooperation and access to information

1. The Host Party shall provide full cooperation and support to EU Proxima and EU Proxima personnel.

2. If requested and necessary for the accomplishment of the EUPOL Proxima mission, the Host Party shall provide:

- effective access to EUPOL Proxima personnel to buildings, facilities, locations and official vehicles within the control of the Host Party;
- EUPOL Proxima personnel with effective access to documents, materials and information within its control relevant to the mandate of the EUPOL Mission.

3. The Head of Mission and the Host Party shall consult regularly and take appropriate measures to ensure close and reciprocal liaison at every appropriate level. The Host Party may appoint a liaison officer to EUPOL Proxima.

Article 11

Host Party support and contracting

1. The Host Party agrees, if requested by EUPOL Proxima, to assist in finding suitable premises.

2. If required and available, premises owned by the Host Party shall be provided free of charge.

3. Within its means and capabilities, the Host Party will assist and support the preparation, establishment, execution and support of the Mission. The assistance and the support from the Host Party to the Mission shall be provided under the same conditions as those provided to the Host Party police forces.

4. EUPOL Proxima will endeavour, to the maximum extent possible, to contract locally for services, goods and personnel, subject to the requirements of the Mission.

*Article 12***Deceased EUPOL Proxima personnel**

1. The Head of Mission shall have the right to take charge of and make suitable arrangements for the repatriation of any deceased EUPOL Proxima personnel, as well as any personal property belonging to the deceased.
2. Autopsies shall not be performed on deceased members of the EUPOL Proxima without the agreement of the Sending State or, in the case of international staff, the State of his/her nationality, and the presence of a representative of EUPOL Proxima and/or the State concerned.

*Article 13***Communications**

1. EUPOL Proxima shall have the right to install and operate radio sending and receiving stations, as well as satellite systems, using appropriate frequencies, subject to arrangements to be concluded in accordance with Article 17 of the present Agreement.
2. EUPOL Proxima shall enjoy the right to unrestricted communication by radio (including satellite, mobile or hand-held radio), telephone, telegraph, facsimile and other means, as well as the right to install, for the purpose of the Mission, the necessary means for maintaining such communications within and between EUPOL Proxima facilities, including the laying of cables and ground lines, in accordance with the regulations of the Host Party.

*Article 14***Claims for death, injury, damage or loss**

1. The Member States, other States participating in EUPOL Proxima, or EU Institutions, shall not be obliged to reimburse claims arising out of activities in connection with civil disturbances, protection of the EU Mission or its personnel, or which are incidental to operational necessities.
2. Any other claim of a civil law character, including claims of personnel locally employed by EUPOL Proxima, to which the Mission or any member thereof is a party and over which the courts of the Host Party do not have jurisdiction because of any provision of the present Agreement, shall be submitted through the authorities of the Host Party to the Head of Mission and shall be dealt with by separate arrangements, as referred to in Article 17, whereby procedures for settling claims and for addressing claims shall be established. Settlement of claims will occur after previous consent of the State concerned.

*Article 15***Disputes**

1. All issues arising in connection with the application of this agreement shall be discussed by a Joint Coordination Group. This Group shall be composed of representatives of EUPOL Proxima and the competent authorities of the Host Party.
2. Failing any prior settlement, disputes with regard to the interpretation or application of the present Agreement shall be settled between the Host Party and EU representatives by diplomatic means.

*Article 16***Other provisions**

1. Whenever the present Agreement refers to the immunities, privileges and rights of EUPOL Proxima and EUPOL Proxima personnel, the Government of the Host Party shall be responsible for the implementation and fulfilment of such immunities, privileges and rights through the appropriate local authorities of the Host Party.
2. Nothing in the present Agreement is intended or shall be construed to derogate from any rights that may attach with respect to an EU Member State or any other State contributing to EUPOL Proxima or their personnel under other agreements.

*Article 17***Supplementary arrangements**

The Head of Mission and the administrative authorities of the Host Party shall conclude such supplementary arrangements as may be necessary to implement the present Agreement.

*Article 18***Entry into force and termination**

1. The present Agreement shall enter into force upon written notification of the Parties that the internal requirements for the entry into force have been complied with.
2. The present Agreement may be amended on the basis of mutual written agreement between the Parties.
3. The present Agreement shall remain in force until the final departure of EUPOL Proxima or all personnel thereof.
4. The present Agreement may be denounced by written notification to the other Party. The denunciation shall take effect 60 days after receipt by the other Party of the notification of denunciation.
5. Termination or denunciation of the present Agreement shall not affect any rights or obligations arising from the execution of the present Agreement prior to its termination or denunciation.

A. Letter from the European Union

Skopje, 11 December 2003

The Government of the former Yugoslav Republic of Macedonia

Dear Sir,

I have the honour to propose that, if it is acceptable to your Government, this letter and your confirmation shall together take the place of signature of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the status and activities of the European Union Police Mission in the former Yugoslav Republic of Macedonia (EUPOL Proxima).

The text of the aforementioned Agreement, herewith annexed, has been approved by decision of the Council of the European Union on 11 December 2003.

This letter also constitutes the notification, on behalf of the European Union, in accordance with Article 18.1 of the Agreement.

Please accept, Sir, the assurance of my highest consideration.

For the European Union



Alexis BROUHNS

EU Special Representative

B. Letter from the Former Yugoslav Republic of Macedonia

Скопје, 11 декември 2003

Почитуван Господине,

Во името на Владата на Република Македонија имам чест да го потврдам приемот на Вашето писмо со денешна дата, кое се однесува на потпишувањето на Договорот помеѓу Република Македонија и Европската унија за статусот и активностите на Полициската мисија на Европската унија во Република Македонија (ЕУПОЛ "Проксима"), заедно со приложениот текст на Договорот.

Ја потврдувам согласноста на мојата Влада на текстот на Договорот и сметам дека оваа Размена на писма е еквивалент на потпишувањето.

Сепак, изјавувам дека Република Македонија не ја прифаќа деноминацијата употребена за мојата земја во погоре наведениот Договор, имајќи предвид дека уставното име на мојата земја е Република Македонија.

Примете ги Господине, изразите на моето највисоко почитување.

Игор Шундев



(courtesy translation)

Skopje, December 11, 2003

Dear Sir,

On behalf of the Government of the Republic of Macedonia I have the honor to acknowledge receipt of your letter of today's date regarding the signature of the Agreement between the Republic of Macedonia and the European Union on the status and activities of the European Union Police Mission in the Republic of Macedonia (EUPOL Proxima), together with the attached text of the Agreement.

I consider this Exchange of Letters as equivalent of signature.

However, I declare that the Republic of Macedonia does not accept the denomination used for my country in the abovementioned Agreement, having in mind that the constitutional name of my country is the Republic of Macedonia.

Please accept, Sir, the assurances of my highest consideration.

Igor DZUNDEV

C. Letter from the European Union

Skopje, 11 December 2003

Dear Sir,

I have the honour to acknowledge receipt of your letter of today's date.

The European Union notes that the Exchange of Letters between the European Union and the Former Yugoslav Republic of Macedonia, which takes the place of signature of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the status and activities of the European Union Police Mission in the former Yugoslav Republic of Macedonia (EUPOL Proxima), has been accomplished and that this cannot be interpreted as acceptance or recognition by the European Union in whatever form or content of a denomination other than the 'former Yugoslav Republic of Macedonia'.

Please accept, Sir, the assurance of my highest consideration.

For the European Union

Alexis BROUHNS

EU Special Representative

CORRIGENDA**Corrigendum to Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC**

(Official Journal of the European Union L 176 of 15 July 2003)

On page 70, Article 25(2)(a):

for: '(a) connection and access to national networks, including transmission and distribution tariffs. These tariffs, or methodologies, shall allow the necessary investments in the networks to be carried out in a manner allowing these investments to ensure the viability of the networks;'

read: '(a) connection and access to national networks, including transmission and distribution tariffs, and terms, conditions and tariffs for access to LNG facilities. These tariffs, or methodologies, shall allow the necessary investments in the networks and LNG facilities to be carried out in a manner allowing these investments to ensure the viability of the networks and LNG facilities;'

On page 71, Article 25(6):

for: '6. Any party having a complaint against a transmission, LNG or distribution system operator with respect to the issues mentioned in paragraphs 1, 2 and 4 and in Article 19 may refer the complaint to the regulatory authority, which, acting as dispute settlement authority, shall issue a decision within two months after receipt of the complaint. This period may be extended by two months where additional information is sought by the regulatory authorities. This period may be extended with the agreement of the complainant. Such a decision shall have binding effect unless and until overruled on appeal.'

read: '6. Any party who is affected and who has a right to complain concerning a decision on methodologies taken pursuant to paragraphs 2, 3 or 4 or, where the regulatory authority has a duty to consult, concerning the proposed methodologies, may, at the latest within two months, or a shorter time period as provided by Member States, following publication of the decision or proposal for a decision, submit a complaint for review. Such a complaint shall not have suspensive effect.'
