

Official Journal

of the European Union

ISSN 1725-2555

L 85

Volume 47

23 March 2004

English edition

Legislation

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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 525/2004
of 22 March 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⁾, 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 March 2004.

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

Done at Brussels, 22 March 2004.

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

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 1947/2002 (OJ L 299, 1.11.2002, p. 17).

ANNEX

to the Commission Regulation of 22 March 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	107,2
	204	66,2
	212	115,9
	999	96,4
0707 00 05	052	133,1
	096	93,1
	204	13,1
	220	147,3
	999	96,7
0709 90 70	052	125,6
	204	56,0
	999	90,8
0805 10 10, 0805 10 30, 0805 10 50	052	49,6
	204	63,2
	212	60,0
	220	45,4
	400	37,9
	624	60,6
	999	52,8
0805 50 10	052	57,0
	220	31,0
	400	46,9
	600	51,3
	999	46,6
0808 10 20, 0808 10 50, 0808 10 90	388	88,1
	400	88,1
	404	90,4
	508	71,0
	512	73,5
	524	88,7
	528	73,7
	720	86,9
	999	82,6
0808 20 50	388	81,6
	512	87,6
	528	66,7
	720	34,9
	999	67,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11). Code '999' stands for 'of other origin'.

**COMMISSION REGULATION (EC) No 526/2004
of 22 March 2004**

**amending the specification for a name appearing in the Annex to Regulation (EC) No 1107/96 on
the registration of geographical indications and designations of origin (Espárrago de Navarra)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs⁽¹⁾, and in particular Article 9 thereof,

Whereas:

- (1) Pursuant to Article 9 of Regulation (EEC) No 2081/92, for the name *Espárrago de Navarra*, registered as a protected geographical indication by Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92⁽²⁾, Spain has requested changes to the description and the geographical area.
- (2) Scrutiny of the request has shown that the amendments proposed are not minor.
- (3) According to Article 9 of Regulation (EEC) No 2081/92, the Article 6 procedure should accordingly be applied *mutatis mutandis*.

(4) It is considered that the amendments proposed are consonant with Regulation (EEC) No 2081/92. Following their publication in the *Official Journal of the European Union*⁽³⁾ the Commission has received no objection pursuant to Article 7 of that Regulation.

(5) The amendments should therefore be registered and published in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments in Annex I to this Regulation are hereby registered and are published as required by Article 6(4) of Regulation (EEC) No 2081/92.

A summary of the main points of the specification is given in Annex II to this Regulation.

Article 2

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 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 208, 24.7.1999, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 148, 21.6.1996, p. 1. Regulation as last amended by Regulation (EC) No 1660/2003 (OJ L 234, 20.9.2003, p. 10).

⁽³⁾ OJ C 110, 8.5.2003, p. 20 (*Espárrago de Navarra*).

ANNEX I

Council Regulation (EEC) No 2081/92

AMENDMENT OF THE SPECIFICATION OF A PROTECTED GEOGRAPHICAL INDICATION (Article 9)

1. Registered name: Espárrago de Navarra PGI.**2. Amendments requested***Specification headings*

- ☐ Name
- ☒ Description
- ☒ Geographical area
- ☐ Proof of origin
- ☐ Link
- ☐ Labelling
- ☐ National requirements

3. Amendments*Description*

Add the following approved varieties: Dariana, Grolim, Steline and Thielim.

Delete the following approved varieties: Blanco del Pais, Cito and Darbonne 2, 3 and 4.

Fields may include up to 20 % non-approved varieties.

Geographical area

Add the following localities in respect of the Autonomous Community of Aragon: Biota, Boquiñeni, Luceni, Remolinos, Sádaba, Sos del Rey Católico and Uncastillo.

Add the following localities in respect of the Autonomous Community of Navarre: Améscoa Baja, Ansoáin, Aoiz-Agoitz, Aranguren, Belascoáin, Berrioplano, Burlada, Castillo-Nuevo, Ciriza, Cizur, Echarri, Echáuri-Etxauri, Egüés, Elorz, Ezcabarte, Ezprogui, Galar, Guesálaz, Huarte, Ibargoiti, Iza, Izagaondoa, Juslapeña, Lana, Leache, Leoz, Lezáun, Lizoáin, Lónguida, Monreal, Noáin, Olóriz, Olza, Orisoain, Pamplona-Iruña, Romanzado, Salinas de Oro, Tiebas-Muruarte de Reta, Unciti, Unzué, Urraúl Bajo, Urroz, Vidaurreta, Zabalza and Zizur.

4. Date of receipt of the full application: ES/00098 — 14.11.2002

ANNEX II

SUMMARY

Council Regulation (EEC) No 2081/92

'ESPÁRRAGO DE NAVARRA'

PDO () PGI (X)

National application No: –

1. Responsible department in the Member State:

Name: Subdirección General de Sistemas de Calidad Diferenciada. Dirección General de Alimentación. Secretaría General de Agricultura y Alimentación del Ministerio de Agricultura, Pesca y Alimentación de España.

Address: Paseo Infanta Isabel, 1 — E-28071 Madrid

Telephone: (34-91) 347 53 94

Fax: (34-91) 347 54 10

E-mail: mvegaalv@mapya.es

2. Applicant group:

2.1. Name: Consejo Regulador de la Denominación Específica 'Espárrago de Navarra' (Regulating body of the 'Espárrago de Navarra' specific designation)

2.2. Address: Avda. Serapio Huici, 22 — E-31610 Villava

Telephone: (34-94) 801 30 45

Fax: (34-94) 801 30 46

2.3. Composition: Producer/processor (X) other ()

3. Type of product: Vegetables — Category 1.8

4. Specification:

(Summary of requirements pursuant to Article 4(2))

4.1. Name: 'Espárrago de Navarra' (Navarre asparagus)

4.2. Description:

Tender, fresh shoots of *Asparagus officinalis* L, purplish, white or green, of the varieties 'Argenteuil', 'Dariana', 'Desto', 'Cipres', 'Grolim', 'Juno', 'Steline' and 'Thielim', for consumption when fresh or preserved, of set length, diameter and class.

Fields may include up to 20 % non-approved varieties.

4.3. Geographical area:

In the central Ebro valley, the production area covers 263 municipalities in Navarre, Rioja and Aragon.

4.4. Proof of origin:

Plantations duly registered; processing in registered factories in the production area; labels and numbered designation labels issued by the regulating body.

4.5. Method of production:

Asparagus from registered plantations, harvested and transported to the factories by means that preserve the condition and freshness of the product; it is processed under conditions established by the regulating body.

4.6. Link:

The asparagus is grown in clay or open clay soils with slightly basic pH; the climate is continental with Mediterranean influence and the mean temperatures are 13 to 14 °C. Use of appropriate cultivation, harvesting and production techniques, which are inspected.

4.7. *Inspection body:*

Name: Consejo Regulador de la Denominación Específica Espárrago de Navarra
Address: Avda. Serapio Huici, 22
E-31610 Villava
Telephone: (34-94) 801 30 45
Fax: (34 94) 801 30 46

4.8. *Labelling:*

Labels must be authorised by the regulating body. The words 'Denominación Específica Espárrago de Navarra' must appear. Numbered labels certifying designation are issued by the regulating body.

4.9. *National requirements:*

Law 25/1970 of 2 December 1970. Order of 13 July 1993 approving the Espárrago de Navarra specific designation and its regulating body.

EC No: ES/0098/94.01.24

Date of receipt of the full application: 19.11.2003

**COMMISSION REGULATION (EC) No 527/2004
of 22 March 2004**

determining the extent to which applications lodged in March 2004 for import licences for certain pigmeat products under the regime provided for by the Agreements concluded by the Community with the Republic of Poland, the Republic of Hungary, the Czech Republic, Slovakia, Bulgaria and Romania can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1898/97 of 29 September 1997 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for by the Agreements concluded by the Community with Bulgaria, the Czech Republic, Slovakia, Romania, the Republic of Poland and the Republic of Hungary ⁽¹⁾, and in particular Article 4(5) thereof,

Whereas:

- (1) The applications for import licences lodged for the period 1 to 30 April 2004 are for quantities less than or equal to the quantities available and can therefore be met in full.
- (2) The surplus to be added to the quantity available for the following period should be determined.

- (3) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 to 30 April 2004 submitted pursuant to Regulation (EC) No 1898/97 shall be met as referred to in Annex I.
2. For the period 1 May to 30 June 2004, applications may be lodged pursuant to Regulation (EC) No 1898/97 for import licences for a total quantity as referred to in Annex II.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 22 March 2004.

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

⁽¹⁾ OJ L 267, 30.9.1997, p. 58. Regulation as last amended by Regulation (EC) No 333/2004 (OJ L 60, 27.2.2004, p. 12).

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 to 30 April 2004
1	100,0
2	100,0
3	100,0
4	100,0
H1	100,0
7	100,0
8	100,0
9	100,0
T1	100,0
T2	100,0
T3	100,0
S1	100,0
S2	100,0
B1	100,0
15	100,0
16	100,0
17	100,0

ANNEX II

(t)

Group No	Total quantity available for the period 1 May to 30 June 2004
B1	3 000,0
15	1 100,0
16	2 125,0
17	15 625,0

**COMMISSION REGULATION (EC) No 528/2004
of 22 March 2004**

determining the extent to which applications lodged in March 2004 for import licences for certain pigmeat sector products under the arrangements provided for by the Free Trade Agreements between the Community, of the one part, and Latvia, Lithuania and Estonia, of the other part, can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Commission Regulation (EC) No 2305/95 of 29 September 1995 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for in the free trade agreements between the Community, of the one part and Latvia, Lithuania and Estonia, of the other part ⁽¹⁾, and in particular Article 4(4) thereof,

Applications for import licences for the period 1 April to 30 June 2004 submitted pursuant to Regulation (EC) No 2305/95 shall be met as referred to in the Annex.

Whereas the applications for import licences lodged for the second quarter of 2004 are for quantities less than the quantities available and can therefore be met in full,

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 22 March 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 233, 30.9.1995, p. 45. Regulation as last amended by Regulation (EC) No 1853/2002 (OJ L 280, 18.10.2002, p. 5).

ANNEX

Group	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 2004
18	100
L1	100
19	100
20	100
21	100
22	100
E1	100

**COMMISSION REGULATION (EC) No 529/2004
of 22 March 2004**

determining the extent to which applications lodged in March 2004 for import licences for certain pigmeat sector products under the regime provided for by Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 1432/94 of 22 June 1994 laying down detailed rules for the application in the pigmeat sector of the import arrangements provided for in Council Regulation (EC) No 774/94 opening and providing for the administration of certain Community tariff quotas for pigmeat and certain other agricultural products ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) The applications for import licences lodged for the period 1 to 30 April 2004 are for quantities less than the quantities available and can therefore be met in full.
- (2) The quantity available for the following period should be determined.

- (3) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

HAS ADOPTED THIS REGULATION:

Article 1

1. Applications for import licences for the period 1 to 30 April 2004 submitted pursuant to Regulation (EC) No 1432/94 shall be met as referred to in Annex I.
2. For the period 1 May to 30 June 2004, applications may be lodged pursuant to Regulation (EC) No 1432/94 for import licences for a total quantity as referred to in Annex II.
3. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 22 March 2004.

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

⁽¹⁾ OJ L 156 23.6.1994, p. 14. Regulation as last amended by Regulation (EC) No 332/2004 (OJ L 60, 27.2.2004, p. 10).

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 to 30 April 2004
1	100,00

ANNEX II

(t)	
Group	Total quantity available for the period 1 May to 30 June 2004
1	3 476,0

**COMMISSION REGULATION (EC) No 530/2004
of 22 March 2004**

determining the extent to which applications lodged in March 2004 for import licences under the regime provided for by tariff quotas for certain products in the pigmeat sector for the period 1 to 30 April 2004 can be accepted

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Article 1

Having regard to Commission Regulation (EC) No 1458/2003 of 18 August 2003 opening and providing for the administration of tariff quotas for certain products in the pigmeat sector ⁽¹⁾, and in particular Article 5(6) thereof,

1. Applications for import licences for the period 1 to 30 April 2004 submitted pursuant to Regulation (EC) No 1458/2003 shall be met as referred to in Annex I.

Whereas:

2. For the period 1 May to 30 June 2004, applications may be lodged pursuant to Regulation (EC) No 1458/2003 for import licences for a total quantity as referred to in Annex II.

(1) The applications for import licences lodged for the period 1 to 30 April 2004 are for quantities less than the quantities available and can therefore be met in full.

Article 2

(2) The surplus to be added to the quantity available for the following period should be determined,

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 22 March 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 208, 19.8.2003, p. 3.

ANNEX I

Group No	Percentage of acceptance of import licences submitted for the period 1 to 30 April 2004
G2	100
G3	100
G4	100
G5	100
G6	100
G7	100

ANNEX II

(t)

Group No	Total quantity available for the period 1 May to 30 June 2004
G2	29 517,5
G3	3 487,8
G4	2 846,0
G5	6 100,0
G6	15 000,0
G7	5 499,0

**COMMISSION REGULATION (EC) No 531/2004
of 22 March 2004**

**determining the extent to which applications lodged in March 2004 for import licences for certain
pigmeat products under the regime provided for by the Agreement concluded by the Community
with Slovenia can be accepted**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS REGULATION:

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 571/97 of 26 March 1997 laying down detailed rules for the application in the pigmeat sector of the arrangements provided for in the Interim Agreement between the Community and Slovenia ⁽¹⁾, and in particular Article 4(4) thereof,

Whereas:

- (1) The applications for import licences lodged for the second quarter of 2004 are for quantities less than the quantities available and can therefore be met in full.
- (2) It is appropriate to draw the attention of operators to the fact that licences may only be used for products which comply with all veterinary rules currently in force in the Community,

Article 1

1. Applications for import licences for the period 1 April to 30 June 2004 submitted pursuant to Regulation (EC) No 571/97 shall be met as referred to in the Annex.

2. Licences may only be used for products which comply with all veterinary rules currently in force in the Community.

Article 2

This Regulation shall enter into force on 1 April 2004.

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

Done at Brussels, 22 March 2004.

For the Commission

J. M. SILVA RODRÍGUEZ
Agriculture Director-General

⁽¹⁾ OJ L 85, 27.3.1997, p. 56. Regulation as last amended by Regulation (EC) No 1935/2003 (OJ L 285, 1.11.2003, p. 20).

ANNEX

Group No	Percentage of acceptance of import licences submitted for the period 1 April to 30 June 2004
23	100,00
24	100,00
25	100,00
26	100,00
SL	100,00

COMMISSION REGULATION (EC) No 532/2004
of 22 March 2004
concerning applications for export licences for rice and broken rice with advance fixing of the refund

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1342/2003 of 28 July 2003, laying down special detailed rules for the application of the system of import and export licences for cereals and rice ⁽²⁾, and in particular the second subparagraph of Article 8(3) thereof,

Whereas:

- (1) Article 8(3) of Regulation (EC) No 1342/2003 provides, where this paragraph is specifically referred to when an export refund is fixed, for an interval of three working days between the day of submission of applications and the granting of export licences with advance fixing of the refund and provides that the Commission is to fix a uniform percentage reduction in the quantities if applications for export licences exceed the quantities which may be exported. Commission Regulation (EC) No 343/2004 ⁽³⁾ fixes refunds under the procedure provided for in the abovementioned paragraph for 3 000 tonnes for all the destinations R02 and R03 defined in the Annex to that Regulation.

- (2) For all the destinations R02 and R03, quantities applied for on 19 March 2004 are in excess of the available quantity. A percentage reduction should therefore be fixed for export licence applications submitted on 19 March 2004.

- (3) In view of its purpose, this Regulation should take effect from the day of its publication in the Official Journal,

HAS ADOPTED THIS REGULATION:

Article 1

For all the destinations R02 and R03 defined in the Annex to Regulation (EC) No 343/2004, applications for export licences for rice and broken rice with advance fixing of the refund submitted pursuant to that Regulation on 19 March 2004 shall give rise to the issue of licences for the quantities applied for to which a percentage reduction of 2,03 % has been applied.

Article 2

For all the destinations R02 and R03 defined in the Annex to Regulation (EC) No 343/2004, applications for export licences for rice and broken rice submitted from 20 March 2004 shall not give rise to the issue of export licences pursuant to that Regulation.

Article 3

This Regulation shall enter into force on 23 March 2004.

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

Done at Brussels, 22 March 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 329, 30.12.1995, p. 18. Regulation as last amended by Commission Regulation (EC) No 411/2002 (OJ L 62, 5.3.2002, p. 27).

⁽²⁾ OJ L 189, 29.7.2003, p. 12.

⁽³⁾ OJ L 5, 9.1.2004, p. 69.

COMMISSION DIRECTIVE 2004/31/EC
of 17 March 2004

amending Annexes I, II, III, IV and V to Council Directive 2000/29/EC on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular points (c) and (d) of the second paragraph of Article 14 thereof,

After consulting the Member States concerned,

Whereas:

- (1) From information supplied by Sweden based on surveys, it appears that areas in Sweden should not longer be recognised as 'protected zones' in respect of Beet necrotic yellow vein virus.
- (2) Under Directive 2000/29/EC, the introduction into the Community of plants of *Vitis* L., other than fruits, originating in third countries is prohibited.
- (3) From information supplied by Switzerland, it appears that the measures Switzerland applies as regards the introduction into and movement within its territory of plants of *Vitis* L., other than fruits, are equivalent to the measures laid down in Directive 2000/29/EC. Therefore, plants of *Vitis* L., other than fruits, originating in Switzerland should be allowed to enter the Community.
- (4) Under Directive 2000/29/EC, the introduction into the areas within the Community recognised as protected zones as regards *Erwinia amylovora* (Burr.) Winsl. et al. of the host plants, other than fruit and seeds, of this harmful organism, originating in third countries other than those recognised as being free from this harmful organism, or in which pest free areas have been established in relation to this harmful organism, is prohibited.
- (5) From information supplied by Switzerland, it appears that the measures Switzerland applies as regards the introduction into and movement within its territory of host plants of *Erwinia amylovora* (Burr.) Winsl. et al., other than fruits and seeds, are largely equivalent to the measures laid down in Directive 2000/29/EC. Therefore, host plants of *Erwinia amylovora* (Burr.) Winsl. et al., other than fruits and seeds, and other than plants of

Cotoneaster Ehrh. and *Photinia davidiana* (Dcne.) Cardot, originating in Switzerland should be allowed to enter the Community.

- (6) From information supplied by Italy based on surveys, it appears that some areas in Italy should not longer be recognised as 'protected zones' in respect of *Erwinia amylovora* (Burr.) Winsl. et al.
- (7) Due to a clerical error in the preparation of Directive 2003/116/EC, current point 21.1 of Part B of Annex IV to Directive 2000/29/EC was erroneously numbered.
- (8) The current provisions against *Tilletia indica* Mitra should be amended to take into account the updated information on the presence of this harmful organism in Iran.
- (9) Directive 2000/29/EC should therefore be amended accordingly.
- (10) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annexes I, II, III, IV and V to Directive 2000/29/EC are amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 April 2004 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

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

⁽¹⁾ OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2003/116/EC (OJ L 321, 6.12.2003, p. 36).

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 17 March 2004.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Annexes I, II, III, IV and V to Directive 2000/29/EC are amended as follows:

1. in Part B of Annex I, under heading (b), point 1 is replaced by the following:

'1. Beet necrotic yellow vein virus	DK, F (Brittany), FI, IRL, P (Azores), UK (Northern Ireland)'
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2. in Part B of Annex II, under heading (b), point 2 is replaced by the following:

'2. <i>Erwinia amylovora</i> (Burr.) Winsl. et al.	Parts of plants, other than fruit, seeds and plants intended for planting, but including live pollen for pollination of <i>Amelanchier</i> Med., <i>Chaenomeles</i> Lindl., <i>Cotoneaster</i> Ehrh., <i>Crataegus</i> L., <i>Cydonia</i> Mill., <i>Eriobotrya</i> Lindl., <i>Malus</i> Mill., <i>Mespilus</i> L., <i>Photinia davidiana</i> (Dcne.) Cardot, <i>Pyracantha</i> Roem., <i>Pyrus</i> L. and <i>Sorbus</i> L.	E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Trentino-Alto Adige: autonomous province of Trento; Tuscany; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesse Umbertiano, Castelvuglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusina, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)'
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3. Annex III is amended as follows:

(a) in the right-hand column of point 15 of Part A, the text is replaced by the following:

'Third countries other than Switzerland';

(b) in Part B, point 1 is replaced by the following:

'1. Without prejudice to the prohibitions applicable to the plants listed in Annex IIIA(9), (9.1), (18), where appropriate, plants and live pollen for pollination of: <i>Amelanchier</i> Med., <i>Chaenomeles</i> Lindl., <i>Crataegus</i> L., <i>Cydonia</i> Mill., <i>Eriobotrya</i> Lindl., <i>Malus</i> Mill., <i>Mespilus</i> L., <i>Pyracantha</i> Roem., <i>Pyrus</i> L. and <i>Sorbus</i> L., other than fruit and seeds, originating in third countries other than Switzerland and other than those recognised as being free from <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the procedure laid down in Article 18(2), or in which pest-free areas have been established in relation to <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the relevant International Standard for Phytosanitary Measures and recognised as such in accordance with the procedure laid down in Article 18(2)	E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Trentino-Alto Adige: autonomous province of Trento; Tuscany; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesse Umbertiano, Castelvuglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusina, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)
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| <p>2. Without prejudice to the prohibitions applicable to the plants listed in Annex IIIA(9), (9.1), (18), where appropriate, plants and live pollen for pollination of: <i>Cotoneaster</i> Ehrh. and <i>Photinia davidiana</i> (Dcne.) Cardot, other than fruit and seeds, originating in third countries other than those recognised as being free from <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the procedure laid down in Article 18(2), or in which pest-free areas have been established in relation to <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the relevant International Standard for Phytosanitary Measures and recognised as such in accordance with the procedure laid down in Article 18(2)</p> | <p>E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Trentino-Alto Adige: autonomous province of Trento; Tuscany; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)'</p> |
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4. Annex IV is amended as follows:

(a) Section I of Part A is amended as follows:

(i) in the left-hand column of point 53, the text 'Iran' is inserted

(ii) in the left-hand column of point 54, the text 'Iran' is inserted;

(b) Part B is amended as follows:

(i) in the right hand column of point 20.1, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(ii) in the right hand column of point 20.2, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(iii) point 21 is replaced by the following:

'21. Plants and live pollen for pollination of: <i>Amelanchier</i> Med., <i>Chaenomeles</i> Lindl., <i>Cotoneaster</i> Ehrh., <i>Crataegus</i> L., <i>Cydonia</i> Mill., <i>Eriobotrya</i> Lindl., <i>Malus</i> Mill., <i>Mespilus</i> L., <i>Photinia davidiana</i> (Dcne.) Cardot, <i>Pyracantha</i> Roem., <i>Pyrus</i> L. and <i>Sorbus</i> L., other than fruit and seeds	Without prejudice to the prohibitions applicable to the plants listed in Annex IIIA(9), (9.1), (18) and IIIB(1), (2) where appropriate, official statement that: (a) the plants originate in third countries recognised as being free from <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the procedure laid down in Article 18(2), or (b) the plants originate in pest-free areas in third countries which have been established in relation to <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the relevant International Standard for Phytosanitary Measures and recognised as such in accordance with the procedure laid down in Article 18(2), or (c) the plants originate in one of the following Cantons of Switzerland: Berne (with the exceptions of the districts of Signau and Trachselwald), Fribourg, Grisons, Ticino, Vaud, Valais, or	E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Trentino-Alto Adige: autonomous province of Trento; Tuscany; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertiano, Castelguglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusia, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)'
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(d) the plants originate in the protected zones listed in the right-hand column,

or

(e) the plants have been produced, or, if moved into a "buffer zone", kept and maintained for a period of at least 7 months including the period 1 April to 31 October of the last complete cycle of vegetation, on a field:

(aa) located at least 1 km inside the border of an officially designated 'buffer zone' of at least 50 km² where host plants are subject to an officially approved and supervised control regime established at the latest before the beginning of the complete cycle of vegetation preceding the last complete cycle of vegetation, with the object of minimising the risk of *Erwinia amylovora* (Burr.) Winkl. et al. being spread from the plants grown there. Details of the description of this 'buffer zone' shall be kept available to the Commission and to other Member States. Once the 'buffer zone' is established, official inspections shall be carried out in the zone not comprising the field and its surrounding zone of 500 m width, at least once since the beginning of the last complete cycle of vegetation at the most appropriate time, and all host plants showing symptoms of *Erwinia amylovora* (Burr.) Winkl. et al. should be removed immediately. The results of these inspections shall be supplied by 1 May each year to the Commission and to other Member States, and

(bb) which has been officially approved, as well as the 'buffer zone', before the beginning of the complete cycle of vegetation preceding the last complete cycle of vegetation, for the cultivation of plants under the requirements laid down in this point, and

(cc) which, as well as the surrounding zone of a width of at least 500 m, has been found free from *Erwinia amylovora* (Burr.) Winkl. et al. since the beginning of the last complete cycle of vegetation, at official inspection carried out at least:

- twice in the field at the most appropriate time, i.e. once during June to August and once during August to November; and
- once in the said surrounding zone at the most appropriate time, i.e. during August to November, and

	(dd) from which plants were officially tested for latent infections in accordance with an appropriate laboratory method on samples officially drawn at the most appropriate period. Between 1 April 2004 and 1 April 2005, these provisions shall not apply to plants moved into and within the protected zones listed in the right-hand column which have been produced and maintained on fields located in officially designated "buffer zones", according to the relevant requirements applicable before 1 April 2004.	
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(iv) point 21.1 is deleted;

(v) a new point 21.3 is inserted before point 22:

'21.3. From 15 March to 30 June, beehives	There shall be documented evidence that the beehives: (a) originate in third countries recognised as being free from <i>Erwinia amylovora</i> (Burr.) Winsl. et al. in accordance with the procedure laid down in Article 18(2), or (b) originate in one of the following Cantons of Switzerland: Berne (with the exceptions of the districts of Signau and Trachselwald), Fribourg, Grisons, Ticino, Vaud, Valais, or (c) originate in the protected zones listed in the right-hand column, or (d) have undergone an appropriate quarantine measure before being moved.	E, F (Corsica), IRL, I (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Trentino-Alto Adige; autonomous province of Trento; Tuscany; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesse Umbertino, Castलगuglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusina, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), A (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), P, FI, UK (Northern Ireland, Isle of Man and Channel Islands)
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(vi) in the right hand column of point 22, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(vii) in the right hand column of point 23, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(viii) in the right hand column of point 25, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(ix) in the right hand column of point 26, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(x) in the right hand column of point 27.1, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(xi) in the right hand column of point 27.2, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)';

(xii) in the right hand column of point 30, the text is replaced by the following:

'DK, F (Britanny), FI, IRL, P (Azores), UK (Northern Ireland)'.

5. In point 1 and 8, under heading I of Part B of Annex V, the text 'Iran' is inserted after 'India'.

COMMISSION DIRECTIVE 2004/32/EC
of 17 March 2004

amending Directive 2001/32/EC as regards certain protected zones exposed to particular plant health risks in the Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular the first subparagraph of Article 2(1)(h) thereof,

Having regard to the requests made by Ireland, Italy, Austria and Sweden,

Whereas:

- (1) Under Commission Directive 2001/32/EC of 8 May 2001 recognising certain protected zones exposed to particular plant health risks in the Community and repealing Directive 92/76/EEC ⁽²⁾, Ireland and some areas in Italy and Austria were provisionally recognised as protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al. for a period expiring on 31 March 2004.
- (2) From information supplied by Ireland and Austria based on surveys, it appears that the provisional recognition of the protected zones for Ireland and Austria in respect of *Erwinia amylovora* (Burr.) Winsl. et al. should be extended for a further limited period.
- (3) From information supplied by Italy based on surveys, it appears that some areas within Italy should no longer be recognised as protected zones in respect of *Erwinia amylovora* (Burr.) Winsl. et al., whilst other areas should be recognised as 'protected zones' in respect of *Erwinia amylovora* (Burr.) Winsl. et al. for a further limited period.
- (4) Under Directive 2001/32/EC, some areas in Sweden were provisionally recognised as protected zones in respect of beet necrotic yellow vein virus for a period expiring on 31 March 2004.
- (5) From information supplied by Sweden based on surveys, it appears that those areas within Sweden should no longer be recognised as protected zones in respect of beet necrotic yellow vein virus.

(6) Directive 2001/32/EC should, therefore, be amended accordingly.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2001/32/EC is amended as follows:

1. Article 1 is amended as follows:

(a) the second paragraph is replaced by:

'In the case of point (b)(2) of the Annex, for Ireland, for Italy (Apulia, Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Lombardy; Trentino-Alto Adige: autonomous province of Trento; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesse Umbertiano, Castलगuglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusina, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes of Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), and for Austria (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), the said zones are recognised until 31 March 2006.';

(b) the third paragraph is deleted.

2. The Annex is amended in accordance with the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by 20 April 2004 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

⁽¹⁾ OJ L 169, 10.7.2000, p. 1. Directive as last amended by Commission Directive 2003/116/EC (OJ L 321, 6.12.2003, p. 36).

⁽²⁾ OJ L 127, 9.5.2001, p. 38. Directive as last amended by Directive 2003/46/EC (OJ L 138, 5.6.2003, p. 45).

They shall apply those provisions from 21 April 2004.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 17 March 2004.

For the Commission

David BYRNE

Member of the Commission

ANNEX

1. Under heading (b), in point 2, the entry in the right-hand column is replaced by the following:

'Spain, France (Corsica), Ireland, Italy (Abruzzi; Apulia; Basilicata; Calabria; Campania; Emilia-Romagna: provinces of Forlì-Cesena, Parma, Piacenza and Rimini; Friuli-Venezia Giulia; Lazio; Liguria; Lombardy; Marche; Molise; Piedmont; Sardinia; Sicily; Trentino-Alto Adige: autonomous province of Trento; Tuscany; Umbria; Valle d'Aosta; Veneto: except in the province of Rovigo the communes Rovigo, Polesella, Villamarzana, Fratta Polesine, San Bellino, Badia Polesine, Trecenta, Ceneselli, Pontecchio Polesine, Arquà Polesine, Costa di Rovigo, Occhiobello, Lendinara, Canda, Ficarolo, Guarda Veneta, Frassinelle Polesine, Villanova del Ghebbo, Fiesso Umbertino, Castelvuglielmo, Bagnolo di Po, Giacciano con Baruchella, Bosaro, Canaro, Lusina, Pincara, Stienta, Gaiba, Salara, and in the province of Padova the communes Castelbaldo, Barbona, Piacenza d'Adige, Vescovana, S. Urbano, Boara Pisani, Masi, and in the province of Verona the communes Palù, Roverchiara, Legnago, Castagnaro, Ronco all'Adige, Villa Bartolomea, Oppeano, Terrazzo, Isola Rizza, Angiari), and for Austria (Burgenland, Carinthia, Lower Austria, Tirol (administrative district Lienz), Styria, Vienna), Portugal, Finland, United Kingdom (Northern Ireland, Isle of Man and Channel Islands)'

2. Under heading (d), in point 1, the entry in the right-hand column is replaced by the following:

'Denmark, France (Brittany), Ireland, Portugal (Azores), Finland, United Kingdom (Northern Ireland)'

II

(Acts whose publication is not obligatory)

COUNCIL

Information concerning the date of entry into force of the EC-fyROM Stabilisation and Association Agreement

The Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part, signed in Luxembourg on 9 April 2001 ⁽¹⁾, enters into force on 1 April 2004, in accordance with Article 127 of the Agreement, as the last instrument of ratification or approval was deposited on 25 February 2004.

⁽¹⁾ OJ L 84, 20.3.2004.

COMMISSION

COMMISSION DECISION

of 1 October 2003

on the State aid which Germany intends to grant to Frenzel Kyffhäuser Tiefkühlkost GmbH

(notified under document number C(2003) 3383)

(Only the German text is authentic)

(2004/272/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on the interested parties to submit their comments pursuant to those provisions ⁽¹⁾,

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on the interested parties to submit their comments on the state aid.

(4) The Commission received no comments from interested parties. Germany sent comments to the Commission by fax dated 12 April 2001, received on 17 April 2001. Further information was submitted to the Commission by letter dated 18 July 2003, received on 24 July 2003.

II. DESCRIPTION OF THE AID

Whereas:

1. Title

I. PROCEDURE

(1) By letter dated 5 December 1997, received on 10 December 1997, Germany notified the Commission pursuant to Article 88(3) of the EC Treaty of various aid measures benefiting Frenzel Kyffhäuser Tiefkühlkost GmbH. It provided the Commission with further information in its letters dated 7 April 1998, received on 14 April 1998, 20 October 1998, received on 26 October 1998, 9 February 1999, received on 12 February 1999, 13 August 1999, received on 24 August 1999, two letters dated 22 November 1999, received on 25 November 1999 and 26 November 1999 respectively, and letters dated 17 August 2000, received on 22 August 2000, and 29 November 2000, received on 5 December 2000.

(2) In its letter dated 8 February 2001, the Commission informed Germany that it had decided to initiate the procedure provided for in Article 88(2) of the EC Treaty in respect of the State aid.

(5) Guarantee for a company engaged in the processing of vegetables

2. Legal basis

(6) The German authorities informed the Commission that the aid was to be granted on the basis of the Bürgschaftsrichtlinie des Freistaates Thüringen für die gewerbliche Wirtschaft und die freien Berufe (Thuringian guidelines on guarantees for commercial companies and liberal professions) of 8 November 1995. This aid scheme was approved by the Commission in its letter dated 27 December 1996 ⁽³⁾ (SG(96) D/11696). In the Decision approving the aid scheme, the Commission notes that the scheme may not be applied to enterprises involved in the production, processing and marketing of products listed in Annex I to the Treaty. The measure was therefore notified to the Commission as an individual aid.

⁽¹⁾ OJ C 320, 15.11.2001, p. 12.

⁽²⁾ See footnote 1.

⁽³⁾ State aid N 117/1996.

3. Recipient

- (7) The aid benefits the company Frenzel Kyffhäuser Tiefkühlkost GmbH. The company produces frozen food and processes, in particular, root vegetables and potatoes. It is located in the Artern area, which is in an Objective 1 region.

4. Objective

- (8) The aid is intended for the acquisition by the recipient of a manufacturing plant in Ringleben (Thuringia). This manufacturing plant is a vegetable processing company with several processing lines and a refrigerator installation with a potato ventilating system and two freezer units. The purchase price for the fixed assets and the inventory amounts to EUR 3 016 622. The existing processing capacity is not being expanded by the investment.

- (9) The recipient has taken out the following loans for this investment:

Loan	Terms	Loan amount
I. European Recovery Programme ⁽¹⁾	Contract concluded on 22 December 1997, to run until 30 September 2017, repayment of EUR 45 114 per semester from 30 February 2001, final repayment of EUR 45 102, interest 4,75 % p.a. fixed for the entire duration.	EUR 1 533 876 (*)
II. KfW-Mittelstands-programm (reconstruction loan corporation — SME programme) ⁽²⁾	Contract concluded on 22 December 1997, to run until 31 December 2005, repayment of EUR 31 956 per semester starting on 30 June 2000, interest 4,75 % p.a. fixed for the entire duration of the loan. One-off processing fee of 2 %, disagio of 4 %, risk premium 2 %.	EUR 383 469
III. Loan from the company's bank (Sparkasse Döbeln)	Contract concluded on 8 December 1997, to run until 20 December 2007, monthly repayments of EUR 10 737 starting on 31 January 1998, interest 6,5 % p.a. fixed until 30 December 2004, one-off processing fee of EUR 5 113.	EUR 945 890
Total		EUR 2 863 235

(*) All amounts have been rounded off after conversion into euro.

⁽¹⁾ Aid scheme approved by the Commission (aid N 563C/94).

⁽²⁾ Aid scheme approved by the Commission (aid NN 24/96).

5. Type of aid

- (10) For the above loans a State guarantee of 65 % of the amount loaned was granted by the Thüringer Aufbaubank (Thuringia Reconstruction Bank) with priority given to the creditor on the agreed collateral. The loans were paid out on 31 December 1997. The guarantee was granted at the same time, subject to approval by the European Commission.

- (11) Securities provided:

— EUR 2 863 235 first-rank mortgage on the company's real estate in Ringleben,

— assignment of machinery by way of security,

- joint and several guarantee (subject up to a ceiling) by the partner and director, Mr Frenzel,
- assignment of claims under a risk life insurance for Mr Frenzel for an amount of EUR 511 292.

- (12) The following charges applied to the guarantee:
- one-off processing fee of 0,375 % of the obligo,
 - remuneration (0,75 % p.a. of the obligo).
- (13) The German authorities indicated that, notwithstanding the securities provided, the company could not obtain a commercial loan on the free market allowing it to make the purchase without the additional guarantee. The reasons given were as follows: the company's location (Northern Thuringia, where an above-average number of bankruptcies have occurred since German unification), the specific character of the fixed assets (in the event of insolvency, a private investor must be found to take over the assets) and bank practice with regard to the valuation of food stocks.
- (14) Regarding the company's financial position, the German authorities stated that the company's turn-over and cash flow had shown constant increases in the period 1994–1996, yet the company had only a limited share of equity capital (4,3 % in December 1996), which is considered low by both the company and its creditors. In the opinion of the German authorities, the company could not be considered as being in financial difficulty.

6. Aid intensity

- (15) The German authorities provided the following overview of their calculation of the cash value of the loans:

Loan	Loan amount	Grant equivalent
I. European Recovery Programme	EUR 1 533 876	EUR 99 912
II. KfW-Mittelstands-programm (reconstruction loan corporation — SME programme)	EUR 383 469	EUR 13 487
III. Bank loan	EUR 945 890	—
Total	EUR 2 863 235	EUR 113 399

- (16) The value of the guarantee for EUR 1 861 103 (= 65 % of the EUR 2 863 235 loan) amounts to a grant equivalent of EUR 9 306 (= 0,5 % of EUR 1 861 103) according to the German authorities. They justify this value on the basis of the range of 0,5–2 % accepted by the Commission in case N 117/96 for viable enterprises (letter of 27 December 1996, SG (96)D/11696). In a separate letter dated 11 November 1998 (D/54570), the Commission accepted an aid rate of 0,5 % for enterprises which are not in financial difficulty.

7. Duration of the guarantee

- (17) The German authorities provided the Commission with the following information on the period covered by the guarantee:

Loan	Maximum duration of guarantee
I. European Recovery Programme	31 March 2013
II. KfW-Mittelstandsprogramm (reconstruction loan corporation — SME programme)	31 March 2006
III. Bank loan	31 March 2008

III. GROUNDS FOR INITIATING THE PROCEDURE

- (18) A distinction must be made between the loans themselves and the guarantee in respect of those loans.

1. Information injunction with respect to the loans

- (19) Loans I and II were granted on the basis of two aid schemes approved by the Commission (see footnotes 4 and 5). On the basis of the information available to it, the Commission had doubts as to whether the two aid schemes invoked by the German authorities covered sensitive sectors (including agriculture). In view of these doubts, and in accordance with the judgment of the Court of Justice in case C-47/91 ⁽⁴⁾, the Commission considered it necessary to give the German Government formal notice to supply within one month all the documentation, information and data necessary to enable the Commission to determine whether the loans were effectively covered by aid schemes which had been approved previously.

2. Commission's objections to the guarantee

- (20) The Commission had doubts about the compatibility of the guarantee with the common market for the following reasons:
- (21) Under point 5.2 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ⁽⁵⁾, the Commission examines aid in the form of guarantees according to the same rules as are applied to other forms of aid. On the basis of the available information, it was not clear whether or not the recipient was an enterprise in difficulty. As a result, it was unclear which legal basis was to be applied in evaluating the aid: the guidelines on state aid for rescuing and restructuring firms in difficulty ⁽⁶⁾ (restructuring guidelines) or the Community guidelines for State aid in the agriculture sector ⁽⁷⁾ (Community guidelines).
- (22) The Commission had doubts as to whether the notified aid met all the terms of the restructuring guidelines. In particular, the German authorities had not submitted a restructuring plan for the company. Moreover, it was not clear how undue distortions of competition could be avoided and what the recipient's own contribution was. Likewise, the new restructuring guidelines ⁽⁸⁾ excluded aid to newly created firms.
- (23) The Commission also doubted whether the notified aid met all the conditions of point 4.2 of the Community guidelines (investments to improve the processing and marketing of agricultural products). In particular, it was not possible to check whether the aid intensity ceiling was complied with, as it was difficult to calculate the grant equivalents on the basis of the available information and the data sent to the Commission by the German authorities did not appear justified. Moreover, the German authorities had not sent the Commission any information which could have been used to examine compliance with the other conditions of point 4.2 of the Community guidelines.
- (24) The Commission also had doubts as to whether the notified aid comprised an element of aid to the lender. In particular, it was not clear whether the *Land* of Thuringia was assuming a risk which had formerly been assumed free of charge by the bank. Such aid would be deemed merely operating aid, which would be incompatible with the common market.

⁽⁴⁾ Case C-47/91 (Italgrani/Commission) of 5 October 1994, ECR [1994] p. I-4635.

⁽⁵⁾ OJ C 71, 11.3.2000, p. 14.

⁽⁶⁾ OJ C 283, 19.9.1997. As the aid was notified before 30 April 2000, see OJ C 288 of 9.10.1999, as amended by OJ C 121 of 29.4.2000.

⁽⁷⁾ OJ C 232, 12.8.2000, p. 17.

⁽⁸⁾ OJ C 288, 9.10.1999, p. 2.

IV. COMMENTS BY GERMANY

- (25) Germany has not replied to the information injunction (see point III.1).
- (26) The German authorities have said that the recipient was never in financial difficulty. Moreover, it was not a matter of continuing an insolvent enterprise, but a newly established one. The German authorities sent the following data from the company accounts to the Commission, which it believed showed that the company could not be classified as an enterprise in difficulty within the meaning of the restructuring guidelines in the period 1997–1999.

Balance sheet: key figures	1999	1998	1997 (*)
Turnover	EUR 6 149 307	EUR 3 136 264	EUR 887 603
Operating outturn	EUR 161 568	EUR 11 248	EUR 3 579
Cash flow	EUR 436 132	- EUR 585 429 (**)	EUR 49 084
Own capital	EUR 219 344	EUR 77 205	EUR 55 220

(*) Incomplete financial year.

(**) Fire damage meant cash flow was severely reduced that year.

- (27) In addition, by letter dated 18 July 2003 the German authorities sent the Commission updated key balance sheet figures for the company, which they believed showed that even at that moment the company was not in financial difficulty. The German authorities sent the following data from the company accounts to the Commission:

Balance sheet: key figures	2000	2001	2002 (*)
Turnover	EUR 5 941 000	EUR 5 758 000	EUR 6 598 000
Operating outturn	EUR 26 000	EUR 23 000	EUR 65 000
Cash flow	EUR 632 000	EUR 556 000	EUR 402 000
Own capital	EUR 256 000	EUR 258 000	EUR 353 000

(*) Provisional annual accounts.

- (28) The German authorities submitted further comments on the basis of the Community Guidelines for State aid in connection with investments in the processing and marketing of agricultural products ⁽⁹⁾ and the Commission Decision of 22 March 1994 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products and repealing Decision 90/342/EEC ⁽¹⁰⁾. They believed that the aid met the terms of these legal provisions.
- (29) In their letter dated 18 July 2003, the German authorities sent the Commission additional information which it can use to examine the compliance with the conditions of the Community guidelines for State aid in the agriculture sector ⁽¹¹⁾.
- (30) As regards the intensity of the aid, the German authorities made the following comments:

⁽⁹⁾ OJ C 29, 2.2.1996, p. 4.

⁽¹⁰⁾ OJ L 79, 23.3.1994, p. 29.

⁽¹¹⁾ See footnote 7.

- (31) The grant equivalents of the loans were to be calculated as follows:

Loan	Nominal interest rates	Real interest rates	Grant equivalent based on the real interest rate
I. European Recovery Programme	4,75 %	4,84 %	EUR 88 044
II. KfW-Mittelstands-programm (reconstruction loan corporation — SME programme)	4,75 %	5,65 %	—
III. Bank loan	6,5 %	No data	—
Total			EUR 88 044

The differences between the nominal and real interest rates were explained by bank fees and a 2 % disagio, i.e. the real rate that the company had to pay was higher than the nominal rate. The German authorities did not believe that the second loan (KfW) was aid within the meaning of Article 87 of the EC Treaty, as the real interest rate was higher than the Commission's reference rate at that time (5,54 %).

- (32) The grant equivalent of the guarantee was, however, still to be calculated as shown in point II.6. The German authorities have not provided the Commission with any new information on this matter.
- (33) In the opinion of the German authorities, this produced the following calculation of (cumulative) aid intensity: The total grant equivalent from the loans and guarantee was EUR 97 350. Based on the eligible costs of EUR 3 016 622, this gives a (cumulative) aid intensity of 3,23 %.
- (34) The German authorities also informed the Commission that there was no element of aid to the lender. It was not a question of a retroactive guarantee of a loan that had already been granted, but of a loan granted subject to an approved guarantee. The guarantee offer was made to the lender on 21 November 1997. It was subject to approval by the Commission. The loan agreements between the lender and the recipient date from 22 November 1997. The loan agreements signed with the company's bank include the 65 % performance guarantee by the Thüringer Aufbaubank under the clause on collateral. On the basis of these loan agreements and the guarantee (provisionally not in force) the lender granted provisional payment of the loans. This was subject to the purchase price obligation being met without delay and the start-up of business activity. Had the loans not been paid out provisionally, the recipient would have been at risk of losing its market foothold and its entire business strategy would have been jeopardised. The lender did not query the approval of the guarantee as State aid when evaluating the loan, as it expected the Commission to approve it. In the view of the signatories to the loan agreement, therefore, as yet there is no permanent financing of the investment projects.

V. ASSESSMENT OF THE AID

- (35) It should be pointed out that the measure affects both the root vegetable and the potato sectors. Potatoes are listed in Annex I to the Treaty but are not subject to common organisation of the market. Therefore the Commission, in accordance with Article 36 of the EC Treaty and Article 4 of Regulation (EEC) No 26/62 ⁽¹²⁾, must assess that part of the measure affecting potatoes in accordance with Article 88(1) and the first sentence of Article 88(3) of the EC Treaty, pursuant to which it can only make proposals regarding the compatibility of a measure with Community policy. For that part of the measure relating to root vegetables, the competition rules and the rules on State aid apply ⁽¹³⁾.

⁽¹²⁾ OJ 30, 20.4.1962, p. 993/62.

⁽¹³⁾ See Article 43 of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables, OJ L 297, 21.11.1996, p. 1.

1. Application of aid schemes N 563C/94 and NN 24/96 in the agricultural sector

- (36) Both aid schemes involve regional aid. In its communication of 9 December 1999, after the entry into force of the 1998 regional guidelines (the implementation of appropriate measures) ⁽¹⁴⁾, Germany gave an assurance that it was taking into account the fact that the regional guidelines were not applicable to the processing and marketing of Annex I products.
- (37) The Commission Decision on aid No N 563C/94 (approval of changes) lays down that 'Community rules in the agricultural sector and the obligations arising therefrom apply, in particular the requirement individually to notify all cases of application'. A similar statement is also found in an earlier decision approving aid No N 108B/94.
- (38) The Commission Decision on aid No NN 24/96 (ex N 1004/95) refers back to aid No NN 109/93 and stipulates that the 'Community rules for [...] agriculture and fisheries are to be applied'.
- (39) Despite a request to provide information, the German authorities did not provide the Commission with any further information showing that the aid schemes concerned also apply in sensitive sectors (which include agriculture). The Commission cannot therefore assume, on the basis of the available information, that the two aid schemes cover the agricultural sector. The two loans granted (I and II) are therefore to be examined in the light of existing case law ⁽¹⁵⁾ as one-off aid.
- (40) Since the aid schemes concerned (Nos NN 24/96 and N 563C/94) may have been misused within the meaning of Article 16 of Council Regulation (EC) No 659/1999 of 22 March 1999 ⁽¹⁶⁾, the Commission reserves the right to examine their application more closely.

2. Existence of State aid

- (41) Article 87(1) of the EC Treaty prohibits any aid granted by a Member State or payable out of State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain enterprises or the production of certain goods, in so far as it affects trade between Member States.
- (42) An examination of the available information reveals that these conditions are fulfilled. The measures described above (loans I and II and the guarantee) are financed from State resources. They favour a particular enterprise in the agricultural sector in Thuringia. The measure is therefore likely to distort competition ⁽¹⁷⁾ and restrict trade between Member States ⁽¹⁸⁾.
- (43) The German authorities take the view that loan II (KfW-Mittelstandsprogramm) does not involve aid (see recital 31). However, on the basis of the available information, the existence of aid cannot be ruled out. Loan II (like Loan I) was granted under an aid scheme approved by the Commission. In its decision approving the scheme, the Commission stated that it constituted State aid within the meaning of Article 87(1) of the EC Treaty.

⁽¹⁴⁾ OJ C 74, 10.3.1998, p. 9.

⁽¹⁵⁾ See footnote 4.

⁽¹⁶⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁷⁾ According to the case law of the European Court of Justice, when the competitive position of a firm is improved through State aid, competition with rival firms not receiving such aid will generally be distorted (Case 730/79, Philip Morris Holland, [1980] ECR 2671, POINTS 11 and 12).

⁽¹⁸⁾ German intra-Community trade in agricultural products in 2002 was EUR 28 459 million (imports) and EUR 20 573 million (exports). No figures are available for Thuringia. (Source: DG AGRI).

- (44) The fact that the effective interest rate for the loan is above the Commission's reference rate is not in itself sufficient grounds not to apply Article 87 of the EC Treaty. This reference rate is a floor rate that may be increased in situations involving a particular risk. In such cases, the premium may amount to 400 basis points or more if no private bank would have agreed to grant the relevant loan. In the case in question, the enterprise's bank granted a capital market loan at 6,5 % only when the authorities of Thuringia had taken over a guarantee for all three loans, although a series of securities were agreed upon (see point II.5). While the correct reference rate is difficult to determine on the basis of the available information, it cannot at present be assumed that the reference rate of 5,54 % applying during the period concerned is directly applicable, particularly since, as has been shown, the interest rate for the capital market loan is higher, despite the additional security provided by the guarantee. For these reasons, loan II (KfW) must also be regarded as State aid within the meaning of Article 87(1) of the EC Treaty.
- (45) Whether State guarantees constitute State aid must be assessed in the light of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees ⁽¹⁹⁾. Point 2.1.4 of this Commission notice stipulates that guarantees given by the State directly, and guarantees given by enterprises under the dominant influence of public authorities, may constitute State aid within the meaning of Article 87(1) of the Treaty.
- (46) Point 4.2 of the Commission notice lists the conditions that must be met in order for a State guarantee not to be considered State aid. The German authorities have confirmed that the borrower was unable to obtain a loan on the financial markets under market conditions without State intervention. Condition (c) of point 4.2 of the Commission notice is thus not met. Furthermore, although a premium is paid to cover the risk associated with the guarantee borne by the State, it would appear, in the circumstances (limited own capital and confirmation by the German authorities that the guarantee is necessary to obtain the financing), that this premium does not reflect the market price for the guarantee. Condition (d) of point 4.2 is thus not met. In the light of the above, the guarantee must also be regarded as State aid within the meaning of Article 87(1) of the EC Treaty.
- (47) Therefore, Article 87(1) of the EC Treaty definitely applies to the above measures.
- (48) When the decision to open formal proceedings was adopted, the Commission could not rule out that the measure also contained an element of aid in favour of the lender (see point III.2). On the basis of the information which Germany has sent the Commission (see paragraph 34), this can now be ruled out. The guarantee was not taken over for an existing loan or for another financial commitment that had already been entered into, nor was a guaranteed loan used to repay another, non-guaranteed loan. The actions of the company's bank in granting the loan, in particular regarding the provisional use of the loan, seem to favour the borrower rather than the lender. Therefore, on the basis of the available information, the measure is not regarded as State aid in favour of the lender.

3. Applicable legal framework

- (49) Aid in the form of guarantees must be assessed in accordance with the criteria which the Commission normally applies to this kind of aid (investment, rescue and restructuring aid, etc.) ⁽²⁰⁾. Therefore, the appropriate framework for examining the acquisition of assets must be established.

⁽¹⁹⁾ OJ C 71, 11.3.2000, p. 14.

⁽²⁰⁾ See point 5.2 of the Commission notice on the application of Articles 87 and 88 of the EC Treaty to state aid in the form of guarantees.

- (50) The information supplied by the German authorities in their letters dated 12 April 2001 and 18 July 2003 (see recitals 26 and 27) shows that the company's financial position has consistently improved since its creation in 1997. At no point was the registered capital drawn on. Rather, the company capital shown in the balance sheet steadily increased between the company's creation and 2002. Turnover constantly increased, from EUR 888 000 in 1997 to EUR 6 598 000 in 2002. Gross cash flow has declined slightly in recent years, but in 2002 a rate of 6,2 % of total output was achieved, which, according to the German authorities, is in line with the average for the sector. Similarly, the results for the financial year improved. In the light of the above, the company cannot be considered to be in difficulty within the meaning of the restructuring guidelines.
- (51) The Commission normally examines aid for investments to improve the processing and marketing of agricultural products in the light of point 4.2 of the Community guidelines⁽²¹⁾. The German authorities based their initial position of 12 April 2001 on the Community guidelines for State aid in connection with investments in the processing and marketing of agricultural products⁽²²⁾ and the Commission Decision on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products⁽²³⁾. However, this legislation was no longer in force when the formal investigation procedure was opened. In their letter dated 18 July 2003, the German authorities provided further information, which permits the measure to be assessed in the light of the abovementioned Community guidelines.

4. Exemption from the prohibition on State aid under Article 87(3) of the EC Treaty

- (52) Aid for investment to improve the processing and marketing of agricultural products may be granted, provided that the following conditions are met:
- (a) The maximum aid intensity is normally 40 %. For investments in Objective 1 regions the maximum rate is 50 % (point 4.2.3 of the Community guidelines).
 - (b) Investment aid may only be granted to enterprises that can be shown to be economically viable, based on an assessment of their prospects (point 4.2.3).
 - (c) The enterprises must comply with the Community minimum standards regarding the environment, hygiene and animal welfare. Where investments are made in order to comply with newly introduced minimum standards regarding the environment, hygiene and animal welfare, aid may be granted for that purpose (point 4.2.3).
 - (d) Only the costs referred to under point 4.2.3 of the Community guidelines are eligible for support.
 - (e) Investment aid may be granted only where normal market outlets for the products concerned can be found. This must be assessed at the appropriate level in relation to the products concerned, the types of investment and existing and expected capacities (point 4.2.5).
- (a) *Maximum rate of aid*
- (53) The investment is to be made in an Objective 1 area. The maximum aid intensity is therefore 50 %.
- (54) Since it is difficult, in the light of the available information, to determine the aid intensity accurately, the Commission will calculate it as follows: three variants, a 'minimum', a 'standard' and a 'maximum' variant, are examined to determine whether one of them exceeds the maximum aid rate. The Commission used the method of calculation given in Annex I to the regional guidelines⁽²⁴⁾ (see Annex to this Decision).

⁽²¹⁾ See footnote 7.

⁽²²⁾ See footnote 9.

⁽²³⁾ See footnote 10.

⁽²⁴⁾ See footnote 14.

Minimum variant:

- (55) The minimum variant is the calculation proposed by the German authorities. The total grant equivalent of the loans and the guarantee is EUR 97 350. Compared with the total eligible cost of EUR 3 016 622, this gives a (cumulative) aid intensity of 3,23 %.

Standard variant:

- (56) The following assumptions are made for the standard variant: in order to calculate the grant equivalents of the loans, the nominal interest rate is compared with the reference interest rate that the Commission determined for the period concerned. In order to calculate the grant equivalent of the guarantee, the average (1,25 %) of the rates accepted by the Commission for viable enterprises in case N 117/96 is used (see point II.6).

Maximum variant:

- (57) For this variant, the following assumptions are made: in order to calculate the grant equivalents of the loans, the nominal interest rate is compared with a 'market interest rate' for a capital market loan. The 'market interest rate' is taken to be the interest rate fixed by the undertaking's bank for the capital market loan. In order to calculate the grant equivalent of the guarantee, the upper limit (2,0 %) accepted in the Commission Decision for viable enterprises in case N 117/96 is used (see point II.6).
- (58) As can be seen from the following table, in no case is the maximum permissible aid intensity of 50 % exceeded. This condition can therefore be regarded as fulfilled.

	Minimum variant	Standard variant	Maximum variant
Cash value of loans I and II	EUR 88 044	EUR 112 912	EUR 237 476
Cash value of the guarantee	EUR 9 306	EUR 23 264	EUR 37 222
Cumulative aid intensity	3,23 %	4,51 %	9,11 %

(b) *Viability of the enterprise*

- (59) The German authorities examined the company's economic viability and gave assurances that it was sound. As stated in points IV and V.2, the company's financial position has improved over recent years. In addition, capital repayments on the outstanding loans were made according to plan. In the light of the above, it can therefore be assumed that company's favourable development will continue over the next few years. This condition can therefore be regarded as fulfilled.

(c) *Compliance with Community minimum standards*

- (60) The German authorities have expressly confirmed that the recipient fulfils the minimum standards regarding the environment, hygiene and animal welfare within the meaning of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ⁽²⁵⁾. This condition can therefore be regarded as fulfilled.

⁽²⁵⁾ OJ L 160, 26.6.1999, p. 80.

(d) *Eligible costs*

- (61) The cost of building works and technical facilities for processing root vegetables and potatoes as part of the project constitutes eligible expenditure. This expenditure is eligible for subsidies under the Community guidelines. The aid covers part of the cost of purchasing a manufacturing plant in respect of which collective bankruptcy proceedings have been initiated. The recipient acquired the entire fixed capital, including the immovable assets and new and used machinery. Pursuant to point 4.2.4 of the Community guidelines, in conjunction with point 4.4 of the regional guidelines, ⁽²⁶⁾ fixed capital formation resulting from the acquisition of an establishment which has been closed down or which would have been closed down if it had not been acquired, can also be regarded as an initial investment in so far as the establishment does not belong to an enterprise in difficulties. The cost of acquiring the manufacturing plant can therefore be regarded as eligible expenditure under the terms of the Community guidelines.

(e) *Market outlets*

- (62) The German authorities have confirmed that the existence of normal market outlets was assessed at the appropriate level. There are sufficient market outlets. The recipient's products are stocked by all leading retail food outlets in eastern Germany and some of its products are available throughout the country. Customers were also found among discount outlets, which constitute the fastest-growing segment of the retail trade. Furthermore, the recipient's customers include wholesalers and businesses in the expanding home-delivery market for frozen foods. The investment project does not increase the existing processing capacity. This condition can therefore also be regarded as fulfilled.

VI. CONCLUSIONS

- (63) The Commission regrets that Germany failed to respond to the request for information dated 8 February 2001. This is a clear infringement of the obligation to provide legal cooperation laid down in general terms in Article 10 of the EC Treaty and in more specific terms in Article 88 of the EC Treaty and Regulation (EC) No 659/1999 ⁽²⁷⁾. The Commission reserves the right to take further steps against the Federal Republic of Germany on this matter.
- (64) For the reasons set out above, the Commission considers that the aid can be regarded as compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty since it fulfils the conditions laid down in point 4.2 of the Community guidelines for State aid in the agriculture sector and the Commission notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees,

HAS ADOPTED THIS DECISION:

Article 1

The aid, in the form of two low-interest loans with a combined value of EUR 1 917 345 and a guarantee for a loan of EUR 1 861 103, which Germany intends to grant to Frenzel Kyffhäuser Tiefkühlkost GmbH, is compatible with the common market in accordance with Article 87(3)(c) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 1 October 2003.

For the Commission

Franz FISCHLER

Member of the Commission

⁽²⁶⁾ OJ C 74, 10.3.1998, p. 9.

⁽²⁷⁾ OJ L 83, 27.3.1999, p. 1.

ANNEX

Loan I — Standard variant

Half year	Interest	Repayment	Capital repay- ment	Reduction of interest	Net capital repayment	Oustanding balance	Cash value
1/1998	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 895,50
2/1998	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 736,60
1/1999	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 581,98
2/1999	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 431,53
1/2000	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 285,13
2/2000	42 488,37	0,00	42 488,37	6 058,81	36 429,56	1 533 876,00	5 142,68
1/2001	42 488,37	45 114,00	87 602,37	6 058,81	81 543,56	1 488 762,00	5 004,06
2/2001	41 238,71	45 114,00	86 352,71	5 880,61	80 472,10	1 443 648,00	4 725,98
1/2002	39 989,05	45 114,00	85 103,05	5 702,41	79 400,64	1 398 534,00	4 459,24
2/2002	38 739,39	45 114,00	83 853,39	5 524,21	78 329,18	1 353 420,00	4 203,46
1/2003	37 489,73	45 114,00	82 603,73	5 346,01	77 257,73	1 308 306,00	3 958,22
2/2003	36 240,08	45 114,00	81 354,08	5 167,81	76 186,27	1 263 192,00	3 723,15
1/2004	34 990,42	45 114,00	80 104,42	4 989,61	75 114,81	1 218 078,00	3 497,87
2/2004	33 740,76	45 114,00	78 854,76	4 811,41	74 043,35	1 172 964,00	3 282,03
1/2005	32 491,10	45 114,00	77 605,10	4 633,21	72 971,90	1 127 850,00	3 075,29
2/2005	31 241,45	45 114,00	76 355,45	4 455,01	71 900,44	1 082 736,00	2 877,31
1/2006	29 991,79	45 114,00	75 105,79	4 276,81	70 828,98	1 037 622,00	2 687,77
2/2006	28 742,13	45 114,00	73 856,13	4 098,61	69 757,52	992 508,00	2 506,35
1/2007	27 492,47	45 114,00	72 606,47	3 920,41	68 686,07	947 394,00	2 332,76
2/2007	26 242,81	45 114,00	71 356,81	3 742,21	67 614,61	902 280,00	2 166,71
1/2008	24 993,16	45 114,00	70 107,16	3 564,01	66 543,15	857 166,00	2 007,91
2/2008	23 743,50	45 114,00	68 857,50	3 385,81	65 471,69	812 052,00	1 856,10
1/2009	22 493,84	45 114,00	67 607,84	3 207,61	64 400,24	766 938,00	1 711,02
2/2009	21 244,18	45 114,00	66 358,18	3 029,41	63 328,78	721 824,00	1 572,41
1/2010	19 994,52	45 114,00	65 108,52	2 851,20	62 257,32	676 710,00	1 440,02
2/2010	18 744,87	45 114,00	63 858,87	2 673,00	61 185,86	631 596,00	1 313,63
1/2011	17 495,21	45 114,00	62 609,21	2 494,80	60 114,41	586 482,00	1 193,01
2/2011	16 245,55	45 114,00	61 359,55	2 316,60	59 042,95	541 368,00	1 077,94
1/2012	14 995,89	45 114,00	60 109,89	2 138,40	57 971,49	496 254,00	968,20
2/2012	13 746,24	45 114,00	58 860,24	1 960,20	56 900,03	451 140,00	863,60
1/2013	12 496,58	45 114,00	57 610,58	1 782,00	55 828,58	406 026,00	763,93
2/2013	11 246,92	45 114,00	56 360,92	1 603,80	54 757,12	360 912,00	669,00
1/2014	9 997,26	45 114,00	55 111,26	1 425,60	53 685,66	315 798,00	578,64
2/2014	8 747,60	45 114,00	53 861,60	1 247,40	52 614,20	270 684,00	492,66
1/2015	7 497,95	45 114,00	52 611,95	1 069,20	51 542,75	225 570,00	410,90
2/2015	6 248,29	45 114,00	51 362,29	891,00	50 471,29	180 456,00	333,19
1/2016	4 998,63	45 114,00	50 112,63	712,80	49 399,83	135 342,00	259,37
2/2016	3 748,97	45 114,00	48 862,97	534,60	48 328,37	90 228,00	189,28
1/2017	2 499,32	45 114,00	47 613,32	356,40	47 256,92	45 114,00	122,79
2/2017	1 249,66	45 114,00	46 363,66	178,20	46 185,46	0,00	59,74
Total							99 456,96

Loan II — Standard variant

[illegible]

Loan II — Maximum variant

[illegible]