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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 2087/2004
of 7 December 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 8 December 2004.

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

Done at Brussels, 7 December 2004.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽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 Commission Regulation of 7 December 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	103,1
	204	98,8
	999	101,0
0707 00 05	052	92,7
	204	32,5
	999	62,6
0709 90 70	052	108,2
	204	70,4
	999	89,3
0805 10 10, 0805 10 30, 0805 10 50	204	52,8
	388	50,6
	999	51,7
0805 20 10	204	54,2
	999	54,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	68,6
	204	55,3
	464	161,3
	624	80,4
	720	30,2
	999	79,2
0805 50 10	052	49,2
	528	34,1
	999	41,7
0808 10 20, 0808 10 50, 0808 10 90	052	116,3
	388	138,0
	400	86,7
	404	107,4
	512	104,5
	720	67,3
	999	103,4
0808 20 50	720	66,4
	999	66,4

⁽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 2088/2004

of 7 December 2004

amending Regulation (EC) No 2497/2001 and Commission (EC) No 2597/2001 as regards tariff quotas for certain fish and fishery products originating in Croatia and for certain wines originating in Croatia, the former Yugoslav Republic of Macedonia and Slovenia

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded⁽¹⁾, and in particular Article 57(2) thereof,

Having regard to Council Regulation (EC) No 2248/2001 of 19 November 2001 on certain procedures for applying the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part and for applying the Interim Agreement between the European Community and the Republic of Croatia⁽²⁾ and in particular Article 7 thereof,

Having regard to Council Regulation (EC) No 153/2002 of 21 January 2002 on certain procedures for applying 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, and for applying the Interim Agreement between the European Community and the former Yugoslav Republic of Macedonia⁽³⁾, and in particular Article 7 thereof,

Whereas:

(1) By its Decision 2004/778/EC of 11 October 2004⁽⁴⁾ the Council has concluded a Protocol to the Interim Agreement on trade and trade-related matters between the European Community, of the one part, and the Republic of Croatia, of the other part, to take account of the accession of the Czech Republic, the Republic of

Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union, hereinafter 'the enlargement Protocol'. The enlargement Protocol applies on a provisional basis with effect from 1 May 2004.

(2) By its Decision of 22 November 2004⁽⁵⁾ the Council has authorised for the signing and has provided for the provisional application from 1 May 2004 of a Protocol to 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, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union, hereinafter 'the enlargement Protocol'.

(3) Both enlargement protocols provide for new tariff quotas and for changes to the existing tariff quotas laid down in Commission Regulation (EC) No 2497/2001 of 19 December 2001 opening and providing for the administration of Community tariff quotas for certain fish and fishery products originating in the Republic of Croatia⁽⁶⁾ and in Commission Regulation (EC) No 2597/2001 of 28 December 2001 opening and providing for the administration of Community tariff quotas for certain wines originating in the Republic of Croatia, in the former Yugoslav Republic of Macedonia and in the Republic of Slovenia⁽⁷⁾.

(4) To implement the new tariff quotas and the changes to existing tariff quotas provided in the enlargement protocols, it is necessary to amend Regulation (EC) No 2497/2001 and Regulation (EC) No 2597/2001.

⁽¹⁾ OJ L 236, 23.9.2003, p. 33.

⁽²⁾ OJ L 304, 21.11.2001, p. 1. Regulation as amended by Regulation (EC) No 2/2003 (OJ L 1, 4.1.2003, p. 26).

⁽³⁾ OJ L 25, 29.1.2002, p. 16. Regulation as amended by Regulation (EC) No 3/2003 (OJ L 1, 4.1.2003, p. 30).

⁽⁴⁾ OJ L 350, 25.11.2004, p. 1.

⁽⁵⁾ Not yet published in the Official Journal.

⁽⁶⁾ OJ L 337, 20.12.2001, p. 27. Regulation as amended by Regulation (EC) No 607/2003 (OJ L 86, 3.4.2003, p. 18).

⁽⁷⁾ OJ L 345, 29.12.2001, p. 35.

- (5) For the year 2004 the volumes of the new tariff quotas and the increases of the volumes of existing tariff quotas should be calculated as a pro rata of the basic volumes specified in the enlargement protocols, taking into account the part of the period elapsed before 1 May 2004.
- (6) In order to facilitate the management of certain existing tariff quotas provided for in Regulation (EC) No 2497/2001 and in Regulation (EC) No 2597/2001, the quantities imported within the framework of those quotas should be taken into account for charging on the tariff quotas opened in accordance with Regulation (EC) No 2497/2001 and Regulation (EC) No 2597/2001, as amended by this Regulation.
- (7) After the accession of Slovenia to the European Union, the tariff quotas for wines originating in that Member State as provided for in Regulation (EC) No 2597/2001 should lapse. The references to those quotas should therefore be deleted.
- (8) Since the enlargement protocols apply from 1 May 2004, this Regulation should apply from the same date and should enter into force as soon as possible.
- (9) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 2497/2001 is replaced by Annex I to this Regulation.

Article 2

Regulation (EC) No 2597/2001 is amended as follows:

1. The title is replaced by the following:

‘opening and providing for the management of Community tariff quotas for certain wines originating in the Republic of Croatia and in the former Yugoslav Republic of Macedonia’.

2. Article 1 is replaced by the following:

‘Article 1

1. When wines, listed in the Annex, originating in the Republic of Croatia or in the former Yugoslav Republic of Macedonia are put into free circulation in the Community, they shall benefit from an exemption of customs duty,

within the limits of the annual Community tariff quotas specified in this Annex and in accordance with the provisions set out in this Regulation.

2. If any of the countries concerned pay export subsidies in respect of the relevant products, exemption from customs duty within the tariff quotas provided for in the additional protocols concluded by Decisions 2001/919/EC, 2001/918/EC and 2001/916/EC (hereinafter additional protocols on wine) shall be suspended in the case of that country.’

3. Article 3 is replaced by the following:

‘Article 3

Notwithstanding the conditions laid down in point Annex I(5)(a) of to each of the additional protocols on wine, imports of wine within the Community tariff quotas referred to in Article 1(1) shall be subject to the provisions laid down in the applicable protocols on the definition of the concept of originating products and methods of administrative cooperation,

— to the Interim Agreement between the European Community and the Republic of Croatia,

— to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part,

— and to 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.’

4. Article 5 is replaced by the following:

‘Article 5

1. The individual tariff quota for the wines originating in Croatia referred to in Part I of the Annex under order number 09.1588 shall be increased every year.

2. The annual increase referred to in paragraph 1 may be applied only if at least 80 % of the respective volume opened within the previous year has been used.

The Commission shall review the volumes used each year and shall adopt provisions to implement any necessary adjustment of those volumes for Croatia.’

5. The Annex is replaced by the text set out in Annex II to this Regulation.

Article 3

The quantities which, pursuant to Regulation (EC) No 2497/2001 and Regulation (EC) No 2597/2001, have been put into free circulation in the Community since 1 January 2004, within the tariff quotas with order numbers 09.1581, 09.1582, 09.1583, 09.1584, 09.1585, 09.1586, 09.1588, 09.1589, 09.1558 and 09.1559, shall at the entry into force

of this Regulation be taken into account for charging on the respective tariff quotas laid down in the Annex to Regulation (EC) No 2497/2001 and Regulation (EC) No 2597/2001, as amended by this Regulation.

Article 4

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

It shall apply from 1 May 2004.

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

Done at Brussels, 7 December 2004.

For the Commission

László KOVÁCS

Member of the Commission

ANNEX I

'ANNEX

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN codes as they exist at the time of adoption of this Regulation. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

Order No	CN code	TARIC Sub-division	Description	Annual tariff quota volume (net weight)	Tariff quota duty
09.1581	0301 91 10		Trout (<i>Salmo trutta</i> , <i>Oncorhynchus mykiss</i> , <i>Oncorhynchus clarki</i> , <i>Oncorhynchus aguabonita</i> , <i>Oncorhynchus gilae</i> , <i>Oncorhynchus apache</i> and <i>Oncorhynchus chrysogaster</i>): live; fresh or chilled; frozen; dried, salted or in brine; smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	30 tonnes	Exemption
	0301 91 90				
	0302 11 10				
	0302 11 20				
	0302 11 80				
	0303 21 10				
	0303 21 20				
	0303 21 80				
	0304 10 15				
	0304 10 17				
	ex 0304 10 19	40			
	ex 0304 10 91	10			
	0304 20 15				
	0304 20 17				
	ex 0304 20 19	50			
	ex 0304 90 10	11, 17, 40			
	ex 0305 10 00	10			
	ex 0305 30 90	50			
	0305 49 45				
	ex 0305 59 80	61			
	ex 0305 69 80	61			
09.1582	0301 93 00		Carp: live; fresh or chilled; frozen; dried, salted or in brine; smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	210 tonnes	Exemption
	0302 69 11				
	0303 79 11				
	ex 0304 10 19	30			
	ex 0304 10 91	20			
	ex 0304 20 19	40			
	ex 0304 90 10	16			
	ex 0305 10 00	20			
	ex 0305 30 90	60			
	ex 0305 49 80	30			
	ex 0305 59 80	63			
	ex 0305 69 80	63			
09.1583	ex 0301 99 90	80	Sea bream (<i>Dentex dentex</i>) and (<i>Pagellus</i> spp.): live; fresh or chilled; frozen; dried, salted or in brine; smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	35 tonnes	Exemption
	0302 69 61				
	0303 79 71				
	ex 0304 10 38	80			
	ex 0304 10 98	77			
	ex 0304 20 94	50			
	ex 0304 90 97	82			
	ex 0305 10 00	30			
	ex 0305 30 90	70			
	ex 0305 49 80	40			
	ex 0305 59 80	65			
	ex 0305 69 80	65			

Order No	CN code	TARIC Sub-division	Description	Annual tariff quota volume (net weight)	Tariff quota duty
09.1584	ex 0301 99 90 0302 69 94 ex 0303 77 00 ex 0304 10 38 ex 0304 10 98 ex 0304 20 94 ex 0304 90 97 ex 0305 10 00 ex 0305 30 90 ex 0305 49 80 ex 0305 59 80 ex 0305 69 80	15, 17, 28 ⁽¹⁾ 10 85 79 60 84 40 80 50 67 67	Sea bass (<i>Dicentrarchus labrax</i>); live; fresh or chilled; frozen; dried, salted or in brine; smoked; fillets and other fish meat; flours, meals and pellets, fit for human consumption	from 1 January to 31 December 2004: 550 tonnes + 66,66 tonnes increase from 1 May to 31 December 2004 from 1 January to 31 December 2005 and for every year thereafter: 650 tonnes	Exemption
09.1585	1604 13 11 1604 13 19 ex 1604 20 50	10, 19	Prepared or preserved sardines	from 1 January to 31 December 2004: 180 tonnes	6 %
09.1586	1604 16 00 1604 20 40		Prepared or preserved anchovies	from 1 January to 31 December 2004: 40 tonnes + 6,66 tonnes increase from 1 May to 31 December 2004	Exemption
09.1587	1604		Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs	from 1 May to 31 December 2004: 860 tonnes from 1 January to 31 December 2005 and for every year thereafter: 1 550 tonnes	Exemption

⁽¹⁾ From 1 January 2005 the TARIC subdivisions 15, 17 and 28 will be replaced by 22.

ANNEX II

'ANNEX

Notwithstanding the rules for the interpretation of the Combined Nomenclature, the wording for the description of the products is to be considered as having no more than an indicative value, the preferential scheme being determined, within the context of this Annex, by the coverage of the CN codes as they exist at the time of adoption of this Regulation. Where ex CN codes are indicated, the preferential scheme is to be determined by application of the CN code and corresponding description taken together.

PART I: CROATIA

Order No	CN code	TARIC Sub-division	Description	Annual quota volume (in hl)	Tariff quota duty	
09.1588	ex 2204 10 19	91, 99	Sparkling wine, other than Champagne or Asti spumante	From 1 January to 31 December 2004: 30 000 + 9 333,33 increase from 1 May to 31 December 2004 For every year thereafter, from 1 January to 31 December: 44 000 ⁽¹⁾	Exemption	
	ex 2204 10 99	91, 99				
	2204 21 10					
	ex 2204 21 79	79	Other wine of fresh grapes, in containers holding 2 litres or less			
		80				
	ex 2204 21 80	79				
		80				
	ex 2204 21 83 ⁽²⁾	10				
		79				
		80				
	ex 2204 21 84 ⁽³⁾	10				
		79				
		80				
	ex 2204 21 94	10				
		30 ⁽⁴⁾				
	ex 2204 21 98	10				
		30 ⁽⁴⁾				
	ex 2204 21 99	10				
09.1589	2204 29 10		Other wine of fresh grapes, in containers holding more than 2 litres	From 1 January to 31 December 2004: 15 000 + 9 333,33 increase from 1 May to 31 December 2004 For every year thereafter, from 1 January to 31 December: 29 000	Exemption	
	2204 29 65					
	ex 2204 29 75	10				
	2204 29 83					
	ex 2204 29 84	10				
		30 ⁽⁴⁾				
	ex 2204 29 94	10				
		30 ⁽⁴⁾				
	ex 2204 29 98	10				
	30 ⁽⁴⁾					
	ex 2204 29 99	10				

⁽¹⁾ This quota volume shall be increased annually by 10 000 hl, subject to at least 80 % of the eligible quantity having been utilised in the previous year. The annual increase shall be applied until the sum of the tariff quotas under order No 09.1588 and 09.1589 reaches a maximum of 98 000 hl.

⁽²⁾ From 1 January 2005 the CN code ex 2204 21 83 will change to ex 2204 21 84 and the TARIC subdivisions 10, 79 and 80 will change to 59 and 70.

⁽³⁾ From 1 January 2005 the CN code ex 2204 21 84 will change to ex 2204 21 85 and the TARIC subdivisions 10, 79 and 80 will change to 79 and 80.

⁽⁴⁾ From 1 January 2005 the TARIC subdivisions 10 and 30 will change to 20.

PART II: FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Order No	CN Code	TARIC Sub-division	Description	Annual quota volume (in hl)	Tariff quota duty
09.1558	ex 2204 10 19	91, 99	Sparkling wine, other than Champagne or Asti spumante	From 1 January to 31 December 2004: 27 000 + 1 333,33 increase from 1 May to 31 December 2004 For every year thereafter, from 1 January to 31 December: 37 000 ⁽¹⁾	Exemption
	ex 2204 10 99	91, 99			
	2204 21 10		Other wine of fresh grapes, in containers holding 2 litres or less		
	ex 2204 21 79	79			
		80			
	ex 2204 21 80	79			
		80			
	ex 2204 21 83 ⁽²⁾	10			
		79			
		80			
	ex 2204 21 84 ⁽³⁾	10			
	79				
	80				
	ex 2204 21 94	10			
		30 ⁽⁴⁾			
	ex 2204 21 98	10			
		30 ⁽⁴⁾			
	ex 2204 21 99	10			
09.1559	2204 29 10		Other wine of fresh grapes, in containers holding more than 2 litres	From 1 January to 31 December 2004: 273 000 + 59 666,66 increase from 1 May to 31 December 2004 For every year thereafter, from 1 January to 31 December: 354 500 ⁽⁵⁾	Exemption
	2204 29 65				
	ex 2204 29 75	10			
	2204 29 83				
	ex 2204 29 84	10			
		30 ⁽⁴⁾			
	ex 2204 29 94	10			
		30 ⁽⁴⁾			
	ex 2204 29 98	10			
		30 ⁽⁴⁾			
	ex 2204 29 99	10			

⁽¹⁾ From 1 January 2006, this quota volume shall be increased annually by 6 000 hl.

⁽²⁾ From 1 January 2005 the CN code ex 2204 21 83 will change to ex 2204 21 84 and the TARIC subdivisions 10, 79 and 80 will change to 59 and 70.

⁽³⁾ From 1 January 2005 the CN code ex 2204 21 84 will change to ex 2204 21 85 and the TARIC subdivisions 10, 79 and 80 will change to 79 and 80.

⁽⁴⁾ From 1 January 2005 the TARIC subdivisions 10 and 30 will change to 20.

⁽⁵⁾ From 1 January 2006, this quota volume shall be reduced annually by 6 000 hl.

COMMISSION REGULATION (EC) No 2089/2004**of 7 December 2004****fixing the export refunds on beef and veal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal⁽¹⁾, and in particular Article 33(12) thereof,

Whereas:

- (1) Article 33 of Regulation (EC) No 1254/1999 provides that the difference between prices on the world market for the products listed in Article 1 of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Commission Regulations (EEC) No 32/82⁽²⁾, (EEC) No 1964/82⁽³⁾, (EEC) No 2388/84⁽⁴⁾, (EEC) No 2973/79⁽⁵⁾ and (EC) No 2051/96⁽⁶⁾ lay down the conditions for granting special export refunds on certain cuts of beef and veal and certain preserved beef and veal products, and for certain destinations.
- (3) It follows from applying those rules and criteria to the foreseeable situation on the market in beef and veal that the refund should be as set out below.
- (4) With regard to live animals, for reasons of simplification export refunds should no longer be granted for categories with insignificant trade with third countries. Moreover, in the light of the general concern of animal welfare, export refunds for live animals for slaughter should be limited as much as possible. Consequently, export refunds for such animals should only be granted for third countries which for cultural and/or religious reasons traditionally import substantial numbers of animals for domestic slaughter. As to live animals for reproduction, in order to prevent any abuse, export refunds for pure-bred breeding animals should be limited to heifers and cows of no more than 30 months of age.

- (5) Export refunds should be granted for certain destinations on some fresh or chilled meat listed in the Annex under CN code 0201, on some frozen meat listed in the Annex under CN code 0202, on some meat or offal listed in the Annex under CN code 0206 and on some other prepared or preserved meat or offal listed in the Annex under CN code 1602 50 10.
- (6) In the case of meat of bovine animals, boned or boneless, salted and dried, there are traditional trade flows to Switzerland. To allow this trade to continue, the refund should be set to cover the difference between prices on the Swiss market and export prices in the Member States.
- (7) In the case of certain other cuts and preserves of meat or offal shown in the Annex under CN codes 1602 50 31 to 1602 50 80, the Community presence of international trade may be maintained by granting a refund corresponding to that at present available.
- (8) In the case of other beef and veal products, a refund need not be fixed since the Community's share of world trade is not significant.
- (9) Commission Regulation (EEC) No 3846/87⁽⁷⁾ establishes the agricultural product nomenclature for the purposes of export refunds. The refunds are set on the basis of the product codes as defined in that nomenclature.
- (10) In order to simplify customs export formalities for operators, the refunds on all frozen cuts should be brought into line with those on fresh or chilled cuts other than those from adult male bovine animals.
- (11) Checks on products covered by CN code 1602 50 should be stepped up by making the granting of refunds on these products conditional on manufacture under the arrangements provided for in Article 4 of Council Regulation (EEC) No 565/80 of 4 March 1980 on the advance payment of export refunds in respect of agricultural products⁽⁸⁾.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

⁽²⁾ OJ L 4, 8.1.1982, p. 11. Regulation as last amended by Regulation (EC) No 744/2000 (OJ L 89, 11.4.2000, p. 3).

⁽³⁾ OJ L 212, 21.7.1982, p. 48. Regulation as last amended by Regulation (EC) No 2772/2000 (OJ L 321, 19.12.2000, p. 35).

⁽⁴⁾ OJ L 221, 18.8.1984, p. 28. Regulation as last amended by Regulation (EEC) No 3661/92 (OJ L 370, 19.12.1992, p. 16).

⁽⁵⁾ OJ L 336, 29.12.1979, p. 44. Regulation as last amended by Regulation (EEC) No 3434/87 (OJ L 327, 18.11.1987, p. 7).

⁽⁶⁾ OJ L 274, 26.10.1996, p. 18. Regulation as last amended by Regulation (EC) No 2333/96 (OJ L 317, 6.12.1996, p. 13).

⁽⁷⁾ OJ L 366, 24.12.1987, p. 1. Regulation as last amended by Regulation (EC) No 118/2003 (OJ L 20, 24.1.2003, p. 3).

⁽⁸⁾ OJ L 62, 7.3.1980, p. 5. Regulation as last amended by Commission Regulation (EC) No 444/2003 (OJ L 67, 12.3.2003, p. 3).

- (12) Refunds should be granted only on products that are allowed to move freely in the Community. Therefore, to be eligible for a refund, products should be required to bear the health mark laid down in Council Directives 64/433/EEC⁽¹⁾, 94/65/EC⁽²⁾ and 77/99/EEC⁽³⁾, respectively.
- (13) Pursuant to Article 6(2) of Regulation (EEC) No 1964/82, the special refund is to be reduced if the quantity of boned meat to be exported amounts to less than 95 %, but not less than 85 %, of the total weight of cuts produced by boning.
- (14) The negotiations on the adoption of additional concessions, held within the framework of the Europe Agreements between the European Community and the associated central and eastern European Countries, aim in particular to liberalise trade in products covered by the common organisation of the market in beef and veal. To this end, it was decided, *inter alia*, to abolish export refunds on products intended for export to Romania. This country should therefore be excluded from the list of destinations giving rise to the grant of a refund, while ensuring that the abolition of refunds for this country may not lead to the creation of a differentiated refund for exports to other countries.
- (15) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

1. The list of products on which export refunds as referred to in Article 33 of Regulation (EC) No 1254/1999 are granted and the amount thereof and the destinations shall be as set out in the Annex to this Regulation.
2. The products must meet the relevant health marking requirements of:
 - Chapter XI of Annex I to Directive 64/433/EEC,
 - Chapter VI of Annex I to Directive 94/65/EC,
 - Chapter VI of Annex B to Directive 77/99/EEC.

Article 2

In the case referred to in the third subparagraph of Article 6(2) of Regulation (EEC) No 1964/82 the rate of the refund on products falling within product code 0201 30 00 9100 shall be reduced by EUR 14,00/100 kg.

Article 3

The fact of not setting an export refund for Romania shall not be deemed to constitute a differentiation of the refund.

Article 4

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

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

Done at Brussels, 7 December 2004.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 121, 29.7.1964, p. 2012/64. Directive as last amended by Directive 95/23/EC (OJ L 243, 11.10.1995, p. 7).

⁽²⁾ OJ L 368, 31.12.1994, p. 10. Directive as amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽³⁾ OJ L 26, 31.1.1977, p. 85. Directive as last amended by Regulation (EC) No 807/2003 (OJ L 122, 16.5.2003, p. 36).

ANNEX

to the Commission Regulation of 7 December 2004 fixing export refunds on beef

Product code	Destination	Unit of measurement	Refunds (7)
0102 10 10 9140	B00	EUR/100 kg live weight	53,00
0102 10 30 9140	B00	EUR/100 kg live weight	53,00
0102 90 71 9000	B11	EUR/100 kg live weight	41,00
0201 10 00 9110 ⁽¹⁾	B02	EUR/100 kg net weight	71,50
	B03	EUR/100 kg net weight	43,00
	039	EUR/100 kg net weight	23,50
0201 10 00 9120	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 10 00 9130 ⁽¹⁾	B02	EUR/100 kg net weight	97,00
	B03	EUR/100 kg net weight	56,50
	039	EUR/100 kg net weight	33,50
0201 10 00 9140	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0201 20 20 9110 ⁽¹⁾	B02	EUR/100 kg net weight	97,00
	B03	EUR/100 kg net weight	56,50
	039	EUR/100 kg net weight	33,50
0201 20 20 9120	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0201 20 30 9110 ⁽¹⁾	B02	EUR/100 kg net weight	71,50
	B03	EUR/100 kg net weight	43,00
	039	EUR/100 kg net weight	23,50
0201 20 30 9120	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 20 50 9110 ⁽¹⁾	B02	EUR/100 kg net weight	123,00
	B03	EUR/100 kg net weight	71,50
	039	EUR/100 kg net weight	41,00
0201 20 50 9120	B02	EUR/100 kg net weight	58,50
	B03	EUR/100 kg net weight	17,50
	039	EUR/100 kg net weight	19,50
0201 20 50 9130 ⁽¹⁾	B02	EUR/100 kg net weight	71,50
	B03	EUR/100 kg net weight	43,00
	039	EUR/100 kg net weight	23,50
0201 20 50 9140	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 20 90 9700	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0201 30 00 9050	400 ⁽³⁾	EUR/100 kg net weight	23,50
	404 ⁽⁴⁾	EUR/100 kg net weight	23,50

Product code	Destination	Unit of measurement	Refunds (7)
0201 30 00 9060 ⁽⁶⁾	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0201 30 00 9100 ⁽²⁾ ⁽⁶⁾	B08, B09	EUR/100 kg net weight	172,00
	B03	EUR/100 kg net weight	102,00
	039	EUR/100 kg net weight	60,00
	809, 822	EUR/100 kg net weight	152,50
0201 30 00 9120 ⁽²⁾ ⁽⁶⁾	220	EUR/100 kg net weight	205,00
	B08	EUR/100 kg net weight	94,50
	B09	EUR/100 kg net weight	88,00
	B03	EUR/100 kg net weight	56,50
0202 10 00 9100	039	EUR/100 kg net weight	33,00
	809, 822	EUR/100 kg net weight	83,50
	220	EUR/100 kg net weight	123,00
	B02	EUR/100 kg net weight	33,50
0202 10 00 9900	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
0202 20 10 9000	039	EUR/100 kg net weight	16,00
	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	14,00
	039	EUR/100 kg net weight	16,00
0202 20 30 9000	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
	B02	EUR/100 kg net weight	58,50
0202 20 50 9100	B03	EUR/100 kg net weight	17,50
	039	EUR/100 kg net weight	19,50
	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
0202 20 50 9900	039	EUR/100 kg net weight	11,50
	B02	EUR/100 kg net weight	33,50
	B03	EUR/100 kg net weight	10,00
	039	EUR/100 kg net weight	11,50
0202 30 90 9100	B02	EUR/100 kg net weight	23,50
	B03	EUR/100 kg net weight	23,50
	039	EUR/100 kg net weight	11,50
	400 ⁽³⁾	EUR/100 kg net weight	23,50
0202 30 90 9200 ⁽⁶⁾	404 ⁽⁴⁾	EUR/100 kg net weight	23,50
	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
0202 30 90 9200 ⁽⁶⁾	809, 822	EUR/100 kg net weight	37,00
	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00

Product code	Destination	Unit of measurement	Refunds (7)
0206 10 95 9000	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0206 29 91 9000	B02	EUR/100 kg net weight	46,00
	B03	EUR/100 kg net weight	13,00
	039	EUR/100 kg net weight	15,00
	809, 822	EUR/100 kg net weight	37,00
0210 20 90 9100	039	EUR/100 kg net weight	23,00
1602 50 10 9170 ⁽⁸⁾	B02	EUR/100 kg net weight	22,50
	B03	EUR/100 kg net weight	15,00
	039	EUR/100 kg net weight	17,50
1602 50 31 9125 ⁽²⁾	B00	EUR/100 kg net weight	88,50
1602 50 31 9325 ⁽²⁾	B00	EUR/100 kg net weight	79,00
1602 50 39 9125 ⁽²⁾	B00	EUR/100 kg net weight	88,50
1602 50 39 9325 ⁽²⁾	B00	EUR/100 kg net weight	79,00
1602 50 39 9425 ⁽²⁾	B00	EUR/100 kg net weight	30,00
1602 50 39 9525 ⁽²⁾	B00	EUR/100 kg net weight	30,00
1602 50 80 9535 ⁽⁸⁾	B00	EUR/100 kg net weight	17,50

(1) Entry under this subheading is subject to the submission of the certificate appearing in the Annex to amended Regulation (EEC) No 32/82.

(2) The refund is granted subject to compliance with the conditions laid down in amended Regulation (EEC) No 1964/82.

(3) Carried out in accordance with amended Regulation (EEC) No 2973/79.

(4) Carried out in accordance with amended Regulation (EC) No 2051/96.

(5) The refund is granted subject to compliance with the conditions laid down in amended Regulation (EEC) No 2388/84.

(6) The lean bovine meat content excluding fat is determined in accordance with the procedure described in the Annex to Commission Regulation (EEC) No 2429/86 (OJ L 210, 1.8.1986, p. 39). The term 'average content' refers to the sample quantity as defined in Article 2(1) of Regulation (EC) No 765/2002 (OJ L 117, 4.5.2002, p. 6). The sample is to be taken from that part of the consignment presenting the highest risk.

(7) Article 33(10) of amended Regulation (EC) No 1254/1999 provides that no export refunds shall be granted on products imported from third countries and re-exported to third countries.

(8) The refund is granted only on products manufactured under the arrangement provided for in Article 4 of amended Council Regulation (EEC) No 565/80.

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 Commission Regulation (EC) No 2081/2003 (OJ L 313, 28.11.2003, p. 11).

The other destinations are defined as follows:

B00: all destinations (third countries, other territories, victualling and destinations treated as exports from the Community) with the exception of Romania.

B02: B08, B09 and destination 220.

B03: Ceuta, Melilla, Iceland, Norway, Faroe Islands, Andorra, Gibraltar, Holy See, Bulgaria, Albania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, former Yugoslav Republic of Macedonia, the communes of Livigno and Campione d'Italia, Helgoland, Greenland, stores and provisions (destinations referred to in Articles 36 and 45, and if appropriate in Article 44, of Commission Regulation (EC) No 800/1999, as amended (OJ L 102, 17.4.1999, p. 11)).

B08: Turkey, Ukraine, Belarus, Moldova, Russia, Georgia, Armenia, Azerbaijan, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan, Kyrgyzstan, Morocco, Algeria, Tunisia, Libya, Lebanon, Syria, Iraq, Iran, Israel, West Bank/Gaza Strip, Jordan, Saudi Arabia, Kuwait, Bahrain, Qatar, United Arab Emirates, Oman, Yemen, Pakistan, Sri Lanka, Myanmar (Burma), Thailand, Vietnam, Indonesia, Philippines, China, North Korea, Hong Kong.

B09: Sudan, Mauritania, Mali, Burkina Faso, Niger, Chad, Cape Verde, Senegal, Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia, Côte d'Ivoire, Ghana, Togo, Benin, Nigeria, Cameroon, Central African Republic, Equatorial Guinea, São Tomé and Príncipe, Gabon, Congo, Congo (Democratic Republic), Rwanda, Burundi, Saint Helena and dependencies, Angola, Ethiopia, Eritrea, Djibouti, Somalia, Uganda, Tanzania, Seychelles and dependencies, British Indian Ocean Territory, Mozambique, Mauritius, Comoros, Mayotte, Zambia, Malawi, South Africa, Lesotho.

B11: Lebanon and Egypt.

COURT OF JUSTICE

PRACTICE DIRECTIONS **relating to direct actions and appeals**

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES,

HEREBY ADOPTS THE FOLLOWING PRACTICE DIRECTIONS:

Pursuant to Article 125a of its Rules of Procedure,

USE OF TECHNICAL MEANS OF COMMUNICATION

Whereas:

(1) It is in the interest of the efficient conduct of proceedings in direct actions and appeals that practice directions should be issued to agents and lawyers representing parties before the Court, dealing with the submission of pleadings and the preparation and conduct of hearings.

— by telefax (to fax number: (352) 43 37 66),

or

(2) The present directions reflect, explain and complement provisions in the Rules of Procedure and are designed to enable agents and lawyers to take account of the constraints under which the Court operates, particularly as regards the electronic processing of procedural documentation and translation and interpretation requirements.

— as an attachment to an electronic mail (e-mail address: ecj.registry@curia.eu.int).

(3) The Rules of Procedure and the Instructions to the Registrar require the Registrar to receive procedural documents, to ensure that they comply with the provisions of the Rules of Procedure and to assist the Court and Chambers, in particular in the organisation of hearings. In carrying out his duties, the Registrar must satisfy himself that the agents and lawyers comply with these practice directions, requiring them to make good any irregularities of form in documents lodged which do not comply with those provisions or requesting the agent or lawyer concerned to comply therewith.

2. Where transmission is by electronic mail, only a scanned copy of the signed original will be accepted. An ordinary electronic file or one bearing an electronic signature or a computer-generated facsimile signature will not be treated as complying with Article 37(6) of the Rules of Procedure.

Documents should be scanned at a resolution of 300 DPI and wherever possible, in PDF format (images plus text), using Acrobat or Readiris 7 Pro software.

(4) The views of representatives of the agents of the Member States and the institutions acting in proceedings before the Court, and of the Council of the Bars and Law Societies of the European Community (CCBE), have been heard on the drafting of these practice directions,

3. A document lodged by telefax or electronic mail will be treated as complying with the relevant time limit only if the signed original itself reaches the Registry within ten days following such lodgment, as specified in Article 37(6) of the Rules of Procedure. The signed original must be sent without delay, immediately after the despatch of the copy, without any corrections or amendments, even of a minor nature. In the event of any discrepancy between the signed original and the copy previously lodged, only the date of lodgment of the signed original will be taken into consideration.

4. Where, in accordance with Article 38(2) of the Rules of Procedure, a party agrees to be notified by telefax or other technical means of communication, the statement to that effect must specify the telefax number and/or the electronic mail address to which the Registry may send that party documents to be served. The recipient's computer must be equipped with suitable software (for example, Acrobat or Readiris 7 Pro) for reception and display of communications from the Registry, which will be transmitted in PDF format.

PRESENTATION OF PLEADINGS

5. Pleadings and other procedural documents lodged (*) by the parties must be submitted in a form which can be processed electronically by the Court and which, in particular, makes it possible to scan documents and to use character recognition.

For that purpose, the following requirements must be complied with:

1. the paper must be white, unlined and A4 size, with text on one side of the page only;
2. pages of pleadings and annexes, if any, must be assembled in such a way as to be easily separable. They must not be bound together or permanently attached by means such as glue or staples;
3. the text must be in a commonly-used font (such as Times New Roman, Courier or Arial), in at least 12 pt in the body of the text and at least 10 pt in the footnotes, with one and a half line spacing and upper, lower, left and right margins of at least 2,5 cm;
4. the pages of the pleading must be numbered consecutively in the top right-hand corner. That numbering must also cover all the pages of any annexes to the pleading, so as to make it possible to check that all the pages of the annexes have been duly scanned.
6. The following information must appear on the first page of the pleading:
 1. the title of the pleading (application, appeal, defence, response, reply, rejoinder, application for leave to intervene, statement in intervention, observations on the statement in intervention, objection of inadmissibility, etc.).

Where a response seeks an order setting aside in whole or in part the decision of the Court of First Instance on a plea in law not raised in the appeal, the title of the pleading must indicate that the document is a response and cross-appeal;

2. the case number (C .../...), if it has already been notified by the Registry;
3. the names of the applicant (appellant) and defendant (respondent) and in appeals, the identification of the decision under appeal and the parties before the Court of First Instance;
4. the name of the party on whose behalf the pleading is lodged.

7. Each paragraph of the pleading must be numbered.

8. The signature of the agent or lawyer acting for the party concerned must appear at the end of the pleading.

FORM AND CONTENT OF THE PRINCIPAL TYPES OF PLEADING

A. Direct actions

Application initiating proceedings

9. An application must contain the statements prescribed by Article 38(1) and (2) of the Rules of Procedure.
10. The following must appear at the beginning of each application:
 1. the applicant's name and address;
 2. the name and capacity of the applicant's agent or lawyer;
 3. the identity of the party or parties against whom the action is brought;
 4. the statements referred to in Article 38(2) of the Rules of Procedure (address for service in Luxembourg and/or agreement to service by telefax or any other technical means of communication).
11. In the case of an application for annulment, a copy of the contested measure must be annexed to the application and identified as such.

(*) The Court's postal address is:
Court of Justice of the European Communities
L-2925 LUXEMBOURG.

12. Each application should be accompanied by a summary of the pleas in law and main arguments relied on, intended to facilitate publication in the Official Journal of the notice prescribed by Article 16(6) of the Rules of Procedure, which will be prepared by the Registry. The summary in question must not be more than two pages long.
13. The precise wording of the forms of order sought by the applicant must be specified either at the beginning or the end of the application.
14. The introductory part of the application must be followed by a brief account of the facts giving rise to the dispute.
15. The structure of the legal argument must reflect the pleas in law relied upon. After the account of the facts giving rise to the dispute, a summary outline of those pleas in law should be given.

Defence

16. The defence must contain the statements prescribed by Article 40(1) of the Rules of Procedure.
17. In addition to the case-number and the applicant's name, the following must appear at the beginning of each defence:
 1. the defendant's name and address;
 2. the name and capacity of the defendant's agent or lawyer;
 3. an address for service in Luxembourg and/or agreement to service by telefax or other technical means of communication (second subparagraph of Article 40(1) of the Rules of Procedure).
18. The precise wording of the forms of order sought by the defendant must be specified either at the beginning or at the end of the defence.
19. The structure of the legal argument must, so far as is possible, reflect that of the pleas in law put forward in the application.
20. The factual and legal background is to be recapitulated in the defence only in so far as its presentation in the application is disputed or calls for further particulars. If any fact alleged by the other party is contested it must be clearly indicated and the basis on which it is challenged must be stated explicitly.

Reply and rejoinder

21. The reply and rejoinder must not recapitulate the factual and legal background except in so far as its presentation in the previous pleadings is disputed or, exceptionally, calls for further particulars. If any fact alleged by the other party is contested it must be clearly indicated and the basis on which it is challenged must be stated explicitly.

Statement in intervention

22. The statement in intervention must develop no arguments that are not new in relation to those put forward by the main party. It may be confined to a mere reference to the other arguments.

The statement in intervention must not recapitulate the factual and legal background except in so far as its presentation in the previous pleadings is disputed or, exceptionally, calls for further particulars. If any fact alleged by the other party is contested it must be clearly indicated and the basis on which it is challenged must be stated explicitly.

B. Appeals

The appeal

23. An appeal must contain the statements prescribed by Article 112(1) of Rules of Procedure.
24. The following must appear at the beginning of each appeal:
 1. the appellant's name and address;
 2. the name and capacity of the appellant's agent or lawyer;
 3. the identification of the decision of the Court of First Instance appealed against (type of decision, formation of the Court, date and number of the case) and the names of the parties before the Court of First Instance;
 4. the date on which the decision of the Court of First Instance was notified to the appellant;
 5. an address for service in Luxembourg and/or agreement to service by telefax or other technical means of communication.
25. A copy of the decision of the Court of First Instance appealed against must be annexed to the appeal.

26. The appeal should be accompanied by a summary of the grounds of appeal and main arguments relied on, intended to facilitate publication in the Official Journal of the notice prescribed by Article 16(6) of the Rules of Procedure. The summary in question must not be more than two pages long.
27. The precise wording of the forms of order sought by the appellant must be specified either at the beginning or at the end of the appeal (Article 113(1) of Rules of Procedure).
28. It is not generally necessary to set out the background to the dispute or its subject matter; it will be sufficient to refer to the decision of the Court of First Instance.
29. The structure of the legal arguments must reflect the grounds, in particular errors of law, relied upon in support of the appeal. A summary outline of those grounds should be given at the beginning of the appeal.

Response

30. A response must contain the statements prescribed by Article 115(1) of the Rules of Procedure.
31. The following must appear at the beginning of each response, in addition to the case number and the appellant's name:
 1. the name and address of the party lodging it;
 2. the name and capacity of the agent or lawyer acting for that party;
 3. the date on which notice of the appeal was served on the party;
 4. an address for service in Luxembourg and/or agreement to service by telefax or any other technical means of communication.
32. The precise wording of the forms of order sought by the party lodging the response must be specified either at the beginning or at the end of the response.
33. If the response seeks an order setting aside, in whole or in part, the decision of the Court of First Instance on a plea in law not raised in the appeal, that fact must be indicated in the title of the pleading (Response and Cross-appeal).
34. The structure of the legal arguments must, so far as is possible, reflect the grounds of appeal put forward by the

appellant and/or, as appropriate, the grounds put forward by way of cross-appeal.

35. Since the factual and legal background has already been set out in the judgment under appeal, it is to be recapitulated in the response only quite exceptionally, in so far as its presentation in the appeal is disputed or calls for further particulars. Any fact challenged must be clearly indicated, and the point of fact or law in question indicated explicitly.

Reply and rejoinder

36. As a rule, the reply and rejoinder will not recapitulate any more the factual and legal background. Any fact challenged must be clearly indicated, and the point of fact or law in question indicated explicitly.

Statement in intervention

37. The statement in intervention must develop no arguments that are not new in relation to those put forward by the main party. It may be confined to a mere reference to the other arguments.

The statement in intervention must not recapitulate the factual and legal background except in so far as its presentation in the previous pleadings is disputed or, exceptionally, calls for further particulars. Any fact challenged must be clearly indicated, and the point of fact or law in question indicated explicitly.

ANNEXES TO PLEADINGS

38. Legal argument submitted for consideration by the Court must appear in the pleadings and not in the annexes.
39. Only documents mentioned in the actual text of a pleading and necessary in order to prove or illustrate its contents may be submitted as annexes.
40. Annexes will be accepted only if they are accompanied by a schedule of annexes (Article 37(4) of the Rules of Procedure). That schedule must indicate for each document annexed:
 1. the number of the annex;
 2. a short description of the document (e.g. 'letter', followed by its date, author and addressee and its number of pages);

3. a reference to the page and paragraph in the pleading at which the document is mentioned and from which the need to produce it is apparent.
41. If, for the convenience of the Court, copies of judgments, legal writings or legislation are annexed to a pleading, they must be separate from the other annexes.
42. Each reference to a document lodged must state the relevant annex number as given in the schedule of annexes in which it appears and indicate the pleading to which it is annexed. In appeal proceedings, where the document has already been produced before the Court of First Instance, the identification used for that document before the Court of First Instance must also be given.

DRAFTING AND LENGTH OF PLEADINGS

43. With a view to avoiding delay in proceedings, when drafting pleadings the following points in particular must be taken into consideration:

- the case is examined on the basis of the pleadings; in order to facilitate that examination, documents must be structured and concise and must avoid repetition,
- pleadings will, as a general rule, be translated; in order to facilitate translation and to make it as accurate as possible sentences should be simple in structure and vocabulary should be simple and precise,
- the time needed for translation and for examination of the case-file is proportionate to the length of the pleadings lodged, so that the shorter the pleadings, the swifter the disposal of the case.

44. It is the Court's experience that, save in exceptional circumstances, effective pleadings need not exceed 10 or 15 pages and replies, rejoinders and responses can be limited to 5 to 10 pages.

APPLICATIONS FOR EXPEDITED PROCEDURE

45. A party applying by separate document under Article 62a of the Rules of Procedure for a case to be decided by the Court by expedited procedure must briefly state the reasons for the special urgency of the case. Save in exceptional circumstances, that application must not exceed five pages.

46. As the expedited procedure is largely oral, the pleading of the party requesting it must be confined to a summary of the pleas relied upon. Such pleadings must not, save in exceptional circumstances, exceed 10 pages.

APPLICATIONS FOR LEAVE TO LODGE A REPLY IN APPEAL PROCEEDINGS

47. The President may, on application, allow a reply to be lodged if it is necessary in order to enable the appellant to defend its point of view or in order to provide a basis for the decision on the appeal.

Save in exceptional circumstances such an application must not exceed 2 to 3 pages and must be confined to summarising the precise reasons for which, in the appellant's opinion, a reply is necessary. The request must be comprehensible in itself without any need to refer to the appeal or the response.

APPLICATIONS FOR HEARING OF ORAL ARGUMENT

48. The Court may decide not to hear oral argument where none of the parties has applied to be heard (Articles 44a and 120 of the Rules of Procedure). In practice, it is rare for a hearing to be organised in the absence of such an application.

The application must specify why the party wishes to be heard. That reasoning must be based on a real assessment of the benefit of a hearing to the party in question and must indicate the documentary elements or arguments which that party considers it necessary to develop or disprove more fully at a hearing. It is not sufficient to provide a general statement of reasons referring to the importance of the case or of the questions to be decided.

PREPARATION AND CONDUCT OF HEARINGS

49. Before the hearing begins the agents or lawyers are called to a short meeting with the relevant formation of the Court, in order to plan the hearing. At that point the Judge-Rapporteur and the Advocate General may indicate the matters they wish to hear developed in the arguments.

50. Oral argument is limited to 30 minutes maximum before the full Court, the Grand Chamber or a chamber of five Judges and to 15 minutes maximum before a Chamber of three Judges. Before any formation the presentation of an intervenor's argument is limited to 15 minutes maximum.

Speaking time may exceptionally be extended beyond those limits on application made to the President of the formation concerned together with a detailed statement of reasons. The application must reach the Court as soon as possible and in order to be taken into consideration, at the latest two weeks before the date of the hearing.

The notification of the hearing asks the agents and lawyers to inform the Registry of the likely duration of their oral arguments. The information supplied is used in the planning of the business of the Court and the Chambers, and it is not possible to exceed the speaking time requested.

51. Having read the written pleadings, the Judges and the Advocate General are already familiar with the case, its subject matter and the pleas in law and arguments put forward by the parties. The purpose of oral argument is not to present a party's point of view afresh but to clarify any matters which the agent or lawyer regards as particularly important, especially those referred to in the application for a hearing (see paragraph 42 above). Repetition of what has already been stated in the written pleadings must

be avoided; if necessary, a reference to the pleadings during the course of the oral argument will suffice.

Oral submissions should begin by outlining the plan to be followed.

52. Very frequently the Judges and Advocate General will listen to oral argument via simultaneous interpretation. In order to make that interpretation possible, agents and lawyers should speak at a natural and unforced pace and use short sentences of simple structure.

It is inadvisable to read out a text prepared in advance. It is preferable to speak on the basis of properly structured notes. If the oral argument is, nevertheless, prepared in writing, account should be taken in drafting the text of the fact that it is to be delivered orally and ought therefore to come as close as possible to oral exposition. To facilitate interpretation, agents and lawyers are requested to send the text or written outline of their oral argument by fax in advance to the Interpretation Division (fax (352) 43 03 36 97).

Done at Luxembourg, 15 October 2004.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 December 2003

on State aid implemented by France for France 2 and France 3

(notified under document number C(2003) 4497)

(Only the French text is authentic)

(Text with EEA relevance)

(2004/838/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) On 10 March 1993, Télévision Française 1 SA (hereinafter TF1) submitted a complaint to the Commission concerning the methods used to finance and operate the public broadcasters France 2 and France 3⁽²⁾. The complaint alleged infringements of Article 81, Article 86(1), and Article 87 of the Treaty.
- (2) With regard to Article 81 of the Treaty, TF1 argued that France 2 and France 3 had implemented a number of concerted practices which had as their object and effect the restriction of competition. As far as Article 86 was concerned, TF1 considered that the French State was maintaining in force measures that were contrary to the principle of equal treatment of public and private enterprises and imposed or encouraged anticompetitive agreements. Lastly, as regards Article 87 of the Treaty, TF1 claimed that the licence fee, various grants and capital injections and authorisations to incur deficits which France 2 and France 3 received in the early 1990s constituted State aid. TF1 also regarded as a measure with equivalent effect to State aid the fact that the French Broadcasting Authority could not impose fines on the public broadcasters. TF1 alleged that these State aid measures had enabled the public broadcasters to disregard all commercial profitability constraints by outbidding for the purchase of television rights and offering introductory prices and artificial reductions on their advertising slots or sponsorship activities.

⁽¹⁾ OJ C 340, 27.11.1999, p. 57.

⁽²⁾ For the sake of clarity, this Decision will refer to the broadcasters only as 'France 2' and 'France 3' which in September 1992 replaced the names 'Antenne 2' and 'France Régions 3'.

- (3) On 16 July 1993, the Commission sent a request for information to TF1, which replied by letter dated 30 September 1993. A request for information was addressed on 12 August 1993 to the French authorities, which replied by letter dated 9 December 1993.
- (4) On 17 March 1994, TF1 wrote to the Commission reiterating the main points set out in the complaint.
- (5) By letter of 23 September 1994 and in a document dated 12 December 1994, TF1 provided further information. During the same period, several meetings took place between Commission representatives and representatives of TF1.
- (6) By letter dated 9 June 1995, TF1 expressed concern about the examination of the complaint. The Commission replied by letter of 5 July 1995 that the study it had ordered on the funding of public service broadcasting in all the Member States was not yet available.
- (7) By letter dated 3 October 1995, TF1 called on the Commission to act. By letter of 11 December 1995, the Commission informed TF1 that it had requested further information from the French authorities by letter dated 21 November 1995. By means of a document dated 27 November 1995, TF1 provided additional information.
- (8) On 2 February 1996, TF1 brought an action before the Court of First Instance of the European Communities against the Commission for failure to act.
- (9) By letter of 16 February 1996, the French authorities replied to the request for information addressed to them on 21 November 1995. By letters dated 22 February, 28 June, 4 October and 18 October 1996, the Commission sent further requests for information to the French authorities, which replied by means of a number of letters and fax messages dated 21 March, 28 March, 12 April, 18 July and 20 December 1996.
- (10) By letter dated 10 March 1997, TF1 lodged an additional complaint with the Commission.
- (11) In a letter addressed to TF1 on 15 May 1997, the Commission stated that in its view no measure taken by the French State infringed Article 86 read in conjunction with Articles 81 and 82 of the Treaty.
- (12) By letter dated 21 October 1997, the French authorities provided the Commission with further information.
- (13) On 10 July 1998, a meeting was held between the Commission and TF1.
- (14) By decision adopted on 2 February 1999, the Commission rejected the arguments set out in TF1's complaint and based on Articles 81 and 82 of the Treaty.
- (15) On 26 February 1999, the Commission issued an injunction requiring the French authorities to provide information; the latter replied by letter dated 29 April 1999.
- (16) With the entry into force of the Treaty of Amsterdam on 1 May 1999, the Protocol on the system of public broadcasting in the Member States (hereinafter the Protocol) was annexed to the Treaty.

- (17) On 3 June 1999, the Court of First Instance delivered a judgment declaring that the Commission had failed to fulfil its obligations by failing to adopt a decision concerning the part of the complaint lodged by TF1 concerning State aid ⁽³⁾.
- (18) By letter dated 27 September 1999, the Commission informed France that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the investment grants received by France 2 and France 3 and the capital injections received by France 2 between 1988 and 1994.
- (19) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽⁴⁾. The Commission invited interested parties to submit their comments on the measures concerned.
- (20) A meeting was held between the French authorities and the Commission on 19 November 1999. The French authorities submitted their comments by letter dated 10 December 1999. On 1 February 2000, the Association of Commercial Television in Europe (hereinafter the ACT) submitted its comments to the Commission. The French authorities reacted to those comments by letter dated 15 June 2000.
- (21) Meetings took place on 10 February 2000, between the Commission and representatives of TF1, then on 6 April and 2 October 2000, between the Commission and representatives of the French authorities and France Télévisions.
- (22) The communication from the Commission on the application of State aid rules to public service broadcasting ⁽⁵⁾ (hereinafter the communication) was published on 15 November 2001. It sets out the principles which the Commission intends to follow when examining public funding measures granted to public broadcasters.
- (23) By letters dated 29 July, 18 October and 16 December 2002, and 21 January, 20 March and 15 April 2003, the Commission requested further information from the French authorities, which replied by letters dated 19 August 2002 and 2 January, 11 February, 12 February, 19 May, 26 August and 7 November 2003.
- (24) On 20 November 2002 and 11 June 2003, meetings were held between the Commission and representatives of the French authorities and France Télévisions; on 14 April 2003, a meeting was held between the Commission and representatives of TF1.
- (25) This Decision relates only to the financial measures in respect of which the decision was taken to initiate the Article 88(2) procedure, namely the investment grants received by France 2 and France 3 and the capital injections received by France 2 between 1988 and 1994. It does not deal with the television licence fee introduced by Act No 49-1032 of 30 July 1949, which was excluded from the scope of the decision to initiate the procedure.
- (26) Nevertheless, in order to gain a comprehensive view of the financial relations between the French State and the public broadcasters France 2 and France 3 over the period covered by this Decision, the Commission must take account not only of the investment grants and capital injections but also of the licence fee. It will consequently refer in this Decision to the licence fee in so far as is necessary for its analysis of the financial measures referred to in recital 25.

⁽³⁾ Judgment of 3 June 1999 in Case T-17/96 *TF1 v Commission* [1999] ECR II-1757.

⁽⁴⁾ See footnote 1.

⁽⁵⁾ OJ C 320, 15.11.2001, p. 5.

II. DETAILED DESCRIPTION OF THE MEASURES

- (27) France 2 and France 3 are financed by a combination of the licence fee and advertising and sponsorship income. The licence fee is the ordinary source of public funding for the French public broadcasters. Nevertheless, over the period 1988 to 1994, France 2 and France 3 also received investment grants and France 2 received capital injections.

A. Investment grants and other grants

- (28) Between 1988 and 1994, France 2 and France 3 received from the French State the investment grants and other grants set out in tables 1 and 2.

TABLE 1

Grants received by France 2

(FRF million) (°)

	1988	1989	1990	1991	1992	1993	1994
Investment grants	130	136	—	178,3	195	139	—
Other grants	—	—	0,74	86,52	—	—	21
Total grants	130	136	0,74	264,82	195	139	21

(*) The differences between some of the figures given in these tables and those appearing in the decision to initiate the formal investigation procedure derive from information provided by the French authorities in the course of the procedure.

TABLE 2

Grants received by France 3

(FRF million) (°)

	1988	1989	1990	1991	1992	1993	1994
Investment grants	50	100	40	80	145	159	—
Other grants	—	—	—	—	—	4,5	—
Total grants	50	100	40	80	145	163,5	—

(*) The differences between some of the figures given in these tables and those appearing in the decision to initiate the formal investigation procedure derive from information provided by the French authorities in the course of the procedure.

B. Capital injections

- (29) During the period under consideration, France 2 also received three capital injections from the French State, in 1991 (FRF 500 million), 1993 (FRF 55 million) and 1994 (FRF 355 million).
- (30) With the exception of the licence fee, the investigation has shown that France 2 and France 3 did not receive other public funding enabling them to finance their activities.

III. COMMENTS FROM INTERESTED PARTIES

- (31) In the course of the formal investigation procedure, the Commission received, by letter dated 1 February 2000, comments from the ACT, which represents most of the commercial television broadcasters in the Community.

- (32) By way of introduction, the ACT stated that the private broadcasters TF1, M6 and Canal + had been required to fulfil public service obligations without receiving any corresponding financial compensation from the State and that the public service obligations imposed on France 2 and France 3 therefore in no way justified their public funding. It also regretted that certain items of information, such as the additional costs incurred by the public broadcasters on account of their public service remits or the content of their reorganisation plan, did not appear in the decision to initiate the formal investigation procedure. It nevertheless confirmed the Commission's analysis of the effect of the aid measures in question on competition and trade between Member States.
- (33) The ACT claimed, firstly, that the licence fee constituted State aid following the liberalisation of broadcasting and that it was new aid, since the licence fee was paid to France 2 and France 3 each year. It concluded from this that the Commission should have included the licence fee among the measures covered by the formal investigation procedure and took the view that the licence fee could not be declared compatible with the common market under Article 87(3)(c) or Article 86(2) of the Treaty. The public funding of France 2 and France 3 was unjustified in its opinion insofar as the private broadcasters had similar public service obligations to those of the public broadcasters but did not receive the same financial compensation from the State.
- (34) As regards the investment grants and capital injections, the ACT took the view that such aid was not linked to a precise cultural project and consequently could not be justified pursuant to Article 87(3)(d) of the Treaty. It also considered that the measures constituted operating aid and that the exemption for rescue and restructuring aid to firms in difficulty could not be applied to the case in point since the French authorities had not communicated the restructuring plan for the broadcasters to the Commission.
- (35) Lastly, after recalling the methodology that the Commission should follow for assessing State aid in the light of Article 86(2) of the Treaty, the ACT argued that the investment grants and capital injections under examination did not meet the criteria laid down by that provision insofar as they constituted exceptional, temporary aid and were not paid in order to finance additional public service tasks.
- (36) In conclusion, the ACT therefore called on the Commission to adopt a negative final decision on the investment grants paid to France 2 and France 3 and the capital injections granted to France 2, to initiate the formal investigation procedure in respect of the licence fee and to provide it with fuller information on the public service obligations of the two broadcasters and the content of their reorganisation plan.

IV. COMMENTS FROM FRANCE

A. Decision to initiate the formal investigation procedure

- (37) The French authorities commented by letter dated 10 December 1999 on the decision to initiate the formal investigation procedure. They stated that their letters dated 20 December 1996 and 29 April 1999 formed an integral part of those comments. The points developed in those two letters will be summarised here only where they did not appear already in the letter of 10 December 1999.
- (38) The French authorities began by reviewing the consequences of the liberalisation of broadcasting. They considered that the privatisation of TF1 had suddenly and unexpectedly weakened France 2's financial stability since, from 1987 onwards, TF1's advertising income rose steeply while that of France 2 stagnated. The French authorities ascribed that trend to two factors: on the one hand, TF1's programme schedule had been redirected, for commercial reasons, towards housewives under 50 years of age, the audience of most interest to advertisers, whereas the target audience for the public broadcasters was broad and diversified; on the other hand, the rules laid down by law and regulatory action allowed public broadcasters more limited access to advertising resources than private broadcasters.

- (39) Programme purchase and production costs had also risen sharply. Since the number of broadcasters had doubled in the space of four years, competition had become keener on the programmes market, while the new operators had injected additional cash into that market. As a result, the costs of programmes of all types had increased. To compensate for such inflation, the two public broadcasters drew from their stock of programmes. Since they received less funding and were less frequently renewed, those programmes became less attractive, causing among other things a slump in France 2's audience and therefore a fall in its advertising revenue. Falling advertising incomes and rising costs thus brought about a deterioration in the financial situation of the two public broadcasters.
- (40) The French authorities claimed that the State was forced to intervene in order to ensure the continued operation of the public channels and performance of their public service tasks, thereby maintaining pluralism. Those public service tasks were reflected in a general obligation to achieve certain quality standards and to broadcast specific types of programme. They derived from the notion that the existence of general-interest public channels reaching a sufficiently wide audience was a necessary condition for pluralism of information, variety of programmes and diversified support for TV and film production. The performance of these tasks resulted in both an additional cost and a loss of advertising income for the public broadcasters. Between 1988 and 1994, the deterioration in their economic situation threatened to jeopardise their survival and thus obstruct the performance of their public service tasks. The State therefore had to intervene through investment grants and capital injections. The spontaneous growth of the licence fee could not absorb the rapid increase in programme costs and halt the broadcasters' economic decline. The French authorities considered that the State intervention in favour of France 2 and France 3 was compatible with the common market pursuant to both Article 86(2) and Article 87(3)(c) of the Treaty and the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽⁶⁾.
- (41) They argued that the investment grants awarded to France 2 and France 3 were justified by the need to help them cope with the increase in programme costs. Furthermore, following an audit by the consultants Coopers & Lybrand, the two public broadcasters drew up a strategic plan in July 1991, comprising for each channel an internal reorganisation plan and a redundancy programme designed to generate savings, and setting out a strategy for meeting viewers' expectations more effectively while asserting their specific identity as public service broadcasters. The State supported the implementation of this strategic plan with additional finance in the form of the abovementioned investment grants and in the case of France 2, a capital injection in order to consolidate the structure of its balance sheet. The first injection of FRF 500 million having proved insufficient, the State decided to grant France 2 two more capital injections in 1993 and 1994, the latter being implemented following a fresh audit by Coopers & Lybrand and at the same time as a further cost cutting plan. These recapitalisation measures enabled France 2's financial situation to be put onto a sounder footing. The French authorities consider that these financing measures enabled the two public broadcasters to adjust to the new competitive environment.
- (42) The French authorities pointed out that the aid measures for the public broadcasters were granted against a general background of the redefinition of their public service tasks and their relations with the State through the conclusion of target-setting contracts.
- (43) They stated, lastly, that the markets in television audiences, programmes and advertising were national in size and claimed that the Commission had not demonstrated how intra-Community trade had been affected by the public financing measures in question.

⁽⁶⁾ OJ C 368, 23.12.1994, p. 12.

- (44) In their reply dated 29 April 1999, the French authorities commented on the position of France 2 and France 3 on the markets in the acquisition of broadcasting rights and advertising. They stated that the public broadcasters were unable to threaten the positions of the commercial channels on the markets in the acquisition of broadcasting rights, since their financial capacities were smaller and their programming had to meet standards of quality and diversity, whereas the commercial channels offered only programmes that were attractive in terms of audience ratings. The French authorities also denied that France 2 and France 3 had pursued an 'artificially low' pricing policy in the sale of advertising slots: they argued among other things that France 2's advertising rates were on the whole only 5 to 10 % lower than TF1's, although the latter's slots were twice as powerful; the difference between the prices applied by the two public broadcasters and TF1 merely reflected the difference in the power of their advertising slots.

B. Comments from the ATC

- (45) By letter dated 15 June 2000, the French authorities sent the Commission their reactions to the comments from the ATC. They reiterated their view that the licence fee constituted existing aid and denied that the private terrestrial channels were subject to similar obligations to those of the public broadcasters. They maintained that the investment grants and capital injections covered by this Decision were compatible with the common market pursuant to both Article 86(2) and Article 87(3)(c) of the Treaty and pointed out that they had not requested the application of Article 87(3)(d) concerning the promotion of culture. They ended by stating that it was for the Commission to assess whether the information in its possession was sufficient in order to bring the procedure to an end and whether the public documents could be communicated to the ACT.

V. ASSESSMENT OF THE MEASURES

- (46) Article 87(1) of the Treaty provides that 'save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market'.
- (47) Consequently, for a measure to constitute State aid within the meaning of Article 87(1) of the Treaty, all of the following conditions must be met:

- the aid must be granted by a Member State using State resources,
- it must favour certain undertakings or certain sectors and thereby distort or threaten to distort competition,
- it must affect trade between Member States.

A. State resources

- (48) The grants and capital injections covered by this Decision come from the French national budget. They were awarded by virtue of a legislative instrument or a regulatory decision. Consequently, there can be no doubt that they involve State resources and can be imputed to the State.

B. Selective advantage and distortion of competition

- (49) All the grants received by France 2 and France 3 between 1988 and 1994 constituted financial resources which the public broadcasters were able to use in order to finance their activities or make investments and which they obtained without having to draw on their own resources or borrow on the market. The grants therefore constituted an advantage. The advantage was also selective since only the two public broadcasters benefited and not all television operators, whether public or private.

- (50) During the period 1988 to 1994, the French State also made three capital injections into France 2. The Commission normally takes the view that a State capital injection into an enterprise does not constitute a selective advantage for the latter if it is made in circumstances that would be acceptable for a private investor operating under normal market economy conditions. This market economy private investor test can, because of its very nature, be applied only to investments in commercial activities from which a normal return is expected. In the case in point, France 2 is engaged in making and programming television broadcasts in line with the tasks entrusted to it by the State, and a large share of its activity is on that account directly financed by the State via the licence fee. Its programming is not intended to maximise its commercial revenues. By injecting capital into France 2, the French State's prime objective was not therefore to obtain an optimum return; it therefore did not have the same motives as a private investor operating in a market economy. In their comments dated 20 December 1996 and 29 April 1999, the French authorities argued that the French State had acted as a market economy private investor would have done. It is contradictory, however, to claim, in certain comments, that the State acted in the same way as a private investor operating in a market economy and in the comments on the decision to initiate the formal investigation procedure, that the State intervention in favour of France 2 complied with the guidelines on State aid for rescuing and restructuring firms in difficulty. The guidelines apply to rescue and restructuring aid and not to interventions in line with the market economy private investor principle.
- (51) Since the French authorities compared their behaviour towards France 2 with that of a private investor operating in a market economy, that argument must nevertheless be examined. To assess whether the capital injections were granted under normal market conditions, the economic performance of the recipient during the period preceding the grant of the capital injections must be examined, together with its financial prospects based on market forecasts. Table 3 shows France 2's net profits/losses before and after the grant of the three capital injections.

TABLE 3
France 2 financial data 1988 to 1994

	1988	1989	1990	1991	1992	1993	1994	1995
Turnover	2 835,66	2 878,81	3 047,18	3 414,15	4 393,52	4 367,65	4 935,79	5 073,76
Net profit/loss	- 99,92	- 329,19	- 744,25	- 92,92	75,51	52,01	73,13	60,73

Source: France 2, profit and loss accounts

- (52) As can be seen from table 3, France 2 was not profitable at the time the capital injections were made. The French authorities could not, on the basis of the broadcaster's past performance, expect a reasonable rate of return on their investment. Neither could they expect a normal return on the basis of the enterprise's financial prospects or market forecasts. Although France 2's viability was restored from 1992 onwards, after several years of losses, the meagre profits it registered were possible only thanks to the additional capital injections granted by the French State in 1993 and 1994. Consequently, the French authorities' argument that the capital injections granted to France 2 should be regarded as a normal market investment cannot be accepted.
- (53) The Commission thus takes the view that a private investor operating in a market economy would not have granted France 2 capital injections equivalent to those made by the French State in 1991, 1993 and 1994. Those capital injections therefore conferred an advantage on France 2 that was also selective since France 2 is the only television broadcaster that received such capital injections in order to finance its activities.

- (54) It also has to be examined whether the criterion concerning the advantage conferred is fulfilled in the light of the cumulative conditions laid down by the Court of Justice of the European Communities in *Altmark*⁽⁷⁾. Those conditions are the following:
- the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined,
 - the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings,
 - the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations,
 - where the undertaking is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.
- (55) In the case in point, the Commission considers that the second condition laid down by the Court in *Altmark* is not met. The investment grants and capital injections are one-off support measures granted by the French State to France 2 and France 3 to enable them to cope with the deterioration in their economic situation. Such finance was granted only a posteriori and in order to address an unforeseen situation, and therefore not on the basis of parameters established in advance in an objective and transparent manner.
- (56) Furthermore, as far as the fourth condition laid down by the Court in *Altmark* is concerned, the Commission notes that the television broadcasters to which the French authorities entrusted public service obligations were not chosen pursuant to a public procurement procedure, and the level of financial compensation granted to the two public broadcasters was not determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided, would have incurred in discharging those public service obligations.
- (57) Since the cumulative conditions laid down by the Court in *Altmark* are not met, the Commission finds that the grants and capital injections covered by this Decision did constitute for France 2 and France 3 selective advantages within the meaning of Article 87(1) of the Treaty.
- (58) The Court of Justice has furthermore consistently held⁽⁸⁾ that any State aid which strengthens the position of an undertaking compared with other undertakings competing in intra Community trade distorts competition. In 1988, when the Commission's examination of this case began, the broadcasting sector in France was open to competition. France 2 and France 3 were in competition with other television broadcasters and the financial advantage they received through the financial measures covered by this Decision necessarily maintained or strengthened their position compared with that of their competitors. The financial measures from which they benefited did therefore result in a distortion of competition within the meaning of Article 87(1) of the Treaty.

⁽⁷⁾ Judgment of 24 July 2003 in Case C-280/00 *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH*, not yet reported.

⁽⁸⁾ See Cases C-730/79 *Philip Morris Holland BV v Commission* [1980] ECR 2671 and C-259/85 *France v Commission* [1987] ECR 4393.

C. Effect on trade

- (59) A State financial measure constitutes State aid within the meaning of Article 87(1) of the Treaty only where it actually or potentially affects trade between Member States. When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid⁽⁹⁾. The Court of Justice has developed a broad interpretation of the concept of the effect on trade. Accordingly, the fact that an undertaking is not itself engaged in exporting does not mean that trade is not affected. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased, with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid thus enables the undertaking to retain a market share that could have been captured by competitors established in other Member States⁽¹⁰⁾.
- (60) In the light of this case-law, the communication states that 'thus, State financing of public service broadcasters can generally be considered to affect trade between Member States. This is clearly the position as regards the acquisition and sale of programme rights, which often takes place at an international level. Advertising, too, in the case of public broadcasters who are allowed to sell advertising space, has a cross-border effect, especially for homogeneous linguistic areas across national boundaries. Moreover, the ownership structure of commercial broadcasters may extend to more than one Member State'⁽¹¹⁾.
- (61) In its information injunction⁽¹²⁾ and in the decision to initiate the formal investigation procedure, the Commission developed at length the issue of the effect on trade. The markets in the acquisition of broadcasting rights and the sale of programmes have an international dimension, even if rights and programmes are usually acquired for a particular geographic market. The financial resources granted to France 2 and France 3 provided them with additional competitive means for acquiring broadcasting rights and investing in programmes that were subsequently put up for sale. The aid measures in question also placed France 2 and France 3 in a more favourable position than their competitors in the Community, with the result that those competitors had less chances of exporting their products to France. It should be noted here that during part of the period examined in this Decision, a broadcasting group operating in several Member States held shares in the French channel La Cinq, which was declared bankrupt in 1992.
- (62) Consequently, the grants and capital injections received by France 2 and France 3 did affect trade within the meaning of Article 87(1) of the Treaty.
- (63) In the light of these considerations, it has to be concluded that the grants paid by the French authorities to France 2 and France 3 and the capital injections granted to France 2 between 1988 and 1994 constitute State aid within the meaning of the Treaty.

VI. ASSIGNMENT TO FRANCE 2 AND FRANCE 3 OF RESPONSIBILITY FOR THE OPERATION OF A SERVICE OF GENERAL ECONOMIC INTEREST

- (64) Article 86(2) of the Treaty provides that 'undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, insofar as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community'.

⁽⁹⁾ See judgment in *Philip Morris*, *ibid.*

⁽¹⁰⁾ See in particular Cases 102/87 *France v Commission* [1988] ECR 4067 and C-303/88 *Italy v Commission* [1991] ECR I-1433.

⁽¹¹⁾ Point 18 of the communication.

⁽¹²⁾ See recital 15 of this Decision.

- (65) It is settled case-law that Article 86 of the Treaty constitutes, for undertakings entrusted with the operation of services of general economic interest, a derogation from the ban on State aid⁽¹³⁾. The Court's judgment in *Altmark* implicitly confirms that State aid which compensates for the costs incurred by an undertaking in providing a service of general economic interest may be declared compatible with the common market if the conditions laid down in Article 86(2) of the Treaty are met.
- (66) The Court has consistently held⁽¹⁴⁾ that Article 86 provides for a derogation and must therefore be interpreted restrictively. The Court has clarified that in order for a measure to benefit from such a derogation, it is necessary that all the following conditions be fulfilled:
- the service in question must be a service of general economic interest and clearly defined as such by the Member State,
 - the undertaking in question must be explicitly entrusted by the Member State with the provision of that service,
 - the application of the competition rules of the Treaty must obstruct the performance of the particular tasks assigned to the undertaking and the derogation must not affect the development of trade to an extent that would be contrary to the interests of the Community.
- (67) The communication sets out the principles and methods which the Commission intends to follow to ensure that the above conditions are fulfilled in the broadcasting sector. In the case in point, the Commission must accordingly establish that:
- the activity of France 2 and France 3 constitutes a public service activity and the public service tasks of the two broadcasters are clearly defined (definition),
 - France 2 and France 3 have been entrusted with these public service tasks by an official decision (entrustment and supervision),
 - the financial compensation granted to them is proportional to the net cost of their public service activity (proportionality test).
- (68) In its analysis, the Commission must also have due regard for the Protocol. The Protocol stresses that the system of public broadcasting is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism. It states more precisely that the Member States are competent 'to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account'.

⁽¹³⁾ Case T-106/95 *FFSA and Others v Commission* [1997] ECR II-229.

⁽¹⁴⁾ See judgment in *FFSA*, *ibid.*

A. Definition of the public service remits of France 2 and France 3

- (69) In accordance with the Protocol and the communication, the definition of the public service remit is a matter for the Member States. The communication states that 'given the specific nature of the broadcasting sector, a "wide" definition, entrusting a given broadcaster with the task of providing balanced and varied programming in accordance with the remit, while preserving a certain level of audience, may be considered, in view of the interpretative provisions of the Protocol, legitimate under Article 86(2). Such a definition would be consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society and guaranteeing pluralism, including cultural and linguistic diversity' ⁽¹⁵⁾. As regards the definition of the public service in the broadcasting sector, the role of the Commission is limited to checking for manifest error ⁽¹⁶⁾.
- (70) Article 48 of French Act No 86-1067 of 30 September 1986 on freedom of communication refers to the 'educational, cultural and social role' of the television channels France 2 and France 3. Articles 54, 55 and 56 of the Act determine precisely certain tasks to be performed by France 2 or France 3 with regard to the transmission of government communiqués, parliamentary debates and broadcasts reserved for political parties, trade unions and professional associations and the main religious denominations represented in France.
- (71) The public service remits of France 2 and France 3 are then specified for each channel in a schedule of obligations. Article 3 of the schedule of tasks and obligations of France 2 dated 28 August 1987 provides that 'the company shall make and programme its broadcasts with the aim of providing all sections of the public with information, cultural enrichment and entertainment, in accordance with the cultural, educational and social role assigned to it by law' and that 'through its programmes in particular, it shall promote the cultural heritage and contribute to its enrichment via the productions it broadcasts'. Article 3 of the schedule of tasks and obligations of France 3, also dated 28 August 1987, reproduces the aforementioned two paragraphs and adds a third one, whereby 'the company shall make and programme broadcasts on regional life, facilitating in particular the expression of and provision of information to the different cultural, social and professional communities and spiritual and philosophical groupings'.
- (72) Some 20 articles then spell out more precisely the content of these public service tasks: pluralistic expression of different trends of thought and opinion; fairness, independence and pluralism of information; adjustment to technological change; adaptation of programmes to cater for the needs of the deaf and hard of hearing; transmission of government communiqués, the main parliamentary debates and broadcasts reserved for political parties, trade unions and professional associations and the main religious denominations represented in France; broadcasting of messages devoted to major national causes, road safety and consumer information; transmission of educational and social welfare broadcasts; obligations relating to the transmission and nature of documentaries, news and current affairs programmes, drama, music, dance, variety shows, sporting events, programmes for children and young people and fictional works.
- (73) The schedules of tasks and obligations of France 2 and France 3 dated 16 September 1994, which replaced those dating from 1987, reaffirm these public service tasks. The preamble to both documents states that 'the national television broadcasting companies (France 2 and France 3) provide a television service for all citizens. As such, they shall endeavour to reach the widest possible audience while affirming their personality by offering a specific range of programmes based on four major characteristics:
- in performing the cultural, educational and social role assigned to them by law, these channels shall provide the public with information, cultural enrichment and entertainment, showing respect for human dignity at all times,
 - they shall ensure pluralism in their programming by including all types of programme and catering for all audiences,

⁽¹⁵⁾ Point 33 of the communication.

⁽¹⁶⁾ Point 36 of the communication.

- the programmes they offer shall be particularly rich and diversified in the area of cultural broadcasts and programmes for the young,
- they shall make a significant effort in terms of programme output by pursuing innovation, being systematically attentive to the script and encouraging the creation of original productions aimed, among other things, at promoting the French cultural heritage.

In doing so, the national broadcasting companies shall endeavour to act as the benchmark in standards of ethics, quality and imaginativeness. They shall be guided by concern to avoid any kind of bad taste. The attention they pay to their audience shall reflect a desire to achieve high standards rather than commercial performance'. The preamble to the schedule of tasks and obligations of France 2 then describes the latter as 'the only exclusively general-interest channel in public ownership' with a duty to reach 'a wide audience, to which it shall offer a diversified and balanced range of programmes', while the preamble to the schedule of tasks and obligations of France 3 states that the latter 'shall assert its specific role as a regional and local channel' and give priority to 'decentralised news coverage and regional events'. As in the case of the schedules of tasks and obligations dated 28 August 1987, some 20 articles then spell out more precisely the content of these public service tasks.

- (74) The Commission considers that the public service tasks entrusted to France 2 and France 3 correspond to a service of general economic interest within the meaning of Article 86(2) of the Treaty. They are clearly defined and legitimate, in that they are aimed both at satisfying the democratic, social and cultural needs of French society and at ensuring pluralism, including cultural and linguistic diversity, within the meaning of the Protocol. The Commission also notes that these public service tasks cover the making and transmission of all the programmes broadcast by France 2 and France 3; the public service activity of the two broadcasters therefore consists in making and transmitting all their programmes. Although some of the public service tasks are of a general and predominantly qualitative nature, the Commission, having due regard to the interpretative provisions set out in the Protocol, deems such a 'wide' definition to be legitimate. It considers, finally, that the definition of public service tasks does not contain any manifest error.
- (75) The schedules of tasks and obligations of the two public broadcasters also contain provisions on programming quotas for films and audiovisual works 'in original French language' and on funding for the co-production of films. These are regulatory measures that apply to all free-to-air terrestrial broadcasters. Since the scope of this Decision does not include those measures, it is without prejudice to any examination of the advantages thus granted to the television and film production industry.

B. Entrustment and supervision

- (76) The public service tasks in question were entrusted to France 2 and France 3 by official decisions, since they derive from Act No 86-1067 and the schedules of tasks and obligations dated 28 August 1987, then 16 September 1994, adopted by decree by the Prime Minister. The schedules of tasks and obligations provide that certain obligations are to be spelled out by annual measures. The schedules of tasks and obligations dated 16 September 1994 also indicate that the obligations and principles set out therein are to be spelled out, where necessary, in the target-setting contracts concluded between the State and the broadcasters.
- (77) The French authorities have established various means of checking that France 2 and France 3 are discharging their public service tasks. The two public broadcasters have to report each year to the minister responsible for communication and to the Broadcasting Authority on compliance with their schedules of tasks and obligations. The Broadcasting Authority publishes annually a report in which it assesses, article by article, compliance by each channel with the schedules of tasks and obligations. In the event of a serious failure by one of the channels to fulfil its public service obligations, the Broadcasting Authority addresses comments to its board of directors. Such comments are made public.

- (78) Furthermore, pursuant to Article 53 of Act No 86-1067, Parliament passes the budget for the public broadcasters on the basis of a report drafted in each House by a member of the Finance Committee. The draftsman may, if he deems necessary, comment on the fulfilment by the broadcasters of their public service obligations.
- (79) It should lastly be noted that the 12 members of the board of directors of each channel include two Members of Parliament, four representatives of the State and four experts. These 10 figures are from outside the channels and are therefore able unreservedly to express their views on fulfilment of the public service obligations.

C. Proportionality of the funding of the public service activity

- (a) *Assessment of the State compensation for the cost of the public service activity*
- (80) The Commission must assess whether the State aid paid to France 2 and France 3 is proportionate to the cost of their public service activity. As stated in the communication, 'in order to satisfy the proportionality test, it is necessary that the State aid does not exceed the net costs of the public service mission, taking also into account other direct or indirect revenues derived from the public service mission. For this reason, the net benefit that non-public service activities derive from the public service activity will be taken into account in assessing the proportionality of the aid' ⁽¹⁷⁾.
- (81) Although the communication refers in this context to Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings ⁽¹⁸⁾ and the obligation to keep separate accounts introduced by that Directive, that obligation did not apply to television broadcasting during the period covered by this Decision.
- (82) The communication is neutral as regards the methods chosen by the Member State for funding television broadcasters entrusted with public service tasks. The French authorities have opted for a dual-funding system involving both public resources and commercial revenues. Advertising and sponsorship income accounts for nearly all the commercial revenues, since distribution activities generate very little income. As far as the public resources are concerned, the licence fee constitutes the ordinary public funding of France 2 and France 3. However, between 1988 and 1994, in addition to the licence fee, the French authorities awarded France 2 and France 3 the grants set out in tables 1 and 2.
- (83) The French authorities also granted three capital injections to France 2. Between 1988 and 1991, France 2 accumulated losses such that in 1991 it was required by Article 241 of Act No 66-537 of 24 July 1966 to increase and then reduce its registered capital in order to offset most of its losses and restore the level of its shareholders' equity to half its registered capital. During that operation, the French State injected FRF 500 million into France 2. This was sufficient to enable the broadcaster to continue operating in the short term, but was not enough to restore a lasting balance between its net assets and bank debt. The French State therefore had to grant two more capital injections, in 1993 and 1994, totalling FRF 410 million.
- (84) As part of the proportionality test, the Commission has to check that all the public funding received by France 2 and France 3 between 1988 and 1994, i.e. the State aid covered by this Decision plus the licence fee and the equipment grants, does not exceed the net cost of their public service activity.

⁽¹⁷⁾ Point 57 of the communication.

⁽¹⁸⁾ OJ L 195, 27.7.1980, p. 35. Directive as last amended by Directive 2000/52/EC (OJ L 193, 29.7.2000, p. 75).

- (85) It should first be noted that, over the period 1988 to 1994, France 2 and France 3 received types of public funding that are dealt with differently in the accounts. The licence fee is intended to compensate for the annual expenses incurred by the two public broadcasters in carrying out their public service activity and as such, it is entered annually in the profit and loss account. On the other hand, the capital injections and grants are recorded on the balance sheet. This is because the capital injections are exceptional contributions that served to make good previous deficits that had accumulated over several years. Likewise, the investment and equipment grants finance investments that are then used, and therefore depreciated, over several years. The grants are therefore entered in the profit and loss account at the same rate as the investments are depreciated. Since, for the calculation of the compensation for public service costs, balance-sheet items (grants) are mixed with items in the profit and loss account (depreciations, included in the total costs for the year), it is essential to adopt a cumulative approach over a medium or long-term period, since that makes it possible to consider that the entries made for grants in the profit and loss account and the grants entered on the balance sheet converge towards the same amounts. Since the formal investigation procedure relates to the period between 1988 and 1994, that period will be taken for the cumulative calculation.
- (86) France 2 and France 3 carry on both a public service activity and commercial activities, either in-house or via subsidiaries. Only the cost of the channels' public service activity, which includes all the costs necessary for making and transmitting their programmes, is eligible for financial compensation from the State. However, each channel's total costs for the year include not only the costs linked to the public service activity but also those linked to commercial activities. The net cost of each channel's public service activity is therefore obtained by deducting from its total costs for the year all the costs linked to commercial activities, whether carried on in-house or via subsidiaries, and the net profits from those activities (chiefly advertising and sponsorship income), as specified in the communication. As shown in table 4, over the period under consideration, 1988 to 1994, the cumulative net cost of the public service activity was FRF 15,69 billion for France 2 and FRF 20,89 billion for France 3 ⁽¹⁹⁾.

TABLE 4

Determination of the net cost of the public service activity, calculated on a cumulative basis over the period 1988 to 1994

	(FRF billion)	
	France 2	France 3
Total costs	41,982	37,011
Costs related to commercial activities	<15,2>	<11,74>
Net profits from commercial activities	<11,091>	<4,379>
Net cost of the public service activity	15,691	20,892

- (87) These net public service costs must then be compared with all the public funding received by the broadcasters in order to assess whether or not the financial compensation from the State exceeded those costs. Since the licence fee, on the one hand, and the grants and capital injections, on the other, are dealt with differently in the accounts, the balances of the compensation for the cost of the public service activity need to be calculated successively for each type of public funding examined. Over the period 1988 to 1994, France 2 and France 3 received by way of the licence fee FRF 12,12 billion and FRF 20,17 billion respectively ⁽²⁰⁾. An analysis based on the profit and loss account thus reveals that France 2 and France 3 were cumulatively undercompensated to the tune of FRF 3,57 billion and FRF 718,6 million respectively.

⁽¹⁹⁾ These figures and the ensuing ones have been rounded off.

⁽²⁰⁾ These figures include both the licence fee and the reimbursement by the State of part of the revenue lost to the public broadcasters as a result of licence fee exemptions on social welfare grounds.

- (88) These amounts of undercompensation must now be correlated with the additional public resources entered on the balance sheet. These additional resources consist, on the one hand, in equipment grants and on the other, in the investment grants, other grants and capital injections covered by this Decision. Cumulatively, they amount to FRF 1,91 billion in the case of France 2 and FRF 633,5 million in the case of France 3. The net cost of the public service activity should, moreover, not include the capital injections and non-refunded advances on current account granted to the public broadcasters' subsidiaries engaged in commercial activities (FRF 115,2 million for France 2 and FRF 25,9 million for France 3).
- (89) Taking these additional resources into account, it transpires that France 2 and France 3 were under-compensated over the period 1988 to 1994, to the tune of FRF 1,54 billion and FRF 59,2 million respectively.
- (b) *Assessment of the behaviour of France 2 and France 3 on the market in the sale of advertising slots*
- (90) In accordance with the communication, the Commission must also check that no distortion of competition which is not necessary for the fulfilment of the public service tasks has been caused by the commercial activities intrinsically related to the public service activity. Such a distortion would exist if France 2 and France 3, secure in the assurance that their lower commercial revenues would be compensated for by the State, were to drive advertising rates down, thereby reducing the revenues of their competitors.
- (91) In its complaint, TF1 raised this issue, claiming that thanks to the State aid they receive, France 2 and France 3, acting 'outside the profitability constraints of their competitors, are able to offer introductory prices and artificial reductions on their advertising slots or sponsorship activities in order to retain the custom of advertisers'.
- (92) On the basis of the information in its possession, the Commission has not found any evidence in support of TF1's claim. The difference between the advertising rates charged by TF1 and by France 2 and France 3 is accounted for, not by the commercial behaviour of the two public broadcasters, but by the difference in the power of advertising slots as between TF1 and the public channels.
- (93) In the television advertising industry, advertisers are interested above all in the audience reached by advertising slots among housewives under 50 years of age. Audiences are measured using the concept of the gross rating point, or GRP, which is defined as the average number of contacts achieved by an advertising campaign out of 100 people in the target population. A contact is considered to have been established where a person is exposed once, at a given time, to the broadcast message.
- (94) For their adverts, advertisers look for the most powerful slots which achieve, at a given time, the best coverage of the target population. The result is that, the greater the audience for a slot, the more advertisers are prepared to pay a higher unit price per contact (GRP price). There is therefore a premium for the power of advertising slots.
- (95) Table 6 shows for each channel the average GRP and the average GRP price over the whole day for the target population of housewives aged between 15 and 49:

TABLE 6 (*)

	TF1		France 2		France 3		M6	
	Average GRP	GRP price (EUR)	Average GRP	GRP price (EUR)	Average GRP	GRP price (EUR)	Average GRP	GRP price (EUR)
1990	5,8	2 732	3	2 738	2,3	2 533	1,9	2 440
1991	5,3	2 649	2,6	2 488	2,1	2 463	1,9	2 239
1992	4,8	2 963	2,5	2 652	2	2 707	1,9	2 297
1993	4,7	2 829	2,4	2 595	1,7	2 785	1,9	2 481
1994	4,7	2 983	2,6	2 847	1,6	2 777	2	2 475

(*) Data taken from a table supplied by the French authorities in their letter dated 2 January 2003.

Source: Médiamétrie/Médiamat Traitement Popcorn

The change in methodology in 1989 does not allow comparisons to be made with earlier data.

- (96) Table 7 shows for each channel the average GRP and the average GRP price during peak viewing times (19.00 to 22.00 hours) for the target population of housewives aged between 15 and 49:

TABLE 7

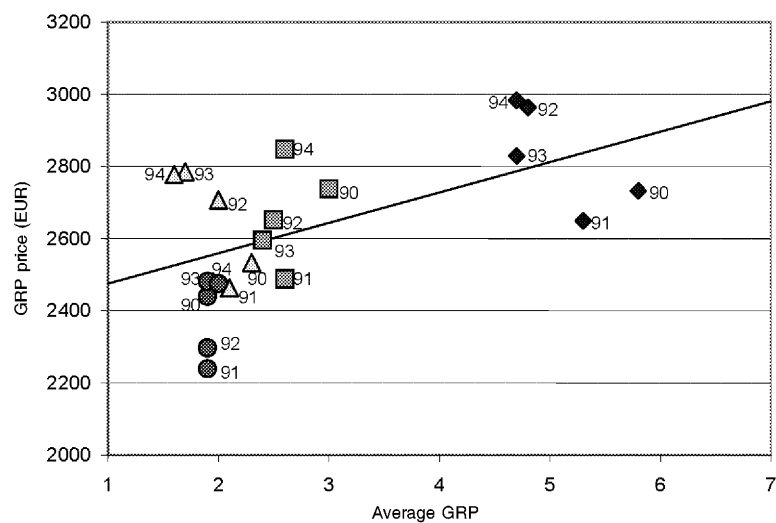
	TF1		France 2		France 3		M6	
	Average GRP	GRP price (EUR)	Average GRP	GRP price (EUR)	Average GRP	GRP price (EUR)	Average GRP	GRP price (EUR)
1990	12,8	3 465	5,9	3 079	3,9	2 620	3,4	2 815
1991	12,1	3 536	6,1	3 103	4,1	2 607	3,8	2 454
1992	10,4	3 741	5,7	3 613	3,9	3 032	4,4	2 587
1993	10,7	3 512	5,9	3 378	3,4	3 150	3,9	3 084
1994	10,3	3 735	6	3 519	3,4	3 078	4,2	3 920

Source: Médiamétrie/Médiamat Traitement Popcorn

The change in methodology in 1989 does not allow comparisons to be made with earlier data.

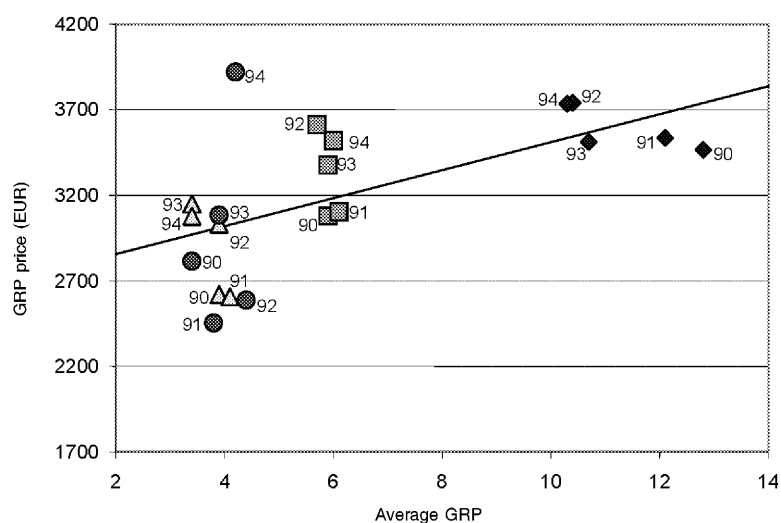
- (97) The public broadcasters would be found to have engaged in anticompetitive behaviour on the market in the sale of advertising slots if, given that a higher average GRP results in a higher GRP price (the premium for power), the GRP prices charged by the public broadcasters were appreciably lower than those charged by TF1 and M6. That is not the case on the basis of the data set out in tables 6 and 7. Admittedly, the tables show that, as stressed by TF1, its GRP price is in the main higher than those of France 2 or France 3, which are themselves higher than that of M6. It is also clear that TF1's average GRP is always very distinctly higher than France 2 or France 3. Between 1990 and 1994, over the whole day, TF1's average GRP varied between 4,7 and 5,8 points, whereas that of France 2 varied between 2,4 and 3 points, that of France 3 between 1,6 and 2,3 points and that of M6 between 1,9 and 2 points. During peak viewing times, TF1's average GRP varied between 10,3 and 12,8 points, whereas that of France 2 varied between 5,7 and 6,1 points, that of France 3 between 3,4 and 4,1 points and that of M6 between 3,4 and 4,4 points. However, the difference between TF1's GRP prices and those of the two public broadcasters is not disproportionate if it is compared with the difference between the GRP prices of TF1 and M6. On average, the GRP prices of France 2, France 3 and M6 are around EUR 83 per unit of GRP lower than those charged by TF1 during the two periods examined (over the whole day and at peak viewing times). Consequently, France 2 and France 3 did not sell their advertising slots at artificially low prices.
- (98) By way of illustration, the charts below show the data on the different channels' GRP prices and average GRP, as set out in tables 6 and 7, distinguishing between the average for the whole day and the peak viewing times. The limited number of points (five) available for each channel and their low dispersion allow all five years and four channels to be plotted on the same chart.

Relationship between GRP price and average GRP over the whole day
(1990-1994)



◆ TF1 ■ FR2 ▲ FR3 ● M6 — Regression line

Relationship between GRP price and average GRP at peak viewing times
(1990-1994)



◆ TF1 ■ FR2 ▲ FR3 ● M6 — Regression line

- (99) The two charts show that there is a positive correlation between average GRP and GRP price, which corroborates the fact that there is a premium for power: a channel with a higher GRP has a higher GRP price. The correlation is represented on the charts by the linear regression line of GRP price against average GRP, which reflects the 'average' relationship between GRP price and GRP for all the channels over the period examined. It can also be seen from the charts that the prices charged by France 2 and France 3 were not significantly lower than those charged by TF1 and M6 when the premium for power is taken into account: for France 2 and France 3, the few points located below the regression line are nevertheless very close to it. Some of France 3's prices were furthermore higher than those of M6 for more or less the same GRP.
- (100) To sum up, the prices charged by France 2 and France 3 between 1990 and 1994 were not significantly lower than those charged by TF1 and M6. The higher prices of TF1's advertising slots can thus be accounted for by the power of its slots and not by the commercial behaviour of the public broadcasters. The French Competition Council furthermore arrived at the same conclusion in a decision it took in 2001 concerning the sale of television advertising slots ⁽²¹⁾.
- (101) In conclusion, the Commission finds, firstly, that over the period 1988 to 1994 the public funds paid by the French authorities to France 2 and France 3 were lower than the cost of their public service activity and secondly that there is no conclusive evidence of anticompetitive behaviour by the public broadcasters on the market in the sale of advertising slots. The Commission accordingly finds that the State funding of the public service activity of France 2 and France 3 satisfies the proportionality test.
- (102) The Commission considers that, in the case under examination, the three conditions for the application of the derogation provided for in Article 86(2) of the Treaty are met.

VII. CONCLUSION

- (103) In the light of its analysis, the Commission finds that the State aid measures covered by this formal investigation procedure are compatible with the common market pursuant to Article 86(2) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The investment grants paid by France to France 2 and France 3 and the capital injections granted by France to France 2 between 1988 and 1994 constitute State aid that is compatible with the common market within the meaning of Article 86(2) of the Treaty.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 10 December 2003.

For the Commission
Mario MONTI
Member of the Commission

⁽²¹⁾ Decision No 00-D-67 of 13 February 2001 on practices observed on the market in the sale of television advertising slots.

COMMISSION DECISION**of 3 December 2004****establishing conditions for non-commercial movements of young dogs and cats from third countries into the Community***(notified under document number C(2004) 4546)***(Text with EEA relevance)****(2004/839/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THIS DECISION:

Having regard to the Treaty establishing the European Community,

Having regard to the Regulation (EC) No 998/2003 of the European Parliament and of the Council of 26 May 2003 on the animal health requirements applicable to the non-commercial movement of pet animals and amending Council Directive 92/65/EEC⁽¹⁾, and in particular Article 8(3)(c) thereof,

Whereas:

- (1) Regulation (EC) No 998/2003 establishes conditions for non-commercial movements of dogs and cats from third countries into the Community. These conditions differ depending on the status of the third country of origin and of the Member State of destination.
- (2) Article 8(3)(c) of Regulation (EC) No 998/2003 provides that conditions should be established for entry of unvaccinated dogs and cats under three months of age from third countries listed respectively in parts B and C of Annex II to the Regulation.
- (3) Those conditions should be equivalent to the conditions applying to the movement of unvaccinated young cats and dogs between Member States.
- (4) Since Regulation (EC) No 998/2003 is already applicable, and in the interest of European pet owners, this Decision should apply without delay.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

Article 1

1. Member States may authorise the introduction onto their territory of dogs and cats less than three months of age and not vaccinated against rabies from third countries listed respectively in part B and C of Annex II to Regulation (EC) No 998/2003 under conditions at least equivalent to those laid down in Article 5(2) of that Regulation.

2. Subsequent movement to another Member State of the animals introduced in accordance with paragraph 1 shall be prohibited, except where the animal is to be moved in accordance with the conditions laid down in Article 5(1) of Regulation (EC) No 998/2003 to a Member State other than those listed in part A of Annex II to that Regulation.

Subsequent movement to another Member State listed in part A of Annex II to that Regulation of an animal introduced in accordance with paragraph 1 shall take place in accordance with the conditions laid down in Article 6(1) of Regulation (EC) No 998/2003 once the animal concerned has reached more than three months of age.

Article 2

This Decision shall apply from 11 December 2004.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 3 December 2004.

For the Commission
Markos KYPRIANOU
Member of the Commission

⁽¹⁾ OJ L 146, 13.6.2003, p. 1. Regulation as last amended by Commission Regulation (EC) No 1994/2004 (OJ L 344, 20.11.2004, p. 17).

COMMISSION DECISION

of 30 November 2004

approving programmes for the eradication and monitoring of certain animal diseases and of checks aimed at the prevention of zoonoses presented by the Member States for the year 2005 and fixing the level of the Community's financial contribution

(notified under document number C(2004) 4600)

(2004/840/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⁾, and in particular Article 24(6) and Articles 29 and 32 thereof,

Whereas:

(1) Decision 90/424/EEC provides for the possibility of a financial contribution by the Community in the eradication and monitoring of animal diseases and for checks aimed at the prevention of zoonoses.

(2) The Member States have submitted programmes for the eradication and monitoring of certain animal diseases as well as for the prevention of zoonoses in their territories.

(3) After examination of those programmes they were found to comply with relevant Community veterinary legislation and in particular with the Community criteria relating to the eradication of those diseases, in accordance with Council Decision 90/638/EEC of 27 November 1990 laying down Community criteria for the eradication and monitoring of certain animal diseases⁽²⁾.

(4) Those programmes appear on the list of programmes established by Commission Decision 2004/695/EC of 14 October 2004 on the list of programmes for the eradication and monitoring of animal diseases and of checks aimed at the prevention of zoonoses qualifying for a financial contribution from the Community in 2005⁽³⁾.

(5) In the light of the importance of those programmes for the achievement of Community objectives in the field of animal and public health, it is appropriate to fix the financial contribution of the Community at 50 % of the costs to be incurred by the Member States concerned for the measures referred to in this Decision up to a maximum amount for each programme.

(6) Under Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy⁽⁴⁾, programmes for the monitoring and eradication of animal diseases are to be financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund; for financial control purposes, Articles 8 and 9 of Regulation (EC) No 1258/1999 apply.

(7) The financial contribution from the Community should be granted subject to the condition that the actions planned are efficiently carried out and that the competent authorities supply all the necessary information within the time limits laid down in this Decision.

(8) There is a need to clarify the rate to be used for the conversion of the payment applications submitted in national currency as defined in Article 1(d) of Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro⁽⁵⁾.

⁽¹⁾ OJ L 224, 18.8.1990, p. 19. Decision as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽²⁾ OJ L 347, 12.12.1990, p. 27. Decision as amended by Directive 92/65/EEC (OJ L 268, 14.9.1992, p. 54).

⁽³⁾ OJ L 316, 15.10.2004, p. 87.

⁽⁴⁾ OJ L 160, 26.6.1999, p. 103.

⁽⁵⁾ OJ L 349, 24.12.1998, p. 1.

- (9) The approval of some of those programmes should not prejudice a decision of the Commission on rules for eradication of the concerned diseases based on scientific advice.
- (10) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

CHAPTER I

Rabies

Article 1

1. The programme for the eradication of rabies presented by Austria is hereby approved for the period from 1 January 2005 to 31 December 2005.
2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Austria for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 180 000.

Article 2

1. The programme for the eradication of rabies presented by the Czech Republic is hereby approved for the period from 1 January 2005 to 31 December 2005.
2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by the Czech Republic for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 400 000.

Article 3

1. The programme for the eradication of rabies presented by Germany is hereby approved for the period from 1 January 2005 to 31 December 2005.
2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Germany for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 400 000.

Article 4

1. The programme for the eradication of rabies presented by Finland is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Finland for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 100 000.

Article 5

1. The programme for the eradication of rabies presented by Lithuania is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Lithuania for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 900 000.

Article 6

1. The programme for the eradication of rabies presented by Poland is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Poland for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 1 500 000.

Article 7

1. The programme for the eradication of rabies presented by Slovenia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Slovenia for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 200 000.

Article 8

1. The programme for the eradication of rabies presented by Slovakia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Slovakia for the purchase and distribution of vaccine plus baits for the programme referred to in paragraph 1, and shall not exceed EUR 400 000.

*CHAPTER II****Bovine Brucellosis****Article 9*

1. The programme for the eradication of bovine brucellosis presented by Cyprus is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Cyprus for the programme referred to in paragraph 1, and shall not exceed EUR 100 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 10

1. The programme for the eradication of bovine brucellosis presented by Greece is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Greece for the programme referred to in paragraph 1, and shall not exceed EUR 100 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 11

1. The programme for the eradication of bovine brucellosis presented by Spain is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Spain for the programme referred to in paragraph 1, and shall not exceed EUR 5 000 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 12

1. The programme for the eradication of bovine brucellosis presented by Ireland is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Ireland for the programme referred to in paragraph 1, and shall not exceed EUR 5 000 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 13

1. The programme for the eradication of bovine brucellosis presented by Italy is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Italy for the programme referred to in paragraph 1, and shall not exceed EUR 3 000 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 14

1. The programme for the eradication of bovine brucellosis presented by Poland is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Poland for the programme referred to in paragraph 1, and shall not exceed EUR 800 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 15

1. The programme for the eradication of bovine brucellosis presented by Portugal is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Portugal for the programme referred to in paragraph 1, and shall not exceed EUR 1 800 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 16

1. The programme for the eradication of bovine brucellosis presented by the United Kingdom is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by the United Kingdom for the programme referred to in paragraph 1, and shall not exceed EUR 5 000 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

*CHAPTER III****Bovine tuberculosis****Article 17*

1. The programme for the eradication of bovine tuberculosis presented by Cyprus is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Cyprus for the programme referred to in paragraph 1, and shall not exceed EUR 5 000, for:

- (a) the costs of tuberculin testing;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 18

1. The programme for the eradication of bovine tuberculosis presented by Greece is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Greece for the programme referred to in paragraph 1, and shall not exceed EUR 100 000, for:

- (a) the costs of tuberculin testing;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 19

1. The programme for the eradication of bovine tuberculosis presented by Spain is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Spain for the programme referred to in paragraph 1, and shall not exceed EUR 4 000 000, for:

- (a) the costs of tuberculin testing;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 20

1. The programme for the eradication of bovine tuberculosis presented by Italy is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Italy for the programme referred to in paragraph 1, and shall not exceed EUR 2 500 000, for:

- (a) the costs of tuberculin testing;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 21

1. The programme for the eradication of bovine tuberculosis presented by Poland is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Poland for the programme referred to in paragraph 1, and shall not exceed EUR 700 000, for:

- (a) the costs of tuberculin testing;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 22

1. The programme for the eradication of bovine tuberculosis presented by Portugal is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Portugal for the programme referred to in paragraph 1, and shall not exceed EUR 250 000, for:

- (a) the costs of tuberculin testing;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

CHAPTER IV

Enzootic bovine leucosis*Article 23*

1. The programme for the eradication of enzootic bovine leucosis presented by Estonia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Estonia for the programme referred to in paragraph 1, and shall not exceed EUR 25 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 24

1. The programme for the eradication of enzootic bovine leucosis presented by Italy is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Italy for the programme referred to in paragraph 1, and shall not exceed EUR 250 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 25

1. The programme for the eradication of enzootic bovine leucosis presented by Lithuania is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Lithuania for the programme referred to in paragraph 1, and shall not exceed EUR 200 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 26

1. The programme for the eradication of enzootic bovine leucosis presented by Latvia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Latvia for the programme referred to in paragraph 1, and shall not exceed EUR 100 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 27

1. The programme for the eradication of enzootic bovine leucosis presented by Portugal is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Portugal for the programme referred to in paragraph 1, and shall not exceed EUR 200 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

*CHAPTER V****Ovine and Caprine Brucellosis****Article 28*

1. The programme for the eradication of ovine and caprine brucellosis presented by Cyprus is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Cyprus for the programme referred to in paragraph 1, and shall not exceed EUR 175 000, for:

- (a) the cost of laboratory tests;
- (b) compensation for owners for the slaughter of animals subject to that programme.

Article 29

1. The programme for the eradication of ovine and caprine brucellosis presented by Greece is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Greece for the programme referred to in paragraph 1, and shall not exceed EUR 800 000, for:

- (a) the purchase of vaccines;
- (b) salaries of contractual veterinarians specially recruited for that programme.

Article 30

1. The programme for the eradication of ovine and caprine brucellosis presented by Spain is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Spain for the programme referred to in paragraph 1, and shall not exceed EUR 6 500 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 31

1. The programme for the eradication of ovine and caprine brucellosis presented by France is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by France for the programme referred to in paragraph 1, and shall not exceed EUR 300 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 32

1. The programme for the eradication of ovine and caprine brucellosis presented by Italy is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Italy for the programme referred to in paragraph 1, and shall not exceed EUR 4 500 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

Article 33

1. The programme for the eradication of ovine and caprine brucellosis presented by Portugal is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Portugal for the programme referred to in paragraph 1, and shall not exceed EUR 1 700 000, for:

- (a) the purchase of vaccines;
- (b) the cost of laboratory tests;
- (c) compensation for owners for the slaughter of animals subject to that programme.

*CHAPTER VI***Bluetongue***Article 34*

1. The programme for the eradication and monitoring of bluetongue presented by Spain is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of serological and entomological testing and the costs of the traps to be incurred by Spain for the programme referred in paragraph 1, and shall not exceed EUR 25 000.

Article 35

1. The programme for the eradication and monitoring of bluetongue presented by France is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of serological and entomological testing and the costs of the traps to be incurred by France for the programme referred in paragraph 1, and shall not exceed EUR 50 000.

Article 36

1. The programme for the eradication and monitoring of bluetongue presented by Italy is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of serological and entomological testing and the costs of the traps to be incurred by Italy for the programme referred in paragraph 1, and shall not exceed EUR 400 000.

*CHAPTER VII***Salmonella in poultry***Article 37*

1. The programme for the control of salmonella in breeding poultry presented by Austria is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Austria for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 70 000. The financial contribution by the Community shall be for:

- (a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;
- (b) the destruction of incubated hatching eggs;
- (c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;

- (d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;
- (e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Council Directive 92/117/EEC⁽¹⁾, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 38

1. The programme for the control of salmonella in breeding poultry presented by Belgium is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Belgium for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 400 000. The financial contribution by the Community shall be for:

- (a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;
- (b) the destruction of incubated hatching eggs;
- (c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;
- (d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;
- (e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 39

1. The programme for the control of salmonella in breeding poultry presented by Denmark is hereby approved for the period 1 January 2005 to 31 December 2005.

⁽¹⁾ OJ L 62, 15.3.1993, p. 38. Directive as last amended by Regulation (EC) No 806/2003.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Denmark for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 110 000. The financial contribution by the Community shall be for:

- (a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;
- (b) the destruction of incubated hatching eggs;
- (c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;
- (d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;
- (e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 40

1. The programme for the control of salmonella in breeding poultry presented by France is hereby approved for the period 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by France for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 600 000. The financial contribution by the Community shall be for:

- (a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;
- (b) the destruction of incubated hatching eggs;

- (c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;
- (d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;
- (e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 41

1. The programme for the control of salmonella in breeding poultry presented by Ireland is hereby approved for the period 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Ireland for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 50 000. The financial contribution by the Community shall be for:

- (a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;
- (b) the destruction of incubated hatching eggs;

(c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;

(d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;

(e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 42

1. The programme for the control of salmonella in breeding poultry presented by Italy is hereby approved for the period 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Italy for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 600 000. The financial contribution by the Community shall be for:

(a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;

(b) the destruction of incubated hatching eggs;

(c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;

(d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;

(e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 43

1. The programme for the control of salmonella in breeding poultry presented by the Netherlands is hereby approved for the period 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by the Netherlands for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 350 000. The financial contribution by the Community shall be for:

(a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;

(b) the destruction of incubated hatching eggs;

(c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;

(d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;

(e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

Article 44

1. The programme for the control of salmonella in breeding poultry presented by Slovakia is hereby approved for the period 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Slovakia for the implementation of the programme referred to in paragraph 1, and shall not exceed EUR 100 000. The financial contribution by the Community shall be for:

(a) either the destruction of breeding poultry or the difference between the estimated value of such breeding poultry and the income from the sale of the heat-treated meat obtained from this poultry;

(b) the destruction of incubated hatching eggs;

(c) either the destruction of non-incubated hatching eggs or the difference between the estimated value of such non-incubated hatching eggs and the income from the sale of the heat-treated egg products obtained from those eggs;

(d) the purchase of vaccines in so far as they do not interfere with the implementation of the programme;

(e) the costs of bacteriological tests performed in the framework of official sampling as laid down in Section I of Annex III to Directive 92/117/EEC, up to a maximum amount of EUR 5 per test to be reimbursed to the Member State.

CHAPTER VIII

Swine vesicular disease

Article 45

1. The programme for the eradication and monitoring of swine vesicular disease presented by Italy is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological laboratory tests and the costs to be incurred by Italy for compensation for owners for the slaughter of animals subject to the programme referred to in paragraph 1, and shall not exceed EUR 200 000.

CHAPTER IX

Classical swine fever

Article 46

1. The programme for the eradication and monitoring of classical swine fever presented by Belgium is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological tests of domestic pigs and wild boars incurred by Belgium subject to the programme referred to in paragraph 1, and shall not exceed EUR 15 000.

Article 47

1. The programme for the eradication and monitoring of classical swine fever presented by the Czech Republic is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological tests of domestic pigs and wild boars incurred by the Czech Republic subject to the programme referred to in paragraph 1, and shall not exceed EUR 100 000.

Article 48

1. The programme for the eradication and monitoring of classical swine fever presented by Germany is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological tests of domestic pigs and wild boars incurred by Germany subject to the programme referred to in paragraph 1, and shall not exceed EUR 800 000.

Article 49

1. The programme for the eradication and monitoring of classical swine fever presented by France is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological tests of domestic pigs and wild boars incurred by France subject to the programme referred to in paragraph 1, and shall not exceed EUR 150 000.

Article 50

1. The programme for the eradication and monitoring of classical swine fever presented by Luxembourg is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological tests of domestic pigs and wild boars incurred by Luxembourg subject to the programme referred to in paragraph 1, and shall not exceed EUR 100 000.

Article 51

1. The programme for the eradication and monitoring of classical swine fever presented by Slovenia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs of virological and serological tests of domestic pigs and wild boars incurred by Slovenia subject to the programme referred to in paragraph 1, and shall not exceed EUR 10 000.

Article 52

1. The programme for the eradication and monitoring of classical swine fever presented by Slovakia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by Slovakia for the programme referred to in paragraph 1, and shall not exceed EUR 200 000, for:

(a) the purchase and distribution of vaccines;

(b) the cost of virological and serological tests of domestic pigs and wild boars.

CHAPTER X

Aujeszky's disease

Article 53

1. The programme for the eradication of Aujeszky's disease presented by Belgium is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the cost of laboratory tests to be incurred by Belgium for the programme referred to in paragraph 1, and shall not exceed EUR 300 000.

Article 54

1. The programme for the eradication of Aujeszky's disease presented by Spain is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the cost of laboratory tests to be incurred by Spain for the programme referred to in paragraph 1, and shall not exceed EUR 250 000.

Article 55

1. The programme for the eradication of Aujeszky's disease presented by Hungary is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the cost of laboratory tests to be incurred by Hungary for the programme referred to in paragraph 1, and shall not exceed EUR 50 000.

Article 56

1. The programme for the eradication of Aujeszky's disease presented by Ireland is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the cost of laboratory tests to be incurred by Ireland for the programme referred to in paragraph 1, and shall not exceed EUR 50 000.

Article 57

1. The programme for the eradication of Aujeszky's disease presented by Portugal is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the cost of laboratory tests to be incurred by Portugal for the programme referred to in paragraph 1, and shall not exceed EUR 25 000.

Article 58

1. The programme for the eradication of Aujeszky's disease presented by Slovakia is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The financial contribution by the Community shall be at the rate of 50 % of the cost of laboratory tests to be incurred by Slovakia for the programme referred to in paragraph 1, and shall not exceed EUR 25 000.

CHAPTER XI

Heartwater, babesiosis and anaplasmosis*Article 59*

1. The programme for the eradication of heartwater, babesiosis and anaplasmosis in Guadeloupe presented by France is hereby approved for the period from 1 January 2005 to 31 December 2005.

2. The programme for the eradication of heartwater, babesiosis and anaplasmosis in Martinique presented by France is hereby approved for the period from 1 January 2005 to 31 December 2005.

3. The programme for the eradication of heartwater, babesiosis and anaplasmosis in Réunion presented by France is hereby approved for the period from 1 January 2005 to 31 December 2005.

4. The financial contribution by the Community shall be at the rate of 50 % of the costs to be incurred by France for the implementation of the programmes referred to in paragraphs 1, 2 and 3, and shall not exceed EUR 150 000.

CHAPTER XII

General and final provisions*Article 60*

1. For the programmes referred to in Articles 9 to 33, the eligible costs for the compensation for the slaughter of animals shall be limited as provided for in paragraphs 2 and 3.

2. The average compensation to be reimbursed to the Member States shall be calculated on the basis of the number of animals slaughtered in the Member State and:

(a) for bovine animals, up to a maximum of EUR 300 per animal;

(b) for sheep and goats, up to a maximum of EUR 35 per animal.

3. The maximum amount of compensation to be reimbursed to the Member States per single animal shall not exceed EUR 1 000 per bovine animal and EUR 100 per sheep or goat.

Article 61

1. The maximum amounts of the costs to be reimbursed to the Member States for the programmes referred to in Article 9 to 33 and 53 to 58 shall not exceed:

(a) rose bengal test:	EUR 0,3 per test;
(b) complement fixation test:	EUR 0,6 per test;
(c) ELISA test:	EUR 1 per test;
(d) agar gel immune diffusion test:	EUR 0,8 per test;
(f) tuberculin test:	EUR 0,8 per test;
(g) gamma-interferon test:	EUR 3 per test;
(h) vaccine dose:	EUR 0,1 per dose.

Article 62

The conversion rate for applications submitted in national currency in month 'n' shall be that of the 10th day of month 'n+1' or for the first preceding day for which a rate is quoted.

Article 63

1. The financial contribution by the Community for the programmes referred to in Articles 1 to 59 shall be granted provided that their implementation is in conformity with the relevant provisions of Community law, including rules on competition and on the award of public contracts, and subject to the conditions provided for in points (a) to (f):

- (a) bringing into force by 1 January 2005 the laws, regulations and administrative provisions by the Member State concerned for implementing the programme;
- (b) forwarding by 1 June 2005 at the latest, the preliminary technical and financial evaluation of the programme, in accordance with Article 24(7) of Decision 90/424/EEC;
- (c) forwarding an intermediate report, covering the first six months of the programme, at the latest four weeks after the end of the implementation period covered by the report;
- (d) forwarding a final report by 1 June 2006 at the latest, on the technical execution of the programme accompanied by justifying evidence as to the costs paid and the results

attained during the period from 1 January 2005 to 31 December 2005;

- (e) implementing the programme efficiently;
- (f) no other Community contribution has been or will be asked for these measures.

2. If a Member State does not comply with the rules set out in paragraph 1, the Commission shall reduce the contribution of the Community to that Member State having regard to the nature and gravity of the infringement, and to the financial loss suffered by the Community.

Article 64

This Decision shall apply from 1 January 2005.

Article 65

This Decision is addressed to the Member States.

Done at Brussels, 30 November 2004.

For the Commission
Markos KYPRIANOU
Member of the Commission

CORRIGENDA**Corrigendum to Council Regulation (EC) No 821/2004 of 26 April 2004 amending Regulation (EC) No 2229/2003 imposing a definitive anti-dumping duty and collecting definitively the provisional anti-dumping duty imposed on imports of silicon originating in Russia**

(Official Journal of the European Union L 127 of 29 April 2004)

On page 2, points 8 and 9:

for: '8. the name of the company acting as an importer to which the invoice is issued directly by the company;

9. the name of the official of the company that has issued the commercial invoice and the following signed declaration:

"I, the undersigned, certify that the sale for direct export by [company name] to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [company name], and accepted by the European Commission through [Decision]. I declare that the information provided in this invoice is complete and correct."

read: '8. the name of the first independent customer in the Community to which the invoice is issued directly by the sales company;

9. the name of the official of the sales company that has issued the commercial invoice and the following signed declaration:

"I, the undersigned, certify that the sale for direct export to the European Union of the goods covered by this invoice is being made within the scope and under the terms of the Undertaking offered by [company name], and accepted by the European Commission through [Decision ...]. I declare that the information provided in this invoice is complete and correct."
