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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 1666/2005**of 13 October 2005****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 14 October 2005.

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

Done at Brussels, 13 October 2005.

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 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 13 October 2005 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	49,2
	204	52,0
	999	50,6
0707 00 05	052	101,8
	999	101,8
0709 90 70	052	98,7
	999	98,7
0805 50 10	052	73,8
	382	63,3
	388	68,1
	524	57,2
	528	70,3
	999	66,5
0806 10 10	052	88,3
	400	215,8
	999	152,1
0808 10 80	388	85,2
	400	107,5
	512	89,6
	528	11,2
	720	48,5
	800	163,1
	804	77,5
0808 20 50	999	83,2
	052	90,7
	388	56,9
	720	54,1
	999	67,2

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1667/2005**of 13 October 2005****amending Regulation (EC) No 60/2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia,

Having regard to the Act of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, and in particular the first paragraph of Article 41 thereof,

Whereas:

- (1) Under Article 7(2) of Commission Regulation (EC) No 60/2004 of 14 January 2004 laying down transitional measures in the sugar sector by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia⁽¹⁾, the amount to be charged to those Member States for surplus quantities not eliminated is to be taken into account for the calculation of the production levies for the marketing year 2004/05.
- (2) The amount to be charged will not be known when the 2004/05 production levies are calculated in September 2005, as the deadline for providing proof of elimination of surplus quantities was deferred to 31 March 2006 by Commission Regulation (EC) No 651/2005. Provision should therefore be made for that amount to be taken into account for the calculation of the production levies for the marketing year 2005/06, in September 2006.

(3) Regulation (EC) No 60/2004 should be amended accordingly. As this amendment must precede the fixing of the production levies for the marketing year 2004/05, this Regulation should enter into force immediately.

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 7(2) of Regulation (EC) No 60/2004 is replaced by the following:

‘2. If proof of elimination from the market is not provided in accordance with paragraph 1, for all or part of the surplus quantity, the new Member State shall be charged an amount equal to the quantity not eliminated multiplied by the highest export refunds applicable to white sugar falling within CN code 1701 99 10 during the period from 1 May 2004 to 30 November 2005. A share equal to 25 % of the total amount shall be assigned to the Community budget by 31 December at the latest of each of the years 2006, 2007, 2008 and 2009. The total amount will be taken into account for the calculation of the production levies for the marketing year 2005/06.’

Article 2

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

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 9, 15.1.2004, p. 8. Regulation as amended by Regulation (EC) No 651/2005 (OJ L 108, 29.4.2005, p. 3).

COMMISSION REGULATION (EC) No 1668/2005**of 13 October 2005****fixing the interest rates to be used for calculating the costs of financing intervention measures comprising buying-in, storage and disposal for the 2006 EAGGF Guarantee Section accounting year**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1883/78 of 2 August 1978 laying down general rules for the financing of interventions by the European Agricultural Guidance and Guarantee Fund, Guarantee Section ⁽¹⁾, and in particular Article 5 thereof,

Whereas:

interest costs on the basis of the uniform interest rate plus the difference between twice that rate and the actual rate borne by the Member State concerned.

- (5) Given the Member States' communications to the Commission, the interest rates applicable for the 2006 EAGGF Guarantee Section accounting year should be fixed in the light of the various factors into account.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the EAGGF Committee,

HAS ADOPTED THIS REGULATION:

Article 1

For expenditure incurred during the 2006 EAGGF Guarantee Section accounting year:

- (1) Article 3 of Commission Regulation (EEC) No 411/88 of 12 February 1988 on the method and the rate of interest to be used for calculating the costs of financing intervention measures comprising buying-in, storage and disposal ⁽²⁾, lays down that the uniform interest rate used for calculating the costs of financing intervention measures is to correspond to the three-month and 12-month forward Euribor rates with a weighting of one third and two thirds respectively.
 - (2) The Commission fixes this rate before the beginning of each EAGGF Guarantee Section accounting year on the basis of the rates recorded in the six months preceding fixing.
 - (3) In accordance with Article 4(1) and (2) of Regulation (EEC) No 411/88, a specific interest rate is to be fixed for Member States which, for six months or more, have borne an interest rate lower than the uniform interest rate set for the Community. Where a Member State has failed to communicate the average rate of its interest costs before the end of the accounting year, the specific interest to be applied is determined on the basis of the reference interest rates shown in the Annex to the said Regulation.
 - (4) Article 4(3) of Regulation (EEC) No 411/88 lays down that, for accounting years 2005 and 2006, where the average rate of interest costs borne by a Member State is more than twice the uniform interest rate determined for the Community, the Community may reimburse the
1. the uniform interest rate referred to in Article 5 of Regulation (EEC) No 1883/78 shall be 2,2 % for Member States other than those listed in points 2 and 3 below;
 2. the specific interest rate referred to in Article 4(1) of Regulation (EEC) No 411/88 shall be:
 - (a) 2,1 % for the Czech Republic, France, Austria and Finland;
 - (b) 1,8 % for Sweden;
 3. the interest rate reimbursed according to Article 4(3) of Regulation (EEC) No 411/88 shall be:
 - (a) 3,2 % for Cyprus;
 - (b) 5,1 % for Hungary;
 - (c) 3,0 % for Poland;
 - (d) 2,8 % for Slovenia;
 - (e) 2,3 % for the United Kingdom.

⁽¹⁾ OJ L 216, 5.8.1978, p. 1. Regulation as last amended by Regulation (EC) No 695/2005 (OJ L 114, 4.5.2005, p. 1).

⁽²⁾ OJ L 40, 13.2.1988, p. 25. Regulation as last amended by Regulation (EC) No 956/2005 (OJ L 164, 24.6.2005, p. 8).

Article 2

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 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

COMMISSION REGULATION (EC) No 1669/2005**of 13 October 2005****fixing the representative prices and the additional import duties for molasses in the sugar sector
applicable from 14 October 2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the market in sugar ⁽¹⁾, and in particular Article 24(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1422/95 of 23 June 1995 laying down detailed rules of application for imports of molasses in the sugar sector and amending Regulation (EEC) No 785/68 ⁽²⁾, stipulates that the cif import price for molasses established in accordance with Commission Regulation (EEC) No 785/68 ⁽³⁾, is to be considered the representative price. That price is fixed for the standard quality defined in Article 1 of Regulation (EEC) No 785/68.
- (2) For the purpose of fixing the representative prices, account must be taken of all the information provided for in Article 3 of Regulation (EEC) No 785/68, except in the cases provided for in Article 4 of that Regulation and those prices should be fixed, where appropriate, in accordance with the method provided for in Article 7 of that Regulation.
- (3) Prices not referring to the standard quality should be adjusted upwards or downwards, according to the

quality of the molasses offered, in accordance with Article 6 of Regulation (EEC) No 785/68.

- (4) Where there is a difference between the trigger price for the product concerned and the representative price, additional import duties should be fixed under the terms laid down in Article 3 of Regulation (EC) No 1422/95. Should the import duties be suspended pursuant to Article 5 of Regulation (EC) No 1422/95, specific amounts for these duties should be fixed.
- (5) The representative prices and additional import duties for the products concerned should be fixed in accordance with Articles 1(2) and 3(1) of Regulation (EC) No 1422/95.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 141, 24.6.1995, p. 12. Regulation as amended by Regulation (EC) No 79/2003 (OJ L 13, 18.1.2003, p. 4).

⁽³⁾ OJ L 145, 27.6.1968, p. 12. Regulation as amended by Regulation (EC) No 1422/95.

ANNEX

Representative prices and additional duties for imports of molasses in the sugar sector applicable from 14 October 2005

(EUR)

CN code	Amount of the representative price in 100 kg net of the product in question	Amount of the additional duty in 100 kg net of the product in question	Amount of the duty to be applied to imports in 100 kg net of the product in question because of suspension as referred to in Article 5 of Regulation (EC) No 1422/95 ⁽¹⁾
1703 10 00 ⁽²⁾	11,00	—	0
1703 90 00 ⁽²⁾	11,60	—	0

⁽¹⁾ This amount replaces, in accordance with Article 5 of Regulation (EC) No 1422/95, the rate of the Common Customs Tariff duty fixed for these products.

⁽²⁾ For the standard quality as defined in Article 1 of amended Regulation (EEC) No 785/68.

COMMISSION REGULATION (EC) No 1670/2005**of 13 October 2005****fixing the export refunds on white sugar and raw sugar exported in its unaltered state**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

- (1) Article 27 of Regulation (EC) No 1260/2001 provides that the difference between quotations or prices on the world market for the products listed in Article 1(1)(a) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) Regulation (EC) No 1260/2001 provides that when refunds on white and raw sugar, undenatured and exported in its unaltered state, are being fixed account must be taken of the situation on the Community and world markets in sugar and in particular of the price and cost factors set out in Article 28 of that Regulation. The same Article provides that the economic aspect of the proposed exports should also be taken into account.
- (3) The refund on raw sugar must be fixed in respect of the standard quality. The latter is defined in Annex I, point II, to Regulation (EC) No 1260/2001. Furthermore, this refund should be fixed in accordance with Article 28(4) of that Regulation. Candy sugar is defined in Commission Regulation (EC) No 2135/95 of 7 September 1995 laying down detailed rules of application for the grant of export refunds in the sugar sector ⁽²⁾. The refund thus calculated for sugar containing added flavouring or colouring matter must apply to their sucrose content and, accordingly, be fixed per 1 % of the said content.
- (4) In special cases, the amount of the refund may be fixed by other legal instruments.

- (5) The refund must be fixed every two weeks. It may be altered in the intervening period.
- (6) The first subparagraph of Article 27(5) of Regulation (EC) No 1260/2001 provides that refunds on the products referred to in Article 1 of that Regulation may vary according to destination, where the world market situation or the specific requirements of certain markets make this necessary.
- (7) The significant and rapid increase in preferential imports of sugar from the western Balkan countries since the start of 2001 and in exports of sugar to those countries from the Community seems to be highly artificial.
- (8) To prevent any abuse through the re-import into the Community of sugar products in receipt of an export refund, no refund should be set for all the countries of the western Balkans for the products covered by this Regulation.
- (9) In view of the above and of the present situation on the market in sugar, and in particular of the quotations or prices for sugar within the Community and on the world market, refunds should be set at the appropriate amounts.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Sugar,

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 214, 8.9.1995, p. 16.

ANNEX

**REFUNDS ON WHITE SUGAR AND RAW SUGAR EXPORTED WITHOUT FURTHER PROCESSING
APPLICABLE FROM 14 OCTOBER 2005 ^(a)**

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	S00	EUR/100 kg	34,44 ⁽¹⁾
1701 11 90 9910	S00	EUR/100 kg	33,70 ⁽¹⁾
1701 12 90 9100	S00	EUR/100 kg	34,44 ⁽¹⁾
1701 12 90 9910	S00	EUR/100 kg	33,70 ⁽¹⁾
1701 91 00 9000	S00	EUR/1 % of sucrose × 100 kg product net	0,3744
1701 99 10 9100	S00	EUR/100 kg	37,44
1701 99 10 9910	S00	EUR/100 kg	36,63
1701 99 10 9950	S00	EUR/100 kg	36,63
1701 99 90 9100	S00	EUR/1 % of sucrose × 100 kg of net product	0,3744

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

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

The other destinations are:

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

^(a) The amounts set out in this Annex are not applicable with effect from 1 February 2005 pursuant to Council Decision 2005/45/EC of 22 December 2004 concerning the conclusion and the provisional application of the Agreement between the European Community and the Swiss Confederation amending the Agreement between the European Economic Community and the Swiss Confederation of 22 July 1972 as regards the provisions applicable to processed agricultural products (OJ L 23, 26.1.2005, p. 17).

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

COMMISSION REGULATION (EC) No 1671/2005**of 13 October 2005****fixing the maximum export refund for white sugar to certain third countries for the 9th partial invitation to tender issued within the framework of the standing invitation to tender provided for in Regulation (EC) No 1138/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

(1) Commission Regulation (EC) No 1138/2005 of 15 July 2005 on a standing invitation to tender to determine levies and/or refunds on exports of white sugar ⁽²⁾, for the 2005/2006 marketing year, requires partial invitations to tender to be issued for the export of this sugar to certain third countries.

(2) Pursuant to Article 9(1) of Regulation (EC) No 1138/2005 a maximum export refund shall be fixed,

as the case may be, account being taken in particular of the state and foreseeable development of the Community and world markets in sugar, for the partial invitation to tender in question.

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

HAS ADOPTED THIS REGULATION:

Article 1

For the 9th partial invitation to tender for white sugar issued pursuant to Regulation (EC) No 1138/2005 the maximum amount of the export refund shall be 39,407 EUR/100 kg.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1. Regulation as last amended by Commission Regulation (EC) No 39/2004 (OJ L 6, 10.1.2004, p. 16).

⁽²⁾ OJ L 185, 16.7.2005, p. 3.

COMMISSION REGULATION (EC) No 1672/2005**of 13 October 2005****fixing the maximum export refund for butter in the framework of the standing invitation to tender
provided for in Regulation (EC) No 581/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular the third subparagraph of Article 31(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 581/2004 of 26 March 2004 opening a standing invitation to tender for export refunds concerning certain types of butter ⁽²⁾ provides for a permanent tender.
- (2) Pursuant to Article 5 of Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender procedure concerning export refunds for certain milk products ⁽³⁾ and following an examination of the

tenders submitted in response to the invitation to tender, it is appropriate to fix a maximum export refund for the tendering period ending on 11 October 2005.

- (3) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the permanent tender opened by Regulation (EC) No 581/2004, for the tendering period ending on 11 October 2005, the maximum amount of refund for the products referred to in Article 1(1) of that Regulation shall be as shown in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 90, 27.3.2004, p. 64. Regulation as last amended by Regulation (EC) No 1239/2005 (OJ L 200, 30.7.2005, p. 32).

⁽³⁾ OJ L 90, 27.3.2004, p. 58. Regulation as amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

ANNEX

(EUR/100 kg)

Product	Export refund Code	Maximum amount of export refund for export to the destinations referred to in the second subparagraph of Article 1(1) of Regulation (EC) No 581/2004
Butter	ex 0405 10 19 9500	96,40
Butter	ex 0405 10 19 9700	98,75
Butteroil	ex 0405 90 10 9000	120,49

COMMISSION REGULATION (EC) No 1673/2005**of 13 October 2005****fixing the maximum export refund for skimmed milk powder in the framework of the standing invitation to tender provided for in Regulation (EC) No 582/2004**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular the third subparagraph of Article 31(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 582/2004 of 26 March 2004 opening a standing invitation to tender for export refunds for skimmed milk powder ⁽²⁾ provides for a permanent tender.
- (2) Pursuant to Article 5 of Commission Regulation (EC) No 580/2004 of 26 March 2004 establishing a tender procedure concerning export refunds for certain milk products ⁽³⁾ and following an examination of the tenders submitted in response to the invitation to

tender, it is appropriate to fix a maximum export refund for the tendering period ending on 11 October 2005.

- (3) The Management Committee for Milk and Milk Products has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

For the permanent tender opened by Regulation (EC) No 582/2004, for the tendering period ending on 11 October 2005, the maximum amount of refund for the product and destinations referred to in Article 1(1) of that Regulation shall be 12,49 EUR/100 kg.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Commission Regulation (EC) No 186/2004 (OJ L 29, 3.2.2004, p. 6).

⁽²⁾ OJ L 90, 27.3.2004, p. 67. Regulation as last amended by Regulation (EC) No 1239/2005 (OJ L 200, 30.7.2005, p. 32).

⁽³⁾ OJ L 90, 27.3.2004, p. 58. Regulation as amended by Regulation (EC) No 2250/2004 (OJ L 381, 28.12.2004, p. 25).

COMMISSION REGULATION (EC) No 1674/2005**of 13 October 2005****establishing a prohibition of fishing for cod in ICES zones I, II b by vessels flying the flag of Poland**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the common fisheries policy ⁽¹⁾, and in particular Article 26(4) thereof,

Having regard to Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to common fisheries policy ⁽²⁾, and in particular Article 21(3) thereof,

Whereas:

- (1) Council Regulation (EC) No 27/2005 of 22 December 2004 fixing for 2005 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks applicable in Community waters and for Community vessels, in waters where catch limitations are required ⁽³⁾, lays down quotas for 2005.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2005.

- (3) It is therefore necessary to prohibit fishing for that stock and its retention on board, transhipment and landing,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2005 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing for the stock referred to in the Annex to this Regulation, by vessels flying the flag of or registered in the Member State referred to therein, shall be prohibited from the date set out in that Annex. It shall be prohibited to retain on-board, tranship or land such stock caught by those vessels after that date.

*Article 3***Entry into force**

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

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

Done at Brussels, 13 October 2005.

For the Commission

Jörgen HOLMQUIST

Director-General for Fisheries and Maritime Affairs

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1. Regulation as last amended by Regulation (EC) No 768/2005 (OJ L 128, 21.5.2005, p. 1).

⁽³⁾ OJ L 12, 14.1.2005, p. 1. Regulation as last amended by Regulation (EC) No 1300/2005 (OJ L 207, 10.8.2005, p. 1).

ANNEX

Member State	Poland
Stock	COD/1/2B
Species	Cod (<i>Gadus morhua</i>)
Zone	I, II b
Date	1 September 2005

COMMISSION REGULATION (EC) No 1675/2005**of 13 October 2005****fixing the export refunds on cereals and on wheat or rye flour, groats and meal**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) Article 13 of Regulation (EC) No 1784/2003 provides that the difference between quotations or prices on the world market for the products listed in Article 1 of that Regulation and prices for those products in the Community may be covered by an export refund.
- (2) The refunds must be fixed taking into account the factors referred to in Article 1 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules under Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾.
- (3) As far as wheat and rye flour, groats and meal are concerned, when the refund on these products is being calculated, account must be taken of the quantities of cereals required for their manufacture. These quantities were fixed in Regulation (EC) No 1501/95.

- (4) The world market situation or the specific requirements of certain markets may make it necessary to vary the refund for certain products according to destination.
- (5) The refund must be fixed once a month. It may be altered in the intervening period.
- (6) It follows from applying the detailed rules set out above to the present situation on the market in cereals, and in particular to quotations or prices for these products within the Community and on the world market, that the refunds should be as set out in the Annex hereto.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(a), (b) and (c) of Regulation (EC) No 1784/2003, excluding malt, exported in the natural state, shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

ANNEX

to the Commission Regulation of 13 October 2005 fixing the export refunds on cereals and on wheat or rye flour, groats and meal

Product code	Destination	Unit of measurement	Amount of refunds	Product code	Destination	Unit of measurement	Amount of refunds
1001 10 00 9200	—	EUR/t	—	1101 00 15 9130	C01	EUR/t	11,52
1001 10 00 9400	A00	EUR/t	0	1101 00 15 9150	C01	EUR/t	10,62
1001 90 91 9000	—	EUR/t	—	1101 00 15 9170	C01	EUR/t	9,81
1001 90 99 9000	A00	EUR/t	0	1101 00 15 9180	C01	EUR/t	9,18
1002 00 00 9000	A00	EUR/t	0	1101 00 15 9190	—	EUR/t	—
1003 00 10 9000	—	EUR/t	—	1101 00 90 9000	—	EUR/t	—
1003 00 90 9000	A00	EUR/t	0	1102 10 00 9500	A00	EUR/t	0
1004 00 00 9200	—	EUR/t	—	1102 10 00 9700	A00	EUR/t	0
1004 00 00 9400	A00	EUR/t	0	1102 10 00 9900	—	EUR/t	—
1005 10 90 9000	—	EUR/t	—	1103 11 10 9200	A00	EUR/t	0
1005 90 00 9000	A00	EUR/t	0	1103 11 10 9400	A00	EUR/t	0
1007 00 90 9000	—	EUR/t	—	1103 11 10 9900	—	EUR/t	—
1008 20 00 9000	—	EUR/t	—	1103 11 90 9200	A00	EUR/t	0
1101 00 11 9000	—	EUR/t	—	1103 11 90 9800	—	EUR/t	—
1101 00 15 9100	C01	EUR/t	12,33				

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

C01: All third countries with the exception of Albania, Bulgaria, Romania, Croatia, Bosnia and Herzegovina, Serbia and Montenegro, the former Yugoslav Republic of Macedonia, Lichtenstein and Switzerland.

COMMISSION REGULATION (EC) No 1676/2005**of 13 October 2005****concerning tenders notified in response to the invitation to tender for the export of barley issued in Regulation (EC) No 1058/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

- (1) An invitation to tender for the refund for the export of barley to certain third countries was opened pursuant to Commission Regulation (EC) No 1058/2005 ⁽²⁾.
- (2) Article 7 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on

the market for cereals ⁽³⁾, and in particular Article 13(3) thereof,

- (3) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95, a maximum refund should not be fixed.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

No action shall be taken on the tenders notified from 7 to 13 October 2005 in response to the invitation to tender for the refund for the export of barley issued in Regulation (EC) No 1058/2005.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 174, 7.7.2005, p. 12.

⁽³⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last modified by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

COMMISSION REGULATION (EC) No 1677/2005**of 13 October 2005****fixing the maximum export refund on oats in connection with the invitation to tender issued in
Regulation (EC) No 1438/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 7 thereof,

Having regard to Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽²⁾, and in particular Article 7 thereof,

Having regard to Commission Regulation (EC) No 1438/2005 of 2 September 2005 on a special intervention measure for oats in Finland and Sweden for the 2005/2006 marketing year ⁽³⁾,

Whereas:

- (1) An invitation to tender for the refund for the export of oats produced in Finland and Sweden for export from Finland or Sweden to all third countries with the

exception of Bulgaria, Norway, Romania and Switzerland was opened pursuant to Regulation (EC) No 1438/2005.

- (2) On the basis of the criteria laid down in Article 1 of Regulation (EC) No 1501/95, a maximum refund should be fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 7 to 13 October 2005, pursuant to the invitation to tender issued in Regulation (EC) No 1438/2005, the maximum refund on exportation of oats shall be 22,56 EUR/t.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

⁽³⁾ OJ L 228, 3.9.2005, p. 5.

COMMISSION REGULATION (EC) No 1678/2005**of 13 October 2005****fixing the maximum export refund on common wheat in connection with the invitation to tender issued in Regulation (EC) No 1059/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals ⁽¹⁾, and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the refund for the export of common wheat to certain third countries was opened pursuant to Commission Regulation (EC) No 1059/2005 ⁽²⁾.

(2) In accordance with Article 7 of Commission Regulation (EC) No 1501/95 of 29 June 1995 laying down certain detailed rules for the application of Council Regulation (EEC) No 1766/92 on the granting of export refunds on cereals and the measures to be taken in the event of disturbance on the market for cereals ⁽³⁾, the Commission may, on the basis of the tenders notified, decide to fix a maximum export refund taking account of the criteria referred to in Article 1 of Regulation (EC) No 1501/95.

In that case a contract is awarded to any tenderer whose bid is equal to or lower than the maximum refund.

(3) The application of the abovementioned criteria to the current market situation for the cereal in question results in the maximum export refund being fixed.

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

HAS ADOPTED THIS REGULATION:

Article 1

For tenders notified from 7 to 13 October 2005, pursuant to the invitation to tender issued in Regulation (EC) No 1059/2005, the maximum refund on exportation of common wheat shall be 9,00 EUR/t.

Article 2

This Regulation shall enter into force on 14 October 2005.

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

Done at Brussels, 13 October 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 270, 21.10.2003, p. 78. Regulation as amended by Commission Regulation (EC) No 1154/2005 (OJ L 187, 19.7.2005, p. 11).

⁽²⁾ OJ L 174, 7.7.2005, p. 15.

⁽³⁾ OJ L 147, 30.6.1995, p. 7. Regulation as last amended by Regulation (EC) No 777/2004 (OJ L 123, 27.4.2004, p. 50).

II

(Acts whose publication is not obligatory)

EUROPEAN PARLIAMENT AND COUNCIL

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 7 September 2005

on the mobilisation of the European Union Solidarity Fund according to point 3 of the Interinstitutional Agreement of 7 November 2002 between the European Parliament, the Council and the Commission on the financing of the European Union Solidarity Fund supplementing the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure

(2005/706/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Interinstitutional Agreement of 7 November 2002 between the European Parliament, the Council and the Commission on the financing of the European Union Solidarity Fund supplementing the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure ⁽¹⁾, and in particular point 3 thereof,

Having regard to Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund ⁽²⁾,

Having regard to the proposal from the Commission,

Whereas:

- (1) The European Union has created a Solidarity Fund (the Fund) to show solidarity with the population of regions struck by disasters.
- (2) Slovakia submitted an application to mobilise the Fund on 24 January 2005, following a disaster caused by a storm.
- (3) The Interinstitutional Agreement of 7 November 2002 allows mobilisation of the Fund within an annual ceiling of EUR 1 billion.
- (4) The storm disaster in Slovakia in November 2004 fulfils the criteria for mobilising the European Union Solidarity Fund,

⁽¹⁾ OJ C 283, 20.11.2002, p. 1.

⁽²⁾ OJ L 311, 14.11.2002, p. 3.

HAVE ADOPTED THIS DECISION:

Article 1

The European Union Solidarity Fund shall be mobilised to provide the sum of EUR 5 667 578 in commitment appropriations from the general budget of the European Union for the financial year 2005.

Article 2

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

Done at Strasbourg, 7 September 2005.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

D. ALEXANDER

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 7 September 2005****on the mobilisation of the flexibility instrument in favour of the rehabilitation and reconstruction assistance to tsunami affected countries according to point 24 of the Interinstitutional Agreement of 6 May 1999**

(2005/707/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽¹⁾, and in particular point 24 thereof,

Having regard to the proposal from the Commission,

Whereas:

The Budget Authority has agreed to support the rehabilitation and reconstruction needs in the earthquake/tsunami affected countries (mainly Indonesia, Sri Lanka and the Maldives) for a total amount of EUR 350 million, of which EUR 170 million in 2005; part of the required response will be delivered by redefining indicative and not yet committed programmes for the region in agreement with the governments concerned (EUR 60 million), by recourse to the Rapid Reaction Mechanism (EUR 12 million) and by the mobilisation of the emergency reserve (EUR 70 million). Since the ceiling for heading 4 'External actions' is already exceeded by EUR 100 million in 2005, and all possibilities for reallocating appropriations under this heading have been examined, EUR 15 million will be financed by an additional deployment of the flexibility instrument,

HAVE DECIDED AS FOLLOWS:

Article 1

For the amending budget No 3/2005 to the general budget of the European Union for the financial year 2005, the flexibility instrument shall be used to provide the sum of EUR 15 000 000 in commitment appropriations.

This amount shall be used for the financing of aid for rehabilitation and reconstruction of the earthquake/tsunami affected countries in Asia, covered by heading 4 'External actions' of the financial perspective, under Article 19 10 04 'Rehabilitation and reconstruction operations in developing countries in Asia' of the 2005 budget.

Article 2

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

Done at Strasbourg, 7 September 2005.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

D. ALEXANDER

⁽¹⁾ OJ C 172, 18.6.1999, p. 1. Agreement amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 7 September 2005
on the revision of the financial perspective 2000 to 2006
(2005/708/EC)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure ⁽¹⁾, and in particular to points 19, 20 and 21 thereof,

Having regard to Decision 2003/430/EC of the European Parliament and of the Council of 19 May 2003 on the revision of the financial perspective ⁽²⁾,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in the fifth subparagraph of Article 272(9) of the Treaty ⁽³⁾,

Whereas:

The reform of the common agricultural policy adopted by the Council in September 2003 ⁽⁴⁾ provides for a reduction in direct payments (modulation) to finance rural development policy to achieve a better balance between policy tools designed to promote sustainable agriculture and those designed to promote rural development and to finance additional rural development measures. The financial perspective set out in Annex I to the Interinstitutional Agreement on budgetary discipline and improvement of the budgetary procedure as revised by Decision 2003/430/EC hereinafter referred to as the 'financial perspective', should therefore be modified to take into account the effect of 'modulation' for the year 2006. As a consequence, commitment appropriations from subheading 1a 'Common agricultural policy' can be used to finance additional measures under subheading 1b 'Rural development', with no change in the ceiling of heading 1 'Agriculture',

HAVE DECIDED AS FOLLOWS:

Article 1

The financial perspective is revised as follows:

The annual ceilings for appropriations for commitments in heading 1 of table 1a, table 1b, table 2a and table 2b shall be amended as follows:

- (a) the figure for the subheading 1a 'Common agricultural policy' shall be reduced in 2006 by the amount corresponding to the modulation;

Reduced amounts in common agricultural policy	2006
EUR million at 1999 prices	– 570
EUR million at 2006 prices	– 655

⁽¹⁾ OJ C 172, 18.6.1999, p. 1. Agreement amended by Decision 2003/429/EC of the European Parliament and of the Council (OJ L 147, 14.6.2003, p. 25).

⁽²⁾ OJ L 147, 14.6.2003, p. 31.

⁽³⁾ Decision of the European Parliament of 7 September 2005 and Decision of the Council of 18 July 2005.

⁽⁴⁾ Council Regulation (EC) No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

- (b) the figure for the subheading 1b 'Rural development' shall be increased in 2006 by the amount corresponding to the modulation;

Increased amounts in rural development	2006
EUR million at 1999 prices	+ 570
EUR million at 2006 prices	+ 655

Article 2

1. The financial perspective for the European Union, in 1999 prices, is set out in tables 1a and 1b in the Annex.
2. The corresponding financial perspective resulting from the technical adjustment for 2005, in line with movements in gross national income (GNI) and prices, is set out in tables 2a and 2b in the Annex.

Article 3

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

Done at Strasbourg, 7 September 2005.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
D. ALEXANDER

ANNEX

Table 1a: Revised financial perspective (EU-25) at 1999 prices

Commitment appropriations		2000	2001	2002	2003	2004	2005	2006
		(EUR million)						
1. AGRICULTURE								
1a Common agricultural policy		40 920	42 800	43 900	43 770	44 657	45 677	45 807
1b Rural development		36 620	38 480	39 570	39 430	38 737	39 602	39 042
		4 300	4 320	4 330	4 340	5 920	6 075	6 765
2. STRUCTURAL ACTIONS								
Structural funds		32 045	31 455	30 865	30 285	35 665	36 502	37 940
Cohesion fund		29 430	28 840	28 250	27 670	30 533	31 835	32 608
		2 615	2 615	2 615	2 615	5 132	4 667	5 332
3. INTERNAL POLICIES								
		5 930	6 040	6 150	6 260	7 877	8 098	8 212
4. EXTERNAL ACTIONS								
		4 550	4 560	4 570	4 580	4 590	4 600	4 610
5. ADMINISTRATION ⁽¹⁾								
		4 560	4 600	4 700	4 800	5 403	5 558	5 712
6. RESERVES								
Monetary reserve		900	900	650	400	400	400	400
Emergency aid reserve		500	500	250				
Guarantee reserve		200	200	200	200	200	200	200
		200	200	200	200	200	200	200
7. PRE-ACCESSION STRATEGY								
Agriculture		3 120	3 120	3 120	3 120	3 120	3 120	3 120
Pre-accession structural instrument		520	520	520	520			
PHARE (applicant countries)		1 040	1 040	1 040	1 040			
		1 560	1 560	1 560	1 560			
8. COMPENSATION								
						1 273	1 173	940
TOTAL APPROPRIATIONS FOR COMMITMENTS		92 025	93 475	93 955	93 215	102 985	105 128	106 741
TOTAL APPROPRIATIONS FOR PAYMENTS		89 600	91 110	94 220	94 880	100 800	101 600	103 840
Ceiling, appropriations for payments as % of GNI (ESA 95)		1,07 %	1,07 %	1,10 %	1,11 %	1,10 %	1,07 %	1,07 %
Margin for unforeseen expenditure		0,17 %	0,17 %	0,14 %	0,13 %	0,14 %	0,17 %	0,17 %
Own resources ceiling		1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of staff contributions to the pension scheme, up to a maximum of EUR 1 100 million at 1999 prices for the period 2000 to 2006.

Table 1b: Revised financial perspective (EU-25) at 1999 prices
(including budgetary implications of a political settlement in Cyprus)

Commitment appropriations		2000	2001	2002	2003	2004	2005	2006
		(EUR million)						
1. AGRICULTURE								
1a Common agricultural policy		40 920	42 800	43 900	43 770	44 650	45 675	45 805
1b Rural development		36 620	38 480	39 570	39 430	38 740	39 611	39 052
		4 300	4 320	4 330	4 340	5 910	6 064	6 753
2. STRUCTURAL ACTIONS								
Structural funds		32 045	31 455	30 865	30 285	35 718	36 579	38 052
Cohesion fund		29 430	28 840	28 250	27 670	30 571	31 899	32 703
		2 615	2 615	2 615	2 615	5 147	4 680	5 349
3. INTERNAL POLICIES								
		5 930	6 040	6 150	6 260	7 891	8 112	8 226
4. EXTERNAL ACTIONS								
		4 550	4 560	4 570	4 580	4 590	4 600	4 610
5. ADMINISTRATION ⁽¹⁾								
		4 560	4 600	4 700	4 800	5 403	5 558	5 712
6. RESERVES								
Monetary reserve		900	900	650	400	400	400	400
Emergency aid reserve		500	500	250				
Guarantee reserve		200	200	200	200	200	200	200
		200	200	200	200	200	200	200
7. PRE-ACCESSION STRATEGY								
Agriculture		3 120	3 120	3 120	3 120	3 120	3 120	3 120
Pre-accession structural instrument		520	520	520	520			
PHARE (applicant countries)		1 040	1 040	1 040	1 040			
		1 560	1 560	1 560	1 560			
8. COMPENSATION								
						1 273	1 173	940
TOTAL APPROPRIATIONS FOR COMMITMENTS		92 025	93 475	93 955	93 215	103 045	105 218	106 865
TOTAL APPROPRIATIONS FOR PAYMENTS		89 600	91 110	94 220	94 880	100 800	101 600	103 840
Ceiling, appropriations for payments as % of GNI (ESA 95)		1,07 %	1,07 %	1,10 %	1,11 %	1,10 %	1,07 %	1,07 %
Margin for unforeseen expenditure		0,17 %	0,17 %	0,14 %	0,13 %	0,14 %	0,17 %	0,17 %
Own resources ceiling		1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of staff contributions to the pension scheme, up to a maximum of EUR 1 100 million at 1999 prices for the period 2000 to 2006.

Table 2a: Revised financial perspective (EU-25) at current prices

Commitment appropriations	Current prices							(EUR million)
	2000	2001	2002	2003	2004	2005	2006	
1. AGRICULTURE								
1a Common agricultural policy	41 738	44 530	46 587	47 378	49 305	51 439	52 618	
1b Rural development	37 352	40 035	41 992	42 680	42 769	44 598	44 847	
	4 386	4 495	4 595	4 698	6 536	6 841	7 771	
2. STRUCTURAL ACTIONS								
Structural funds	32 678	32 720	33 638	33 968	41 035	42 441	44 617	
Cohesion fund	30 019	30 005	30 849	31 129	35 353	37 247	38 523	
	2 659	2 715	2 789	2 839	5 682	5 194	6 094	
3. INTERNAL POLICIES								
	6 031	6 272	6 558	6 796	8 722	9 012	9 385	
4. EXTERNAL ACTIONS								
	4 627	4 735	4 873	4 972	5 082	5 119	5 269	
5. ADMINISTRATION ⁽¹⁾								
	4 638	4 776	5 012	5 211	5 983	6 185	6 528	
6. RESERVES								
Monetary reserve	906	916	676	434	442	446	458	
Emergency aid reserve	500	500	250					
Guarantee reserve	203	208	213	217	221	223	229	
	203	208	213	217	221	223	229	
7. PRE-ACCESSION STRATEGY								
Agriculture	3 174	3 240	3 328	3 386	3 455	3 472	3 566	
Pre-accession structural instrument	529	540	555	564				
PHARE (applicant countries)	1 058	1 080	1 109	1 129				
	1 587	1 620	1 664	1 693				
8. COMPENSATION								
					1 410	1 305	1 074	
TOTAL APPROPRIATIONS FOR COMMITMENTS	93 792	97 189	100 672	102 145	115 434	119 419	123 515	
TOTAL APPROPRIATIONS FOR PAYMENTS	91 322	94 730	100 078	102 767	111 380	114 060	119 112	
Ceiling, appropriations for payments as % of GNI (ESA 95)	1,07 %	1,08 %	1,11 %	1,09 %	1,09 %	1,08 %	1,08 %	
Margin for unforeseen expenditure	0,17 %	0,16 %	0,13 %	0,15 %	0,15 %	0,16 %	0,16 %	
Own resources ceiling	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of staff contributions to the pension scheme, up to a maximum of EUR 1 100 million at 1999 prices for the period 2000 to 2006.

Table 2b: Revised financial perspective (EU-25) at current prices
(including budgetary implications of a political settlement in Cyprus)

Commitment appropriations	Current prices						(EUR million)
	2000	2001	2002	2003	2004	2005	2006
1. AGRICULTURE	41 738	44 530	46 587	47 378	49 297	51 437	52 615
1a Common agricultural policy	37 352	40 035	41 992	42 680	42 772	44 608	44 858
1b Rural development	4 386	4 495	4 595	4 698	6 525	6 829	7 757
2. STRUCTURAL ACTIONS	32 678	32 720	33 638	33 968	41 094	42 528	44 746
Structural funds	30 019	30 005	30 849	31 129	35 395	37 319	38 632
Cohesion fund	2 659	2 715	2 789	2 839	5 699	5 209	6 114
3. INTERNAL POLICIES	6 031	6 272	6 558	6 796	8 737	9 027	9 401
4. EXTERNAL ACTIONS	4 627	4 735	4 873	4 972	5 082	5 119	5 269
5. ADMINISTRATION ⁽¹⁾	4 638	4 776	5 012	5 211	5 983	6 185	6 528
6. RESERVES	906	916	676	434	442	446	458
Monetary reserve	500	500	250	0	0	0	0
Emergency aid reserve	203	208	213	217	221	223	229
Guarantee reserve	203	208	213	217	221	223	229
7. PRE-ACCESSION STRATEGY	3 174	3 240	3 328	3 386	3 455	3 472	3 566
Agriculture	529	540	555	564			
Pre-accession structural instrument	1 058	1 080	1 109	1 129			
PHARE (applicant countries)	1 587	1 620	1 664	1 693			
8. COMPENSATION					1 410	1 305	1 074
TOTAL APPROPRIATIONS FOR COMMITMENTS	93 792	97 189	100 672	102 145	115 500	119 519	123 657
TOTAL APPROPRIATIONS FOR PAYMENTS	91 322	94 730	100 078	102 767	111 380	114 060	119 112
Ceiling, appropriations for payments as % of GNI (ESA 95)	1,07 %	1,08 %	1,11 %	1,09 %	1,09 %	1,08 %	1,08 %
Margin for unforeseen expenditure	0,17 %	0,16 %	0,13 %	0,15 %	0,15 %	0,16 %	0,16 %
Own resources ceiling	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %	1,24 %

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of staff contributions to the pension scheme, up to a maximum of EUR 1 100 million at 1999 prices for the period 2000 to 2006.

COMMISSION

COMMISSION DECISION

of 2 August 2004

on the State aid implemented by France for France Télécom

(notified under document number C(2004) 3061)

(Only the French text is authentic)

(Text with EEA relevance)

(2005/709/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

- (2) The opening decision was notified to France on 31 January 2003. After a number of substantive errors had been corrected, a corrigendum was notified to France on 7 March 2003.

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,

- (3) France communicated additional information to the Commission by letters dated 4 April 2003, 15 May 2003 and 29 January 2004.

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

- (4) The Commission's decision to open the procedure was published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested third parties to submit their comments on the aid measures in question.

Whereas:

I. PROCEDURE

- (1) By letter dated 31 January 2003, the Commission informed France of its decision to open the formal investigation procedure provided for in Article 88(2) of the EC Treaty (hereinafter called the opening decision) in respect of financial measures introduced by the French authorities for France Télécom (hereinafter called FT or the company) and in respect of the business tax scheme applicable to that operator. A description of the facts which led to the procedure being opened is not included in this Decision ⁽²⁾.

- (5) The Commission received the following comments on the subject from interested third parties:

- 21 March 2003: comments from Cable and Wireless plc and Cable and Wireless SA
- 11 April 2003: comments from Cegetel
- 10 April 2003: comments from AFORS Telecom
- 11 April 2003: comments from LDCOM

⁽¹⁾ OJ C 57, 12.3.2003, p. 5.

⁽²⁾ See paragraphs 1 to 8 of the opening decision, which are to be considered an integral part of this Decision.

⁽³⁾ OJ C 57, 12.3.2003, p. 5, hereinafter called 'decision to open the procedure' or 'opening decision'.

- 11 April 2003: comments from A ⁽⁴⁾
 - 10 April 2003: comments from Tiscali
 - 11 April 2003: comments from WorldCom France
 - 11 April 2003: comments from B ⁽⁴⁾
 - 11 April 2003: comments from Bouygues SA and Bouygues Telecom (BT) ⁽⁵⁾
 - 14 April 2003: comments from Telecom Italia
 - 14 April 2003: comments from C ⁽⁴⁾
 - 29 April 2003: comments from B
 - 30 April 2003: comments from LDCOM ⁽⁶⁾.
- (6) The Commission transmitted the comments to France on 16 May 2003, giving it the opportunity of commenting on them.
- (7) The French authorities submitted their comments by letters dated 30 June and 29 July 2003.
- (8) The Commission received further information and documents from the third parties listed below:
- 23 June 2003: letter from LDCOM
 - 25 June 2003: letter from D ⁽⁴⁾
 - 27 October 2003: letter from MCI
 - 16 October 2003: letter from ECTA
 - 25 June 2003: letter from E ⁽⁴⁾
 - 7 January 2004: letter from BT
 - 16 January 2004: letter from LT
 - 19 March 2004: letter from FT
 - 5 April 2004: letter from Tiscali
 - 17 May 2004: letter from LDCOM
 - 26 May 2004: letter from BT
- 22 June 2004: letter from FT
 - 30 June 2004: fax from FT
 - 2 July 2004: fax from FT
 - 16 July 2004: fax from BT.
- (9) The Commission requested additional explanations from the French authorities by letters dated as follows:
- 11 September 2003 (answer given by the French authorities on 20 October 2003)
 - 11 November 2003 (answer given by the French authorities on 4 December 2003)
 - 12 January 2004 (answer given by the French authorities on 21 January 2004)
 - 2 February 2004 (answer given by the French authorities on 16 February 2004)
 - 1 June 2004 (answer given by the French authorities at the meeting on 16 June 2004)
- (10) The Commission forwarded the letters referred to in paragraph 8 to the French authorities on 3 May and 14 June 2004.
- (11) The Commission heard representatives of third parties at various meetings during the course of the procedure.
- (12) The Commission met the French authorities and FT on 22 January and 16 and 23 June 2004.
- (13) By fax dated 5 July 2004, the French authorities submitted to the Commission new calculations concerning the special business tax scheme. On 13, 15 and 16 July 2004, the French authorities submitted additional comments to the Commission.

⁽⁴⁾ Party wishing that its identity be kept confidential.

⁽⁵⁾ To which a complaint lodged by the same companies dated 22.1.2003 was annexed.

⁽⁶⁾ LDCOM sent the Commission a corrigendum, which was forwarded to the French authorities on 16.6.2003.

II. DESCRIPTION

- (14) Only the special business tax scheme applicable to FT, as referred to in the opening decision, is the subject of this Decision.

(15) Inasmuch as the measure under scrutiny has already been described in detail in the opening decision⁽⁷⁾, a description will be included in this Decision only as far as is necessary.

(16) Until 1990 inclusive, FT's business activities were conducted by a Directorate in the Ministry of Posts and Telecommunications. As an administrative public service of the State, the former Directorate-General for Telecommunications was subject to none of the following taxes: (i) business tax; (ii) property tax on buildings and unbuilt land; and (iii) corporation tax⁽⁸⁾. It was endowed with a budget annexed to that of the State which was largely in surplus and which was subject to a payment to the general budget under the heading of operating surpluses as well as to certain levies for financing specific activities.

(17) Law No 90-568 of 2 July 1990 on the organisation of the public postal and telecommunications service transformed the former Directorate-General for Telecommunications into two separate public-law entities (La Poste and FT) endowed with financial autonomy and governed by commercial law. The conferment of legal personality on these two entities should have resulted in the ordinary rules of taxation being applied to them. Under the terms of Article 1654 of the General Tax Code (*Code général des impôts*, hereafter called CGI), 'public establishments, industrial or commercial state concerns, and companies in which the State or local authorities have shareholdings shall pay under the conditions of ordinary law the duties and taxes of all types to which private companies carrying on the same operations are subject'. Consequently, FT should have been subject to the ordinary rules of taxation as from the date of its formation on 1 January 1991 (Article 1 of Law No 90-568 of 2 July 1990). However, contrary to this principle — which is enshrined, moreover, in Law No 90-568 itself⁽⁹⁾ — the legislator introduced taxation rules derogating from the ordinary rules for FT (Articles 18-21 of Law No 90-568) in the form of two schemes: a 'transitional' scheme applicable from 1 January 1991 to 1 January 1994,

followed by a 'definitive' scheme applicable indefinitely with effect from 1 January 1994:

— 1991 to 1993: Article 19 of Law No 90-568 laid down the principle that, for a period lasting from 1 January 1991 until 1 January 1994, FT would be subject only to the duties and taxes actually borne by the State. Consequently, during that period, FT, like the State, did not have to pay taxes such as business tax, property tax or corporation tax. During that same period, and under the terms of the same article, FT had to make contributions to the State budget (in particular the civil research and development budget) 'by way of the levy for the benefit of the general budget'. These contributions were fixed annually by the Finance Acts up to a certain amount⁽¹⁰⁾.

— 1994 to 2003: Pursuant to Law No 90-568 (Article 18) and Article 1654 CGI, FT was subject to the ordinary tax system as from 1 January 1994, except for local direct taxation (property tax, business tax), with respect to which Law No 90-568 laid down special conditions concerning the rate, the basis and the taxation arrangements. According to an initial estimate by the French authorities, the advantage derived by FT from the special business tax scheme that was applicable to it amounted to approximately EUR 198 million a year⁽¹¹⁾. On the basis of figures provided subsequently by the French authorities, the amount is said to be lower (see recitals (54) *et seq.* below). This special open-ended business tax scheme was abolished by the 2003 Finance Act⁽¹²⁾.

⁽⁷⁾ See paragraphs 25 to 33 of the opening decision.

⁽⁸⁾ It had been subject, on the other hand, since 1988 to VAT; see the 'Report to Parliament on the normalisation of the local taxation of France Télécom', Directorate-General for Taxes, November 2001, p. 6.

⁽⁹⁾ Although Article 18 of Law No 90-568 laid down the principle of the subjection of La Poste and FT to ordinary duties and taxes, it provided that this application of the ordinary rules had to be effected 'subject to the provisions of Articles 19, 20 and 21 of this Law'.

⁽¹⁰⁾ Article 19 of Law No 90-568 provided as follows: 'Until 1 January 1994, La Poste and France Télécom shall be subject only to such duties and taxes as are actually borne by the State at the time of publication of this Law by reason of the activities transferred to the public operators. Until that same date, the contributions paid by France Télécom into the civil research and development budget and by way of the levy for the benefit of the general budget shall be fixed each year by the Finance Acts up to an annual amount calculated by applying to a basic amount, set for 1989 at 13 700 million francs, the consumer price index established by the National Statistical Institute and economic studies'.

⁽¹¹⁾ The report submitted to Parliament by the Directorate-General for Taxes in November 2001 on the normalisation of the taxation of France Télécom states that 'the immediate normalisation of the conditions of taxation of France Télécom in relation to business tax would involve, assuming that the rate remains unchanged [i.e. independently of decisions taken by local authorities], an over-taxation of almost 198 million euros for the company'; see the 'Report to Parliament on the normalisation of the local taxation of France Télécom', Directorate-General for Taxes, November 2001, p. 16.

⁽¹²⁾ Article 29 of the 2003 Finance Act completely normalised the arrangements for subjecting FT to business tax as from 1.1.2003. See in this connection the report submitted by Mr Gilles Carrez on behalf of the Committee on Finance, the General Economy and the Plan on the draft Finance Act, 2003, distributed at the National Assembly on 14.10.2002.

III. COMMENTS FROM INTERESTED PARTIES

- (18) The comments sent by interested parties merely repeat the arguments presented by the Commission in the opening decision. Consequently, they will not be reproduced in this Decision.

IV. COMMENTS FROM THE FRENCH AUTHORITIES

- (19) The French authorities' arguments focus on a fundamental point, namely that the specific scheme established by the State for FT did not confer any advantage on the company. The French authorities acknowledge that FT was subject to a special scheme in relation to business tax from 1991 to 2002 inclusive, but they consider that the scheme gave it no edge and in no way affected public resources, resulting in an overtaxation of FT compared with the ordinary-law situation. The French authorities base this conclusion on the following three points:

- between 1991 and 1993 inclusive, FT was subject to a levy for the benefit of the general budget which, according to the French authorities, was equivalent to payment of business tax and included (*inter alia*) the amount of the business tax itself;
- the French authorities stress that Law No 90-568 established 'once and for all' a single tax scheme applicable to FT from 1991 to 2003. They consider that an overall calculation should be made of any advantage conferred by the scheme on FT throughout the period 1991 to 2003. In their opinion, an overtaxation of FT one year might 'offset' an under-taxation of FT another year;
- according to the French authorities, the arrangements for taxing the company under the headings of business tax and corporation tax are inseparable; consequently, it is necessary to study together the various elements of taxation of FT throughout the period 1991 to 2003. As business tax enters into the calculation of the taxable result, the correction of any undertaxation under the heading of business tax should be accompanied by a downward correction of the amount of corporation tax.

- (20) Secondly, the French authorities maintain that the measure in question should be considered existing. Lastly, at the meetings with the Commission on 16 and 23 June 2004, the French authorities questioned

the validity of the calculations which they themselves had previously submitted to the Commission concerning the difference between the business tax paid by FT and that which it would have had to pay had it been subject to the rules of ordinary law. According to the French authorities, it was impossible to calculate for certain the undertaxation of FT under the heading of business tax from 1994 onwards. Consequently, in the French authorities' opinion, the Commission should not rule on this issue. By letter dated 5 July 2004, the French authorities submitted to the Commission new calculations (prepared by FT itself), which they by no means claimed to be more accurate or more precise than those submitted previously but which were intended simply to illustrate the impossibility of estimating with any degree of accuracy the advantage enjoyed by FT under the special business tax scheme from 1994 onwards.

V. ASSESSMENT OF THE AID

- (21) Article 87(1) of the EC Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. In the opening decision, the Commission noted that all the constituent elements of State aid within the meaning of Article 87(1) of the EC Treaty were *prima facie* present. Only the main findings of that analysis are reproduced in this Decision ⁽¹³⁾:

- FT received special treatment in relation to business tax (introduced by Articles 18-21 of Law No 90-568);
- this special treatment conferred on it an advantage (according to the estimates of the French authorities themselves);
- the special provisions on business tax applicable to FT were introduced by Parliament by means of a law promulgated by the President of the French Republic, which leaves no doubt as to the imputability of this measure to the State;
- in so far as FT paid fewer taxes than companies subject to the rules of ordinary law, there is a use of public resources;

⁽¹³⁾ For more details see Chapter III of the opening decision.

- since FT operates in a very competitive sector, that of telecommunications, the advantages from which FT benefits distort or threaten to distort competition;
- since FT operates in markets which were gradually opened to competition from the end of the 1980s, any advantage granted to FT by the State is likely to affect trade between Member States.

1. The years 1991 to 1993

- (22) To analyse the business tax scheme for the period 1991 to 1993, it is necessary to examine the first argument advanced by the French authorities, according to which the levy for the benefit of the general budget paid by FT from 1991 to 1993 was in the nature of a tax and can be considered equivalent to payment of business tax according to specific procedures. On this point, the Commission would observe that, according to case law, the existence of aid cannot be denied by reason of the fact that a company benefiting from an advantageous tax arrangement is subject under a different head to heavier taxation⁽¹⁴⁾. Each tax follows a different logic and is based on different presuppositions.
- (23) As for the levy being in the nature of a tax, the Commission would first of all observe that the levy is not expressly linked by law to the business tax. There is nothing in law that says that the levy was payable in lieu of business tax. Nor was the amount of the levy defined according to the parameters which determine the amount of the business tax.
- (24) Moreover, in the opening decision, the Commission pointed out that the amount of the lump sum paid by FT to the State by way of contribution to the general budget was equivalent to the profit which the PTT paid to the State in 1989 and 1990. It considered, therefore, that the payment of this sum was akin more to a levy on FT's operating results than to individual taxation by way of business tax.

- (25) Before 1990, when FT's business activities were still being conducted by a Directorate in the Ministry of Posts and Telecommunications, the budget of that Directorate was in surplus. To make up the deficits in the general budget of the State, this annexed budget was subject to a levy for the benefit of the general budget under the heading of 'operating surpluses', to which were subsequently added other levies intended to finance specific activities. In 1988, the Government committed itself to stabilising until 1992 the contribution from the budget annexed to the general budget at FRF 13,7 billion for 1989 and FRF 14 billion for 1990. It is this amount that was taken as a basis by Law No 90-568 when it fixed the levy imposed on FT for the benefit of the general budget for the years 1991, 1992 and 1993⁽¹⁵⁾.

- (26) More generally, the characteristics of the levy (lump-sum payment, amount fixed in the light of the company's past operating surpluses) are not those of traditional taxation.

- (27) In view of its origins and how it is defined, the levy therefore resembles more a participation in the operating results.

- (28) However, even if the levy is not expressly linked by law to the business tax, it is linked to the specific tax scheme applicable to FT. Law No 90-568 provided, in the same chapter entitled 'Taxation' and in the same article, that FT did not have to pay any taxes (other than those paid by the State) and that it had to pay a levy for the benefit of the general budget, these two provisions being applicable during the same period (from 1 January 1991 to 1 January 1994).

- (29) Additionally, the levy possesses features which are typically those of a tax, namely a pecuniary payment collected definitively, without any counterpart and through authority by the State or another public entity. Lastly, it procures resources for the State.

⁽¹⁴⁾ The Court of Justice has held that a reduction in social charges pertaining to family allowances could not be 'made good' through an additional charge under unemployment insurance. See judgment of the Court of Justice of 2 July 1974, Case 173-73, *Italian Republic v Commission of the European Communities*, [1974] ECR 709, point 34: 'The argument that the contested reduction is not a "state aid", because the loss of revenue resulting from it is made good through funds accruing from contributions paid to the unemployment insurance fund, cannot be accepted'. See also the Commission Decision 2002/581/EC of 11 December 2001 on the tax measures for banks and banking foundations implemented by Italy, according to which 'A selective measure might be justified by the specificity of the activity covered by it, but not by the presence of other selective measures.' (OJ L 184, 13.7.2002, p. 27, recital (35)).

⁽¹⁵⁾ FT had to pay into the general budget an amount fixed each year by the Finance Acts 'up to an annual amount calculated by applying to a base, fixed for 1989 at 13 700 million francs, the consumer price index established by the National Institute for Statistics and Economic Studies' (Article 19 of Law No 90-568).

(30) It would seem, therefore, that the objective of Article 19 of the Law was to establish a three-year transitional period during which FT would continue to pay to the State the same amounts as in the past by way of participation in the operating results and at the same time would be exempted from payment of all taxes (other than those paid by the State). The immediate subjection of FT to the ordinary rules of taxation would have involved, *inter alia*, the payment of local taxes (benefiting local authorities and not the general budget of the State, such as, for example, business tax) — which might have led to a reduction in FT's contribution to the national budget (in so far as a new form of participation in the operating results was not immediately introduced).

(31) In conclusion, it would appear that the levy for the benefit of the general budget to which FT was subject from 1991 to 1993 inclusive was of a mixed nature, being partly in the nature of a tax and partly in the form of participation in the operating results, in so far as it was intended to ensure that, during a three-year transitional period, the company paid to the State an amount equivalent to that which it would have paid had it paid tax under the conditions of ordinary law, plus an additional amount corresponding to a levy on the operating results. In other words, the special levy which FT paid to the State between 1991 and 1993 inclusive performed a dual function: it was tantamount in part to the payment of various taxes and — for the remainder — to participation by the State as owner of the company in the latter's results.

(32) In the light of the above (and in particular of the partly tax-like nature of the levy and of the link between the levy and the specific tax scheme applicable to the company), even in the absence of explicit textual indications to the effect that the levy has to be considered a specific method of payment of business tax, the Commission concludes that during the years 1991 to 1993 inclusive the levy in question was tantamount in part to the payment of taxes, including the payment of business tax, and — for the remainder — to participation by the State as owner of the company in the latter's operating results.

(33) In this connection it should be added that, according to the information submitted by the French authorities for the years 1991 to 1993 inclusive, the levy in question was larger than the taxes FT would have had to pay had it been subject to the ordinary business tax and corporation tax arrangements. It follows from this that, during that period, FT gained no advantage from the business tax exemption. However, the Commission

would point out that, during the years 1991 to 1993 inclusive, FT was subject only to the duties and taxes actually borne by the State (in particular it did not pay any property tax). Consequently, to make sure that the exemption from business tax and its replacement by the levy in question had not conferred any tax advantage on FT, the Commission asked the French authorities whether the levy was higher than all the other taxes FT would have paid had it been taxed under conditions of ordinary law (and not just higher than the sum of business tax and corporation tax)⁽¹⁶⁾. At the meetings with the Commission on 16 and 23 June 2004, the French authorities confirmed that the levy was indeed higher than the sum of all the other taxes. Consequently, the Commission considers that FT did not benefit from any advantage during the period between 1991 and 1993 inclusive in so far as it was subject to a special levy of a mixed nature, being tantamount in part to the payment of various taxes and — for the remainder — to a levy on the operating results, which special levy was higher than the sum of the duties and taxes from which FT was exempted.

2. The years 1994 to 2003

(34) In order to analyse the business tax scheme for the period 1994 to 2003, it is necessary to examine the second and third arguments advanced by the French authorities.

(35) The French authorities stress that Law No 90-568 established 'once and for all' a single tax scheme applicable to FT from 1991 to 2002 inclusive. In their view, an overall calculation should be made of any advantage the scheme may have conferred on FT throughout the period 1991 to 2002. In their opinion, an overtaxation of FT one year might 'offset' an undertaxation of FT another year. More precisely, the French authorities maintain that the undertaxation of FT for the 'definitive' period (1 January 1994 to 1 January 2003) is offset by an overtaxation (due to the payment of the levy) during the 'transitional' period (1 January 1991 to 31 December 1993). This is claimed to be because the amount paid by FT to the State by way of the levy for the years 1991, 1992 and 1993 was so much higher than under the ordinary rules of taxation that it exceeded any advantage derived by FT from the specific arrangements for fixing the business tax during the 'definitive' period.

⁽¹⁶⁾ In view of the fact that the procedure was initiated in respect only of business tax and not of property tax and corporation tax, this Decision covers only business tax. In any event, for the period concerned, any other exemption from other taxes by the French State for FT's benefit would be time-barred on the date of this Decision within the meaning of Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 83, 27.3.1999, p. 1).

(36) This argument cannot be accepted. Law No 90-568 established two clearly distinct taxation schemes:

- a 'transitional' scheme lasting from 1991 to 1994, during which time FT was exempted from all taxes other than those paid by the State and had to pay to the State a lump sum by way of a 'levy for the benefit of the general budget';
- as from 1994, a scheme intended to be definitive (the Law did not lay down any end date for this scheme and in 2003 a new law was needed to abolish it); under this scheme, FT was subject under ordinary-law conditions to all taxes except property taxes and business tax, for which special conditions were laid down.

(37) According to case law, aid given to a company cannot be offset by a specific charge imposed on the same company on another score. The Court of Justice has thus held that a reduction in social security contributions pertaining to family allowances which benefits certain companies cannot be 'made good' through an additional charge imposed on those same companies under the heading of unemployment insurance ⁽¹⁷⁾.

(38) In the light of this case law, the Commission cannot agree that the 'undertaxation' of FT under the heading of business tax from 1994 onwards could be offset by the special levy paid by the company between 1991 and 1994, a levy which was not specifically connected with business tax. As the Commission has already observed, Law No 90-568 does not provide that the special levy was due instead of business tax. Moreover, the amount of this levy was defined, not according to the parameters which determine the amount of business tax, but by reference to the profit which the PTT paid to the State in 1989 and 1990. In view of its origins and the way it is defined, the levy is akin more to a levy on operating results than to individual taxation under the heading of business tax. This ought normally to have led the Commission to rule out any set-off and to consider that the non-payment of business tax during the 'transitional' period also constituted a specific advantage conferred on the company.

(39) It is by way of exception that the Commission has accepted that the levy paid by the company between 1991 and 1993 inclusive was also tantamount to payment of business tax. In view of the ambiguous

nature of the levy, which seems to be connected with the specific tax scheme applicable to FT ⁽¹⁸⁾, the fact that the levy exceeded the amount which would have resulted from the application of the ordinary-law tax system and the transitional character of the scheme in question, the Commission has decided to give the company the benefit of the doubt and has agreed to recognise the partly tax-like nature of the levy and the fact that it was tantamount also to payment of taxes. Nevertheless, any part of the levy which exceeded the normally applicable tax burden under the ordinary law could be understood only as a remuneration on capital, which rules out any legal basis for an offsetting mechanism. Any offsetting between the amounts paid by FT by way of levies on operating surpluses and the undertaxation of FT under the heading of business tax would involve a confusing of levies of different types (tax credits with pecuniary gains), which is not admissible.

(40) Lastly, the Commission notes that Law No 90-568 did not provide for any offsetting of the undertaxation of FT from 1994 onwards by an overtaxation for the years 1991 to 1994. An overall calculation, such as that proposed by the French authorities, would involve, however, reclassifying *ex post* the surplus tax allegedly paid by FT during the 'transitional' period as a tax advance payment (tax credit) to be deducted from future years, which was not at all the aim of Law No 90-568 when it established the two schemes. If the French authorities now propose to offset different types of levy (the special levy of a mixed type – being in the nature both of a tax and of a dividend – and the undertaxation of FT on the score of business tax) applicable to two separate periods, this is not at all due to the application of the normal taxation rules of French law, but involves an *a posteriori* rationalisation aimed at avoiding the recovery of the aid from which FT benefited.

(41) In conclusion, the Commission cannot accept the French authorities' second argument according to which an overall calculation should be made of the advantage conferred by the scheme on FT throughout the period 1991 to 2002.

(42) This means that the difference between the business tax actually paid by FT and that which should have been due under the ordinary law from 1 January 1994 to 1 January 2003 constitutes State aid inasmuch as it represents an advantage for FT granted through resources which would otherwise have been incorporated in the budget of the State.

⁽¹⁷⁾ Case 173-73, already cited.

⁽¹⁸⁾ Law No 90-568 provided, in the same chapter entitled 'Taxation' and in the same article, that FT did not have to pay any taxes other than those paid by the State and that it had to pay a levy for the benefit of the general budget, these two provisions being applicable during the same period.

- (43) Nor can the Commission accept the argument according to which business tax enters into the calculation of the taxable result and that the correction of any under-taxation under the heading of business tax should be accompanied by a downward correction of the amount of corporation tax since the arrangements for taxing the company under the headings of business tax and corporation tax are inseparable.
- (44) This argument has been rejected by the Court of First Instance, which has stated clearly that '... the Commission is not obliged, in its decisions ordering the recovery of State aid, to determine the incidence of tax on the amount of aid to be recovered, since that calculation falls within the scope of national law; it is merely required to indicate the gross sum to be recovered. That does not prevent the national authorities, when recovering the amount in question, from deducting certain sums, where appropriate, from the amount to be recovered pursuant to their internal rules, provided that the application of those rules does not make such recovery impossible in practice or discriminate in relation to comparable cases governed by national law' ⁽¹⁹⁾.

VI. NEW AID

- (45) Regarding the nature of the aid, the Commission confirms its preliminary conclusion set out in the opening decision that the aid in question has to be considered new. The exceptional business tax scheme was introduced by a law of 1990 (i.e. after the entry into force of the Treaty) precisely to prevent the creation of FT as a public operator from implying its subjection to the ordinary rules of taxation. Moreover, since 1988 the telecommunications sector has been gradually liberalised. Because FT benefited as from 1994 from aid connected with the specific business tax scheme and because at that time the markets in which FT operated were, at least partially, competitive ⁽²⁰⁾, the Commission has to conclude that the measure in question is new aid.

VII. PRESCRIPTION

- (46) The French authorities consider that in any event the alleged aid scheme for FT introduced by Law No

90-568 constitutes an existing scheme of aid which cannot be recovered. They note that the scheme was introduced by Law No 90-568 of 2 July 1990 and consider that it was on 2 July 1990 (i.e. the day on which the law was adopted) that the aid was granted to the recipient. The opening of the procedure having been decided on 30 January 2003, i.e. more than 10 years after the aid was granted, the French authorities maintain that, in accordance with Article 15 of Regulation (EC) No 659/1999, the alleged aid for FT was 'covered' by the Community rules on the time-barring of State aid.

- (47) It will be recalled in this connection that Article 15 provides as follows:

'1. The powers of the Commission to recover aid shall be subject to a limitation period of 10 years.

2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Communities.

3. Any aid with regard to which the limitation period has expired, shall be deemed to be existing aid'.

- (48) It should be pointed out that the 10-year limitation period provided for in Article 15 of Regulation (EC) No 659/1999 'does not in any way express a general principle whereby new aid is transformed into existing aid but merely precludes recovery of aid established more than 10 years before the Commission first intervened' ⁽²¹⁾. It follows from this that, pursuant to

⁽¹⁹⁾ Judgment of the Court of First Instance of 8 June 1995, Case T-459/93, *Siemens SA v Commission of the European Communities* [1995] ECR II-1675.

⁽²⁰⁾ Judgment of the Court of First Instance of 15 June 2000, Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/97, T-3/98 to T-6/98 and T-23/98 *Alzetta Mauro and Others v Commission of the European Communities* [2000] ECR II-2319, paragraphs 141 *et seq.*; Judgment of the Court of 9 August 1994, Case C-44/93, *Namur-Les Assurances du Crédit SA v Office National du Ducroire and the Belgian State* [1994] ECR I-3829.

⁽²¹⁾ Judgment of the Court of First Instance of 30 April 2002, Joined Cases T-195/01 and T-207/01, *Government of Gibraltar v Commission of the European Communities* [2002] ECR II-2309, paragraph 130.

Article 15 of the Regulation, the aid which benefited FT under the specific business tax scheme would not lose its character as new aid by reason of the fact that the scheme was set up more than 10 years ago. Quite simply, under the terms of the provision, the Commission would be able to order recovery only in respect of aid which had benefited the company during the 10 years preceding its action. In so far as the aid benefited FT as from the 1994 financial year and the opening decision dates from 30 January 2003, the Commission must order the recovery of the aid in question in its entirety.

- (49) It should also be pointed out that, according to Article 15 of Regulation (EC) No 659/1999, 'The powers of the Commission to recover aid shall be subject to a limitation period of 10 years' and that this period starts to run 'on the day on which the unlawful aid is awarded to the beneficiary ... under an aid scheme'. What matters, therefore, under the terms of the Regulation, is the date on which the individual aid was granted to the recipient under an aid scheme and not the date on which the scheme itself was introduced. In other words, what Article 15 of the Regulation time-bars is the possibility for the Commission to order the recovery of aid granted illegally to the recipient more than 10 years previously and in no way, contrary to what the French authorities claim, the aid schemes themselves. It follows from this that, in the case of aid schemes, the limitation period for recovery starts to run, not on the day on which the scheme was introduced, but on the day on which the aid was actually granted to the recipient. Law No 90-568 introduced an aid scheme for FT ⁽²²⁾. Consequently, the limitation period in respect of the aid granted to FT under this specific tax scheme starts to run, not on the day on which Law No 90-568 was adopted, but on the day on which the aid was actually granted to FT, that is to say annually at the time when the business tax was due.

- (50) Regarding the interruption of the limitation period, contrary to what the French authorities maintain there does not have to be a formal Commission decision for the period to be interrupted. According to Article 15 of Regulation (EC) No 659/1999, 'Any action taken by the Commission ... with regard to the unlawful aid shall

⁽²²⁾ Pursuant to Article 1, point (d), of Regulation (EC) No 659/99, 'aid scheme' means any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount.

interrupt the limitation period'. The Court of First Instance has already held that a simple request for information can interrupt the limitation period provided for in Article 15 of Regulation (EC) No 659/1999 ⁽²³⁾. In the present case, the first information request sent by the Commission to the French authorities concerning the special business tax scheme applicable to FT was dated 28 June 2001. It is therefore on that date that the limitation period within the meaning of Article 15 of Regulation (EC) No 659/1999 was interrupted ⁽²⁴⁾.

- (51) Consequently, only aid granted to FT more than 10 years before the first information request (i.e. before 28 June 1991) is no longer recoverable. However, in so far as aid was granted to FT as from the 1994 financial year under the business tax scheme applicable for the period 1994 to 2003, the Commission must order the recovery of the aid in question in its entirety.

VIII. COMPATIBILITY OF THE AID

- (52) The French authorities have put forward no specific argument in support of the compatibility of the aid. The Commission would stress that, for the reasons set out in paragraphs 122 and 123 of the opening decision, it considers that the aid is not compatible with the common market within the meaning of Article 87(2) or (3)(a), (c) (with reference to the economic development of certain areas), (d) and (e). In addition, the aid in question is connected with no restructuring project of the company but constitutes rather operating aid. Consequently, the aid cannot be considered compatible on the basis of Article 87(3)(c) (with reference to the development of certain economic activities).

IX. CONCLUSION

- (53) In the light of the above, the Commission finds that:

— The business tax scheme applicable during the period 1991 to 1993 does not constitute State aid.

⁽²³⁾ Judgment of the Court of First Instance of 10 April 2003, Case T-369/00 *Département du Loiret v Commission of the European Communities* [2003] ECR II-1789, paragraphs 81 *et seq.*

⁽²⁴⁾ As the Court of First Instance has already observed, 'When it addresses a request for information to a Member State, the Commission is informing that State that it has in its possession information concerning aid alleged to be unlawful and, if necessary, that that aid will have to be repaid ... Accordingly, the simplicity of the request for information does not have the consequence of depriving it of legal effect as a measure capable of interrupting the limitation period provided for in Article 15 of Regulation (EC) No 659/1999'; see Case T-369/00, already cited, paragraphs 79 and 82.

- The difference between the business tax actually paid by FT and that which would have been payable under the ordinary law from 1 January 1994 to 31 December 2002 constitutes State aid. This aid is new aid which was implemented illegally by France in infringement of Article 88(3) of the EC Treaty. This aid is incompatible with the common market and, consequently, must be recovered.

- (54) According to the estimates in the report submitted to Parliament by the Directorate-General for Taxes in

November 2001, 'the immediate normalisation of the conditions of taxation of FT in relation to business tax would involve, at an unchanged rate (i.e. independently of decisions taken by local authorities), an overtaxation of almost 198 million euros for the company'. However, by letter dated 15 May 2003 the French authorities submitted to the Commission more precise information concerning the undertaxation of FT under the specific business tax scheme (see the table below):

in EUR million

Financial year	1994	1995	1996	1997	1998	1999	2000	2001	2002	Cumulation
Ordinary-law taxation simulation	674	786	830	923	1 012	1 092	1 035	1 039	971	8 362
Actual taxation of FT	560	667	694	785	855	914	940	913	894	7 222
Undertaxation	114	119	136	138	157	178	95	126	77	1 140

Source: French authorities' answer of 15 May 2003.

- The French authorities made a precise calculation of the business tax FT would have paid in 2000, 2001 and 2002 had it been subject to the ordinary-law arrangements on the basis of a breakdown at local level of equipment and movable property, immovable property and wages after application of the local tax rates.

- They estimated the business tax for the years 1994 to 1999 by reference to the amount of business tax FT would have paid in 2000 had it been subject to the ordinary-law arrangements, corrected by the trend in the taxable base and in tax rates since 1991, given that the data available did not make it possible to carry out a precise calculation for the years prior to 2000 in view of the difficulty of reconstituting the local bases and rates.

- It follows from these estimates that the amount of aid to be recovered is EUR 1 140 million.

- (55) By letter dated 29 January 2004, the French authorities informed the Commission that the business tax payable by the company in 2003 (the first year of application of the ordinary-law arrangements) amounted to EUR 773 million, a figure appreciably lower than the EUR 971 million simulated for 2002 at a time when the amount of business tax actually due was not yet known. They stressed that the back-calculation of this figure over

previous years confirmed and strengthened their position as it would show the overtaxation of FT in relation to the ordinary-law position.

- (56) Lastly, at the meetings with the Commission on 16 and 23 June 2004, the French authorities maintained that the calculations previously submitted to the Commission were imprecise and that it was impossible to estimate for certain the amount of aid from which FT had benefited during the period 1994 to 2003. Accordingly, they called on the Commission not to rule on the aid allegedly granted to FT under the special business tax scheme.

- (57) Concerning this last argument, the Commission notes first of all that it is a new argument which contradicts the previous position of the French authorities, which had submitted estimates on 15 May 2003, as confirmed and supplemented on 29 January 2004. Moreover, the French authorities did not question the accuracy of these estimates at any time during the course of the procedure. It was not until the June 2004 meetings, when it became clear that the Commission's investigation was coming to an end, that the French authorities queried the estimates provided previously. In these circumstances, the argument as to the impossibility of calculating with any accuracy the amount of aid from which FT benefited cannot not be accepted.

(58) On 5 July 2004, the French authorities submitted to the Commission new estimates as to the business tax which would have been payable by FT had it been subject to the ordinary law between 1991 and 2002 inclusive. By fax dated 13 July 2004, the French authorities stated that 'these estimates are based only on the actual amount, now known, of business tax paid by FT for the year 2003 in accordance with the ordinary-law arrangements'. By fax dated 16 July 2004, the French authorities outlined the method it had used in making these new estimates:

- the French authorities established that FT's net business tax contribution for 2003 amounted to EUR 773 million;
- they then calculated the business tax contribution FT would have paid under the terms of Law No 90-568

having regard to its declarations for 2003; this amount came to EUR 696 million;

- the French authorities then noted that the new provisions in force (application of the ordinary-law arrangements using the actual rates and real bases) would have had the effect of increasing for the 2003 financial year by EUR 77 million, or 11,06 %, the contribution which would have been due under the previous rules;
- this percentage increase was then applied to the contributions actually paid by FT between 1991 and 2002;
- it follows from these estimates that the undertaxation of FT for the period between 1994 and 2002 amounted to EUR 798 million.

in EUR million

Financial year	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Ordinary-law taxation simulation	622	741	771	872	949	1 015	1 044	1 014	992	8 020
Actual taxation of FT	560	667	694	785	855	914	940	913	894	7 222
Undertaxation	62	74	77	87	94	101	104	101	98	798

Source: French authorities' letter of 5 July 2004.

(59) In view of the discrepant information submitted by the French authorities, the Commission cannot at this stage say exactly how much aid is to be recovered, but what it can say is that FT benefited from State aid the indicative amount of which is somewhere between EUR 798 million and EUR 1 140 million in capital, to which must be added interest from the date on which the aid was at the disposal of the recipient until the date of its recovery⁽²⁵⁾. The exact amount of aid to be recovered will be determined by the Commission, in collaboration with the French authorities, within the framework of the recovery procedure, at the latest by 1 November 2004.

must be recovered. The Commission calls on the French authorities, in accordance with their duty of honest cooperation, to collaborate with it in determining the exact amount of aid to be recovered,

HAS ADOPTED THIS DECISION:

Article 1

(60) In conclusion, the Commission considers that the specific business tax scheme applicable to FT between 1994 and 2003 procured it an advantage amounting to State aid in that it was undertaxed compared with the ordinary-law situation. This State aid, which was granted by the French authorities in violation of their prior notification obligation, is incompatible with the common market and

The State aid granted illegally by France in infringement of Article 88(3) of the EC Treaty to France Télécom under the business tax scheme applicable to that company during the period 1 January 1994 to 31 December 2002 (provided for by Law No 90-568 (Article 18) and Article 1654 CGI) is incompatible with the common market.

Article 2

1. France shall take all necessary measures to recover from France Télécom the aid referred to in Article 1.

⁽²⁵⁾ This is without prejudice to the possibility enjoyed by the French authorities in accordance with case law of, at the time of recovery, 'deducting certain sums, where appropriate, from the amount to be recovered pursuant to their internal rules, provided that the application of those rules does not make such recovery impossible in practice or discriminate in relation to comparable cases governed by national law' (Case T-459/93, already cited).

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision.

3. The aid to be recovered shall include interest from the date on which it was at the disposal of the recipient until the date of its recovery.

4. The interest shall be calculated in conformity with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁶⁾.

Article 3

France shall inform the Commission, within two months of notification of this Decision, of the measures that it proposes to take and that it has already taken to comply with it. For that purpose, France shall use the questionnaire annexed to this Decision.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 2 August 2004.

For the Commission

Frederik BOLKESTEIN

Member of the Commission

⁽²⁶⁾ OJ L 140, 30.4.2004, p. 1.

COMMISSION DECISION**of 13 October 2005****concerning certain protection measures in relation to a suspicion of highly pathogenic avian influenza in Romania***(notified under document number C(2005) 4068)***(Text with EEA relevance)****(2005/710/EC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

ratites, farmed and wild feathered game birds, live birds other than poultry and hatching eggs of these species from Romania.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽¹⁾, and in particular Article 18 thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽²⁾, and in particular Article 22 thereof,

Whereas:

(1) Avian influenza is an infectious viral disease in poultry and birds, causing mortality and disturbances which can quickly take epizootic proportions liable to present a serious threat to animal and public health and to reduce sharply the profitability of poultry farming. There is a risk that the disease agent might be introduced via international trade in live poultry and poultry products.

(2) On 12 October 2005 Romania has notified to the Commission the isolation of an H5 avian influenza virus collected from a clinical case. The clinical picture allows the suspicion of highly pathogenic avian influenza pending the determination of the neuraminidase (N) type and of the pathogenicity index.

(3) In view of the animal health risk of disease introduction into the Community, it is therefore appropriate as an immediate measure to suspend imports of live poultry,

(4) As Romania is authorised for imports of game trophies, eggs for human consumption and untreated feathers, imports into the Community of these products should be suspended as well because of the animal health risk involved.

(5) Furthermore the importation into the Community from Romania should be suspended for fresh meat of poultry, ratites and wild and farmed feathered game and importation of meat preparations and meat products consisting of or containing meat of those species.

(6) Certain products derived from poultry slaughtered before 1 August 2005 should also continue to be authorised, taking into account the incubation period of the disease.

(7) Commission Decision 2005/432/EC of 3 June 2005 laying down the animal and public health conditions and model certificates for imports of meat products for human consumption from third countries and repealing Decisions 97/41/EC, 97/221/EC and 97/222/EC ⁽³⁾ lays down the list of third countries from which Member States may authorise the importation of meat products and establishes treatment regimes considered effective in inactivating the respective pathogens. In order to prevent the risk of disease transmission via such products, appropriate treatment must be applied depending on the health status of the country of origin and the species the product is obtained from. It appears therefore appropriate, that imports of poultry meat products originating in Romania and treated to a temperature of at least 70 °C throughout the product should continue to be authorised.

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

⁽¹⁾ OJ L 268, 24.9.1991, p. 56. Directive as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 24, 30.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1; corrected version in OJ L 191, 28.5.2004, p. 1).

⁽³⁾ OJ L 151, 14.6.2005, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall suspend the importation from the territory of Romania of:

- live poultry, ratites, farmed and wild feathered game, live birds other than poultry as defined in Article 1, third indent, of Decision 2000/666/EC, including birds accompanying their owners (pet birds), and hatching eggs of these species,
- fresh meat of poultry, ratites, farmed and wild feathered game,
- meat preparations and meat products consisting of or containing meat of those species,
- raw pet food and unprocessed feed material containing any parts of those species,
- eggs for human consumption,
- non-treated game trophies from any birds, and
- unprocessed feathers and parts of feathers.

2. By way of derogation from paragraph 1, Member States shall authorise the importation of the products covered by paragraph 1 first to fourth indent, which have been obtained from birds slaughtered before 1 August 2005.

3. In the veterinary certificates/commercial documents accompanying consignments of the products referred to in paragraph 2 the following words as appropriate to the species shall be included:

'Fresh poultry meat/fresh ratite meat/fresh meat of wild feathered game/fresh meat of farmed feathered game/meat product consisting of, or containing meat of poultry, ratites, farmed or wild feathered game meat/meat preparation consisting of, or containing meat of poultry, ratites, farmed or wild feathered game meat/raw pet food and unprocessed feed material containing any parts of poultry, ratites, farmed or wild feathered game ^(A) obtained from

birds slaughtered before 1 August 2005 and in accordance with Article 1(2) of Commission Decision 2005/710/EC.

^(A) Delete as appropriate.'

4. By derogation from paragraph 1, Member States shall authorise the importation of meat products consisting of or containing meat of poultry, ratites, farmed and wild feathered game under the condition that the meat of these species has undergone at least one of the specific treatments referred to under points B, C or D in Part IV of Annex II to Commission Decision 2005/432/EC.

Article 2

Member States shall ensure that for the importation of processed feathers or parts of feathers, a commercial document stating that the processed feathers or parts thereof have been treated with a steam current or by some other method ensuring that no pathogens are transmitted accompany the consignment.

However, that commercial document shall not be required for processed decorative feathers, processed feathers carried by travellers for their private use or consignments of processed feathers sent to private individuals for non-industrial purpose.

Article 3

Member States shall amend the measures they apply to imports so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 4

This Decision shall apply until 30 April 2006.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 13 October 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

**DECISION No 1/2005 OF THE EC-EFTA JOINT COMMITTEE ON THE SIMPLIFICATION OF
FORMALITIES IN TRADE IN GOODS**

of 4 October 2005

**inviting Romania to accede to the Convention of 20 May 1987 on the simplification of formalities
in trade in goods**

(2005/711/EC)

THE JOINT COMMITTEE,

Having regard to the Convention of 20 May 1987 on the simplification of formalities in trade in goods ⁽¹⁾,
(hereinafter referred to as the Convention), and in particular Article 11(3) thereof,

Whereas:

- (1) In preparing the accession of Romania to the European Union the exchange of goods with this country would be facilitated by the simplification of formalities which affect the trade in goods between this country and the European Community, the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation.
- (2) With a view to achieving such facilitation it is appropriate to invite Romania to accede to the Convention,

HAS DECIDED AS FOLLOWS:

Article 1

Romania is invited, in the form of an Exchange of Letters between the Council of the European Union and Romania attached to this Decision, to accede to the Convention in accordance with Article 11a of the Convention as from 1 January 2006.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Basel, 4 October 2005.

For the Joint Committee

The President

Rudolf DIETRICH

⁽¹⁾ OJ L 134, 22.5.1987, p. 2. Convention as last amended by Decision No 2/95 (OJ L 117, 14.5.1996, p. 18).

LETTER No 1**Communication of the Decision of the EC-EFTA Joint Committee inviting Romania to accede to the Convention of 20 May 1987 on the simplification of formalities in trade in goods**

Sir,

I have the honour to inform you of the Decision No 1/2005 of the EC-EFTA Joint Committee on the simplification of formalities in trade in goods of 4 October 2005 inviting Romania to accede to the Convention of 20 May 1987 on the simplification of formalities in trade in goods.

The accession by Romania to the Convention may be effected by lodging its Instrument of Accession with the General Secretariat of the Council of the European Union together with a translation of the Convention in the official language of Romania in accordance with Article 11a of the Convention.

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

*The General Secretary
General Secretariat of the
Council of the European Union*

LETTER No 2**Instrument of Accession of Romania to the Convention on the simplification of formalities in trade in goods**

Romania,

Acknowledging the Decision No 1/2005 of the EC-EFTA Joint Committee on the simplification of formalities in trade in goods of 4 October 2005 inviting Romania to accede to the Convention of 20 May 1987 on the simplification of formalities in trade in goods,

Desiring to become a Contracting Party to the Convention,

HEREBY

Accedes to the Convention;

Attaches to this Instrument a translation of the Convention in the official language of Romania;

Declares that it accepts all the Recommendations and Decisions of the EC-EFTA Joint Committee on the simplification of formalities in trade in goods adopted between 4 October 2005 and the date on which the Accession of Romania becomes effective in accordance with Article 11a of the Convention.

Done at ...

For Romania

**DECISION No 5/2005 OF THE EC-EFTA JOINT COMMITTEE ON 'COMMON TRANSIT'
of 4 October 2005**

**inviting Romania to accede to the Convention of 20 May 1987 on a common transit procedure
(2005/712/EC)**

THE JOINT COMMITTEE,

Having regard to the Convention of 20 May 1987 on a common transit procedure ⁽¹⁾ (hereinafter referred to as the Convention), and in particular Article 15(3)(e) thereof,

Whereas:

- (1) The promotion of trade with Romania would be facilitated by a simplification of formalities to be carried out in the context of trade of goods between this country and the European Community, the Republic of Iceland, the Kingdom of Norway and the Swiss Confederation.
- (2) With a view to achieving such procedure it is appropriate to invite Romania to accede to the Convention,

HAS DECIDED AS FOLLOWS:

Article 1

In accordance with Article 15a of the Convention, Romania is invited, in the form of an Exchange of Letters between the Council of the European Union and Romania attached to this Decision, to accede to the Convention as from 1 January 2006.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Basel, 4 October 2005.

For the Joint Committee
The President
Rudolf DIETRICH

⁽¹⁾ OJ L 226, 13.8.1987, p. 2. Convention as last amended by Decision No 4/2005 (OJ L 225, 31.8.2005, p. 29).

LETTER No 1**Communication of the Decision of the EC-EFTA Joint Committee inviting Romania to accede to the Convention of 20 May 1987 on a common transit procedure**

Sir,

I have the honour to inform you of the Decision No 5/2005 of the EC-EFTA Joint Committee on common transit of 4 October 2005 inviting Romania to become a Contracting Party to the Convention of 20 May 1987 on a common transit procedure.

The accession of Romania to the Convention may be effected by lodging its Instrument of Accession with the General Secretariat of the Council of the European Union together with a translation of the Convention in the official language of Romania in accordance with Article 15a of the Convention.

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

*The General Secretary
General Secretariat of the
Council of the European Union*

LETTER No 2**Instrument of Accession of Romania to the Convention on a common transit procedure**

Romania,

Taking note of the Decision No 5/2005 of the EC-EFTA Joint Committee on common transit of 4 October 2005 inviting Romania to accede to the Convention of 20 May 1987 on a common transit procedure,

Desiring to become a Contracting Party to the Convention,

HEREBY

Accedes to the Convention;

Attaches to this Instrument a translation of the Convention in the official language of Romania;

Declares that it accepts all the Recommendations and Decisions of the EC-EFTA Joint Committee on common transit adopted between the 4 October 2005 and the date on which the Accession of Romania becomes effective in accordance with Article 15a of the Convention.

Done at ...

For Romania
