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Contents

I Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory

REGULATIONS

Commission Regulation (EC) No 1109/2009 of 19 November 2009 establishing the standard import values for determining the entry price of certain fruit and vegetables 1

★ **Commission Regulation (EC) No 1110/2009 of 18 November 2009 establishing a prohibition of fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and the Mediterranean by vessels flying the flag of Greece 3**

★ **Commission Regulation (EC) No 1111/2009 of 19 November 2009 adopting the plan allocating to the Member States resources to be charged to the 2010 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community and derogating from certain provisions of Regulation (EEC) No 3149/92..... 5**

Commission Regulation (EC) No 1112/2009 of 19 November 2009 suspending submission of applications for import licences for sugar products under certain tariff quotas 14

Commission Regulation (EC) No 1113/2009 of 19 November 2009 fixing the export refunds on milk and milk products 16

Commission Regulation (EC) No 1114/2009 of 19 November 2009 granting no export refund for skimmed milk powder in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008..... 20

Price: EUR 4

(Continued overleaf)

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

Commission Regulation (EC) No 1115/2009 of 19 November 2009 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95	21
--	----

Commission Regulation (EC) No 1116/2009 of 19 November 2009 fixing the rates of the refunds applicable to milk and milk products exported in the form of goods not covered by Annex I to the Treaty	23
---	----

II Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory

DECISIONS

Commission

2009/845/EC:

- ★ **Commission Decision of 26 November 2008 on State aid granted by Austria to the company Postbus in the Lienz district C 16/07 (ex NN 55/06) (notified under document C(2008) 7034) ⁽¹⁾...** 26

2009/846/EC:

- ★ **Commission Decision of 20 October 2009 on the conclusion of an administrative Agreement between the European Commission and the European GNSS Supervisory Authority on the security and exchange of classified information** 39

III Acts adopted under the EU Treaty

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

- ★ **College Decision 2009-8 adopting the Financial Regulation applicable to Eurojust** 45



⁽¹⁾ Text with EEA relevance

I

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COMMISSION REGULATION (EC) No 1109/2009

of 19 November 2009

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 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector ⁽²⁾, and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 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 Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 20 November 2009.

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

Done at Brussels, 19 November 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 350, 31.12.2007, p. 1.

ANNEX

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	AL	38,6
	MA	31,6
	MK	37,7
	TR	59,0
	ZZ	41,7
0707 00 05	JO	171,8
	MA	46,5
	TR	77,7
	ZZ	98,7
0709 90 70	MA	57,7
	TR	109,5
	ZZ	83,6
0805 20 10	MA	68,7
	ZZ	68,7
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	CN	52,3
	HR	40,9
	MA	74,5
	TR	76,4
	ZZ	61,0
0805 50 10	AR	54,6
	TR	71,6
	ZA	61,6
	ZZ	62,6
0806 10 10	BR	245,4
	LB	294,8
	TR	143,2
	US	293,9
	ZZ	244,3
0808 10 80	AU	171,8
	CA	63,9
	MK	22,6
	NZ	102,0
	US	94,7
	ZA	103,1
0808 20 50	ZZ	93,0
	CN	57,0
	TR	84,0
	US	72,0
	ZZ	71,0

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1110/2009**of 18 November 2009****establishing a prohibition of fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W,
and the Mediterranean by vessels flying the flag of Greece**

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 43/2009 of 16 January 2009 fixing for 2009 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 2009.
- (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 2009.

- (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 2009 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 that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 18 November 2009.

For the Commission

Fokion FOTIADIS

Director-General for Maritime Affairs and Fisheries

⁽¹⁾ OJ L 358, 31.12.2002, p. 59.

⁽²⁾ OJ L 261, 20.10.1993, p. 1.

⁽³⁾ OJ L 22, 26.1.2009, p. 1.

ANNEX

No	29/T&Q
Member State	Greece
Stock	BFT/AE045W
Species	Bluefin tuna (<i>Thunnus thynnus</i>)
Zone	Atlantic Ocean, east of longitude 45° W, and Mediterranean
Date	17 October 2009

COMMISSION REGULATION (EC) No 1111/2009**of 19 November 2009****adopting the plan allocating to the Member States resources to be charged to the 2010 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community and derogating from certain provisions of Regulation (EEC) No 3149/92**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 43(f) and (g), in conjunction with Article 4 thereof,

Having regard to Council Regulation (EC) No 2799/98 of 15 December 1998 establishing agrimonetary arrangements for the euro ⁽²⁾, and in particular Article 3(2) thereof,

Whereas:

- (1) In accordance with Article 2 of Commission Regulation (EEC) No 3149/92 of 29 October 1992 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community ⁽³⁾, the Commission should adopt a distribution plan to be financed from resources available in the 2010 budget year. That plan should lay down, in particular, for each of the Member States applying the measure, the maximum financial resources available to carry out its part of the plan, and the quantity of each type of product to be withdrawn from the stocks held by the intervention agencies.
- (2) The Member States involved in the distribution plan for the 2010 budget year have supplied the Commission with the information required in accordance with Article 1 of Regulation (EEC) No 3149/92.
- (3) For the purposes of resource allocation, account must be taken of experience and of the degree to which the Member States used the resources allocated to them in previous years.

(4) Point 1(c) of Article 2(3) of Regulation (EEC) No 3149/92 provides for the allocation of resources for the purchase on the market of products temporarily unavailable in intervention stocks. Given that the stocks of cereals currently held by the intervention agencies are not sufficient to cover the allocations corresponding to the requests for cereals and rice, resource allocations should be fixed to enable the purchase on the market of cereals or rice as required to implement the distribution plan for the 2010 budget year.

(5) Article 7(1) of Regulation (EEC) No 3149/92 provides for the transfer between Member States of products unavailable in the intervention stocks of the Member State in which such products are required to implement the annual distribution plan. Accordingly, the intra-Community transfers necessary to implement that plan for 2010 should be authorised, subject to the conditions laid down in Article 7 of Regulation (EEC) No 3149/92.

(6) Article 7(3) of Regulation (EEC) No 3149/92 provides the option, in cases where transfer of products from the Member State in which they are held in intervention to another Member State is foreseen, for operators to submit a bid without transferring the products released from intervention stocks to the applicant Member State. Article 25 of Regulation (EC) No 1234/2007 provides that disposal of products bought into public intervention should take place in such a way as to avoid disturbances in the market.

(7) Due to the current market situation in the dairy sector, which is marked by low price levels, the use of the option provided in Article 7(3) of Regulation (EEC) No 3149/92 should not be allowed in the 2010 distribution plan for butter and skimmed milk powder in order to avoid possible disturbances in the market following the release of those products in certain markets that are already well supplied. For the same reason, the use of the possibilities offered to operators in paragraphs 2 and 2a of Article 4 of that Regulation should be limited so that dairy products intended for distribution to the most deprived persons in the Community comply with certain requirements concerning their composition and quantity of milk used in their manufacturing. In order to monitor the compliance with that rule, the Member States should provide in their progress reports a detailed list of distributed products placed under the categories 'high fat content' or 'other'.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 349, 24.12.1998, p. 1.

⁽³⁾ OJ L 313, 30.10.1992, p. 50.

- (8) In order to ensure that the dairy products from the intervention stocks do not enter the market at an inappropriate moment during the year, the time period provided in the third subparagraph of Article 3(2) of Regulation (EEC) No 3149/92 during which butter and skimmed milk powder may be withdrawn from the intervention stocks should be shortened.
- (9) Taking into account the complexity of the implementation of the 2010 distribution plan requiring a high volume of intra-Community transfers, it is appropriate to increase the 5 % margin provided in Article 3(3) of Regulation (EEC) No 3149/92.
- (10) To implement the annual distribution plan, the operative event within the meaning of Article 3 of Regulation (EC) No 2799/98 should be the date on which the financial year for administration of stocks in public storage starts.
- (11) In accordance with Article 2(2) of Regulation (EEC) No 3149/92, the Commission has consulted the major organisations familiar with the problems of the most deprived persons in the Community when drawing up the annual distribution plan.
- (12) Article 2(1) of Regulation (EEC) No 3149/92 provides that the Commission adopts the annual distribution plan before 1 October of each year. Due to the current market situation in the dairy sector and taking into account the need for further consultations with the Member States on their requests, it still has not been possible for the Commission to adopt the distribution plan. Therefore, in order to ensure timely execution of the annual distribution plan this Regulation should enter into force immediately after its publication.
- (13) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

In 2010, the distribution of food to the most deprived persons in the Community under Article 27 of Regulation (EC) No 1234/2007 shall be implemented in accordance with the annual distribution plan set out in Annex I to this Regulation.

Article 2

Allocations to Member States for the purchase of cereals on the market, as required under the plan referred to in Article 1, shall be as set out in Annex II.

Article 3

1. By way of derogation from Article 3(2) of Regulation (EEC) No 3149/92, for the 2010 distribution plan, butter and skimmed milk powder must be withdrawn from intervention storage from 1 May to 30 September 2010. The sixty days deadline for the withdrawal of the products provided in the fifth subparagraph of Article 3(2) of that Regulation shall not apply in this case.

However, the first subparagraph shall not apply to allocations of 500 tonnes or less.

2. By way of derogation from Article 3(3) of Regulation (EEC) No 3149/92, for the 2010 distribution plan where substantiated changes concern 10 % or more of the quantities or values entered per product in the Community plan, the plan shall be revised.

Article 4

1. By way of derogation from paragraphs 2 and 2a of Article 4 of Regulation (EEC) No 3149/92, when implementing the 2010 distribution plan the Member States shall place the dairy products intended for distribution either under the category 'high fat content' or under the category 'other'.

2. The Member States shall ensure that the total quantity of milk fat accounts for a minimum of 20 % of the total weight of the products falling within the first category and that the manufacturing of the total quantity of the products within the second category has required a quantity of milk of at least 90 % of their total weight.

3. The progress report for the 2010 distribution plan, provided for in Article 10 of Regulation (EEC) No 3149/92, shall contain a detailed list of distributed products placed either under the category 'high fat content' or under the category 'other'.

Article 5

1. The intra-community transfer of products listed in Annex III to this Regulation shall be authorised, subject to the conditions laid down in Article 7 of Regulation (EEC) No 3149/92.

2. By way of derogation from Article 7(3) of Regulation (EEC) No 3149/92, in case where a transfer of skimmed milk powder or butter from a Member State in which these products are present in intervention stocks to the Member State where those products will be used to implement the annual distribution plan is foreseen in this Regulation the operator shall not have the option of placing the withdrawn products on the Community market in the first Member State but will have to transfer them to the second Member State.

Article 6

For the purpose of implementing the annual distribution plan referred to in Article 1 of this Regulation, the date of the operative event within the meaning of Article 3 of Regulation (EC) No 2799/98 shall be 1 October 2009.

Article 7

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, 19 November 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

ANNEX I

ANNUAL DISTRIBUTION PLAN FOR 2010

(a) Financial resources made available to implement the 2010 plan in each Member State:

(in EUR)	
Member State	Distribution
Belgique/België	7 806 433
България	8 565 832
Česká republika	133 893
Eesti	761 012
Éire/Ireland	818 816
Elláda	20 044 478
España	52 623 664
France	78 103 609
Italia	122 456 856
Latvija	5 119 849
Lietuva	8 859 115
Luxembourg	107 483
Magyarország	14 770 126
Malta	698 841
Polska	97 405 034
Portugal	22 516 761
România	29 951 704
Slovenija	2 619 927
Suomi/Finland	4 636 567
Total	478 000 000

- (b) Quantity of each type of product to be withdrawn from Community intervention stocks for distribution in each Member State subject to the maximum amounts laid down in a):

(in tonnes)

Member State	Cereals	Butter	Skimmed milk powder	Sugar
Belgique/België	29 067	1 285	—	1 507
България	54 104	—	—	1 724
Česká republika	302	20	22	9
Eesti	5 147	—	1	—
Eire/Ireland	—	350	—	—
Elláda	64 397	—	5 889	—
España	181 248	9 335	1 603	3 483
France	168 998	13 033	12 050	3 247
Italia	283 206	20 000	18 166	4 006
Latvija	22 951	—	969	—
Lietuva	40 317	145	1 212	1 182
Magyarország	95 687	—	—	1 938
Malta	4 740	—	—	—
Polska	387 305	1 901	17 952	10 823
Portugal	47 522	5 079	1 826	1 045
România	135 555	—	4 500	5 577
Slovenija	9 810	—	600	289
Suomi/Finland	25 371	—	500	—
Total	1 555 726	51 148	65 290	34 832

Allocation for Luxembourg for the purchase of milk powder on the EU market: EUR 101 880

ANNEX II

Allocations to Member States for purchase of cereals on the Community market:

(in EUR)

Member State	Cereals
Belgique/België	1 117 572
България	2 080 196
Česká republika	11 600
Eesti	197 884
Éire/Ireland	—
Elláda	2 475 950
España	6 968 699
France	6 497 704
Italia	10 888 824
Latvija	882 424
Lietuva	1 550 130
Luxembourg	—
Magyarország	3 679 017
Malta	182 233
Polska	14 891 236
Portugal	1 827 127
România	5 211 876
Slovenija	377 183
Suomi/Finland	975 485
Total	59 815 140

ANNEX III

(a) Intra-Community transfers of cereals authorised under the plan for the 2010 budget year:

	Quantity (tonnes)	Holder	Recipient
1.	102 940	SZIF, Česká republika	FEGA, España
2.	87 816	SZIF, Česká republika	FranceAgriMer, France
3.	29 067	BLE, Deutschland	BIRB, Belgique
4.	81 182	BLE, Deutschland	FranceAgriMer, France
5.	31 423	BLE, Deutschland	ARR, Polska
6.	1 022	PRIA, Eesti	Rural Support Service, Latvia
7.	36 172	Lietuvos žemės ūkio ir maisto produktų rinkos reguliavimo agentūra, Lietuva	ARR, Polska
8.	44 239	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	Държавен фонд 'Земеделие' — Разплащателна агенция, България
9.	64 397	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	OPEKEPE, Elláda
10.	204 593	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	AGEA, Italia
11.	4 740	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	Ministry for Resources and Rural Affairs Paying Agency, Malta
12.	39 351	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	ARR, Polska
13.	11 640	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	IFAP I.P., Portugal
14.	135 555	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	Agenția de Plăți și Intervenție pentru Agricultură, România
15.	9 810	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország	Agencija Republike Slovenije za kmetijske trge in razvoj podeželja, Slovenija
16.	6 852	AMA, Austria	Държавен фонд 'Земеделие' — Разплащателна агенция, България
17.	65 045	Pôdohospodárska platobná agentúra, Slovenská Republika	FEGA, España
18.	78 613	Pôdohospodárska platobná agentúra, Slovenská Republika	AGEA, Italia
19.	199 816	Agency for Rural Affairs, Suomi/Finland	ARR, Polska
20.	13 263	SJV, Sverige	FEGA, España

	Quantity (tonnes)	Holder	Recipient
21.	21 929	SJV, Sverige	Rural Support Service, Latvia
22.	35 882	SJV, Sverige	IFAP I.P., Portugal

(b) Intra-Community transfers of sugar authorised under the plan for the 2010 budget year:

	Quantity (tonnes)	Holder	Recipient
1.	2 129	SZIF, Česká republika	ARR, Polska
2.	397	OFI, Ireland	BIRB, Belgique
3.	995	OFI, Ireland	FranceAgriMer, France
4.	1 724	AGEA, Italia	Държавен фонд 'Земеделие' — Разплащателна агенция, България
5.	3 483	AGEA, Italia	FEGA, España
6.	2 252	AGEA, Italia	FranceAgriMer, France
7.	1 182	AGEA, Italia	Lietuvos žemės ūkio ir maisto produktų rinkos reguliavimo agentūra, Lietuva
8.	1 938	AGEA, Italia	Mezőgazdasági és Vidékfejlesztési Hivatal, Magyarország
9.	8 694	AGEA, Italia	ARR, Polska
10.	1 045	AGEA, Italia	IFAP I.P., Portugal
11.	5 577	AGEA, Italia	Agenția de Plăți și Intervenție pentru Agricultură, România
12.	289	AGEA, Italia	Agencija Republike Slovenije za kmetijske trge in razvoj podeželja, Slovenija

(c) Intra-Community transfers of butter authorised under the plan for the 2010 budget year:

	Quantity (tonnes)	Holder	Recipient
1.	9 894	BLE, Deutschland	AGEA, Italia
2.	10 106	Dienst Regelingen Roermond, Netherlands	AGEA, Italia

(d) Intra-Community transfers of skimmed milk powder authorised under the plan for the 2010 budget year:

	Quantity (tonnes)	Holder	Recipient
1.	600	SZIF, Česká republika	Agencija Republike Slovenije za kmetijske trge in razvoj podeželja, Slovenija
2.	5 889	BLE, Deutschland	OPEKEPE, Elláda
3.	969	PRIA, Eesti	Rural Support Service, Latvia
4.	18 166	FranceAgriMer, France	AGEA, Italia
5.	4 500	Lietuvos žemės ūkio ir maisto produktų rinkos reguliavimo agentūra, Lietuva	Agenția de Plăți și Intervenție pentru Agricultură, România

COMMISSION REGULATION (EC) No 1112/2009**of 19 November 2009****suspending submission of applications for import licences for sugar products under certain tariff quotas**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾,

Having regard to Commission Regulation (EC) No 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector ⁽²⁾, and in particular Article 5(2) thereof,

Whereas:

- (1) Quantities covered by applications for import licences submitted to the competent authorities from 1 to 7 November 2009 in accordance with Regulation (EC)

No 891/2009, are equal to the quantity available under order number 09.4321.

- (2) Submission of further applications for licences for order number 09.4321 should be suspended until the end of the marketing year, in accordance with Regulation (EC) No 891/2009,

HAS ADOPTED THIS REGULATION:

Article 1

Submission of further applications for licences, which correspond to the order numbers indicated in the Annex, shall be suspended until the end of the marketing year 2009/10.

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, 19 November 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 254, 26.9.2009, p. 82.

ANNEX

CXL Concessions Sugar**2009/10 marketing year****Applications lodged from 1.11.2009 to 7.11.2009**

Order No	Country	Allocation coefficient (%)	Further applications
09.4317	Australia	—	
09.4318	Brazil	—	
09.4319	Cuba	—	
09.4320	Any third countries	—	Suspended
09.4321	India	(¹)	Suspended

‘—’: Not applicable; no licence application has been sent to the Commission.

(¹) Not applicable; the applications do not exceed the quantities available and are fully granted.

Balkans Sugar**2009/10 marketing year****Applications lodged from 1.11.2009 to 7.11.2009**

Order No	Country	Allocation coefficient (%)	Further applications
09.4324	Albania	—	
09.4325	Bosnia and Herzegovina	—	
09.4326	Serbia, Montenegro and Kosovo (*)	(¹)	
09.4327	Former Yugoslav Republic of Macedonia	—	
09.4328	Croatia	(¹)	

‘—’: Not applicable; no licence application has been sent to the Commission.

(*) Not applicable; the applications do not exceed the quantities available and are fully granted.

(¹) Kosovo under United Nations Security Council Resolution 1244/1999.

Exceptional import sugar and industrial import sugar**2009/10 marketing year****Applications lodged from 1.11.2009 to 7.11.2009**

Order No	Type	Allocation coefficient (%)	Further applications
09.4380	Exceptional	—	Suspended
09.4390	Industrial	(¹)	Suspended

‘—’: Not applicable; no licence application has been sent to the Commission.

(¹) Not applicable; the applications do not exceed the quantities available and are fully granted.

COMMISSION REGULATION (EC) No 1113/2009
of 19 November 2009
fixing the export refunds on milk and milk products

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 164(2), in conjunction with Article 4, thereof,

Whereas:

- (1) Article 162(1) of Regulation (EC) No 1234/2007 provides that the difference between prices on the world market for the products listed in Part XVI of Annex I to that Regulation and prices for those products on the Community market may be covered by an export refund.
- (2) Given the present situation on the market in milk and milk products, export refunds should be fixed in accordance with the rules and certain criteria provided for in Articles 162, 163, 164, 167, 169 and 170 of Regulation (EC) No 1234/2007.
- (3) Article 164(1) of Regulation (EC) No 1234/2007 provides that export refunds may vary according to destination, especially where the world market situation, the

specific requirements of certain markets or obligations resulting from agreements concluded in accordance with Article 300 of the Treaty make this necessary.

- (4) Export refunds for the Dominican Republic have been differentiated to take into account the reduced custom duties applied on imports under the import tariff quota under the Memorandum of Understanding between the European Community and the Dominican Republic on import protection for milk powder in the Dominican Republic ⁽²⁾, approved by Council Decision 98/486/EC ⁽³⁾. Due to a changed market situation in the Dominican Republic, characterised by increased competition for milk powder, the quota is no longer fully used. In order to maximise the use of the quota, the differentiation of export refunds for the Dominican Republic should be abolished.
- (5) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

Export refunds as provided for in Article 164 of Regulation (EC) No 1234/2007 shall be granted on the products and for the amounts set out in the Annex to this Regulation, subject to the conditions provided for in Article 3(2) of Commission Regulation (EC) No 1282/2006 ⁽⁴⁾.

Article 2

This Regulation shall enter into force on 20 November 2009.

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

Done at Brussels, 19 November 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 218, 6.8.1998, p. 46.

⁽³⁾ OJ L 218, 6.8.1998, p. 45.

⁽⁴⁾ OJ L 234, 29.8.2006, p. 4.

ANNEX

Export refunds on milk and milk products applicable from 20 November 2009

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0401 30 31 9100	L20	EUR/100 kg	0,00	0402 29 19 9900	L20	EUR/100 kg	0,00
0401 30 31 9400	L20	EUR/100 kg	0,00	0402 29 99 9100	L20	EUR/100 kg	0,00
0401 30 31 9700	L20	EUR/100 kg	0,00	0402 29 99 9500	L20	EUR/100 kg	0,00
0401 30 39 9100	L20	EUR/100 kg	0,00	0402 91 10 9370	L20	EUR/100 kg	0,00
0401 30 39 9400	L20	EUR/100 kg	0,00	0402 91 30 9300	L20	EUR/100 kg	0,00
0401 30 39 9700	L20	EUR/100 kg	0,00	0402 91 99 9000	L20	EUR/100 kg	0,00
0401 30 91 9100	L20	EUR/100 kg	0,00	0402 99 10 9350	L20	EUR/100 kg	0,00
0401 30 99 9100	L20	EUR/100 kg	0,00	0402 99 31 9300	L20	EUR/100 kg	0,00
0401 30 99 9500	L20	EUR/100 kg	0,00	0403 90 11 9000	L20	EUR/100 kg	0,00
0402 10 11 9000	L20	EUR/100 kg	0,00	0403 90 13 9200	L20	EUR/100 kg	0,00
0402 10 19 9000	L20	EUR/100 kg	0,00	0403 90 13 9300	L20	EUR/100 kg	0,00
0402 10 99 9000	L20	EUR/100 kg	0,00	0403 90 13 9500	L20	EUR/100 kg	0,00
0402 21 11 9200	L20	EUR/100 kg	0,00	0403 90 13 9900	L20	EUR/100 kg	0,00
0402 21 11 9300	L20	EUR/100 kg	0,00	0403 90 33 9400	L20	EUR/100 kg	0,00
0402 21 11 9500	L20	EUR/100 kg	0,00	0403 90 59 9310	L20	EUR/100 kg	0,00
0402 21 11 9900	L20	EUR/100 kg	0,00	0403 90 59 9340	L20	EUR/100 kg	0,00
0402 21 17 9000	L20	EUR/100 kg	0,00	0403 90 59 9370	L20	EUR/100 kg	0,00
0402 21 19 9300	L20	EUR/100 kg	0,00	0404 90 21 9120	L20	EUR/100 kg	0,00
0402 21 19 9500	L20	EUR/100 kg	0,00	0404 90 21 9160	L20	EUR/100 kg	0,00
0402 21 19 9900	L20	EUR/100 kg	0,00	0404 90 23 9120	L20	EUR/100 kg	0,00
0402 21 91 9100	L20	EUR/100 kg	0,00	0404 90 23 9130	L20	EUR/100 kg	0,00
0402 21 91 9200	L20	EUR/100 kg	0,00	0404 90 23 9140	L20	EUR/100 kg	0,00
0402 21 91 9350	L20	EUR/100 kg	0,00	0404 90 23 9150	L20	EUR/100 kg	0,00
0402 21 99 9100	L20	EUR/100 kg	0,00	0404 90 81 9100	L20	EUR/100 kg	0,00
0402 21 99 9200	L20	EUR/100 kg	0,00	0404 90 83 9110	L20	EUR/100 kg	0,00
0402 21 99 9300	L20	EUR/100 kg	0,00	0404 90 83 9130	L20	EUR/100 kg	0,00
0402 21 99 9400	L20	EUR/100 kg	0,00	0404 90 83 9150	L20	EUR/100 kg	0,00
0402 21 99 9500	L20	EUR/100 kg	0,00	0404 90 83 9170	L20	EUR/100 kg	0,00
0402 21 99 9600	L20	EUR/100 kg	0,00	0405 10 11 9500	L20	EUR/100 kg	0,00
0402 21 99 9700	L20	EUR/100 kg	0,00	0405 10 11 9700	L20	EUR/100 kg	0,00
0402 29 15 9200	L20	EUR/100 kg	0,00				
0402 29 15 9300	L20	EUR/100 kg	0,00				
0402 29 15 9500	L20	EUR/100 kg	0,00				
0402 29 19 9300	L20	EUR/100 kg	0,00				
0402 29 19 9500	L20	EUR/100 kg	0,00				

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0405 10 19 9500	L20	EUR/100 kg	0,00	0406 30 39 9500	L04	EUR/100 kg	0,00
0405 10 19 9700	L20	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0405 10 30 9100	L20	EUR/100 kg	0,00	0406 30 39 9700	L04	EUR/100 kg	0,00
0405 10 30 9300	L20	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0405 10 30 9700	L20	EUR/100 kg	0,00	0406 30 39 9930	L04	EUR/100 kg	0,00
0405 10 50 9500	L20	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0405 10 50 9700	L20	EUR/100 kg	0,00	0406 30 39 9950	L04	EUR/100 kg	0,00
0405 10 90 9000	L20	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0405 20 90 9500	L20	EUR/100 kg	0,00	0406 40 50 9000	L04	EUR/100 kg	0,00
0405 20 90 9700	L20	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0405 90 10 9000	L20	EUR/100 kg	0,00	0406 40 90 9000	L04	EUR/100 kg	0,00
0405 90 90 9000	L20	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 10 20 9640	L04	EUR/100 kg	0,00	0406 90 13 9000	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 10 20 9650	L04	EUR/100 kg	0,00	0406 90 15 9100	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 10 20 9830	L04	EUR/100 kg	0,00	0406 90 17 9100	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 10 20 9850	L04	EUR/100 kg	0,00	0406 90 21 9900	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 20 90 9913	L04	EUR/100 kg	0,00	0406 90 23 9900	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 20 90 9915	L04	EUR/100 kg	0,00	0406 90 25 9900	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 20 90 9917	L04	EUR/100 kg	0,00	0406 90 27 9900	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 20 90 9919	L04	EUR/100 kg	0,00	0406 90 32 9119	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 30 31 9730	L04	EUR/100 kg	0,00	0406 90 35 9190	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 30 31 9930	L04	EUR/100 kg	0,00	0406 90 35 9990	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 30 31 9950	L04	EUR/100 kg	0,00	0406 90 37 9000	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00	0406 90 61 9000	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00

Product code	Destination	Unit of measurement	Refunds	Product code	Destination	Unit of measurement	Refunds
0406 90 63 9100	L04	EUR/100 kg	0,00	0406 90 86 9200	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 63 9900	L04	EUR/100 kg	0,00	0406 90 86 9400	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 69 9910	L04	EUR/100 kg	0,00	0406 90 86 9900	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 73 9900	L04	EUR/100 kg	0,00	0406 90 87 9300	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 75 9900	L04	EUR/100 kg	0,00	0406 90 87 9400	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 76 9300	L04	EUR/100 kg	0,00	0406 90 87 9951	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 76 9400	L04	EUR/100 kg	0,00	0406 90 87 9971	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 76 9500	L04	EUR/100 kg	0,00	0406 90 87 9973	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 78 9100	L04	EUR/100 kg	0,00	0406 90 87 9974	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 78 9300	L04	EUR/100 kg	0,00	0406 90 87 9975	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 79 9900	L04	EUR/100 kg	0,00	0406 90 87 9979	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 81 9900	L04	EUR/100 kg	0,00	0406 90 88 9300	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 85 9930	L04	EUR/100 kg	0,00	0406 90 88 9500	L04	EUR/100 kg	0,00
	L40	EUR/100 kg	0,00		L40	EUR/100 kg	0,00
0406 90 85 9970	L04	EUR/100 kg	0,00				
	L40	EUR/100 kg	0,00				

The destinations are defined as follows:

L20: All destinations with the exception of:

- (a) third countries: Andorra, Holy See (Vatican City State), Liechtenstein and the United States of America;
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar
- (d) the destinations referred to in Article 33(1), Article 41(1) and Article 42(1) of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1).

L04: Albania, Bosnia and Herzegovina, Serbia, Kosovo (*), Montenegro and the former Yugoslav Republic of Macedonia.

L40: All destinations with the exception of:

- (a) third countries: L04, Andorra, Iceland, Liechtenstein, Norway, Switzerland, Holy See (Vatican City State), the United States of America, Croatia, Turkey, Australia, Canada, New Zealand and South Africa;
- (b) territories of the EU Member States not forming part of the customs territory of the Community: the Faeroe Islands, Greenland, Heligoland, Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control;
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.
- (d) the destinations referred to in Article 33(1), Article 41(1) and Article 42(1) of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1).

(*) As defined by United Nations Security Council Resolution 1244 of 10 June 1999.

COMMISSION REGULATION (EC) No 1114/2009**of 19 November 2009****granting no export refund for skimmed milk powder in the framework of the standing invitation to tender provided for in Regulation (EC) No 619/2008**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 164(2), in conjunction with Article 4, thereof,

Whereas:

- (1) Commission Regulation (EC) No 619/2008 of 27 June 2008 opening a standing invitation to tender for export refunds concerning certain milk products ⁽²⁾ provides for a standing invitation to tender procedure.
- (2) Pursuant to Article 6 of Commission Regulation (EC) No 1454/2007 of 10 December 2007 laying down common rules for establishing a tender procedure for

fixing export refunds for certain agricultural products ⁽³⁾ and following an examination of the tenders submitted in response to the invitation to tender, it is appropriate not to grant any refund for the tendering period ending on 17 November 2009.

- (3) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

For the standing invitation to tender opened by Regulation (EC) No 619/2008, for the tendering period ending on 17 November 2009, no export refund shall be granted for the product and destinations referred to in point (c) of Article 1 and in Article 2 respectively of that Regulation.

Article 2

This Regulation shall enter into force on 20 November 2009.

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

Done at Brussels, 19 November 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 168, 28.6.2008, p. 20.

⁽³⁾ OJ L 325, 11.12.2007, p. 69.

COMMISSION REGULATION (EC) No 1115/2009**of 19 November 2009****fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾, and in particular Article 143 thereof,

Having regard to Council Regulation (EC) No 614/2009 of 7 July 2009 on the common system of trade for ovalbumin and lactalbumin ⁽²⁾, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices for poultrymeat and egg products and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for

egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin. The representative prices should therefore be published.

(3) In view of the situation on the market, this amendment should be applied as soon as possible.

(4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the Annex to this Regulation.

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, 19 November 2009.

For the Commission

Jean-Luc DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 181, 14.7.2009, p. 8.

⁽³⁾ OJ L 145, 29.6.1995, p. 47.

ANNEX

to the Commission Regulation of 19 November 2009 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

‘ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security under Article 3(3) (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “70 % chickens”, frozen	81,9	2	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “65 % chickens”, frozen	111,7	2	BR
		106,7	3	AR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	196,7	32	BR
		192,6	34	AR
		295,8	1	CL
0207 14 50	Fowls of the species <i>Gallus domesticus</i> , breasts, frozen	203,5	3	BR
		149,3	19	AR
0207 14 60	Fowl of the species <i>Gallus domesticus</i> , legs, frozen	98,6	13	BR
		116,1	8	AR
0207 25 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as “80 % chickens”, frozen	162,2	0	BR
0207 27 10	Turkeys, boneless cuts, frozen	233,4	19	BR
		279,0	5	CL
0408 91 80	Eggs, not in shell, dried	340,9	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	218,1	21	BR

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). The code “ZZ” represents “other origins”.

COMMISSION REGULATION (EC) No 1116/2009**of 19 November 2009****fixing the rates of the refunds applicable to milk and milk products exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (single CMO Regulation) ⁽¹⁾, and in particular Article 164(2) thereof,

Whereas:

- (1) Article 162(1)b of Regulation (EC) No 1234/2007 provides that the difference between prices in international trade for the products referred to in Article 1(1)(p) and listed in Part XVI of Annex I to that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed in Part IV of Annex XX to that Regulation.
- (2) Commission Regulation (EC) No 1043/2005 of 30 June 2005 implementing Council Regulation (EC) No 3448/93 as regards the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽²⁾, specifies the products for which a rate of refund is to be fixed, to be applied where these products are exported in the form of goods listed in Part IV of Annex XX to Regulation (EC) No 1234/2007.
- (3) In accordance with the second paragraph, subparagraph (a) of Article 14 of Regulation (EC) No 1043/2005, the rate of the refund per 100 kilograms for each of the basic products in question is to be fixed for a period of the same duration as that for which refunds are fixed for the same products exported unprocessed.
- (4) Article 162(2) of Regulation (EC) No 1234/2007 lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.
- (5) In the case of certain milk products exported in the form of goods not covered by Annex I to the Treaty, there is a danger that, if high refund rates are fixed in advance, the commitments entered into in relation to those refunds may be jeopardised. In order to avert that danger, it is therefore necessary to take appropriate precautionary measures, but without precluding the conclusion of long-term contracts. The fixing of specific refund rates for the advance fixing of refunds in respect of those products should enable those two objectives to be met.
- (6) Article 15(2) of Regulation (EC) No 1043/2005 provides that, when the rate of the refund is being fixed, account is to be taken, where appropriate, of aids or other measures having equivalent effect applicable in all Member States in accordance with the Regulation on the common organisation of the agricultural markets to the basic products listed in Annex I to Regulation (EC) No 1043/2005 or to assimilated products.
- (7) Article 100(1) of Regulation (EC) No 1234/2007 provides for the payment of aid for Community-produced skimmed milk processed into casein if such milk and the casein manufactured from it fulfil certain conditions.
- (8) The Management Committee for the Common Organisation of Agricultural Markets has not delivered an opinion within the time limit set by its Chair,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products listed in Annex I to Regulation (EC) No 1043/2005 and in Part XVI of Annex I to Regulation (EC) No 1234/2007, and exported in the form of goods listed in Part IV of Annex XX to Regulation (EC) No 1234/2007, shall be fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 20 November 2009.

⁽¹⁾ OJ L 299, 16.11.2007, p. 1.

⁽²⁾ OJ L 172, 5.7.2005, p. 24.

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

Done at Brussels, 19 November 2009.

For the Commission

Heinz ZOUREK

Director-General Enterprise and Industry

ANNEX

Rates of the refunds applicable from 20 November 2009 to certain milk products exported in the form of goods not covered by Annex I to the Treaty ⁽¹⁾

(EUR/100 kg)

CN code	Description	Rate of refund	
		In case of advance fixing of refunds	Other
ex 0402 10 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content not exceeding 1,5 % by weight (PG 2):		
	(a) on exportation of goods of CN code 3501	—	—
	(b) on exportation of other goods	0,00	0,00
ex 0402 21 19	Powdered milk, in granules or other solid forms, not containing added sugar or other sweetening matter, with a fat content of 26 % by weight (PG 3)	0,00	0,00
ex 0405 10	Butter, with a fat content by weight of 82 % (PG 6):		
	(a) on exportation of goods of CN code 2106 90 98 containing 40 % or more by weight of milk fat	0,00	0,00
	(b) on exportation of other goods	0,00	0,00

⁽¹⁾ The rates set out in this Annex are not applicable to exports to:

- (a) third countries: Andorra, the Holy See (Vatican City State), Liechtenstein, the United States of America and the goods listed in Tables I and II of Protocol 2 to the Agreement between the European Community and the Swiss Confederation of 22 July 1972 exported to the Swiss Confederation.
- (b) territories of EU Member States not forming part of the customs territory of the Community: Ceuta, Melilla, the Communes of Livigno and Campione d'Italia, Heligoland, Greenland, the Faeroe Islands and the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.
- (c) European territories for whose external relations a Member State is responsible and not forming part of the customs territory of the Community: Gibraltar.
- (d) the destinations referred to in Article 33(1), Article 41(1) and Article 42(1) of Commission Regulation (EC) No 612/2009 (OJ L 186, 17.7.2009, p. 1).

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 26 November 2008

on State aid granted by Austria to the company *Postbus* in the *Lienz* district C 16/07 (ex NN 55/06)

(notified under document C(2008) 7034)

(Only the German text is authentic)

(Text with EEA relevance)

(2009/845/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Austria regarding this complaint. By letter dated 3 October 2005 ⁽⁵⁾, Austria provided the Commission with the information requested.

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

- (2) By letter dated 30 May 2007 ⁽⁶⁾, the Commission informed Austria that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure in question.

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

- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*. The Commission invited third parties to submit their comments ⁽⁷⁾.

Having called on interested parties to submit their comments pursuant to the Articles cited above ⁽¹⁾,

Whereas:

- (4) Austria submitted its observations by letter dated 18 July 2007 ⁽⁸⁾.

1. PROCEDURE

- (1) By letters dated 2 August 2002 ⁽²⁾ and 23 August 2003 ⁽³⁾, a privately owned Austrian bus company filed a complaint with the Commission regarding alleged State aid granted in 2002 by the Tyrolean public transport authority (*Verkehrsverbund Tirol GmbH*, hereinafter: *Verkehrsverbund Tirol*) to its publicly owned competitor *Postbus AG* (hereinafter *Postbus*). By letter dated 14 July 2005 ⁽⁴⁾, the Commission requested information from

- (5) By letter dated 24 July 2007 ⁽⁹⁾ the complainant informed the Commission that it was no longer interested in pursuing the matter.

- (6) The Commission received no comments from other third parties.

⁽¹⁾ OJ C 162, 14.7.2007, p. 19.

⁽²⁾ Registered under Reference TREN (2002) A/63803.

⁽³⁾ Registered under Reference TREN (2002) A/68846.

⁽⁴⁾ Registered under Reference TREN (2005) D/113701.

⁽⁵⁾ Registered under Reference TREN (2006) A/15295.

⁽⁶⁾ Registered under Reference C (2007) 2209 final.

⁽⁷⁾ Cf. footnote 1.

⁽⁸⁾ Registered under Reference TREN (2007) A/38864.

⁽⁹⁾ Registered under Reference TREN (2007) A/39395.

2. DETAILED DESCRIPTION OF THE AID

2.1. Measure under investigation

2.1.1. Background

- (7) *Verkehrsverbund Tirol* is a publicly owned company governed by private law. Similar bodies exist in all other regions and are commonly referred to as *Verkehrsverbundgesellschaften*. These bodies are responsible for planning and coordinating bus transport within their respective region. According to the *Bundesgesetz über die Ordnung des öffentlichen Personennah- und Regionalverkehrs* (Federal act on the organisation of local and regional public passenger transport, hereafter: ÖPNRV-G), these bodies receive annual grants from the respective *Bundesland* in order to ensure adequate public passenger transport in the region.
- (8) On 12 July 2002 *Verkehrsverbund Tirol* and *Postbus* agreed on a public service contract for public passenger transport on the bus routes numbered 5002, 5008, 5010, 5012, 5014, 5050 and 5052 in the district of *Lienz*.
- (9) Under Austrian administrative law, a bus operator needs to hold a licence in order to be allowed to operate a bus route. The award of the licence is independent of the conclusion of a public service contract.
- (10) *Postbus* already held the licences to operate the seven routes covered by the contract prior to the conclusion of the public service contract. *Postbus* had applied for the licences on its own initiative, without being sure of receiving compensation. Therefore, the routes in question are considered under Austrian legislation as being operated '*eigenwirtschaftlich*' (in the commercial interest). The distinction between *eigenwirtschaftlich* and *gemeinwirtschaftlich* (in the common interest) is important under Austrian public procurement rules, as only public service contracts for routes operated as *gemeinwirtschaftlich* are subject to public procurement rules. Therefore, the public service contract which is the object of the present decision was awarded without a public procurement procedure.

2.1.2. Detailed description of the public service contract under investigation

- (11) The contract covers the provision of bus transport services by *Postbus* in return for remuneration. It entered into force retroactively on 1 January 2002 and was concluded for an indefinite period. Each of the parties has the right to terminate the contract subject to six months' notice as from December 2006.
- (12) To calculate the remuneration, the contract distinguishes between *Bestellleistungen* and *Bestandsleistungen*.

- (13) The contract defines *Bestellleistungen* as the core provision of bus transport services for which fixed compensation is paid. Part IV(3) of the contract provides that 204 807 km are accounted for by the *Bestellleistungen*. Part XIII of the contract provides that *Postbus* receives an annual payment of EUR 527 000, plus VAT. Payment is made in twelve instalments spread over the year.

- (14) The contract defines *Bestandsleistungen* as the provision of bus transport services for which compensation is paid which is the sum of three different components. Part IV(3) of the contract provides that 952 761 km are accounted for by the *Bestandsleistungen*. Part X(2) fixes the payment for the *Bestandsleistungen* at EUR 1 690 000 for the year 2002. Part X(3) provides that this remuneration is made up as follows:

- (a) compensation for interconnection (*Verbundabgeltung*), the amount of which is fixed each year for each route on the basis of passenger numbers;
- (b) revenue from ticket sales, net of VAT, returned to *Postbus*;
- (c) revenue from the compensation granted by the Federal Ministry for Health, Family Affairs and Youth for providing reduced fares for school pupils and apprentices under section 29 ÖPNRV-G and the contracts concluded between the Ministry and *Postbus* under sections 30(f) and 30(j) of the *Familien Lasten Ausgleichs Gesetz* (FLAG).

- (15) For the first year of the contract, the *Verbundabgeltung* is fixed at EUR 1 690 000 minus the revenue from ticket sales and minus the compensation for fare obligations. At the time of concluding the contract, the parties did not yet know what revenue there would be from the compensation for fare obligations. The contract therefore does not fix the absolute amount of the *Verbundabgeltung*.

- (16) The cost paid by *Verkehrsverbund Tirol* to *Postbus* for 2002 was therefore EUR 2 217 000 (including the proceeds returned from ticket sales). In return, *Postbus* was obliged to provide 1 157 568 km of bus services based on the timetables and routes set out in the contract. The average price paid per kilometre was EUR 1,92.

2.1.3. Historical development of the Austrian system

- (17) The distinction between *Bestellleistungen* and *Bestandsleistungen* is primarily due to the historical development of the ÖPNRV-G, which lays down the arrangements for the organisation and funding of local public transport in the rural parts of Austria.

- (18) Section 10(1) ÖPNRV-G provides that bus transport companies owned by the Austrian State, such as *Postbus*, can claim compensation for their operating losses on public transport (*Alteinnahmegarantie*) from the Federal Government up to 1 June 1999.
- (19) For the period starting on 1 June 1999, the Federal Government will pay an amount equivalent to the sum paid each year under the *Alteinnahmegarantie* to the regional bodies responsible for the organisation of public transport, the *Verkehrsverbundgesellschaften*. The latter use these sums to commission bus transport services from bus companies. Before commissioning these services, the *Verkehrsverbundgesellschaften* have to plan the public transport in their region in accordance with sections 11, 20 and 31 ÖPNRV-G, which define the economic and quality-related criteria with which public transport must comply (section 10(2) ÖPNRV-G).
- (20) As from 2001, the Federal Government will reduce the amounts it pays to the *Verkehrsverbundgesellschaften* by one fifth each year (section 10(3) ÖPNRV-G).
- (21) Sections 14 et seq. ÖPNRV-G lay down the requirements for the setting-up and organisation of the *Verkehrsverbundgesellschaften*. In particular, section 19(1) ÖPNRV-G requires the *Verkehrsverbundgesellschaften* to replace the *Alteinnahmegarantie* system by a system of public service contracts within a period of five years starting in 1999.

2.1.4. Justification of the price provided for in the public service contract

- (22) Prior to signing the public service contract, *Verkehrsverbund Tirol* used three different methods to verify whether the public service compensation provided for in the contract was justified. The three methods were: costs per kilometre (*Prüfung nach Kilometersätzen*), costs per cost item (*Prüfung nach Kostensätzen*) and costs according to the different cost categories (*Prüfung nach Einzelkostenpositionen*).

2.2. Initial assessment by the Commission

- (23) In its decision to initiate the procedure, the Commission raised doubts as to whether the public service contract concluded between *Verkehrsverbund Tirol* and *Postbus* met the second of the so-called *Altmark* criteria⁽¹⁰⁾. The four *Altmark* criteria being cumulative, it has not assessed in detail whether the third and fourth criteria are fulfilled, but concluded that the presence of State aid cannot be excluded.
- (24) With respect to possible compatibility of such State aid with the common market, the decision to initiate the procedure considers that the aid may be compatible with the common market on the basis of Article 73 of

the EC Treaty and Article 14 of Regulation (EEC) No 1191/69 of the Council of 26 June 1969 on action by Member States concerning the obligation inherent in the concept of a public service in transport by rail, road and inland waterway⁽¹¹⁾. In particular, the Commission considered that the amount of compensation paid to *Postbus* appeared not to exceed what was necessary to cover the costs incurred in the discharge of the public service obligations of the contract, taking into account the related receipts and a reasonable profit for discharging the obligations.

- (25) However, the Commission considered that, since there was no public tender, and a direct competitor of *Postbus* alleged that *Postbus* was receiving overcompensation, the competitor in question and all other interested third parties should be given the opportunity to comment on the methods used by Austria to check costs and avoid overcompensation before taking a definitive view on whether *Postbus* was receiving overcompensation or not. On these grounds, the Commission raised doubts as to whether *Postbus* received overcompensation for providing a public service under a public service contract.

3. COMMENTS FROM AUSTRIA

- (26) The comments of Austria concern:
- (a) the relationship between the *Altmark* criteria and Regulation (EEC) No 1191/69;
 - (b) the application of the second *Altmark* criterion in the present case;
 - (c) the application of the third and fourth *Altmark* criteria in the present case, in particular the methods used to verify costs and avoid overcompensation;
 - (d) the compatibility of the public service contract with Regulation (EEC) No 1191/69.

Relationship between the *Altmark* criteria and Regulation (EEC) No 1191/69

- (27) Austria considers that Article 73 of the EC Treaty and Regulation (EEC) No 1191/69, which is based on it, constitute a *lex specialis* to Article 87(1) of the EC Treaty. Therefore, whenever a public service contract meets the criteria set out in Article 14 of Regulation (EEC) No 1191/69, there is no State aid, and therefore no need to assess the public service contract in question under Article 87(1) of the EC Treaty and the *Altmark* criteria. Austria bases this interpretation on point 37 of the *Altmark* judgement, which states:

⁽¹⁰⁾ These criteria have been established by the ECJ in its judgement of 24 July 2003, *Altmark*, case C-280/00, ECR I-7747 to assess whether a public service compensation constitutes State aid or not.

⁽¹¹⁾ OJ L 156, 28.6.1969, p. 1.

'The first point to examine is whether Regulation (EEC) No 1191/69 is applicable to the transport services at issue in the main proceedings. Only if that is not the case will the application of the general provisions of the Treaty on State aid to the subsidies at issue in the main proceedings have to be considered.'

3.1. Application of the second Altmark criterion in the present case

(28) Austria argues that even if Council Regulation (EEC) No 1191/69 does not address the existence of State aid, but merely its compatibility with the common market, the public service contract concluded between *Verkehrsverbund Tirol* and *Postbus* in any event meets the four *Altmark* criteria.

(29) As far as the second *Altmark* criterion is concerned, Austria explains that both the remuneration for the *Bestellleistungen* and the remuneration for the *Bestandsleistungen* have been established in advance in an objective and transparent manner. With respect to the *Bestellleistungen*, Austria explains that the contract is a net contract, whereby *Postbus* receives a fixed price for each bus kilometre driven of EUR 2,57/km⁽¹²⁾. Therefore, the price had been fixed in advance, using the objective and transparent criterion of the 'price per km driven'.

(30) With respect to the *Bestandsleistungen*, Austria explains that the price had also been agreed in advance by the parties as a fixed price, namely EUR 1 690 000 for 952 761 km to be driven. What had not been fixed in advance was the exact split between the three components of payment, namely ticketing revenues, compensation for tariff obligations and compensation for integrated transport systems. Austria explains that the explanation lies in the very nature of the three components, two of which depend on the number of passengers transported, the third one being the difference between the total agreed price and the sum of the first two elements.

(31) Also in this regard, Austria concludes that the contract is a net contract, whereby *Postbus* receives a fixed price for each bus kilometre driven of EUR 1,77/km, and that therefore, the price had been fixed in advance, using the objective and transparent criterion of the 'price per km driven'.

⁽¹²⁾ EUR 527 000: 204 807 km = EUR 2,57 per km.

3.2. Application of the third and the fourth Altmark criteria in the present case, in particular methods to verify costs and avoid overcompensation

(32) Austria argues that *Verkehrsverbund Tirol* ruled out the possibility of overcompensation being paid to *Postbus* by checking the price paid to *Postbus* per kilometre against the industry average, using three different methods: a check per cost per kilometre; a check of costs per cost item; and a check of costs according to different cost categories.

(33) In its reply to the decision to initiate the procedure, Austria provided the Commission with further information regarding two of the methods used to check costs for providing transport services and avoid overcompensation, namely the checking of costs per cost item and the checking of costs according to different cost categories. It considers that no further explanation is necessary with regard to the checking of costs per kilometre⁽¹³⁾.

(34) Austria considers that these three cost checks ensure compliance with both the third *Altmark* criterion (absence of overcompensation) and the fourth *Altmark* criterion (average, well-run undertaking).

3.2.1. Check of costs per cost item

(35) Through the method 'checking of costs per item', *Verkehrsverbund Tirol* compared the costs per item of *Postbus* with the average costs in the industry sector.

(36) Based on the average costs in the industry sector, *Postbus* should meet the following cost targets for the public service contract in the *Lienz* district:

Cost item	Cost
Personnel costs	EUR [...] (*)
Costs for fuel and maintenance	EUR [...]
Vehicle costs (depreciation)	EUR [...]
Administrative costs	EUR [...]
Total	EUR [...]

(*) Confidential information.

(37) Austria provides the following detailed explanation for these cost items.

⁽¹³⁾ For the explanations given by Austria in this regard at the stage of the preliminary assessment, see points 98 and 99 of the decision to initiate the procedure.

3.2.1.1. Personnel costs

- (38) Austria based the calculation of personnel costs on 54 290 driving hours (*Lenkerstunden*) for scheduled route operation. Austria clarified that this amount is based on the number of kilometres needed to operate according to the schedule including dwell-time, but excluding round-trips to terminal bus stops/garages, rest periods etc. According to Austria, at 21 km per hour *Verkehrsverbund Tirol* assumed a relatively high number of driven kilometres per hour⁽¹⁴⁾, as the average for Austria is 16-18 km per hour.
- (39) Austria stated that the gross hourly rate for a driving hour (including all duties, taxes, garage, maintenance, administration and additional personnel costs) is valued at EUR [...]. This amount is composed as follows: the 2002 Austrian collective agreement for employees in private-law governed bus undertakings provided for a net average hourly rate of EUR 7,55. To this amount, one has to add as a first step surcharges for Sunday and holiday work; overtime payment; taxes and social security. If these additional costs are taken into consideration, the average hourly rate is EUR 16,30.
- (40) On top of this hourly rate, there is an additional charge of approximately [...] % for the costs of personnel for garage services, planning and administration. Taking into account these overheads, one hour of bus operation generates costs of EUR [...].
- (41) Multiplication of the annual number of driving hours by the average hourly rate results in total personnel costs of EUR [...] ⁽¹⁵⁾.

3.2.1.2. Costs for fuel and maintenance

- (42) Concerning the costs for fuel and maintenance, *Verkehrsverbund Tirol* assumes there will be a cost of EUR [...] for every scheduled kilometre (1 157 568 km), which totals EUR [...]. This amount includes all vehicle-related costs, except costs for financing, depreciation and controlling.
- (43) Austria explains its calculation in detail. It is based on the assumption that, for the routes in the district of *Lienz*, four 15-metre buses with a fuel consumption of 45 l/100 km and twenty-one 12-metre buses with a fuel consumption of 36 l/100 km will be needed. The total estimated fuel consumption of this fleet is 478 000 litres.

Based on a diesel price of EUR [...] /litre, the total fuel costs are therefore EUR [...].

- (44) Maintenance costs are estimated at EUR [...] per bus (personnel and material costs), totalling EUR [...] for 25 buses. The costs for fuel and maintenance together equal EUR [...].
- (45) This is already more than the EUR [...] that had been taken as a benchmark. Therefore, the Austrian authorities conclude that the cost item 'fuel and maintenance' is a very conservative estimate.

3.2.1.3. Costs for the purchase and depreciation of vehicles

- (46) The costs for the purchase and depreciation of vehicles of EUR [...] are based on the following assumptions:
- (a) The bus routes are to be operated with four 15 m buses and twenty-one 12 m buses.
- (b) The public service contract stipulates that the average age of the fleet shall not extend 6 years, and that at least 10 % of the fleet shall be renewed each year.
- (c) The purchase price for a 12 m bus is EUR [...]; the average annual return on capital is 5 %; and the amortisation period 8 years. Therefore, the annuity per vehicle is EUR [...].
- (d) However, as the contract allows for the use of vehicles for a period of 12 years, 1/3 of the fleet is used despite the fact that it is fully amortised. Therefore, the costs for purchase and depreciation of vehicles concern only 2/3 of the fleet, or 16 vehicles.
- (47) Based on these assumptions, the annual costs for purchase and depreciation of vehicles are EUR [...] ⁽¹⁶⁾.

3.2.1.4. Administrative costs

- (48) Concerning the administrative costs of EUR [...], *Verkehrsverbund Tirol* assumed [...] % of all the other costs per cost item for its calculations ⁽¹⁷⁾. This amount covers the office rental fee and office equipment.

⁽¹⁴⁾ The figure of 21 km can be obtained by dividing the total number of kilometres by the number of driving hours: 1 157 568 km: 54 290 hours = 21,32 km per hour.

⁽¹⁵⁾ 54 290 hours × [...] EUR/hour = [...] EUR.

⁽¹⁶⁾ EUR [...].

⁽¹⁷⁾ EUR [...] (all other costs per item) × [...] % = EUR [...].

3.2.2. Check of costs according to the different cost categories

- (49) The check of costs according to the different cost categories is a calculation of plausibility of the different cost categories. *Verkehrsverbund Tirol* has established the following costs as a benchmark:

Cost categories	Cost
Driver costs	EUR [...]
Personnel costs (other than driver costs)	EUR [...]
Vehicle costs (depreciation)	EUR [...]
Fuel costs	EUR [...]
Tyre costs	EUR [...]
Other costs (repairs, maintenance, etc.)	EUR [...]
Administrative costs	EUR [...]
Total	EUR [...]

- (50) These benchmarks are again explained in more detail.

3.2.2.1. Driver costs

- (51) *Verkehrsverbund Tirol* based the calculation of driver costs on 28 drivers which, according to Austria, is a low base figure for 25 buses, if holidays, non-working periods due to sick leave etc. are taken into account. Although the Austrian collective agreement for employees in private-law governed bus undertakings provides for an annual gross wage of EUR [...] (without any surcharges or taxes), *Verkehrsverbund Tirol* assumed only EUR [...]. Hence, the personnel costs amount to EUR [...].

3.2.2.2. Personnel costs

- (52) Concerning the other personnel costs for the personnel in administration, planning and garage services, *Verkehrsverbund Tirol* assumed an annual gross wage of EUR [...] per employee. The number of employees was set at 8. Thus, other personnel costs account for EUR [...].

3.2.2.3. Vehicle costs

- (53) The vehicle costs are based on the same assumption as used for the check of costs per item.

3.2.2.4. Fuel costs

- (54) Concerning the fuel costs, *Verkehrsverbund Tirol* based the calculation on a fuel consumption of 465 000 litres. The

average price for fuel was assumed to be EUR [...] per litre. Therefore, the overall fuel costs are EUR [...] ⁽¹⁷⁾.

3.2.2.5. Tyre costs

- (55) With regard to tyre costs, *Verkehrsverbund Tirol* assumed a purchase price of EUR [...] for 2 pairs of tyres every year for 25 buses, resulting in costs of EUR [...].

3.2.2.6. Other costs

- (56) The material costs for vehicles, maintenance, insurance, tax etc., are estimated to be about EUR [...] per year. This includes insurance for every vehicle at about EUR [...] per year and material costs of EUR [...] per kilometre driven. Maintenance for 25 buses totals EUR [...] per year. The rent for garage space with a surface area of 1 500 m² is EUR [...] per year.

3.2.2.7. Administrative costs

- (57) The administrative costs are estimated to be about EUR [...] per month, hence EUR [...] per year.

3.2.3. Austria's conclusion on the third and fourth Altmark criteria

- (58) Austria concludes that *Verkehrsverbund Tirol* has assessed the price paid to *Postbus* against adequate, realistic and conservative estimates of how much an average bus undertaking would have spent for executing a comparable contract. Austria underlines that the price paid to *Postbus*, namely EUR 2 217 000, is well within the range between the two cost checks, which give results of EUR 2 224 965 and EUR 2 205 619 respectively.

- (59) Therefore, Austria considers that the likelihood of over-compensation being paid to *Postbus* can be ruled out, and that the price paid to *Postbus* corresponds to the price that an average, well-run undertaking adequately equipped with means of transport would have demanded to provide the transport services in question.

3.3. Compatibility of the public service contract with Regulation (EEC) No 1191/69

- (60) For the reasons set out in section 3.3, Austria considers that the public service contract also fully complies with Article 14 of Regulation (EEC) No 1191/69.

4. LEGAL ASSESSMENT

- (61) First of all, Austria's argument that Article 87(1) of the EC Treaty does not apply to a public service contract covered by Regulation (EEC) No 1191/69 must be rejected.

- (62) Amongst other things, Regulation (EEC) No 1191/69 enables certain aid granted by Member States in the form of compensation for the imposition of a public service obligation to be deemed to be compatible with the common market and exempts Member States from the requirement in Article 88(3) to notify the aid to the Commission before it is granted.
- (63) However, the State aid rules in Regulation (EEC) No 1191/69 apply only to measures which constitute State aid within the meaning of Article 87(1) of the EC Treaty. In other words, Regulation (EEC) No 1191/69 is concerned with compatibility.
- (64) It is therefore necessary, in the first instance, to consider whether the payments provided for in the contract between *Postbus* and *Verkehrsverbund Tirol* constitute State aid within the meaning of Article 87(1) of the EC Treaty. If they do, it is necessary, in the second instance, to consider whether they are compatible with the common market.

4.1. Existence of aid

- (65) According to Article 87(1) of the EC Treaty, 'save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market'.
- (66) Bus operators such as *Postbus* are performing an economic activity, namely the transportation of passengers in return for payment; they are therefore undertakings within the meaning of Article 87(1) of the EC Treaty.
- (67) The subsidies to *Postbus* are paid by *Verkehrsverbund Tirol*, which is financed by the *Land* of Tyrol and the Federal Government. These sums are therefore paid from State resources.
- (68) The next question is whether *Postbus* gains a selective economic advantage through the public service contract which is the subject of this decision. In its judgment in *Altmark Trans*⁽¹⁸⁾ the Court set out the criteria which must be applied when assessing whether compensation has been given for a public service:
- '... public subsidies intended to enable the operation of urban, suburban or regional scheduled transport services are not caught by that provision where such subsidies are to be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations. [...].'
- According to the Court, that is the case if the following four criteria have been met:
- first, the recipient undertaking must be actually required to discharge public service obligations and those obligations must have been clearly defined;
 - second, the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner;
 - third, the compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations;
 - fourth, where the undertaking which is to discharge public service obligations is not chosen in a public procurement procedure, the level of compensation needed has to be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations.'
- 4.1.1. Recipient undertaking actually required to discharge clearly defined public service obligations
- (69) Article 2(1) of Regulation (EEC) No 1191/69 defines public service obligations as follows: 'Public service obligations' means obligations which the transport undertaking in question, if it were considering its own commercial interests, would not assume or would not assume to the same extent or under the same conditions'.

⁽¹⁸⁾ Case C 280/00, *Altmark Trans* [2003] ECR I-7747, as referred to above.

(70) The contract concluded between *Postbus* and *Verkehrsverbund Tirol* formalises specific requirements which are imposed on the service provider to ensure that a balanced transport network exists given the rural nature, the low population density and the geographical characteristics of the areas served. These factors are likely to discourage an operator from offering such services on a strictly commercial basis. *Postbus* is obliged to offer such services and to propose the relevant timetables; the routes on which the services must be offered are clearly set out in a contractual manner as specified in point 2 of the contract.

(71) It is therefore clear from the contract concluded between *Postbus* and *Verkehrsverbund Tirol* that *Postbus* is actually responsible for the public transport service in the district of *Lienz*. The first *Altmark* criterion is therefore met.

4.1.2. *Parameters on the basis of which the compensation is calculated established beforehand in an objective and transparent manner*

(72) Secondly, it must be determined whether the parameters on the basis of which the compensation is calculated have been established beforehand in an objective and transparent manner.

(73) The contract distinguishes between payment for *Bestellleistungen* and payment for *Bestandsleistungen*. As explained by Austria in its reply to the decision opening the formal investigation procedure, the contract provides for remuneration per kilometre of transport supplied for both categories of transport service. The price is EUR 2,57/km for *Bestellleistungen* and EUR 1,77/km for *Bestandsleistungen*. The only difference between the *Bestandsleistungen* and the *Bestellleistungen* is that one of the components of the compensation is adjusted so that the sum of EUR 1,77/km is systematically complied with.

(74) It should be noted that it is common practice in bus transport contracts to fix the compensation on the basis of a price per kilometre driven and the total number of kilometres driven, in particular where the public authority responsible for the organisation of public transport bears the risk as regards ticket sales revenue. Having re-examined the content of the contracts on the basis of the additional explanations given by Austria, the Commission notes that, contrary to the findings of its preliminary analysis in points 64 to 71 of the decision to open the formal investigation procedure, the contract concluded between *Postbus* and *Verkehrsverbund Tirol* is a contract of this type.

(75) Fixing the compensation on the basis of a price per kilometre to be driven and the total number of kilo-

metres to be driven meets the second *Altmark* criterion since the price per kilometre and the total number of kilometres to be driven are established beforehand in an objective and transparent manner.

(76) The second *Altmark* criterion is therefore met.

4.1.3. *No overcompensation*

(77) On the basis of paragraphs 96 to 102 of the decision to open the formal investigation procedure, the Commission considers that the method which *Verkehrsverbund Tirol* has chosen to ensure that there is no overcompensation, namely the use of three different ways of comparing the price asked by the bus undertaking with the averages found in the sector concerned, can be accepted as proof that there is no overcompensation.

(78) In the present case, the Commission considers that since there was no public tender, and that a direct competitor of *Postbus* stated that *Postbus* received overcompensation, the competitor in question and all interested third parties should be given the opportunity to comment on the methods used by Austria to check costs before it can be decided with certainty whether or not *Postbus* is receiving overcompensation.

(79) It should firstly be noted that the Commission has been informed by the complainant that the latter is no longer interested in the present case. Secondly, no third party has challenged the finding that there is no overcompensation.

(80) The Commission furthermore considers that Austria has provided additional information which shows that the price paid by *Verkehrsverbund Tirol* to *Postbus* is fair and adequate given the average costs observed in the sector of the industry in question and the experience of public authorities. Sections 3.3.1 to 3.3.3 above summarise the methods of calculation used and the resulting comparisons and conclusions. More generally, a method such as that in the case in question which systematically compares the compensation with the costs in the sector a posteriori and in three different ways ensures that there is no overcompensation. If such a comparison were to lead to the finding that there is overcompensation, Austria would have to demand its recovery.

(81) On this basis, it can be concluded that *Postbus* is not receiving overcompensation for the performance of the public service contract which is the subject of this decision and that the third *Altmark* criterion is therefore met.

4.1.4. *Price corresponding to the cost in an average undertaking that is well-managed and adequately furnished with means of transport*

- (82) It still has to be checked whether the price paid by *Verkehrsverbund Tirol* to *Postbus* corresponds to the cost in an average undertaking that is well-managed and is adequately furnished with means of transport. To check whether this criterion is met, the three components in question should be analysed separately.

4.1.4.1. *Costs in an average undertaking*

- (83) In this regard, it should firstly be noted that Austria has based its checks on standard parameters, the averages found in the sector of the industry in question. They can therefore be regarded as reflecting the average in the sector in question.
- (84) Consequently, the costs in *Postbus* correspond to the costs in an average Austrian undertaking.

4.1.4.2. *Costs in a well-managed undertaking*

- (85) The next question is whether the costs in *Postbus* also correspond to the costs in a well-managed undertaking. In the bus transport sector, which has been dominated by monopolies and in which contracts have been awarded without tenders for a long time, an undertaking operating in the market is not necessarily a well-managed undertaking.
- (86) In this regard, it should firstly be noted that Austria has not explained how these parameters also represent the average in a well-managed undertaking. By way of example, the Commission considers that Austria could have taken as a basis the average costs in undertakings which have won a significant number of tenders in the sector in the last few years.
- (87) It should also be noted that there is a difference of EUR 0,80 per km between the price for the *Bestellleistungen* and the price for the *Bestandsleistungen*. This seems to imply that *Postbus* has a certain margin for improving its efficiency as regards the *Bestellleistungen*.
- (88) It must be concluded that Austria has not demonstrated that the price paid by *Verkehrsverbund Tirol* to *Postbus* corresponds to the cost in a well-managed undertaking. The fourth *Altmark* criterion is therefore not met.

4.1.4.3. *Conclusion as regards compliance with the Altmark criteria*

- (89) As the four criteria are cumulative, the fact that one of the four criteria has not been met leads the Commission

automatically to conclude that the payments in question should be regarded as granting a selective economic advantage to the undertaking *Postbus*.

4.1.5. *Distortion of competition and effects on trade*

- (90) The undertaking *Postbus* operates in the bus transport market throughout Austria and has a large share of the market. Giving an economic advantage to this undertaking could therefore distort competition.

- (91) In the case in hand, competition could in particular be distorted by the fact that the public funding is granted to the undertaking which holds the bus transport licence in the district in question. Public financing might therefore prevent other firms from securing licences for operating public transport routes, since it strengthens the position of the recipient undertakings and allows them to offer more attractive business terms when they come to renew their licences.

- (92) With regard to the potential of the measure in question to affect trade between the Member States, it should firstly be noted that the local and regional public transport market is open to competition in Austria and other Member States in that there is no national monopoly for one or more companies in this market.

- (93) In this context, attention is drawn to paragraphs 77 et seq. of the judgment in *Altmark Trans*, in which the Court ruled that:

‘... it is not impossible that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may none the less have an effect on trade between Member States.

Where a Member State grants a public subsidy to an undertaking, the supply of transport services by that undertaking may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services in the market in that Member State (see, to that effect, Case 102/87 *France v Commission* [1988] ECR 4067, paragraph 19; Case C-305/89 *Italy v Commission* [1991] ECR I-1603, paragraph 26; and *Spain v Commission*, as referred to above, paragraph 40).

[...]

The second condition for the application of Article 92(1) of the Treaty, namely that the aid must be capable of affecting trade between Member States, does not therefore depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned.'

- (94) It therefore cannot be ruled out that undertakings established in other Member States have less chance of providing their transport services in the Austrian market as a result of the measure in question.
- (95) Consequently, the public funding granted by *Verkehrsverbund Tirol* to *Postbus* could distort competition and affect trade between Member States.

4.1.6. Conclusion

- (96) As the fourth *Altmark* criterion is not met but all the other conditions of Article 87(1) of the EC Treaty are met, the payments in question constitute State aid within the meaning of Article 87(1) of the EC Treaty.
- (97) It is therefore necessary to examine whether this aid can be considered compatible with the common market.

4.2. Compatibility of the aid

- (98) Article 73 of the EC Treaty provides for overland transport that 'aids shall be compatible with this Treaty if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.'

4.2.1. The *Altmark* case law on the applicability of Article 73

- (99) According to the Court, 'Article 77 of the EC Treaty (now Article 73 EC) provides that aids which meet the needs of coordination of transport or represent reimbursement for the discharge of certain obligations inherent in the concept of a public service are compatible with the Treaty. ... Following the adoption of Regulation No 1107/70 on the granting of aids for transport by rail, road and inland waterway, Member States are no longer authorised to rely on Article 77 of the Treaty, which provides that aids which meet the needs of coordination of transport or represent reimbursement for the discharge of certain obligations inherent in the concept of a public service are compatible with the Treaty, outside the cases referred to in secondary Community legislation. To the extent that Regulation (EEC) No 1191/69 on action by the Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway does not apply and the subsidies at issue fall within Article 92(1) of the Treaty (now, after amendment, Article 87(1) EC), Regulation (EEC) No 1107/70 lists

exhaustively the circumstances in which the authorities of the Member States may grant aids under Article 77 of the Treaty.'⁽¹⁹⁾

- (100) The question therefore is whether Regulation (EEC) No 1191/69 or Regulation (EEC) No 1107/70 contain rules on the compatibility of State aid which are applicable in the present case.

4.2.2. Compatibility on the basis of Regulation (EEC) No 1191/69

4.2.2.1. Scope of Regulation (EEC) No 1191/69

- (101) The scope of Regulation (EEC) No 1191/69 is defined as follows in Article 1(1) and (2) of the Regulation:

'1. This Regulation shall apply to transport undertakings which operate services in transport by rail, road and inland waterway. Member States may exclude from the scope of this Regulation any undertakings whose activities are confined exclusively to the operation of urban, suburban or regional services.

2. For the purpose of this Regulation:

— "urban and suburban services" means transport services meeting the needs of an urban centre or conurbation, and transport needs between it and surrounding areas,

— "regional services" means transport services operated to meet the transport needs of a region.'

- (102) Austria has availed itself of the option of excluding certain undertakings from the scope of the Regulation: according to Article 2 of the *Privatbahnunterstützungsgesetz* 1998 (1998 Private Railways Support Act)⁽²⁰⁾, undertakings which operate exclusively in the field of urban or suburban services are excluded from the scope of Regulation (EEC) No 1191/69.

- (103) However, in the present case the services concerned are regional services. Regulation (EEC) No 1191/69 does therefore apply to them.

4.2.2.2. The scheme chosen by Austria

- (104) Article 1(3) to (5) of Regulation (EEC) No 1191/69 describe the two different schemes between which Member States can choose as regards the organisation and financing of public transport, namely the scheme under which public service obligations are imposed and the contractual scheme.

⁽¹⁹⁾ Case C 280/00, *Altmark Trans GmbH* [2003] ECR I-7747, paragraphs 101, 106, 107, Regulation (EEC) No 1107/70 of the Council (OJ L 130, 15.6.1970, p. 1).

⁽²⁰⁾ Bundesgesetzblatt I 1994/519.

‘3. The competent authorities of the Member States shall terminate all obligations inherent in the concept of a public service as defined in this Regulation imposed on transport by rail, road and inland waterway.

4. In order to ensure adequate transport services which in particular take into account social and environmental factors and town and country planning, or with a view to offering particular fares to certain categories of passenger, the competent authorities of the Member States may conclude public service contracts with a transport undertaking. The conditions and details of operation of such contracts are laid down in Section V.

5. However, the competent authorities of the Member States may maintain or impose the public service obligations referred to in Article 2 for urban, suburban and regional passenger transport services. The conditions and details of operation, including methods of compensation, are laid down in Sections II, III and IV. Where a transport undertaking not only operates services subject to public service obligations but also engages in other activities, the public services must be operated as separate divisions meeting at least the following conditions:

- (a) the operating accounts corresponding to each of these activities shall be separate and the proportion of the assets pertaining to each shall be used in accordance with the accounting rules in force;
- (b) expenditure shall be balanced by operating revenue and payments from public authorities, without any possibility of transfer from or to another sector of the undertaking's activity.’

- (105) Austria has opted for the contractual scheme (section 19 ÖPNRV-G). Consequently, the provisions applicable to the measures in question are those in Section V of Regulation (EEC) No 1191/69.

4.2.2.3. Application of Section V of Regulation (EEC) No 1191/69

- (106) Section V of Regulation (EEC) No 1191/69 consists of a single article, Article 14, which provides:

‘1. A “public service contract” shall mean a contract concluded between the competent authorities of a Member State and a transport undertaking in order to provide the public with adequate transport services.

A public service contract may cover notably:

- transport services satisfying fixed standards of continuity, regularity, capacity and quality,
- additional transport services,
- transport services at specified rates and subject to specified conditions, in particular for certain categories of passenger or on certain routes,
- adjustments of services to actual requirements.

2. A public service contract shall cover, inter alia, the following points:

- (a) the nature of the service to be provided, notably the standards of continuity, regularity, capacity and quality;
- (b) the price of the services covered by the contract, which shall either be added to tariff revenue or shall include the revenue, and details of financial relations between the two parties;
- (c) the rules concerning amendment and modification of the contract, in particular to take account of unforeseeable changes;
- (d) the period of validity of the contract;
- (e) penalties in the event of failure to comply with the contract.

3. Those assets involved in the provision of transport services which are the subject of a public service contract may belong to the undertaking or be placed at its disposal.

4. Any undertaking which intends to discontinue or make substantial modifications to a transport service which it provides to the public on a continuous and regular basis and which is not covered by the contract system or the public service obligation shall notify the competent authorities of the Member State thereof at least three months in advance. The competent authorities may decide to waive such notification. This provision shall not affect other national procedures applicable as regards entitlement to terminate or modify transport services.

5. After receiving the information referred to in paragraph 4 the competent authorities may insist on the maintenance of the service concerned for up to one year from the date of notification and they shall inform the undertaking at least one month before the expiry of the notification. They may also take the initiative of negotiating the establishment or modification of such a transport service.

6. Expenditure arising for transport undertakings from the obligations referred to in paragraph 5 shall be compensated in accordance with the common procedures laid down in Sections II, III and IV'.

(107) The contract concluded between *Postbus* and *Verkehrsverbund Tirol* is a contract concluded between a competent authority of a Member State and a transport undertaking in order to provide the public with adequate transport services.

(108) This contract includes in particular: transport services satisfying fixed standards of continuity, regularity, capacity and quality; transport services at specified rates and subject to specified conditions, in particular for certain categories of passenger; adjustments of services to actual requirements.

(109) This contract may therefore be considered to be a public service contract within the meaning of Article 14 of Regulation (EEC) No 1191/69.

(110) It should be noted that both the intended purpose (to provide the public with adequate transport services) and the content of the public service contracts ('fixed standards of continuity, regularity, capacity and quality', determination of fares, conditions of service 'for certain categories of passenger or on certain routes', 'adjustment of services to actual requirements' etc.) do not differ from those which may be the subject of public service obligations imposed by the State or public bodies. However, it has already been explained that compensation for such services constitutes aid to the provider.

(111) In this respect, it should firstly be noted that the legislator's aim when adopting Regulation (EEC) No 1191/69 was to define under which conditions 'aid [...] which corresponds to the reimbursement of certain obligations inherent in the notion of public services' as referred to in Article 73 of the Treaty is compatible with the common market. Both the application of Article 73 of the Treaty and the application of Regulation (EEC) No 1191/69 presuppose the existence of State aid within the meaning of Article 87(1) of the Treaty. If the content of contracts can be covered by the concept in Article 73 of the EC Treaty of 'obligations inherent in the concept of public

services', the type of instrument, a contract and not a unilaterally imposed obligation, should not per se prevent aid which might be contained in the price from being deemed to be compatible. The decisive factor when determining the nature of a service, whether imposed by the State or approved by the parties to a contract, as a public service obligation is its content and not the form in which it originates⁽²¹⁾. It can therefore be concluded that there is no legal obstacle to aid included in the cost of services provided for by a public service contract being deemed by the Commission to be compatible with the common market. It should be noted that this solution was also chosen by the co-legislators in the new Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road⁽²²⁾. However, Article 12 of that Regulation stipulates that it does not enter into force until 1 December 2009. It is therefore not applicable to the contract in question which has been concluded before the Regulation enters into force.

(112) In the absence of specific conditions regarding compatibility in Regulation (EEC) No 1191/69, the Commission considers that the general principles which flow from the Treaty, the case-law and the decision-making practice in other fields should apply when determining whether such aid is compatible.

(113) The Commission provided a general summary of those principles in part 2.4 of the above-mentioned Framework⁽²³⁾. As regards the compatibility of the aid included in the cost paid by a public authority to a public service provider, paragraph 14 of the Framework provides:

'The amount of compensation may not exceed what is necessary to cover the costs incurred in discharging the public service obligations, taking into account the relevant receipts and reasonable profit for discharging those obligations. The amount of compensation includes all the advantages granted by the State or through State resources in any form whatsoever.'

(114) The payments from *Verkehrsverbund Tirol* to *Postbus* must therefore be deemed to be compatible with the common market if they satisfy these requirements.

(115) These requirements correspond very precisely to the third *Altmark* criterion which – as stated above – has been met in the case in question.

⁽²¹⁾ See the Court judgment in Case C 280/00, *Altmark Trans*, concerning a German public service contract [2003] ECR I-7747. This did not prevent the Court from assessing whether or not aid was involved on the basis of the content and not the type of instrument; See also Article 4 of Commission Decision 2005/842/EC of 28 November 2005 on the application of Article 86(2) of the EC Treaty to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ L 312, 29.11.2005, p. 67), which also disregards the type of instrument.

⁽²²⁾ OJ L 315, 3.12.2007, p. 1.

⁽²³⁾ OJ C 297, 29.11.2005, p. 4.

- (116) It can therefore be concluded that the State aid granted by *Verkehrsverbund Tirol* to *Postbus* in the framework of the public service obligation is compatible with the common market on the basis of Article 14 of Regulation (EEC) No 1191/69.

4.3. No exceptions to notification obligation

- (117) Austria considers that, on the basis of Article 17(2) of Regulation (EEC) No 1191/69, the public service contract between *Verkehrsverbund Tirol* and *Postbus* is exempt from compulsory notification under Article 88(3) of the EC Treaty.
- (118) Article 17(2) of Regulation (EEC) No 1191/69 states that 'compensation paid pursuant to this Regulation shall be exempt from the preliminary information procedure laid down in Article 93(3) of the Treaty establishing the European Economic Community'.
- (119) The question therefore is whether the payments which *Verkehrsverbund Tirol* makes under the public service contract with *Postbus* constitute compensation within the meaning of Article 17(2) of Regulation (EEC) No 1191/69.

In the above-mentioned judgment in *Danske Busvognmænd*, the Court of First Instance of the European Communities considered that 'the contractual relationships established following a tender procedure between the transport undertaking and the competent authority include, by virtue of Article 14(1) and (2) of Regulation (EEC) No 1191/69, a specific financing scheme which leaves no room for compensation according to the methods laid down in Sections II, III and IV of that Regulation' ⁽²⁴⁾.

- (120) It emerges from this judgment that the concept of 'public service compensation' within the meaning of Article 17(2) of Regulation (EEC) No 1191/69 must be interpreted in a very narrow manner. It therefore covers only compensation for public service obligations imposed unilaterally on an undertaking pursuant to Article 2 of the Regulation which are calculated using the method described in Articles 10 to 13 of the Regulation and which do not have to be notified to the Commission under the procedure provided for in Article 88(3) of the EC Treaty.
- (121) However, payments provided for in a transport services contract based on public service obligations within the

meaning of Article 14 of Regulation (EEC) No 1191/69 do not constitute compensation within the meaning of Article 17(2) of the Regulation.

- (122) Payments provided for in a transport services contract based on a public service contract within the meaning of Article 14 of Regulation (EEC) No 1191/69, such as in the contract between *Verkehrsverbund Tirol* and *Postbus*, are therefore not exempt from the notification requirement provided for in Article 88(3) of the EC Treaty. Their compatibility therefore has to be assessed by the Commission.

5. CONCLUSION

- (123) Austria has unlawfully implemented the public service contract between *Verkehrsverbund Tirol* and *Postbus* which is the subject of this Decision in violation of Article 88(3) of the Treaty. However, the State aid provided for in that contract can be deemed compatible therewith on the basis of Article 73 of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted by Austria to *Postbus* under the contract concluded on 12 July 2002 with *Verkehrsverbund Tirol* is compatible with the common market subject to the conditions and terms set out in Article 2.

Article 2

Austria shall each year compare the compensation payment with the average costs as determined in the sector on the basis of the methods set out in section 3.3. of this Decision and shall demand repayment of any overcompensation paid.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 26 November 2008.

For the Commission

Antonio TAJANI

Vice-President

⁽²⁴⁾ Case T-157/01 *Danske Busvognmænd*, ECR [2004] II-917, points 77 to 79.

COMMISSION DECISION

of 20 October 2009

on the conclusion of an administrative Agreement between the European Commission and the European GNSS Supervisory Authority on the security and exchange of classified information

(2009/846/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo) ⁽¹⁾, and in particular Article 13 thereof,

Whereas:

(1) Pursuant to Article 12(1) of Regulation (EC) No 683/2008, public governance of the two programmes is based on the principle of a strict division of responsibilities between the European Community, represented by the Commission, the European GNSS Supervisory Authority established under Council Regulation (EC) No 1321/2004 ⁽²⁾ and the European Space Agency. The Commission is responsible for the management of the programmes.

(2) Article 13 of Regulation (EC) No 683/2008, concerning governance of the security aspects of the European satellite radio navigation programmes, lays down in particular that the Commission is to manage all the security aspects of the systems resulting from these programmes.

(3) Pursuant to Article 16 of that Regulation, where programme security is concerned the European GNSS Supervisory Authority is responsible for security accreditation and the operation of the Galileo Security Centre on the basis of guidelines adopted by the Commission.

(4) The tasks assigned to the Commission and the European GNSS Supervisory Authority respectively pursuant to the abovementioned provisions in the context of the Galileo and EGNOS programmes entail the exchange of classified information between those two entities. They also entail

the exchange of classified information between the European GNSS Supervisory Authority on the one hand and the European Space Agency, Council and Member States on the other, via the Commission.

(5) In Decision 2001/844/EC, ECSC, Euratom ⁽³⁾, the Commission amended its internal Rules of Procedure to include rules setting out basic principles and minimum standards of security, particularly with regard to EU classified information.

(6) Pursuant to Article 20 of Regulation (EC) No 1321/2004, the European GNSS Supervisory Authority has the task of applying the security principles contained in Decision 2001/844/EC, ECSC, Euratom. This covers, inter alia, provisions for the exchange, handling and storage of classified information.

(7) At present there is no framework for the exchange of classified information between the Commission and the European GNSS Supervisory Authority or between the European GNSS Supervisory Authority on the one hand and the European Space Agency, Council and Member States on the other, via the Commission.

(8) It is therefore necessary to conclude an Agreement between the Commission and the European GNSS Supervisory Authority on the security and exchange of classified information. Such an Agreement has been negotiated by the Commission and the European GNSS Supervisory Authority and should therefore be approved and signed,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Commission and the European GNSS Supervisory Authority on the security and exchange of classified information is hereby approved.

The text of the Agreement is annexed to this Decision.

⁽¹⁾ OJ L 196, 24.7.2008, p. 1.

⁽²⁾ OJ L 246, 20.7.2004, p. 1.

⁽³⁾ OJ L 317, 3.12.2001, p. 1.

Article 2

The Director-General of the Directorate-General for Energy and Transport of the European Commission is hereby authorised to sign the Agreement on behalf of the Commission.

Article 3

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

Done at Brussels, 20 October 2009.

For the Commission

Antonio TAJANI

Vice-President



ANNEX

Agreement between the European Commission and the European GNSS Supervisory Authority on the security and exchange of classified information

THE EUROPEAN COMMISSION,

hereinafter 'the Commission', represented by the Director-General for Energy and Transport,
of the one part, and

THE EUROPEAN GNSS SUPERVISORY AUTHORITY,

hereinafter 'the GSA', represented by its Executive Director,
of the other part,

hereinafter 'the parties' or 'the party',

HAVING REGARD to the Treaty establishing the European Community,

HAVING REGARD to Regulation (EC) No 683/2008 of the European Parliament and of the Council of 9 July 2008 on the further implementation of the European satellite navigation programmes (EGNOS and Galileo),

HAVING REGARD to Council Regulation (EC) No 1321/2004 of 12 July 2004 on the establishment of structures for the management of the European satellite radio-navigation programmes,

HAVING REGARD to Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001, amending its internal rules of procedure,

WHEREAS there is a permanent need, in the context of the European satellite radio-navigation programmes EGNOS and Galileo, to exchange classified information between the parties,

NOTING THAT to ensure optimum and effective cooperation and consultations it may be necessary to have access to classified information of the parties, and to exchange classified information between the parties,

MINDFUL of the fact that such access and such an exchange of classified information call for appropriate security measures,

HAVE AGREED AS FOLLOWS:

Article 1

For the purposes of this Agreement:

- (a) 'classified information' means any information (namely, knowledge that can be communicated in any form) or any material, including documents, considered by one of the parties to require protection against unauthorised disclosure and designated as such by a security classification;
- (b) 'party from which the information originates' means the party from which classified information that is communicated or disclosed to the other party, namely the receiving party, originates;
- (c) 'receiving party' means the party which receives classified information from the other party, namely the party from which the information originates;
- (d) 'security regulations' means Decision 2001/844/EC, ECSC, Euratom, to the extent that it is applicable to each party, and the internal procedures and regulations of each party.

Article 2

This Agreement shall apply to classified information communicated by one party to the other party or exchanged between them in accordance with their respective security regulations for the purposes of the European satellite radio-navigation programmes (Galileo and EGNOS).

Article 3

Each party:

- (a) shall ensure the protection and safeguarding of classified information covered by this Agreement which is communicated by one party to the other party or exchanged between them;
- (b) shall ensure that the classified information communicated or exchanged under this Agreement keeps the security classification allocated to it by the party from which the information originates. The receiving party shall ensure the protection and safeguarding of such classified information in accordance with its own security regulations relating to classified information assigned an equivalent security classification in accordance with the security arrangements to be established pursuant to Article 9;

- (c) shall refrain from making use of such classified information covered by this Agreement for purposes other than those established by the party from which the information originates;
- (d) shall refrain from disclosing such classified information covered by this Agreement to third parties other than those referred to in Article 4(4) and (5) without the prior consent of the party from which the information originates;
- (e) shall authorise access to such classified information only to persons who have a need to know that information and, where appropriate, have the required level of security clearance.

Article 4

1. In accordance with the principle of control by the transmitting agency, classified information may be communicated or disclosed by the party from which the information originates to the receiving party.
2. Disclosure or communication of classified information to third parties other than those referred to in paragraphs 4 and 5 shall be carried out by decision of the receiving party subject to the prior written consent of the party from which the information originates, in accordance with the principle of control by the transmitting agency, as defined in its security regulations.
3. For the application of paragraphs 1 and 2, automatic disclosure to third parties other than those referred to in paragraphs 4 and 5 shall be possible only if procedures have been established and adopted between the parties for certain categories of information with a bearing on their operational needs.
4. Classified information originating from the GSA may be automatically disclosed by the Commission to the European Space Agency ('ESA'), the Council and the Member States.
5. The Commission shall endeavour to conclude agreements and arrangements with the ESA, the Council and the Member States respectively, to allow the automatic disclosure to the GSA of classified information originating from the ESA, the Council and the Member States.

Article 5

1. The parties shall endeavour to have a security system and establish security measures which comply with the basic principles and minimum standards provided for in their respective security regulations and figure in the arrangements to be established under Article 9, so that an equivalent level of protection is ensured for classified information covered by this Agreement.

2. The parties shall provide mutual assistance with regard to the security of classified information covered by this Agreement and security questions of mutual interest. The authorities referred to in Article 9 shall carry out consultations and reciprocal inspections relating to security in order to evaluate the effectiveness of the security arrangements under their responsibility which are to be established under that Article.

3. Prior to the communication or exchange between the parties of classified information covered by this Agreement, the responsible security authorities referred to in Article 9 shall state that they agree that the receiving party is able to ensure the protection and safeguarding of that information in accordance with the arrangements to be established under that Article.

Article 6

The parties shall endeavour to ensure that any persons who, in carrying out their official duties, need to have access to or, on account of their tasks or duties, may have access to classified information communicated or exchanged under this Agreement have, if need be, appropriate security clearance before authorising them to have access to such classified information.

The purpose of the security clearance procedures shall be to determine whether, taking into account their loyalty and reliability, they may have access to classified information.

Article 7

1. For the purposes of this Agreement:
 - (a) where the Commission is concerned, all correspondence shall be sent to the central office of the Secretariat-General of the Commission, at the following address:

European Commission
Secretariat-General
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
 - (b) where the GSA is concerned, all correspondence shall be sent to the following address:

GSA
Local Security Officer
Rue de la Loi/Wetstraat 56
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

2. By way of derogation from paragraph 1, correspondence from a party to which only specific staff, bodies or departments of that party have access may, for operational reasons, only be addressed and accessible to staff, bodies or departments of the other party specifically designated as recipients, taking into account their responsibilities and in accordance with the need-to-know principle. If that is the case:

(a) where the Commission is concerned, such correspondence shall be sent direct by the GSA to the local office which serves the specific staff, bodies or departments within the Commission, or via the [central office of the Secretariat-General] of the Commission, where the receiving staff, bodies or departments do not have a local office;

(b) where the GSA is concerned, such correspondence shall be sent via the GSA's Security Department.

Article 8

The Executive Director of the GSA and the Director of the Commission's Security Directorate shall supervise the application of this Agreement.

Article 9

1. For the purposes of applying this Agreement, security arrangements shall be established between the authorities referred to in paragraphs 2 and 3 in order to determine the standards for security protection and reciprocal safeguarding of classified information communicated or exchanged under this Agreement.

2. The GSA's Security Department, under the authority of and on behalf of the Executive Director of the GSA, shall prepare security arrangements to ensure the protection and safeguarding of classified information communicated to the GSA or exchanged with it under this Agreement.

3. The Commission's Security Directorate, acting under the authority of the Member of the Commission responsible for security matters, shall prepare security arrangements to ensure the protection and safeguarding of classified information

communicated or exchanged under this Agreement within the Commission and in its buildings.

4. For the GSA, the security arrangements referred to in paragraph 1 shall be subject to the approval of the GSA's Administrative Board.

Article 10

The authorities referred to in Article 9 shall establish the procedures to be followed where it is established or suspected that classified information covered by this Agreement is compromised, including notification to the other party of the situation and the measures taken.

Article 11

Each party shall bear its own costs incurred in implementing this Agreement.

Article 12

Any dispute between the Commission and the GSA arising from the interpretation or application of this Agreement shall be the subject of negotiations between the parties.

Article 13

1. This Agreement shall enter into force on the first day of the first month following the date on which the parties have notified each other that the necessary internal procedures have been completed.

2. Each party shall notify the other of any change in its regulations that is liable to compromise the protection of classified information covered by this Agreement.

3. This Agreement may be reviewed at the request of one or other of the parties with a view to making possible amendments.

4. Any amendment to this Agreement shall be made only in writing and by mutual agreement between the parties. It shall enter into force by means of mutual notification, in accordance with paragraph 1.

5. This Agreement is concluded for an indefinite period of time. It may be terminated at any time by one or other of the parties by means of written notification of termination addressed to the other party. Termination shall take effect 6 months following receipt of notification by the other party. However, it shall not affect obligations entered into earlier under this Agreement. In particular, all classified information

communicated or exchanged under this Agreement shall continue to be protected in accordance with this Agreement until such time as the recipient returns it to the party from which it originates, at the request of the latter.

6. This Agreement is drawn up in duplicate in English.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement.

Done at Brussels, 11 November 2009.

For the Commission
Director-General
Matthias RUETE

For the European GNSS Supervisory Authority
Executive Director
Pedro PEDREIRA

III

(Acts adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE VI OF THE EU TREATY

COLLEGE DECISION 2009-8

adopting the Financial Regulation applicable to Eurojust

THE COLLEGE OF EUROJUST,

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA) ⁽¹⁾, as amended by Decision of the Council (2003/659/JHA) ⁽²⁾, and in particular Article 37 thereof,

Having regard to Commission Regulation (EC, Euratom) No 2343/2002 ⁽³⁾ of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Commission Regulation (EC, Euratom) No 652/2008 ⁽⁴⁾,

Whereas:

- (1) Following the amendment of the framework Financial Regulation by Regulation (EC, Euratom) No 652/2008, it is necessary to adapt Eurojust's financial rules in order to align its provisions with the amended Framework Financial Regulation.
- (2) Eurojust has legal personality and has the full responsibility to draw up and to implement its own budget.
- (3) It is necessary to define the rules on drawing up and implementing Eurojust's budget, as well as the rules governing the presentation and the auditing of the accounts.
- (4) It is also necessary to define the powers and responsibilities of the College of Eurojust, the Authorising Officer, the accounting officer, the imprest administrator and the internal auditor.

- (5) Effective control systems must be established to protect the financial interest of the European Community.
- (6) Since Eurojust is financed by an annual subsidy charged to the Community budget, the timetable for establishing the budget, presenting the accounts and granting discharge should be aligned to the equivalent provisions of the general Financial Regulation.
- (7) For the same reason, Eurojust must observe the same requirement as the institutions of the Community in the award of public contracts and grants; in this respect, a reference to the relevant provisions of the general Financial Regulation will suffice.
- (8) The Financial Regulation must reflect the specific requirements of Eurojust as a judicial cooperation unit. It should take full account of the sensitive operations carried out by Eurojust, in particular in relation to investigations and prosecutions.
- (9) The amended Financial Regulation applicable to Eurojust's budget must be adopted unanimously by the College after the Commission has consented to the changes.
- (10) The Commission has consented to this Regulation including the departure from the framework Financial Regulation,

HAS ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER

Article 1

This Regulation lays clear the main principle and rules governing the establishment and the implementation of the budget of Eurojust.

⁽¹⁾ OJ L 63, 6.3.2002, p. 1.

⁽²⁾ OJ L 245, 29.9.2003, p. 44.

⁽³⁾ OJ L 357, 31.12.2002, p. 72.

⁽⁴⁾ OJ L 181, 10.7.2008, p. 23.

Article 2

For the purposes of this Regulation:

1. 'Eurojust Decision' shall mean the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA), as amended by Decision of the Council of 18 June 2003 (2003/659/JHA);
2. 'Eurojust' shall mean the judicial cooperation unit set up by the Eurojust Decision as a body of the European Union;
3. 'College' shall mean the unit referred to in Article 10(1) of the Eurojust Decision;
4. 'Administrative Director' shall mean the person referred to in Articles 29 and 36(1) of the Eurojust Decision;
5. 'Staff' shall mean the Administrative Director as well as the staff referred to in Article 30 of the Eurojust Decision;
6. 'Budget' shall mean the budget of Eurojust as referred to in Article 34 of the Eurojust Decision;
7. 'Budgetary Authority' shall mean the European Parliament and the Council of the European Union;
8. 'General Financial Regulation' shall mean the Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities;
9. 'Framework Financial Regulation' shall mean the Regulation (EC, Euratom) No 2343/2002;
10. 'Implementing Rules to the general Financial Regulation' shall mean the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾;
11. 'Eurojust Financial Implementing Rules' shall mean the implementing rules to this Financial Regulation;
12. 'Eurojust Financial Rules' shall mean the Eurojust Decision, this Financial Regulation and the Eurojust Financial Implementing Rules;

13. 'Staff Regulations' shall mean regulations and rules applicable to officials and other servants of the European Communities.

TITLE II

BUDGETARY PRINCIPLES

Article 3

The establishment and implementation of the budget shall comply with the principles of unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification and sound financial management, which requires effective and efficient internal control and transparency as provided for in this Regulation.

CHAPTER 1

Principles of unity and of budget accuracy

Article 4

The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the implementation of the Eurojust Decision.

Article 5

The budget shall comprise:

- (a) own revenue consisting of all fees, charges and, without prejudice to Article 51, interest which Eurojust may receive for services supplementary to the tasks entrusted to it, and any other revenue;
- (b) revenue made up of any financial contributions of the host Member State;
- (c) a subsidy granted by the European Communities;
- (d) revenue assigned to specific items of expenditure in accordance with Article 19(1);
- (e) the expenditure of Eurojust, including administrative expenditure.

Article 6

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget.
2. An appropriation must not be entered in the budget if it is not for an item of expenditure considered necessary.
3. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.

⁽¹⁾ OJ L 357, 31.12.2002, p. 1.

CHAPTER 2

Principle of annuality*Article 7*

The appropriations entered in the budget shall be authorised for one financial year, which shall run from 1 January to 31 December.

Article 8

1. The budget shall contain non-differentiated appropriations and, where justified by operational needs, differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.

2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year.

3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.

4. Administrative appropriations shall be non-differentiated. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

Article 9

1. The revenue of Eurojust referred to in Article 5 shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year.

2. The revenue of Eurojust shall give rise to an equivalent amount of payment appropriations.

3. The appropriations authorised in the budget for a given year may be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from preceding financial years.

4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.

5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.

Article 10

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.

However, they may, by decision of the College taken not later than 15 February, be carried over to the next financial year only, in accordance with paragraphs 2 to 7.

2. Appropriations relating to staff expenditure may not be carried over.

3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, to be defined in the Eurojust Financial Implementing Rules, have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.

4. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. Eurojust shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

5. Non-differentiated appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.

6. Appropriations carried over which have not been committed by 31 March of year N + 1 shall be automatically cancelled.

Appropriations carried over in this way shall be identified in the accounts.

7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically. By 1 June of year N + 1 at the latest, Eurojust shall inform the Commission about the implementation of the assigned revenue carried over.

The appropriations available corresponding to assigned revenue carried over must be used first.

Article 11

Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled.

Article 12

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has become definitive.

Article 13

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the College on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.

2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.

Article 14

1. If the budget has not been finally adopted at the beginning of the financial year, the following rules shall apply to commitment and payment of expenditure which it has been possible to book to a specific line in the budget as part of implementation of the last budget duly adopted.

2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the chapter in question for the previous financial year, plus one twelfth for each month which has elapsed.

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the chapter in question for the previous financial year.

The limit of the appropriations provided for in the statement of estimates of revenue and expenditure may not be exceeded.

3. At the request of the Administrative Director, if the continuity of action by Eurojust and management needs so require, the College may simultaneously authorise two or more provisional twelfths for both commitments and payments over and above those automatically made available by the provisions of paragraphs 1 and 2.

The additional twelfths shall be authorised in full and shall not be divisible.

CHAPTER 3

Principle of equilibrium*Article 15*

1. The budget revenue and payment appropriations must be in balance.

2. Commitment appropriations may not exceed the amount of the Community subsidy, plus own revenue and any other revenue referred to in Article 5.

3. Eurojust may not raise loans.

4. Community funds paid to Eurojust shall constitute for its budget a balancing subsidy which shall count as prefinancing within the meaning of Article 81(1)(b)(i) of the general Financial Regulation.

5. Eurojust shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests, it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.

Article 16

1. If the balance of the outturn account within the meaning of Article 81 is positive, it shall be repaid to the Commission up to the amount of the Community subsidy paid during the year. The part of the balance exceeding the amount of the Community subsidy paid during the year shall be entered in the budget for the following financial year as revenue. Eurojust shall provide, by 31 March of the year N at the latest, an estimate of the operating surplus from the year N – 1, which is to be returned to the Community budget later in year N, in order to complete the information already available concerning the surplus of the year N – 2. This information shall be duly taken into account by the Commission when assessing the financial needs of Eurojust for the year N + 1;

The difference between the Community subsidy entered in the general budget and that actually paid to the body shall be cancelled.

2. If the balance of the outturn account provided for in Article 81 is negative, it shall be entered in the budget for the following financial year.

3. The revenue or payment appropriations shall be entered in the budget during the budgetary procedure using the letter of amendment procedure or, while budget implementation is under way, by means of an amending budget.

CHAPTER 4

Principle of unit of account

Article 17

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for cash-flow purposes, the accounting officer and, in the case of imprest accounts, imprest administrators shall be authorised to carry out operations in national currencies as laid down in the Eurojust Financial Implementing Rules.

CHAPTER 5

Principle of universality

Article 18

Total revenue shall cover total payment appropriations, subject to Article 19. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 21.

Article 19

1. The following items of revenue shall be used to finance specific items of expenditure:

- (a) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;
- (b) contributions to Eurojust's activities from Member States, non-member countries or miscellaneous bodies, in so far as this is provided for in the agreement concluded between Eurojust and the Member States, non-member countries or bodies in question;
- (c) revenue from third parties in respect of goods, services and works supplied at their request, with the exception of fees and charges referred to in Article 5(a);
- (d) proceeds from the supply of goods, services and works for Community institutions or other Community bodies;
- (e) revenue arising from the repayment of amounts wrongly paid;
- (f) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus, which are being replaced or scrapped when the book value is fully depreciated;
- (g) insurance payments received;
- (h) revenue from payments connected with lettings;

- (i) revenue from the sale of publications and films, including those on an electronic medium.

1a. The basic act applicable may also assign the revenue for which it provides to specific items of expenditure.

2. All items of revenue within the meaning of points (a) to (d) of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.

3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraphs 1 and 1a and wherever possible shall indicate the amount.

Article 20

1. The Administrative Director may accept any donation made to Eurojust, such as foundations, subsidies, gifts and bequests.

2. Acceptance of donations which may involve some financial charge shall be subject to the prior authorisation of the College, which shall take a decision within two months of the date on which the request is submitted to it. If the College fails to take a decision within that period, the donation shall be deemed accepted.

Article 21

1. The following deductions may be made from payment requests, invoices or statements, which shall then be passed for payment of the net amount:

- (a) penalties imposed on parties to procurement contracts or beneficiaries of a grant;
- (b) discounts, refunds and rebates on individual invoices and payment requests;
- (c) interest generated by pre-financing payments.

2. The cost of goods, other products or services provided to Eurojust shall be charged to the budget for the full ex-tax amount where they incorporate taxes refunded:

- (a) either by the Member States pursuant to the Protocol on Privileges and Immunities of the European Communities, by the Host State on the basis of the Seat Agreement or on the basis of other relevant agreements;
- (b) or by a Member State or non-member country on the basis of other relevant agreements.

Any national taxes temporarily borne by Eurojust under the first subparagraph shall be entered in a suspense account until they are refunded by the State concerned.

3. Any negative balance shall be entered in the budget as expenditure.

4. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.

CHAPTER 6

Principle of specification

Article 22

The appropriations in their entirety shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

Article 23

1. The Administrative Director may make transfers from one chapter to another and from one article to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the line from which the transfer is made.

2. Beyond the limit referred in paragraph 1, the Administrative Director may propose to the College transfers of appropriations from one title to another. The College shall have three weeks in which to oppose such transfers. After this time-limit they shall be deemed to be adopted.

3. Proposals for transfers and transfers carried out under paragraphs 1 and 2 shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.

4. The Administrative Director shall inform the College as soon as possible of all transfers made. He/She shall inform the budgetary authority of all transfers carried out under paragraph 2.

Article 24

1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).

2. Appropriations corresponding to assigned revenue may be transferred only if they are used for the purpose to which the revenue is assigned.

CHAPTER 7

Principle of sound financial management

Article 25

1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.

2. The principle of economy requires that the resources used by Eurojust for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be provided to the College by the Administrative Director. This information shall be provided annually and at the latest in the documents accompanying the preliminary draft budget.

4. In order to improve decision-making, Eurojust shall regularly carry out ex ante and ex post evaluations of programmes or activities. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be sent to the College.

5. The objectives and measures set out in paragraphs 3 and 4 do not apply to case-related work.

Article 25a

1. The budget shall be implemented in compliance with effective and efficient internal control.

2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:

(a) effectiveness, efficiency and economy of operations;

(b) reliability of reporting;

(c) safeguarding of assets and information;

(d) prevention and detection of fraud and irregularities;

- (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.

CHAPTER 8

Principle of transparency

Article 26

1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.

2. A summary of the budget and amending budgets, as finally adopted, shall be published in the *Official Journal of the European Union* within three months of their adoption.

The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.

3. The budget including the establishment plan and amending budgets, as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the Internet site of Eurojust within four weeks of their adoption.

4. Eurojust shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted pursuant to Article 74b. The published information shall be easily accessible, transparent and comprehensive. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data as laid down in the Eurojust Decision and the Rules of Procedure on the Processing and Protection of Personal Data.

Where information is published only in anonymous form, Eurojust shall, upon request, provide information on the beneficiaries concerned to the European Parliament in an appropriate manner.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

Establishment of the budget

Article 27

1. The budget shall be established in accordance with the Eurojust Decision.

2. Each year, the Administrative Director shall draw up and submit to the College for its approval, a provisional draft estimate of revenue and expenditure for Eurojust for the following financial year.

3. The College shall send the Commission a provisional draft estimate of revenue and expenditure for Eurojust and the general guidelines underlying that estimate, on the basis of the provisional draft drawn up by the Administrative Director, by 10 February each year. The College shall forward the final draft estimate to the Commission by 31 March at the latest.

4. The estimate of revenue and expenditure of Eurojust shall include:

- (a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;
- (b) where there is a change in the number of posts, a statement justifying the request for new posts;
- (c) a quarterly estimate of cash payments and receipts;
- (d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators.

Evaluation results shall be consulted and referred to as evidence of the likely merits of an increase or decrease of Eurojust's proposed budget in comparison with its budget for year N.

5. Eurojust shall send to the Commission and the budgetary authority by 31 March each year at the latest the following:

- (a) its draft work programme;
- (b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission;
- (c) information on the number of officials, temporary and contract staff as defined in the Staff Regulations for the years N – 1 and N as well as an estimate for the year N + 1;
- (d) information on contributions in kind granted by the host Member State to Eurojust;
- (e) an estimate of the balance of the outturn account within the meaning of Article 81 for the year N – 1.

As part of the procedure for adoption of the general budget, the Commission shall send Eurojust's statement of estimates to the budgetary authority and propose the amount of the subsidy for Eurojust and the number of staff it considers that Eurojust needs. The Commission shall provide the draft establishment plan of Eurojust and for an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed.

6. The budgetary authority shall adopt the establishment plan of Eurojust and any subsequent amendment thereto in accordance with Article 32(1). The establishment plan shall be published in an Annex to Section III — Commission — of the general budget.

7. The budget and the establishment plan shall be adopted by the College. They become definitive after final adoption of the general budget setting the amount of the subsidy and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.

Article 28

Any amendment to the budget, including the establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget, in accordance with the provisions of the Eurojust Decision and Article 27.

CHAPTER 2

Structure and presentation of the budget

Article 29

The budget shall comprise a statement of revenue and a statement of expenditure.

Article 30

In so far as it is justified by the nature of Eurojust's activities, the statement of expenditure must be set out on the basis of a nomenclature with a classification by purpose. This nomenclature shall be determined by Eurojust and shall make a clear distinction between administrative appropriations and operating appropriations.

Article 31

The budget shall show:

1. in the statement of revenue:

- (a) the estimated revenue of Eurojust for the financial year in question;

- (b) the estimated revenue for the preceding financial year and the revenue for year N – 2;

- (c) appropriate remarks on each revenue line.

2. in the statement of expenditure:

- (a) the commitment and payment appropriations for the financial year in question;

- (b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year N – 2;

- (c) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;

- (d) appropriate remarks on each subdivision.

Article 32

1. The establishment plan referred to in Article 27 shall show, next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled.

It shall constitute an absolute limit for Eurojust; no appointment may be made in excess of the limit set.

However, save in the case of grades AD 16, AD 15, AD 14 and AD 13, the College may modify the establishment plan by up to 10 % of posts authorised, subject to two conditions:

- (a) that the volume of staff appropriations corresponding to a full financial year is not affected;

- (b) that the limit of the total number of posts authorised by the establishment plan is not exceeded.

2. By way of derogation from the second subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments. Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, Eurojust shall take appropriate measures to respect the limit referred to in point (b) of paragraph 1 as soon as possible.

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

General provisions*Article 33*

The Administrative Director shall perform the duties of authorising officer. He/she shall implement the revenue and expenditure of the budget in accordance with the Eurojust Financial Rules, on his/her own responsibility and within the limits of the appropriations authorised. Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, Eurojust shall participate in fraud prevention activities of the European Anti-fraud Office. Such activities shall not affect the operational work of Eurojust as foreseen in the Eurojust Decision and shall in particular not entail the access to or transmission of any case-related documents to OLAF.

Article 34

1. The Administrative Director may delegate his/her powers of budget implementation to staff of Eurojust covered by the Staff Regulations, in accordance with the conditions laid down by the Eurojust Financial Rules. Those so empowered may act only within the limits of the powers expressly conferred upon them.

2. The delegate may subdelegate the powers received as provided for in the Eurojust Financial Implementing Rules. Each act of subdelegation shall require the explicit agreement of the Administrative Director.

Article 35

1. All financial actors within the meaning of Chapter 2 of this title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures which may bring their own interests into conflict with those of Eurojust. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

2. There is a conflict of interests where the impartial and objective exercise of the functions of a person referred to in paragraph 1 is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Administrative Director, the competent authority shall be the College.

Article 36

1. The budget shall be implemented by the Administrative Director in the departments placed under his/her authority.

2. Technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

CHAPTER 2

Financial actors

Section 1 — Principle of segregation of duties

Article 37

The duties of authorising officer and accounting officer shall be segregated and mutually incompatible.

Section 2 — Authorising officer

Article 38

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.

2. To implement expenditure, the authorising officer shall make budget commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.

3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

4. The authorising officer shall put in place minimum standards as set out in the Eurojust Financial Implementing Rules. These minimum standards shall be drawn up on the basis of the standards laid down by the Commission for its own department and having due regard to the risks associated with the management environment and the nature of the action financed, the organisational structure and the internal management and control systems and procedures suited to the performance of his/her duties, including where appropriate ex post verifications.

The authorising officer shall establish within his/her departments an expertise and advice function designed to help him/her control the risks involved in his/her activities.

5. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. Initiation and the ex ante and ex post verification of an operation shall be separate functions.

6. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget. Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, the detailed rules on data protection as laid down in the Eurojust Decision and the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust shall apply.

Article 39

1. Initiation of an operation as referred to in Article 38(5) shall be understood to mean all the operations which are preparatory to the adoption of the acts implementing the budget by the authorising officers responsible referred to in Articles 33 and 34.

2. *Ex ante* verification of an operation as referred to in Article 38(5) shall be understood to mean all the *ex ante* checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.

3. Each operation shall be the subject of at least one *ex ante* verification. The purpose of this verification shall be to ascertain that:

- (a) the expenditure is in order and conforms to the relevant provisions;
- (b) the principle of sound financial management referred to in Article 25 has been applied.

For the purpose of *ex ante* verification, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his/her risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.

4. The purpose of *ex post* verifications of documents and, where appropriate, on-the-spot verifications shall be to verify that operations financed by the budget have been correctly implemented and in particular that the criteria referred to in paragraph 3 have been complied with. These verifications may be organised on a sample basis using risk analysis.

5. The officials or other staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those

performing the tasks referred to in paragraph 1 and shall not be their subordinates.

6. All staff responsible for scrutinising the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards adopted by Eurojust and based on standards laid down by the Commission for its own departments.

Article 40

1. The authorising officer shall report to the College on the performance of his/her duties in the form of an annual activity report, together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

This annual activity report shall indicate the results of his/her operations by reference to the objectives set for non-case-related operations, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor within the meaning of Article 71 shall take note of the annual activity report and any other pieces of information identified.

2. By no later than 15 June each year, the College shall send the budgetary authority and the Court of Auditors an analysis and an assessment of the annual activity report on the previous financial year. This analysis and assessment shall be included in the annual report of Eurojust, in accordance with the provisions of the Eurojust Decision.

Article 41

Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the Administrative Director in writing and, if the latter fails to take action within a reasonable period, the panel referred to in Article 47(4) and the College. In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.

Article 42

Where powers of budget implementation are delegated or sub-delegated in accordance with Article 34, Article 38(1), (2) and (3) shall apply *mutatis mutandis* to the authorising officers by delegation or subdelegation.

Section 3 — Accounting officer

Article 43

1. The College shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his/her duties. He/She shall be responsible in Eurojust for:

- (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) preparing and presenting the accounts in accordance with Title VII;
- (c) keeping the accounts in accordance with Title VII;
- (d) implementing, in accordance with Title VII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
- (e) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify the respect of validation criteria;
- (f) treasury management.

2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of Eurojust's assets and of budget implementation.

2a. Before the adoption of the accounts by the Administrative Director, the accounting officer shall sign them off, thereby certifying that he/she has a reasonable assurance that the accounts present a true and fair view of the financial situation of Eurojust.

For that purpose the accounting officer shall satisfy himself/herself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established, and that all revenue and expenditure is entered in the accounts.

The authorising officer shall forward all information that the accounting officer needs in order to fulfil his/her duties.

The authorising officer shall remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.

2b. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he/she deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

2c. The accounting officer of Eurojust shall sign off its annual accounts and send them to the Commission's accounting officer.

3. Subject to paragraph 4 of this Article and Article 44, only the accounting officer shall be empowered to manage cash and cash equivalents. He/she shall be responsible for their safe-keeping.

4. The accounting officer may, in the performance of his/her duties, delegate certain tasks to subordinate staff subject to the Staff Regulations, where this is indispensable for the performance of his/her duties. The accounting officer shall notify the authorising officer beforehand where this is the intended course of action.

5. The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.

Section 4 — Imprest administrator

Article 44

Where it proves indispensable for the payment of small sums and for the collection of other revenue referred to in Article 5, imprest accounts may be set up which shall be endowed by the accounting officer and shall be placed under the responsibility of imprest administrators designated by him/her.

The maximum amount of each item of expenditure or revenue that can be paid by the imprest administrator to third parties may not exceed a certain amount to be specified in the Eurojust Financial Implementing Rules for each item of expenditure or revenue.

Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 66 (1a), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.

CHAPTER 3

Liability of the financial actors

Section 1 — General rules

Article 45

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.

The authorising officer may at any time withdraw his/her agreement to a specific subdelegation.

2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the College.

The College shall appoint an interim accounting officer.

3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the accounting officer.

Article 46

1. The provisions of this chapter are without prejudice to the criminal-law liability which the authorising officer and the persons referred to in Article 45 may incur as provided in the applicable national law and in the provisions in force on the protection of the Communities' financial interests and on the fight against corruption involving officials of the Communities or officials of Member States.

2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 47, 48 and 49. In the event of illegal activity, fraud or corruption which may harm the interests of the Community, the matter will be referred to the authorities and bodies designated by the applicable legislation.

Section 2 — Rules applicable to the authorising officer and authorising officers by delegation or subdelegation

Article 47

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.

1a. The obligation to pay compensation shall apply in particular if:

(a) the authorising officer, whether intentionally or through gross negligence on his/her part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the Eurojust Financial Implementing Rules.

(b) the authorising officer, whether intentionally or through gross negligence on his/her part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it, or is late in issuing a payment order, thereby rendering Eurojust liable to civil action by third parties.

2. An authorising officer by delegation or subdelegation who considers that a decision falling under his/her responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to implement the decision in question, the latter must implement it and may not be held liable.

3. In the event of delegation, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.

4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation, shall exercise the same powers in respect of Eurojust as it does in respect of Commission departments, unless the College decides to set up a functionally independent panel, or to participate in a joint panel established by several Community bodies. For cases submitted by Eurojust, the specialised financial irregularities panel set up by the Commission shall include one staff member of a Community body.

On the basis of the opinion of this panel, the Administrative Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Administrative Director, the panel shall send it to the College and the Commission's internal auditor. The Administrative Director shall refer, in anonymous form, to opinions of the panel in his/her annual activity report and indicate the follow-up measures taken.

5. Any member of staff may be required to compensate, in whole or in part, any damage suffered by Eurojust as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties in accordance with the Staff Regulations.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.

Section 3 — Rules applicable to accounting officers and imprest administrators

Article 48

An accounting officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- (a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- (b) he/she alters bank accounts or postal giro accounts without notifying the authorising officer in advance;
- (c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he/she fails to collect revenue due.

Article 49

An imprest administrator may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- (a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- (b) he/she cannot provide proper supporting documents for the payments he/she has made;
- (c) he/she makes payments to persons other than those entitled;
- (d) he/she fails to collect revenue due.

CHAPTER 4

Revenue operations

Section 1 — General provisions

Article 50

Eurojust shall present to the Commission requests for payment of all or part of the Community subsidy pursuant to Article 15(5), under terms and at intervals agreed with the Commission.

Article 51

The funds paid to Eurojust by the Commission by way of the subsidy shall bear interest for the benefit of the general budget.

Section 2 — Estimate of amounts receivable

Article 52

An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to Eurojust.

Section 3 — Establishment of amounts receivable

Article 53

1. Establishment of an amount receivable is the act by which the authorising officer or authorising officer by delegation:

- (a) verifies that the debt exists;
- (b) determines or verifies the reality and the amount of the debt;
- (c) verifies the conditions in which the debt is due.

2. Any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order given to the accounting officer, accompanied by a debit note sent to the debtor. Both of these documents shall be drawn up and sent by the authorising officer responsible.

3. The contracts and grant agreements concluded by Eurojust shall provide that any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with the Implementing Rules to the general Financial Regulation. The condition whereby interest on late payment is due to Eurojust, including the rate for default interest, shall be explicitly referred to in the contracts and grant agreements.

4. In duly substantiated cases, certain routine revenue items may be established provisionally.

Provisional establishment shall cover the recovery of several individual amounts which need not therefore be established individually.

Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

Section 4 — Authorisation of recovery

Article 54

The authorisation of recovery is the act whereby the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.

Section 5 — Recovery

Article 55

1. Amounts wrongly paid shall be recovered.
2. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer or authorising officer responsible. He/she shall exercise due diligence to ensure that Eurojust receives its revenue and shall see that its rights are safeguarded.
3. Where the authorising officer responsible is planning to waive or partially waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality.

Such a waiver shall be made by a duly substantiated decision of the authorising officer. The authorising officer may delegate such a decision only for amounts receivable of less than EUR 5 000.

The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.

4. The authorising officer responsible shall cancel an established amount receivable when the discovery of a mistake as to a point of law or fact reveals that the amount had not been correctly established. Such cancellation shall be by decision of the authorising officer responsible and shall be suitably substantiated.

5. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of a factual error entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the established entitlement of Eurojust. Such an adjustment shall be by decision of the authorising officer responsible and shall be suitably substantiated.

Article 56

1. Upon actual recovery of the sum due, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.

2. A receipt shall be issued in respect of all cash payments made to the accounting officer.

Article 57

1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.

2. The accounting officer shall recover amounts by offsetting them against equivalent claims that Eurojust has on any debtor who himself/herself has a claim on Eurojust that is certain, of a fixed amount and due, provided that offsetting is legally possible.

Article 58

The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, provided that the following two conditions are met:

- (a) the debtor undertakes to pay interest at the rate specified in Article 86 of the Implementing Rules to the general Financial Regulation for the entire additional period allowed, starting from the date set in the debit note;
- (b) in order to safeguard the rights of Eurojust, the debtor provides a financial guarantee covering both the principal sum and the interest.

Article 58a

The accounting officer shall keep a list of amounts due to be recovered, in which Eurojust's entitlements are grouped according to the date of issue of the recovery order. He/She shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to Eurojust's report on budgetary and financial management.

Eurojust shall establish a list of its entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

Article 58b

Entitlements of Eurojust in respect of third parties and entitlements of third parties in respect of Eurojust shall be subject to a limitation period of five years, which shall be laid down in the contracts and grant agreements concluded by Eurojust.

Section 6 — Specific provision applicable to fees and charges

Article 59

Where Eurojust collects fees and charges referred to in Article 5(a), an overall provision estimate of such fees and charges shall be made at the beginning of each financial year.

Where fees and charges are entirely determined by legislation or decisions of the College, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of Eurojust's entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in Eurojust's report on budgetary and financial management.

Where Eurojust uses a separate invoicing system, the accounting officer shall regularly, and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.

As a general rule, Eurojust shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. If, by way of exception, a service has been provided without prior payment of the corresponding charge or fee, sections 3, 4 and 5 of this chapter shall apply.

CHAPTER 5

Expenditure operations*Article 60*

1. Every item of expenditure shall be committed, validated, authorised and paid.

2. Every commitment of expenditure shall be preceded by a financing decision. This shall not apply to case-related work.

3. The work programme of Eurojust shall be equivalent to a financing decision for the activities it covers, provided that they are clearly identified and the underlying criteria are spelled out precisely. The work programme shall comprise detailed objectives and performance indicators.

4. Administrative appropriations may be implemented without a prior financing decision.

Section 1 — Commitment of expenditure

Article 61

1. The budget commitment is the operation reserving the appropriations necessary to cover subsequent payments to honour a legal commitment.

2. The legal commitment is the act whereby the authorising officer responsible enters into or establishes an obligation which results in a charge for the budget.

3. The budget commitment is individual when the beneficiary and the amount of the expenditure are known.

4. The budget commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

5. The budget commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

The provisional budget commitment shall be implemented either by the conclusion of one or more individual legal commitments giving rise to an entitlement to subsequent payments or, in exceptional cases relating to expenditure on staff management, directly by payments.

Article 62

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.

2. Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N + 1.

Individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of year N.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that final date shall be decommitted in accordance with Article 11.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 67 has been made in a period of three years following the signing of the legal commitment shall be decommitted.

Article 63

When adopting a budget commitment, the authorising officer responsible shall ensure that:

- (a) the expenditure has been charged to the correct item in the budget;
- (b) the appropriations are available;
- (c) the expenditure conforms to the Eurojust Financial Rules;
- (d) the principle of sound financial management is complied with.

Section 2 — Validation of expenditure

Article 64

Validation of expenditure is the act whereby the authorising officer responsible:

- (a) verifies the existence of the creditor's entitlement;
- (b) verifies the conditions in which payment is due;
- (c) determines or verifies the reality and the amount of the claim.

Article 65

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.

2. The validation decision shall be expressed by the signing of a 'passed for payment' voucher by the authorising officer responsible.

3. In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, 'passed for payment' shall take the form of validation using the personal password of the authorising officer responsible.

Section 3 — Authorisation of expenditure

Article 66

1. Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he/she validated.

1a. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his/her risk analysis, the authorising officer may order the application of a direct debit system.

2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 38(6).

3. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 90(1).

Section 4 — Payment of expenditure

Article 67

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act within the meaning of Article 49 of the general Financial Regulation or the contract or grant agreement, and shall cover one of the following operations:

- (a) payment of the entire amount due;
- (b) payment of the amount due in any of the following ways:
 - (i) prefinancing, which may be divided into a number of payments;
 - (ii) one or more interim payments;
 - (iii) payment of the balance of the amounts due.

Prefinancing shall count in full or in part against the interim payments.

The entire prefinancing and interim payments shall count against the payment of balances.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

Article 68

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

Section 5 — Time limits for expenditure operations

Article 69

The validation, authorisation and payment of expenditure must be carried out within the time limits specified in, and in accordance with the provisions of the Implementing Rules to the general Financial Regulation.

CHAPTER 6

IT systems

Article 70

Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.

CHAPTER 7

Internal auditor

Article 71

Eurojust shall have an internal auditing function. The internal auditor shall be appointed and shall exercise his/her powers in accordance with Article 38(2) and (3) of the Eurojust Decision.

Article 72

1. The internal auditor shall advise Eurojust on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He/she shall be responsible:

(a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them; and

(b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.

2. The internal auditor shall perform his/her duties on all Eurojust's activities and departments. He/she shall enjoy full and unlimited access to all information required to perform his/her duties.

3. The internal auditor shall report to the College and the Administrative Director on his/her findings and recommendations. They shall ensure that action is taken on recommendations resulting from audits.

4. The internal auditor shall submit to Eurojust an annual internal audit report setting out, *inter alia*, the number and type of internal audits conducted, the recommendations made and the action taken on these recommendations. This annual report shall also mention any systemic problems detected by the specialised panel set up under Article 66(4) of the general Financial Regulation.

5. Each year Eurojust shall send to the authority responsible for discharge and to the Commission a report drawn up by its Administrative Director summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations.

6. This article shall not apply to case-related work and documents.

Article 73

The responsibility of the internal auditor for action taken in the performance of his/her duties shall be determined in the Eurojust Financial Implementing Rules in accordance with Article 87 of the general Financial Regulation.

TITLE V

PROCUREMENT

Article 74

1. As regards procurement, the relevant provisions of the general Financial Regulation and of the Implementing Rules to the general Financial Regulation shall apply subject to paragraphs 4 to 7 of this Article.

2. Eurojust may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Community bodies.

3. Eurojust shall participate in the common central database set up and operated by the Commission pursuant to Article 95 of the general Financial Regulation.

4. Eurojust may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94⁽¹⁾ for the supply of goods, provision of services or performance of work that the latter provide.

5. Eurojust shall be entitled to join or to benefit from the procurement procedures undertaken by the Host State or an International Organisation, provided they shall, in their procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards, specially relating to transparency, non-discrimination and prevention of conflict of interest.

The Administrative Director is alone empowered to recognise the equivalence of the guarantees with the internationally accepted standards.

6. For the application of Article 101 of the general Financial Regulation, the call for tender shall provide that Eurojust may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

7. For the application of Article 103 of the general Financial Regulation, calls for tender launched by Eurojust shall provide that it may suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure under the conditions laid down in that Article.

For the application of Article 103 of the general Financial Regulation, the contracts concluded by Eurojust with economic operators shall stipulate that it may take the measures specified in that Article under the conditions laid down therein.

TITLE VA

PROJECTS WITH SIGNIFICANT BUDGET IMPLICATIONS

Article 74a

The College shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which

may have significant financial implications for the funding of its administrative budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project notify Eurojust of its intention to issue such an opinion. Failing a reply, Eurojust may proceed with the planned operation.

This opinion shall be forwarded to Eurojust within four weeks of the notification pursuant to the second paragraph.

TITLE VB

EXPERTS

Article 74b

Article 265a of the Implementing Rules to the general Financial Regulation shall apply *mutatis mutandis* for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting Eurojust, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. Eurojust may use the lists drawn up by the Commission or other Community bodies.

TITLE VI

GRANTS AWARDED BY EUROJUST

Article 75

1. Where Eurojust awards grants to public authorities for the performance of tasks of Eurojust in accordance with Article 3 of the Eurojust Decision, for the performance of tasks of the European Judicial Network in accordance with Article 26(2)(b) of the Eurojust Decision or by delegation of the Commission pursuant to Article 54(2) (b) of the general Financial Regulation, the relevant principles of the general Financial Regulation and of the Implementing Rules to the general Financial Regulation shall apply subject to paragraphs 2 and 3 of this Article.

2. Grants shall be covered by written agreements between Eurojust and the beneficiary.

3. For the application of Article 119(2) of the general financial regulation, grant agreements concluded by Eurojust shall stipulate that it may suspend, reduce or terminate the grant in the cases provided for by Article 183 of the Implementing Rules to the general Financial Regulation after the beneficiary has been given the opportunity to make his observations.

⁽¹⁾ OJ L 314, 7.12.1994, p. 1.

TITLE VII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts*Article 76*

The annual accounts of Eurojust shall comprise:

- (a) the financial statements of Eurojust;
- (b) the reports on implementation of the budget.

The accounts of Eurojust shall be accompanied by a report on budgetary and financial management during the year. The report shall give an account, inter alia, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.

Article 77

The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:

- (a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- (b) as regards reports on budgetary implementation, of revenue and expenditure operations.

Article 78

The financial statements shall be drawn up in accordance with the generally accepted accounting principles as specified in the Implementing Rules to the general Financial Regulation, namely:

- (a) going concern basis;
- (b) prudence;
- (c) consistent accounting methods;
- (d) comparability of information;
- (e) materiality;
- (f) no netting;

(g) reality over appearance;

(h) accrual-based accounting.

Article 79

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.

2. The value of assets and liabilities shall be determined in accordance with the valuation rules laid down by the accounting methods provided for in Article 132 of the general Financial Regulation.

Article 80

1. The financial statements shall be presented in euro and shall comprise:

- (a) the balance sheet and the economic outturn account, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous year; they shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of Eurojust's activities;
- (b) the cash-flow table showing amounts collected and disbursed during the year and the final treasury position;
- (c) the statement of changes in capital presenting in detail the increases and decreases during the year in each item of the capital accounts.

2. The Annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to Eurojust's activities.

Article 81

The budgetary implementation reports shall be presented in euro. They shall comprise:

- (a) the budgetary outturn account, which sets out all budget operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;

- (b) the Annex to the budgetary outturn account, which shall supplement and comment on the information given in that account.

Article 82

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management for that financial year, referred to in Article 76 of this Decision, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation.

The accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

Article 83

1. In accordance with Article 129(1) of the general Financial Regulation, the Court of Auditors shall, by 15 June of the following year at the latest, make its observations on the provisional accounts of Eurojust.

2. On receiving the Court of Auditors' observations on the provisional accounts of Eurojust, the Administrative Director shall draw up the final accounts of Eurojust in accordance with Article 43, under his/her own responsibility, and send them to the College, which shall give an opinion on these accounts.

3. The Administrative Director shall send the final accounts, together with the opinion of the College, to the Commission's accounting officer, to the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest; the aforementioned documents shall be sent within two weeks where the Court of Auditors' observations are received later than 15 June.

4. The final accounts of Eurojust, consolidated with those of the Commission, shall be published in the *Official Journal of the European Union* by 15 November of the following financial year.

5. The Administrative Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. The replies of Eurojust shall be sent to the Commission at the same time.

CHAPTER 2

Accounting

Section 1 — Common provisions

Article 84

1. The accounting system of Eurojust is the system serving to organise the budgetary and financial information in such a way that figures can be inputted, filed and registered.

2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.

3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the budget year so that the accounts referred to in Chapter 1 can be drawn up.

4. Notwithstanding paragraphs 2 and 3, the authorising officer may keep analytical accounts.

Article 85

The accounting rules and methods and the harmonised chart of accounts to be applied by Eurojust shall be adopted by the Commission's accounting officer in accordance with Article 133 of the general Financial Regulation.

Section 2 — General accounts

Article 86

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of Eurojust.

Article 87

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.

2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.

3. The accounting system must be such as to leave a trail for all accounting entries.

Article 88

The accounting officer of Eurojust shall, after the close of the budgetary year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts in compliance with the rules.

Section 3 — Budgetary accounts*Article 89*

1. The budget accounts shall provide a detailed record of budgetary implementation.

2. For the purposes of paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditure operations provided for in Title IV of this Regulation.

*CHAPTER 3***Property inventories***Article 90*

1. Eurojust shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting Eurojust property in accordance with a model drawn up by the accounting officer of the Commission.

Eurojust shall check that entries in the inventory correspond to the actual situation.

2. The sale of movable property shall be advertised in an appropriate manner.

*TITLE VIII***EXTERNAL AUDIT AND DISCHARGE***CHAPTER 1***External audit***Article 91*

The Court of Auditors shall scrutinise the accounts of Eurojust in accordance with Article 248 of the EC Treaty.

Article 92

1. Eurojust shall send the Court of Auditors the budget, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all decisions and acts adopted pursuant to Articles 10, 14, 19 and 23.

2. Eurojust shall send the Court of Auditors the internal financial rules it has adopted.

3. The Court of Auditors shall be informed of the appointment of authorising officers, accounting officers and imprest administrators and of delegation decisions under Article 34, Article 43(1) and (4) and Article 44.

Article 93

The scrutiny carried out by the Court of Auditors shall be governed by Articles 139 to 144 of the general Financial Regulation. This scrutiny shall be exercised in a way which safeguards the protection of sensitive case-related data.

*CHAPTER 2***Discharge***Article 94*

1. The European Parliament, upon a recommendation from the Council, shall, before 30 April of year N + 2, give a discharge to the Administrative Director in respect of the implementation of the budget for year N. The Administrative Director shall inform the College of the observations of the European Parliament contained in the resolution accompanying the discharge decision.

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Administrative Director of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the Administrative Director, in co-operation with the College, shall make every effort to take measures as soon as possible to remove or facilitate removal of the obstacles to that decision.

Article 95

1. The discharge decision shall cover the accounts of all the revenue and expenditure of Eurojust, the resulting balance and the assets and liabilities of Eurojust shown in the financial statement.

2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of Eurojust. It shall also examine the annual report made by the Court of Auditors, together with the replies of the Administrative Director of Eurojust, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The Administrative Director shall submit to the European Parliament, at the latter's request, in the same manner as provided for in Article 146(3) of the general Financial Regulation, any information required for the smooth application of the discharge procedure for the year in question.

Article 96

1. The Administrative Director shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council, taking into account the tasks of Eurojust.

2. At the request of the European Parliament or the Council, the Administrative Director shall report on the measures taken in the light of these observations and comments. He/she shall send a copy thereof to the Commission and the Court of Auditors.

TITLE IX

TRANSITIONAL AND FINAL PROVISIONS

Article 97

The European Parliament, the Council and the Commission shall be empowered to obtain any necessary information or

explanations regarding budgetary matters within their fields of competence.

Article 98

The College shall, as far as is necessary and with the Commission's prior consent, adopt detailed rules for implementing the Financial Regulation of Eurojust, on a proposal from the Administrative Director.

Article 99

This Decision shall enter into force on the day following the adoption by the College and shall be published in the *Official Journal of the European Union*. It shall replace the Decision on the Financial Regulation of Eurojust adopted on 20 April 2006.

Done at The Hague on 27 March 2009.

The President of Eurojust

José Luís LOPES DA MOTA

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