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Contents

[1] Text with EEA relevance

(Continued overleaf)

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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.

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Commission

EN

[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 457/2005

of 21 March 2005

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], and in particular Article 4(1) thereof,

Whereas:

(1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

(2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 22 March 2005.

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

Done at Brussels, 21 March 2005.

For the Commission

J. M. SILVA RODRÍGUEZ

Director-General for Agriculture and Rural Development

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

ANNEX

to Commission Regulation of 21 March 2005 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	96,4
	204	87,3
	212	124,2
	624	175,4
	628	124,5
	999	121,6
0707 00 05	052	165,9
	204	65,0
	999	115,5
0709 10 00	220	144,2
	999	144,2
0709 90 70	052	114,4
	204	45,4
	999	79,9
0805 10 20	052	53,6
	204	53,8
	212	57,0
	220	49,8
	400	56,1
	421	35,9
	624	59,5
	999	52,2
0805 50 10	052	64,9
	220	21,8
	400	74,3
	624	57,4
	999	54,6
0808 10 80	388	61,6
	400	100,5
	404	76,2
	508	66,2
	512	80,5
	524	55,3
	528	70,6
	720	68,2
	999	72,4
0808 20 50	052	157,0
	388	60,8
	512	60,3
	528	60,1
	720	45,2
	999	76,7

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

COMMISSION REGULATION (EC) No 458/2005

of 21 March 2005

opening a standing invitation to tender for the export of common wheat held by the Czech intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [2] lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Given the current market situation, a standing invitation to tender should be opened for the export of 300 000 tonnes of common wheat held by the Czech intervention agency.

(3) Special rules must be laid down to ensure that the operations are properly carried out and monitored. To that end, securities should be lodged to ensure that the goals of the operation are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(4) Where removal of the common wheat is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency, the Member State concerned should pay compensation.

(5) To forestall reimportation refunds should be awarded only for exportation to certain third countries.

(6) Whereas Article 7(2a) of Regulation (EEC) No 2131/93 provides for the possibility of reimbursing the successful tenderer for the lowest transport costs between the place of storage and the actual place of exit. In view of the Czech Republic's geographical position, that provision should be applied.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to this Regulation, the Czech intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of common wheat held by it.

Article 2

1. The invitation to tender shall cover a maximum of 300 000 tonnes of common wheat for export to third countries with the exception of Albania, Bulgaria, Croatia, Bosnia and Herzegovina, Serbia and Montenegro [3] and the former Yugoslav Republic of Macedonia, Liechtenstein, Romania and Switzerland.

2. The regions in which the 300 000 tonnes of common wheat are stored are set out in Annex I.

Article 3

1. As an exception to the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, without monthly increase.

2. No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

4. In application of Article 7(2a) of Regulation (EEC) No 2131/93, the successful tenderer shall be reimbursed for the lowest costs between the place of storage and the actual place of exit.

[1] OJ L 270, 21.10.2003, p. 78.

[2] OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 2045/2004 (OJ L 354, 30.11.2004, p. 17).

[3] Including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999.

Article 4

1. Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000 [1].

Article 5

1. As an exception to Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall be 9.00 (Brussels time) on 31 March 2005.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 9.00 (Brussels time) each Thursday hereafter, with the exception of 5 May 2005.

3. The last partial invitation to tender shall expire at 9.00 (Brussels time) on 23 June 2005.

4. Tenders must be lodged with the Czech intervention agency:

Statní zemědělský intervenční fond
Odbor rostlinných komodit
Ve Smečkách 33
CZ-110 00, Praha 1
Tel. (420-2) 22 87 16 67/403
Fax (420-2) 222 96 80 64 04.

Article 6

1. The intervention agency, the storer and a successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

In the event of a dispute, the analysis results shall be forwarded to the Commission.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 75 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities specified in points B.2 and B.4 of the Annex to Regulation (EC) No 824/2000 [2], and

— half a percentage point as regards the impurities specified in point B.5 of the Annex to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot concerned. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, if the successful tenderer requests the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

[1] OJ L 152, 24.6.2000, p. 1.

[2] OJ L 100, 20.4.2000, p. 31.

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, the successful tenderer may request the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the common wheat is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 7

As an exception to Article 12 of Commission Regulation (EEC) No 3002/92 [1], the documents relating to the sale of common wheat under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where applicable, the T5 copy shall carry the entry:

— Trigo blando de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 458/2005

— Intervenční pšenice obecná nepodléhá vývozní náhradě ani clu, nařízení (ES) č. 458/2005

— Blød hvede fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 458/2005

— Weichweizen aus Interventionsbeständen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 458/2005

— Pehme nisu sekkumisvarudest, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr 458/2005

— Μαλακός σίτος παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 458/2005

— Intervention common wheat without application of refund or tax, Regulation (EC) No 458/2005

— Blé tendre d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 458/2005

— Frumento tenero d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 458/2005

— Intervences parastie kvieši bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. 458/2005

— Intervenciniai paprastieji kviečiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. 458/2005

— Intervenciós búza, visszatérítés, illetve adó nem alkalmazandó, 458/2005/EK rendelet

— Zachte tarwe uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 458/2005

— Pszenica zwyczajna interwencyjna niedająca prawa do refundacji ani do opłaty, rozporządzenie (WE) nr 458/2005

— Trigo mole de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 458/2005

— Intervenčná pšenica obyčajná nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. 458/2005

— Intervencija navadne pšenice brez zahtevkov za nadomestila ali carine, Uredba (ES) št. 458/2005

— Interventiovehnä, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 458/2005

— Interventionsvete, utan tillämpning av bidrag eller avgift, förordning (EG) nr 458/2005.

[1] OJ L 301, 17.10.1992, p. 17.

Article 8

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Czech intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the fax numbers set out in Annex IV.

Article 10

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, 21 March 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Středočeský, Jihočeský, Plzeňský, Karlovarský, Ústecký, Liberecký, Královehradecký, Pardubický, Vysočina, Jihomoravský, Olomoucký, Zlínský, Moravskoslezský	300 000

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of common wheat held by the Czech intervention agency

(Article 6(1) of Regulation (EC) No 458/2005)

— Name of successful tenderer:

— Date of award:

— Date of refusal of the lot by the successful tenderer:

Number of lot	Quantity in tonnes	Address of the silo	Reason for refusal to take over
			— PS (kg/hl) — % of sprouted grains — % of miscellaneous impurities (Schwarzbesatz) — % of matter other than basic cereals of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of common wheat held by the Czech intervention agency

(Regulation (EC) No 458/2005)

1	2	3	4	5	6	7
Serial numbers of tenderers	Number of lot	Quantity in tonnes	Tender price (EUR/t) [1]	Increases (+) Reductions (–) (EUR/t) (for the record)	Commercial costs (EUR/t)	Destination
1						
2						
3						
etc.						

[1] This price includes the increases and reductions relating to the lot covered by the tender.

ANNEX IV

The following numbers only for the Agriculture DG (D.2) in Brussels are to be used:

— Fax: (32-2) 292 10 34.

COMMISSION REGULATION (EC) No 459/2005

of 21 March 2005

opening a standing invitation to tender for the export of common wheat held by the Austrian intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [2], lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Given the current market situation, a standing invitation to tender should be opened for the export of 80 663 tonnes of common wheat held by the Austrian intervention agency.

(3) Special rules must be laid down to ensure that the operations are properly carried out and monitored. To that end, securities should be lodged to ensure that the goals of the operation are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(4) Where removal of the common wheat is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency, the Member State concerned should pay compensation.

(5) To forestall reimportation refunds should be awarded only for exportation to certain third countries.

(6) Whereas Article 7(2a) of Regulation (EEC) N° 2131/93 provides for the possibility of reimbursing the successful tenderer for the lowest transport costs between the place of storage and the actual place of exit. In view of Austria's geographical position, that provision should be applied.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to this Regulation, the Austrian intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of common wheat held by it.

Article 2

1. The invitation to tender shall cover a maximum of 80 663 tonnes of common wheat for export to third countries with the exception of Albania, Bulgaria, Croatia, Bosnia and Herzegovina, Serbia and Montenegro [3] and the former Yugoslav Republic of Macedonia, Liechtenstein, Romania and Switzerland.

2. The regions in which the 80 663 tonnes of common wheat are stored are set out in Annex I.

Article 3

1. As an exception to the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, without monthly increase.

2. No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

4. In application of Article 7(2a) of Regulation (EEC) No 2131/93, the successful tenderer shall be reimbursed for the lowest costs between the place of storage and the actual place of exit.

[1] OJ L 270, 21.10.2003, p. 78.

[2] OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 2045/2004 (OJ L 354, 30.11.2004, p. 17).

[3] Including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999.

Article 4

1. Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000 [1].

Article 5

1. As an exception to Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall be 9.00 (Brussels time) on 31 March 2005.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 9.00 (Brussels time) each Thursday hereafter, with the exception of 5 May 2005.

3. The last partial invitation to tender shall expire at 9.00 (Brussels time) on 23 June 2005.

4. Tenders must be lodged with the Austrian intervention agency:

AMA (Agrarmarkt Austria)
Dresdnerstraße 70
A-1200 Wien
Fax (43-1) 331 51 46 24, (43-1) 331 51 44 69.

Article 6

1. The intervention agency, the storer and a successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

In the event of a dispute, the analysis results shall be forwarded to the Commission.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 75 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities specified in points B.2 and B.4 of the Annex to Regulation (EC) No 824/2000 [2], and

— half a percentage point as regards the impurities specified in point B.5 of the Annex to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot concerned. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, if the successful tenderer requests the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

[1] OJ L 152, 24.6.2000, p. 1.

[2] OJ L 100, 20.4.2000, p. 31.

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, the successful tenderer may request the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the common wheat is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 7

As an exception to Article 12 of Commission Regulation (EEC) No 3002/92 [1], the documents relating to the sale of common wheat under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where applicable, the T5 copy shall carry the entry:

— Trigo blando de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 459/2005

— Intervenční pšenice obecná nepodléhá vývozní náhradě ani clu, nařízení (ES) č. 459/2005

— Blød hvede fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 459/2005

— Weichweizen aus Interventionsbeständen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 459/2005

— Pehme nisu sekkumisvarudest, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr 459/2005

— Μαλακός σίτος παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 459/2005

— Intervention common wheat without application of refund or tax, Regulation (EC) No 459/2005

— Blé tendre d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 459/2005

— Frumento tenero d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 459/2005

— Intervences parastie kvieši bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. 459/2005

— Intervenciniai paprastieji kviečiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. 459/2005

— Intervenciós búza, visszatérítés, illetve adó nem alkalmazandó, 459/2005/EK rendelet

— Zachte tarwe uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 459/2005

— Pszenica zwyczajna interwencyjna niedająca prawa do refundacji ani do opłaty, rozporządzenie (WE) nr 459/2005

— Trigo mole de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 459/2005

— Intervenčná pšenica obyčajná nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. 459/2005

— Intervencija navadne pšenice brez zahtevkov za nadomestila ali carine, Uredba (ES) št. 459/2005

— Interventiovehnä, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 459/2005

— Interventionsvete, utan tillämpning av bidrag eller avgift, förordning (EG) nr 459/2005.

[1] OJ L 301, 17.10.1992, p. 17.

Article 8

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Austrian intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the fax numbers set out in Annex IV.

Article 10

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, 21 March 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Burgenland, Niederösterreich, Oberösterreich	80 663

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of common wheat held by the Austrian intervention agency

(Article 6(1) of Regulation (EC) No 459/2005)

— Name of successful tenderer:

— Date of award:

— Date of refusal of the lot by the successful tenderer:

Number of lot	Quantity in tonnes	Address of the silo	Reason for refusal to take over
			— PS (kg/hl) — % of sprouted grains — % of miscellaneous impurities (Schwarzbesatz) — % of matter other than basic cereals of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of common wheat held by the Austrian intervention agency

(Regulation (EC) No 459/2005)

1	2	3	4	5	6	7
Serial numbers of tenderers	Number of lot	Quantity in tonnes	Tender price (EUR/t) [1]	Increases (+) Reductions (–) (EUR/t) (for the record)	Commercial costs (EUR/t)	Destination
1						
2						
3						
etc.						

[1] This price includes the increases and reductions relating to the lot covered by the tender.

ANNEX IV

The following numbers only for the Agriculture DG (D.2) in Brussels are to be used:

— Fax (32-2) 292 10 34.

COMMISSION REGULATION (EC) No 460/2005

of 21 March 2005

opening a standing invitation to tender for the export of common wheat held by the Hungarian intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [2], lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Given the current market situation, a standing invitation to tender should be opened for the export of 320 000 tonnes of common wheat held by the Hungarian intervention agency.

(3) Special rules must be laid down to ensure that the operations are properly carried out and monitored. To that end, securities should be lodged to ensure that the goals of the operation are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(4) Where removal of the common wheat is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency, the Member State concerned should pay compensation.

(5) To forestall reimportation refunds should be awarded only for exportation to certain third countries.

(6) Whereas Article 7(2a) of Regulation (EEC) No 2131/93 provides for the possibility of reimbursing the successful tenderer for the lowest transport costs between the place of storage and the actual place of exit. In view of Hungary's geographical position, that provision should be applied.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to this Regulation, the Hungarian intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of common wheat held by it.

Article 2

1. The invitation to tender shall cover a maximum of 320 000 tonnes of common wheat for export to third countries with the exception of Albania, Bulgaria, Croatia, Bosnia and Herzegovina, Serbia and Montenegro [3] and the former Yugoslav Republic of Macedonia, Liechtenstein, Romania and Switzerland.

2. The regions in which the 320 000 tonnes of common wheat are stored are set out in Annex I.

Article 3

1. As an exception to the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, without monthly increase.

2. No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

4. In application of Article 7(2a) of Regulation (EEC) No 2131/93, the successful tenderer shall be reimbursed for the lowest costs between the place of storage and the actual place of exit.

[1] OJ L 270, 21.10.2003, p. 78.

[2] OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 2045/2004 (OJ L 354, 30.11.2004, p. 17).

[3] Including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999.

Article 4

1. Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000 [1].

Article 5

1. As an exception to Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall be 9.00 (Brussels time) on 31 March 2005.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 9.00 (Brussels time) each Thursday hereafter, with the exception of 5 May 2005.

3. The last partial invitation to tender shall expire at 9.00 (Brussels time) on 23 June 2005.

4. Tenders must be lodged with the Hungarian intervention agency:

Mezőgazdasági és Vidékfejlesztési Hivatal
Alkotmány u. 29.
H-1385 Budapest 62
Pf. 867
Tel. (36-1) 219 62 60
Fax (36-1) 219 62 59.

Article 6

1. The intervention agency, the storer and a successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

In the event of a dispute, the analysis results shall be forwarded to the Commission.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 75 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities specified in points B.2 and B.4 of the Annex to Regulation (EC) No 824/2000 [2], and

— half a percentage point as regards the impurities specified in point B.5 of the Annex to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot concerned. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, if the successful tenderer requests the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

[1] OJ L 152, 24.6.2000, p. 1.

[2] OJ L 100, 20.4.2000, p. 31.

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, the successful tenderer may request the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the common wheat is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 7

As an exception to Article 12 of Commission Regulation (EEC) No 3002/92 [1], the documents relating to the sale of common wheat under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where applicable, the T5 copy shall carry the entry:

— Trigo blando de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 460/2005

— Intervenční pšenice obecná nepodléhá vývozní náhradě ani clu, nařízení (ES) č. 460/2005

— Blød hvede fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 460/2005

— Weichweizen aus Interventionsbeständen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 460/2005

— Pehme nisu sekkumisvarudest, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr 460/2005

— Μαλακός σίτος παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 460/2005

— Intervention common wheat without application of refund or tax, Regulation (EC) No 460/2005

— Blé tendre d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 460/2005

— Frumento tenero d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 460/2005

— Intervences parastie kvieši bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. 460/2005

— Intervenciniai paprastieji kviečiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. 460/2005

— Intervenciós búza, visszatérítés, illetve adó nem alkalmazandó, 460/2005/EK rendelet

— Zachte tarwe uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 460/2005

— Pszenica zwyczajna interwencyjne nie dające prawa do refundacji ani do opłaty, rozporządzenie (WE) nr 460/2005

— Trigo mole de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 460/2005

— Intervenčná pšenica obyčajná nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. 460/2005

— Intervencija navadne pšenice brez zahtevkov za nadomestila ali carine, Uredba (ES) št. 460/2005

— Interventiovehnä, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 460/2005

— Interventionsvete, utan tillämpning av bidrag eller avgift, förordning (EG) nr 460/2005.

[1] OJ L 301, 17.10.1992, p. 17.

Article 8

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Hungarian intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the fax numbers set out in Annex IV.

Article 10

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, 21 March 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Bács-Kiskun, Baranya, Békés, Borsod-Abaúj-Zemplén, Csongrád, Fejér, Főváros és Pest, Győr-Moson-Sopron, Hajdú-Bihar, Heves, Jász-Nagykun-Szolnok, Somogy, Szabolcs-Szatmár-Bereg, Tolna	320 000

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of common wheat held by the Hungarian intervention agency

(Article 6(1) of Regulation (EC) No 460/2005)

— Name of successful tenderer:

— Date of award:

— Date of refusal of the lot by the successful tenderer:

Number of lot	Quantity in tonnes	Address of the silo	Reason for refusal to take over
			— PS (kg/hl) — % of sprouted grains — % of miscellaneous impurities (Schwarzbesatz) — % of matter other than basic cereals of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of common wheat held by the Hungarian intervention agency

(Regulation (EC) No 460/2005)

1	2	3	4	5	6	7
Serial numbers of tenderers	Number of lot	Quantity in tonnes	Tender price (EUR/t) [1]	Increases (+) Reductions (–) (EUR/t) (for the record)	Commercial costs (EUR/t)	Destination
1						
2						
3						
etc.						

[1] This price includes the increases and reductions relating to the lot covered by the tender.

ANNEX IV

The following numbers only for the Agriculture DG (D.2) in Brussels are to be used:

— Fax (32-2) 292 10 34.

COMMISSION REGULATION (EC) No 461/2005

of 21 March 2005

opening a standing invitation to tender for the export of common wheat held by the Polish intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [2], lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Given the current market situation, a standing invitation to tender should be opened for the export of 93 084 tonnes of common wheat held by the Polish intervention agency.

(3) Special rules must be laid down to ensure that the operations are properly carried out and monitored. To that end, securities should be lodged to ensure that the goals of the operation are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(4) Where removal of the common wheat is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency, the Member State concerned should pay compensation.

(5) To forestall reimportation refunds should be awarded only for exportation to certain third countries.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to this Regulation, the Polish intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of common wheat held by it.

Article 2

1. The invitation to tender shall cover a maximum of 93 084 tonnes of common wheat for export to third countries with the exception of Albania, Bulgaria, Croatia, Bosnia and Herzegovina, Serbia and Montenegro [3] and the former Yugoslav Republic of Macedonia, Liechtenstein, Romania and Switzerland.

2. The regions in which the 93 084 tonnes of common wheat are stored are set out in Annex I.

Article 3

1. As an exception to the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, without monthly increase.

2. No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

[1] OJ L 270, 21.10.2003, p. 78.

[2] OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 2045/2004 (OJ L 354, 30.11.2004, p. 17).

[3] Including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999.

Article 4

1. Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000 [1].

Article 5

1. As an exception to Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall be 9.00 (Brussels time) on 31 March 2005.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 9.00 (Brussels time) each Thursday hereafter, with the exception of 5 May 2005.

3. The last partial invitation to tender shall expire at 9.00 (Brussels time) on 23 June 2005.

4. Tenders must be lodged with the Polish intervention agency:

Agencja Rynku Rolnego
Biuro Produktów Roślinnych
Dział Zbóż
ul. Nowy Świat 6/12
PL-00-400 Warszawa
Tel. (48-22) 661 78 10
Fax (48-22) 661 78 26.

Article 6

1. The intervention agency, the storer and a successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

In the event of a dispute, the analysis results shall be forwarded to the Commission.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 75 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities specified in points B.2 and B.4 of the Annex to Regulation (EC) No 824/2000 [2], and

— half a percentage point as regards the impurities specified in point B.5 of the Annex to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot concerned. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, if the successful tenderer requests the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

[1] OJ L 152, 24.6.2000, p. 1.

[2] OJ L 100, 20.4.2000, p. 31.

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, the successful tenderer may request the intervention agency to supply another lot of intervention common wheat of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the common wheat is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 7

As an exception to Article 12 of Commission Regulation (EEC) No 3002/92 [1], the documents relating to the sale of common wheat under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where applicable, the T5 copy shall carry the entry:

— Trigo blando de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 461/2005

— Intervenční pšenice obecná nepodléhá vývozní náhradě ani clu, nařízení (ES) č. 461/2005

— Blød hvede fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 461/2005

— Weichweizen aus Interventionsbeständen ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 461/2005

— Pehme nisu sekkumisvarudest, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr 461/2005

— Μαλακός σίτος παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 461/2005

— Intervention common wheat without application of refund or tax, Regulation (EC) No 461/2005

— Blé tendre d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 461/2005

— Frumento tenero d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 461/2005

— Intervences parastie kvieši bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. 461/2005

— Intervenciniai paprastieji kviečiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. 461/2005

— Intervenciós búza, visszatérítés, illetve adó nem alkalmazandó, 461/2005/EK rendelet

— Zachte tarwe uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 461/2005

— Pszenica zwyczajna interwencyjna niedająca prawa do refundacji ani do opłaty, rozporządzenie (WE) nr 461/2005

— Trigo mole de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 461/2005

— Intervenčná pšenica obyčajná nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. 461/2005

— Intervencija navadne pšenice brez zahtevkov za nadomestila ali carine, Uredba (ES) št. 461/2005

— Interventiovehnä, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 461/2005

— Interventionsvete, utan tillämpning av bidrag eller avgift, förordning (EG) nr 461/2005.

[1] OJ L 301, 17.10.1992, p. 17.

Article 8

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the Polish intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the fax numbers set out in Annex IV.

Article 10

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, 21 March 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Opolski, Kujawsko-Pomorski, Lubelski, Podkarpacki, Mazowiecki, Warmińsko-Mazurski, Zachodniopomorski, Pomorski, Lubuski, Podlaski, Wielkopolski	93 084

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of common wheat held by the Polish intervention agency

(Article 6(1) of Regulation (EC) No 461/2005)

— Name of successful tenderer:

— Date of award:

— Date of refusal of the lot by the successful tenderer:

Number of lot	Quantity in tonnes	Address of the silo	Reason for refusal to take over
			— PS (kg/hl) — % of sprouted grains — % of miscellaneous impurities (Schwarzbesatz) — % of matter other than basic cereals of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of common wheat held by the Polish intervention agency

(Regulation (EC) No 461/2005)

1	2	3	4	5	6	7
Serial numbers of tenderers	Number of lot	Quantity in tonnes	Tender price (EUR/t) [1]	Increases (+) Reductions (–) (EUR/t) (for the record)	Commercial costs (EUR/t)	Destination
1						
2						
3						
etc.						

[1] This price includes the increases and reductions relating to the lot covered by the tender.

ANNEX IV

The following numbers only for the Agriculture DG (D.2) in Brussels are to be used:

— Fax (32-2) 292 10 34.

COMMISSION REGULATION (EC) No 462/2005

of 21 March 2005

opening a standing invitation to tender for the export of barley held by the German intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1784/2003 of 29 September 2003 on the common organisation of the market in cereals [1], and in particular Article 6 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [2], lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

(2) Given the current market situation, a standing invitation to tender should be opened for the export of 500 693 tonnes of barley held by the German intervention agency.

(3) Special rules must be laid down to ensure that the operations are properly carried out and monitored. To that end, securities should be lodged to ensure that the goals of the operation are achieved without excessive cost to the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

(4) Where removal of the barley is delayed by more than five days or the release of one of the securities required is delayed for reasons imputable to the intervention agency, the Member State concerned should pay compensation.

(5) To forestall reimportation refunds should be awarded only for exportation to certain third countries.

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

HAS ADOPTED THIS REGULATION:

Article 1

Subject to this Regulation, the German intervention agency shall issue a standing invitation to tender in accordance with Regulation (EEC) No 2131/93 for the export of barley held by it.

Article 2

1. The invitation to tender shall cover a maximum of 500 693 tonnes of barley for export to third countries with the exception of Albania, Bulgaria, Canada, Croatia, Bosnia and Herzegovina, Mexico, Serbia and Montenegro [3], the United States of America, the former Yugoslav Republic of Macedonia, Liechtenstein, Romania and Switzerland.

2. The regions in which the 500 693 tonnes of barley are stored are set out in Annex I.

Article 3

1. As an exception to the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender, without monthly increase.

2. No export refund or tax or monthly increase shall be granted on exports carried out under this Regulation.

3. Article 8(2) of Regulation (EEC) No 2131/93 shall not apply.

[1] OJ L 270, 21.10.2003, p. 78.

[2] OJ L 191, 31.7.1993, p. 76. Regulation as last amended by Regulation (EC) No 2045/2004 (OJ L 354, 30.11.2004, p. 17).

[3] Including Kosovo, as defined in UN Security Council Resolution 1244 of 10 June 1999.

Article 4

1. Export licences shall be valid from their date of issue within the meaning of Article 9 of Regulation (EEC) No 2131/93 until the end of the fourth month thereafter.

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted under Article 49 of Commission Regulation (EC) No 1291/2000 [1].

Article 5

1. As an exception to Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders under the first partial invitation to tender shall be 9.00 (Brussels time) on 31 March 2005.

2. The time limit for submission of tenders under subsequent partial invitations to tender shall be 9.00 (Brussels time) each Thursday hereafter, with the exception of 5 May 2005 and 26 May 2005.

3. The last partial invitation to tender shall expire at 9.00 (Brussels time) on 23 June 2005.

4. Tenders must be lodged with the German intervention agency:

Bundesanstalt für Landwirtschaft und Ernährung (BLE)
Adickesallee 40
D-60322 Frankfurt am Main
Fax (49) 691 56 46 24

Article 6

1. The intervention agency, the storer and a successful tenderer shall, at the request of the latter and by common agreement, either before or at the time of removal from storage as the tenderer chooses, take reference samples for counter-analysis at the rate of at least one sample for every 500 tonnes and shall analyse the samples. The intervention agency may be represented by a proxy, provided this is not the storer.

In the event of a dispute, the analysis results shall be forwarded to the Commission.

Reference samples for counter-analysis shall be taken and analysed within seven working days of the date of the successful tenderer's request or within three working days if the samples are taken on removal from storage. Where the final result of sample analyses indicates a quality:

(a) higher than that specified in the notice of invitation to tender, the successful tenderer must accept the lot as established;

(b) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, providing that the differences do not exceed the following limits:

— one kilogram per hectolitre as regards specific weight, which must not, however, be less than 64 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards the impurities specified in points B.2 and B.4 of the Annex to Regulation (EC) No 824/2000 [2], and

— half a percentage point as regards the impurities specified in point B.5 of the Annex to Regulation (EC) No 824/2000, the percentages admissible for noxious grains and ergot, however, remaining unchanged,

the successful tenderer must accept the lot as established;

(c) higher than the minimum characteristics laid down for intervention but below the quality described in the notice of invitation to tender, and a difference exceeding the limits set out in point (b), the successful tenderer may:

— accept the lot as established, or

— refuse to take over the lot concerned. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, if the successful tenderer requests the intervention agency to supply another lot of intervention barley of the quality laid down at no additional charge, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall notify the Commission immediately thereof in accordance with Annex II;

[1] OJ L 152, 24.6.2000, p. 1.

[2] OJ L 100, 20.4.2000, p. 31.

(d) below the minimum characteristics laid down for intervention, the successful tenderer may not remove the lot in question. The successful tenderer shall be discharged of all obligations relating to the lot in question and the securities shall be released provided the Commission and the intervention agency are immediately notified in accordance with Annex II; however, the successful tenderer may request the intervention agency to supply another lot of intervention barley of the quality laid down at no additional charge. In that case, the security shall not be released. The lot must be replaced within three days of the date of the successful tenderer's request. The successful tenderer shall immediately inform the Commission thereof in accordance with Annex II.

2. However, if the barley is removed before the results of the analyses are known, all risks shall be borne by the successful tenderer from the time the lot is removed, without prejudice to any means of redress against the storer.

3. If, as a result of successive replacements, the successful tenderer has not received a replacement lot of the quality laid down within one month of the date of the request for a replacement, the successful tenderer shall be discharged of all obligations and the securities shall be released, provided the Commission and the intervention agency have been immediately informed in accordance with Annex II.

4. Except where the final results of analyses indicate a quality below the minimum characteristics laid down for intervention, the costs of taking the samples and conducting the analyses provided for in paragraph 1 but not of inter-bin transfers shall be borne by the European Agricultural Guidance and Guarantee Fund (EAGGF) for up to one analysis per 500 tonnes. The costs of inter-bin transfers and any additional analyses requested by a successful tenderer shall be borne by that tenderer.

Article 7

As an exception to Article 12 of Commission Regulation (EEC) No 3002/92 [1], the documents relating to the sale of barley under this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b) of Regulation (EEC) No 3002/92, the export declaration and, where applicable, the T5 copy shall carry the entry:

— Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 462/2005

— Intervenční ječmen nepodléhá vývozní náhradě ani clu, nařízení (ES) č. 462/2005

— Byg fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 462/2005

— Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 462/2005

— Sekkumisoder, mille puhul ei rakendata toetust või maksu, määrus (EÜ) nr 462/2005

— Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 462/2005

— Intervention barley without application of refund or tax, Regulation (EC) No 462/2005

— Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 462/2005

— Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 462/2005

— Intervences rudzi bez kompensācijas vai nodokļa piemērošanas, Regula (EK) Nr. 462/2005

— Intervenciniai rugiai, kompensacija ar mokesčiai netaikytini, Reglamentas (EB) Nr. 462/2005

— Intervenciós árpa, visszatérítés, illetve adó nem alkalmazandó, 462/2005/EK rendelet

— Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 462/2005

— Jęczmień interwencyjny niedający prawa do refundacji ani do opłaty, rozporządzenie (WE) nr 462/2005

— Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 462/2005

— Intervenčný jačmeň nepodlieha vývozným náhradám ani clu, nariadenie (ES) č. 462/2005

— Intervencija rži brez zahtevkov za nadomestila ali carine, Uredba (ES) št. 462/2005

— Interventio-ohra, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 462/2005

— Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 462/2005.

[1] OJ L 301, 17.10.1992, p. 17.

Article 8

1. The security lodged under Article 13(4) of Regulation (EEC) No 2131/93 shall be released once the export licences have been issued to the successful tenderers.

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 25 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Article 9

Within two hours of the expiry of the time limit for the submission of tenders, the German intervention agency shall notify the Commission of tenders received. Such notification shall be made using the model set out in Annex III and the fax numbers set out in Annex IV.

Article 10

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, 21 March 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

ANNEX I

(in tonnes)

Place of storage	Quantity
Schleswig-Holstein, Hamburg, Niedersachsen, Bremen, Mecklenburg-Vorpommern, Berlin, Brandenburg, Sachsen-Anhalt, Sachsen, Thüringen, Nordrhein-Westfalen, Hessen, Rheinland-Pfalz, Saarland, Baden-Württemberg, Bayern	500 693

ANNEX II

Communication of refusal of lots under the standing invitation to tender for the export of barley held by the German intervention agency

(Article 6(1) of Regulation (EC) No 462/2005)

— Name of successful tenderer:

— Date of award:

— Date of refusal of the lot by the successful tenderer:

Number of lot	Quantity in tonnes	Address of the silo	Reason for refusal to take over
			— PS (kg/hl) — % of sprouted grains — % of miscellaneous impurities (Schwarzbesatz) — % of matter other than basic cereals of unimpaired quality — Other

ANNEX III

STANDING INVITATION TO TENDER FOR THE EXPORT OF BARLEY HELD BY THE GERMAN INTERVENTION AGENCY

(Regulation (EC) No 462/2005)

1	2	3	4	5	6	7
Serial numbers of tenderers	Number of lot	Quantity in tonnes	Tender price (EUR/t) [1]	Increases (+) Reductions (–) (EUR/t) (for the record)	Commercial costs (EUR/t)	Destination
1						
2						
3						
etc.						

[1] This price includes the increases and reductions relating to the lot covered by the tender.

ANNEX IV

The following numbers only for the Agriculture DG (D.2) in Brussels are to be used:

— Fax (32-2) 292 10 34.

COMMISSION DIRECTIVE 2005/26/EC

of 21 March 2005

establishing a list of food ingredients or substances provisionally excluded from Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs [1], and in particular second subparagraph of Article 6(11) thereof,

Whereas:

(1) Annex IIIa of Directive 2000/13/EC establishes a list of food ingredients to be indicated on the label as they are likely to cause adverse reactions in susceptible individuals.

(2) In accordance with Directive 2000/13/EC the Commission may provisionally exclude certain ingredients or products of those ingredients from Annex IIIa to that Directive, while food manufacturers or their associations conduct scientific studies to establish that those ingredients or products comply with the conditions for definite exclusion from that Annex.

(3) The Commission received 27 applications regarding 34 ingredients or products thereof, of which 32 fall within the scope of this Directive, and have been submitted to the European Food Safety Authority (EFSA) for a scientific opinion.

(4) Based on the information provided by the applicant, and other information available, the EFSA has considered that certain products of ingredients are not likely, or not very likely, to cause adverse reactions in susceptible individuals. In certain cases, EFSA has concluded that it cannot draw a firm conclusion, though no reported cases were mentioned.

(5) Those products or ingredients complying with these conditions should therefore provisionally be excluded from Annex IIIa of Directive 2000/13/EC,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The ingredients or substances listed in the Annex to this Directive shall be excluded from Annex IIIa of Directive 2000/13/EC until 25 November 2007.

Article 2

1. Member States shall adopt and publish, by 21 September 2005 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 25 November 2005.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 21 March 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

[1] OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

ANNEX

List of food ingredients and substances provisionally excluded from Annex IIIa of Directive 2000/13/EC

Ingredients	Products thereof provisionally excluded
Cereals containing gluten	— Wheat based glucose syrups including dextrose [1] — Wheat based maltodextrins [1] — Glucose syrups based on barley — Cereals used in distillates for spirits
Eggs	— Lysozym (produced from egg) used in wine — Albumin (produced from egg) used as fining agent in wine and cider
Fish	— Fish gelatine used as carrier for vitamins and flavours — Fish gelatine or Isinglass used as fining agent in beer, cider and wine
Soybean	— Fully refined soybean oil and fat [1] — Natural mixed tocopherols (E306), natural D-alpha tocopherol, natural D-alpha tocopherol acetate, natural D-alpha tocopherol succinate from soybean sources — Vegetable oils derived phytosterols and phytosterol esters from soybean sources — Plant stanol ester produced from vegetable oil sterols from soybean sources
Milk	— Whey used in distillates for spirits — Lactitol — Milk (casein) products used as fining agents in cider and wines
Nuts	— Nuts used in distillates for spirits — Nuts (almonds, walnuts) used (as flavour) in spirits
Celery	— Celery leaf and seed oil — Celery seed oleoresin
Mustard	— Mustard oil — Mustard seed oil — Mustard seed oleoresin

[1] And products thereof, in so far as the process that they have undergone is not likely to increase the level of allergenicity assessed by the EFSA for the relevant product from which they originated.

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 3 March 2005

concerning the conclusion of an Agreement between the European Community and the Government of the Socialist Republic of Vietnam on market access

(2005/244/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof, in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

(1) The Commission has negotiated on behalf of the Community a bilateral Agreement on an early implementation of market access commitments relating to Vietnam's WTO accession.

(2) The Agreement was initialled on 3 December 2004.

(3) It is necessary that the Agreement, which will be of a temporary nature and of a *sui generis* design, enter into force as soon as possible if it is to be effective. The conclusion of the Agreement does not affect in any way the division of competences between the Community and its Member States, in accordance with Community law as interpreted by the Court of Justice.

(4) The Agreement should be approved on behalf of the Community,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Government of the Socialist Republic of Vietnam on market access is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

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

Article 3

The Commission shall, in accordance with the procedure referred to in Article 17 of Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries [1], adopt the measure provided for in the first paragraph of Article 5 of the Agreement, consisting of reapplication of textile and clothing quotas in case Vietnam fails to fulfil its obligations under Articles 2, 3 and 4 of the Agreement and paragraph 9 of the Agreement in the form of an Exchange of Letters, initialled on 15 February 2003.

The provisions of this Decision approving the Agreement shall prevail over Regulation (EEC) No 3030/93 to the extent that the same subject matter is concerned.

Done at Brussels, 3 March 2005.

For the Council
The President
F. BILTGEN

[1] OJ L 275, 8.11.1993, p. 1. Regulation as last amended by Regulation (EC) No 2200/2004 (OJ L 374, 22.12.2004, p. 1).

AGREEMENT

between the European Community and the Government of the Socialist Republic of Vietnam on market access

THE EUROPEAN COMMUNITY

and

THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

hereinafter referred to collectively as the 'Parties' and individually as the 'Party',

ACKNOWLEDGING the importance of coordinating and strengthening the friendship, cooperation and interaction between the Socialist Republic of Vietnam and the European Community; and

DESIRING to develop and broaden trade and investment relations between the Socialist Republic of Vietnam and the European Community,

HAVE AGREED AS FOLLOWS:

Article 1

From 1 January 2005, the European Community shall suspend, with the aim of elimination, the textile and clothing quotas imposed on the Socialist Republic of Vietnam.

Article 2

From 1 January 2005, the Socialist Republic of Vietnam shall:

— apply the tariffs for clothing, fabrics and made–up articles and fibres at the levels as committed by Vietnam in the Agreement on trade in textiles and clothing and other market opening measures initialled in Hanoi on 15 February 2003 ([1]),

— apply a tariff rate of 5 % for yarns,

— apply a tariff rate of 65 % for wines and spirits,

— grant to European Community investors and services providers treatment no less favourable than that accorded to US investors and services suppliers as provided for in the Investment and Trade in Services Chapters of the Bilateral Trade Agreement between the Socialist Republic of Vietnam and the United States of America and the relevant Annexes thereof,

— allow European Community operators to invest in cement and clinker production, subject to the regulations applied in this sector in Vietnam. These regulations are non-discriminatory,

— allow European Community investors in the telecommunications sector, currently operating under Business Co-operation Contracts with Vietnamese operators, to have the possibility to renew current arrangements or to convert them into another form of establishment with conditions no less favourable than those they currently enjoy, in accordance with the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004,

— eliminate restriction on the customers to whom European Community suppliers of computer services, construction services, engineering, integrated engineering, architectural services and urban planning services, which are currently operating in Vietnam, provide the services,

— consider granting licences, on a case-by-case basis and under the conditions set forth in the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004, for the European Community's operators to establish 100 % European Community–owned enterprises in Vietnam to provide computer services, construction services, engineering, integrated engineering, architectural services and urban planning services without restrictions on the customers to whom these services are provided,

— allow 4 (four) European Community pharmaceutical firms to carry out toll manufacturing in Vietnam without license transfer and while retaining their authorisation to market the imported products,

([1]) Published in the *Official Journal of the European Union* L 152, 26.6.2003, p. 42, as 'Agreement in the form of Exchange of Letters amending the Agreement between the European Community and the Socialist Republic of Vietnam on trade in textile and clothing products and other market opening measures, as last amended by the Agreement in the form of an Exchange of Letters initialled on 31 March 2000'.

— allow European Community companies to establish joint ventures with Vietnamese partners, without limitation on European Community capital contribution, in order to invest in construction of office buildings and apartments for sale and lease, subject to Vietnam's laws and regulations on property sale and lease.

Article 3

No later than 31 March 2005, the Socialist Republic of Vietnam shall:

— grant to 1 (one) European Community distributor a licence to establish a 100 % European Community-owned enterprise in Vietnam, subject to the conditions provided for in the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004,

— grant to 1 (one) European Community insurer a licence to operate in the life insurance sector in Vietnam,

— allow joint ventures with 51 % capital contribution by European Community shipping lines, and allow 1 (one) European Community shipping line to set up a 100 % European Community-invested enterprise in Vietnam to carry out activities of its own shipping line, under the conditions provided for in the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004,

— grant to 1 (one) European Community service supplier a licence to provide computer reservation system services in Vietnam, under the conditions provided for in the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004,

— grant tariff quota for the importation of 3 500 units of Completely Built Units (CBU) of motorbikes or scooters of European Community origin at 70 % of the current tariff rate. At least 50 % of these quotas shall be allocated to Vietnamese agents and distributors duly authorised by European Community manufacturers.

Article 4

The Socialist Republic of Vietnam shall:

— grant to European Community investors treatment no less favourable than that accorded to Japanese investors as provided for in the Bilateral Investment Agreement (BIT) between the Socialist Republic of Vietnam and Japan, upon the entry into force of the said Agreement,

— in 2005 and 2006, grant 3 (three) licences to European Community suppliers of environmental services to operate in Vietnam as 100 % European Community–owned enterprises, for providing environmental services, except environmental impact assessment services, subject to the scope of activities and conditions provided for in the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004,

— allow European Community distributors, legally operating in Vietnam, to open 4 (four) more stores in 2005 and 2 (two) additional stores in 2006,

— grant to 1 (one) European Community distributor a licence to operate in Vietnam as a 100 % European Community-owned enterprise in 2006, subject to the conditions provided for in the WTO Arrangement initialled by Vietnam and the European Community on 9 October 2004,

— reduce the list of prohibited molecules to 5 to 7 molecules no later than December 2004, and abolish this list for the European Community no later than 31 December 2005.

Article 5

The European Community may reapply the textile and clothing quotas at the level of the total quantity of the textile and clothing quotas accorded by the European Community to Vietnam in 2004, increased by the annual growth rates provided for in the Agreement on trade in textiles and clothing and other market opening measures initialled in Hanoi on 15 February 2003, in the event that Vietnam fails to fulfil any of the obligations contained in Articles 2, 3 and 4 of this Agreement or in paragraph 9 of the 2003 Agreement cited above.

In the event that the European Community fails to fulfil its obligations under Article 1 of this Agreement or in paragraph 9 of the Agreement on trade in textiles and clothing and other market opening measures initialled in Hanoi on 15 February 2003, Vietnam may suspend the application of its commitments under Articles 2, 3 and 4 of this Agreement.

Article 6

This Agreement shall enter into force upon the exchange of written notifications by the Parties of the completion of their respective internal procedures for that purpose.

Either Party may at any time propose modifications to this Agreement or denounce it, provided that at least six months' notice is given. In the event of denouncement, the Agreement shall come to an end on the expiry of the period of notice.

This Agreement will expire upon the date of accession of Vietnam to the WTO.

The Parties shall endeavour to complete their respective internal procedures with a view of implementing this Agreement by 31 December 2004.

Article 7

This Agreement shall be drawn up in duplicate in the Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian, Spanish, Swedish and Vietnamese languages, each of these being equally authentic.

For the European Community

For the Government of the Socialist Republic of Vietnam

COMMISSION

COMMISSION DECISION

of 18 March 2005

concerning a specific financial contribution by the Community relating to the surveillance programme of campylobacter in broilers presented by Sweden for the year 2005

(notified under document number C(2005) 759)

(Only the Swedish text is authentic)

(2005/245/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field [1], and in particular Articles 19 and 20 thereof;

Whereas:

(1) The protection of human health against diseases and infections directly or indirectly transmissible from animals to man (zoonoses) is of paramount importance.

(2) A multi-annual national surveillance programme of campylobacter in broilers was submitted by the Swedish authorities in 2000, with a view to obtaining financial support from the Community. The aim of the programme is to estimate the baseline prevalence both in primary production and in the food chain, and to progressively reinforce implementation of hygienic measures in farms with a view to lowering the prevalence at farm level and subsequently along the food chain. The programme was approved by the Commission and Community financial assistance afforded to it for an appropriate period of time within a maximum of four years, to cover certain costs incurred by Sweden and to collect valuable technical and scientific information. The programme started from 1 July 2001.

(3) For budgetary reasons, Community assistance is decided each year. By Commission Decisions 2001/29/EC [2], 2001/866/EC [3], 2002/989/EC [4] and 2003/864/EC [5], the Community provided financial assistance respectively for the second semester of the year 2001 and for the years 2002, 2003 and 2004.

(4) The Swedish authorities presented on 28 May 2004 a programme for Community financial assistance during 2005, and a revised programme on 2 and 17 November 2004. On this basis, it appears appropriate to extend by six months the total period for financial assistance by the Community beyond the initially agreed total period of four years, thus providing assistance for the period 1 January to 31 December 2005. The financial assistance provided by the Community for this period should be fixed up to a maximum of EUR 160 000.

(5) Pursuant to Article 3(2) of Council Regulation (EC) No 1258/1999 [6], veterinary and plant health measures undertaken in accordance with Community rules shall be financed under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund; for financial control purposes, Articles 8 and 9 of Regulation (EC) No 1258/1999 apply.

[1] OJ L 224, 18.8.1990, p. 19. Decision as last amended by Directive 2003/99/EC of the European Parliament and of the Council (OJ L 325, 12.12.2003, p. 31).

[2] OJ L 6, 11.1.2001, p. 22.
[3] OJ L 323, 7.12.2001, p. 26.
[4] OJ L 344, 19.12.2002, p. 45.
[5] OJ L 325, 12.12.2003, p. 59.
[6] OJ L 160, 26.6.1999, p. 103.

(6) A financial contribution from the Community shall be granted in so far as the actions provided for are effectively carried out and provided that the authorities furnish all the necessary information within the time limits provided for.

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

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

HAS ADOPTED THIS DECISION:

Article 1

1. The surveillance programme for campylobacter in broilers presented by Sweden is hereby approved for a period of 12 months starting from 1 January 2005.

2. The financial assistance from the Community for the programme referred to in paragraph 1 shall be 50 % of the costs (VAT excluded) incurred by Sweden for laboratory testing, up to SEK 165 per bacteriological test for the detection of campylobacter, SEK 330 per test for the enumeration of campylobacter and SEK 330 for the fingerprinting of campylobacter and up to a maximum of EUR 160 000.

Article 2

1. The financial assistance referred to under Article 1(2) shall be granted to Sweden provided that the implementation of the programme shall be in conformity with the relevant provisions of Community law, including rules on competition and on the award of public contracts and subject to the conditions provided for in points (a) to (e):

(a) bringing into force by 1 January 2005 the laws, regulations and administrative provisions for implementing the programme,

(b) forwarding an intermediate financial and technical evaluation covering the first five months of the programme, at the latest four weeks after the end of the reporting period. The report shall conform to the model as set out in the Annex,

(c) forwarding a final report by 31 March 2006 at the latest on the overall execution and results of the programme for the whole period during which Community financial assistance was granted, i.e. from 1 July 2001 to 31 December 2005. The report shall also contain a technical and financial evaluation covering the year 2005, in accordance with the model as set out in the Annex, accompanied by justifying evidence as to the costs incurred,

(d) these reports providing substantive and valuable technical and scientific information corresponding to the purpose of the Community intervention,

(e) implementing the programme effectively.

2. When the time limit in subparagraph 1(c) is not respected, the contribution shall be reduced by 25 % on 1 May, 50 % on 1 June, 75 % on 1 July and 100 % on 1 September.

Article 3

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

Article 4

This Decision shall apply from 1 January 2005.

Article 5

This decision is addressed to the Kingdom of Sweden.

Done at Brussels, 18 March 2005.

For the Commission
Markos KYPRIANOU
Member of the Commission

[1] OJ L 349, 24.12.1998, p. 1.

ANNEX

Technical and financial information related to implementation of a surveillance programme for campylobacter in broilers, Sweden

Section A. Technical report on control

Reporting period from ..... to .....

1. Examination carried out at diagnostic laboratories

(a) Routine sampling

	Number of slaughter-groups sampled	Total number of on-farm 'socks' samples	Total number of 'cloacal swabs' at slaughter	Total number of 'neck-skins' samples at slaughter	Total number of samples
Bacteriology campylobacter					

(b) Additional on-farm sampling during high prevalence season

	Number of farms sampled	Total number of 'faecal droppings' samples
Bacteriology campylobacter		

(c) Additional sampling at slaughter during high prevalence season

	Number of slaughter-groups sampled	Total number of 'caecal samples'
Bacteriology campylobacter		

(d) Sampling for enumeration of campylobacter at slaughter

	Number of slaughter-groups sampled	Number of neck-skin samples	Number of 'whole-bird rinse' samples	Total number of samples
Bacteriology campylobacter				

(e) Sampling for traceability studies

Number of PFGE analyses of campylobacter:

2. Follow-up of sampling

Number of follow-up mails to producers

Number of follow-up farm visits

3. Description of epidemiological situation along the food chain (results and analysis of results from sampling, visits to farms).

4. Description of the epidemiological situation in humans (trends and sources of campylobacteriosis).

5. Name and address of reporting authority:

Section B. Statement on costs incurred for control [1]

Reporting period from ..... to .....

Reference number of Commission Decision providing financial assistance:

Costs incurred related to functions at/by	Costs incurred during the reporting period (national currency)
Bacteriology for campylobacter	
Enumeration of campylobacter	
Fingerprinting of campylobacter	

[1] When presenting the final report referred to in Article 2(c), for each item a listing of all expenditures shall be provided together with a copy of supporting documents.

COMMISSION DECISION

of 20 October 2004

on the State aid No C 40/2002 (ex N 513/2001) concerning State aid to Hellenic Shipyards AE

(notified under document number C(2004) 3919)

(Only the Greek version is authentic)

(Text with EEA relevance)

(2005/246/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having regard to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding [1],

Having called on interested parties to submit their comments [2] pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 16 July 2001 Greece notified the Commission pursuant to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding, a number of State aid measures intended for Hellenic Shipyards AE. The notification was received following a series of communications with the Greek authorities, after the Commission became aware of the measures at issue.

(2) By letter dated 5 June 2002 [3], reproduced in the authentic language in the *Official Journal of the European Communities* [4], the Commission notified the Hellenic Republic of its decision to approve some of the State aid measures concerned, and to initiate the procedure laid down in Article 88(2) of the EC Treaty concerning some other measures (the contested measures), in particular the measures provided for in Articles 5(2) and 6(2) of Act 2941/2001 regulating issues relating to Hellenic Shipyards.

(3) The Greek authorities replied to the Commission by letters dated 16 September 2002 and 13 December 2002. The Commission also received comments from one interested party, by letter dated 6 September 2002. These comments were communicated to the Greek authorities by letter dated 2 October 2002.

(4) In their letter dated 16 September 2002, the Greek authorities requested an extension of the deadline to respond to the comments of interested parties, and informed the Commission that the Greek Government contemplated the abolition of the contested State aid measures, by law. They requested, however, an extension of the deadline for their response to the Commission's investigation procedure by three months.

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[1] OJ L 202, 18.7.1998, p. 1.
[2] OJ C 186, 6.8.2002, p. 5.
[3] SG(2002) D/230101.
[4] OJ C 186, 6.8.2002, p. 5.

(5) By letter dated 30 January 2003, the Greek authorities informed the Commission that the Greek Government decided to abolish the two contested measures, and requested a further three-months' extension for the implementation of this decision. By letter dated 3 April 2003, the Greek authorities informed the Commission that the abolition of the two measures would be included in a 'forthcoming' draft Act.

(6) By letter dated 1 August 2003, the Commission requested the Greek authorities to provide the text of the law abolishing the measures and the date when it was expected to be voted by the Greek Parliament. By letter dated 1 October 2003, the Greek authorities replied to the Commission that the contested measures would be abolished by law.

(7) By letter dated 11 November 2003, the Commission reiterated its request to the Greek authorities regarding the text of the law abolishing the two measures and the date of its adoption. By letter dated 24 January 2004, the Greek authorities informed the Commission that the abolition of the two measures had been included in an Act due to pass before the Greek Parliament by 13 February 2004.

(8) By letter dated 17 March 2004, the Commission requested Greece to provide information on the progress of the abolition of the measures. The Greek authorities informed the Commission, by letter dated 29 April 2004, that the abolition of the two measures was the intention of the 'new administration'. The Commission also took the opportunity to remind the Greek authorities of their commitment to abolish the contested measures on the occasion of a meeting between Commission officials and the Greek authorities, which took place in Athens on 28 June 2004.

(9) According to the Commission's information, however, the Greek authorities have taken no steps, so far, to abolish the contested measures. For this reason, the Commission has decided to proceed with the closing by negative decision of the procedure laid down in Article 88(2) of the EC Treaty with respect to the two contested measures.

II. **DETAILED DESCRIPTION OF THE AID**

A. **Legal basis**

(10) Act 2941/2001 (hereinafter referred to as the Act) which regulated, *inter alia*, issues regarding Hellenic Shipyards. The Act was adopted in August 2001 and published in volume A of the Greek Government Gazette on 12 September 2001.

B. **Aid approved**

(11) By letter dated 5 June 2002 [1], the Commission authorised aid amounting to EUR 29.5 million which Greece intended to grant, in accordance with the above referenced Act, to encourage employees involved in civil shipbuilding to voluntarily leave Hellenic Shipyards. The Commission found that this aid fulfilled the conditions of Article 4 of Regulation (EC) No 1540/98, and was therefore compatible with the common market.

C. **Article 88(2) procedure of the Treaty**

(12) At the same time, the Commission decided to initiate the procedure of Article 88(2) of the EC Treaty and, in accordance with Article 6 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2], invited interested parties to submit comments [3]. The Commission expressed doubts as to the compatibility of two aid measures with Regulation (EC) No 1540/98.

[1] SG(2002) D/230101.
[2] OJ L 83, 27.3.1999, p. 1.
[3] OJ C 186, 6.8.2002, p. 5.

(13) With regard to the application of Regulation (EC) No 1540/98 to the assessment of the contested measures, the Commission notes that these cannot be regarded as notified aid. Since the contested measures are provisions of an Act, which already entered into force on 12 September 2001, and to the extent that the measures were not in the meantime suspended, they are considered to be unlawful aid.

(14) Even though Regulation (EC) No 1540/98 expired on 31 December 2003, and it is not concerned by the Commission's notice on the determination of the applicable rules for the assessment of unlawful State aid [1], in the interest of a consistent practice, the Commission will apply this Regulation in the present case. In any case, the Commission would have reached the same conclusion even if the measures were assessed on the basis of the current framework on State aid to shipbuilding [2].

a) *Article 5(2) of the Act*

(15) According to Article 5(2) of the Act, the State will cover some of the company's future pension obligations. According to Greek law, a retiring person receives a one-off lump sum which normally equals 40 % of the sum received when a person is made redundant. According to this provision, the State will cover the share of this cost in proportion to the amount of years that the employee has worked in Hellenic Shipyards before it is sold to its new shareholders. The relevant amount is disbursed to the company upon its request. This provision thus ensures that part of this one-off lump sum is paid by the State up to the year 2035, when the last employees, employed at the time before the transfer to the new shareholders, may retire.

b) *Article 6(4) of the Act*

(16) Article 6(4) of the Act concerns three items in the balance sheet of the company as in 31 December 1999: 'tax-free reserves', 'special reserves', and 'amounts intended to increase the share capital'. These are relieved from any tax or other duty obligation so that they can be set off against losses of previous years.

(17) According to the Greek authorities, the tax rate for capitalisation of tax exempt reserves by limited liability companies, which have no shares on the stock exchange, is 10 %. This means that netting tax-exempt reserves with old losses implied a 10 % tax on the amount involved. According to the Greek authorities, the tax free reserves amounted to EUR 112 million and the relevant tax would thereby amount to EUR 11.2 million.

III. **COMMENTS OF THE HELLENIC REPUBLIC**

(18) By letter dated 16 September 2002, the Greek authorities submitted their first observations with regard to the contested measures [3]. In particular, the Greek authorities explained that, in accordance with Greek legislation [4], special reserves which are capitalised, are taxed separately at a rate of 5 % (to the extent that at the time they were established, they had already been taxed) and not at a rate of 10 %, as stated by the Commission. Therefore, the amount at issue was EUR 171 282 and not EUR 342 564.

(19) Moreover, the Greek authorities noted that, when capitalised, the amounts intended for the increase of capital, are only subject to capital duty at 1 %, and are thus not taxed at 10 % as stated in the Commission's letter. Therefore, the relevant amount was EUR 255 906 and not EUR 2.55 million, as calculated by the Commission in the opening of the investigation procedure.

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[1] OJ C 119, 22.5.2002, p. 22.
[2] *Framework* OJ C 317, 30.12.2003, p. 11.
[3] In the same letter, the Greek authorities also requested the extension of the deadline for their full response, by three months due to the 'sensitivity, complexity, and seriousness' of the matter.
[4] Article 13(6) of Act 2459/97.

(20) The Greek authorities thus concluded that the total amount of EUR 11.2 million mentioned in the Commission's letter with regard to the tax free reserves should be corrected to EUR 8.69 million on the basis of the following calculation:

Capitalisation of tax free reserves	EUR 43 544 350 × 10 %	EUR 4 354 435
Special reserves	EUR 39 155 498 × 10 %	
For the sale of real estate	EUR 3 525 645 × 5 %	EUR 3 915 550
For the reserve that was taxed when it was established		EUR 171 282
Shares above par [1]	Not taxed	—
Shareholders' deposit	EUR 25 590 609 × 1 %	EUR 255 906
Total		EUR 8 697 173

[1] According to the Greek authorities, this item consists of contributions by shareholders to a capital increase. Contributions towards capital increases are not normally taxed.

(21) Notwithstanding the objections to the calculation of the relevant amounts, the Greek authorities informed the Commission in the same letter that the Greek Government was contemplating the abolition of the provisions of law on which the Commission initiated the procedure of Article 88(2) of the EC Treaty. In their letter dated 30 January 2003, the Greek authorities formally informed the Commission of their decision to abolish the two provisions. This information was confirmed in all subsequent communications of the Greek authorities dated 3 April 2003, 1 October 2003, 24 January 2004 and 29 April 2004.

(22) The Commission can therefore imply that the Greek authorities agree with the conclusion that the contested measures constituted incompatible State aid.

IV. **COMMENTS OF INTERESTED PARTIES**

(23) On 9 September 2002, the Commission received comments from the representatives of Elefsis Shipbuilding and Industrial Enterprises S.A., a direct competitor of Hellenic Shipyards, in response to the Commission's notice inviting interested parties to submit comments on the aid in respect of which the Commission initiated the procedure at issue. The comments were communicated to the Hellenic Republic by letter dated 2 October 2002.

(24) Elefsis Shipyards considered that the findings of the Commission warranted further investigation with particular regard to the precise nature of Hellenic Shipyards' capital reserves, and the precise level of the capacity of Hellenic Shipyards for naval (75 %) and commercial (25 %) shipbuilding and ship repair works.

(25) With regard to the capital reserves, which are the subject of the Commission's investigation in this case, Elefsis Shipyards noted that the Commission should investigate whether the tax rate, which under normal Greek legislation would have been applicable to the use of such capital reserves to offset losses, had Law 2941/2001 not been enacted, equates to 10 %.

V. **ASSESSMENT OF THE AID**

(26) According to Article 87(1) of the EC 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, in so far as it affects trade between Member States, be incompatible with the common market. Pursuant to the established case law of the European Courts the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(27) The Commission notes that shipbuilding is an economic activity involving trade between Member States. Therefore, the aid in question falls within the scope of Article 87(1) of the EC Treaty.

(28) According to Article 87(3)(e) of the EC Treaty, categories of aid specified by a decision of the Council acting by a qualified majority on a proposal from the Commission may be considered compatible with the common market. The Commission notes that the Council adopted on this basis Regulation No 1540/98.

(29) According to the Commission's Notice on the determination of the applicable rules for the assessment of unlawful State aid, the compatibility of unlawful State aid with the common market should be assessed on the basis of the instrument in force at the time when the aid was granted. Even though this Notice does not apply in this case, in the interest of a consistent approach, the Commission will apply this Regulation in the present case, especially since its assessment would not be altered even if it was based on the current framework on State aid to shipbuilding [1].

(30) The Commission notes that according to Regulation (EC) No 1540/98, 'shipbuilding' means building of self-propelled seagoing commercial vessels. The Commission further notes that Hellenic Shipyards builds these ships and that consequently it is an undertaking covered by Regulation (EC) No 1540/98.

(31) The Commission therefore had to assess the contested measures under Regulation (EC) No 1540/98 as far as they distort, or threaten to distort, competition in civil shipbuilding and civil ship-repair. As stated above, according to the Greek authorities, 75 % of the shipbuilding activities of Hellenic Shipyards concern military activities and this has consequences as regards State aid falling under Article 5(2) of the Act.

a) *Article 5(2) of the Act*

(32) According to this provision, the State will cover the share of the cost of the one-off retirement sum, in proportion to the amount of years that the employee has worked in Hellenic Shipyards before it is sold, compared to the amount of years worked thereafter. The provision thus ensures that some of the one-off lump sum paid to retiring employees will be paid by the State up until the year 2035, when the last employees currently employed may retire.

(33) According to the information provided by the Greek authorities, the maximum cost of this measure would be around EUR 7 million but, due to the fact that some workers would not stay until retirement, the estimated cost would be EUR 4 million. Given that the Greek authorities stated that 75 % of the employees concerned by the measure are involved in military shipbuilding, it was estimated that the total amount of State aid under this measure for civil shipbuilding and ship-repair, would be approximately EUR 1 million (corresponding to 25 % of the employees concerned by the measure).

(34) The Commission considers that this measure constitutes operating aid, as it would alleviate the company from normal costs of operating its activities. Given that Regulation (EC) No 1540/98 did not provide for such aid, the Commission concludes that this aid is not compatible with the common market.

(35) The Commission notes that reference to the ratio of 75 % to 25 % with regard to military and civil shipbuilding and ship-repair respectively, is based on the statements of the Greek authorities. This ratio was not subject to the formal investigation procedure in this case. Nevertheless, the present decision is, on this aspect, without prejudice to any subsequent conclusion at which the Commission may arrive, in the context of other proceedings.

[1] It is noted that the application of the current Framework would not alter the final outcome of these proceedings, since in the same way as Regulation (EC) No 1540/98, it does not provide for operating aid.

b) *Article 6(4) of the Act*

(36) According to this provision, the company can transfer a number of tax exempt reserves into share capital without paying the statutory 10 % tax, if they are set off against losses of previous years. These are exempted from any tax or other duty obligation so that they can be set off against losses of previous years.

(37) Article 6(4) of the Act concerns three items in the balance sheet of the company: 'tax free reserves', 'special reserves', and 'amounts intended to increase the share capital'. According to the Greek authorities, the tax rate for capitalisation of tax exempt reserves by limited liability companies, which have no shares on the stock exchange, is 10 %. This means that netting tax-exempt reserves with old losses implied a 10 % tax on the amount involved. According to the Greek authorities, the tax-free reserves amounted to EUR 112 million and the relevant tax amounted to EUR 11.2 million, according to normal Greek tax rules.

(38) The proposed tax exemptions for netting the concerned reserves with old losses benefit the company, and must therefore be regarded as State aid. Regulation (EC) No 1540/98 did not provide for such aid, and the Commission therefore concludes that this provision is not compatible with the common market. More particularly:

Tax-free reserves

(39) The Greek authorities consider that the exemption from tax of one part of the tax free reserves of Hellenic Shipyards (approximately EUR 43 million) cannot be deemed to create a profit equal to 10 % of the amounts written off for the company. The reason is that Act 2367/95 on partial privatisation and reform of companies, on which a previous Commission Decision [1] on debt write-off from 1997 was based, provided for the writing off of 99 % of all existing debt of the company. The provision applied whether the debts were mentioned in the books or not, and also for debts which would be created up to 31 January 1996.

(40) The Greek authorities claim that if Hellenic Shipyards had offset by 31 January 1996 the losses of past years with the tax exempt reserves, the resulting 10 % tax on the concerned EUR 43 million would generate a tax liability which would have been written off to 99 % on the basis of Act 2367/95. They further claim that the company could even now put forward the regularisation documents based on this provision. Consequently, the only advantage the company now obtains by offsetting 100 % of the tax exempt reserves with the losses of previous years is EUR 43 000 (1 % of 10 % of EUR 43 million).

(41) In the opening of the formal investigation procedure, the Commission noted two problems with this argument. First, the relevant Commission decision of 1997 states the exact amount of the debt write-off authorised for Hellenic Shipyards. The Commission could not authorise further debt write-off based on the Commission decision of 1997, since the maximum amount stated in the decision cannot be exceeded. Moreover, the decision of 1997 does not state that any further debt could be written off later, even if it could be referred to the period before the end of 1996.

(42) The Commission therefore, on the basis of the information available to it, concludes that the proposed tax exemptions for netting the concerned reserves with old losses has a value of EUR 4,3 million which benefits the company and therefore constitutes State aid. Regulation (EC) No 1540/98 did not provide for such aid, and the Commission concludes that it cannot be declared compatible with the common market.

(43) For the other half of the 'tax-free reserves', of approximately EUR 39 million, the Greek authorities claimed that they have origins in a hotel sale in 1956, and were not taxed, in accordance with laws of that time. The tax exemption of EUR 3,9 million related to this amount also appears to be aid, which is not compatible with the common market.

[1] Case C 10/94, OJ C 306/5, 8.10.1997.

(44) The Commission's formal investigation procedure also referred to another item of EUR 0,2 million which concerns the issue of shares above par value. The Greek authorities have informed the Commission that these contributions which are also intended for the increase of capital are not normally taxed.

Special reserves

(45) For the special reserves of EUR 3,4 million, the Greek authorities claim that these have been taxed in accordance with the tax laws in force at the time of their creation, so that no tax advantage is to be gained when netting them with old losses. However, the Commission notes that the amount of special reserves is included in the balance sheet under reserves. The Commission therefore assumes that the netting of this amount with old losses also should be taxed by 10 % according to normal tax laws.

(46) The tax exemption related to the extraordinary reserves, of a value of EUR 340 000, is also concluded to be aid, and therefore, on the same grounds as above, the Commission finds that it is incompatible with the common market.

Amounts intended for the increase in share capital

(47) The 'amounts intended for the increase in share capital' of EUR 25,6 million represents, according to the Greek authorities, the amount that the Greek State paid to compensate Hellenic Shipyards for the cost of reducing staff by around 1 000 persons between 1996 and 1997. According to the Greek authorities, this amount is exempt from tax as it is used for netting the amount of old losses.

(48) To the extent that the company should have been taxed by 10 % on the above-referenced amount, the Commission concludes that the aid amount of EUR 2,56 million in the form of a tax exemption for netting the amount involved with old losses, is not compatible with the common market.

Use of old losses for tax exemption purposes

(49) The Commission notes that Article 6(4) of the Act authorises the use of old losses for accounting purposes without any limitation in time. Upon opening the investigation procedure in this case, the Commission requested information on whether this element in itself provides Hellenic Shipyards with an advantage compared to the normal Greek tax laws.

(50) The Greek authorities have not provided relevant information. However, the fact that Greece has repeatedly stated to the Commission that it commits to abolish Article 6(4) of the Act in its entirety, provides sufficient evidence that this measure should also be considered as State aid, which is incompatible with the common market.

(51) In general, the Commission's assessment of the contested measures as described in the letter to the Hellenic Republic dated 5 June 2002, has not been affected by the information provided by Greece. Moreover, Greece appears to have agreed with the Commission's analysis on the incompatibility of the contested measures with the common market, and for this reason repeatedly [1] committed to repeal the two contested measures by law.

[1] As described above in paragraphs 4 to 5.

VI. **COMPLAINT ON ALLEGED AID TO HELLENIC SHIPYARDS**

(52) The Commission has received a formal complaint alleging State aid, which the Greek government may have granted to Hellenic Shipyards. The allegations contained in this complaint are currently under investigation. The Commission notes that the present decision does not prejudge the outcome of this or any other investigation it may have or will undertake with regard to alleged State aid to Hellenic Shipyards.

(53) With regard to the complainant's claims on the calculation of the amounts of aid that could be granted under Article 6(4) of the Act [1], the Commission notes that these became devoid of purpose given that the present Decision orders the abolition of the this provision.

VII. **CONCLUSION**

(54) The Greek authorities have implicitly agreed with the Commission's assessment concluding that the two contested measures constitute State aid, which is incompatible with the Treaty. Despite the commitment of the Greek authorities to abolish the two provisions by introducing a relevant amending Act before the Greek Parliament, they have not done so to this date. The Commission must therefore close the proceedings which were opened by the letter of 5 June 2002, by adopting a decision which orders the Hellenic Republic to repeal the two measures and recover any aid that may have been granted on their basis.

(55) The Commission wishes to emphasize that these measures should be abolished in substance, so as to eliminate the element of State aid that they entail. More particularly, to the extent that the benefits which could be granted to Hellenic Shipyards under Article 5(2) and Article 6(4) of the Act may also derive from other legal instruments, Greece should ensure that these are equally repealed and that, if aid was granted on their basis, it is recovered from the beneficiaries.

(56) The Greek authorities have indicated to the Commission that no aid has been granted under the two contested provisions. However, the Commission wishes to draw their attention to the fact that should any aid amount have been disbursed under the contested provisions, this should be recovered in full and without further delay.

(57) Article 7(7) of Council Regulation (EC) No 659/1999 allows the Commission to take a negative decision once the time limit referred to in Article 7(6) has expired, on the basis of the information available to it. The information provided by the Greek authorities has not altered the Commission's finding that the contested provisions result to State aid which is incompatible with the common market.

(58) The Commission therefore closes the investigation procedure opened on 5 June 2002, in respect of the measures whereby Hellenic Shipyards is exempted from taxes, in accordance with Article 6(4) of the Act and where the State covers part of the future pension costs for employees linked to civil shipbuilding, in accordance with Article 5(2). These measures constitute State aid that is not compatible with Regulation (EC) No 1540/98 and thereby with the common market.

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[1] In a Memorandum submitted to the Commission, the complainant claims that the total amount of tax saved by Hellenic Shipyards, on the basis of the contested provision, is approximately EUR 34 million. In a recent submission, the complainant also notes that the amount of aid under Article 5(2) of the Act is higher than EUR 1 million while the tax benefits that Hellenic Shipyards could obtain under Article 6(4) of the Act could be calculated as follows: (a) EUR 14,625 million regarding the offset of the capital reserve of EUR 39 million; (b) EUR 4,66 million regarding the capital reserves of EUR 43 million, EUR 0,2 million and EUR 3,4 million (subject to the opinion of a Greek tax expert); and (c) an amount equal to the amount of capital reserves of EUR 85,6 million.

HAS ADOPTED THIS DECISION:

Article 1

Article 5(2) and Article 6(4) of Act 2941/2001 constitute State aid to Hellenic Shipyards AE which is incompatible with the common market.

The aid may, accordingly, not be implemented.

Article 2

In the event that State aid has been disbursed to Hellenic Shipyards AE under the provisions referred to in Article 1 of this Decision, Greece shall take all necessary measures to recover that aid.

In such a case, recovery shall be effected without delay and in accordance with the procedures under national law, provided these allow the immediate and effective implementation of this Decision.

The sums to be recovered shall bear interest throughout the period running from the date on which they were put at the disposal of the beneficiary until their actual recovery.

The interest shall be calculated in conformity with the provisions laid down in Chapter V of Commission Regulation (EC) No 794/2004 [1].

Greece shall end the aid measure and cancel all payment of outstanding aid with effect of the date of notification of this Decision.

Article 3

Greece shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 20 October 2004.

For the Commission
Mario MONTI
Member of the Commission

[1] OJ L 140, 30.4.2004, p. 1.

COMMISSION DECISION

of 3 March 2005

initiating the investigation provided for in Article 4(3) of Council Regulation (EEC) No 2408/92 on access for Community air carriers to intra-Community air routes

(notified under document number C(2005) 577)

(Text with EEA relevance)

(2005/247/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2408/92 of 23 July 1992 [1], and in particular Article 4(3) thereof,

Whereas:

I. **The facts**

(1) On 10 December 2004, pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92, the Italian Republic asked the Commission to publish a notice in the *Official Journal of the European Union* imposing public service obligations (PSO) on 18 routes between the Sardinian airports and the main national airports [2].

(2) The main points of the notice are as follows:

— It concerns the following 18 routes:

— Alghero–Rome and Rome–Alghero

— Alghero–Milan and Milan–Alghero

— Alghero–Bologna and Bologna–Alghero

— Alghero–Turin and Turin–Alghero

— Alghero–Pisa and Pisa–Alghero

— Cagliari–Rome and Rome–Cagliari

— Cagliari–Milan and Milan–Cagliari

— Cagliari–Bologna and Bologna–Cagliari

— Cagliari–Turin and Turin–Cagliari

— Cagliari–Pisa and Pisa–Cagliari

— Cagliari–Verona and Verona–Cagliari

— Cagliari–Naples and Naples–Cagliari

— Cagliari–Palermo and Palermo–Cagliari

— Olbia–Rome and Rome–Olbia

— Olbia–Milan and Milan–Olbia

— Olbia–Bologna and Bologna–Olbia

— Olbia–Turin and Turin–Olbia

— Olbia–Verona and Verona–Olbia

— All 18 routes indicated above and the public service obligations imposed upon them constitute a single package which must be accepted completely and entirely by the interested carriers without any compensation regardless of nature or origin.

— Each single carrier (or leading carrier) which accepts the public service obligations must provide a performance security for the purpose of guaranteeing the correct execution and continuation of the service. This security must amount to at least EUR 15 million and be guaranteed by a bank surety to be activated upon the first request for at least EUR 5 million and by an insurance surety for the remaining amount.

— The minimum frequency, timetables and capacity offered for each route are given under point '2. PUBLIC SERVICE OBLIGATIONS' of the notice published in *Official Journal of the European Union* C 306 of 10 December 2004, which is expressly referred to for the purposes of this Decision.

[1] OJ L 240, 24.8.1992, p. 8. Regulation as last amended by European Parliament and Council Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

[2] OJ C 306, 10.12.2004, p. 6.

— The minimum capacity of the aircraft used is given under point '3. AIRCRAFT TO BE USED' of the notice published in *Official Journal of the European Union* C 306 of 10 December 2004, which is expressly referred to for the purposes of this Decision.

— The fare structure for all the routes concerned is given under point '4. FARES' of the notice published in *Official Journal of the European Union* C 306 of 10 December 2004, which is expressly referred to for the purposes of this Decision.

— In particular, regarding reduced fares, point 4.8 of the notice states that carriers operating on the affected routes are legally bound to apply the reduced fares (specified under '4. FARES'), to at least the following groups of passengers:

  — people born in Sardinia, even if they do not live in Sardinia,

  — spouses and children of people born in Sardinia.

— The public service obligations are valid from 1 January 2005 to 31 December 2007.

— Carriers intending to accept the public service obligations must present a formal acceptance to the competent Italian authority within 15 days of publication of the notice in the *Official Journal of the European Union*.

(3) It should be noted that prior to imposing the public service obligations referred to in this Decision, the Italian Republic had imposed public service obligations, first published in *Official Journal of the European Union* C 284 of 7 October 2000 [1], on six routes between the Sardinian airports and Rome and Milan. In accordance with Article 4(1)(d) of Regulation (EEC) No 2408/92, these had been put out to tender [2] to select the carriers authorised to operate these routes on an exclusive basis with financial compensation.

(4) The carriers authorised to operate the routes in accordance with the public service obligations imposed were:

— Alitalia: Cagliari–Rome.

— Air One: Cagliari–Milan, Alghero–Milan and Alghero–Rome.

— Merdiana: Olbia–Rome and Olbia–Milan.

(5) These arrangements were replaced by the public service obligations which are the subject of this Decision.

II. **Essential elements of the rules on public service obligations**

(6) The rules on public service obligations are laid down in Regulation (EEC) No 2408/92, which defines the conditions for applying the principle of freedom to provide services in the air transport sector.

(7) Public service obligations are defined as an exception to the principle of the Regulation that 'subject to this Regulation, Community air carriers shall be permitted by the Member State(s) concerned to exercise traffic rights on routes within the Community' [3].

(8) The conditions for imposing them are defined in Article 4. They are interpreted strictly and in accordance with the principles of non-discrimination and proportionality. They must be adequately justified on the basis of the criteria laid down in the same Article.

(9) More precisely, the rules governing public service obligations provide that these may be imposed by a Member State in respect of scheduled air services to an airport serving a peripheral or development region in its territory or on a thin route to any regional airport, provided the route is considered vital for the economic development of the region in which the airport is located and to the extent necessary to ensure on that route the adequate provision of scheduled air services satisfying fixed standards of continuity, regularity, capacity and pricing, standards which air carriers would not meet if they were solely considering their commercial interest.

(10) The adequacy of scheduled air services is assessed by the Member States having regard to the public interest, the possibility of having recourse to other forms of transport, the ability of such forms to meet the transport needs under consideration and the combined effect of all air carriers operating or intending to operate on the route.

[1] OJ C 284, 7.10.2000, p. 16. Amendment to OJ C 49, 15.2.2001, p. 2. Corrigendum to OJ C 63, 28.2.2001, p. 12.
[2] OJ C 51, 16.2.2001, p. 22.
[3] Article 3(1) of Regulation (EEC) No 2408/92.

(11) Article 4 provides for a two-phase mechanism: in the first phase (Article 4(1)(a)) the Member State concerned imposes a public service obligation on one or more routes, which are open to all Community carriers, provided they meet the obligations. Where no carrier applies to operate the route on which the public service obligation has been imposed, the Member State can move on to a second phase (Article 4(1)(d)) which limits access to that route to only one carrier for a renewable period of up to three years. The carrier is selected by a Community tender procedure. The selected carrier can then receive financial compensation for operating the route in accordance with the public service obligation.

(12) By virtue of Article 4(3) the Commission may decide, following an investigation, carried out either at the request of a Member State or on its own initiative, whether the public service obligation published should continue to apply. The Commission must communicate its decision to the Council and to the Member States. Any Member State may refer the matter to the Council which, acting by a qualified majority, may take a different decision.

III. **Elements raising serious doubts as to the conformity of the public service obligations imposed on routes between the Sardinian airports and the main national airports with Article 4 of Regulation (EEC) No 2408/92**

(13) Article 4(1)(a) of the Regulation lists a certain number of cumulative criteria for imposing public service obligations:

— Type of route eligible: routes to an airport serving a peripheral or development region in the territory of the Member State concerned or on a thin route to any regional airport in that territory.

— It must be recognised that the route is vital for the economic development of the region in which the airport served is located.

— The principle of adequacy, assessed having regard to the existence of other means of transport or alternative routes, must be observed.

(14) In addition, the public service obligations must comply with the basic principles of proportionality and non-discrimination (see, for example, Court of Justice decision of 20 February 2001, in case C-205/99, Asociación Profesional de Empresas Navieras de Líneas Regulares (Analir) and others *v* Administración General del Estado, [2001] ECR p. I-01271).

(15) In the case in point, the notice imposing public service obligations published in the Official Journal at the request of the Italian Republic contains several provisions which raise serious doubts as to their conformity with Article 4 of the Regulation, and are therefore likely to restrict unduly the development of the routes concerned; in particular:

(a) No detailed explanation based on an economic analysis of the air transport market between Sardinia and the rest of Italy has been provided, to justify the need for the new public service obligations, their appropriateness and their proportionality to the objective.

(b) The six routes covered by the previous notice and included in the new one have not been assessed.

(c) It is not evident that the 12 other routes on which public service obligations have been imposed since 1 January 2005 are vital for the economic development of the regions of Sardinia where the airports concerned are located; considering in particular:

— The nature of the routes concerned,

— It has not been shown that these routes are vital for the economic development of the regions of Sardinia in which the airports concerned are located,

— The existence of alternative air routes which allow an adequate and continuous service to be provided to the airports concerned, via the main Italian hubs linked in a satisfactory manner with Sardinia.

(d) The requirement that interested carriers operate all 18 routes to which the public service obligations apply as a single package is a particularly significant restriction of the principle of the freedom to provide services. It is in breach of the principles of proportionality and non-discrimination; considering in particular:

— it has not been shown that grouping all these routes together is vital for the economic development of the regions of Sardinia in which the airports concerned are located,

— the risk of unjustified discrimination between carriers, where only the largest ones have the means to operate in such conditions,

— in addition, such a requirement is contrary to the need for the Member State imposing the public service obligations to take account in its assessment of the combined effect of all air carriers operating or intending to operate on the route [1].

In fact, the Italian authorities wanted to impose the requirement that the eighteen routes be operated as a single package in order to finance the operating losses of thin routes by the expected proceeds of the operation of the most important routes. Such cross-subsidisation is alien to Article 4 of Regulation (EEC) No 2408/92.

(e) The requirement to provide a security of a particularly high amount is also likely to create unjustified discrimination between interested carriers, where only the largest ones have the means to offer such guarantees.

(f) The very short time, 15 days from the publication of the notice in the Official Journal given to interested carriers to accept the public service obligations and twenty two days to begin operating (on 1 January 2005), are likely to create unjustified discrimination between them. In reality, it is impossible for a carrier not already operating on routes to Sardinia to complete the legal and administrative formalities in the time allowed and mobilise the resources needed to set up such an operation.

(g) The requirement, in point 4.8 of the notice, that reduced fares must be applied to passengers solely because of their place of birth (in this case Sardinia) or for the sole reason that they have family links with such persons may in fact be unlawful discrimination based on nationality (see for example case C-338/01 Commission *v* Italy [2003] ECR p. I-00721).

IV. **Procedure**

(16) Despite repeated calls from the Commission drawing the attention of the Italian authorities to these problems and expressing doubts as to the conformity of the notice imposing public service obligations with Regulation (EEC) No 2408/92, the Italian Republic decided to have it published.

(17) As soon as it was published, several interested parties contacted the Commission to informally express their concerns regarding the disproportionate and discriminatory nature of the public service obligations. The Commission also received a complaint contesting the legality of these obligations (the author wished to remain anonymous).

(18) In the light of the above, and by virtue of Article 4(3) of Regulation (EEC) No 2408/92 of 23 July 1992, the Commission may carry out an investigation to determine whether the development of one or more routes is unduly restricted by the imposition of public service obligations, in order to decide whether these obligations should continue to be imposed on the routes in question.

HAS ADOPTED THIS DECISION:

Article 1

The Commission will carry out an investigation, as provided for in Article 4(3) of Regulation (EEC) No 2408/92, in order to determine whether the public service obligations imposed on routes between the Sardinian airports and the main national airports, published at the request of the Italian Republic in *Official Journal of the European Union* C 306 of 10 December 2004, should continue to apply to these routes.

Article 2

1. The Italian Republic shall transmit to the Commission, within one month following the notification of this Decision, all the information necessary for examining the conformity of the public service obligations referred to in Article 1 with Article 4 of Regulation (EEC) No 2408/92.

2. In particular, the following shall be transmitted:

— The legal analysis of the impact on the exercise by all European air carriers of traffic rights in respect of the routes to which the public service obligations published in *Official Journal of the European Union* C 306 of 10 December 2004 apply, in the event that these obligations are effectively complied with.

— In particular, it must be stated whether the Italian authorities intended to create an exclusive right to operate the 18 routes for the carrier or carriers which formally accepted the obligations.

[1] Article 4(1)(b)(iv) of Regulation (EEC) No 2408/92.

— The legal analysis, with regard to Community law, justifying the different conditions contained in the notice imposing public service obligations published in *Official Journal of the European Union* C 306 of 10 December 2004.

— The reasons for imposing reduced fares only for 'People born in Sardinia, even if they do not live in Sardinia and spouses and children of people born in Sardinia'.

— A detailed assessment of the implementation of the public service obligations published in *Official Journal of the European Union* C 284 of 7 October 2000.

— A detailed analysis of the economic relations between the regions of Sardinia and the other regions of Italy where the airports concerned by the public service obligations published in *Official Journal of the European Union* C 306 of 10 December 2004 are located.

— A detailed analysis of the current supply of air transport between the Sardinian airports and the other Italian airports concerned by the public service obligations published in *Official Journal of the European Union* C 306 of 10 December 2004, including the supply of indirect flights.

— A detailed analysis of the availability of other means of transport and their capacity to meet the transport needs under consideration.

— An analysis of the current demand for air transport for each route concerned by these obligations.

— A precise description of the journey times and frequency required to connect by road the different Sardinian airports concerned by these obligations.

— A description of the situation on the day of notification of this Decision regarding the operation of services in accordance with the obligations and the identity of the carrier or carriers operating the services.

— The operating forecasts (passenger traffic, freight, financial forecasts, etc.) communicated by the carrier or carriers.

— Any claims existing before the national courts on the day of notification of this Decision and the legal situation of the notice imposing the public service obligations.

Article 3

1. This Decision is addressed to the Italian Republic.

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

Done at Brussels, 3 March 2005.

For the Commission

Jacques BARROT

Vice-President

DECISION No 1/2004 OF THE COMMUNITY/SWITZERLAND INLAND TRANSPORT COMMITTEE

of 22 June 2004

concerning the charging system applicable to vehicles in Switzerland for the period from 1 January 2005 until the opening of the Lötschberg base tunnel or 1 January 2008 at the latest

(2005/248/EC)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road, and in particular Article 51(2) thereof,

Whereas:

(1) Article 40 provides for Switzerland to introduce charges, from 1 January 2001 for use of its public highways (performance-based charge on heavy goods vehicle traffic). The charges applicable from 1 January 2005 must be differentiated according to three categories of (EURO) emission standards.

(2) To this end, the Agreement stipulates the weighted average of the charges, the maximum charge for the most polluting category of vehicles and the maximum difference in charge from one category to another.

(3) The weighting is calculated according to the number of vehicles per EURO standard category operating in Switzerland. The Joint Committee examines the relevant censuses and determines the amounts of the charges for the three categories, based on these weightings.

(4) The Joint Committee has examined the censuses provided by Switzerland.

(5) The Joint Committee must decide the weighting, the distribution of the EURO standard categories between the three categories of charge and the level of the charges for the three categories.

(6) In the Final Act, Switzerland declared that it would fix the actual charges applicable until the opening of the first base tunnel or 1 January 2008, whichever is the earlier, at a level below the maximum amount permitted by the Agreement. The validity of this decision should therefore be limited to that period.

HAS DECIDED AS FOLLOWS:

Article 1

Out of the total number of kilometres travelled during December 2003, January and February 2004 by vehicles of over 3,5 tonnes on Swiss territory, 9,79 % were recorded by vehicles in the EURO 0 standard category, 8,47 % by vehicles in the EURO 1 standard category, 41,09 % by vehicles in the EURO 2 standard category and 40,65 % by vehicles in the EURO 3 standard category.

Article 2

The performance-based charge for vehicles with an actual total laden weight of not more than 40 tonnes and travelling a distance of 300 km shall be:

— CHF 346 for charge category 1,

— CHF 302 for charge category 2,

— CHF 258 for charge category 3.

Article 3

Charge category 1 shall apply to vehicles in the EURO 1 emission class and to all vehicles put into circulation before the EURO 1 standard entered into force. Charge category 2 shall apply to vehicles in the EURO 2 emission class. Charge category 3 shall apply to vehicles in the EURO 3, EURO 4 and EURO 5 emission classes.

Article 4

This Decision shall enter into force on 1 January 2005.

Done at Berne, 22 June 2004.

For the Swiss Confederation	*For the European Community*
The President	*The Head of the Delegation*
Max FRIEDLI	Heinz HILBRECHT

DECISION No 2/2004 OF THE COMMUNITY/SWITZERLAND INLAND TRANSPORT COMMITTEE

of 22 June 2004

amending Annex 1 to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road

(2005/249/EC)

THE COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on the carriage of goods and passengers by rail and road, and in particular Article 52(4) thereof,

Whereas:

(1) The first indent of Article 52(4) of the Agreement provides for the Joint Committee to adopt decisions revising Annex 1.

(2) Since the Agreement was signed new Community legal acts have been adopted in the areas covered by the Agreement. Annex 1 must therefore be reworded to bring it into line with the changes in the relevant Community legislation.

HAS DECIDED AS FOLLOWS:

Article 1

Annex 1 to the Agreement is hereby repealed and replaced by the text annexed to this decision.

Article 2

For the purposes of Regulation (EC) No 484/2002 of the European Parliament and of the Council [1]:

(a) the European Community and the Swiss Confederation shall exempt from the obligation to hold a driver attestation all citizens of the Swiss Confederation, of a European Community Member State and of a Member State of the European Economic Area;

(b) the Swiss Confederation may not exempt citizens of States other than those mentioned in point (a) from the obligation to hold a driver attestation without prior consultation with and approval by the European Community.

Article 3

The delegations of Switzerland and the European Community agree that Council Regulation (EEC) No 881/92 [2] is applied as last amended by Regulation (EC) No 484/2002.

[1] OJ L 76, 19.3.2002, p. 1.
[2] OJ L 95, 9.4.1992, p. 1.

Article 4

This decision shall enter into force on the first day of the month following its adoption.

Done at Berne, 22 June 2004

For the Swiss Confederation	*For the European Community*
The Chairman	*The Head of the Delegation*
Max FRIEDLI	Heinz HILBRECHT

ANNEX

'ANNEX 1

APPLICABLE PROVISIONS

In accordance with Article 52(6) of this Agreement, Switzerland shall apply legal provisions equivalent to the following:

Relevant provisions of Community law

SECTION 1 — ADMISSION TO THE OCCUPATION

— Council Directive 96/26/EC of 29 April 1996 on admission to the occupation of road haulage operator and road passenger transport operator and mutual recognition of diplomas, certificates and other evidence of formal qualifications intended to facilitate for these operators the right to freedom of establishment in national and international transport operations (OJ L 124, 23.5.1996, p. 1), as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).

SECTION 2 — SOCIAL STANDARDS

— Council Regulation (EEC) No 3821/85 of 20 December 1985 on recording equipment in road transport (OJ L 370, 31.12.1985, p. 8), as last amended by Commission Regulation (EC) No 432/2004 (OJ L 71, 10.3.2004, p. 3).

— Council Regulation (EEC) No 3820/85 of 20 December 1985 on the harmonisation of certain social legislation relating to road transport (OJ L 370, 31.12.1985, p. 1) or equivalent rules laid down in the AETR Agreement, including amendments thereto.

— Regulation (EC) No 484/2002 of the European Parliament and of the Council of 1 March 2002 amending Council Regulations (EEC) No 881/92 and (EEC) No 3118/93 for the purposes of establishing a driver attestation (OJ L 76, 19.3.2002, p. 1).

For the purposes of this Agreement:

(a) only Article 1 of Regulation (EC) No 484/2002 shall apply;

(b) the European Community and the Swiss Confederation shall exempt from the obligation to hold a driver attestation all citizens of the Swiss Confederation, of a European Community Member State and of a Member State of the European Economic Area;

(c) the Swiss Confederation may not exempt citizens of States other than those mentioned in point (b) from the obligation to hold a driver attestation without prior consultation with and approval by the European Community.

— Council Directive 88/599/EEC of 23 November 1988 on standard checking procedures for the implementation of Regulation (EEC) No 3820/85 on the harmonisation of certain social legislation relating to road transport and Regulation (EEC) No 3821/85 on recording equipment in road transport (OJ L 325, 29.11.1988, p. 55), as last amended by Regulation (EC) No 2135/98 (OJ L 274, 9.10.1998, p. 1).

— Council Directive 76/914/EEC of 16 December 1976 on the minimum level of training for some road transport drivers (OJ L 357, 29.12.1976, p. 36).

SECTION 3 — TECHNICAL STANDARDS

Motor vehicles

— Council Regulation (EC) No 2411/98 of 3 November 1998 on the recognition in intra-Community traffic of the distinguishing sign of the Member State in which motor vehicles and their trailers are registered (OJ L 299, 10.11.1998, p. 1).

— Council Directive 91/542/EEC of 1 October 1991 amending Directive 88/77/EEC on the approximation of the laws of the Member States relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles (OJ L 295, 25.10.1991, p. 1).

— Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community (OJ L 57, 23.2.1992, p. 27), as last amended by Directive 2002/85/EC of the European Parliament and of the Council (OJ L 327, 4.12.2002, p. 8).

— Council Directive 92/24/EEC of 31 March 1992 relating to speed limitation devices or similar speed limitation on-board systems of certain categories of motor vehicles (OJ L 129, 14.5.1992, p. 154), as amended by Directive 2004/11/EC of the European Parliament and of the Council (OJ L 44, 14.2.2004, p.19).

— Council Directive 92/97/EEC of 10 November 1992 amending Directive 70/157/EEC on the approximation of the laws of the Member States relating to the permissible sound level and the exhaust system of motor vehicles (OJ L 371, 19.12.1992, p. 1).

— Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic (OJ L 235, 17.9.1996, p. 59), as last amended by Directive 2002/7/EC of the European Parliament and of the Council (OJ L 67, 9.3.2002, p. 47).

— Council Directive 96/96/EC of 20 December 1996 on the approximation of the laws of the Member States relating to roadworthiness tests for motor vehicles and their trailers (OJ L 46, 17.2.1997, p. 1), as last amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1).

Transport of dangerous goods by road

— Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road (OJ L 319, 12.12.1994, p. 7), as last amended by Commission Directive 2003/28/EC (OJ L 90, 8.4.2003, p. 45).

— Council Directive 95/50/EC of 6 October 1995 on uniform procedures for checks on the transport of dangerous goods by road (OJ L 249, 17.10.1995, p. 35), as last amended by Council Directive 2001/26/EC (OJ L 168, 23.6.2001, p. 23).

Transport of dangerous goods by rail

— Council Directive 96/49/EC of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail (OJ L 235, 17.9.1996, p. 25), as last amended by Commission Directive 2003/29/EC (OJ L 90, 8.4.2003, p. 47).

Safety advisers

— Council Directive 96/35/EC of 3 June 1996 on the appointment and vocational qualification of safety advisers for the transport of dangerous goods by road, rail and inland waterway (OJ L 145, 19.6.1996, p. 10).

— Directive 2000/18/EC of the European Parliament and of the Council of 17 April 2000 on minimum examination requirements for safety advisers for the transport of dangerous goods by road, rail or inland waterway (OJ L 118, 19.5.2000, p. 41).

SECTION 4 — ACCESS AND TRANSIT RIGHTS WITH REGARD TO RAILWAYS

— Council Directive 95/18/EC of 19 June 1995 on the licensing of railway undertakings (OJ L 143, 27.6.1995, p. 70), as last amended by Directive 2004/49/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 44).

— Council Directive 95/19/EC of 19 June 1995 on the allocation of railway infrastructure capacity and the charging of infrastructure fees (OJ L 143, 27.6.1995, p. 75).

— Council Directive 91/440/EEC of 29 July 1991 on the development of the Community's railways (OJ L 237, 24.8.1991, p. 25), as last amended by Directive 2004/51/EC of the European Parliament and of the Council (OJ L 164, 30.4.2004, p. 164).

SECTION 5 — OTHER FIELDS

— Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ L 316, 31.10.1992, p. 19), as amended by Directive 1994/74/EC (OJ L 365, 31.12.1994, p. 46).'

DECISION No 31/2005 OF THE JOINT COMMITTEE ESTABLISHED UNDER THE AGREEMENT ON MUTUAL RECOGNITION BETWEEN THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA

of 14 February 2005

related to the listing of a Conformity Assessment Body under the Sectoral Annex on Telecommunication Equipment

(2005/250/EC)

THE JOINT COMMITTEE,

Having regard to the Agreement on Mutual Recognition between the European Community and the United States of America, and in particular Articles 7 and 14,

Whereas the Joint Committee is to take a decision to list a Conformity Assessment Body or Bodies under a Sectoral Annex,

HAS DECIDED AS FOLLOWS:

1. The Conformity Assessment Body in Attachment A is added to the list of Conformity Assessment Bodies in Section V of the Sectoral Annex on Telecommunication Equipment.

2. The specific scope of listing, in terms of products and conformity assessment procedures, of the Conformity Assessment Body indicated in Attachment A has been agreed by the Parties and will be maintained by them.

This Decision, done in duplicate, shall be signed by representatives of the Joint Committee who are authorised to act on behalf of the Parties for purposes of amending the Agreement. This Decision shall be effective from the date of the later of these signatures.

Signed in Washington DC, 9 February 2005.

On behalf of the United States of America
James C. SANFORD

Signed in Brussels, 14 February 2005.

On behalf of the European Community
Joanna KIOUSSI

ATTACHMENT A

EC Conformity Assessment Body added to the list of Conformity Assessment Bodies in Section V of the Sectoral Annex on Telecommunication Equipment

KTL
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COMMISSION RECOMMENDATION

of 11 March 2005

on the European Charter for Researchers and on a Code of Conduct for the Recruitment of Researchers

(Text with EEA relevance)

(2005/251/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 165 thereof,

Whereas

(1) The Commission considered it necessary in January 2000 [1] to establish the European Research Area as the linchpin of the Community's future action in this field with a view to consolidating and giving structure to a European research policy.

(2) The Lisbon European Council set the Community the objective of becoming the most competitive and dynamic knowledge economy in the world by 2010.

(3) The Council has addressed issues related to the profession and the career of researchers within the European Research Area in its Resolution of 10 November 2003 [2] and welcomed in particular the Commission's intention to work towards the development of a European Researcher's Charter and a Code of Conduct for the Recruitment of Researchers.

(4) The identified potential shortage of researchers [3], particularly in certain key disciplines, will pose a serious threat to EU's innovative strength, knowledge capacity and productivity growth in the near future and may hamper the attainment of the Lisbon and Barcelona objectives. Consequently, Europe must dramatically improve its attractiveness to researchers and strengthen the participation of women researchers by helping to create the necessary conditions for more sustainable and appealing careers for them in R&D [4].

(5) Sufficient and well-developed human resources in R&D are the cornerstone of advancement in scientific knowledge, technological progress, enhancing the quality of life, ensuring the welfare of European citizens and contributing to Europe's competitiveness.

(6) New instruments for the career development of researchers should be introduced and implemented, thus contributing to the improvement of career prospects for researchers in Europe.

(7) Enhanced and more visible career prospects also contribute to the building of a positive public attitude towards the researchers' profession, and thereby encourage more young people to embark on careers in research.

(8) The ultimate political goal of this recommendation is to contribute to the development of an attractive, open and sustainable European labour market for researchers, where the framework conditions allow for recruiting and retaining high quality researchers in environments conducive to effective performance and productivity.

(9) Member States should endeavour to offer researchers sustainable career development systems at all career stages, regardless of their contractual situation and of the chosen R&D career path, and they should endeavour to ensure that researchers are treated as professionals and as an integral part of the institutions in which they work.

(10) Even though Member States have made considerable efforts to overcome administrative and legal obstacles to geographical and intersectoral mobility, many of these obstacles still remain.

(11) All forms of mobility should be encouraged as part of a comprehensive human resource policy in R&D at national, regional and institutional level.

(12) The value of all forms of mobility needs to be fully recognised in the career appraisal and career advancement systems for researchers, thus guaranteeing that such an experience is conducive to their professional development.

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[1] COM(2000) 6 final of 18.1.2000.
[2] OJ C 282, 25.11.2003, p. 1. Council Resolution of 10 November 2003 (2003/C 282/01 on the profession and the career of researchers within the European Research Area).
[3] COM(2003) 226 final and SEC(2003) 489 of 30.4.2003.
[4] SEC(2005) 260.

(13) The development of a consistent career and mobility policy for researchers to [1] and from the European Union should be considered with regard to the situation in developing countries and regions within and outside Europe, so that building research capacities within the European Union does not occur at the expense of less developed countries or regions.

(14) Funders or employers of researchers in their role as recruiters should be responsible for providing researchers with open, transparent and internationally comparable selection and recruitment procedures.

(15) Society should appreciate more fully the responsibilities and the professionalism that researchers demonstrate in executing their work at different stages of their careers and in their multi-faceted role as knowledge workers, leaders, project coordinators, managers, supervisors, mentors, career advisors or science communicators.

(16) This recommendation takes as its premise that employers or funders of researchers have an overriding obligation to ensure that they meet respective national, regional or sectoral legislation requirements.

(17) This recommendation provides Member States, employers, funders and researchers with a valuable instrument to undertake, on a voluntary basis, further initiatives for the improvement and consolidation of researchers' career prospects in the European Union and for the creation of an open labour market for researchers.

(18) The general principles and requirements outlined in this recommendation are the fruits of a public consultation process to which the members of the Steering Group on Human Resources and Mobility have been fully associated,

HEREBY RECOMMENDS:

1. That Member States endeavour to undertake the necessary steps to ensure that employers or funders of researchers develop and maintain a supportive research environment and working culture, where individuals and research groups are valued, encouraged and supported, and provided with the necessary material and intangible support to enable them to fulfil their objectives and tasks. Within this context, particular priority should be given to the organisation of working and training conditions in the early stage of the researchers' careers, as it contributes to the future choices and attractiveness of a career in R&D.

2. That Member States endeavour to take, wherever necessary, the crucial steps to ensure that employers or funders of researchers improve the recruitment methods and career evaluation/appraisal systems in order to create a more transparent, open, equal and internationally accepted system of recruitment and career development as a prerequisite for a genuine European labour market for researchers.

3. That Member States — as they formulate and adopt their strategies and systems for developing sustainable careers for researchers — take duly into account and are guided by the general principles and requirements, referred to as The European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers outlined in the Annex.

4. That Member States endeavour to transpose these general principles and requirements within their area of responsibility into national regulatory frameworks or sectoral and/or institutional standards and guidelines (charters and/or codes for researchers). In so doing they should take into account the great diversity of the laws, regulations and practices which, in different countries and in different sectors, determine the path, organisation and working conditions of a career in R&D.

5. That Member States consider such general principles and requirements as an integral part of institutional quality assurance mechanisms by regarding them as a means for establishing funding criteria for national/regional funding schemes, as well as adopting them for the auditing, monitoring and evaluation processes of public bodies.

6. That Member States continue their efforts to overcome the persisting legal and administrative obstacles to mobility, including those related to intersectoral mobility and mobility between and within different functions, taking into account an enlarged European Union.

7. That Member States endeavour to ensure that researchers enjoy adequate social security coverage according to their legal status. Within this context, particular attention should be paid to the portability of pension rights, either statutory or supplementary, for researchers moving within the public and private sectors in the same country and also for those moving across borders within the European Union. Such regimes should guarantee that researchers who, in the course of their lives, change jobs or interrupt their careers do not unduly suffer a loss of social security rights.

[1] COM(2004) 178 final of 16.3.2004.

8. That Member States put in place the necessary monitoring structures to review this recommendation regularly, as well as to measure the extent to which employers, funders and researchers have applied the European Charter for Researchers and the Code of Conduct for the Recruitment of Researchers.

9. That the criteria for measuring this will be established and agreed with the Member States within the context of the work undertaken by the Steering Group on Human Resources and Mobility.

10. That Member States in their role as representatives in the international organisations established at intergovernmental level take due account of this recommendation when proposing strategies and taking decisions concerning the activities of those organisations.

11. This recommendation is addressed to the Member States but it is also intended as an instrument to encourage social dialogue, as well as dialogue among researchers, stakeholders and society at large.

12. The Member States are invited to inform the Commission, as far as possible, by 15 December 2005 and annually thereafter of any measures they have taken further to this recommendation, and to inform it of the first results of its application as well as to provide examples of good practice.

13. This recommendation will be reviewed periodically by the Commission in the context of the open method of coordination.

Done at Brussels, 11 March 2005

For the Commission

Janez POTOČNIK

Member of the Commission

ANNEX

SECTION 1

The European Charter for Researchers

The European Charter for Researchers is a set of general principles and requirements which specifies the roles, responsibilities and entitlements of researchers as well as of employers and/or funders of researchers [1]. The aim of the Charter is to ensure that the nature of the relationship between researchers and employers or funders is conducive to successful performance in generating, transferring, sharing and disseminating knowledge and technological development, and to the career development of researchers. The Charter also recognises the value of all forms of mobility as a means for enhancing the professional development of researchers.

In this sense, the Charter constitutes a framework for researchers, employers and funders which invites them to act responsibly and as professionals within their working environment, and to recognise each other as such.

The Charter addresses all researchers in the European Union at all stages of their career and covers all fields of research in the public and private sectors, irrespective of the nature of the appointment or employment [2], the legal status of their employer or the type of organisation or establishment in which the work is carried out. It takes into account the multiple roles of researchers, who are appointed not only to conduct research and/or to carry out development activities but are also involved in supervision, mentoring, management or administrative tasks.

This Charter takes as its premise that researchers as well as employers and/or funders of researchers have an overriding obligation to ensure that they meet the requirements of the respective national or regional legislation. Where researchers enjoy a status and rights which are, in certain respects, more favourable than those provided for in this Charter, its terms should not be invoked to diminish the status and rights already acquired.

Researchers, as well as employers and funders, who adhere to this Charter will also be respecting the fundamental rights and observe the principles recognised by the Charter of Fundamental Rights of the European Union [3].

GENERAL PRINCIPLES AND REQUIREMENTS APPLICABLE TO RESEARCHERS

Research freedom

Researchers should focus their research for the good of mankind and for expanding the frontiers of scientific knowledge, while enjoying the freedom of thought and expression, and the freedom to identify methods by which problems are solved, according to recognised ethical principles and practices.

Researchers should, however, recognise the limitations to this freedom that could arise as a result of particular research circumstances (including supervision/guidance/management) or operational constraints, e.g. for budgetary or infrastructural reasons or, especially in the industrial sector, for reasons of intellectual property protection. Such limitations should not, however, contravene recognised ethical principles and practices, to which researchers have to adhere.

Ethical principles

Researchers should adhere to the recognised ethical practices and fundamental ethical principles appropriate to their discipline(s) as well as to ethical standards as documented in the different national, sectoral or institutional codes of ethics.

Professional responsibility

Researchers should make every effort to ensure that their research is relevant to society and does not duplicate research previously carried out elsewhere.

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[1] See definition in Section 3.
[2] See definition in Section 3.
[3] OJ C 364, 18.12.2000, p. 1.

They must avoid plagiarism of any kind and abide by the principle of intellectual property and joint data ownership in the case of research carried out in collaboration with a supervisor(s) and/or other researchers. The need to validate new observations by showing that experiments are reproducible should not be interpreted as plagiarism, provided that the data to be confirmed are explicitly quoted.

Researchers should ensure, if any aspect of their work is delegated, that the person to whom it is delegated has the competence to carry it out.

Professional attitude

Researchers should be familiar with the strategic goals governing their research environment and funding mechanisms, and should seek all necessary approvals before starting their research or accessing the resources provided.

They should inform their employers, funders or supervisor when their research project is delayed, redefined or completed, or give notice if it is to be terminated earlier or suspended for whatever reason.

Contractual and legal obligations

Researchers at all levels must be familiar with the national, sectoral or institutional regulations governing training and/or working conditions. This includes intellectual property rights regulations, and the requirements and conditions of any sponsor or funders, independently of the nature of their contract. Researchers should adhere to such regulations by delivering the required results (e.g. thesis, publications, patents, reports, new products development, etc.) as set out in the terms and conditions of the contract or equivalent document.

Accountability

Researchers need to be aware that they are accountable towards their employers, funders or other related public or private bodies as well as, on more ethical grounds, towards society as a whole. In particular, researchers funded by public funds are also accountable for the efficient use of taxpayers' money. Consequently, they should adhere to the principles of sound, transparent and efficient financial management and cooperate with any authorised audits of their research, whether undertaken by their employers/funders or by ethics committees.

Methods of collection and analysis, the outputs and, where applicable, details of the data should be open to internal and external scrutiny, whenever necessary and as requested by the appropriate authorities.

Good practice in research

Researchers should at all times adopt safe working practices, in line with national legislation, including taking the necessary precautions for health and safety and for recovery from information technology disasters, e.g. by preparing proper back-up strategies. They should also be familiar with the current national legal requirements regarding data protection and confidentiality protection requirements, and undertake the necessary steps to fulfil them at all times.

Dissemination, exploitation of results

All researchers should ensure, in compliance with their contractual arrangements, that the results of their research are disseminated and exploited, e.g. communicated, transferred into other research settings or, if appropriate, commercialised. Senior researchers, in particular, are expected to take a lead in ensuring that research is fruitful and that results are either exploited commercially or made accessible to the public (or both) whenever the opportunity arises.

Public engagement

Researchers should ensure that their research activities are made known to society at large in such a way that they can be understood by non-specialists, thereby improving the public's understanding of science. Direct engagement with the public will help researchers to better understand public interest in priorities for science and technology and also the public's concerns.

Relation with supervisors

Researchers in their training phase should establish a structured and regular relationship with their supervisor(s) and faculty/departmental representative(s) so as to take full advantage of their relationship with them.

This includes keeping records of all work progress and research findings, obtaining feedback by means of reports and seminars, applying such feedback and working in accordance with agreed schedules, milestones, deliverables and/or research outputs.

Supervision and managerial duties

Senior researchers should devote particular attention to their multi-faceted role as supervisors, mentors, career advisors, leaders, project coordinators, managers or science communicators. They should perform these tasks to the highest professional standards. With regard to their role as supervisors or mentors of researchers, senior researchers should build up a constructive and positive relationship with the early-stage researchers, in order to set the conditions for efficient transfer of knowledge and for the further successful development of the researchers' careers.

Continuing professional development

Researchers at all career stages should seek to continually improve themselves by regularly updating and expanding their skills and competencies. This may be achieved by a variety of means including, but not restricted to, formal training, workshops, conferences and e-learning.

GENERAL PRINCIPLES AND REQUIREMENTS APPLICABLE TO EMPLOYERS AND FUNDERS

Recognition of the profession

All researchers engaged in a research career should be recognised as professionals and be treated accordingly. This should commence at the beginning of their careers, namely at postgraduate level, and should include all levels, regardless of their classification at national level (e.g. employee, postgraduate student, doctoral candidate, postdoctoral fellow, civil servants).

Non-discrimination

Employers and/or funders of researchers will not discriminate against researchers in any way on the basis of gender, age, ethnic, national or social origin, religion or belief, sexual orientation, language, disability, political opinion, social or economic condition.

Research environment

Employers and/or funders of researchers should ensure that the most stimulating research or research training environment is created which offers appropriate equipment, facilities and opportunities, including for remote collaboration over research networks, and that the national or sectoral regulations concerning health and safety in research are observed. Funders should ensure that adequate resources are provided in support of the agreed work programme.

Working conditions

Employers and/or funders should ensure that the working conditions for researchers, including for disabled researchers, provide where appropriate the flexibility deemed essential for successful research performance in accordance with existing national legislation and with national or sectoral collective-bargaining agreements. They should aim to provide working conditions which allow both women and men researchers to combine family and work, children and career [1]. Particular attention should be paid, *inter alia*, to flexible working hours, part-time working, tele-working and sabbatical leave, as well as to the necessary financial and administrative provisions governing such arrangements.

[1] See SEC(2005) 260, Women and Science: Excellence and Innovation – Gender Equality in Science.

Stability and permanence of employment

Employers and/or funders should ensure that the performance of researchers is not undermined by instability of employment contracts, and should therefore commit themselves as far as possible to improving the stability of employment conditions for researchers, thus implementing and abiding by the principles and terms laid down in Council Directive 1999/70/EC [1].

Funding and salaries

Employers and/or funders of researchers should ensure that researchers enjoy fair and attractive conditions of funding and/or salaries with adequate and equitable social security provisions (including sickness and parental benefits, pension rights and unemployment benefits) in accordance with existing national legislation and with national or sectoral collective bargaining agreements. This must include researchers at all career stages including early-stage researchers, commensurate with their legal status, performance and level of qualifications and/or responsibilities.

Gender balance [2]

Employers and/or funders should aim for a representative gender balance at all levels of staff, including at supervisory and managerial level. This should be achieved on the basis of an equal opportunity policy at recruitment and at the subsequent career stages without, however, taking precedence over quality and competence criteria. To ensure equal treatment, selection and evaluation committees should have an adequate gender balance.

Career development

Employers and/or funders of researchers should draw up, preferably within the framework of their human resources management, a specific career development strategy for researchers at all stages of their career, regardless of their contractual situation, including for researchers on fixed-term contracts. It should include the availability of mentors involved in providing support and guidance for the personal and professional development of researchers, thus motivating them and contributing to reducing any insecurity in their professional future. All researchers should be made familiar with such provisions and arrangements.

Value of mobility

Employers and/or funders must recognise the value of geographical, intersectoral, inter- and trans-disciplinary and virtual [3] mobility as well as mobility between the public and private sector as an important means of enhancing scientific knowledge and professional development at any stage of a researcher's career. Consequently, they should build such options into the specific career development strategy and fully value and acknowledge any mobility experience within their career progression/appraisal system.

This also requires that the necessary administrative instruments be put in place to allow the portability of both grants and social security provisions, in accordance with national legislation.

Access to research training and continuous development

Employers and/or funders should ensure that all researchers at any stage of their career, regardless of their contractual situation, are given the opportunity for professional development and for improving their employability through access to measures for the continuing development of skills and competencies.

Such measures should be regularly assessed for their accessibility, take-up and effectiveness in improving competencies, skills and employability.

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[1] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43), which aims to prevent fixed-term employees from being treated less favourably than similar permanent employees, to prevent abuse arising from the use of successive fixed-term contracts, to improve access to training for fixed-term employees and to ensure that fixed-term employees are informed about available permanent jobs.

[2] See SEC(2005) 260, Women and Science: Excellence and Innovation – Gender Equality in Science.

[3] i.e. remote collaboration over electronic networks.

Access to career advice

Employers and/or funders should ensure that career advice and job placement assistance, either in the institutions concerned, or through collaboration with other structures, is offered to researchers at all stages of their careers, regardless of their contractual situation.

Intellectual property rights

Employers and/or funders should ensure that researchers at all career stages reap the benefits of the exploitation (if any) of their R&D results through legal protection and, in particular, through appropriate protection of intellectual property rights, including copyrights.

Policies and practices should specify what rights belong to researchers and/or, where applicable, to their employers or other parties, including external commercial or industrial organisations, as possibly provided for under specific collaboration agreements or other types of agreement.

Co-authorship

Co-authorship should be viewed positively by institutions when evaluating staff, as evidence of a constructive approach to the conduct of research. Employers and/or funders should therefore develop strategies, practices and procedures to provide researchers, including those at the beginning of their research careers, with the necessary framework conditions so that they can enjoy the right to be recognised and listed and/or quoted, in the context of their actual contributions, as co-authors of papers, patents, etc., or to publish their own research results independently from their supervisor(s).

Supervision

Employers and/or funders should ensure that a person is clearly identified to whom early-stage researchers can refer for the performance of their professional duties, and should inform the researchers accordingly.

Such arrangements should clearly define that the proposed supervisors are sufficiently expert in supervising research, have the time, knowledge, experience, expertise and commitment to be able to offer the research trainee appropriate support and provide for the necessary progress and review procedures, as well as the necessary feedback mechanisms.

Teaching

Teaching is an essential means for the structuring and dissemination of knowledge and should therefore be considered a valuable option within the researchers' career paths. However, teaching responsibilities should not be excessive and should not prevent researchers, particularly at the beginning of their careers, from carrying out their research activities.

Employers and/or funders should ensure that teaching duties are adequately remunerated and taken into account in the evaluation/appraisal systems, and that time devoted by senior members of staff to the training of early stage researchers should be counted as part of their teaching commitment. Suitable training should be provided for teaching and coaching activities as part of the professional development of researchers.

Evaluation/appraisal systems

Employers and/or funders should introduce for all researchers, including senior researchers, evaluation/appraisal systems for assessing their professional performance on a regular basis and in a transparent manner by an independent (and, in the case of senior researchers, preferably international) committee.

Such evaluation and appraisal procedures should take due account of their overall research creativity and research results, e.g. publications, patents, management of research, teaching/lecturing, supervision, mentoring, national or international collaboration, administrative duties, public awareness activities and mobility, and should be taken into consideration in the context of career progression.

Complaints/appeals

Employers and/or funders of researchers should establish, in compliance with national rules and regulations, appropriate procedures, possibly in the form of an impartial (ombudsman-type) person to deal with complaints/appeals of researchers, including those concerning conflicts between supervisor(s) and early-stage researchers. Such procedures should provide all research staff with confidential and informal assistance in resolving work-related conflicts, disputes and grievances, with the aim of promoting fair and equitable treatment within the institution and improving the overall quality of the working environment.

Participation in decision-making bodies

Employers and/or funders of researchers should recognise it as wholly legitimate, and indeed desirable, that researchers be represented in the relevant information, consultation and decision-making bodies of the institutions for which they work, so as to protect and promote their individual and collective interests as professionals and to actively contribute to the workings of the institution [1].

Recruitment

Employers and/or funders should ensure that the entry and admission standards for researchers, particularly at the beginning at their careers, are clearly specified and should also facilitate access for disadvantaged groups or for researchers returning to a research career, including teachers (of any level) returning to a research career.

Employers and/or funders of researchers should adhere to the principles set out in the Code of Conduct for the Recruitment of Researchers when appointing or recruiting researchers.

SECTION 2

The Code of Conduct for the Recruitment of Researchers

The Code of Conduct for the Recruitment of Researchers consists of a set of general principles and requirements that should be followed by employers and/or funders when appointing or recruiting researchers. These principles and requirements should ensure observance of values such as transparency of the recruitment process and equal treatment of all applicants, in particular with regard to the development of an attractive, open and sustainable European labour market for researchers, and are complementary to those outlined in the European Charter for Researchers. Institutions and employers adhering to the Code of Conduct will openly demonstrate their commitment to act in a responsible and respectable way and to provide fair framework conditions to researchers, with a clear intention to contribute to the advancement of the European Research Area.

GENERAL PRINCIPLES AND REQUIREMENTS FOR THE CODE OF CONDUCT

Recruitment

Employers and/or funders should establish recruitment procedures which are open [2], efficient, transparent, supportive and internationally comparable, as well as tailored to the type of positions advertised.

Advertisements should give a broad description of knowledge and competencies required, and should not be so specialised as to discourage suitable applicants. Employers should include a description of the working conditions and entitlements, including career development prospects. Moreover, the time allowed between the advertisement of the vacancy or the call for applications and the deadline for reply should be realistic.

Selection

Selection committees should bring together diverse expertise and competences and should have an adequate gender balance and, where appropriate and feasible, include members from different sectors (public and private) and disciplines, including from other countries and with relevant experience to assess the candidate. Whenever possible, a wide range of selection practices should be used, such as external expert assessment and face-to-face interviews. Members of selection panels should be adequately trained.

[1] In this context see also Directive 2002/14/EC of the European Parliament and of the Council (OJ L 80, 23.3.2002, p. 29).
[2] All available instruments should be used, in particular international or globally accessible web-based resources such as the pan-European Researcher's Mobility Portal: http://europa.eu.int/eracareers

Transparency

Candidates should be informed, prior to the selection, about the recruitment process and the selection criteria, the number of available positions and the career development prospects. They should also be informed after the selection process about the strengths and weaknesses of their applications.

Judging merit

The selection process should take into consideration the whole range of experience [1] of the candidates. While focusing on their overall potential as researchers, their creativity and level of independence should also be considered.

This means that merit should be judged qualitatively as well as quantitatively, focusing on outstanding results within a diversified career path and not only on the number of publications. Consequently, the importance of bibliometric indices should be properly balanced within a wider range of evaluation criteria, such as teaching, supervision, teamwork, knowledge transfer, management of research and innovation and public awareness activities. For candidates from an industrial background, particular attention should be paid to any contributions to patents, development or inventions.

Variations in the chronological order of CVs

Career breaks or variations in the chronological order of CVs should not be penalised, but regarded as an evolution of a career, and consequently, as a potentially valuable contribution to the professional development of researchers towards a multidimensional career track. Candidates should therefore be allowed to submit evidence-based CVs, reflecting a representative array of achievements and qualifications appropriate to the post for which application is being made.

Recognition of mobility experience

Any mobility experience, e.g. a stay in another country/region or in another research setting (public or private) or a change from one discipline or sector to another, whether as part of the initial research training or at a later stage of the research career, or virtual mobility experience, should be considered as a valuable contribution to the professional development of a researcher.

Recognition of qualifications

Employers and/or funders should provide for appropriate assessment and evaluation of the academic and professional qualifications, including non-formal qualifications, of all researchers, in particular within the context of international and professional mobility. They should inform themselves and gain a full understanding of rules, procedures and standards governing the recognition of such qualifications and, consequently, explore existing national law, conventions and specific rules on the recognition of these qualifications through all available channels [2].

Seniority

The levels of qualifications required should be in line with the needs of the position and not be set as a barrier to entry. Recognition and evaluation of qualifications should focus on judging the achievements of the person rather than his/her circumstances or the reputation of the institution where the qualifications were gained. As professional qualifications may be gained at an early stage of a long career, the pattern of lifelong professional development should also be recognised.

Postdoctoral appointments

Clear rules and explicit guidelines for the recruitment and appointment of postdoctoral researchers, including the maximum duration and the objectives of such appointments, should be established by the institutions appointing postdoctoral researchers. Such guidelines should take into account time spent in prior postdoctoral appointments at other institutions and take into consideration that the postdoctoral status should be transitional, with the primary purpose of providing additional professional development opportunities for a research career in the context of long-term career prospects.

[1] See also The European Charter for Researchers: Evaluation/Appraisal systems in Section 1 of this document.
[2] Look at http://www.enic-naric.net/ to find more detailed information about the NARIC Network (National Academic Recognition Information Centres) and the ENIC Network (European Network of Information Centres).

SECTION 3

Definitions

Researchers

For the purpose of this recommendation the internationally recognised Frascati definition of research [1] will be used. Consequently, researchers are described as:

'Professionals engaged in the conception or creation of new knowledge, products, processes, methods and systems, and in the management of the projects concerned.'

More specifically, this recommendation relates to all persons professionally engaged in R&D at any career stage [2], regardless of their classification. This includes any activities related to 'basic research', 'strategic research', 'applied research', experimental development and 'transfer of knowledge' including innovation and advisory, supervisory and teaching capacities, the management of knowledge and intellectual property rights, the exploitation of research results or scientific journalism.

A distinction is made between Early-Stage Researcher and Experienced Researchers:

— the term Early-Stage Researcher [3] refers to researchers in the first four years (full-time equivalent) of their research activity, including the period of research training,

— Experienced Researchers [4] are defined as researchers having at least four years of research experience (full-time equivalent) since gaining a university diploma giving them access to doctoral studies, in the country in which the degree/diploma was obtained or researchers already in possession of a doctoral degree, regardless of the time taken to acquire it.

Employers

In the context of this recommendation 'employers' refers to all those public or private institutions which employ researchers on a contractual basis or which host them under other types of contracts or arrangements, including those without a direct financial relationship. The latter refers particularly to institutions of higher education, faculty departments, laboratories, foundations or private bodies where researchers either undergo their research training or carry out their research activities on the basis of funding provided by a third party.

Funders

'Funders' refers to all those bodies [5] which provide funding, (including stipends, awards, grants and fellowships) to public and private research institutions, including institutions for higher education. In this role they might stipulate as a key condition for providing funding that the funded institutions should have in place and apply effective strategies, practices and mechanisms according to the general principles and requirements presented in this recommendation.

Appointment or employment

This refers to any type of contract or stipend or to a fellowship, grant or awards financed by a third party including funding within the context of the framework programme(s) [6].

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[1] In: Proposed Standard Practice for Surveys on Research and Experimental Development, Frascati Manual, OECD, 2002.
[2] COM(2003) 436 of 18.7.2003: Researchers in the ERA: One profession, multiple careers.
[3] See Work Programme Structuring the European Research Area Human Resources and Mobility Marie Curie Actions, edition September 2004, p. 41.
[4] Idem, p. 42.
[5] The Community will endeavour to apply the commitments laid down in this Recommendation to the receiver of funding in the context of the Framework Programme(s) for Research, Technological Development and Demonstration Activities.
[6] The Framework Programme(s) for Research, Technological Development and Demonstration Activities.