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European Community food aid
as an instrument
for economic and social development
and humanitarian relief?

Prospects for and constraints on
further changes in
European Community food aid law

Volume I

Peter Van den Bossche
Department of Law
European University Institute

Thesis submitted for assessment with a view towards obtaining the degree
of Doctor of the European University Institute in Law
European Community food aid as an instrument for economic and social development and humanitarian relief?

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Volume I

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Thesis submitted for assessment with a view towards obtaining the degree of Doctor of the European University Institute in Law
To Astrid,

in the hope that one day she may see a world
in which there will be no more need for food aid.
Preface

Death in all its shapes is hateful to unhappy man, but the worst is death from hunger.

Homer, *Odyssey* XII

I have tried sedulously not to laugh at the acts of man, nor to lament them, nor to detest them, but to understand them.

Baruch Spinoza, *Tractatus theologico-politicus*, 1790

The importance of the subject matter of this thesis unfortunately needs no emphasis. Community food aid is an essential element in the welfare and indeed survival of many millions of people in the Third World. It is also a highly complicated and controversial subject. Surprisingly, however, Community food aid policy and law have received little attention from legal scholars. This study will help to fill this gap and will contribute a lawyer’s insights to a better overall understanding of Community policy in this field. Rather than focusing on a few problems of obvious and direct interest to lawyers, I decided to undertake a comprehensive overview of Community food aid policy and law. At times, I have regretted this decision, for it made it impossible to examine many interesting issues in detail. Partly as a result of this, my study raises more questions than it answers but I hope it will therefore be seen as an invitation for more research. Many of the issues dealt with here definitely merit further and deeper reflection; some would be valid topics for doctoral theses in their own right. As for myself, I see the submission of this thesis as an interim stage towards a more detailed study for eventual publication.
The study comprises an introductory chapter, three main chapters, and a conclusion. In the introductory chapter, I place food aid in relation to the problem of world hunger and present an analytical framework for understanding and evaluating a food aid policy. The main chapters deal with three successive phases in the evolution of Community food aid policy and law: the period 1969-76, during which agricultural surplus disposal was the Community’s primary objective (Chapter 1); the period 1977-82, during which the balance of compromise between the objectives of the Community’s food aid policy gradually shifted in favour of development cooperation and humanitarian relief (Chapter 2); and the period 1983-89, during which the latter objectives became ever more the Community’s primary objectives (Chapter 3). Each chapter consists of a first section in which I seek to explain the evolution in the policy and the objectives pursued during the period in question, and a second section in which I undertake a more in-depth analysis of the main features of Community food aid policy and law. This study covers Community food aid policy and law until January 1990; later developments - none of which were of fundamental importance - have not been considered. In the conclusion, which as its title indicates is also intended as a summary, I try to establish the scope for and constraints on further changes in Community food aid law.

I am indebted towards a great number of people for helping this study towards completion. First of all, I would like to thank my supervisor, Professor Joseph Weiler, professor at the University of Michigan Law School and external professor at the European University Institute. His constructive and critical advice, his personal encouragement and his willingness to give up his time to read my work and discuss it with me has provided me with the guidance essential to completing a work of this nature.

Most of this thesis was written between January 1988 and May 1990 while I was working as a research associate at the European University Institute. I owe much to Professor Dr. Jürgen Schwarze, European University Institute/University of Freiburg, for giving me the possibility and encouraging me to work on my thesis.
during this period. I would also like to thank Professor Francis Snyder, University College, London/European University Institute, for reading and commenting on a draft of this study. Of course, I am solely responsible for any mistakes and omissions that remain.

I am indebted to the University of Antwerp (UFSIA/UIA) where I received my basic training in law and to the University of Michigan Law School whose faculty, and in particular Professor Eric Stein and Professor John Jackson, had a considerable influence on my intellectual development and thinking about law. My thanks also go to Mr. Louis Huby, Head of the Commission's food aid service and his staff for their willingness to share information and insights with me.

Finally, on the personal level, I would like to thank my parents, Mr. and Mrs. Van den Bossche-Roosen, my brother, Hans Van den Bossche, for their help in many things large and small, and my wife, Patricia Murillo Montesdeoca. Her patience, support, constant encouragement and faith in my abilities allowed me to draw on previously unknown reserves of energy at times when my own faith faltered.

Peter Van den Bossche

Florence, July 1990
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Introduction:

The potential role of food aid in the fight against world hunger
1 The world food problem and the potential role of food aid in the fight against world hunger

1.1 The hunger paradox

Each year at least 50 million people, of which 30 million children under the age of five, die from lack of food or related diseases and it is estimated that as many as 1 billion people are undernourished. No statistics, however, can truly reflect the horrifying tragedy of the world food problem, the mutilation and slow extinction of millions and millions of lives. At the World Food Conference of 1974, it was solemnly proclaimed that:

Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental facilities. Society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective. Accordingly, the eradication of hunger is a common objective of all countries of the international community, especially of the developed countries.

---

1 It is extremely difficult to say with any precision how many people annually die from hunger and malnutrition. No country’s statistics records such deaths. Various diseases are listed as causes of death. It is equally difficult to say how many people are malnourished or hungry. The numbers of malnourished people in an area are mostly calculated in terms of how many individuals do not receive that area’s standard minimum of daily calories needed to support normal growth and/or development of a person. The differences in standards depend on the average size of people, weather, work patterns, age and sex distribution, and other local factors. The requirements are aggregated per capita averages for individual nations and are compared to the estimated national average per capita availability of calories to determine the adequacy of the diet. Because it is difficult to measure these variables accurately and because averages do not reveal who does and does not receive food, it is clear that calorie and protein data provide only approximate information about the location and the numbers of hungry people (WENNERGREN, E.B., 'The World Food Problem', Solving World Hunger, 1987, 1; see also FALCON, W. and others, 'The World Food and Hunger Problem: Changing Perspectives and Possibilities, 1974-84, in GITTINGER, J.P., LESLIE, J. and HOISINGTON, C.J., Food Policy, Baltimore, 1987, 17-18.). The variation in estimates of the total number of undernourished is therefore not surprising: 435 million according to the FAO, 840 million according to the World Bank, and 1.3 billion according to the International Food Policy Research Institute (See also Background Briefing of the World Food Conference, 7-8 April 1988, in The Courier, November-December 1989, 49.).
and others in a position to help.¹

At the beginning of the nineties, this noble objective is, however, far from being realized. On the contrary, hunger and malnutrition are more widespread and severe than ever before. In spite of the sustained increase in the world food production per capita since 1960, ever-growing numbers of people are, be it by local unavailability of food or by their inability to buy what is available, severely undernourished. In many developing countries, especially in Africa, the agricultural production has dramatically failed to keep pace with the growing domestic demand arising from the rapid increase of population.² In sub-Saharan Africa food production per capita has fallen over the last decade by up to 15% in some countries and by 6% over the whole region.³

In sharp contrast with this failure, the agriculture of many developed countries, and especially the United States and the Member States of the European Community, has been 'too' successful, producing huge and costly surpluses. At the end of 1986/87, the United States had total carry-over stocks of wheat and coarse grains of 203.7 million tonnes; the total wheat and barley carry-over stocks of the

---

²Universal Declaration on the Eradication of Hunger and Malnutrition, point 1. The World Food Conference was held in Rome from 5-16 November 1974 and adopted the Universal Declaration on the Eradication of Hunger and Malnutrition (and 22 resolutions), subsequently endorsed by the General Assembly resolution 3348 (XXIX) of 17 December 1974. For the full text of the Declaration, see: TOMASEVSKI, K., The Right to Food, Guide through Applicable International Law, Dordrecht, 1987, 3-7.

³While there are obviously some exceptions (e.g. Bangladesh), most Asian countries have since the early seventies made continuous and impressive progress in their per capita output of the main consumer and export products, rice and wheat (L.P., 'Africa and Asia: Agricultural Policy and Development - A Comparison', The Courier, May-June 1988, 96.). The per capita food production in Africa, however, fell by 1.3% annually in 1970-80 (WENNERGREN, 1987, 8.) and the prospects are not positive; with long-term trends in food production of about 2% a year compared with projected average annual population growth rates of over 3%, output shortfalls are bound to increase substantially (INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE, Food Trends in ACP Countries, Wageningen, 1987, 22.). See also: X., 'Global Trends in Cereals: Production and Trade', The Courier, March-April 1989, 69.).

European Community were 23 million tonnes. It is in this general context of shortages on the one hand and surpluses on the other - a situation quite appropriately also referred to as the 'hunger paradox' - that food aid has appeared on the international scene. For the purpose of this study, food aid will be defined as the transfer of foodstuffs on concessional (as opposed to commercial) terms. It should immediately be noted, however, that it is neither always clear nor generally accepted whether certain terms are commercial or concessional. There is certainly a grey area in which fall transactions which are in fact neither clearly commercial nor clearly concessional. At international level, this definitional problem severely complicated the application of the FAO Principles of Surplus Disposal, a code of conduct for food aid donors, and led in 1970 to an agreement among the members of the FAO's Sub-Committee on Surplus Disposal on a catalogue of 13 types of transactions which constituted food aid transactions and for which the above mentioned Principles were and are thus applicable. These


4This study concerns European Community food aid supplied to non-Member States, be it directly or via international and non-governmental organizations. Food aid to Community inhabitants, such as for example the food aid given in 1987 to the poorest sections of the population most affected by the exceptionally cold winter of 1986/87, is beyond the scope of this study. On the latter action, see 'Report by the Commission on the free food action applied in the Community in 1987 following the exceptional cold winter of 1986/87 and suggestions for the future', COM(87) 473 final.

5The FAO Principles of Surplus Disposal (Resolution No 2/20 of the FAO Council) is a non-legally binding code of conduct recommended in the provision of food aid. The Principles were agreed upon in 1954 as a collective response to the growing commercial market uncertainty caused by the accumulation in the early 1950's of large stocks of surplus agricultural commodities especially in the United States and the resulting problem of surplus disposal. To translate the Principles into an effective international code of conduct, the FAO established the Consultative Sub-Committee on Surplus Disposal (CSD), which is at present made up of 46 Member Countries (28 developing and 18 developed), the European Community and 19 Observer countries. It is based in Washington DC and meets monthly.

Under the Principles, food aid donors and recipients are committed to ensure that the food aid operations will be carried out without harmful interference with the normal patterns of production and international trade. To this end, the Principles require that the food aid supplied must be additional to the normal commercial imports. Food aid donors are under the obligation to consult (through the CSD) the normal commercial suppliers of the commodity supplied as food aid and to notify any food aid transaction to the CSD which monitors the adherence to the provisions of the Principles.

6In the Principles, food aid is defined as 'sales on concessional terms' as distinguished from 'commercial sales'. With experience gained from applying the Principles, it became clear, however, that views on the meaning of 'sales on concessional terms' differed among governments and that there
13 transactions are:

1. Gifts or donations of commodities from a government to a government of an importing country, an intergovernmental organization or a private institution for free distribution directly to the final consumers in the importing country.

2. Gifts or donations of commodities from a government to a government of an importing country, an intergovernmental organization or a private institution for distribution, by means of sale on the open market of the importing country.

3. Monetary grants by the government of an exporting country to an importing country, for the specific purpose of purchasing a commodity from the exporting country.

4. Monetary grants by a government either to a supplying country (or countries) or to a recipient country for the specific purpose of purchasing a commodity from the exporting country (or countries) for delivery to the specific recipient country.

5. Monetary grants by a government to an international organization for the specific purpose of purchasing commodities in the open market for delivery to eligible importing countries (developing countries)

6. Transfers of commodities under the rules and established procedures of the World Food Programme.

7. Sales for the currency of the importing country which is not transferable and is not convertible into currency or goods and services for use by the contributing country.

8. Sales for the currency of the importing country which is partly into currency or goods and services for use by the contributing country.


10. Sales on credit in which, as a result of government intervention, or of a centralized marketing scheme, the interest rates, period of repayment (including periods of grace) or other related terms do

was a grey area in which fell transactions which were neither clearly commercial nor clearly concessional. The CSD made several fruitless attempts to find a generally acceptable distinction between concessional and non-concessional transactions. Needless to say that this definitional problem limited the practical application of the Principles. Eventually, the CDS agreed in 1970 on a catalogue of 13 transactions which it considered to be food aid.
not conform to the commercial rates, periods or terms prevailing in the world market. In particular with respect to periods of repayment, credit transactions are distinguished as follows: (a) 10 years or more; (b) over 3 years and under 10 years.

11. Sales in which the funds for the purchase of commodities are obtained under a loan form from the government of the exporting country tied to the purchase of those commodities, distinguished as follows with respect to periods of repayment: (a) 10 years or more; (b) over 3 years and under 10 years.

12. Transactions under categories 1 to 4 and 7 to 11 subject to tied Usual Market Requirements or to tied Offset Purchasing Requirements.

13. Transactions under categories 1 to 4 and 7 to 11 tied to purchase of fixed quantities of the same or another commodity from the exporting country.

While for the purpose of this study the notion of food aid is not limited to the 13 transactions on this list, it is useful to mention these transactions as it highlights clearly that food aid is far more complex and diverse than commonly thought. Many would be quite surprised to find out that food aid donors often sell rather than grant food aid to the recipient countries or that most food aid is not distributed for free to the poorest but sold on the open market. Even more surprised many may be to find that food aid is in fact a highly controversial form of aid. At first view, it seems only logical - if not a morale imperative - to supply surplus agricultural commodities, which developed countries have to dispose of, to developing countries desperate for food. As John Cathie observed, giving food aid has a deep emotional appeal.9 Few experts would indeed criticize the food aid supplied to regions struck by famine to mitigate the acute distress of the local

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population. Such food aid, normally referred to as emergency food aid, constitutes, however, only a small part of all food aid supplied. On average, it represents not more than 10% of the food aid supplied in a given year. The other 90% of food aid supplied to developing countries is, however, highly controversial. The debate on the merits of food aid - as reflected in a disproportionately large literature - reveals disagreement on virtually every aspect of this form of aid, including the question whether there should be food aid at all, the most appropriate commodities to use, the types of use to which food aid should be put and the criteria for deciding who should receive it, on what scale and under what conditions. Everybody agrees, however, that the solution to world food problem does not lay with massive food aid shipments. To solve the world food problem, one must fight its root cause, i.e. the widespread poverty in the developing countries and the ultimate solution to this widespread poverty can only lay in the 'rapid' economic and social development of the Third World.

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10 Some aid experts have, however, also criticized this form of aid. A 'classical', often cited example of emergency food aid which had a negative rather than positive impact on the recipient population is the emergency food aid sent in 1976 to Guatemala to assist the earthquake victims (See: JACKSON, T. and EADE, Against the Grain, London, 1982.). In the latter case, aid donors had greatly overestimated the quantities of food actually required. Needless to say that the massive influx of food aid had disastrous effects on the (producer) price of food on the local market.

11 Exceptionally, however, this percentage has been much higher. During the height of the African crisis in 1984-85, 50% of all food aid supplied to sub-Saharan African countries was emergency food aid (BENSON, C., and CLAY, E., Food Aid and Food Crisis in Sub-Saharan Africa: Statistical Trends and Implications, Disasters, 1986, 310-1.). Furthermore, it should be noted that the emergencies in question are as a rule of a protracted kind, namely famines caused by crop failure (slowly evolving emergencies, such as the African famine) and famine among refugees (semi-permanent emergencies, such as the Afghan refugee situation). Emergencies caused by sudden natural disasters absorb usually less than 2% of all emergency food aid (INGRAM, J., 'Food and Disaster Relief: Issues of Management and Policy', Disasters, 1988, 12.).


13 In 1987/88, developing countries consumed 1,030 million tonnes of cereals, 920 million tonnes was produced locally, 110 million tonnes was imported of which 11 million in the form of food aid. On the basis of FAO figures, one can estimate the food needs developing countries cannot cover at 40 million tonnes of cereals. It is obvious that an increase of food aid from 11 million tonnes to around 50 million tonnes is not realistic. More importantly, however, it would not solve the food problem.

14 See for example: WORLD BANK, Poverty and Hunger: Issues and Options for Food Security in Developing Countries, Washington D.C., 1986; It is important to note that the root cause of the world food problem is poverty and this in two respects. On the one hand, there is hunger and malnutrition...
is obvious that in the developing countries, where the larger part of the populations live on the land and derive their livelihood from agriculture, the key sector for development is agriculture.\footnote{Typically, upwards of 70\% of the population in the poorer developing countries works in agricultural production (WENNERGREN, 1987, 10.).} In most developing countries, accelerated agricultural growth represents the best means for stimulating overall economic growth.\footnote{MELLOR, J.W., 'Food and Development: the Critical Nexus', 1988, 8.} The deplorable state of agriculture in many developing countries, and the resulting poverty and hunger, are in most cases not - or not primarily - nature's fault.\footnote{On the causes of the 1972-74 world food crisis for example, see; GARCIA, R., Drought and Man, Volume 1: Nature Pleads Not Guilty, Oxford, 1981.} Most developing countries have the physical capacities to grow (far) more food.\footnote{It is now generally recognized that the world has sufficient resources to feed its people (Background Briefing of the World Food Conference, 7-8 April 1988, in The Courier, November-December 1989, 49.). Estimates suggest that the world contains about 2,500 million hectares of potentially arable land that could ultimately be put under cultivation. Only about 1,400 million hectares were cultivated in 1970 (WENNERGREN, 1987, 12.). As late as in 1980 only 6\% of the land south of the Sahara was being used whereas in fact one third could be cultivated (LINNER, S., Disaster Relief for Development, Stockholm, 1986, 4.). It has been recognized, however, that increasing food production by extending the area under cultivation is only a short-term answer since, in the long term, it is likely to create more (economic and ecological) problems than it solves. Ultimately, the only solution is to intensify and increase yield of the land already under cultivation, which is, however, much more difficult than bringing new land under cultivation (FRANCO, M., 'Cereals Marketing and Food Security', The Courier, March-April 1988, 91; see on increasing yields through the use of high-yield seeds, fertilizers and irrigation systems: MELLOR, 1988, 12; on the possibility to increase yields through pest control and inter-cropping: KEEN, M., 'Multidisciplinary Keys to Africa's Food Problems, The Courier, March-April 1988, 13; but see on the serious questions raised by the use of High Yielding Varieties of plants (these hybrid varieties need massive use of artificial fertilizers and pesticides and do not disseminate on their own; it is always necessary to buy fresh seeds from the cultivators, a small number of transnationals (KARNER, H., 'The African Food Crisis: Another Look beyond the Emergency, Journal of Social Development in Africa, 1988, 72-3.). It has been noted that as much as 80\% of the growth of cereal production worldwide over the last 20 years is to be attributed to higher productivity of croplands rather than increasing the acreages under crop (X., 'Global Trends in Cereals: Production and Trade', The Courier, March-April 1989, 64.).} Their problems are, however, to an important extent the result of because people are too poor to buy the food they need. On the other hand, there is hunger and malnutrition because people are too poor to invest in learning and applying production increasing technology to produce more food. (See: WENNERGREN, 1987, 1-2).

It is self-evident that for economic development to lead to an improvement in the poverty and food situation it will have to be accompanied by (or lead to) a reduction of the inequality in the distribution of power and wealth, or in less radical words to give the poor access to meaningful employment and income-generating opportunities.

\footnote{On the causes of the 1972-74 world food crisis for example, see; GARCIA, R., Drought and Man, Volume 1: Nature Pleads Not Guilty, Oxford, 1981.}
misguided agricultural policies. The physical potential to produce more is just not realized because of a lack of price and other producer incentives, insufficient infrastructure, lack of technical knowledge, failure to adopt 'new' agricultural technologies and a balance of political forces that disadvantages the rural population. Proper agricultural policies would, however, not fail to boost agricultural production, and while an increased agricultural production is in itself not enough to overcome hunger and malnutrition, it would make a very substantial contribution towards the economic and social development, necessary to solve the

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1. See e.g. LELE, U., 'Agricultural Development in Africa: the Lessons from the MADAI Study'', The Courier, September-October 1989, 21-23; SCHULTZ, S., 'Food Aid: An Effective Instrument of Development Policy', Interconomics, May/June 1987, 143-4; LENOIR, R., Le Tiers Monde peut se nourrir, Paris, 1984, 153-9. It should be stressed, however, that while to a larger extent the result of faulty policies, the disastrous situation of agriculture, especially in sub-Saharan Africa, is also the result of 'a less favourable export structure' and of 'prolonged drought' (see LAWRENCE, 1986, 2, who notes that also the IMF and the World Bank have admitted this; see also BORTON, J, and CLAY, E., 'The African Food Crisis', Disasters, 1986, 262 and 264-5 who in their review of the literature on the African food crisis note that all writers agree that poor rains and drought were a significant factor in contributing to the food crisis. Political instability is also considered to have contributed to the food crisis in a variety of ways.). One should also note in this context the analysis of Susan George and others which holds that much of the responsibility for hunger and malnutrition today can be laid at the doorsteps of the developed countries, including the doorsteps of their transnational corporations and their State agencies responsible for dealing with the third world, who find among the local élites willing partners 'anxious to imitate their erstwhile colonial masters and to share whatever benefits may emerge from cooperations with them'. (GEORGE, S., 'More Food, More Hunger', Development: Seeds of Change, 1986, 1/2, 53.). The responsibility of seed cultivating and fertilizer transnationals was also stressed by KARNER, H., 'The African Food Crisis: Another Look beyond the Emergency, Journal of Social Development in Africa, 1988, 74-5.

2. Very interesting in this respect is a 1986 study by Sylvie Brunel and others. Asie-Afrique: Greniers vides, greniers pleins, which examined why most Asian countries were and most African countries were not successful in increasing their per capita food output. The study attributes the progress made in Asia to the hard-working Asian peasants who both used European growing methods and innovated on decisive points their time-honoured swing-plough methods. The success of the 'combination of old and new' was facilitated by better defined, better applied economic policies and authorities that are better adapted and offer more incentives to production than hold it back with red tape (L.P., 'Africa and Asia: Agricultural Policy and Development, A Comparison', The Courier, May-June 1988, 96.). Note also the critical approach of some authors towards 'high-tech agriculture': 'Instead of supporting the so-called green revolution with its massive input of hybrids, pesticides and artificial fertilisers, to the sole profit of a few transnational companies, a real green renaissance should be promoted by the introduction of food security programmes which will abolish hunger and malnutrition as well as comply with the demands of national economies. A green renaissance means a decentralised, ecologically oriented agriculture which is in compliance with the special needs of the various locations on the one hand and on the other is rooted in the traditional know-how of the peasants themselves, but also gives future perspectives in making use of technical and scientific know-how.' (KARNER, H., The African Food Crisis: Another Look beyond the Emergency, Journal of Social Development in Africa, 1988, 80.).
world food problem.\textsuperscript{21}

It is clear that, given the nature of both the problem and its solution, the prime responsibility for agricultural, and more generally economic development cannot but lay with the developing countries themselves. Developed countries, however, can and - since they have a keen interest in 'solving' the Third World's problems - should actively support the development efforts of developing countries. While arguably at an insufficient scale and at the same time pursuing policies which inhibit Third World development (e.g. commercial and agricultural policies), the developed countries do support development efforts.\textsuperscript{22} Besides preferential trade arrangements, the Member States of the OECD spent in 1987 in total \$ 41,531

\textsuperscript{21}A mere increase in food production and food availability does not necessarily solve the food problem. People are hungry not only because of local food unavailability but also because of their inability to pay for what is available. '[...] it is tempting to argue that an increase in food output will lead to a reduction in hunger, malnutrition, and starvation. But, alas, the connection is not so straightforward or so simple. Indeed, many cases may be found in which hunger has increased, or failed to diminish, despite a rise in per capita food supplies.' (GRiffin, K., 'World Hunger and the World Economy', in Hollist, W.L., and Tullis, F.L., Pursuing Food Security, Boulder, 1987, 17.). According to Griffin this was the case in for example in India where the green revolution led to dramatically improved yields and a growth in the food production per capita of 0.8% a year since 1970 but not to any reduction in hunger (GRiffin, 1987, 19 and 22.). See also Reutlinger, S., 'Food Security and Poverty in Developing Countries', in Gittinger, J., Leslie, J., and Hoisington, C., Food Policy, Baltimore, 1987, 213-4; and Sen, A., Hunger and Entitlements, Helsinki, 1987.

\textsuperscript{22}Especially the aggressive promotion of exports and the protection of the domestic markets, essential features of the agricultural policies of many developed countries, have detrimental effects on the Third World agricultural development and international food security. As a result of the protectionist agricultural policies of developed countries, and especially their export promotion policy, the world market price of certain products, e.g. cereals and sugar, may be under the cost price of the efficient producers for years at a time. This is detrimental for developing countries which are able to produce at relatively low cost but lack the financial resources to subsidise their exports when world prices are low. Furthermore, by imposing variable levies on agricultural imports, developed countries take away the comparative advantage developing countries might have on the Markets of developed countries (See: Background briefing of the World Food Conference, 7-8 April 1988, in The Courier, November-December, 1989, 49; and see also: Frisch, D., 'EC Food Aid: the Instrument of a Development Policy', The Courier, November-December 1989, 59. For a more detailed analysis, see: Breckling, J., Thorpe, S., and Stoeckel, A., Effects of EEC Agricultural Policies: A General Equilibrium Approach, Canberra, 1987; Datta, A., Welthandel und Welthunger, Munich, 1984; The CAP role in international trade, Agra Europe Special Report No 19, London, 1983. Note, however, that the abolition of protectionist agricultural policies and the consequent disappearance of large structural surpluses may lead to an even more vulnerable world food security situation. World stock levels driven entirely by market forces could in fact be quite low, dangerously low in comparison with the food deficits that may arise after just a few bad harvests (See: Interview by Amadou Traore with James Ingram, Executive-Director of WFP, in The Courier, November-December 1989, 63.).
Introduction

million - or 0.35% of GNP - on development assistance (ODA). This brings us back to food aid since one of the forms in which this assistance was given was food aid. Food aid, which appeared on the scene in the forties as aid to war-devastated Europe and was re-oriented in the fifties to developing countries, was originally - and this until the late sixties - an almost exclusively American form of aid. Under the Agricultural Trade Development and Assistance Act of 1954, better known as Public Law 480, the United States supplied during the period 1961-65 annually an average of 16,700,000 tonnes of cereals or 99% of all food aid supplied. In this period, food aid expenditure amounted to as much as 21% of ODA. Since, the food aid scene has, however, changed considerably. In the early seventies, the total quantities of food aid supplied dropped considerably, as a result of a sharp reduction in American food aid and in spite of the emergence of the European Community and other developed countries as major food aid donors. In comparison with its heyday in the sixties, food aid has become a scarce resource, largely because world commercial demand for food grains has increased more rapidly than the agricultural surpluses produced by developed countries. At present, global food aid supplies in cereals amounts to 11 million tonnes or about 10% of the Third World cereal imports and slightly more than 1% of the Third World cereal consumption. In recent years OECD countries have

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2*The United States gave already in 1812 emergency food aid to Venezuela for the victims of an earthquake and before the First World War most European countries undertook a number of one-off food aid operations in favour of their colonies and dependencies. The first, longer-term food aid programme was only set up in the wake of the First World War when - between 1918 and 1926 - the United States granted considerable amounts of food aid to a war-devastated Europe (A.T., 'In the beginning were the surpluses...', The Courier, November-December 1989, 55.). Nevertheless, food aid as we know it today is a post-World War II phenomenon.


3See for more details: Chapter 1 of this study.


spent on average annually merely around 10% of their ODA on food aid. It therefore seems that overall food aid is of relatively minor importance as an aid instrument. It must be pointed out, however, that for the United States, Canada and especially the European Community food aid is a much more important instrument of their development cooperation policy. For the United States food aid represented in 1987 12.9%, for Canada also 12.9%, and for the European Community 25% of their ODA. Secondly, it should be noted that for a number of developing countries, especially the poorest countries, food aid represents a very important element in both the aid package and their food imports. Food aid is therefore certainly not as marginal an aid instrument as one might conclude from the global data mentioned above. Furthermore, it should be noted that in spite of pleas for the replacement of food aid with financial aid (except for small amounts for emergency actions), food aid is very likely to stay with us at least at more or less the same scale for the years to come. Developing countries and a

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29I.e. somewhat more than $3 billion (KENNES, W., 'Food Aid and Food Security: Approach and Experience of the European Community', Tijdschrift voor Sociaal Wetenschappelijk Onderzoek van de Landbouw, 1988, 138.). Note that data in OECD, 1988 Report on Development Cooperation, 192-3 and 232-3 would suggest that in 1987 OECD food aid expenditure amounted to merely $2,063 million or 5.7% of all ODA.

30For the data on the United States and Canada, see OECD, 1988 Report on Development Cooperation, 192-3; for the data on the European Community, see KENNES, 'Food Aid and Food Security', 1988, 138.


32With regard to the replacement of food aid with financial aid, it was noted by Hans Singer that it seems to be part of conventional wisdom today that food aid is inferior to financial aid and should therefore be replaced by the latter (SINGER, H.W., 'Food Aid: Development Tool or Obstacle to Development?', Development Policy Review, 1987, 330). MATZKE, O., 'Food Aid: Pros and Cons' Aussenpolitik, 1984, 89, for example observes that: 'Almost all development projects "financed" with food aid could be realized more effectively, more cheaply and more flexibly with donations of money. In many instances it would be more efficient and of greater development impact to buy the food domestically or in neighbouring countries than to import from North America or Europe.' Hans Singer argues, however, that the distinction between food aid and financial aid is trickier than often realized and points out that the food aid which is supplied as balance of payments support - the bulk of food aid - is both in intention and in fact financial aid. Food aid can also be seen as financial aid in so far as it leads to the establishment of counterpart funds and to the extent that food aid supplied for use for a specific project may be 'monetized' to cover certain expenses of the project, food aid is also financial aid (SINGER, 1987, 327). On the other hand - Singer points out - much of what is called financial aid is food aid. This is true, for example of all financial balance of payment aid which sets free foreign exchange to import food and financial aid directly given to enable countries to buy food (SINGER, 1987, 327). Contrary to the presumed inferiority of food aid in comparison with
number of international bodies and experts have even urged for a significant boost in food aid. While it is extremely difficult to assess food aid needs, even the most conservative WFP estimates suggest a need for at least 20 million tonnes of food aid a year. If there are no radical changes in the Third World's agricultural situation, developing countries will by the end of the century need as much as 40 million tonnes of food aid to allow them to meet their basic requirements. As I already indicated, food aid is, however, a very controversial form of aid. No aspect of international aid to developing countries has been the target of greater criticism than food aid. Is food aid good aid? All major food aid donors claim that their food aid supplies make a positive contribution to the fight against world hunger to the extent that - on the one hand - food aid supports the economic and social development, and especially the agricultural development and the food security of the recipient countries, and - on the other hand - food aid mitigates the human suffering caused by food shortages resulting from natural or man-made disasters. Is this claim justified?

financial aid, Singer argues its superiority indicating that the terms of food aid are on the whole 'softer' (the grant element is bigger), that food aid is more concentrated on the poorest developing countries and on the poorest sections of the population, that food aid is well designed to promote human capital formation and that food aid offers the advantage of 'a double opportunity of policy dialogue' (for more details, see SINGER, 1987, 330-1). Anyhow, for most food aid donors (but not for the United Kingdom for example) food aid and financial aid are not substitutes. If the volume of food aid would be reduced, the total aid volume would drop since financial aid would not necessarily increase.

31Interview by Amadou TRAORE with James INGRAM, Executive Director of WFP, in The Courier, November-December 1989, 61.

32Background briefing of the World Food Conference, 7-8 April 1989 in The Courier, November-December 1989, 49. Note that this is almost four times as much as is supplied at present.

33GEORGE. 1986. 60
1.2 Food aid as an instrument for economic and social development, and in particular agricultural and rural development and food security?

Whether food aid can contribute to the economic and social development, and in particular to the agricultural and rural development and food security of the recipient countries, is probably one of the most controversial questions debated among development aid experts and it is clear from the abundant literature that there is no easy answer. Food aid critics have certainly been able to support

their position by a large number of horror stories depicting situations in which food aid rather impeded than promoted development. Food aid proponents, however, have pointed out that too often problems and issues specific to food aid are not distinguished from those of providing any form of external assistance to low income countries with weak administrative structures, poor infrastructure and governments for which economic and social development is not a genuine priority or which are simply too preoccupied with the struggle for political survival. As regards problems and issues specific to food aid, food aid proponents do not deny that food aid can have serious negative effects on the economic and in particular agricultural development and food security of the recipient country. It is generally recognized that food aid can:

(1) reduce the incentives for local farmers to increase their agricultural production by causing the food prices to drop as a result of the increase in food supply;
(2) allow the recipient governments to neglect their food supply problems and postpone (indefinitely) politically delicate and risky agricultural reforms;
(3) change the dietary habits of the recipient population and create a demand for food products which can not be produced locally and would thus increase the import dependency of the recipient country.


In view of the large number of publications on the effects of food aid on development, I list here only those publications which I have consulted. For more exhaustive bibliographies, especially of the pre-1980 literature, one might want to consult LAWSON CADET, M., Food Aid and Policy for Economic Development: an Annotated Bibliography and Directory, Sacramento CA, 1981; MAXWELL, S.J. and SINGER, H.W., 'Food Aid to Developing Countries: a Survey', World Development, 1979, 225-46.

See e.g. LAPPE, 1987, 84-115; JACKSON/EADE, 1982 to mention just two of the more 'emotional' critics of food aid.

CLAY/PRYER, 1982, 2; who also note that many of the food aid case studies were found to be based on superficial qualitative assessment of the programmes and projects studied. It should also be noted that the protagonists in the food aid debate often talk about different things; they talk about different types of food aid with different types of uses in different countries and at different times and on top of that use different methodologies in their analysis (MAXWELL, S.J., An Evaluation of the EEC Food Aid Programme (IDS/ABC Study), Brighton, 1982, 2.1.).

For a more detailed discussion, see for example: SINGER, H.W., 'Food Aid: Development Tool or Obstacle to Development', Development Policy Review, 1987, 332-338. With regard to the latter point, I would like to note that there has indeed been a significant change in the dietary habits of Sub-Saharan Africa in the course of the last 20 years. Local crops such as millet, sorghum and roots have been replaced by wheat and rice mainly imported from developed countries. It should be observed, however, that these imports tend to be quite cheaper; a kilo of imported rice costs in a Sahelian port
According to food aid proponents, however, these negative effects can be avoided; food aid - they argue - can make a very valuable contribution to the development efforts of the recipient countries and to their attempts to achieve food security, i.e. to increase food production, to promote the stability of food supplies and to ensure greater access to food on the part of the poor and the malnourished. It has been forcefully argued that - rather than having the above mentioned disincentive effects - food aid can on the contrary have 'incentive effects'. Food aid can lift or at least ease a foreign exchange and/or budget constraint on growth and self-reliance by freeing resources to import more production goods and/or by providing resources (either in the form of food (food-for-work projects) or in the form of counterpart funds) to expand investment or to dampen inflationary repercussions of an existing development plan (the output aspect of food aid). Furthermore, food aid can also have a favourable impact on disadvantaged groups, by supporting nutrition programmes (mother-child health or school feeding) or (again) food-for-work projects or by distribution of food at concessional prices through fair-price shops or ration systems (the distribution aspect of food aid).

Finally, food aid can have a significant stabilizing effect on food supplies when used to support storage and stabilisation schemes, ranging from local level storage about half the price of the local equivalent. In addition, consumers are often convinced that the imported products are somehow better. Also imported foods are usually easier and faster to cook.

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40 See i.a. KENNES, 'Food Security and Food Aid', 1988, 142; SINGER/WOOD/JENNINGS, 1988, 201; MELLOR, 1987, 180-1; SINGER/MAXWELL, 1983, 34; MAXWELL, 1982, 5.21.; STEVENS, 1978, 318-9. According to Hans Singer and Simon Maxwell, it is now even generally accepted that the 'disincentive effects' of food aid on local production are not necessary effects (SINGER/MAXWELL, 1983, 35). See also MELLOR, 1987, 180-1. A number of critics do indeed agree that food aid has some developmental potential but they tend to be very sceptical about the possibilities of realizing this potential and suggest to replace food aid by financial aid, except for small quantities of emergency food aid. Schultz, for instance, states "Food aid, which is on balance considered to be of dubious benefit on account of its impact in the recipient country ..." (SCHULTZ, 1987, 144).

41 Edward Clay and Jane Pryer have distinguished between the 'output aspect' of food aid, its 'distribution aspect' and its 'stabilisation aspect' (CLAY/PYER, 1982, 17).


construction to the establishment of an international buffer stock (the stabilisation aspects of food aid).\textsuperscript{4}

Food aid proponents hasten to add, however, that for food aid to make any contribution to development and food security, and thus to realize its potential benefits, food aid programmes are to be carefully and efficiently administrated and related to the recipients' needs. The effectiveness of food aid contributing to development largely depends on the way food aid is utilized by recipients and administrated by donors.\textsuperscript{45}

For food aid to achieve its potential as an instrument for the economic and social development, and in particular the agricultural and rural development and food security of the recipient country, experts argue that a number of policy requirements have to be fulfilled:\textsuperscript{44}

- \textit{with regard to the products supplied as food aid}: food aid donors should: (a) ensure that the products are of good quality, diversified and adapted to the local needs and dietary habits of the recipient population; and (b) undertake a considerable number of triangular operations which allow for the supply of food aid products better adapted to the local needs and the encouragement of the agriculture of food exporting developing countries.


Note that these guidelines tend to the abstract, are often vague and skirt around some of the more contentious issues (SINGER/MAXWELL, 1983, 35.). The following list is not exhaustive and evidently subject to discussion and further refinement.
The world food problem and the role of food aid

- with regard to size and nature of the food aid commitments: donor’s food aid commitments should be: (a) sufficiently large commitments, taking into account the food aid needs of the recipient country; (b) commitments expressed in physical rather than monetary terms in order to guard the level of aid against market price fluctuations; (c) when appropriate, multi-annual commitments, which, although subject to possible revision by mutual agreement, would give the recipient countries assurance of the continuity of the aid and would thus allow for its integration in development programmes and projects; and (d) substitutable by financial aid in cases of a bumper harvest in the 'recipient' country when food aid would exacerbate storage problems and could depress local prices.

- with regard to the allocation of food aid: food aid donors should: (a) give priority to low-income, food-deficit countries, although due attention should also be given to the food aid needs of other countries in support of projects specifically designed to benefit the poorest segments of their populations; (b) give special consideration in allocating food aid to a strong commitment on the part the governments of the eligible countries to achieve food security; (c) channel a significant proportion of food aid through the World Food Programme and other multilateral institutions and non-governmental organisations.

- with regard to the terms and conditions of the food aid supplies: food aid donors should: (a) provide food aid essentially on a grant basis, in particular to the poorest developing countries; (b) undertake to finance, to the maximum extent possible, transport and storage costs of the food aid shipped to the poorest developing countries especially in the case of food aid for use in projects; (c) require that the food aid supplied is fully integrated in the recipients’ development efforts, and in particular its food strategy, and its use is fully consistent with these efforts; (d) must complement food aid with financial and technical aid, the absence of which often constrains the effectiveness of food aid; (e) recognize the fact that food aid is potentially most useful when it substitutes for commercial imports because it then releases foreign exchange which can be used for developmental purposes; and (f) supply food aid not only for immediate
consumption but also for reserve stock building;

- with regard to the management of food aid: food aid donors should: (a) pursue timeliness and better coordination of their food aid supplies; the timeliness is evidently crucial (food aid received 'unexpectedly' or at the wrong time can be quite disruptive) but also the coordination of food aid supplies among the 25-odd bilateral donors as well as international organizations and NGO's is important given most recipients' limited administrative resources and transport and storage facilities; (b) monitor closely every stage of the food aid operations; and (c) systematically evaluate the contribution made by the food aid supplied to the development of the recipient country in order to improve the planning of future operations.
1.3 Food aid as an instrument for humanitarian relief?

As I already mentioned above, the use of food aid as an instrument for humanitarian relief, as an instrument for alleviating human suffering caused by food shortages resulting from natural or man-made disasters, has been far less controversial than its use for economic and social development. Who will tell a starving child that food aid is not good for it? Nevertheless, there are numerous instances known in which food aid supplied to alleviate acute distress caused by natural or man-made disaster did not have the desired effect, or worse had a negative effect on the recipient population. While much excellent work has been done, emergency food aid often consists of hastily improvised, badly planned operations which have tended to become "a disaster within the disaster". Provocatively but not without ground, emergency relief has been referred to as 'the last bastion of unprofessionalism'. In many cases too little food arrived too late and/or insufficient care was taken to ensure that the recipient population did not become dependent on aid. It is clear that if food aid is to be used as an instrument for humanitarian relief, it will - like food aid for development - have to be carefully and efficiently administrated and related to the recipients' needs. For food aid to achieve its potential as an instrument for humanitarian relief, experts argue that a number of policy requirements have to be fulfilled. To some extent, these policy requirements are similar to the requirement listed above, but there are also a number of specific policy requirements and I will focus here on

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48 See e.g. JACKSON/EADE, 1982.


- with regard to the products supplied as food aid: the food aid donors should: (a) supply preferably locally purchased food, if such is available, since it is of course best adapted to the dietary habits, helps to maintain demand for locally produced food and saves on transport costs and time; and (b) provide for sufficient quantities of processed foods which can be airlifted and require no or little preparation.

- with regard to size and nature of the food aid commitments: the food aid donors should: (a) earmark part of their national food stock or funds for meeting urgent needs of developing countries; a special emergency reserve is needed to avoid the danger of being unable to respond when necessary but also to avoid the danger of syphoning food aid from countries and projects where they are used effectively for development into relief operations; (b) contribute or make additional contributions to the International Emergency Food Reserve.

- with regard to the allocation of food aid: the food aid donors should: (a) very carefully assess the real need for food aid; in some disasters situations food aid is not essential but is 'automatically' granted because it is available; (b) in the case of 'sudden' (as opposed to slowly evolving (African drought) or 'semi-permanent' (refugees)) disasters, take allocation decisions solely on humanitarian grounds; (c)

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consider carefully the advantages of supplying emergency food aid through the World Food Programme and other multilateral institutions and especially non-governmental organisations which are established solidly in many disaster-prone countries.

- with regard to the terms and conditions of the food aid supplies: the food aid donors should: (a) undertake to finance, to the maximum extent possible, sea transport (and occasionally air transport), storage, inland transport and distribution costs of the food aid supplied; (b) provide emergency food aid in such a way as not to undermine development efforts; (c) not exclude making aid conditional upon genuine efforts on the part of the recipient government to mitigate the consequences of the disaster; and (d) in case of 'semi-permanent' or 'slowly evolving' disasters, not exclude making the emergency food aid conditional upon action on the part of the recipient government to eliminate the causes of the disaster.

- with regard to the management of food aid: food aid donors should overcome the difficulties of mobilization and delivery on time of an adequate amount food: (a) by assisting in the setting up adequate early warning systems especially for detecting 'slowly evolving' emergencies (as opposed to 'sudden' or 'semi-permanent' emergencies) in time; (b) by setting up a rapid communication system which provides notification of a disaster, can speedily assess the problem on the ground and give feed-back of information from the field to headquarters; (c) by helping the disaster-prone countries to build up their preparedness for disasters (storage capacity; harbour facilities; transport resources; administrative capacity, etc.); (d) by establishing a specialized emergency aid unit; (e) by working out in advance with disaster-prone countries agreements for the deployment of their personnel and equipment within the affected areas and for borrowing stocks locally for subsequent replenishment; (f) by pre-positioning food stocks in disaster-prone areas or other strategic locations from which the food aid can be forwarded expeditiously; (g) by providing for swift and dependable mobilization procedures; and (h) by coordinating emergency food aid actions with other donors and other
INTRODUCTION

Emergency aid actions.
1.4 The premise of this study

While the food aid debate has certainly become more refined in recent years, the basic question whether food aid is good aid or bad aid has, however, not been definitively settled. Whether a food aid policy, which meets the policy requirements listed above, really makes a contribution to the economic and social development of the recipient countries or alleviates human distress caused by food shortages resulting from natural or man-made disasters, is likely to remain a hotly debated question. It is important to note that this question is beyond the scope of this study and the expertise of its author. It is a question for developmental economists and aid experts, not for lawyers. It is the premise of this study, however, that a food aid policy which meets the policy requirements referred to above, does indeed contribute to the economic and social development of the recipient countries and alleviates human suffering caused by food shortages resulting from disasters.

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57 It should be stressed again that the lists of policy requirements of Sections 1.2 and 1.3 are not exhaustive and are evidently open for discussion and further refinement.

58 This in spite of the fact that many food aid issues are country-specific; given the fact that developing countries differ considerably in culture, political organization, administrative resources, environment and needs, it is clear that what may be appropriate and likely to contribute to development in one recipient country may be counterproductive in another. There are few universal truths with regard to food aid (SCHULTZ, 1988, 138.).
Constraints on realizing the potential role of food aid in the fight against world hunger: a survey of other food aid policy objectives

As I already mentioned above, virtually all food aid donors claim that their food aid policy aims at contributing to the economic and social development of the recipient countries and at mitigating human suffering caused by food shortages resulting from natural and man-made disasters. It should be noted, however, that food aid policies usually also pursue other objectives. In the context of this study, it is important to examine these other objectives closely since it is clear that their pursuit may - and often will - constitute a constraint on realizing the potential role of food aid in the fight against world hunger. Whether food aid is an effective instrument for economic and social development and humanitarian relief very much depends on the relative 'strength' of the various objectives pursued by the donor and the compromise reached between them.

The fact that food aid donors pursue also objectives other than third world economic development and humanitarian relief is very well illustrated by the food aid programme of the United States, the world's oldest and largest food aid programme. With regard to the objectives pursued, the American food aid


54A number of authors even argues that these other objectives, and in particular surplus disposal, are the primary objectives. See e.g. AGRA EUROPE, The EEC'S Role in International Food Aid (Special Report No 20), London, 1984, 39 who noted that "at present, food aid is largely limited by the desire of western nations to dump their food surpluses. This remains the primary drive behind food aid programmes"; CATHIE, J., The Political Economy of Food Aid, Aldershot, 1982, 2 who argued that it would be rather naive to assume that food aid has as its major objective the alleviation of hunger and poverty.

55The United States' primary means to provide food assistance to other countries is the 'Agricultural Trade Development and Assistance Act of 1954', commonly known and hereinafter referred to as Public Law 480 or PL 480. This Act, which has been amended numerous times since its inception in 1954, authorizes three programmes by which the United States can provide food aid: (1) the Title I programme - the largest component of PL 480 - which provides for loans (financed
legislation stipulates in Section 2 of Public Law 480:

The Congress hereby declares it to be the policy of the United States to expand international trade; to develop and expand export markets for United States agricultural commodities; to use the abundant agricultural productivity of the United States to combat hunger and malnutrition and to encourage economic development in the developing countries, with particular emphasis on assistance to those countries that are determined to improve their own agricultural production; to use foreign currencies accruing under this Act to foster and encourage the development of private enterprise in developing countries; to enhance food security in the developing countries through local food production; and to promote in other ways the foreign policy of the United States. [...]²⁸

Taking the United States food aid policy as an example, it is clear that a food aid donor can pursue in addition to Third World development and humanitarian relief a number of other objectives falling in two main groups, namely the promotion of

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(2) the Title II programme which provides for donations of food to meet famine or other urgent relief requirements, to combat malnutrition, and to promote economic and community development and this usually through mother-child health activities but also through school feeding and food-for-work projects; and

(3) the Title III programme, similar to the Title I programme but providing for loan forgiveness of the original loan if the recipient country uses the money generated by to local sale of the commodities to implement programmes in agricultural and rural development, nutrition, health services and population planning.

²⁸ Agricultural Trade Development and Assistance Act of 1954, as Amended, 7 U.S.C. 1691. It should be noted, however, that sec. 2 was amended and restated in 1966 by sec 2(a) of the Food for Peace Act of 1966, Public Law 89-808 (80 Stat. 1526), to include the use of abundant agricultural productivity of the United States to combat hunger and malnutrition and the emphasis on assistance to those developing countries that are determined to improve their own agricultural production and to exclude statement of a policy to facilitate the convertibility of currency, to make maximum use of surplus agricultural commodities in furtherance of the foreign policy of the United States, purchase strategic materials, to pay United States obligations abroad, and to promote collective strength. In 1985 sec. 2 was amended by sec. 1111(a) of the Food Security Act of 1985, Public Law 99-198 (99 Stat. 1474) to include the congressional declaration of policy to use accrued foreign currencies to foster and encourage the development of private enterprise in developing countries and to enhance food security in developing countries through local food production.

Pascal Erard and Frédéric Mounier observe in their 1984 book, Les marchés de la faim: l’aide alimentaire en question: "Les Etats-Unis sont francs; c’est une de leurs qualités. [...] Les hommes de pouvoir n’hésitent pas à dire clairement ce qu’ils ont dans la tête ou sur le cœur. L’aide alimentaire ne fait pas exception à cette louable habitude". I can only but agree that the United States is indeed refreshingly candid about the objectives pursued by its food aid policy.
domestic agricultural interests and the promotion of foreign policy interests other than Third World development and humanitarian relief.
2.1 The promotion of domestic agricultural interests

Protectionist, market-interventionist agricultural policies, as widely applied by developed countries to guarantee farmers a higher income than their farm size and the free market would provide and to ensure consumers a diversified food basket at stable and reasonable prices, have in the past as well as in the present led to considerable surplus production. Both the United States and the European Community have over the last decades consistently produced more food than required to meet domestic demand.

Obviously, surplus food producing countries will in the first place seek to export their surpluses on a commercial basis. Unfortunately, however, for some surplus products there is little demand on the world market (dairy products), while for others international demand at given world market prices is often insufficient to allow the exporting countries to dispose of all their domestic surplus production (cereals). As a result, they are left with non-exportable surpluses. It is in this context of unwanted surpluses, that food aid has been supplied to the Third World with the objective of promoting domestic agricultural interests. Food aid can indeed promote domestic agricultural interests and this basically in three ways: firstly by being an instrument for the disposal of expensive and destabilizing, unplanned surpluses, secondly, by being an instrument for the creation of new export markets, and, thirdly, by being a justification for food production levels above what is warranted by domestic demand and commercial exports.

2.1.1 Food aid as an instrument for the disposal of unplanned surpluses

When confronted with non-exportable agricultural surpluses and keeping in mind that these surpluses are expensive to store and thus cannot be stored indefinitely, surplus producing countries have a number of options open to them. A first possibility is to destroy the surplus food and as a matter of fact this is what is often done in the case of foodstuffs, such as vegetables and fruits, which under normal conditions can not be kept for more than a short time and which can only
be preserved at very high cost. For non-perishable products, on the contrary, political considerations often preclude destruction although sober calculation and consideration could well favour it. A second possibility is to denature the foodstuffs and use them as or in the preparation of animal feed. Surpluses of cereals and milk products are often disposed of in this way. A third possibility is to supply the surplus foodstuffs, either free or at reduced prices, to schools and caritative non-profit organizations to provide for domestic 'non-economic' demand. A fourth possibility, finally, is to dispose of surpluses by means of food aid operations, i.e. exports on a non-commercial, concessional basis to developing countries. As a rule, surplus producing countries chose for a mix of these methods to dispose of their food surpluses but food aid has very often been one of the methods opted for. By helping to reduce the financial burden of the protectionist agricultural policy, and thus making it less controversial, food aid certainly promotes domestic agricultural interests. As was already noted, it is undisputed that a major historical cause behind the growth of food aid was the pressure to dispose of food surpluses. While at present most food aid donors are no longer merely motivated by surplus disposal, the use of food aid as an instrument for surplus disposal remains nevertheless quite important.

The United States food aid policy is a very fine example of this. In 1954, the United States produced 983.9 million bushels of wheat, consumed 611.4 million bushels, exported 274.0 million bushels and faced at the end of the year a

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*SINGER/WOOD/JENNINGS, 1987, 35. It has been noted that the levels of cereal food aid commitments have become relatively stable as compared with earlier experience up to around 1975. As the internal production and export availability situation has changed substantially in the short term in all countries and substantial changes have occurred in the international market (relatively tighter markets in the late seventies followed by a build-up of stocks in the early eighties and again tighter markets in the late eighties), the stability of the cereal food aid commitments seems to suggest that most donors do indeed no longer use food aid as an instrument for managing their cereal surpluses and that developmental considerations have gained importance in food aid policy making (See CLAY, 1985, 5.).

*SINGER/WOOD/JENNINGS, 1987, 38. Quite correctly, food aid was once defined in the early sixties as an attempt "to make an honest woman out of the need for disposing of production for which there is no commercial market" (STONEHAVEN, Consultative Assembly of the Council of Europe, Doc 1634 of 28.08.1963, Report on Food Aid, p. 16 as referred to by SCHUMACHER, 1980, 26.).

*MATZKE, 1984, 97.
(accumulated) carry-over stock of 1,036.2 million bushels (up from 256.0 million in 1951) of which 975.9 million bushels were Government-owned (up from 143.3 million in 1951).

It was in this context of the urgent need to do something about these expensive agricultural surpluses that the Public Law 480 programme was conceived, debated and approved. In its origin and throughout the first ten years, the United States food aid policy was a highly pragmatic policy "designed to accomplish a single objective: to ease the political and economic problems stemming from the accumulation of unmarketable surpluses being held at government expense". Food aid offered the US Government a convenient instrument for the disposal of accumulated, costly-to-store surplus production.

Between 1955 and 1976, the PL 480-exports claimed 14% of the total agricultural exports. In the early years of US food aid, other objectives played only a very minor role. It was only in the mid-sixties that other objectives started to gain importance; the surplus-disposal objective remained, however, quite significant.

Quite revealing for the surplus-disposal objective of PL 480 (and at the same time a clear indication of existence of foreign policy objectives) is that, at the height of the world food crisis of 1973-74 when there was no need for surplus disposal,
Secretary of Agriculture E. Butz submitted his budget to the Office of Management and the Budget with a nil entry under the Food for Peace PL 480 Programme, justifying this by pointing out "that with commercial exports booming he did not need the program any more. If Henry [Kissinger] needs it, let the money come out of his budget." At present, the surplus disposal motivation of PL 480 appears from the use of the words "to use the abundant agricultural productivity of the United States" in the statement of policy contained in section 2 of PL 480 already cited above. Furthermore, the United States can, pursuant to section 401 of PL 480, as a rule only supply surplus food. The latter section stipulates inter alia that "no commodity shall be available for disposition under this Act if such disposition would reduce the domestic supply of such commodity below that needed to meet domestic requirements, adequate carryover, and anticipated exports for dollars as determined by the Secretary of Agriculture".

Much like the PL 480 programme, the Canadian food aid policy was in its origin and early years also primarily an expedient solution for the domestic surplus production problems by disposing of costly and unwanted surpluses. Surplus disposal has also for the Canadian food aid policy gradually become a somewhat less important objective over the last two decades but is nevertheless still quite important especially for non-cereal food aid such as skimmed milk powder, fish and rapeseed oil. The present Japanese food aid policy, on the contrary, still fulfills in the very first place the function of a "safety valve" for the domestic agricultural problems and in that respect is different from any of the other food

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697 U.S.C. 1731. It should be noted that section 401 (a) continues "unless the Secretary of Agriculture determines that some part of the supply thereof should be used to carry out urgent humanitarian purposes of this Act". This sentence was added by section 1204 of the Food and Agriculture Act of 1977 (Public Law 95-113; 91 Stat. 956).

70WALLERSTEIN, 1980, 73-4.

2.1.2 Food aid as an instrument for the promotion of agricultural exports

Closely linked with the use of food aid as an instrument for surplus disposal, is its use as an instrument for the promotion of agricultural exports. It seems only logical that when facing important non-exportable surpluses, an effort will be made to create new or develop existing export markets. In the context of such an effort to promote agricultural exports, food aid can play a very useful role. It can be used to literally flood a given export market with supplies on concessional terms pushing competing food exporters of the market and creating a liking among the population for the product supplied. As I already mentioned above, the FAO Principles of Surplus Disposal agreed upon in 1954 in the wake of the adoption of PL 480 and supervised by the Sub-Committee on Surplus Disposal were intended to minimize such conflicts among exporting countries, but questions must be raised as to how successful the Principles have been in avoiding market 'stealing'. The United States has from the very beginning of the PL 480 programme onwards made use of its food aid in this sense. Note that the full title of PL 480 is the 'Agricultural Trade Development and Assistance Act of 1954'. Section 2 of PL 480, already quoted above, explicitly stipulates that it is one of the objectives of the American food aid policy "to expand international trade", and in particular "to develop export markets for the United States agricultural products". In the same provision, it is stipulated that the President in furnishing food aid shall "give special consideration to the potential for expanding markets for America's agricultural abundance abroad in the allocation of commodities or concessional financing". Section 103 (f) requires of the President when supplying Title I food

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72CLAY, 1985, 50. Clay notes a close association between fluctuations in food aid allocations and the overall net trade position for rice, which suggests that the determination of the overall annual allocations for cereal food aid has been powerfully influenced by short-run agricultural trade policy considerations (CLAY, 1985, 47.).

73Part of the sentence added to section 2 by section 201 of the International Development and Food Assistance Act of 1975, Public Law 94-161 (89 Stat. 850).
aid "[to] give consideration to the development and expansion of markets for United States agricultural commodities and local foodstuffs by increasing the effective demand for agricultural commodities through the support of measures to stimulate equitable growth in recipient countries, with appropriate emphasis on developing more adequate storage, handling, and food distribution facilities". Section 107 (a) stipulates that "It is [...] the policy of the Congress to stimulate and maximize the sale of United States agricultural commodities for dollars through private trade and to further the use of private enterprises to the maximum, thereby strengthening the development and the expansion of foreign commercial markets for United States agricultural products. [...]". Section 404 (a) of PL 480 stipulates that "the programmes of assistance conducted under this Act, and the types and quantities of agricultural commodities to be made available, shall be directed in the national interest towards the attainment of humanitarian and developmental objectives as well as the development and the expansion of United States and recipient countries agricultural commodity markets". It cannot but be observed that the United States have been very successful in doing so. The export of wheat, for instance, increased from 216.7 million bushels in 1953 to 856.1 million bushels in 1963 and 1,148.7 million bushels in 1973. Quite understandably, the

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74 7 U.S.C. 1703. Section 103 (f) was amended and restated by section 201 of the International Development Cooperation Act of 1979, Public Law 96-53 (93 Stat. 368). It formerly read as follows: "give special consideration to the development and expansion of foreign markets for United States agricultural commodities, with appropriate emphasis on more adequate storage, handling, and food distribution facilities as well as long-term development of new and expanding markets by encouraging economic growth".

75 7 U.S.C. 1707.

76 7 U.S.C. 1734.

77 *Contra:* Lappe and Moore suggest that it was only at the end of the fifties when it became clear that merely responding to food aid requests was not enough to lower the stocks (the US had in 1959, 1960 and 1961 its highest carry-over stocks ever), that US policy makers decided to take an active role in creating markets (LAPPE/COLLINS, 1977, 286). The market development objectives was, however, already a stated objective in Public Law 480 as originally adopted in 1954.

78 WALLERSTEIN, 1980, 12-3. Other factors have undoubtedly contributed to this dramatic increase in US wheat exports but it is generally recognized that food aid played an instrumental role. Krupadanam notes that "[...] the increase in commercial sales [...] can be contributed largely to the 'spill-over' effect of surplus disposal. In other words, the US captured the market of erstwhile major recipients under PL 480 [...]" (KRUPADANAM, 1985, 62.).
American food aid policy has been referred to as "the best thing that ever happened to the [American] wheat industry." This success is partly due to the fact that PL 480 was able to create markets for (American) wheat among the world's original rice consumers. It taught people to eat wheat who did not eat it before. In 1974, in testimony before the Senate Foreign Relations Committee, former Secretary of Agriculture Orville Freeman noted not without pride that "In the last seven years, [US] agricultural exports to Taiwan have climbed by 531% and those to [South] Korea by 643% because we created a market" and he added that PL 480 therefore "makes very good sense." Whenever the President or Congress questioned the effectiveness of the food aid programme, the U.S. Department of Agriculture, Congressmen from agricultural states and agricultural lobbyists, in defence of the programme, never failed to point at these impressive results of food aid in the field of market creation and market development.

US food aid was, however, not merely used for the creation of new markets by changing eating habits; it cannot be but observed that "[...] l'implantation dans des pays comme le Nigèria au détriment des Britanniques ou comme l' Algérie au détriment des Français, est tout à fait significative et remarquable." Europe has lost a significant part of its traditional export markets and American food aid has been instrumental in this market 'stealing'. The share of the United States in the Third World wheat market was in the period 1949-54 36%; by 1969-70 this share

79LAPPE/COLLINS, 1977, 287.
80LAPPE/COLLINS, 1977, 287.
81WALLERSTEIN, 1980, 148.
82VIGUIE, 1979, p 89; see detailed description of this in GEORGES, S., Comment meurt l'autre moitié du monde?, Paris, 1978. Note that the U.S. Department of State initially opposed the PL 480 programme on the grounds that it might cause some repercussions in international trade and hence strain relations with allies that are affected by such the food aid operations (KRUPADANAM, 1985, 60.).
83To reconquer part of the Egyptian market lost because of massive US food aid imports, the Community decided in 1984 on a special export refund. See also HOUSE OF LORDS, Report on 'Agricultural Trade Policy', Select Committee on the EC, Session 1981-82, 2nd Report.
Note, however, that according to Hopkins and Puchala, few cases of blatant market 'stealing' have occurred (HOPKINS, R. and PUCHALA, D., Global Food Interdependence: Challenge to American Foreign Policy, New York, 1980, 80.).
Constraints on realizing the potential role of food aid

had increase to 51%. Section 103 (f) of PL 480 explicitly requires the President "[to] take steps to assure that the United States obtains a fair share of any increase in commercial purchases of agricultural commodities by the purchasing country and that commercial supplies are available to meet demands developed through programmes carried out under this Act".

Market development is also one of the stated policy objectives of the Canadian food aid programme. Another clear-cut example of the use of food aid as an instrument of market creation is given by the Swiss dairy food aid policy.

2.1.3 Food aid as a justification for surplus production

In so far as agricultural surpluses can be disposed of as food for the hungry of the world, these surpluses may, in the eyes of many, appear to be quite welcome and even necessary. As such, the objective of a food aid policy may be to justify food production at levels unwarranted by domestic demand and commercial exports. The food aid policy then provides an alibi for a surplus producing agricultural policy.

This is certainly the case for the United States food aid policy. Section 2 of PL

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55 U.S.C. 1703. It should perhaps also be observed that section 103 (c) and (n) and section 107 (b) require that United States food aid does not displace any sales of American agricultural commodities (on commercial terms) which otherwise would be made.

56 WALLERSTEIN, 1980, 81.

Section 480 stipulates inter alia that in furnishing food aid, the President shall "give appropriate recognition to and support of a strong and viable American farm economy in providing for the food security of consumers in the United States and throughout the world". Section 39 (b) of Public Law 93-189 stipulates that "in making assessments which would affect or relate to the level of domestic production, the Executive Branch should include in the estimates of overall utilization the expected demands for humanitarian food assistance through such programmes as are carried out under the Agricultural Trade Development and Assistance Act of 1954 (Public Law 480)."

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*U.S.C. 1691. This part of section 2 was added by section 201 of the International Development and Food Assistance Act of 1975, Public Law 94-161 (89 Stat. 850).*

*Section 39 (b) of Public Law 93-189 (87 Stat. 714).*
2.2 The promotion of foreign policy interests other than Third World development and humanitarian relief

The promotion of domestic agricultural interests, while initially undoubtedly the predominant objective of the food aid policy of most donors, is, however, not the only 'other' possible policy objective. As already indicated above food aid has been in the past and is at present used to promote the foreign policy interests of the donor country. Leaving aside its use as an instrument for economic and social development and its use as an instrument for humanitarian relief, food aid can be used to this end in basically three ways: firstly, by being an instrument for diplomatic leverage; secondly, by being an instrument of support of friendly regimes; and thirdly, by being an instrument for positive image building.

2.2.1 Food aid as an instrument for diplomatic leverage

Since food is high in demand and short in supply, it is obvious that food aid - the supply of food at concessional terms - can be used as an instrument for diplomatic leverage and this in two ways: either as a 'carrot' or as a 'stick'. It is clear that, on the one hand, offering food aid can for food destitute developing countries be a very strong incentive to reinforce certain 'desirable behaviour' patterns (food aid as a 'carrot'); on the other hand, however, withdrawing food aid (or threatening to withdraw) can be a dreaded political sanction for behaviour considered hostile...
to the donor's interests (food aid as a 'stick').

United States food aid legislation explicitly stipulates in Section 2 of PL 480 that food aid is intended "to promote [...] the foreign policy of the United States". This goal to promote United States foreign policy interests by using food aid as a 'carrot' or 'stick' appears very clearly in a number of substantive PL 480 provisions. Section 103 (d) limits the supply of Title I food aid to countries classified as 'friendly' and as such explicitly excludes food aid to "countries [...] dominated or controlled by a foreign government or organization controlling a world Communist movement". The same provision excludes Title I food aid to any country which is (a) an aggressor, in a military sense, against any country having diplomatic relations with the United States, or (b) using funds, of any sort, from the United States for purposes inimical to the foreign policies of the United States. Also excluded is the supply of Title I food aid to countries with whom the United States has no diplomatic relations. Section 112 of PL 480 prohibits, with some qualifications, food aid to any country which "engages in a consistent pattern of gross violations of internationally recognized human rights". Section 411 of PL 480, finally, excludes explicitly any Title I and III food aid to Vietnam. It must be noted, however, that the PL 480 provisions excluding countries from food aid have on the whole become less severe in recent years. Until 1981, PL 480 excluded for example Title I food aid to any country or area dominated by a Communist government and until 1977, it excluded from Title I food aid any country which sold or furnished or permitted ships or aircraft under its registration

92WALLERSTEIN, 1980, 122.

97 U.S.C. 1691.

96 U.S.C. 1703. Congressman C. Hope said in 1954 during the debate on PL 480: "With proper use these surpluses can be made a far more potent weapon of combating the spread of Communism than the hydrogen bomb" (quoted by LAPPE, 1987, 97.).

95Section 103 (j), 7 U.S.C. 1703.


97 U.S.C. 1736e.
to transport to or from Cuba or North Vietnam any equipment, materials, or commodities so long as they were governed by a Communist regime.\textsuperscript{*}

Of a different nature but also clearly intended to influence the domestic policy of the recipient country, is section 103 (r) which requires the President when supplying Title I food aid "[t]o give favourable consideration in the allocation of commodities [...] to countries promoting the private sector through the use in Section 108".\textsuperscript{7} This means in fact that countries adhering to the 'American', free enterprise economic model may count on preferential treatment in the allocation of United States food aid.

Discretion often being a condition for its efficient use as an instrument for diplomatic leverage, food aid donors including the United States have as a rule been quite discrete about the use made of food aid to influence the domestic and/or foreign policies of a food destitute country. Nevertheless, the food aid literature reports quite a number of good illustrations of such use in particular by the United States.

In 1974, for example, the United States refused - despite the threat of mass starvation - to give any further food aid to Bangladesh until the latter had cancelled a sale of $3 million worth of jute sacks to Cuba.\textsuperscript{100} In the mid-sixties, one of the conditions attached to United States food aid to India was a drastic change in the Indian government's policy regarding the regulation of companies owned by foreign interests. Furthermore and more specifically the United States

\textsuperscript{*}Section 103 (d) consequently amended by section 401 (3) of the International Security and Development Act of 1981 (Public Law 97-113; 95 Stat. 1537) and by section 201 (b) of the International Development and Food Assistance Act of 1977 (Public Law 95-88; 91 Stat. 545).

\textsuperscript{7}7 U.S.C. 1703. Section 108 provides for the possibility for loans for private enterprises in order to foster and encourage the development of private enterprise institutions and infrastructure. This section was added by section 1111 (h) of the Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1476). Section 2 of PL 480, quoted above, stipulated already that one of the objectives of the food aid policy was to foster and encourage the development of private enterprise in developing countries.

\textsuperscript{100}ROTHSCHILD, E., 'For Some a Feast of Crumbs', \textit{New York Times}, 10 January 1977, 21. The refusal of food aid was based on section 103 (d) of PL 480 which was consequently amended by section 201 (b) of the International Development and Food Assistance Act of 1977 (Public Law 95-88; 91 Stat. 545).
Introduction

demanded that, henceforth, foreign (read American) fertilizer companies, and not the Indian government, be given full control over product pricing and distribution so that production could be moved onto a profitable basis.\textsuperscript{101} The Indian government, confronted with a sizeable food deficit, had no choice but to accept these conditions and it changed its policy. It has been well documented that in the early seventies, food aid was used as part of a larger campaign to put pressure upon - if not to overthrow - the Allende regime in Chile.\textsuperscript{102} Four less well known examples of the use of food aid as an instrument of diplomatic leverage are the suspension of all food aid to Jamaica in 1974 after this country had abruptly raised the prices of bauxite exports to the United States and fear rose that American aluminium investments might be expropriated\textsuperscript{103}, the suspension of all aid to Peru between 1969 and 1974 in reaction to the nationalization of a U.S. oil company\textsuperscript{104}, the temporary suspension in 1976 of food aid to Tanzania and Guyana after these countries voted in the United Nations to condemn Zionism as Racism and had criticized the U.S. foreign policy vis-a-vis Korea\textsuperscript{105}, and the holding up in 1985 of food aid shipments to Kenya until the government of the latter country agreed to let the private sector distribute the food\textsuperscript{106}. Finally, one cannot but note in this context the massive American food aid deliveries to Egypt which are clearly intended to give the United States some grip on Egyptian foreign policy.\textsuperscript{107}

\textsuperscript{101}WALLERSTEIN, 1980, 151.

\textsuperscript{102}WALLERSTEIN, 1980, 156-7. Chile - accustomed to large American food aid deliveries - was denied all but a small quantity of Title 2 food aid.

\textsuperscript{103}HOPKINS/PUCHALA, 1980, 87.

\textsuperscript{104}LAPPE, 1987, 99.


\textsuperscript{107}CATHIE, \textit{Intereconomics}, 1982, 84. See also KRUPADANAM, 1985, 68; and HOPKINS/PUCHALA, 1980, 88-89. In 1974, Kissinger arranged substantial amounts of PL 480 aid in return for which the Egyptians were expected to reopen diplomatic relations with the United States and work towards disengagement with Israel and a solution to the Middle East conflict, based on American rather than Soviet resources and good offices (HOPKINS/PUCHALA, 1980, 89.).

42
2.2.2 Food aid as an instrument of support to friendly regimes

Closely related to the use of food aid as an instrument for diplomatic leverage is its use as a means of support of friendly regimes. Since the lack of adequate food supplies, or supplies at prices too high for the poorer sections of the population is often a main cause of political unrest and destabilization of a regime, regimes which are favourable to donor policies may be kept in power by food deliveries. At the same time, it may help these regimes to finance their fight against internal or external forces which endanger their existence and often the interests of the donor country. United States food aid legislation and more in particular section 103 of PL 480 explicitly provides for the possibility to use food aid to that aim. Section 103 stipulates that Title I food aid can be supplied "to assist friendly countries to be independent of domination or control by any world Communist movement". A glance at the top five recipients of United States food aid in the period 1954-79 reveals that United States food aid has indeed used food aid in support of friendly regimes. The list of top recipients includes countries which one could not possibly consider to be among the more needy developing countries.

A very well known and often cited example of the use of food aid in support of friendly regimes are the massive American food aid supplies to South Vietnam during the Vietnam war. Between 1968 and 1973, South Vietnam alone received twenty times the value of food aid the five African countries most affected by

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108 It is important to know that PL 480 food aid programmes are not subject to Congressional approval. Food aid has thus been used by several Presidents as a handy tool for supporting certain regimes against the will of Congress.

109 FOLEY, M.W., Food for Peace: the Logic of Schizophrenic Policy (not published), 1982, 13: in the period 1954-1979 the main US food aid recipients were: India ($5,768.8m), S. Korea ($1,911.7m), Pakistan ($1,890.4m) Egypt ($1,836.0m), Indonesia ($1,511.6m), S. Vietnam ($1,464.5m), Yugoslavia ($1,000) USDA (See Food for Peace 1979 Annual Report on PL 480, USDA, Washington D.C. 1979, Table 2); for more recent data: see LAPPE, 1987, 98.

drought received during the same period.\textsuperscript{111} In 1973, almost half of all U.S. food aid went to South Vietnam and Cambodia.\textsuperscript{112} This use of food aid "[to preserve] puppet regimes" rather than "the lives of millions of people" was severely criticized also by the United States Congress which in 1974 amended PL 480 so as to require that no more than 30\% of all Title I food aid would go to countries not on the United Nations' list of most seriously affected countries.\textsuperscript{113} This did not prevent the Reagan Administration to supply very considerable amounts of food aid to El Salvador, by no means a low-income country, to support the 'war effort' in that country. Between 1982 and 1985, \$187 million in PL 480 food aid was shipped to the government of El Salvador which was well over four times as much food aid per capita as the U.S. government sent to the whole of drought-stricken Africa over the same period.\textsuperscript{114}

\subsection*{2.2.3 Food aid as an instrument for international image building}

For obvious reasons, industrialized countries are very keen on building goodwill among development countries and their population. Food aid is a useful instrument in this respect. Who would not be 'grateful' to the donor of much needed food? United States food aid for example is granted with this aim of positive image building in mind. This appears clearly from section 103 (1) of PL 480 which requires the President, when supplying Title I food aid "[to] obtain commitments from purchasing countries to publicize widely to their people, by public media and other means, that the commodities are being provided on a concessional basis through the friendship of the American people as food for

\begin{itemize}
\item \textsuperscript{111}LAPPE/COLLINS, 1977, 337.
\item \textsuperscript{112}LAPPE/COLLINS, 1977, 292.
\item \textsuperscript{113}WALLERSTEIN, 1980, 16. On 4 December 1974, Senator M. Hatfield decried on the Senate floor a 'food aid policy' where "preserving puppet regimes is more important [...] than preserving the lives of millions of people".
\item \textsuperscript{114}LAPPE, 1987, 100.
\end{itemize}
peace.\footnote{7 U.S.C. 1703. The requirement to identify Title I food aid at the distribution or sale location as being provided on a concessional basis "through the generosity of the People of the United States of America" was struck out by section 401(4) of Public Law 97-113 (95 Stat. 1537).}
The purpose of this study

As most food aid donors, the European Community claims that its food aid policy aims at contributing to the economic and social development of the recipient countries and at mitigating human suffering caused by food shortages resulting from natural and man-made disasters. The Community even claims that these are the sole objectives of its food aid policy.

The purpose of this study of European Community food aid policy and law is to determine, first, whether Community food aid really was and is an instrument for economic and social development and humanitarian relief and, second, to which extent Community food aid law may still be subject to changes that will allow Community food aid to become an (even) more effective instrument for economic and social development and humanitarian relief.

As I observed above, food aid policies usually also pursue - albeit sometimes without explicitly stating so - objectives other than economic and social development and humanitarian relief. I also noted that the pursuit of these other objectives may - and often will - constitute a constraint on realizing the potential role of food aid in the fight against world hunger. Whether food aid is an effective instrument for economic and social development and humanitarian relief, or in other words, whether and to which extent a food aid policy meets the policy requirements referred to above, very much depends on the relative 'strength' of the various objectives pursued by the donor and the compromise reached between them.

To determine whether Community food aid was and is an effective instrument for economic and social development and humanitarian relief, I will examine whether Community food aid policy and law met and meet these policy requirements referred to above. To determine to which extent Community food aid law may
still be subject to changes that will allow Community food aid to become an (even) more effective instrument for economic and social development and humanitarian relief. I will need to examine why the above mentioned policy requirements were or are not met, or in other words, whether and to which extent the Community also pursued or pursues objectives other than economic and social development and humanitarian relief.

The study is divided in three chapters in which past and present Community food aid policy and law are analyzed and which lead up to a conclusion in which the scope for and constraints on further changes in Community food aid law are examined. The first chapter deals with Community food aid policy and law during the period 1969-1976. I will show that during this period the disposal of unplanned agricultural surpluses was definitely the primary objective of the Community's food aid policy while the economic and social development of the recipient countries, humanitarian relief and possibly also other objectives had - if any - only a secondary importance. The second chapter deals with Community food aid policy and law during the period 1977-1982. During this period, the balance of compromise slowly started to shift in favour of the developmental and humanitarian objectives and I will attempt to explain how this came about. The third and last chapter deals with Community food aid policy and law during the period 1983-89. During this period, economic and social development and humanitarian relief became ever more the primary objectives of the Community's food aid policy, but I will show that these objectives - contrary to what the Community claims - are not the sole objectives pursued.'

In the conclusions of this study, I will examine the scope for and constraints on changes in the substantive and procedural elements of Community food aid law.
Chapter 1:

The European Community food aid policy during the period 1969-76: the disposal of unplanned agricultural surpluses as the primary policy objective
Introduction to Chapter 1

When the European Community first supplied food aid to developing countries in 1969, this was all but the result of a carefully planned, well-conceived policy initiative to contribute to the economic and social development of developing countries or to give humanitarian relief to disaster victims. On the contrary, Community food aid ensued from two ad hoc decisions forced upon the Community to ease respectively international and domestic agricultural surplus problems. This beginning profoundly marked Community food aid policy and law until the early eighties. In this chapter I will examine the Community food aid policy during the period from its inception until the late seventies. In a first section, I will analyze the origins of the Community food aid policy and explain consequent policy developments, and in particular the 1974 Commission Memorandum on Food Aid Policy. In a second section, I will delineate and evaluate the main features of Community food aid policy and law during the period 1969-76.
The origins and early years of the Community food aid policy

2.1 The origins of Community food aid to developing countries

2.1.1 The 1961 Cépède study: a preliminary study which did not result in the setting up of a Community food aid policy

The idea of supplying Community agricultural products on non-commercial terms to developing countries, i.e. the idea of supplying food aid, emerged for the first time in the early sixties, soon after the Community had started with the gradual establishment of its common agricultural policy. At the request of the Commission's Directorate-General for Agriculture, a group of agricultural experts under the direction of Prof. M. Cépède undertook in 1961 a study on the problems and possibilities of Community aid to developing countries through the supply of surplus agricultural products. It should be observed that in 1961 large structural surpluses of agricultural products were for the Community - unlike for the United States - a problem still unknown. The emergence of such surpluses, however, had in the light of the steadily unfolding common agricultural policy to be reckoned with and the Commission wanted to have an idea of what it could do with these surpluses once they would be a fact of life. Therefore, the Cépède-group was asked to investigate the possibility and the limits of increased supplies of agricultural products to developing countries. On comparing the actual food consumption in the developing countries with the total minimum food needs, based on the minimum nutritional requirements for sustaining human life, the Cépède-study noted that there was in fact a very important food deficit in the developing countries.

1 CEPEDE, M., e.a., Hulp van de Europese Economische Gemeenschap aan ontwikkelingslanden door levering van voedingsmiddelen: problemen en mogelijkheden, Europese Commissie Studies, Serie Landbouw No 14, Brussel, 1963. The country studies on which the final conclusion of the study was based were finished in 1961. The study was, however, only published in 1963. In 1965, the study was published in English under the title: Food Aid from the EEC to Developing Countries: Problems and Possibilities.

2 CEPEDE, 1963, 11.
countries. Moreover, long term calculations on the basis of the minimum physiological needs and the expected increase in population showed that the demand for food would increase dramatically in the years to follow. It was thought that only part of the existing as well as expected shortfall in food would be covered by an increased domestic production. To cover the rest, the food deficit developing countries would be dependent on supplies from surplus producing countries. The Cépède-study showed, however, that primarily due to the lack of purchasing power, the possibility for commercial supplies of surpluses was in fact rather limited. The possibilities for supplies of food surpluses to developing countries were therefore mainly of a non-commercial nature, i.e. sales on credits with payment to be made over very long periods and with interest rates below commercial rates, sales for the currency of the recipient country, sales with rebates or, to give a last example, simple grants. Unlike possibilities for commercial supplies, these possibilities for non-commercial supplies were very considerable and could - so the Cépède-study forcefully argued - apart from constituting a welcome outlet for the Community's imminent agricultural surpluses of cereals, milk products and sugar, also make a substantial contribution to the overall economic development of the recipient country, provided of course the recipient country took the right kind of complementary measures. In spite of the Cépède-study's favourable findings on the possibility of Community aid to developing countries through the supply of surplus agricultural products and the pinching need of developing countries for such aid no decision to set up a Community food aid policy was taken in the wake of the study. The reason for this was as simple as it was indicative with regard to the Community's primary motivation for having a food aid policy. As far as cereals were concerned, the Community did indeed - as foreseen - become more than self-sufficient in wheat in 1963. During the next four years, however, no serious surplus problem occurred because the wheat surplus could - somewhat unexpectedly - be exported on commercial terms to mainly

\[\text{CEPEDE, 1963, 29.}\]
The origins of Community food aid

Eastern European countries. No cereal food aid operation was set up because there was 'no need' for such an operation. Only from the marketing year 1967-68 onwards, when the Community lost much of these Eastern European export markets due to the worldwide bumper crop of 1967, the Community was confronted with a serious wheat surplus problem. At that time, however, it had - for different reasons than the disposal of a domestic surplus - already committed itself to supply food aid in the form of cereals but this will be discussed in greater detail below.

As far as dairy products are concerned, it must be noted that there were throughout the sixties increasingly important surpluses of milk and milk products, especially butter. The Community or its Member States were until 1969, however, able to handle the problems these surpluses presented by taking other measures of surplus disposal. The same was true for sugar. In spite of its positive conclusions as regarded the setting up of a Community food aid policy, the Cépède-study did not result in the setting up of such policy because until the late sixties there was, from a common agricultural policy point of view, as opposed - it should be noted - to a development country point of view, no need for food aid operations.

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2.1.2 The origins of Community food aid in cereals: a concession to the United States in the Kennedy Round negotiations on trade in agricultural products

From the establishment of its present food aid programme in 1954 until the late sixties, the United States was virtually the only donor of food aid to developing countries. The table below clearly illustrates that even as late as 1965 the quantities of food aid given by the other developed countries were negligible.

<table>
<thead>
<tr>
<th></th>
<th>'000 t</th>
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<th>'000t</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S.</td>
<td>1,221</td>
<td>96</td>
<td>1,234.4</td>
<td>94.1</td>
</tr>
<tr>
<td>Canada</td>
<td>47</td>
<td>4</td>
<td>57.3</td>
<td>4.4</td>
</tr>
<tr>
<td>EC countries</td>
<td>4</td>
<td>-</td>
<td>6.4</td>
<td>0.5</td>
</tr>
<tr>
<td>Japan</td>
<td>-</td>
<td>-</td>
<td>0.3</td>
<td>-</td>
</tr>
<tr>
<td>Others</td>
<td>5</td>
<td>-</td>
<td>12.9</td>
<td>1.0</td>
</tr>
<tr>
<td>Total</td>
<td>1,277</td>
<td>100</td>
<td>1,311.3</td>
<td>100.0</td>
</tr>
</tbody>
</table>

The United States carried this burden neither lightly nor willingly. In the fifties, it saw, however, little alternative to this role of prime, if not sole, food aid donor. Most other developed countries were still trying to rebuild their economy after the devastation of the World War and were therefore either incapacitated or indisposed to grant food aid to developing countries. Some of them were still recipients of food aid themselves. Furthermore, the United States was, as the largest cereal exporter, more than any other country concerned with the stability on the world cereal market. To assure some degree of stability, however, it was obliged to keep very considerable quantities of surplus wheat, produced by its farmers, of the world market. Unable to storage these huge un-exportable

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8WALLERSTEIN, 1980, 165.

9E.g. Federal Republic of Germany and Japan.

10PAROTTE, 10.
The origins of Community food aid

surpluses for very long, the United States disposed of them *inter alia* by supplying them as food aid to food deficit developing countries.

In the early sixties, however, the situation had changed in several respects. First of all, Western European countries had fully recovered from the devastations of the World War; their agriculture, and especially the agriculture of the Member States of the European Community, produced surpluses which were being sold on the world market. Secondly, the huge agricultural surpluses the United States was struggling with in the fifties and which had resulted in considerable food aid supplies, gradually gave way to more limited surpluses due to changes in the domestic agricultural policy and the opening up of new export markets. Thirdly, it became clear that the developing countries’ need for food aid was very significant and would - in view of the Third World’s population increase - most definitively become even more important in the future.

In view of these changed circumstances, it was hardly surprising that the United States from the early sixties onwards started to urge other developed countries to share the food aid burden and put the food aid issue on the agenda of the Kennedy Round Trade Negotiations. The main objective of the Kennedy Round Trade Negotiations (1964-67) was to come to an overall reduction of tariffs and to overcome as many constraints on free international trade as possible. The scope of the negotiations, as defined by the GATT Ministerial Conference of May 1963, was very broad. Not only trade in industrial products but also trade in raw materials and agricultural products were subject to negotiation. With regard to the latter, there was in the early sixties a general feeling that it was time to finally come to a better organisation of the world market in agricultural products, which had always been characterised by a very high degree of protectionism and state intervention. The United States was particularly worried about the impact the unfolding common agricultural policy might have on American agricultural exports to Europe. In fact, the United States repeatedly made it very clear that the success of the Kennedy Round depended on European Community concessions in
the field of agriculture. Consequently and with the aim to preserve its newly established common agricultural policy, the European Community made a number of far-reaching proposals for international agreements on the trade in cereals, beef, dairy products and sugar. Already at a fairly early stage of the negotiations, however, it became clear that on most problems related to trade in agricultural products the views were too far apart to come to an agreement. If any agreement in this field could be reached, it would be with regard to trade in cereals. One of the main issues in the negotiations on an agreement on the trade in cereals concerned the problem of how to guarantee that grain production in excess of an agreed ratio of self-sufficiency would not enter commercial markets. It is clear that one way of guaranteeing this would be by requiring these surpluses to be disposed of as food aid to developing countries. On 25 March 1965 already, the Contracting Parties adopted a Statement in which the possibility of disposing surpluses in favour of needy developing countries was recognized. During the discussions on this statement, however, profound disagreement as to the primary objective of food aid had emerged. On the one hand, there were some countries - such as Australia, Canada and to some extent Argentina - which saw food aid primarily as development assistance and they wanted this aspect to be stressed. On the other hand, there were countries - such as the United States, the United Kingdom and Japan - which saw food aid primarily as a regulating element in agricultural trade, a cheap and useful instrument for disposing of surpluses.

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11PREEG, Traders and Diplomats - an Analysis of the Kennedy Round, 1970, 144.
12Bull. EC 1-1968/24-25.
dangerous to world trade. In the two years of negotiations that followed the declaration mentioned above, these differences on the primary objective of food aid could not be overcome. At the very end of the negotiations, however, and as part of the package deal concluding the Kennedy Round, the participants to the Round, including the Community, were nevertheless able to come to an agreement on the basic elements of an international agreement on the trade in cereals which provided inter alia for the supply of considerable quantities of cereals as food aid to developing countries. This agreement, the so-called 'Mémorandum d'accord sur les éléments de base pour la négotiation d'un arrangement mondial sur les céréales', was, as its title suggests, not itself the agreement on trade in cereals the participants to the Kennedy Round sought to conclude. With insufficient time left anyway, it was deemed more appropriate to conclude such an agreement on international trade in cereals under the auspices of the United Nations Food and Agriculture Organisation. Article 1 of the Memorandum of Agreement therefore stipulated that the parties to the Memorandum, including the Community, would convene as soon as possible an international conference to negotiate and conclude an international arrangement on cereals comprising the provisions contained in Article 2 of the Memorandum. As far as food aid to developing countries was concerned, the relevant provision was Article 2 (V) which stipulated:

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16 SCHUMACHER, H., Die Nahrungsmittelhilfe der Europäischen Gemeinschaft: Entstehung, System und Rechtsgrundlagen, Baden-Baden, 1980, 45. The position of the European Community was not very clear but somewhere between the two other positions.

17 During the session of 13-17 March 1967 of the European Parliament, Mr. Rey, member of the Commission, said during the debate on the Kennedy Round Trade Negotiations that: "Whatever the outcome of the Kennedy Round, we shall not be able to say that [...] we have solved the problem of food aid from the rich countries to the poor" (Bull. EC 5-1967/57).

18 Mémorandum d'accord sur les éléments de base pour la négotiation d'un arrangement mondial sur les céréales, Annexe C de l'Acte Final du 30 juin 1967, J.O. 1968, L 305/9. The Memorandum was concluded, as a mixed agreement, by the Member States as well as by the Community. The latter concluded the Memorandum on the basis of Articles 111, 114 and 228 of the Treaty. In the negotiation mandate given by the Council to the Commission (Décision du Conseil CEE du 9 mai 1963, J.O. 1963, p. 1929) food aid is not mentioned. Point 4 of the mandate, however, stipulated: "La Commission considère qu'aucun des éléments susceptibles d'affecter l'équilibre des marchés agricoles mondiaux ne devrait être exclu a priori de la négociation".

59
1. Les pays parties au présent accord sont convenus de fournir à titre d'aide alimentaire aux pays de développement, du blé, des céréales secondaires ou l'équivalent en espèces, pour en total de 4,5 million de tonnes métriques par an. Les céréales entrant dans le programme devront être propres à la consommation humaine et d'un type et d'une qualité acceptables.

2. La contribution minimum de chaque pays partie au présent accord sont fixée comme suite:

<table>
<thead>
<tr>
<th>Pour cent</th>
<th>Milliers de tonnes métriques</th>
</tr>
</thead>
<tbody>
<tr>
<td>Etats-Unis</td>
<td>42,0</td>
</tr>
<tr>
<td>Canada</td>
<td>11,0</td>
</tr>
<tr>
<td>Australie</td>
<td>5,0</td>
</tr>
<tr>
<td>Argentine</td>
<td>0,5</td>
</tr>
<tr>
<td>C.E.E.</td>
<td>23,0</td>
</tr>
<tr>
<td>Royaume-Uni</td>
<td>5,0</td>
</tr>
<tr>
<td>Suisse</td>
<td>0,7</td>
</tr>
<tr>
<td>Suède</td>
<td>1,2</td>
</tr>
<tr>
<td>Danemark</td>
<td>0,6</td>
</tr>
<tr>
<td>Norvège</td>
<td>0,3</td>
</tr>
<tr>
<td>Finlande</td>
<td>0,3</td>
</tr>
<tr>
<td>Japon</td>
<td>5,0</td>
</tr>
</tbody>
</table>

While agreement was reached on the food aid commitments to be undertaken by each of the parties, the disagreement on the primary objective of food aid was not surmounted. Consequently, Article 2 (V) remained silent on this point.

Pursuant to Article 1 of the Memorandum of Agreement, the parties to the Memorandum organized a few months after the conclusion of the Kennedy Round an international conference in Rome under the auspices of the United Nations Food and Agriculture Organisation to work out the agreement in trade in cereals referred to above. On 18 August 1967, this resulted in the 'International Cereals Arrangement of 1967'. This International Cereals Arrangement consisted of two

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19°L'Arrangement international sur les céréales de 1967, J.O. 1970, L 66/2. The Arrangement was concluded, as a mixed agreement, by the Member States as well as by the Community. The latter concluded the Arrangement on the basis of Article 113, 114 and 228 EEC (Décision du Conseil du
distinct legal instruments: the 'Wheat Trade Convention' and the 'Food Aid Convention'. The latter Convention, which basically comprised the provisions of Article 2 (V) of the Memorandum of Agreement, supplemented with some institutional and technical provisions, committed the Community to the supply of annually 1.035 million tonnes of cereals as food aid to developing countries. While the Convention - just like Article 2 (V) of the Memorandum - remains silent on the objectives of the food aid supplied under it, it is clear from the context in which it was originally negotiated and from the fact that was an integral part of the International Grains Arrangement, that the Convention was in the first place - and certainly in the eyes of its promoter, the United States - an agreement on the sharing of the burden of surplus disposal. To the extent that other countries diverted excess production to food aid, the programme would make room for commercial (U.S.) imports and reduce the pressures on export markets.20 The disposal of surpluses in support of the commercial cereals market was without any doubt "die gedachtliche Grundkonzeption der Abkommenstruktur".21 The Food Aid Convention was not - and it was not even presented as - a well planned and considered answer to the food shortages in Third World countries.22 While during the Kennedy Round Negotiations the Community could still export its cereal surplus production on a commercial basis and any food aid commitment would have been a politically motivated concession to the United States, the conclusion of the Food Aid Convention coincided with the bumper harvest of 1967 which created also for the Community a cereal surplus problem. At the end of the agricultural year 1967/68, the Community was confronted with 2.8 million tonnes


22INSTITUUT VOOR SOCIAAL-ECONOMISCHE STUDIE VAN MINDER ONTWIKKELDE GEBIEDEN (hereinafter ISMOG), Studie Voedseihulp Europese Gemeenschappen, Amsterdam, 1976, Bijlage, 2.
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cereals which could not be exported on a commercial basis.\textsuperscript{23} The 'obligation' under the Food Aid Convention to supply annually 1,035,000 tonnes of cereals to developing countries was therefore quite welcome and a very useful supplement to the other main surplus disposal instrument, namely the denaturing of cereals into animal feed.\textsuperscript{24} If there had been no Food Aid Convention, it is quite likely that the Community - in view of its domestic cereal surplus problem - would have started at the end of the sixties to supply food aid in cereals on a unilateral basis.

The Community supplied its first food aid in cereals in January 1969 to Turkey to help the victims of an earthquake.\textsuperscript{25}

2.1.3 The origins of food aid in dairy products: food aid as a solution to domestic surplus problems

Already from the early sixties onwards, the Community was confronted with non-exportable surpluses of dairy products but until the late sixties the Member States had been able to keep the surplus situation under control by measures such as the incorporation into animal feed. When in January 1968 the Commission submitted to the Council its proposal for a regulation on the common organisation of the market in milk and milk products, the imbalance on the milk market and thus the surplus problem had, however, become acute.\textsuperscript{26} In a Memorandum to the Council of 8 March 1968 on 'the establishment of structural equilibrium on the

\textsuperscript{23}The surplus situation got worse very quickly. At the end of 1968/69, the non-exportable surpluses amounted to 6.1 million tonnes (Mitteilungen zur Gemeinsamen Agrarpolitik, 10/1974, 3-5.).

\textsuperscript{24}On the denaturing of cereals into animal feed, see: Règlement (CEE) 172/67 du 27 juin 1967, J.O. 1967, p. 2602.

\textsuperscript{25}Bull. EC 3-1969, 69.

\textsuperscript{26}See: 'Report on the Economic Situation of the Milk Market in the Community', a report submitted to the Council at the same time as the Commission proposal (Bull. EC 5-1967, 7.).
milk market in the medium term', the Commission - while focusing on ways and means to limit the creation of surpluses - examined as one of the solutions to the existing surpluses the possibility of supplying part of them food aid to developing countries.\textsuperscript{27} Discussions with the Food and Agriculture Organization indicated that it might be possible to dispose in 1968/69 of up to 50,000 tonnes of butteroil as food aid, provided that all the transport costs would be borne by the Community.\textsuperscript{28} At the time, the Community had 150,000 tonnes of butteroil in storage and it was expected that these stocks would increase by a further 90,000 tonnes during the 1968/69 marketing year.\textsuperscript{29} In view of this situation, the Council decided at its meeting of 27/29 May 1968 that as soon as possible measures would be taken for the disposal of dairy surpluses as food aid.\textsuperscript{30} In a press communiqué of 22 July 1968, the Council made public that it had requested the Commission - following the latter's call on the Council to consider the supply of dairy food aid to Biafra - to work out a proposal concerning the supply of dairy products as food aid to developing countries.\textsuperscript{31} It took, however, almost a year still before the Council, at its meeting of 21/22 April 1969 under heavy Dutch pressure, agreed in principle on the Commission's proposal to supply dairy products as food aid to developing countries in the context of its surplus disposal policy. In the months which followed, the Council approved - on 17 July 1969 - the first operation of food aid in butteroil, an operation in favour of the World Food Programme (35,000 tonnes), and - on 16 September 1969 - the first operation of food aid in skimmed milk powder, an operation in favour of the World Food Programme (120,000

\textsuperscript{27}Bull. EC 5-1968, 7.

\textsuperscript{28}Bull. EC 5-1968, 7.

\textsuperscript{29}Bull. EC 5-1968, 8.


\textsuperscript{31}SCHUMACHER, 1980, 86. See in this context also EP Written Question 1962/68, J.O. 1968, C 118/3 and EP Written Question 182/68, J.O. 1968, C 120/6 both of MEP H. Vredeling.
tonnes) and the International Committee of the Red Cross (3,000 tonnes). In these first decisions on the supply of food aid in the form milk products the Council was very explicit concerning the link between the food aid operation and the situation of the market in milk products. Council Regulation (EEC) No 1399/69 of 17 July 1969 and Council Regulation (EEC) No 1852/69 of 16 September 1969 stipulated:

considerant qu’il n’est pas possible d’écouler aux conditions normales les quantités supplémentaires de beurre [de lait écrémé en poudre] correspondant à ces stocks pendant la campagne laitière en cours; que, par ailiers, il convient d’éviter la prolongation du stockage en raison des frais qui en résultent;

que la fourniture gratuite de ce produit offre un débouché pour le beurre de stock excédentaire [pour l’écoulement des excédents de lait écrémé en poudre] et évite des frais de stockage pendant plusieurs années;

As was observed by Hanns Schumacher the surplus disposal motivation behind these dairy food aid operations was so obvious that no attempt was made to deny or hide it:

Der äussere Anlass der Milchhilfe ist so offensichtlich, dass Rat und Kommission die binnenmarktpolitische Ausrichtung der ersten Hilfsaktionen auch gar nicht zu verschleiern suchten.

^Règlement (CEE) 1399/69 du 17 juillet 1969 établissant les règles générales relatives à la fourniture de matières grasses du lait au programme alimentaire mondial, recital 5, J.O. 1969, L 237/1. Both regulation were based on the Council regulation on the common organisation of the market in milk and milk products.

SCHUMACHER, 1980, 87.
While the Community’s dairy aid was much welcomed by the World Food Programme and the International Committee of the Red Cross, it is undisputed that:

L’ aide est conçue comme un remède à des difficultés de gestion de la PAC et non comme une contribution au développement des P.V.D.\textsuperscript{36}

When the Commission in March 1970 in view of the urgent requests for dairy food aid from the International Committee of the Red Cross and a number of developing countries proposed to supply 50,000 tonnes of butteroil and 40,000 tonnes of skimmed milk powder, the Council rejected this proposal in the light of the fact that in the spring of 1970 the dairy surplus stocks were decreasing sharply and special disposal measures such as food aid operations were not required.\textsuperscript{37}

\textsuperscript{36}LAURENS, 1976, 15.

2.2 The 1974 Commission Memorandum on Food Aid Policy and its repercussions on the Community’s food aid policy

In 1972 and 1973, continuous drought and other unfavourable weather conditions in many parts of the world resulted in reduced harvests of cereals in a great number of developed as well as developing countries. This led to a sharp and dramatic increase in the demand for cereals on the world market; especially the Soviet Union bought very heavily on the world market. Early 1974, the world cereals stocks had gone down to less that a month’s requirements. High demand and low supply resulted in a doubling and even trebling of the world market price of wheat and maize; prices which could not be paid by the poorest countries, the more because these countries were at the same time also confronted with drastic increases in the price of oil. As an immediate result, there were serious food shortages (and social and political unrest) all over the Third World reaching famine proportions in the Sahel, Ethiopia and Bangladesh; other countries in Asia, Africa and South America came very close to famine. The world was confronted with a food crisis of a seriousness unequalled since the years immediately following the Second World War. United Nations Secretary-General K. Waldheim spoke of a "worldwide emergency".

It is against this dramatic background that the Commission in March 1974 presented to the Council a communication on 'The Food Crisis and the Community’s Responsibilities towards Developing Countries'. In this

\[3^\text{JONES, 1974, 3.}\]

\[3^\text{Food Crisis and the Community's Responsibilities towards Developing Countries, COM (74) 300 final, 1.}\]

\[4^\text{Report on the Proposal from the Commission of the European Communities to the Council (DC.37/74) for a Communication on the food aid policy of the European Economic Community (Rapporteur: Mr Horst SEEFELD), European Parliament Working Documents 1974-1975, Document 171/74, 10.}\]

\[4^\text{COM (74) 300 final, 1-8.}\]
communication, the Commission - after analyzing the nature of the food crisis and looking into its short- as well as longer-term causes and its consequences for developing countries - stated that:

[...] it would be highly inequitable, as well as dangerously short-sighted on the part of the industrialized countries, and more particularly of Europe, to allow a situation in which the weaker members of the world community of nations should consistently be those that are forced to bear the additional burdens caused by rapid changes on the world economic scene.42

According to the Commission, the Community could not remain passive, but, on the contrary, had:

[...] to show example and take appropriate policy initiatives, consistent with its obligations towards developing countries, imposed on the Community by its immense economic power.43

Consequently, it proposed that the Community would plead - in international bodies - for the formulation of more rational trade policies, which would result in a greater degree of market stability for basic food products throughout the world. The Commission - well aware of the fact that only structural improvements to the developing countries' food production sector could provide a satisfactory long-term solution to the latter's food problems - also proposed that the Community would adopt wide-ranging decisions on financial assistance to developing countries to help them with these structural improvements. Mostpronouncedly, however, the Commission proposed that the Community - in order to live up to its responsibilities towards the developing countries - would formulate a substantial and coherent food aid policy. With the dramatic images of starving people on the evening news, the Community was in 1973-74, as most other food aid donors, under a considerable amount of public pressure to come forward with a more ambitious, development-oriented food aid policy.44 Its proposals for such a food

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42COM (74) 300 final, 3.

43COM (74) 300 final, 4.

44CLAY, 1985, 1.
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aid policy were worked out in 'The Memorandum on Food Aid Policy of the European Economic Community', which in fact constituted the first in-depth policy paper on the Community's food aid policy.\footnote{Memorandum on Food Aid Policy of the European Economic Community, COM (74) 300 final, Memorandum.}

2.2.1 The 1974 Commission Memorandum on Food Aid Policy: opening the discussion on a Community food aid policy with developmental and humanitarian objectives

As a direct result of the food crisis scourging the Third World, the adoption of a substantial and coherent Community food aid policy had - in the eyes of the Commission - become early 1974 "an urgent necessity".\footnote{COM (74) 300 final, Memorandum, 1.} In its 'Memorandum on Food Aid Policy of the European Economic Community', the Commission considered that in view of (a) the rising food aid needs of developing countries; (b) food aid's potential contribution to the economic development of the recipient countries; and (c) the Community's agricultural capacity for an expanded, more ambitious food aid policy, the time had come to adjust substantially its food aid policy.\footnote{The Commission pointed out: (1) that the Community needed to react favourably to the appeals of the Director-General of the FAO for a world food security system, of which food aid would no doubt be an important element; (2) that food aid would very likely be a subject of discussions during the forthcoming Tokyo Round Trade Negotiation; (3) that the Community needed to make a positive contribution to the World Food Conference to be held in November 1974 (COM (74) 300 final, Memorandum, 1.).} Apparently well aware of the shortcomings of the latter policy - it explicitly mentioned the modest size of the food aid programme, the excessive dependence on the common agricultural policy, and the lack of advance supply commitments (i.e. multi-annual commitments) - the Commission proposed to turn the surplus disposal policy which had been set up at the end of the sixties into a food aid policy which would be "related primarily to the objectives of the
The 1974 Commission Memorandum

Community in the Third World".4 The new policy’s overriding objectives would be "to ensure that a well diversified food aid basket could be made available at a time and place where it might be most needed, that the basket would be large enough to have an impact on developing planning, and that at a time of short supplies the poorest countries of the world would not be left to starve".49 Surplus disposal considerations would be secondary; product availability resulting from the common agricultural policy would still be taken into account, but this factor would be one of means rather than ends.

In the Memorandum, the Commission described in quite some detail the salient features of its proposed food aid policy.

With regard to the products supplied as food aid50, the Commission proposed to diversify the Community’s food aid basket; besides a limited number of commodities, selected in relation to the nutritional requirements of developing countries and the Community’s normal product availabilities (wheat, rice, skimmed milk powder, butteroil and sugar), the Commission proposed that the Community would also supply as food aid products which from time to time proved useful in various food aid schemes, especially in emergencies, such as processed cereals, egg powder, etc.51

With regard to the Community’s food aid commitments52, the Commission proposed the establishment of a medium-term 3 year indicative programme, a framework of minimum and maximum food aid quantities for determining - in the light of the circumstances of a particular year - the Community’s annual food aid

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4COM (74) 300 final, Memorandum, 8.
49COM (74) 300 final, Memorandum, 8.
50For details on the products supplied as Community food aid in the period 1969-76, see: Section 3.1 of this Chapter.
51COM (74) 300 final, Memorandum, 9-10.
52For details on the size and nature of Community food aid commitments in the period 1969-76, see: Section 3.2 of this Chapter.
contribution. This medium-term indicative programming would not only allow the Community to give some forward guidance to the food aid recipients as to the overall quantities of Community food aid in the following years, but it would also - and perhaps in the first place - allow the Community to plan the production of the food surpluses supplied as food aid. It also proposed a substantial increase in the size of the Community's food aid programme, so as to relate it better to the needs of the developing countries, the Community's productive capacity and the size of the food aid programmes of other major donors. The Commission also insisted upon the principle that - for reasons of coherence, efficiency, and the close relation between the Community's food aid policy and its commercial and agricultural policies - all future food aid, including (and in particular) that in cereals, should take the form of Community actions.

With regard to the terms regarding the use of Community food aid in the recipient countries, the Commission proposed that direct Community food aid should as a general principle continue to be sold in the open market of recipient countries, except in emergencies and, operations to raise the nutritional standards of

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53COM (74) 300 final, Memorandum, 8-9. The Memorandum contained also concrete proposals for a first indicative 3-year programme (1974/75-1976/77) (COM (74) 300 final, Memorandum, 18-20) and proposals of the 1974-75 programme (COM (74) 300 final, Memorandum, 21.).

54During the FAO Conference in November 1973, Mr P. Lardinois, the Commissioner responsible for Agriculture, stated already that food aid could not and should not be the more or less arbitrary result of surpluses created by accident in the developed countries but that food for the purpose of aid should be produced systematically. This concept of 'supply management' for food aid was taken up and worked out in the 1974 Memorandum. The same concept one finds also back - not in the least because of the Commission's advocacy - in the World Food Conference Resolution No 72/74 (November 1974) on an "Improved Policy of Food Aid" which counsels all food aid donors to adopt the 'conception of advance planning for food aid' (MATZKE, O., 'Planned Production of Agricultural Surpluses?', Interconomics, 1975, 190.). Matzke harboured grave doubts in the concept of deliberate production of surpluses. He wondered whether it would not be wiser, from the point of view of development policy, to put the funds needed for the procurement of food at the direct disposal of the LDC's instead of using them in the developed countries to finance the production and transport of deliberate surpluses (MATZKE, 1975, 191.). He strongly argued for restricting food aid to unplanned surpluses, which in the case of the Community were plenty anyway (MATZKE, 1975, 192.).

55COM (74) 300 final, Memorandum, 10.

56COM (74) 300 final, Memorandum, 16.

57For details on the terms and conditions of Community food aid supplies in the period 1969-76, see: Section 3.4 of this Chapter.
particularly vulnerable groups of the population. The counterpart funds, resulting from these sales, however, should be placed in a special account and utilized in the context of specific (agricultural) development projects (in the case of recipient countries without reasonably comprehensive development programmes) or programmes (in the case of economically more advanced recipient countries). These projects and programmes were to be selected by the recipient countries and agreed upon by the Community prior to the delivery of food aid, in line with pre-established criteria. To ensure that these funds were indeed used in the context of the projects or programmes agreed upon, the Commission stressed the fact that there is some justification for the donor authority having a minimum of control over the use of the funds.54

With regard to the allocation of Community food aid59, the Commission proposed that the Community should continue to give most of its food aid directly to developing countries because that will help - it explicitly stated - to build up its image among developing countries. Nevertheless, the Community should also channel substantial, and possibly increasing, quantities through multilateral institutions, and in particular the World Food Programme. Furthermore, the Commission suggested to focus food aid on the non-associated developing countries since most other Community development aid already went to the associated countries. It is quite surprising, however, that the Commission neither insisted that food aid should be focused on the poorest among the developing countries nor proposed any formal allocation criteria.60

With regard to the procedural and management aspects of the Community food aid policy61, finally, the Commission pointed out that the new food aid policy

54COM (74) 300 final, Memorandum, 10-14.

59For details on the allocation of Community food aid in the period 1969-76, see: Section 3.3 of this Chapter.

60COM (74) 300 final, Memorandum, 14-16.

61For details on the procedural aspects of Community food aid policy formulation in the period 1969-76, see: Section 3.5 of this Chapter.
required efficient and rapid procedures for programme implementation, and that to achieve this, it would be necessary to reallocate within the Community the responsibilities for implementing the food aid programme between the Council and the Commission. It proposed that in the future the Council should decide on the adoption of indicative medium term and annual programmes, and on the allocation of the Community’s food aid among beneficiary countries and international organizations, as well as on the basic conditions underlying the supply of Community food aid. The Commission, on the other hand, would - assisted by a Committee of the type of an agricultural Management Committee - act on behalf of the Community vis-à-vis the food aid recipients as regards the definition of specific terms and conditions under which the Community supplied food aid. For emergency food aid operations, the Commission proposed in the Memorandum, that it would itself be empowered to decide on limited quantities of emergency aid to be dispatched during the days immediately after a disaster and that for further quantities of emergency food aid the Council would take a decision by the accelerated written procedure.\textsuperscript{62}

In the Memorandum, the Commission, very interestingly, argued that it would actually be in the self-interest of the Community to adopt this new food aid policy since it would - apart from creating a major instrument of the Community’s development policy - offer various advantages of a political and economic character such as:

- the generation of goodwill among developing countries as a whole, and especially among the non-associated countries which at the time did not get any financial or technical development aid from the Community yet;
- the encouragement given to commercial exports of agricultural products from Member States;
- bringing the public development assistance contributions of the Member States closer to the goals of the 2nd Development Decade; and

\textsuperscript{62}COM (74) 300 final, Memorandum, 17-18.
The Commission explicitly denied, however, that its proposed food aid policy would also serve as a justification for higher agricultural production levels than would otherwise be desirable. Its proposal for medium-term indicative food aid programming, to allow inter alia to plan the production of the food surpluses supplied as food aid, did, however, point in the opposite direction. One should, however, not be too surprised to find such a contradiction. Within the Commission, there was - as one might have expected - considerable disagreement between the Directorate-General VIII (Development Cooperation) and Directorate-General VI (Agriculture) on the Community's food aid policy. While the latter Directorate-General was certainly not thrilled about the food aid policy reform proposal spelled out in the 1974 Memorandum but was unable to block it, it was definitely able to leave its mark on the proposal and see to it that the food aid policy the Commission was proposing would continue to serve the Community's agricultural interests. In the years following the Memorandum, the disagreement between the DG VI and DG VIII and the resulting contradictory Commission positions was reflected in a number of policy documents and statements which are hard to reconcile with the Commission's explicit denial in the 1974 Memorandum that food aid was not to serve as a justification of surplus production or as a convenient outlet for surpluses. In a document (prepared by Directorate-General VI) submitted to the Council in 1976, for example, the Commission justified the existence of the Community's food aid programme by pointing out that this programme "should not be regarded as a simple act of charity" but that it should be seen in the light of the costs of "alternative measures of satisfactorily dealing with unsaleable supplies".

\[^{63}\text{COM (74) 300 final, Memorandum, 7-8.}\]

\[^{64}\text{COM (74) 300 final, Memorandum, 7. The Commission pointed at the relatively small size of the proposed food aid commitments in relation to production and the fact that agricultural production in Europe is largely influenced by technological and structural factors.}\]

\[^{65}\text{COM (76) 452 final.}\]
While Community food aid so far had been primarily an instrument of agricultural surplus disposal, the Commission definitely displayed in the 1974 Memorandum a profound understanding of the potential of food aid to be use as an instrument for the economic and social development of the recipient countries, and to a lesser extent an instrument for the creation of export markets, international image building and diplomatic leverage. With its Memorandum and appeal for a more development oriented food aid policy, the Commission opened a discussion on the objectives of the Community food aid policy which in some respects has still not been concluded yet.

The Commission repeated its appeal for a new food aid policy in its communication to the Council of 5 November 1974 on 'Development Aid: 'Fresco' of Community action tomorrow'. In dramatic wording, it stated that:

[...] right from 1975, [the Community food aid policy] must as a matter of absolute priority serve those who are suffering most and risk being the first to die.  

2.2.2 The Council's Resolution of 16 July 1974 on the Commission's Memorandum: the absence of a consensus among the Member States on the objectives of the Community’s food aid policy

On 16 July 1974, the Council debated in general terms on the Commission's Memorandum. At the close of the discussion, it adopted a resolution stressing the

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Note that during the years 1975 and 1976, the Commission continued - although perhaps in a less dramatic way - to examine its food aid policy and to look for ways and means to improve it. In 1977, these reflections resulted in two internal reports related to the food aid policy: Rapport sur la division aide alimentaire (rapport interne de la Commission établi par la Direction Générale de l'Administration et du Personnel; janvier 1977); Rapport sur la définition et la mise en œuvre de la politique d'aide alimentaire de la CEE - Situation et possibilités d'amélioration (J.C. Muller, rapport interne de la Commission établi par la Direction Générale du Développement; septembre 1977); as well as a study on usefulness of food aid in dairy products, Etude sur les perspectives concernant la nutrition et le développement pour les produits laitiers dans le tiers monde, COM (77) 540 final.
need for the Community to supply food aid in the form of a wide range of products tailored to the needs of the destitute populations and underscoring the fact that food aid should interlock with the overall context of the Community's development policy. In comparison with the Commission's far reaching proposals for a new food aid policy, the Council resolution was very restrained. It should be noted, for example, that the Council could not reach agreement on the proposed (rather modest) increase in the size of the cereal food aid programme. Although that was exactly what the Commission had wanted to avoid, the Community had thus to go to the World Food Conference empty handed. The fact that the Council merely agreed that food aid should be linked to the Community's development policy and endorsed only one of the Commission's specific proposals (the diversification of the food aid basket adapted to the needs of the recipients), was a clear indication of inability of the Member States to reconcile their political differences over the purposes and objectives of the Community food aid policy.

While during the first years of the Community food aid policy, there was a large degree of consensus among the Member States - resulting from parallel interests - to have a food aid policy which primarily was to dispose of agricultural surpluses (or, more generally, to promote the economic interests of farmers), this consensus

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69 While it was not able to convince the Council to agree to increased food aid commitments and many of its other proposals, it should be noted, however, that the Commission's Memorandum nevertheless considerably influenced the Community's position at the World Food Conference of November 1974 (Bull. EC 11-1974/16-20).

In the World Food Conference Resolution 72/74 on 'Improved Policy of Food Aid', it was stated that the total quantity of food aid should be increased to 10 million tonnes of cereals, that donors should accept and apply the concept of advance planning for food aid, that adequate quantities of non-cereals should be supplied, and that reserve stockpiles should be build up and credit made available to deal with urgent international requirements (PIRONIO, 1976, 46.).


It should perhaps be noted that the Council's Working Party on Development Cooperation had already agreed, in June 1973, that in the future "any supplementary food aid programme should be organized more systematically and better adapted to the development plans of recipient countries" (Report of the Working Party on Development Cooperation, 19 June 1973, referred to in the Seefeld Report on the 1974 Memorandum, Document 171/74, 15.).
fell victim to the enlargement of the Community and especially to the accession of the United Kingdom. The United Kingdom, unlike most other Community Member States, did not produce any agricultural surpluses and did therefore not benefit from any food aid policy intended to dispose of those surpluses. On a more general note, it should be clear that the United Kingdom, from the very beginning an outspoken critic of the Community’s agricultural policy (a policy which did not 'suit' its needs), could not but oppose a food aid policy which was primarily a by-product of the former, contested policy. As I noted in the introduction and as the United Kingdom realized only too well, food aid could not merely make expensive agricultural surpluses politically more acceptable by reducing their cost and giving them a 'useful' purpose, it could also justify and even necessitate an agricultural policy setting production at artificially high levels (such as the common agricultural policy). If there was to be any Community food aid policy at all (the United Kingdom would rather prefer (tied) financial and technical aid from which they were far more likely 'to benefit'), it would have to be a food aid policy in the interest of the recipient developing countries.  

Such a food aid policy was, however, to the extent that it would make it more difficult to use food aid as an instrument for surplus disposal, not welcomed by the surplus producing Member States and their powerful and influential farmers’ interests groups. It must be observed, though, that the latter Member States were as a rule quite careful not to be too outspoken about their position on the objectives of the Community’s food aid policy, fearing that this would not be received well by at least part of their public opinion. The disagreement between the Member

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71See on the position of the United Kingdom with regard to the Community’s food aid policy: 'Memorandum of the Minister of Overseas Development to the Select Committee on Overseas Development’, Session 1972/73, The United Kingdom’s Entry into the Community and Economic Relations with Developing Countries, Observations by the Minister of Overseas Development, House of Commons, July 29, 1974, para 5.; see also JONES, 1974, 3.

72Some Member States clearly benefitted much more from the Community food aid policy than other. For more details, see: Section 3.1 of this Chapter. As indicated above the Commission’s position was somewhat ambivalent. The Commission clearly no longer wanted food aid to be an instrument to dispose of unplanned surpluses. It proposed, however, that European farmers would actually plan the production of the surpluses which would be supplied as food aid. As such, the food aid policy it proposed was still serving the economic interest of the farmers.
States regarding the Community’s food aid policy came - in a embarrassing manner - into the open during the first meeting of the World Food Council in June 1975 at which the United Kingdom openly criticised France, Germany and Italy for refusing to increase the size of the Community’s cereal food aid programme.73

If there was any consensus - or at least near-consensus - among the Member States on the objectives of the Community’s food aid policy, it concerned the potential use of food aid as an instrument of European foreign policy. It was quite obvious - and therefore perhaps never expressly stated - that in the absence of a European foreign policy, Community food aid could not - or only incidentally - be an instrument for diplomatic leverage or an instrument for support of friendly regimes. At the most Community food aid could - as the Commission had proposed in its Memorandum - be used to enhance the European Community’s image in the Third World. The Member States were, however, very well aware of the political implications of food aid donations and therefore insisted on keeping firm control over the policy.

2.2.3 The European Parliament’s Resolution of November 1974 on the Commission’s Memorandum: support for the overall political conception but criticism for certain deficiencies of the Memorandum

The Commission’s Memorandum and its ambitious proposals for a new food aid policy were far better received by the European Parliament. In a Resolution adopted in November 1974 Parliament stated that it:

1. Welcomes the Commission’s memorandum as a first step towards including food aid policy in the Community [development] programme [...];

5. Acknowledges the Commission’s efforts to free food aid policy from the internal aspects of the European Community’s agricultural

73LAURENS, 1976, 211. In view of the situation on the world cereal market (i.e. world food crisis), the cereal producers had no need for more cereal food aid operations.
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policy and to set on a new basis characterized by humanitarian considerations and those of development policy;

6. Approves the overall political conception of the memorandum and supports in particular the proposals for the first indicative three-year programme (1974/75-1976/1977) since this is to be carried out entirely in the form of Community aid; [...]. 74

The European Parliament, however, also criticised the Commission’s Memorandum in the sense that it called to the attention of the latter those aspects of a development-oriented food aid policy which had not - or insufficiently - been dealt with in the Memorandum. As such, Parliament insisted on more bilateral and multilateral coordination in order to avoid double expenditure and to improve the effectiveness of food aid (point 2.); requested the Commission to work out common basic principles for the food aid policies of the Community and the Member States (point 2.); requested the Commission to make the necessary administrative and technical arrangements for setting food aid policy on a Community basis (point 8.); recalled that the extension of Community food aid required an economic and practical solution of storage, transport, distribution and supply problems in the recipient countries (point 9.); called for an appropriate control system to be set up (point 9.); appealed to the Community to extend food aid further in the following years (point 10.); pointed out to the Commission that also the quality of the food aid had to be increased in the future (point 12.) and, finally, requested the Commission to take more account, in defining the Community food aid policy, of actual development needs of the countries concerned and to involve the developing countries directly in the efforts at coordination (point 20.). Certainly far more explicitly than the Commission, the European Parliament clearly considered food aid as just one of several instruments to tackle the world food problem. In its Resolution, it thus requested the Commission to consider also aid in fertilizer and financial aid to set up fertilizer factories in developing countries as well as sending more European agricultural

74OJ. 1974, C 93/88.
experts to food deficit countries.\textsuperscript{75} Parliament also urged the Commission "to work out a comprehensive concept for the alleviation of world hunger problems".\textsuperscript{76}

As the Commission, the European Parliament was also quite aware of the foreign policy, image building dimension (and objective) of the proposed food aid policy. It stated in point 4 of the Resolution:

\begin{quote}
[the European Parliament] takes the view that increased aid also has political advantages since it would become part of a general European development and peace policy and thus enhance the Community's moral stature in the world and contribute to the fulfilment of the obligations and objectives of the second development decade.\textsuperscript{77}
\end{quote}

While the Resolution itself remains silent on this point\textsuperscript{78}, Rapporteur Horst Seefelt stressed in his report - adopted by the Parliament's Committee on Development and Cooperation - that the Commission's argument that increased food aid might increase agricultural sales and non-agricultural exports was, however, totally unacceptable, for Community aid should not depend on market factors.\textsuperscript{79} Seefelt also observed - and as such recognized the validity of this argument which the Commission refuted - that the fact that more food aid might vastly increase the Community's agricultural production (and serve as a justification for these higher

\begin{footnotes}
\item[75]OJ. C 93/88, points 18 and 19.
\item[76]OJ. C 93/88, point 22.
\item[77]The idea of using food aid as an instrument of foreign policy remained present. In a Parliament Working Document of November 1976, one could read: "[...] food aid can be in the interests of the donor, in furthering political and economic relations with the beneficiary countries" (European Parliament Working Documents, Session 1976-1977, document 407/76, 11).
\item[78]Rather than suggesting that this was accidental, I would suggest that this illustrated that Parliament had in its midst also factions which gave priority to European farmers' interests.
\end{footnotes}
production levels), is "a technical and political problem than can be resolved".80

During the following years, Parliament will repeatedly call on the Council to adopt the reform proposals made by the Commission in its 1974 Memorandum.81


81 European Parliament Resolution of 30 April 1975 on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid under the 1975 programme to certain developing countries and international agencies, point 4, OJ. 1975, C 111/25; see also: European Parliament Working Documents, Report on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid under the 1975 programme to certain developing countries and international agencies (Rapporteur: Mr Pierre DESCHAMPS), PE DOC 101/75; and European Parliament Resolution on the proposal for a regulation laying down general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1976 programme, point 4; see also: European Parliament Working Documents, Report on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid under the 1976 programme to certain developing countries and international organizations (Rapporteur: Mr Pierre DESCHAMPS), PE DOC 442/75.
The main features of Community food aid policy and law during the period 1969-76

3.1 The sort, the origin and the quality of products supplied as Community food aid

3.1.1 The sort of products supplied as Community food aid

During the period 1969-76, the Community's food aid basket was mainly made up of common wheat (and wheat flour), skimmed milk powder and butteroil. Food aid in the form of cereals other than wheat was quite exceptional in the period 1969-76. Even more exceptional was the supply of processed cereals for the preparation of gruel and soup. The Community supplied food aid in the form of these products on two occasions in the course of 1970 and 1971 as emergency food aid to the ICRC but unfortunately had no other operations in these products in spite of the fact that they were considered particularly suited in emergencies. Following the entry into force of the 1971 Food Aid Convention, which unlike the 1967 Convention, provided - on the request of Japan - for the possibility of supplying rice as food aid, the Community added rice to its food aid basket and has regularly supplied some food aid in this form ever since.\(^\text{12}\)

Besides cereals, skimmed milk powder and butteroil, the Community supplied during the period 1969-76 once dried egg products\(^\text{13}\), and, from 1972 onwards it

\(^{12}\text{Bull. EC 9/10-1971, 148.}\)

\(^{13}\text{In view of an exceptional surplus situation, the Council decided on 20 July 1971 on the supply of 500 tonnes of dried egg products as food aid to the WFP (Règlement du Conseil (CEE) No 1577/71, J.O. 1971, L 167/9). An agreement between the EC and the WFP was concluded on 26 May 1972 (J.O. 1972, L 134). The products were supplied in the second half of 1972. This first food aid operation in the form of egg products was, however, also the last one. Food aid in egg products was as J-P. Laurens observed "[une] aide qui a simplement correspondu à une situation purement...}
supplied annually small quantities of sugar to the UNRWA\textsuperscript{44} and with the cash contribution received from the Community, the latter bought, under the 1972-75 Convention, corned beef, tomato paste, burghol, dried vegetables and fresh products, and, under the 1975-78 Convention tomato paste and corned beef.\textsuperscript{45} It should be stressed that the latter products were, however, supplied to the UNRWA only and in marginal quantities.\textsuperscript{46}

\textsuperscript{44}In view of the need for sugar in some developing countries, the European Parliament had already in a Resolution of 17 June 1970 (J.O. 1970, C 80/28) suggested to supply sugar as food aid. It took, however, until June 1972 before the Council decided on the first food aid operation in the form of sugar (Règlement du Conseil (CEE) No 1475/72 du 10 juin 1972, J.O. 1972, L 157; Bull. EC 9-1972, 112). It should be noted, however, that this decision was in fact never implemented. Before a formal agreement had been concluded between the Community and the United Nations Relief and Works Agency, the Council agreed at its meeting of 6/7 November 1972 to a Commission proposal for a far more ambitious three-year food aid programme for Palestinian refugees. This programme provided inter alia for the supply of sugar (Bull. EC 11-72, 123). On 18 December 1972 a three-year Convention with the UNRWA was concluded (J.O. 1972, L 304/24; Bull. EC 12-72, 98). The 4000 tonnes which the Council had decided to grant in its decision of 10 July 1972 mentioned above was taken as a part of the 6150 tonnes the Community was committed to supply in 1972 under the terms of the Convention.


For 1972, for example, the cash contribution amounted to 1,610,000 u.a. , the Community donated the UNRWA annually a certain sum of money (e.g. in 1972: 1,610,000 uc) which was to be used to buy (on the Community market) given quantities of corned beef, tomato paste, dried vegetables and burghol, and, if any money was left, fresh produce (See: Article VII of the 1972 Convention between the EEC and the UNRWA (J.O. 1972, L 304/24-25).

\textsuperscript{46}It must be noted that in the context of emergency aid operation (to be distinguished from emergency food aid operations) to help countries hit by a natural or man-made disaster, the Community quite often granted during the period 1969-73 the country hit by disaster or a relief organisation active in such a country a certain amount of cash to buy for example medicines, tents, blankets and also usually unspecified foodstuffs. In this way, the Community (indirectly) also supplied to developing countries very small quantities as products such as for example pulses, legumes, meat, fish and children’s food.
In essence, the Community supplied as food aid only wheat, wheat flour, skimmed milk powder and butteroil and from 1971 onwards some rice. While the Commission had called in its 1974 Memorandum for the diversification of the Community’s food aid basket and the Council had expressed its support for such a wider range of food aid products better tailored to the needs of the recipient populations, the Community’s food aid basket remained during the rest of the period 1969-76 as ‘undiversified’ and poorly adapted to the recipients’ needs as it had been before the Memorandum. While rice confirmed itself as a Community food aid product of some importance and sorghum and maize was supplied to a number of Sahel countries, common wheat or wheat flour always represented between 80 and 90% of the cereals supplied. With regard to dairy food aid, a positive development was the supply of vitamin-enriched milk powder even if the quantities involved were still marginal.

The lack of diversity of the Community food aid basket during the period 1969-76 is easily explained. Generally speaking and with one ‘accidental’ exception, the Community only supplied products of which it had expensive surpluses which needed to be disposed of. In a 1971 study on Community food aid, Janssens observed quite correctly:

Il est évident que si il n’y a pas encore des principes précis sur les

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*Note that the Community occasionally supplied butter rather than butteroil (ISMOG, 1976, Bijlage, 6).

**ISMOG, 1976, Bijlage, 4. The quantities of sorghum and maize supplied to the Sahel were very small. See also: COURT OF AUDITORS, Special Report 1/80, 72.

**See: COM(77) 540 final. The quantities involved were, however, rather small. In 1975 for example, the Community supplied 500 tonnes of skimmed milk powder enriched with vitamins (Bull. EC 9-1975/56) although it must be noted that in July 1976, the Commission decided to extend this facility (General Report on the activities of the European Communities, 1976, 246). Note that in Council Regulation (EEC) No 3582/73 of 28 December 1973 laying down general rules for the supply of skimmed milk powder as food aid to countries of the Sahel and Ethiopia, Article 2, O.J. 1973, L 359/50, the Council had already provided for the possibility of Community financing of the cost of supplying to the recipients the vitamins to be added to the milk.

Vitamin enriched skimmed milk powder costed approx. 100 EUA per tonne more, not only because of the process of enrichment with vitamins A and D but also because milk for vitaminization had to be bought fresh on the market. It should also be noted that the vitamins do not keep more than 6 months from the date of manufacturing which of course made swift delivery and use more important (COURT OF AUDITORS, Special Report 1/80, 16.).

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produits à distribuer pour une aide alimentaire efficace, il y a au moins une politique de résorption des excédents agricoles. L'aide alimentaire communautaire porte sur ses produits excédentaires (y compris le riz pour les excédents italiens).  

In view of doubts expressed by some development experts as to the desirability of food aid in dairy products, the Commission undertook in 1976 a study the results of which were published in a Communication to the Council in 1977 on the nutritional and development prospects of milk products in the Third World. The Commission’s study conveniently concluded that food aid in milk products was essential to meet vital nutritional needs in the developing countries and to help launch production projects.  

The need for surplus disposal was also the motivation behind food aid in egg products. With regard to food aid in the latter product, it was observed that:  

Avec l'action d'aide en poudre d'œufs, c'est l'image presque caricaturale de l'aide alimentaire de la CEE qui a été montrée. Ici, l'aspect humanitaire de l'aide est pratiquement absent; seul compte l'écoulement de ces stock dont on ne sait que faire.

To some extent, food aid in sugar constituted an exception. While the Community faced surpluses of this product when it first undertook to supply food aid in this form in 1972, there was during the period 1974-76 on the Community market no surplus but, on the contrary, a shortage of sugar. Nevertheless, the Community continued to supply this product although it must be observed that the quantity involved was marginal and that the Community did not make any sugar food aid commitments in 1975.

In general, however, surplus disposal considerations were all but secondary in the

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choice of the sort of product supplied as food aid. It appears that when deciding on the Community food aid basket, neither the objective need for nor the suitability of the food products was seriously taken into consideration.*

In 1976, the Director of the World Food Programme, Mr Th. Robinson, observed that:

Aside from its contributions to the WFP, [the European Community] simply allocates surpluses for which the recipient countries arrange shipment and distribution.93

While the Community's food aid basket was thus in practice limited to products of which the Community had important surpluses, it must be noted, however, that Community law did in no way impose such a limitation. The Council could have decided - and did so exceptionally - to supply food aid in the form of products of which there were no surpluses without changing existing legislation or breaching international obligations. As a matter of fact, during the period 1969-76, there was no Community law on the sort of products the Community could or should provide as food aid except for the Community's international food aid obligations under the 1967 and 1971 Food Aid Conventions and the 1972 and 1976 EEC-UNRWA Conventions.96 The Food Aid Conventions obliged the Community to supply respectively "du blé et des céréales secondaires" (Article II (1) of the 1967 Food Aid Convention) and "wheat, coarse grains or products derived therefrom" (Article

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*ISMOG. 1977, Deel I, 4. See also DUPUIS, C., L'aide alimentaire de la Communauté économique européenne, mémoire, Paris, 1975, II A: "La politique communautaire d'aide alimentaire est ainsi ramenée à une simple politique de résorption des excédents qui l'amène à ne tenir guère compte des besoins réels des bénéficiaires".

93The Economist, 18 September 1976. Mr A. Szarf, Head of the Commission's Food Aid Division, reacted that this charge of surplus disposal was not correct and the Community "... is primarily concerned with providing support to the balance of payments of the poorest of the developing countries" (The Economist, 2 October 1976.).

96Note in addition with regard to food aid in cereals: Article 22 (bis) (1) of Council Regulation (EEC) No. 120/67 as amended and Article 20 of Council Regulation (EEC) No. 2727/75, both quoted below, which 'restricted' food aid in cereals to cereals subject to the common market organisation.
1969-76: Surplus disposal as primary policy objective

II (1) of the 1971 Food Aid Convention). The 1972 EEC-UNRWA Convention obliged Community to supply wheat, rice, sugar, skimmed milk powder and a cash donation for the purchase of tomato paste, corned beef, dried vegetables, and burghol (and fresh products). Under the 1976 EEC-UNRWA Convention, the Community was to supply to the UNRWA wheat, rice, sugar, skimmed milk powder and a cash donation for the purchase of tomato paste and corned beef.

3.1.2 The origin of products supplied as Community food aid

Given the fact that in the period 1969-76 the Community almost exclusively supplied food aid in the form of products of which there were important surplus stocks to be disposed of, the question arises whether Community law stipulated specific requirements as to the origin of the products supplied. Did Community law require that the cereals, milk products, sugar and egg products supplied as food aid were taken from the intervention stocks, or mobilized in regions of the Community with particular surplus problems, or mobilized on the Community market as a whole, or, on the contrary, did Community law allow - in the interest

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97Convention relative à l'aide alimentaire (1967), J.O. 1970, L 66/25; and Food Aid Convention (1971), O.J. 1974, L 219/36. Note that under the Food Aid Conventions, it was also possible to make a monetary grant to be used to purchase grain for the importing country rather than to supply the grain itself. The Community, however, never made use of this possibility.


99Note, however, that the successive Conventions all provided for the possibility of renegotiating inter alia the products and quantities supplied under it. (See Article II (2) of the 1972 Convention, J.O. 1972, L 304/24; and Article 10 of the 1976 Convention, O.J. 1976, L 203/42). In fact, an agreement amending the 1972 Convention was concluded in 1976 when the Community as a result of a sudden shortage of sugar on the Community market could not fulfil its supply obligations. It was agreed that for 1974-75 the 2000 tonnes of sugar the Community should normally supply under Article II (1) was cancelled and replaced by a cash contribution (which reimbursed the UNRWA which had bought the sugar on the world market) (See Agreement in the form of an exchange of letters amending the Convention between the European Economic Community and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) signed on 18 December 1972, O.J. 1976, L 203/44).
of the recipient countries - that food aid products were mobilized on the cheaper world market?

With regard to food aid in cereals, the general rules on the origin of cereals supplied as food aid were initially laid down by Council Regulation (EEC) No 120/67 of 13 June 1967 on the common organization of the market in cereals, and in particular Article 22 bis thereof and by Council Regulation (EEC) No 359/67 of 25 July 1967 on the common organisation of the market in rice, and in particular Article 23 bis thereof.\textsuperscript{100} Article 22 bis of Council Regulation 120/67 stipulated regarding the origin of the cereals supplied as food aid:

1. L’exécution des obligations découlant de la convention relative à l’aide alimentaire est assurée par l’achat de produits visés à l’article 1er sur le marché de la Communauté ou par utilisation des céréales détenues par les organismes d’intervention.

2. Les critères de mobilisation des produits et notamment, ceux selon lesquels l’achat sur le marché de la Communauté est effectué ou l’utilisation des céréales détenues par les organismes d’intervention décidée sont arrêtés par le Conseil, statuant sur proposition de la Commission, selon la procédure de vote prévue à l’article 43 paragraphe 2 du traité.

3. En cas des circonstances exceptionnelles, les produits visés à l’article 1er peuvent être mobilisées par l’achat sur le marché mondial. Les modalités d’application de ce paragraphe sont arrêtées selon la procédure prévue à l’article 26.\textsuperscript{101}

Article 23 bis of Council Regulation (EEC) No 359/67 on the common

\textsuperscript{100} Neither Council Regulation (EEC) 120/67 on the common organization of the market in cereals nor Council Regulation (EEC) No 359/67 on the common organization of the market in rice originally provided for the possibility to supply food aid and both were amended to allow for food aid operations. The former was amended by Règlement (CEE) No 289/69 du Conseil du 17 février 1969 modifiant le règlement No 120/67 en vue de la mobilisation des céréales destinées à l’aide alimentaire, J.O. 1969, L 41/1. The latter was amended by Règlement (CEE) No 2726/71 modifiant le règlement No 359/67, J.O. 1971, L 282/6.

organization of the market in rice was *mutatis mutandis* identical.\(^\text{102}\)

More detailed rules on the origin of the cereals supplied as food aid were successively laid down in Council Regulation (EEC) No 290/69 of 17 February 1969 (for cereals supplied as food aid under the 1967 Food Aid Convention) and Council Regulation (EEC) No 1693/72 of 3 August 1972 (for cereals supplied as food aid under the 1971 Food Aid Convention).\(^\text{103}\) Both the 1969 as well as the 1972 regulation were based on the relevant regulations on the common organization of the markets and in particular their 'food aid provision' referred to above.\(^\text{104}\) Clearly part of the common agricultural policy legislation, it is all but surprising that these regulations required that common agricultural policy considerations to be at the basis of each food aid mobilisation decision.

Article 4 (2) of the 1969 regulation stipulated:

> Pour une opération à réaliser dans le cadre d'une action communautaire, la Commission fixe, après examen de la situation du marché et selon la procédure prévue à l'article 26 du règlement No 120/67/CEE, les conditions de mobilisation, en tenant compte, notamment, des critères prévus à l'article 2.\(^\text{105}\)

These criteria in Article 2 were:

1. Lorsque, dans une région de la Communauté, l'évolution des prix du marché des céréales marque un fléchissement ou accuse une lourdeur qui, compte tenu du volume de la récolte ou des stocks régionaux et de leur situation géographique, risque d'obliger l'organisme d'intervention à des achats importants, l'achat peut

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\(^\text{102}\)Règlement (CEE) No 2726/71 modifiant le règlement No 359/67, J.O. 1971, L 282/6.2


\(^\text{104}\)For the 1969 regulation, this was only Council Regulation (EEC) No 120/67 since the Community supplied only cereals other than rice as food aid. For the 1972 regulation the legal basis also included Council Regulation (EEC) No 359/67.

porter sur des céréales se trouvant sur le marché de la région considérée.

2. Lorsqu’un organisme d’intervention détient des stocks provenant des campagnes précédentes, ou lorsque ses stocks provenant de la nouvelle récolte atteignent 5% de la région de l’organisme en cause, les stocks détenus par l’édit organisme peuvent être utilisés.

3. Lorsque les conditions visées aux paragraphes 1 et 2 ne sont pas remplies ou lorsqu’il n’est pas fait usage des possibilités prévues auxdits paragraphes, l’achat de produits visés à l’article 1er du règlement No 120/67/CEE est effectué sur l’ensemble du marché de la Communauté.\footnote{Règlement (CEE) No 290/69 du Conseil du 17 février 1969 fixant les critères de mobilisation des céréales destinées à l’aide alimentaire, article 2, J.O. 1969, L 41/2, as modified by Règlement (CEE) No 832/69 du Conseil du 2 mai 1969 modifiant le règlement (CEE) No 290/69 fixant les critères de mobilisation des céréales destinées à l’aide alimentaire, article 3, J.O. 1969, L 107/3.}

The 1972 regulation contained in essence the same provisions. In its Article 6, it stipulated:

[...], la Commission fixe, après examen de la situation du marché et selon la procédure prévue à l’article 26 du règlement No 120/67/CEE ou selon le cas, du règlement No 359/67/CEE les conditions de mobilisation, en tenant compte notamment des critères prévus à l’article 3.\footnote{Règlement (CEE) No 1693/72 du Council du 3 août 1972 fixant les critères de mobilisation des céréales destinées à l’aide alimentaire, article 6, J.O. 1972, L 178/4.}

These criteria in Article 3 referred to were:

1. Lorsque, dans une région de la Communauté, l’évolution des prix du marché des céréales marque un fléchissement ou accuse une lourdeur qui, compte tenu du volume de la récolte ou des stocks régionaux et de leur situation géographique, risque d’obliger l’organisme d’intervention à des achats importants, les céréales peuvent être achetées sur le marché de la région considérée.

2. Lorsqu’un organisme d’intervention détient des stocks, ces stocks peuvent être utilisés.

3. Lorsque les conditions visées au paragraphe 1 ou au paragraphe 2 ne sont pas remplies ou lorsqu’il n’est pas fait usage des
possibilités prévues auxdits paragraphes, les céréales sont achetées sur l'ensemble du marché de la Communauté.108

Council Regulation (EEC) No 2727/75 of 28 October 1975 on the common organization of the market in cereals, which replaced on 1 November 1975, Council Regulation (EEC) No 120/67 discussed above, contained an Article 28 which was very similar to Article 22 bis of the latter regulation and stipulated with regard to the origin of cereals supplied as food aid:

1. Obligations arising under the food-aid conventions shall be met by purchase on the Community market of the products specified Article 1 or by the use of cereals held by intervention agencies.

2. The criteria for mobilizing the products, in particular those governing the purchase on the Community market or the use of cereals held by intervention agencies, shall be adopted by the Council, acting by a qualified majority on a proposal from the Commission.

3. In exceptional circumstances products specified in Article 1 may be mobilized by purchases on the world market. Detailed rules for the application of this paragraph shall be adopted in accordance with the procedure laid down in Article 26.109


1972 and was as its predecessors of course based on the regulations on the common organization of the markets in cereals and rice and more in particular the above quoted 'food aid provisions' of these regulations. This Council Regulation (EEC) No 2750/75 of 29 October 1975 stipulated in its Article 6:

[...], the Commission shall, after considering the market situation and in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75, or where appropriate, of Regulation No 359/67/EEC, determine the conditions governing mobilization, taking into account in particular the criteria laid down in Article 3.

These criteria laid down in Article 3 were:

1. When in a Community region, trends in cereal market prices register a decline or slump which in view of the volume of the harvest or of regional stocks and their geographical situation, is likely to force the intervention agencies to buy in large quantities of cereals, cereals may be bought in on the market of the region concerned.

2. When an intervention agency holds stocks, these stocks may be used.

3. When the conditions referred to in paragraph 1 or 2 are not fulfilled or when use is not made of the possibilities provided for in those paragraphs cereals shall be bought in on the Community market as a whole.

It will be noted that these provision were very similar to the provisions of Council Regulation (EEC) No 290/69 or Council Regulation (EEC) No 1693/72, both discussed above.

During the period 1969-76, Community law thus explicitly required that any

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decision on the mobilization of cereals as food aid should be taken after considering the market situation. Depending on the market situation, the cereals were taken from an intervention stock, bought on the market of a region with a surplus production or bought on the Community market as a whole. Community law did not rank these three possible origins.\textsuperscript{113} It was clear, however, that the choice between the different origins was to be made on the basis of CAP considerations and that food aid was undisputedly seen as a market intervention/surplus disposal instrument. The procedural mechanism put into place, namely the involvement of the CAP Management Committee for Cereals, as well as the fact that the Commission's decision on the mobilization conditions was prepared by the Directorate-General VI made sure that food aid also did play this role whenever necessary.

The regulations on the common organizations of the markets in cereals and rice both allowed \textit{in exceptional circumstances} for the purchase of cereals and rice on the world market.\textsuperscript{114} It had been with much reluctance that the Council had provided for this possibility but it had eventually realized that since the Community was bound under the Food aid Convention to supply food aid in cereals regardless the availability of cereals on the Community market, it had no

\textsuperscript{113}One could argue that the redaction of the relevant provisions did point at a preference for cereals taken from the intervention stocks or mobilized on a troublesome part of the Community market.


alternative.\textsuperscript{115} Note that in the case the cereals would be purchased on the world market, the 1967 and 1971 Food Aid Conventions required that the purchases were made from countries participating in the latter Conventions and that a considerable part would be bought on the market of developing member countries (i.e. Argentina).\textsuperscript{116} In practice, however, in the period 1969-76 the cereals supplied as food aid were never bought on the world market.\textsuperscript{117} Initially, most cereals supplied as food aid came out of the intervention stocks.\textsuperscript{118} In the later part of the period 1969-76, some were still taken from the intervention stocks but most were mobilized on a part or the whole of the Community market.\textsuperscript{119} While in the case of cereals, the regulations on the common organization of the markets stipulated specific rules regarding the origin of the products supplied as food aid, in the case of dairy products, however, Council Regulation (EEC) 804/68 of 27 June 1968 on the common organization of the market in milk and milk products laid down no specific rules. As a matter of fact, the latter regulation did not even contain any explicit reference to food aid at all. It did, however, provide for special surplus disposal measures in Article 6 (3), second paragraph (for butter) and Article 7 (2), second paragraph (for skimmed milk powder). Article 6 (3), second paragraph stipulated:

\begin{itemize}
  \item It is interesting to note that initially, Regulation (EEC) No 289/69 of 17 February 1969 (J.O. 1969, L 41) did not provide for the possibility to purchase on the world market. While Parliament had insisted on this possibility (J.O. 1969 C 17/21), the Council could not be convinced. Soon after the adoption of Regulation (EEC) No. 289/69, the Council realized, however, that it really had to provide for the possibility to purchase on the world market and once more changed Council Regulation (EEC) No 120/67 (Council Regulation (EEC) No 831/69 of 2 May 1969 (J.O. 1969, L 107/1)).

  \item 1967 Food Aid Convention, Article II (4), J.O. 1970, L 66/25; and 1971 Food Aid Convention, Article II (6) and (7), O.J. 1974, L 219/36. This was of course only a requirement for cereal food aid supplied under the Food Aid Conventions but in the case of the Community this represented all its cereal food aid.

  \item SCHUMACHER, 1980, 73-74.

  \item ISMOG, 1977, Bijlage, 11. Interesting to note is that even at the worst of the World Food Crisis in 1973 the cereals to be supplied as food aid could be taken from the intervention stocks (SCHUMACHER, 1980, 43.).

  \item COURT OF AUDITORS, Special Report 1/80, 65.
\end{itemize}
Special measures may be taken for butter held in public storage which cannot be marketed on normal terms during a milk year. \(\text{[...]}^{20}\)

Article 7 (2), second paragraph stipulated:

Special measures may be taken for skimmed milk powder [held in public storage] which cannot be marketed on normal terms during a milk year.\(^{121}\)

Such 'special measures' of surplus disposal have *inter alia* taken the form of dairy food aid operations. Examples of such operations during the earlier part of the period 1969-76 were Règlement (CEE) No 1399/69 du Conseil du 17 juillet 1969 établissant les règles générales relatives la fourniture de matières grasses du lait au programme alimentaire mondial; Règlement (CEE) No 1852/69 du Conseil du 16 septembre 1969 établissant les règles générales relatives à la fourniture de lait écrémé en poudre au programme alimentaire mondial et au Comité international de la Croix-Rouge; Règlement (CEE) No 1493/70 du Conseil du 27 juillet 1970 établissant les règles générales relatives à la fourniture de beurre et de lait écrémé en poudre au Pérou, à la Roumanie et à la Turquie; Règlement (CEE) No 1494/70 du Conseil du 27 juillet 1970 établissant les règles générales relatives à la fourniture de butteroil à la Turquie; Règlement (CEE) No 1992/72 du Conseil du 2 août 1972 établissant les règles générales relatives à la fourniture de matières grasses au Programme alimentaire mondial et à l'UNRWA; Règlement (CEE) No 3582/73 du Conseil du 28 décembre 1973 établissant les règles générales relatives à la fourniture de lait écrémé en poudre au titre de l'aide alimentaire aux pays du Sahel et à l'Ethiopie; and Règlement (CEE) No 3583/73 du Conseil du 28 décembre 1973 établissant les règles générales relatives à la fourniture de matières grasses du lait au titre de l'aide alimentaire aux pays du Sahel et à

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l’Éthiopie. With regard to the origin of the dairy products supplied, all these regulations contained a similar provisions and one could, by way of example, cite Article 1 of Règlement (CEE) No 1692/72 du Conseil du 2 aout 1972 which stipulated:

Il est mis à la disposition du PAM et de l’UNRWA, à titre d’aide alimentaire, 15,000 tonnes de butteroil produit à partir de beurre détenu par les organismes d’intervention.

As one might have expected in the light of the legal basis of these food aid operations, the 'general rule' on the origin of dairy products supplied was that these products had to come from the intervention stocks. In 1972, there were, however, always two noted exceptions to this rule as a result of the low levels of the intervention stocks of skimmed milk powder. Règlement (CEE) No 442/72 du Conseil du 28 février 1972 relatif à la fourniture de produit laitiers au titre de l’aide alimentaire and Règlement (CEE) No 2721/72 du Conseil du 19 décembre 1972 relatif à la fourniture de lait écrémé en poudre au titre de l’aide alimentaire both provide for the possibility to mobilize dairy food aid on the Community

Note that unlike the rules on the mobilization of cereals to be supplied as food aid, the rules on the mobilization of milk products were repeated in each decision to grant dairy food aid.


12Règlement (CEE) No 1692/72 du Conseil du 2 aout 1972 établissant les règles générales relatives à la fourniture de matières grasses du lait au Programme alimentaire mondial et à l’UNRWA, article 1, J.O. 1972, L 178/1.
market in the case the stocks held by the intervention agencies were insufficient. Article 2 of Règlement (CEE) 2721/72 du Conseil du 19 décembre 1972 for example stipulated:

1. Le lait écrémé en poudre visé à l'article 1er est acheté conformément à l'article 7 paragraph 1 du règlement (CEE) No 804/68.125

2. Si les quantités de lait écrémé en poudre se trouvant en stocks publics ne permettent pas d'effectuer la livraison prévue à l'article 1er ou ne possèdent pas les caractéristiques nécessaires à leur destination particulière la fourniture est assurée par l'achat de lait écrémé en poudre sur le marché de la Communauté. Cet achat est effectué de façon à ne pas perturber le développement normal des prix sur le marché. [...]126

It should be noted that these two latter regulations were not based on the regulation on the common organization of the market which in fact only provided for 'special measures' to dispose of surpluses held in the intervention stocks but on Article 43 of the Treaty.

Towards the end of the period 1969-76, the possibility to mobilise dairy products on the Community market when stocks were insufficient became a general feature. By way of example, I would like to refer to Council Regulation (EEC) No 1347/75 of 26 May 1975 laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1975 programme, and in particular Article 2, which stipulated:

1. The skimmed milk powder referred to in Article 1 shall be purchased in accordance with Article 7 (1) of Regulation (EEC) No 804/68.

2. If the amounts of skimmed milk powder in public stocks are insufficient to supply the quantities provided for in Article 1 or if

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126I.e. skimmed milk powder in the intervention stocks.

they do not have the characteristics necessary for their particular destination where this requires, in particular, other forms of packing or the addition of vitamins or other additives, supplies shall be ensured by the buying-in of skimmed milk powder on the Community market. Buying-in shall be done in such a way as not to disturb the normal development of prices on the market.\(^\text{127}\)

and Council Regulation (EEC) No 1541/75 of 16 June 1975 laying down general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food aid programme, and in particular Article 2 thereof, which stipulated:

1. The butter referred to in Article 1 shall be purchased in accordance with Article 6 (1) of Regulation (EEC) No 804/68. The butteroil referred to in Article 1 shall be processed from this butter.

2. If the market situation is such that delivery as provided in Article 1 cannot be carried out in accordance with paragraph 1, then the supply shall be ensured by means of butter or butter fats available on the Community market. Buying in shall be done in such a way as not to disturb the normal development of prices on the market.\(^\text{128}\)

Unlike for food aid in cereals for which the rules were much more liberal (although their application had the same result), for food aid in milk products Community law required explicitly that the latter products were taken out of the intervention stocks and only if that was not possible, they could be mobilized on the Community market.


Community law never allowed for the mobilization of dairy products on the world market.\textsuperscript{138}

As to Community law on the origin of the other products supplied as food aid during the period 1969-76, I will be brief since food aid in these products was of marginal importance. With regard to food aid in sugar, Community law and more in particular Règlement (CEE) No 1475/72 du Conseil du 10 juillet 1972 relatif à la fourniture de sucre à l'UNRWA à titre d'aide alimentaire and Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972 stipulated that the sugar supplied as food aid was to be sugar produced and in free circulation in the Community.\textsuperscript{139} Community law did not provide for the possibility to mobilize food aid sugar on the world market until 1975, when - as I already noted above - the Community was confronted with a shortage of sugar on the Community market.\textsuperscript{131} This possibility was provided for by Council Regulation (EEC) No 611/75 of 4 March 1975, amending the above quoted Regulation (EEC) No 1053/73, which stipulated:

> If the white sugar is not available on the Community market on normal terms, it may be obtained by purchase on the world market.

\textsuperscript{129}Unlike for cereals, the Community had no international obligation to supply food aid in dairy products. In case there would be no dairy products available for food aid purposes within the Community, the latter would just stop the supply of food aid in dairy products. Such a situation of shortage was unlikely to arise but the fact that the Community did not consider it necessary to provide for this situation is quite revealing as to the underlying objective of the supply of food aid in dairy products.

\textsuperscript{130}Règlement (CEE) No 1475/72 du Conseil du 10 juillet 1972 relatif à la fourniture de sucre à l'UNRWA à titre d'aide alimentaire, article premier (1), J.O. 1972, L 157/3; and Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972, Article 1, L 1973, L 105/1.

\textsuperscript{131}The Commission had launched an invitation to tender on 7 August 1974 and another on 18 September 1974, but no offers were received. See for details: European Parliament Working Documents, Report on the proposal for a regulation amending Regulation (EEC) No 1053/73 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that Agency dated 18 December 1972 (Rapporteur: Mr Horst SEEFE LD), PE DOC 494/74, 7.
On this basis, the Community bought in 1975 1000 tonnes of sugar on the world market. During the period 1969-76, all other sugar supplied as food aid was, however, mobilized on the Community market.

With regard to food aid in egg products, Community law and more in particular Règlement (CEE) No 1577/71 du Conseil du 20 juillet 1971 relatif à la fourniture de produits d'œufs au PAM required that the egg products supplied as food aid were mobilized on the Community market.

Finally, with regard to the corned beef, tomato paste, burghol and dried vegetables, the 1972 and 1976 EEC-UNRWA Conventions stipulated that these products were to be bought with the Community's cash donation on the

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133 COURT OF AUDITORS, Special Report 1/80, 71. It should be noted, however, that the Community did not buy all the sugar it was unable to mobilize on the internal market on the world market. On the contrary, it opted to amend the 1972 Convention. It was agreed that for 1974-75 2000 of the 6000 tonnes of sugar the Community should normally supply under Article II (1) was cancelled and replaced by a cash contribution (See Agreement in the form of an exchange of letters amending the Convention between the European Economic Community and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) signed on 18 December 1972, OJ. 1976, L 203/44).

Note that according to Hanns Schumacher the Community did not use the possibility to purchase sugar on the world market (SCHUMACHER, 1980, 97-98).

134 COURT OF AUDITORS, Special Report 1/80, 71.

135 Règlement (CEE) No 1577/71 du Conseil du 20 juillet 1971 relatif à la fourniture de produits d'œufs au PAM, J.O. 1971, L 167/9. This regulation formed part of the common agricultural policy legislation although it did not have - unlike similar regulations regarding food aid in cereals or milk products - the regulation on the common organization of the market in eggs as its legal basis but merely the Treaty itself. The regulation on the common organization of the market in eggs did not provide for the possibility of food aid operations. Nevertheless, Règlement (CEE) No 1577/71 du Conseil du 20 juillet 1971 could be seen as an integral part of common agricultural policy legislation in that in its Article 3 stipulated: "Les modalités d'application du présent règlement, et notamment les conditions de l'adjudication et de la livraison, sont arrêtées selon la procédure prévue à l'article 17 du règlement No 122/67/CEE du Conseil du 13 juin 1967, portant organisation commune des marchés dans le secteur des œufs [...]."
Community market. While nothing was explicitly stipulated with regard to the fresh products which could be bought with the saldo of the Community's cash donation under the 1972 EEC-UNRWA Convention, one could interpret the Convention as allowing for the purchase of these products on the 'local market'. The quantities of these fresh products supplied were, however, so marginal and only benefitting one recipient (UNRWA) that it is hardly justified to mention this possibility.

Summing up Community law on the origin of products supplied as food aid, one could first of all observe that this law unmistakenly formed an integral part of the common agricultural policy legislation and in particular of the legislation on market regulation and intervention, and that the application of the law on the origin of food aid products was supervised by the common agricultural policy management committees. Secondly, one could observe that the law on the origin of cereals, sugar, egg products, etc was fairly liberal in that it basically only required that the cereals were mobilized within the Community and that one took into consideration the situation on the market when deciding on the mobilization; for cereals and sugar the mobilization outside the Community was also possible but only in respectively exceptional circumstances and in case of shortages on the Community market. On the contrary, Community law on the origin of the milk products supplied as food aid was very strict. As a rule, these products were to come of out the intervention stocks, although if the stocks of skimmed milk powder were insufficient, this product could also be mobilized on the Community market. Thirdly, it could be observed that, with the exception of 1000 tonnes of sugar and perhaps a marginal quantity of fresh produce, all food aid supplied during the period 1969-76 was mobilized within the Community and much of it taken out of the intervention stocks. Finally, I would like to observe that, except for sugar, Community law did not explicitly require that the products mobilized on

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1 For the products purchased with the cash donation under the 1972 Convention, see EEC-UNRWA Convention, Article VII and Annex III, J.O. 1972, L 304/25-26. For the products purchased under the 1976 Convention, see EEC-UNRWA Convention, Article 3 and Annex, O.J. 1976, L 203/41-42.
the Community market for supply as food aid had been produced in the
Community. The CAP's imports protection ensured, however, that in practice
products mobilized within the Community were in fact produced in the
Community.

As a direct result of the rules on the mobilization of products supplied as food aid,
and perhaps even more as a result of their application by the Commission, some
Member States 'benefitted' far more from the Community's food aid policy than
others. It is clear that to the extent food aid was a surplus disposal instrument, it
'benefitted' of course mainly the biggest cereal and dairy producers among
Member States, respectively France and Germany.
1969-76: Surplus disposal as primary policy objective

The expenditure on Community food aid during the period 1969-1976 broken down by the Member States whose suppliers carried out the operations

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<td>14.4</td>
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<td>92.8</td>
<td>11.6</td>
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<td>11.3</td>
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<td>151.0</td>
<td>18.9</td>
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<td>-</td>
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<td>3.4</td>
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<td>-</td>
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<td>0.5</td>
<td>1.7</td>
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<td>0.6</td>
<td>0.4</td>
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<td>0.3</td>
<td>10.2</td>
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<td>1.6</td>
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<td>1.0</td>
<td>2.9</td>
<td>4.4</td>
<td>11.0</td>
<td>1.4</td>
<td>1.1</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td>33.5</td>
<td>77.5</td>
<td>70.9</td>
<td>59.2</td>
<td>155.6</td>
<td>196.2</td>
<td>214.6</td>
<td>223.1</td>
<td>1103.6</td>
<td>130.9</td>
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Partition of Community food aid expenditure among the Member States during the period 1969-76

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As is clearly shown by these data, most Member States benefited from Community food aid. During the first years of the Community food aid policy, it appears that all the then Member States had an interest in the continuation of Community food aid (as a surplus disposal policy). As from 1973, however, following the first enlargement, this changed. To understand the further evolution of the Community food aid policy, it is very important to note that in particular the United Kingdom did not "benefit" from Community food aid. The United Kingdom had no surpluses to dispose of. It was therefore hardly surprising that this policy found little support, not to say hostility, from that side. The Community's enlargement wrecked the initial parallelism of interests and thus the consensus on the Community food aid policy among the Member States. The United Kingdom - not interested in surplus disposal - started to demand the reform of the food aid policy while some of the other Member States were only too keen to continue the surplus disposal policy called food aid policy.

Already in the very first year of Community food aid, the European Parliament
sharply criticised the food aid policy's links with the common agricultural policy and called for a food aid basket the composition of which would be solely determined by development aid objectives. Throughout the first years, Parliament repeatedly insisted on the need of a more diversified food aid basket. During its February 1972 session for example, Parliament requested that the granting of food aid should henceforth be "independent of the home market situation", that skimmed milk powder and butteroil should be purchased on the world market, and that sugar, egg products, and later, other products should be added to the list of food aid commodities.

Even before the first food aid action had taken place, some members of the European Parliament were quite aware of the danger that the Community would supply a very limited range of products not necessarily adapted to the needs of the recipient populations. Mr Armengaud for example remarked:

Pour que l'aide alimentaire mondiale soit satisfaisante, il faut que les pays bénéficiaires de cette aide reçoivent les produits agricoles que les autochtones consomment. Si l'on considère le blé par exemple, ce n'est pas du blé que consommeront les Indiens malheureux et affamés, car ils ont l'habitude de consommer d'autre denrées.

In reaction, Commissioner Mansholt declared:

Nous devons donc dire haut et clair que nous serons disposés dans l'avenir à accorder cette aide alimentaire sous d'autres formes aussi, et que nous ne lierons pas nécessairement cette aide à la construction fortuite de quelques excédent de blé, de céréales ou de poudre de lait.

Unfortunately, for many years to come the reality of Community food aid would be different and probably Mr Kriedeman, MEP, was quite correct when he

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138 See e.g. PE DOC No 199/1968-69.
139 Bull. EC 4-1972, 97. See also for example: PE DOC No 199/1968-69; PE DOC No 55/1970-71; PE DOC No 90/1971-72; and .
sarcastically observed:

J’en connais plus d’un qui, alors qu’il lance un appel ardent à la lutte contre la faim dans le monde et exige une intensification de l’action menée à ce titre, ne pense en réalité qu’à la manière dont il pourrait écouter ses excédents au prix le plus élevé possible.¹⁴²

3.1.3 The quality of products supplied as Community food aid

The quality of the products supplied as food aid was already during the period 1969-76 a sore point. The quality requirements for the Community food aid products were laid down for each food aid operation separately. It is therefore very difficult to make any general statement on those requirements. A cursory check seems to indicate, however, that the products supplied as food aid had to be of at least the same quality as was required for sales to the intervention agencies although it cannot be excluded that occasionally the quality requirements were less strict.¹⁴³ What one can exclude is that Community law applicable in the period


1969-76 allowed for the supply of sub-standard quality products. As far as cereals supplied under the 1967 and 1971 Food Aid Convention were concerned, the Community was obliged to supply products which were respectively "propres à la consummation humaine et d'un type et d'une qualité acceptable" (Article II (1) of the 1967 Convention) and "suitable for human consumption and of an acceptable type and quality" (Article II (1) of the 1971 Convention). Having said this, I must immediately add, however, that this does unfortunately not mean that the Community did not supply any sub-standard quality products. Serious problems were for example reported with regard to the supply of 13,000 tonnes of sorgho to Mali and Niger and the supply of 43,000 tonnes of Italian rice to Bengali refugees in India under the 1971-72 programme. It was reported that about 80% of the latter rice was of sub-standard quality.

The sub-standard quality supplies during the period 1969-76 - and there were quite likely considerably more of them than the ones reported - were in part the result of insufficient quality control, in part the result of inappropriate packaging and in part the result of improper transportation.

It was up to the national intervention agencies to check and guarantee the quality of the products supplied as Community food aid. In its 1974 Report, the Audit Board observed, however, that the quality of the products (before shipment) was insufficiently checked and also pointed out that the taking-over procedure was often badly organized which made it difficult afterwards to establish responsibility for sub-standard deliveries. The national intervention agencies did not do their job properly.

Also the control of the food aid supplies on arrival left much to be desired, as the Audit Board observed in its 1973 Report. The Board reported in its 1974


145COMMISSION DE CONTROLE, Rapport annuel, 1972,73;COMMISSION DE CONTROLE, Rapport annuel, 1974, 102.

146COMMISSION DE CONTROLE, Rapport annuel 1974, 102

Report, however, that the Commission had been taking some first steps to remedy this situation; it had occasionally called on specialized firms or, in certain countries, its delegates to carry out checks on the Community's food aid supplies.\footnote{148}

As to the packaging of the products, it is clear that inappropriate packaging leads to rapid quality loss. While products were possibly of the highest quality when mobilized in the Community, they could as a result of inappropriate packaging be unfit for human consumption on arrival at their destination. In a study undertaken by the ISMOG of the University of Amsterdam on the Community food aid policy, it was indicated that the cotton sacks used for flour during the first years of Community food aid in cereals, not seldom tore when handled with hooks on unloading.\footnote{149} Later these sacks were replaced by much stronger jute sacks. Furthermore, it was observed that the 20-kg tins in which butteroil was initially supplied were really not strong enough to stand high temperatures or rough handling and as a result not seldom up to 15% of the tins of a consignment were leaking. Consequently, the 20-kg tins were replaced by stronger - but reportedly still deficient - 5 kg tins.\footnote{150}

The Community seemed to 'forget' - and Community food aid law reflected this - that the transport, loading/unloading and storage conditions in many of the recipient countries were particularly hard and demanded special (and often more expensive) packaging of the food aid products.

Finally, it should be pointed out that improper transportation was of course also detrimental to the quality of the food aid products. There was no Community law on the matter. In numerous cases questions were raised about the manner in which Community food aid was shipped and in 1974, the Commission consequently started a number of investigations into reported mishaps related to the


\footnote{149}ISMOG, University of Amsterdam, \textit{Studie Voedselhulp Europese Gemeenschappen}, 1977; for a summary of the findings of this study in English, see: BOS, A. 'Food aid by the European Communities: Policy and Practice', \textit{ODI Review}, 1978, 38.

\footnote{150}BOS, 1978, 43-44.
transportation of the aid.\textsuperscript{131}

\textsuperscript{131} COURT OF AUDITORS, Annual Report 1976, 130. The Court reports Commission investigations into what happened to 710 tonnes of milk powder for Somalia which left Europe but reportedly never arrived; the state of 3000 tonnes of maize supplied to Mali; the conditions under which cereal food aid was shipped to Zambia and milk powder to Somalia unfit for human consumption as a result of the infiltration of chemical products, etc.
3.2 The size and nature of the Community food aid commitments

3.2.1 The size of Community food aid commitments

In the first years of the Community food aid policy, food aid commitments were - with the exception of dairy commitments in 1969 - quite modest. To relate the size of the Community food aid programme better to the needs of the developing countries, the Community's productive capacity and the size of the food aid programmes of other major donors, the Commission proposed in its 1974 Memorandum to supply as food aid annually between 1,000,000 and 1,800,000 tonnes of cereals, between 80,000 and 120,000 tonnes of skimmed milk powder, between 45,000 and 65,000 tonnes of butteroil and 10,000 and 40,000 tonnes of sugar. In the case of dairy products, these goals were by 1976 reached and even surpassed (as far as milk powder was concerned); in the case of cereals and sugar, however, the Community fell far short of the Commission Memorandum's quantitative objectives.

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15COM (74) 300 final, Memorandum, 10 and 19.
1969-76: Surplus disposal as primary policy objective

Community food aid commitments in tonnes during the period 1969-76 \(^{133}\)

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<tbody>
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<td>Cereals</td>
<td>301.0</td>
<td>316.9</td>
<td>353.1</td>
<td>414.0</td>
<td>464.5</td>
<td>580.0</td>
<td>643.0</td>
<td>708.0</td>
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<tr>
<td>Milk powder</td>
<td>123.0</td>
<td>4.0</td>
<td>-</td>
<td>60.0</td>
<td>27.0</td>
<td>41.0</td>
<td>55.0</td>
<td>150.0</td>
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<tr>
<td>Butter (^{155})</td>
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<td>1.0</td>
<td>-</td>
<td>15.0</td>
<td>6.0</td>
<td>39.0</td>
<td>45.0</td>
<td>45.0</td>
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<tr>
<td>Sugar (^{156})</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>6.0</td>
<td>4.1</td>
<td>-</td>
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</table>

Community food aid commitments in cereals during the period 1969-76

---

\(^{133}\)Note that these data do not include the very small quantities of food aid supplied - usually in the form of cash or special foodstuffs - in the context of emergency operations, to be distinguished from emergency food aid operations. Note also that these data do not include the food aid supplied between January 1975 and April 1976 under the Council Regulation (EEC) No 155/75 on the sale of skimmed milk powder from public stocks for the supply to development countries, O.J. 1975, L 19/3, and Council Regulation (EEC) No 1960/75 of 28 July 1975 amending Regulation (EEC) No 155/75 on the sale of skimmed milk powder from public stocks for supply to developing countries, O.J. 1975, L 200/5.

\(^{154}\)For cereals, the year '1969' corresponds to the cereal year 1968/69, and so on.

\(^{155}\)In 1970, the Community also committed 1,500 tonnes of butter.

\(^{156}\)Note that '1974' in fact stands for '1 July 1974 - 30 June 1975' and that '1976' stands for '1 July 1975 - 31 December 1976'.
Size and nature of Community food aid commitments

Community food aid commitments in skim during the period 1969-76

![Bar chart]

Community food aid commitments in butteroil during the period 1969-76

![Bar chart]
With regard to cereal food aid commitments, the Community was bound under the 1967 and the 1971 Food Aid Conventions and the Protocols extending the latter Convention to supply from 1968/69 to 1971/72 annually a minimum of 1,035,000 tonnes of cereals, in 1972/73 a minimum of 1,161,000 tonnes and from 1973/74 onwards annually a minimum of 1,287,000 tonnes of cereals.\footnote{Convention relative à l'aide alimentaire, 1967, Article II, J.O. 1970, L 66/25; and Food Aid Convention, 1971, Article II, O.J. 1974, L 219/36. The 1971 Food Aid Convention expired on 30 June 1974 but was (together with the 1971 Wheat Trade Convention) successively extended to 30 June 1975 by the 1974 Protocol, to 30 June 1976 by the 1975 Protocol, and to 30 June 1978 by the 1976 Protocol.}

Initially, however, the Community supplied not even half of this aid itself. The major part was supplied by the Member States. Soon after the signing of the Convention, it became clear that there was no consensus among the Member States concerning the manner in which the Community's obligations under the Convention was to be fulfilled. In a Communication to the Council of 9 November 1967, the Commission expressed its opinion that while International Grains Arrangement - of which the Food Aid Convention was a part - was signed, as a mixed agreement, by both the Community and each of the Member States, there could be no doubt about the Community nature of the obligations undertaken in...
the Food Aid Convention so that the Community, and the Community alone, should adjudge and administer the indebted cereal food aid. Some Member States, and especially Germany and the Netherlands, did, however, not share the Commission's opinion and demanded that the implementation of the Community's Food Aid Convention obligations would be the exclusive competence of the Member States. They stressed the humanitarian and political nature of the Food Aid Convention and concluded thus that the Community was not competent to implement the Convention. In fact, the underlying reason for their resistance against a Community implementation of the Food Aid Convention obligations was their aspiration to preserve for the future food aid as an instrument of national foreign policy.

As was noted by Richard:

L'aide alimentaire était [...] pratiquée à l'échelle bilatérale par les États membres pour lesquelles elle constituait un instrument privilégié de leur politique à l'égard de cette importante et nouvelle "clientèle" que représentaient les pays qui accédaient de l'indépendance.

138 RHEIN, E., 'L'aide alimentaire, un nouveau domaine d'action de la C.E.E.', Revue du Marché commun, 1969, 61. It should be noted, however, that there could be even less doubt about the Community nature of the obligations undertaken in the Wheat Trade Convention which then raises the question why a mixed agreement had been concluded.

139 See European Parliament debate of 15 May 1968 (intervention by Mr Vredeling), J.O. Annexe, No 103, 106-107 and European Parliament debate on 23 January 1969 (intervention by Mr Vredeling), J.O. Annexe, No 101, 95; see also: ISMOG, 1977, Bijlage, 12; and SCHUMACHER. 1981, 51. During the debate of 15 May 1968, Vredeling claimed that also France was demanding that the Food Aid Convention obligations would be implemented by the Member States rather than the Community.

140 RHEIN, 1969, 61; and JANSSENS, 1971, 12: "En accrochant l'aide alimentaire à la politique extérieure au lieu de l'accrocher à la politique commerciale, il est évident qu'on la retirait ainsi de la compétence de la Communauté".

With regard the legal arguments advanced in justification of the partition, Laurens observed quite correctly: "Ce n'est pas la co-signature qui explique l'exécution conjointe, c'est l'état du rapport de force entre les autorités communautaires et les autorités nationales dont il est la manifestation" (LAURENS, 1976, 53). See also RHEIN, 1969, 62: "Une question fondamentale de nature politique beaucoup plus que juridique".

141 RICHARD, P. (ed.), L'aide alimentaire de la CEE dans le nouveau contexte des stratégies alimentaires, Agence Europe - Prométhée, 1983, 50. Note, however, that the Member States had only given small quantities of food aid so far. During the European Parliament debate of 15 May 1968, Commissioner Mansholt argued that the reasons why some Member States insisted on a national implementation of the Food Aid Convention obligations were related to the wish to keep certain national administrations working (?) and to get
Only after a year of hard and difficult negotiations within COREPER and after the Commission had submitted on 4 November 1968 a compromise proposal\textsuperscript{162}, the Council reached during its meeting of 9 and 10 December 1968 agreement on a provisional, one-year solution.\textsuperscript{163} In order to be able to start with the supply of food aid early 1969, it was decided by way of compromise that for 1968/69 the Community's obligations under the Food Aid Convention would be carried out partially by the Community (29.08\% or 301.000 tonnes), partially by the Member States (70.92\% or 734.000 tonnes).\textsuperscript{164} While intended as a one-year compromise solution, the partition of the Food Aid Convention obligation was repeated in the following years.\textsuperscript{165} It must be noted, however, that the Community part became more important every year. In 1969/70, the Community implemented 32.5\% of the total commitment, in 1970/71, 34\%, in 1971/72, 40\%, and in 1972/73 again 40\%.\textsuperscript{166} This gradual, albeit modest, increase in the Community's part was based on the hand that the gesture of granting food aid.

\textsuperscript{162}Note that the Commission proposed that all that the mobilization of all cereals supplied as food aid would be done according to common rules, reflecting its basic conception that food aid is a surplus disposal instrument which should be used according to the needs of the market; the Commission would for all mobilisations decide on which part of the Community market or from which intervention stock the food aid should be mobilized (see COM(68) 893 final).

\textsuperscript{163}Also Parliament took part in the discussion. At its session of 15 May 1968, it adopted a resolution which inter alia stated "The European Parliament ... emphasizes that the Community character of this aid must be evident in the way its is given." (Bull. EC 7-1968,57.).

\textsuperscript{164}LAURENS, 1976, 157. See also: European Parliament debate of 23 January 1969, J.O. Annexe, No 110, 93-103 with reports by Mr Vredeling (PE DOC 199)and Mr Leemans (PE DOC 192) and European Parliament Resolution of 24 January 1969, J.O. 1969, C 17/20 in which Parliament expressed its regret that: "[...]

\textsuperscript{165}"Cette distinction permet certes aux Etats membres d'intégrer au moins partiellement l'aide alimentaire dans leur diplomatie" (RICHARD, 1983, 53).

\textsuperscript{166}In 1971, the Commission had proposed a calendar for the "communautéisation" according to which the Community itself would supply 50\% in 1971/72, 60\% in 1972/73 and 70\% in 1973/74 (Bull. EC 9/10-1971, 146.), but these goals would turn out to be too ambitious. See also: European Parliament debate of 18 October 1981, O.J. Annex No 142, 17-23; European Parliament Working Documents, Vredeling Report, PE DOC 174/71; and European Parliament Resolution of 18 November 1971, J.O. 1971, C 114/9.
undoubtedly to some extent the result of the harsh criticism by the Commission and Parliament which actively campaigned for what was called a 'communautarisation' of Food Aid Convention food aid. Laurens observed, however, quite correctly that:

En effet, on peut douter que les Gouvernements soient disposés à abandonner à une autorité supranationale cet efficace moyen de pression sur des territoires qui sont souvent d'anciennes colonies.\textsuperscript{147}

In its 1974 Memorandum, the Commission insisted that - for reasons of coherence, efficiency, and the close relation between the Community's food aid policy and its commercial and agricultural policies - all future cereal food aid should take the form of Community actions.\textsuperscript{148} Although there was a modest further "communautarisation" of the Community's obligations under the Food Aid Convention in the years that followed the Memorandum, the partition of the Community's obligations remained a firm characteristic of Community food aid in cereals. In 1975/76, the Community implemented as much as 55% of the total commitment but 45% continued to be implemented by the Member States.

\textsuperscript{147}At its session from 21 to 24 January 1969, Parliament adopted a resolution in which it regretted that Food Aid Convention food aid would in practice, at least in 1968/69, "be supplied largely by the Member States and therefore not by the Community as such" and requested that its Community character should be observed as from 1 July 1969 (Bull. EC 3-1969, P. 70). At its session from 15 to 18 June 1970, Parliament again called for a communautarisation of cereal food aid (Bull. EC 8-1970, p. 125.) and would do so on many later occasions.

\textsuperscript{148}LAURENS, J.L., 1976, p. 56.

\textsuperscript{149}COM (74) 300 final, Memorandum, 16.
1969-76: Surplus disposal as primary policy objective

The partition of the Food Aid Convention commitments during the period 1969-76

<table>
<thead>
<tr>
<th>Year</th>
<th>EC FAC commitments</th>
<th>MS part Q</th>
<th>MS part %</th>
<th>EC part Q</th>
<th>EC part %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968/69</td>
<td>1035.0</td>
<td>734.0</td>
<td>71.0</td>
<td>301.0</td>
<td>29.0</td>
</tr>
<tr>
<td>1969/70</td>
<td>1035.0</td>
<td>698.0</td>
<td>67.5</td>
<td>337.0</td>
<td>32.5</td>
</tr>
<tr>
<td>1970/71</td>
<td>1035.0</td>
<td>683.0</td>
<td>66.0</td>
<td>352.0</td>
<td>34.0</td>
</tr>
<tr>
<td>1971/72</td>
<td>1035.0</td>
<td>621.0</td>
<td>60.0</td>
<td>414.0</td>
<td>40.0</td>
</tr>
<tr>
<td>1972/73</td>
<td>1161.0</td>
<td>697.0</td>
<td>60.0</td>
<td>464.0</td>
<td>40.0</td>
</tr>
<tr>
<td>1973/74</td>
<td>1287.0</td>
<td>707.8</td>
<td>55.0</td>
<td>579.2</td>
<td>45.0</td>
</tr>
<tr>
<td>1974/75</td>
<td>1287.0</td>
<td>643.5</td>
<td>50.0</td>
<td>643.5</td>
<td>50.0</td>
</tr>
<tr>
<td>1975/76</td>
<td>1287.0</td>
<td>579.0</td>
<td>45.0</td>
<td>708.0</td>
<td>55.0</td>
</tr>
</tbody>
</table>

The evolution in the partition of the Food Aid Convention obligations during the period 1969-76

It is important to point out that it was this gradual "communautarisation" together with effect of the accession to the Community of the United Kingdom and

170Source: Commission, Green Europe No.216, Annex, 1.
Denmark\textsuperscript{171} - and not any concern on the part of the Community to bring the size of its cereal food aid programme closer to the actual needs of the developing countries - which explained the increase in the size of the Community's cereal food aid commitments during the period 1969-76.\textsuperscript{172}

While the food aid contributions committed under the Food Aid Conventions were minimum contributions, the Community - unlike the United States for example\textsuperscript{173} - supplied during the period 1969-76 no cereal food aid over and above its obligations under the Food Aid Convention.

\textsuperscript{171}Article VIII (1) of the 1971 Convention stipulated: "This Convention shall be open for accession by the European Community and its Member States or by any other Government referred to in Article VI, provided [...] in the case of Governments referred to in paragraph 2 of Article VI their contribution is at least equal to that which they agreed to make in the Food Aid Convention, 1967. [...]" (O.J. 1974, L 219/39). The United Kingdom and Denmark had agreed under the 1967 Convention to an annual contribution of respectively 225.000 tonnes and 27.000 tonnes and their accession to the Community implied an increase of the Community's minimum contribution of 126.000 tonnes for 1972/1973 (the United Kingdom and Denmark joined the Community on 1 January 1973) and of 252.000 tonnes as from 1973/74 onwards.

\textsuperscript{172}The Council could not reach agreement on any increase in the Community/Member States' Food Aid Convention obligations until its meeting of 28 November 1977 at which it was decided that at the negotiations for a new International Cereals Agreement, the Commission could offer an increase in the Community/Member States food aid commitments.

\textsuperscript{173}Note that in particular the United States supplied considerably more cereal food aid than it was obliged to supply under the Food Aid Convention. In the period 1974-76 for example, the total quantity of food aid to be supplied under the Food Aid Convention was 4.226.000 tonnes. However, in 1974/75, 8.399.000 tonnes and in 1975/76, 6.847.000 tonnes of cereals were shipped to developing countries.
1969-76: Surplus disposal as primary policy objective

Community food aid in cereals above the FAC commitment during the period 1969-76

(in '000 tonnes)

<table>
<thead>
<tr>
<th>Year</th>
<th>Food aid under the FAC</th>
<th>Additional food aid</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1968/69</td>
<td>301.0</td>
<td>0.0</td>
<td>301.0</td>
</tr>
<tr>
<td>1969/70</td>
<td>337.0</td>
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<td>0.0</td>
<td>352.0</td>
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<tr>
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<td>0.0</td>
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<td>1972/73</td>
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<td>1973/74</td>
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<td>643.5</td>
<td>0.0</td>
<td>643.5</td>
</tr>
<tr>
<td>1975/76</td>
<td>708.0</td>
<td>0.0</td>
<td>708.0</td>
</tr>
</tbody>
</table>

Already in 1968, before the first cereal food aid action took place, the modest size of the programme was denounced. The size of the cereal food aid programme was directly determined by the commitments made under the 1967 and 1971 Food Aid Conventions and was in no relation at all with the objective needs of the Third World for cereal food aid or with the food aid requests addressed to the Community by developing countries. Between July 1968 and February 1969, the Community received requests for cereal food aid for a total of 1.9 million tonnes while it disposed of merely 301,000 tonnes. In 1974/75 requests for Community cereal food aid exceeded 2,400,000 tonnes and availabilities amounted to 643,500 tonnes. Compared with other donors, the relatively modest size of the Community's programme came clearly to the fore.


175Bull. EC 2-1969, p. 83.

Size and nature of Community food aid commitments

Total cereal food aid shipments by donors during the period 1970-76

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>10.0</td>
<td>12.8</td>
<td>2.4</td>
<td>10.0</td>
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<td>230.2</td>
<td>215.1</td>
<td>258.8</td>
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<td>329.6</td>
<td>261.2</td>
<td>1517.1</td>
<td>2.714</td>
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<td>BLEU</td>
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<td>31.0</td>
<td>41.7</td>
<td>45.8</td>
<td>35.5</td>
<td>42.8</td>
<td>217.3</td>
<td>0.389</td>
</tr>
<tr>
<td>Canada</td>
<td>1318.0</td>
<td>1093.0</td>
<td>808.0</td>
<td>663.6</td>
<td>612.0</td>
<td>1034.0</td>
<td>5528.6</td>
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<td>57.5</td>
<td>64.3</td>
<td>217.6</td>
<td>0.389</td>
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<tr>
<td>Denmark</td>
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<td>-</td>
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<td>47.3</td>
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<td>177.5</td>
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<td>106.8</td>
<td>756.2</td>
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<td>674.7</td>
<td>103.4</td>
<td>1296.9</td>
<td>2.320</td>
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<td>TOTAL</td>
<td>12357.3</td>
<td>12512.8</td>
<td>9964.1</td>
<td>5818.7</td>
<td>8399.4</td>
<td>6847.0</td>
<td>55899.3</td>
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</tr>
</tbody>
</table>

177 Source: FAO, L'aide alimentaire en chiffres, 1983, 14. For comparison with other food aid donors, one has to work with food aid shipment data since data on food aid commitments are not readily available for all donors and all products. For the purpose of comparing the size of programmes, this creates, however, no problem.
During the period 1970-76, the Community supplied only 4.3% of the total quantity of food aid in cereals and was listed 4th among the food aid donors. Towards the mid-seventies, the Community overtook Japan but still supplied far less food aid in cereals than Canada. Even if one took into account also the cereal food aid supplied by the Member States, the quantity supplied was only a fraction of the quantity supplied by the United States. Taking into consideration the position of the European Community as a leading economic power, this could hardly be considered satisfactory. As indicated above, the Commission had proposed in its 1974 Memorandum a considerable increase in the size of the cereal food aid programme, an increase justified by the exceptionally high import requirements of developing countries and by their unquestionable difficulties in meeting those requirements through commercial imports as well as by the need of a large number of developing countries to build or rebuild own national food reserves, following
the world food crisis.\textsuperscript{179} The Member States failed, however, to agree on any increase\textsuperscript{179} and when the 1974 World Food Conference adopted its well-known resolution stipulating that as from 1975 the total amount of cereal food aid should be raised to a minimum quantity of 10 m tonnes a year\textsuperscript{180}, the Community immediately declared that it would not increase the size of its cereal food aid programme. It merely committed itself to keep it at its 1974 level.\textsuperscript{181} Both in November 1975 and in September 1976 the Commission again urged the Council for substantial increases in the Community’s cereal food programme but without success.\textsuperscript{182} Reportedly, these increases were not accepted by the Council due to the ardent opposition of Germany and Italy which considered that they were already doing enough.\textsuperscript{183} At the end of 1976, the Community was the only among the major donors which had not responded to the call of the World Food Conference for an increase in cereal food aid and the Community was criticised for this in various international fora.\textsuperscript{184}

On the positive side, it should be noted, however, that when a drop in agricultural production as a result of bad weather and a drastic change in the Soviet Union’s agricultural import policy resulted in the 1972-74 world food crisis and developing

\textsuperscript{179} COM(74) 300 final, Memorandum, 18.
\textsuperscript{179} SCHUMACHER, 1980, 105.
\textsuperscript{180} Bull. EC 11-1974, 16.
\textsuperscript{181} See Statement by Mr P. Lardinois, Commissioner responsible for Agriculture, Bull. EC 11-1974, 17-20.
\textsuperscript{182} In November 1975, the Commission insisted on an increase with 356,000 tonnes. It argued that such an increase was absolutely necessary in order to contribute to the realization of the 10 m tonnes objective laid down at the 1974 World Food Conference and in order to be able to meet the ever increasing demand for cereal food aid (Bull. EC 11-1975, 50). In September 1976, in its proposal for a (second) indicative three-year food aid programme, the Commission suggested to commit between 1,077,000/1,350,000 tonnes and 2,500,000 tonnes of cereals (COM(76) 452 final; Bull. EC 9-1976, 19).
\textsuperscript{183} Council Meeting of 23 June 1975; see: LAURENS, 1976, 211.
\textsuperscript{184} Bull. EC 9-1976, 20.
countries needed cereal food aid more than ever, the Community, unlike other donors such as the United States, Canada and Japan which all cut their food aid programmes considerably, increased both its cereal food aid commitments and shipments.\footnote{It should be noted, however, that the increase resulted from the 'communautarisation' of the FAC obligations and the accession of the United Kingdom and Denmark to the Community.}

When the Community in 1969 decided for the first time to the supply of dairy food aid, the quantities committed were quite substantial: 123,000 t of skimmed milk powder and 35,000 tonnes of butteroil.\footnote{Règlement (CEE) 1399/69 du 17 juillet 1969 établissant les règles général relatives à la fourniture de matières grasses du lait au programme alimentaire mondial, Article 1 (3), J.O. 1969, L 179/15; and Règlement (CEE) N 1852/69, du 16 septembre 1969 établissant les règles général relatives à la fourniture de lait écrémé en poudre au programme alimentaire mondial et au Comité international de la Croix-Rouge, Article 1 (2), J.O. 1969, L 237/1.} The size of the dairy food aid commitments during the period 1969-76 were, however, unquestionably linked to the size of the dairy intervention stocks.\footnote{As was also noted by Laurens: "[...] les actions sont décidés au coup par coup, sans aucun plan préétabli, mais en tenant uniquement compte des nécessités d'écoulement de stocks pléthoriques" (LAURENS, 1976, 15.) and by Dupuis: "Son ampleur est uniquement fonction de la situation sur le marché intérieur de la CEE, situation qui peut varier considérablement d'une année sur l'autre" (DUPUIS, 1975, A).} When in view of the urgent requests for dairy food aid from the International Committee of the Red Cross and a number of developing countries the Commission proposed in March 1970 to supply in 1970 50,000 tonnes of butteroil and 40,000 tonnes of skimmed milk powder, the Council rejected this proposal in the light of the fact that in the spring of 1970 the dairy surplus stocks were decreasing sharply and special disposal measures such as food aid operations were not required.\footnote{Le skimmed milk powder stocks down from 392.000 t in January 1970 to 183.000 tonnes in January 1971; the butter stocks went down from 336.000 tonnes in January 1970 to 160.000 tonnes in January 1971 (ISMOG, 1976, Bijlage, 9).} Eventually, the Council agreed for 1970 only to three emergency aid operations of almost neglectable size.\footnote{Règlement (CEE) No 1493/70 du Conseil du 27 juillet 1970 établissant les règles générales relatives à la fourniture de beurre et de lait écrémé en poudre au Pérou, à la Roumanie et à la Turquie, Article 1 (2), J.O. 1970, L 166/6; and Règlement (CEE) No 1494/70 du Conseil du 27 juillet 1970 établissant les règles générales relatives à la fourniture de lait écrémé en poudre au programme alimentaire mondial, Article 1 (4), J.O. 1970, L 169/1.}
Community committed in 1970 4,000 t of skimmed milk powder, 1,500 tonnes of butteroil and 1,000 tonnes of butter. In 1971, no dairy food aid was committed at all. During the second half of 1972, however, the stocks returned back to "normal" and in January 1973 reached again a level of 284,000 tonnes. As an immediate result of this return to dairy stock 'normality', the Commission proposed and the Council adopted in August 1972 a butteroil food aid programme of 15,000 tonnes and in December 1972 a skimmed milk programme of 60,000 tonnes. In 1973, the Council adopted on 14 April a first and on 28 December a second skimmed milk powder programme for a total of 27,000 tonnes and on the latter date, it also adopted a butteroil programme of 6,000 tonnes. In its 1974 Memorandum, the Commission suggested annual skimmed milk powder commitments between 80,000 tonnes and 120,000 tonnes and butteroil

1970 établissant les règles générales relatives à la fourniture de butteroil à la Turquie, J.O. 1970, L 166/7. Peru (1000 tonnes of skimmed milk powder), Roumenia (500 tonnes of butter and 1000 tonnes of skimmed milk powder) and Turkey (1000 tonnes of butter, 2000 tonnes of skimmed milk powder and 1000 tonnes of butteroil).

Peru received 1,000 tonnes of skimmed milk powder (and 15,000 tonnes of non-durum wheat); Roumenia received 1,000 tonnes of skimmed milk powder and 500 tonnes of butteroil (but supplied via an international organisation and Turkey received 2,000 tonnes of skimmed milk powder, 1,000 tonnes of butter and 1,000 tonnes of butteroil. (Bull. EC 9/10-1970, 87.)

The stocks continued decreasing; the skimmed milk powder stocks went from 183,000 tonnes in January 1971 to 83,000 in January 1972; the butteroil stocks went from 160,000 tonnes in January 1971 to 134,000 tonnes in January 1972.


During 1973 the skimmed milk powder stocks increased from 284,000 tonnes to 336,000 tonnes while butteroil stocks, on the contrary decreased from 586,000 tonnes to 283,000 tonnes (ISMOG, 1976, Bijlage, 9).
commitments between 45,000 tonnes and 65,000 tonnes.\footnote{COM(74) 300 final, Memorandum, 19-20.} As far as food aid in butteroil was concerned, the Community committed in 1974, 39,000 tonnes, reached in 1975 the lower, minimum goal of 45,000 tonnes and kept in 1976 its commitment on this level.\footnote{Council Regulation (EEC) No 530/74 of 4 March 1974 laying down general rules for the supply of milk fats as food aid to certain developing countries and certain international organizations, OJ. 1974, L 65/1; Council Regulation (EEC) No 1541/75 of 16 June 1975 laying down general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food-aid programme, OJ. 1975, L 157/4; and Council Regulation (EEC) No 694/76 of 25 March 1976 laying down general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1976 food-aid programme, OJ. 1976, L 83/4.} Parliament, however, noted that in view of the requests received by the Community food aid in this form (requests for a total of 125,000 tonnes in 1975 and 91,800 tonnes in 1976) 45,000 tonnes were not sufficient and repeatedly called for an increase in the size of food aid in butteroil.\footnote{European Parliament Resolution of 30 April 1975 on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid under the 1975 programme to certain developing countries and international agencies, OJ. 1975, C 111/25; see also European Parliament Working Documents, Report on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid under the 1975 programme to certain developing countries and international agencies (Rapporteur: Mr Pierre DESCHAMPS), PE DOC 101/75, 8; and European Parliament Resolution on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid to certain developing countries and international organizations under the 1976 programme; see also European Parliament Working Documents, Report on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid to certain developing countries and international organizations under the 1976 programme (Rapporteur: Mr Pierre DESCHAMPS), PE DOC 442/75.} As for food aid in skimmed milk powder, however, the Community only reached in 1976 - and in that year even surpassed - the goals set out in the 1974 Memorandum. In 1974, the Commission had proposed a skimmed milk powder programme of 80,000 tonnes but the ad hoc working party on food aid, composed of the representatives of the Member States, rendered a negative opinion on this proposal. Eventually, the Council adopted a programme to 41,000
In 1975, the Community committed to supply in successive decisions a total of 55,000 tonnes of skimmed milk powder. Taking into account that the Community had received requests for food aid in the form of milk powder for a total volume of 214,000 tonnes, both the Commission and Parliament considered the Community’s effort too small. As part of its proposal on Agricultural Prices for 1976/77 (!), the Commission proposed in December 1975 to earmark 200,000 tonnes of skimmed milk powder as food aid in 1976. Arguing that the dairy food aid programme should be expanded in view of the serious undernourishment in the Third World, it renewed this proposal in its 1976 dairy food aid proposal.

While falling short of the 200,000 tonnes the Commission had asked for, the quantity of skimmed milk powder committed under the 1976 programme was tripled in comparison with the previous year and amounted to 150,000 tonnes, a level it would in later years often equal but never surpass. It must be noted, however, that if the Community decided to increase its skimmed milk powder

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199. Council Regulation (EEC) No 1347/75 of 26 May 1975 laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1975 programme, Article 1, OJ. 1975, L 138/1. The Council decided separately, however, to grant 9,000 tonnes of skimmed milk powder as food aid to the countries of the Sahel and Ethiopia, 2,000 tonnes of skimmed milk powder to Somalia.

200. See e.g.: European Parliament Resolution of 30 April 1975 on the proposal for a regulation laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organization under the 1975 programme, point 9, O.J. 1975, C 111/25; see also European Parliament Working Documents, Report on the proposal for a regulation laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organization under the 1975 programme (Rapporteur: Mr Jorgen B. NIELSEN), PE DOC 50/75, 10.


202. On 1 June the Council decided on a first installment of 55,000 tonnes of milk powder (Council Regulation (EEC) No 1298/76 of 1 June 1976 laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1976 programme, O.J. 1976, L 146/3; see also: Bull. EC 6-1976, 55.) and on 27 July, it decided on a second installment of 95,000 tonnes (Council Regulation (EEC) No 2018/76 of 27 July 1976 on the additional supply of skimmed milk powder as food aid to certain developing countries, international organizations and non-governmental organizations under the 1976 programme, O.J. 1976, L 224/2; see also: Bull. EC 7/8-1976, 70-71.).
programme so drastically, this was rather due to the situation on the market in skimmed milk powder than any concern for the food situation in developing countries (the requests of which were still in excess of the commitments). In the period from 1974-76 the total availability of milk powder went up from 2,307,000 tonnes in 1974 to 3,306,000 tonnes in 1976 with consumption at full market prices and exports at world market prices dropping. In 1976, the residual stocks of skimmed milk powder, i.e. the stocks after deducting quantities required for animal feed compounds and existing food aid programmes) stood at just over 1,000,000 tonnes whereas the normal acceptable level of stocks could be placed at 400,000 tonnes. The drastic increase in the milk powder programme was therefore all but a surprise.

The use of dairy food aid as "Ventil der Agrarpolitik" and the resulting lack of regularity and predictability, was highly criticised by the European Parliament which demanded already in a Resolution of 5 July 1971 more regularity and more long term planning of the dairy food aid actions. There are indications that the

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203This was even the case in 1976 since in April 1976, the Community had already received requests for food aid in milk powder under the 1976 programme for a total of 195,545 tonnes (European Parliament Working Documents, Report on the proposal for a regulation laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1976 programme (Rapporteur: Sir Geoffrey de FREITAS), PE DOC 23/76, 10).

204European Parliament Working Documents, Report on the proposal for a regulation laying down general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1976 programme (Rapporteur: Sir Geoffrey de FREITAS), PE DOC 23/76, 10.

205Note the Oral Question (O-18/76) of June 1976 by Lord Walston and other members of Parliament to the Council: "In view of figures given by Commissioner Lardinois that the interest and storage costs together for holding 1 million tons of dried skim milk powder for one year amount to over 80 million units of account, will the Council take immediate steps to dispose of at least 1/2 million tons at concessionary rates, or as free gifts to the starving peoples of the world? Thereby not only making a major contributions to the fight against malnutrition, but also saving the Community over 40 million units of account annually" (European Parliament Working Documents, PE DOC 186/76, 1.).

206SCHUMACHER, 1980, 58.

Commission shared the Parliament's concern about the lack of regularity and predictability of dairy food aid.\textsuperscript{208}

Determining the quantities of dairy food aid solely on the basis of the size of the intervention stocks, the Community did not take into consideration the objective need of developing countries for food aid in dairy products. During the period 1969-76, the requests for Community dairy food aid were always in excess of the availabilities. While the statistical data available for the period 1969-76 do not allow us to compare in detail the size of the Community's dairy food aid programme with the programmes of other donors, the available information seems to suggest that in the mid-seventies the Community was the most important donor of skimmed milk powder and virtually the only donor of butteroil. In the light of the requests its efforts were nevertheless considered to be insufficient.

With regard to the other Community food aid products, one should note the marginal quantities committed. For egg products, the Community commitment amounted to 500 tonnes\textsuperscript{209} and for sugar, to about 6150 tonnes for 1972, 1973 and 1976, 4150 tonnes for 1974, nothing for 1975\textsuperscript{210}. In its 1974 Memorandum, the Commission suggested annual sugar commitments of minimum 10,000 tonnes and maximum 40,000 tonnes - observing that even these quantities are small in relation

\textsuperscript{208}See COM(72) 763 final and COM(72) 1081 final.

\textsuperscript{209}Règlement (CEE) No 1577/71 du Conseil du 20 juillet 1971 relatif à la fourniture de produits d’œufs au programme alimentaire mondial, Article 1, J.O. 1971, L 167/9. The size of this ad-hoc operation was solely determined by the situation on the Community market and the need to dispose of surpluses of that product (FABER, 1978, 82). Laurens observed that: "Il n'est pas nécessaire d'insister sur le caractère peu humanitaire de cette aide qui a simplement correspondu à une situation purement exceptionnelle de surplus de ce produit. [...]" (LAURENS, 1976, 16).

to the needs of developing countries.211 In view of the precarious situation on the Community market in sugar during the period 1974-76, to which I already referred to above, it was, however, not surprising that, instead of increasing its commitments the Community negotiated for 1974 a reduction of 2000 tonnes of its sugar food aid commitment of 6,150 tonnes under the 1972 EEC-UNRWA Convention212 and that in 1975 no sugar food aid commitments were made at all213. In 1976, however, the Community again committed 6,153 tonnes of sugar.214 In addition to sugar and egg products, the Community donated under the 1972 EEC-UNRWA Convention 1,610,000 u.a. to be used to buy 40 tonnes of tomato paste, 450 tonnes of corned beef, 260 tonnes of dried vegetables, 200 tonnes of burghol, and fresh products with the saldo.215 In its 1974 Memorandum, the Commission suggested annual commitments of between 20 million and 30 million u.a. of food aid in other products216 but rather than increasing food aid in other products, the Community did after 1974 no longer supply food aid in dried vegetables, burghol and fresh products. Under the 1976 EEC-UNRWA, the cash contribution was only to be used for the purchase of 42 tonnes of tomato paste and 520 tonnes of corned beef.217

211COM(74) 300 final, Memorandum, 20.

212See also: Section 2.2.1. of this Chapter.

213One could also argue that the 1974 commitment was in fact a 1 July 1974/30 June 1975 commitment and that the 1976 commitment was a 1 July 1975/31 December 1976 commitment.

214Convention between the European Economic Community and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) concerning aid to refugees in the countries of the Near East (1976), Article 4 and Annex, O.J. 1976, L 203/41-42. Note that this 1976 Convention covered a first period officially starting on 1 July 1975 and ending on 31 December 1976. What happened in fact was that the Community was late with the renewal of the 1972 EEC-UNRWA Convention which expired on 30 July 1975.


216COM(74) 300 final, Memorandum, 20.

With regard to the size of the Community's food aid commitments in budgetary terms during the period 1969-76, it is virtually impossible to give an accurate picture of the situation before 1975 since the food aid appropriations were spread over different parts of the Budget and could not always be identified separately. Pursuant to Council Regulation (EEC) No 2052/69 and No 1703/72 on the financing of Community food aid in cereals, the appropriations to cover the 'export refund' element of the cost of the cereals supplied as food aid, for example, were part of the cereal export refund appropriations provided for in Title 6 ('EAGGF-Guarantee section') but were not identified separately, while the appropriations to cover the 'world price' element of the cost of the cereals supplied were provided for in a 'special' title of the Budget until the 1972 budget and from that budget onwards in Title 9 (Food Aid and Other Expenditure). The latter appropriations were, however, also to be used for all expenditure resulting from food aid in egg products, food aid in sugar and food aid in skimmed milk powder mobilized on the Community market. Appropriations to cover the cost of dairy food aid supplied out of the intervention stocks, on the contrary, were provided for in Title 6 ('EAGGF-Guarantee section') of the Budget. Finally, the cost relating to the transport of Community food aid and 'exceptional costs', were covered by

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221 According to Janssens, a resolution to this effect was adopted by the Council on 15/16 September 1969 (JANSSENS, 1971, 72.).
appropriations provided for in Title 4 of the Budget and by European Development Fund appropriations.\textsuperscript{2}\textsuperscript{2}\textsuperscript{2}

The Audit Board in its 1971 Report, severely criticizing this situation, observed:

Les charges supportées par les Communautés européennes au titre de ces diverses formes d'aides se trouvent ventilées entre des postes budgétaires et hors budget très variés, sans qu'apparaisse nettement la logique de ces critères d'imputation, ce qui fait obstacle à une appréciation globale de l'effort consenti. [...] 

Cette variété des financements reflète, en partie l'ambiguïté d'interventions qui apparaissent tout à la fois comme des secours et des aides au développement, mais aussi comme des mesures d'assainissement des marchés communautaires.\textsuperscript{2}\textsuperscript{2}\textsuperscript{3}

More than anything else, however, it was just bad budgetary management. This impossible situation was remedied by the adoption of Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid.\textsuperscript{2}\textsuperscript{4} This regulation introduced a system of split financing whereby pursuant to its Article 2:

1. That portion of expenditure which corresponds to the export refunds fixed in this connection in accordance with Community rules shall be charged to the Guarantee section of the EAGGF.

2. The expenditure referred to in Article 1, apart from the refunds mentioned in paragraph 1, [i.e. all other food aid expenditure] shall be entered under Title 9 (chapter on 'Food-aid expenditure').

While this system of split-financing came under a good deal of criticism and

\footnotesize\textsuperscript{2}\textsuperscript{2}\textsuperscript{2}COMMISSION DE CONTROLE, Rapport annuel, 1971, Réponses de la Commission, 226; COMMISSION DE CONTROLE, Rapport annuel, 1972, Réponses de la Commission, 17; COMMISSION DE CONTROLE, Rapport annuel, 1973, 111. Note that Council Regulation (EEC) No 1703/72, J.O. 1972, L 180, concerning the financing of expenditure resulting from the 1971 Food Aid Convention allowed the cost of transport beyond the f.o.b. stage to be charged to the food aid budget.

\footnotesize\textsuperscript{2}\textsuperscript{2}\textsuperscript{3}COMMISSION DE CONTROLE, Rapport annuel, 1971, 142.

\footnotesize\textsuperscript{2}\textsuperscript{4}Council Regulation (EEC) No 2681/74 of 21 October 1974 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid, O.J. 1974, L 288/1. Nevertheless, some food aid expenditure was still covered by appropriations entered in other parts of the budget. E.g. the cash donation to the UNRWA to buy certain quantities of tomato paste, corned beef, etc.
Size and nature of Community food aid commitments

definitely had some disadvantages, it clarified the budgetary situation with regard to food aid considerably.

The 1975 and 1976 Budget provided for respectively 231 million u.a. and 414 million u.a., which were by no means trivial amounts. The considerable increase from 1975 to 1976 was primarily due to the tripling of the quantity of food aid in skimmed milk powder (from 55,000 tonnes to 150,000 tonnes).

<table>
<thead>
<tr>
<th>Community food aid commitments in budgetary terms in 1975 and 1976</th>
<th>1975</th>
<th>1976</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cereals Chapter 92 EAGGF-Guarantee</td>
<td>101.3</td>
<td>103.6</td>
</tr>
<tr>
<td>Milk products Chapter 92 EAGGF-Guarantee</td>
<td>61.4</td>
<td>182.7</td>
</tr>
<tr>
<td>Sugar Chapter 92 EAGGF-Guarantee</td>
<td>2.3</td>
<td>2.3</td>
</tr>
<tr>
<td>Other products Chapter 92 p.m.</td>
<td>p.m.</td>
<td>p.m.</td>
</tr>
<tr>
<td>Other expenditure Chapter 92</td>
<td>1.0</td>
<td>1.0</td>
</tr>
<tr>
<td>Totals Chapter 92 EAGGF-Guarantee</td>
<td>166.0</td>
<td>289.6</td>
</tr>
<tr>
<td>Grand total</td>
<td>231.0</td>
<td>414.4</td>
</tr>
</tbody>
</table>


Laurens stated that "[...] on peut avancer sans grande crainte d'être contradit, que le financement de la restitution n'est pas une véritable dépense d'aide alimentaire de la Communauté. Il s'agit en fait d'une simple dépense commerciale qui n'a rien à voir avec les problèmes d'aide au développement et de lutte contre la faim" (LAURENS, 1976, 179.). While I agree with the last sentence, I profoundly disagree with the first. Export refunds are also part of the expenditure of the food aid policy and 'betray' the policy's agricultural and commercial objectives. In the context of this study, export refunds will therefore be considered when calculating the size of the Community's food aid commitment in budgetary terms.
It will be observed that the food aid appropriations provided for in Title 6 (EAGGF-Guarantee Section) which were to be used to cover the 'export refund' element of the cost of the food aid supplies represented about 40% of the total food aid budget. Noteworthy is also that in 1976, dairy food aid appropriations overtook cereal food aid appropriations making the dairy food aid programme the Community's biggest programme. Appropriations for other expenditure were negligible.

It should be noted that during the period 1969-76 the Community also financed the export refund element of the cost of national food aid actions. In its Decision of 11 January 1973 in the case 13/72, Netherlands v. Commission, the European Court of Justice agreed with the Dutch Government that the latter was entitled to receive export refunds for an export operation on a non-commercial basis, i.e. a food aid operation, the Netherlands had undertaken in 1966-67. The Court stated that:

[...] si l'article 14, paragraphe 2 du Règlement 13/64 CEE vise 'en premier lieu' des opérations d'exportation à titre onéreux, il n'en
exclut pas les opérations à titre de don.\textsuperscript{226}

Consequently, the Community financed a considerable part of the Member States' food aid policies. This expenditure is, however, lost in the total of export refunds paid and it is therefore impossible to determine the size of this commitment.

Finally, it should be noted that in 1969 the Member States agreed - after long and difficult discussions - on a special partition key to calculate the contribution of each of the Member States towards financing the 'world price' element of the cost of food aid in cereals. Article 5 of Council Regulation (EEC) No 2052/69 stipulated:

\begin{quote}
[...] les dépenses visées à l'article 4 sont couvertes par des contributions financières des États membres calculées, pour chaque action communautaire, au prorata des quantités correspondant à la participation de chaque État membre'.\textsuperscript{227}
\end{quote}

Pursuant to Council Regulation (EEC) No 17/64, the EAGGF-Guarantee Section partition key was used for the cost of food aid in dairy products and the export refund element of the cost food aid in cereals.\textsuperscript{228}

With the introduction of the System of Own Resources, however, this specific regime for financing food aid expenditure was abandoned and food aid was financed as other Community expenditure.

\textsuperscript{226}CJCE, No 1973/1, p 27-53.

\textsuperscript{227}J.O. 1969, L 263/6.

\textsuperscript{228}J.O. 1964, L 34/586.
3.2.2 The nature of the Community’s overall and specific food aid commitments during the period 1969-76

During the period 1969-76, the overall cereal food aid commitments were - due to the 1969 and 1971 Food Aid Conventions - multi-annual. Due to the 1972 and 1976 EEC-UNRWA Conventions, the Community’s sugar food aid commitments and commitments of food aid in other products were also largely multi-annual. Overall food aid commitments in dairy products, however, were annual commitments and could thus very easily fluctuate with the situation on the agricultural markets. Already in the 1974 Memorandum, the Commission recognized the need for multi-annual planning of all overall food aid commitments and proposed the adoption of a first three-year indicative programme (1975-1977). The programme - expressed in minimum and maximum commitments for each product - would provide a framework for determining the Community’s annual food aid commitments. It should be noted, however, that the Commission did not propose that Community would establish truly multi-annual food aid commitments; the three-year programme would be indicative and not binding. It was argued, however, that this programme would give the food aid recipients some

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229 It can be argued, however, that to the extent that the 1974 and 1975 Protocols (unlike the 1976 Protocol) extended the 1971 Food Aid Convention for only one year, the commitments were in these years not multi-annual.

230 Note, apart from the Conventions themselves which did contain a provision allowing for the renegotiation of the quantities committed, Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid, O.J. 1973, L 105/1, which stipulated in its Article 1 (1): "The following quantities of white sugar, produced and in free circulation in the Community, are to be placed at the disposal of UNRWA as food aid in accordance with the Agreement: 2,150 metric tons for the 1972/73 sugar marketing year; 6,150 metric tons for the 1973/74 sugar marketing year; 6,150 metric tons for the 1974/75 sugar marketing year. However, if the quantities laid down for the sugar marketing years 1973/74 and 1974/75 are varied in accordance with Article 12 of the Agreement by an amount 2,000 tonnes or less, the quantities given under the second and third indents above should be read as having been varied accordingly"; and Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid, O.J. 1976, L 118/1.

231 Note that Parliament in 1970 invited the Commission to “strive, at international level, to ensure that milk products and sugar were in any case included in multilateral food aid conventions” (Bull. EC 8-1970, p. 126).

232 COM(74) 300 final, Memorandum, 8-9 and 18; See also: Bull. EC 3-1974, 73.
forward guidance about the Community’s medium term food aid plans. In spite of the modesty of this proposal, the Council could only in June 1976 come to an agreement in principle on medium-term indicative programmes; too late for the adoption of the first three-year indicative programme proposed in 1974. In a Communication to the Council of 15 September 1976, the Commission therefore proposed the adoption of a second three-year indicative programme (1977-1979). The Council was, however, unable to agree on the programme and during the Council meeting of 22 March 1977, the Commission withdrew its proposal for a second three-year indicative programme.

As regards the Community’s specific food aid commitments, i.e. commitments to individual countries and organizations, they were all, but one, annual commitments during the period 1969-76 which left recipients in the dark as to possible food aid supplies in the years to come. The one exception was the commitment to supply food aid in various products to the UNRWA under the 1972 and 1976 EEC Conventions with this organization.

223 On its other, less development-minded objective, see: Section 2.1 of this Chapter.


225 COM(76) 452 final; see also: Bull. EC 9-1976, 18.

226 Bull. CE 3-1977, 60. It seems that some Member States could not accept the proposed increase in the size of the food aid programme.
3.3 The allocation of Community food aid

3.3.1 The recipients of Community food aid

In comparison with the number of Community food aid recipients in the late seventies and the eighties, the number of recipients during the period 1969-76, and in particular during the first years of that period, was still quite modest. It must be noted, however, that towards the mid seventies the number of recipients increased quickly and - important to note - increased especially in the first years much faster than the quantities of food aid available. In 1969/70, for example, 11 countries and 1 international organization received all together 337,000 tonnes of cereals; in 1972/73, however, 29 countries and 3 international organizations divided up the 464,400 tonnes of cereals available, and, in 1975/76, 37 countries and 5 international organizations shared the 708,000 tonnes available.

This rather dramatic increase in the number of recipients of Community food aid reflected a basic policy choice on the part of the Community to give food aid to - and thus create goodwill in - as many countries as possible, even if the excessive dispersion of the modest quantities of food aid available undoubtedly reduced the latter's effectiveness.

The biggest recipient in absolute quantities of Community food aid in cereals during the period 1969-76 was Bangladesh (678,000 tonnes) followed by India (368,000 tonnes), Pakistan (272,000 tonnes), Indonesia (187,800 tonnes) and the WFP (159,000 tonnes). Note that - not that surprisingly - the countries in this top five were all mega-countries with over 70 million inhabitants and that - more

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237In May 1968 already, Mr De Winter, MEP, had warned against the danger of an excessive dispersion of Community food aid: "Il faut empêcher à tout prix que les efforts de la Communauté, qui ne sont déjà pas bien grands, soient dispersés sur différents pays, ce qui ne manquerait pas de réduire encore leur efficacité." (European Parliament Debate of 15 May 1968, J.O. Annexe No 103, 108.).

See also: ISMOG, 1976., Bijlage, 16.
surprisingly - they were also all Asian countries. The biggest recipient in quantities per capita, however, was Cyprus; it received during the period 1969-76 a total of 45.98 kg of cereals for each of its inhabitants. The other countries in the top five of biggest recipients in quantities per capita were the Comoros (40.22 kg), Mauritius (39.75 kg), Cape Verde (31.80 kg) and Jordan (29.04 kg). A top five with one European, three African and one Middle East country but no Asian country. One could argue that the latter countries were the Community's real favourites but it should immediately be observed that the population of Comoros (322,000 in 1975) or Mauritius (868,000 in 1975) for example was so small that even the smallest consignment of cereal food aid the Community could reasonably give taking into account transport costs, was to represent an impressive quantity per capita. Note also that of the top five of biggest recipients in absolute quantities, Bangladesh (8.85 kg) and even Pakistan (3.64 kg) received per capita all but marginal quantities. Others in that top five, however, such as India (0.59 kg) received very little per capita.
The allocation of Community food aid in cereals during the period 1969-76
(absolute quantities and quantities per capita)
(Source of basic data: CEC, FAO and UNCTAD)

<table>
<thead>
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1969-76: Surplus disposal as primary policy objective

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The biggest recipient in absolute quantities of Community food aid in skimmed milk powder during the period 1969-76 was by far the WFP which received in total 220,300 tonnes of skimmed milk powder from the Community. A distant second was Bangladesh (42,450 tonnes), followed by UNICEF (21,050 tonnes), India (15,250 tonnes) and Mali (10,000 tonnes). Again the largest recipient countries were two Asian mega-countries but note that little, dirt poor, African Mali (with a population of 6 m in 1975) made it in the top five.

The biggest recipient in quantities per capita, however, was Mauritania (4.93 kg) followed by Grenada (4.00 kg), Cape Verde (2.55 kg), Malta (2.17 kg) and Niger (1.97 kg). A top five with three African countries, one Latin American country and one European country, three of which had a population of less than 350,000. Of the big recipients in absolute quantities, Mali received 1.64 kg, Bangladesh 0.55 kg and India 0.02 kg per capita.
The allocation of Community food aid in skim during the period 1969-76
(absolute quantities and quantities per capita)
(Source of basic data: CEC, FAO and UNCTAD)

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The biggest recipient in absolute quantities of Community food aid in butteroil during the period 1969-76 was again the WFP (95,400 tonnes) followed by Bangladesh (17,000 tonnes), Pakistan (10,000 tonnes), UNRWA (10,000 tonnes) and Egypt (4,770 tonnes). Again the largest recipient countries were two Asian mega-countries, once again Bangladesh and Pakistan.

The biggest recipients in quantities per capita, however, were Cyprus (2.3 kg), Mauritania (1.65 kg), Lebanon (1.19 kg), Jordan (1.15 kg) and Guinea Bissau (1.11 kg). Bangladesh received 0.23 kg per capita and Pakistan 0.13 kg.
### Surplus disposal as primary policy objective

**The allocation of Community food aid in butteroil during the period 1969-76 (absolute quantities and quantities per capita)**

(Source of basic data: CEC, FAO and UNCTAD)

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1969-76: Surplus disposal as primary policy objective

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50.5% of all direct Community food aid in cereals during the period 1969-76 went to Asia while 33% went to Africa. The other 16.6% was divided between Europe 5.4%, the Middle East 6.8% and Latin America 3.8%.

Among the Asian countries, Bangladesh was the main recipient both in absolute quantities (678,000 tonnes) and quantities per capita (8.85 kg) of Community food aid in cereals. Among the African countries, Tunisia (124,500 tonnes) was the main recipient in absolute terms and the Comoros (40.22 kg) the main recipient in quantities per capita of Community food aid in cereals; among the European countries these were respectively Turkey (143,100 tonnes) and Cyprus (45.98 kg); among the Middle East countries, Jordan was both the main recipient in absolute quantities (75,500 tonnes) and in quantities per capita (29.04 kg); and finally among the Latin American countries, Peru was the main recipient in absolute quantities (58,500 tonnes) and Uruguay the main recipient in quantities per capita (5.66 kg).
Note that the quantities of food aid allocated to Asia increased sharply in the period 1969-76, especially during the mid-seventies, while the smaller quantities allocated to Africa - after some years of increases - remained (with the exception of 1974) on almost the same level. Europe virtually disappeared as a cereal food aid recipient after 1970/71, while Latin America hesitantly and with marginal quantities came into the picture. Cereal food aid to the Middle East was throughout the period 1969-76 fairly regular, be it unimpressive in absolute terms.

In the period 1969-76, Asia and Africa got respectively 42% and 43.5% of all the skimmed milk powder granted (directly) by the Community while the 14.5% left was divided between Latin America (7.3%), the Middle East (5.0%) and Europe (2.2%). Among the Asian countries, Bangladesh was the main recipient both in absolute quantities (42,450 tonnes) and quantities per capita (0.55 kg) of...
Community food aid in skimmed milk powder. Among the African countries, Mali (10,300 tonnes) was the main recipient in absolute terms and Cape Verde (2.65 kg) the main recipient in quantities per capita; among the European countries these were respectively Turkey (2,000 tonnes) and Malta (2.17 kg); among the Middle East countries, Jordan was both the main recipient in absolute quantities (3,550 tonnes) and in quantities per capita (1.37 kg); and finally, among the Latin American countries, Peru was the main recipient in absolute quantities (6,050 tonnes) and Grenada the main recipient in quantities per capita (4.00 kg).

The evolution of the regional partition of direct food aid in skimmed milk powder in the period 1969-76 was quite irregular. In 1972 almost all direct food aid in skimmed milk powder went to Asia while in 1973 all went to Africa. In 1974 and 1975, the Asia and Africa got more or less the same quantity while in 1976 Asia overtook Africa. With regard to the latter year, the sudden emergence of Latin
In the period 1969-76, Asia was the major recipient of direct Community food aid in butteroil (45.3%), followed by Africa (31.8%) and the Middle East (10.9%). The rest was divided between Latin America (6.8%) and Europe (4.2%). Among the Asian countries, Bangladesh was the main recipient both in absolute quantities (17,800 tonnes) and quantities per capita (0.23 kg) of Community food aid in butteroil. Among the African countries, Egypt (4,770 tonnes) was the main recipient in absolute terms and Mauritania (1.65 kg) the main recipient in quantities per capita; among the European countries these were respectively Turkey (1,000 tonnes) and Cyprus (2.30 kg); among the Middle East countries, Lebanon was both the main recipient in absolute quantities (3,290 tonnes) and in quantities per capita (1.19 kg); and finally, among the Latin American countries, Peru was the main recipient in absolute quantities (2,200 tonnes) and Honduras the main recipient in quantities per capita (0.32 kg).
The evolution of the regional partition of direct food aid in butteroil in the period 1969-76 was marked by the fact that the Community only started to supply butteroil directly to developing countries as from 1973 onwards. In that year butteroil was supplied to Africa and to that region alone; throughout the rest of the period 1969-76, the absolute quantities annual supplied to Africa remained more or less the same which meant of course that it got a gradually smaller part of all direct food aid in butteroil. The Community supplied butteroil for the first time to Asia in 1974 and in that and the following year a very large part of direct Community food aid in butteroil went to this region; in 1976, there was a considerable drop but Asia remained the Community’s largest recipient of food aid in butteroil. Finally, it is noteworthy that both the Middle East and Latin America received butteroil food aid as from 1974 onwards and saw their part of the cake increased yearly.
During the sixties, the Community's development cooperation policy had been exclusively focused on former colonies of the then Member States. While one might have expected a similar focus of Community food aid, the data on the main recipients in absolute quantities of Community food aid clearly indicated that the Community food aid policy mainly benefitted non-associated countries, i.e. developing countries which had been excluded from Community development aid in the sixties. In its 1974 Memorandum the Commission stated explicitly:

Food aid is an essential instrument of development cooperation currently available to the Community in regard to the non-associated developing countries. Since the Community receives more and more requests for direct food aid from such countries, and because this tendency is likely to grow in the future, it is only

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238 See also: LAURENS, 1976, 162.
proper that the Community should give priority to such requests.\textsuperscript{229}

Note, however, that associated countries were all but denied food aid. The data on the allocation of Community food aid also seem to suggest that the Community did not - unlike the United States - discriminate against developing countries with a communist or socialist regime. Pironio claimed the Community gave food aid to those who desired it, fully respecting the sovereign rights of receiving countries and with no political strings attached.\textsuperscript{240} While this is probably too much of a generalization, most of the Community’s food aid was indeed ‘apolitical’, reservation made for its desire to create goodwill in the recipient country.

The allocation data also reveal that the Community’s cereal aid was poorly focused on the most destitute countries (if one identifies these as the least developed countries; marked with * in the tables above). During the period 1969-76, merely 18% of the direct food aid in cereals, 28.8% of direct food aid in skimmed milk powder and 24.6% of direct food aid in butteroil went to the least developed countries.

\textsuperscript{229}COM(74) 300 final, Memorandum, 14.

\textsuperscript{240}PIRONIO, 1976, 39.
1969-76: Surplus disposal as primary policy objective

The focus of direct Community food aid in cereals, skmp and butteroil on the least developed countries during the period 1969-76
The focus on the least developed countries did not improve over the period 1969-76. On the contrary, direct Community food aid in cereals granted to the least developed countries remained more or less on the same absolute level and represented, thus, an ever smaller part of direct cereal food aid. For skimmed milk powder, it can be noted that in 1973 food aid in this product was very much focused on the least developed countries (Sahel) but that in the following years this focus disappeared completely. The same was true for butteroil. Towards the end of the period 1969-76, the Commission recognized, however, the need to focus its aid more on what it called 'the most impoverished countries' and it claimed that under the 1974/75 and 1975/76 cereal food aid programmes, for example, about 80% of the cereal food aid was actually focused on the latter countries.

The evolution of the focus of direct Community food aid in cereals on the least developed countries during the period 1969-76

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241 Bull. EC 11-1974, 76 and Bull. EC 11-1975, 50. It is clear that for the Commission the group of 'most impoverished countries' is far larger than the group of 'least developed countries'. The Commission was very liberal in defining what a 'most impoverished country' was.
While perhaps poorly focused on the least developed countries, one should note, however, the special effort the Community made in 1973 and 1974 in favour of the drought afflicted countries of the Sahel\textsuperscript{242}, albeit that this special effort (in as far as it was in cereals) remained with the limits of the total quantities of cereals to be supplied under the 1971 Food Aid Convention whereas the dramatic situation

\textsuperscript{242}Note for example the interim programme decided by the Council on 17 December 1974 providing for the supply to the Sahel, Ethiopia and Somalia of 60,000 tonnes of cereals, 14,000 tonnes of skimmed milk powder and 6,000 tonnes of butteroil (in part drawn from the 1973/74 reserves and in part deducted in advance from the 1975 programmes) (Bull. EC 12-1974, 73.).
in the Sahel really called for an additional effort.\textsuperscript{243}

In May 1968, Commissioner Mansholt declared in Parliament that the Community should avoid costly administrations - be it at a national or at a Community level - to assure the distribution of the food aid it was committed to supply under the 1967 Food Aid Convention. Observing that the WFP was able to distribute food aid at very low administrative costs (6% of the aid supplied) and that it was unlikely that the Community would be able to distribute food aid at equally low costs, Mansholt stressed:

\begin{quote}
C'est pourquoi nous devrons dans la mesure du possible associer les organismes existants à l'exécution de notre programme et éviter les doubles emplois.\textsuperscript{244}
\end{quote}

In spite of the Commissioner’s preference for multilateral or indirect food aid - a preference which was shared by Parliament\textsuperscript{245} - only a minor part of the food aid in cereals supplied during the period 1969-76 was supplied to international organizations.\textsuperscript{246} The Commissioner’s preference was initially better reflected in the Community’s dairy food aid programmes. In the period 1969-76, only 12% of the cereals but 59.9% of the skimmed milk powder and 65.5% of the butteroil were granted indirectly. Among the international organizations, the WFP was by far the biggest recipient of Community food aid (159,000 tonnes of cereals, 220,300 tonnes of skimmed milk powder and 95,400 tonnes of butteroil) but also UNRWA, UNICEF and ICRC received fairly important quantities of Community food aid. Non-governmental organizations received during the period 1969-76 virtually no

\textsuperscript{243} As was already noted above, unlike other major donors, the Community did at least not decrease its food aid effort (in quantitative terms); on the special effort, see: COMMISSION, Seventh General Report on the Activities of the European Communities, 395-399.

\textsuperscript{244} European Parliament Debate of 15 May 1968, J.O. Annexe No 103, 115.

\textsuperscript{245} ISMOG, 1977, Bijlage, 17.

\textsuperscript{246} It should be noted that for the Netherlands it was exactly the fear that the Community would not supply all or at least most of its food aid through the WFP, which made it argue that all food aid should be implemented by the Member States rather than the Community (See European Parliament Debate of 15 May 1968, J.O. Annexe No 103, 107 (Vredeling)).
food aid: they received 8,300 tonnes of cereals, 12,000 tonnes of skimmed milk powder and no butteroil.\textsuperscript{267}

\textsuperscript{267} The 8,300 tonnes of cereals were granted in 1969 to Diakonisches Werke (Joint Church Aid) for the population of Biafra (Bull. EC 7-1969, 90.).
Allocation of Community food aid

Direct and indirect Community food aid in cereals, skmp and butteroil during the period 1969-76

Cereals

Skmp

Butteroil
Indirect Community food aid in cereals remained more or less at the same level in the period 1969-76 but represented an ever smaller part of Community food aid in cereals. For food aid in skimmed milk powder the picture was quite different. With the exception of 1973, when all food aid in skimmed milk powder was direct food aid, indirect food aid represented, in the years when there was a milk powder programme of some significance, always a very important part of the total programme. Note, however, that in 1976, direct food aid in skimmed milk powder clearly overtook indirect food aid in this product. While food aid in butteroil was in 1969 exclusively granted indirectly, in 1970 and 1973 it was only granted directly and since 1974 direct food aid in butteroil was marginally predominant.

While the 1971 Food Aid Convention recommended to channel as much cereal food aid as possible through the WFP, the Commission was in the mid-seventies clearly not too keen on granting its food aid indirectly. In its 1974 Memorandum, it 'admitted' that the Community should channel substantial and possibly increasing quantities of food aid through multilateral institutions and in particular the WFP but it stressed that most food aid should be given directly to developing countries because 'the Community is not a simple international institution'. The Community had 'an identity and a personality of its own' and food aid was to help to make developing countries aware of this. Against this background, it may seem surprising that still so much food aid in dairy products was supplied indirectly. One should recall, however, that often international organizations, such as the WFP, UNICEF and ICRC with extended local distribution networks, were the only who could offer a reasonable guarantee that the dairy products would used without putting at risk the health of the recipient population.

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The evolution in direct and indirect Community food aid in cereals during the period 1969-76

The evolution in direct and indirect Community food aid in skim during the period 1969-76
Finally, much of the Community's indirect food aid was not as multilateral or indirect as one might have thought. The international organizations to which the Community allocated food aid could not always dispose of this aid as they saw fit but on the contrary needed the Council's approval for every operation undertaken with this aid. This was in particular true for the WFP, the biggest recipient of indirect Community food aid, and the ICRC.\textsuperscript{249} One could argue that this aid was in a certain sense therefore not multilateral at all.\textsuperscript{250} The international organization merely operated as an intermediary. The ultimate decision on an allocation was also in the case of indirect food aid often with the Community and one can be confident that the Community made this known among developing countries. With regard to the allocation of sugar and egg products, I can be brief. During the period 1969-76, sugar was only supplied to the UNRWA and egg products only to

\textsuperscript{249} SMOG, 1977, Deel II, 24. Examples: 'WFP' food aid (1,000 tonnes of skimmed milk powder) to the victims of floods in Pakistan, approved by the Council on 16/17 December 1970 (Bull. EC 2-1971, 89.); and 'ICRC' food aid (1,100 tonnes of skimmed milk powder) to famine victims in India, approved by the Council in June 1970 (Bull. EC 6-1970, 87.).

The Council's approval could not be taken for granted; it was reported that the Council rejected a WFP food aid project in Taiwan (JANSSEN, 1971, 26.).

\textsuperscript{250} See: LAURENS, 1976, 162, who used the term "écran de fumée" to describe the role of the WFP and the ICRC.
the WFP. Obviously, one of the best examples of a politically motivated allocation of food aid, was the allocation of food aid to the UNRWA. While the Palestinian refugees to which this aid was supplied could use the latter well, the Community's prime motivation was undoubtedly its desire to create goodwill among the Arab countries of the region.

3.3.2 The criteria for allocating Community food aid

The question which obviously arises from the previous section is on which basis the Community decided to grant countries and international organizations food aid?

First of all, it must be observed that developing countries got Community food aid because they were struck by a disaster resulting in a situation of famine or danger of famine. The Community's very first food aid operation concerned in fact the supply of 50,000 tonnes of common wheat to Turkey for the victims of a devastating earthquake. During the period 1969-76, the Community came on many other occasions to the aid of countries hit by disaster; it did so either directly or through an international organization operating in such a country. Emergency aid was given after natural as well as man-made disasters. Examples of the former were the above mentioned aid to Turkey in 1969 (earthquake), the aid to East Pakistan in 1970 (cyclone), the aid to Somalia in 1971 (drought), the aid to Nicaragua in 1972 (earthquake), the aid to Ethiopia in 1973 (drought), and the

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251 In 1971, the Commission had proposed to supply also food aid in sugar to the WFP (8,000 tonnes) and in case of disasters (4,000 tonnes). The Council, however, rejected these proposals (LAURENS, 1976, 17.). Schumacher noted that also the ICRC had requested the Community for food aid in sugar (SCHUMACHER, 1980, 95.).


aid to the Fiji Islands in 1975 (hurricane)^{257}.

Examples of the latter were the aid to 'the population of Biafra' (Biafra/armed conflict) in 1969^{258}, the aid to Jordan (homeless/civil unrest) in 1970^{259}; the aid to India (Bengali refugees/armed conflict) in 1971^{260}; the aid to Cyprus (refugees/armed conflict) in 1974 and 1975^{261}; the aid to South Vietnam (refugees/war) in 1975^{262}; and the aid to the Western Sahara (refugees/armed conflict) in 1976^{263}. Not surprisingly, the decisions to grant aid in the case of man-made disasters were sometimes highly controversial. The decision to grant emergency food aid through the ICRC to Biafran refugees, for example, was a good example of this.^{264} Only after long and difficult deliberations the Council was able to come to a decision on this emergency aid operation.

Community law did not oblige the Community to come to the aid of countries and people struck by disaster, but it also did not lay down any restrictive requirements for such action. Community law did for example not provide for a limiting definition of the notions 'disaster' or 'emergency' nor did it exclude certain countries from emergency food aid. Whether the Community supplied food aid to a country struck by disaster and menaced by famine was a political decision. It may be observed that the public opinion - read the media - often played an

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^{256} Bull. EC 10-1973, 63.

^{257} Bull. EC 6-1976, 62.

^{258} Bull. EC 5-1969, 76. It should be noted that as a result of the developments in Nigeria, part of the food aid operation, namely the aid to be shipped through the ICRC (16,700 tonnes of cereals), could not be put into effect completely (Bull. EC 3-1970, p 93.).


^{261} Bull. EC 9-1974, 52 and Bull. EC 3-1975, 55.


^{263} Bull. EC 11-1976, 47.

^{264} See: European Parliament debate of 23 January 1969, J.O. Annexe No 110, 95 (Vredeling) and 98 (Dröschler).
important role in the decision on an emergency food aid action.\textsuperscript{265}
From 1970 onwards, the Council set aside each year a small quantity of cereals
to cover unexpected needs which would arise after the annual allocation decision.\textsuperscript{266}
It would be wrong, however, to think that Community food aid allocations to
countries struck by disasters were in any way limited to this 'reserve'. Some
emergency food aid allocations were part of the annual allocation decision, while
others were decided upon in advance of the allocation decision.\textsuperscript{267}

Most food aid allocations, however, were unrelated to any disaster or emergency.
Especially during the first years of the period 1969-76, it was, however, somewhat
obscure on which basis these allocations were made. Obviously, the Community
must have had some criterium or criteria to decide on the allocation of the food
aid available. The number of countries and organizations requesting Community
food aid was always higher than the number of recipients and the quantities
requested by the latter were always higher than the quantities allocated to them.
In 1969, for example, 9 developing countries requested Community food aid in
cereals but only 6 countries received aid; no aid was supplied to Senegal, South
Korea and the United Arab Republic.\textsuperscript{268} Furthermore, all recipients got
considerably less than they had asked for: India for example had requested 500,000
tonnes and got 80,000 tonnes.\textsuperscript{269}

Surprising as it may be, Community law did not lay down any allocation criteria
during the period 1969-76. The 1967 and 1971 Food Aid Conventions both

\textsuperscript{265}Note also the role of the European Parliament discussed in Section 3.5 of this Chapter.

\textsuperscript{266}The size of this reserve varied. In 1970/71 for example it amounted to 83,000 tonnes but in
1972/73, it was merely 9,900 tonnes. Also the dairy food aid programmes usually had a small reserve.

\textsuperscript{267}See Section 3.5 of this Chapter.

\textsuperscript{268}It must be noted, however, that reportedly South Korea and the United Arab Republic were
granted food aid by some of the Member States and that Senegal withdrew its original application
(Bull. EC 8-1969, 87.).

\textsuperscript{269}See further: JANSSENS, 1971, 39.
explicitly stated in their Article II that the food aid donors were free to choose the recipients of their aid.\textsuperscript{270} The only 'limitation' to the donors' freedom of choice was to be found in 'the statement of objective' in Article I which stipulated that the Convention's food aid was for the benefit of developing countries, from which it may be deduced that the ultimate recipients were to be developing countries.\textsuperscript{271} The 1971 Convention recommended donors to:

\[\ldots\text{] give full consideration to the advantages of directing a greater proportion of food aid through multilateral channels and shall place special emphasis on using the World Food Programme.}\textsuperscript{272}

but this recommendation limited in no way the freedom of choice of the donors. In 1973, the Commission stated in reply to a Written Parliamentary Question by Mr. Vredeling, that the only guideline for (cereal) allocation decisions was the experience of previous years.\textsuperscript{273} Nevertheless, it was reported that from 1970 onwards the Commission, for drafting its cereals allocation proposals, used the following criteria:

- the cereal import needs of the food aid applicant;
- the per capita income of the applicant country;
- the amount of food aid received from other donors;
- the foreign exchange/balance of payments situation of the food aid applicant;
- the influence of previous food aid supplies on trade in cereals.\textsuperscript{274}

For its dairy allocation proposals, the Commission reportedly used the same criteria as for cereals, although it looked more to the existence of a food deficit rather than import needs and in addition examined the absorption capacity of the

\textsuperscript{270}Article II (5) of the 1967 Food Aid Convention and Article II (9) of the 1971 Food Aid Convention.

\textsuperscript{271}It must be noted, however, that the Conventions failed to define what a developing country is. Is Poland a developing country?

\textsuperscript{272}Article II (10) of the 1971 Food Aid Convention, O.J. 1974, L 219/36. This recommendation had also already been made Resolution 2682 (XXV) of the General Assemblee of the United Nations.

\textsuperscript{273}European Parliament Written Question 91/73, O.J. 1973, C 64/21.).

\textsuperscript{274}See: LAURENS, 1976, 72-74; RICHARD, 1983, 57.
recipient country. It should perhaps be observed that the recipient's compliance with the conditions under which the aid was supplied, did not appear in this list of criteria reportedly used by the Commission. The use of such criteria was confirmed by the Commission as from the mid-seventies onwards when the latter started to indicate in its allocation proposals the criteria it had used.

These vague criteria were, however, used in a very flexible manner and were certainly not perceived as a serious constraint on the Commission's power to propose and the Council's power to decide on the allocation of Community food aid. At the most, they were helpful guidelines which were, however, to leave sufficient room for political compromises between the Member States on food aid allocation decisions. It should also be noted that often there were no reliable data available on the size of the food deficit, the import needs, the balance of payments situation and the annual per capita income. The Court of Auditors and Parliament more than once criticised the Commission for not being consistent in the application of its own criteria. In 1976, the Community granted India a very considerable amount of food aid in cereals in spite of the fact that - as was generally known - India had considerable reserves of cereals (and serious storage problems) and was actually exporting domestically grown wheat. In 1975, the Commission granted butteroil to Peru in spite of the fact that this country's income per capita was $520 and thus far above the $300 the Commission said it used as a criteria.

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275 RICHARD, 1983, 62. It is not quite clear, however, when the Commission started to use these criteria for the allocation of dairy products.

276 This is, however, not surprising since the Commission had at the most only a vague idea of what happened to the food aid it supplied; see for more detail: Section 3.4 of this Chapter.

277 See for example the Commission's proposal for the 1975 butteroil programme. COM(75) 586 final.

278 COURT OF AUDITORS, Annual Report 1977, 82-3.

279 European Parliament Working Documents, Report on the proposal for a regulation establishing general rules concerning the supply of milk fats as food aid under the 1975 programme to certain developing countries and international agencies, (Rapporteur: Mr P. DESCHAMPS), PE Doc 101/75,
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Furthermore, it seemed that these informal allocation guidelines were only used to decide to which developing countries cereal food aid should be supplied, but were not used to decide how much food aid should be supplied to each of the recipients.\textsuperscript{30} They were not used for priority ranking and rational distribution.\textsuperscript{31} In fact the quantities supplied to each recipient were often quite irregular and it seems that - far from being the outcome of an in-depth study of the recipients' actual food aid needs and capacity to absorb the aid usefully - these decisions were basically arbitrary.\textsuperscript{32} Equally arbitrary was the partition between bilateral and multilateral food aid.\textsuperscript{33}

The absence of any formal allocation criteria was of course no accidental oversight. No formal allocation criteria were defined because this was considered unnecessary and even potentially harmful to the extent that such allocation criteria - which were likely to put the emphasis on the objective food aid needs of the applicants - could impede swift surplus disposal or limit the use of food aid as an instrument for creating goodwill and enhancing influence in the Third World.\textsuperscript{34}

\textsuperscript{30} ISMOG, 1977, Deel I, 6.
\textsuperscript{31} BOS, 1977, 45.

\textsuperscript{32} Contra: LAURENS, 1976, 72-73 according to whom the Commission undertakes "une analyse détaillée de l'approvisionnement céréales de chaque Etat-demandeur [...]". It should be noted, however, that at the end of 1973, the Commission took part in a study mission involving various likely donors of food aid for the Sahel region. The aim of this mission was to investigate the quantities and conditions for fresh interventions in this region in 1974 (Bull. EC 10-1973, 63.). The same year, the Commission had also taken part in an international conference organized by the Government of Bangladesh (31 March/1 April 1973), the principal objective of which was to examine Bangladesh's needs for external aid, including food aid (Bull. EC 3-1973, 59.).

\textsuperscript{33} ISMOG, 1977, Bijlage, 16.

\textsuperscript{34} Laurens argued that political considerations did not play an important role in the allocation of food aid in the period 1969-76 (LAURENS, 1976, 177.). I think this is both true and false. As I already argued above, it is true in the sense that the Community did indeed not use systematically or deliberately use its food aid as an instrument of diplomatic leverage or in support of friendly regimes; such a use would presume a common foreign policy which there was not. It is false, however, in the sense that the Community did use its food aid to create goodwill and thus enhance its influence in the Third World.
3.4 The terms and conditions of Community food aid supplies

3.4.1 The general terms of Community food aid supplies

During the period 1969-76, the Community supplied as a rule all its food aid on a 100% grant basis, i.e. as a gift. Instead of supplying the food products for free, the Community could have supplied them on less concessional terms. In fact, a large part of U.S. food aid was made up of concessional sales. While for food aid in products other than cereals there was no relevant Community law at all, under the terms of the 1967 Food Aid Convention but even more under the terms of the 1971 Food Aid Convention, the Community was explicitly allowed to supply food aid in cereals on terms less favourable than a gift. Article II (4) of
1969-76: Surplus disposal as primary policy objective

the 1967 Food Aid Convention stipulated:

L’aide alimentaire sous forme de céréales sera fournie selon les modalités suivantes:

a) ventes contre monnaie du pays importateur, ni transférable ni convertible en devises ou en marchandises et services destinés à être utilisés par le pays contributeur. (Dans des circonstances exceptionnelles, il pourrait être accordé une dispense allant jusqu’à 10%.)

b) dons de céréales ou dons en espèces à employer à l’achat de céréales au profit du pays importateur.  

while Article II (5) of the 1971 Food Aid Convention, went - on American demand - much further and stipulated:

Food aid in the form of grain shall be supplied on the following terms:

(a) sales for the money of the importing country which is not transferable and is not convertible into currency or goods and services for use by the member country (under exceptional circumstances an exemption of no more than 10% may be granted),

(b) a gift of grain or a monetary grant to be used to purchase grain for the importing country, or

(c) sales on credit with payment to be made in reasonable annual amounts over periods of twenty years or more and with interest rates which are below commercial rates prevailing in world markets (the credit sales agreement may provide for payment of up to 15% of principal upon delivery of the grain) on the understanding that food aid in the form of grains shall be supplied to the maximum extent possible on the terms indicated in subparagraphs (a) and (b).  

The Community, however, did not make use of this possibility and supplied all its...
cereal food aid as gifts. It also supplied as a rule its food aid in other products for free. By way of example, one could refer to the 1972 Agreement between the Community and Syria on the supply of common wheat as food aid, which in its Article I, first paragraph, stipulated:

Dans le cadre de son programme d’aide alimentaire en céréales pour l’année 1970/1971, la Communauté économique européenne fournit, à titre de don, conformément à la décision prise par le Conseil le 6 avril 1971, une quantité de 7 500 tonnes de froment tendre à la République arabe syrienne [...].

or the 1974 Agreement between the European Economic Community and India on the supply of skimmed-milk powder as food aid, which stipulated in its Article I:

The European Economic Community [...] shall supply by way of gift to the Republic of India [...] 2,750 metric tons of skimmed-milk powder [...].

While this was undoubtedly in the interest of the recipient country, it may well be that the Community’s decision to supply its food aid for free was in the first place motivated by a desire to keep the management of its food aid as simple as possible. In the case of gifts, the donor did not have to worry about the use of the sales proceeds or about the repayments.

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290 Accord entre la Communauté économique européenne et la République arabe syrienne relatif à la fourniture de froment tendre à titre d’aide alimentaire, J.O. 1972, L 95/27.


292 Rhein noted that it was for administrative as well as political reasons that the Commission had proposed in its Communication to the Council of November 1967 to grant all food aid for free. The Council never formally expressed its opinion on this issue but all Member States seemed to have been in agreement with the Commission (RHEIN, 1969, 62).
It should be noted, however, that during the period 1969-76 there was one rather important exception to this 'rule' of supply of food aid by way of gift. Council Regulation (EEC) No 155/75 of 21 January 1975 on the sale of skimmed-milk powder from public stocks for supply to developing countries provided for the possibility to sell at sharply reduced prices (50%) up to 100,000 tonnes of skimmed milk powder held in the intervention stocks to international and non-governmental organizations for supply to developing countries. In the case of natural disasters, the Community could sell at equally low prices directly to developing countries concerned. In justification of these food aid operations in the form of concessional sales, the Council pointed in the recitals of this Regulation, in the first place, at the existence of large stocks of skimmed milk powder held by the intervention agencies and the need to dispose of these stocks in view of the high costs entailed by prolonged storage, and, in the second place, at the need for milk products in developing countries. This facility was expanded by Council Regulation (EEC) No 1960/75 of 29 July 1975 providing for the possibility to sell skimmed milk powder at reduced prices for supply to developing countries not only in the case of natural disasters but also in the case the latter were in particularly difficult economic straits. In view of the drastic increase in the size of the 'ordinary' skimmed milk powder food aid programme in 1976 - one will


296 Council Regulation (EEC) No 155/75 was based on Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market of milk and milk products, and in particular Article 7 (4) thereof, the surplus disposal article.

297 Council Regulation 1960/75 of 29 July 1975 amending Regulation (EEC) No 155/75 on the sale of skimmed milk powder from public stocks for supply to developing countries, Article 1, O.J. 1975, L 200/5. In this case, the selling price ex-intervention agency warehouse was fixed at 22,175 units of account per 100 kg.
recall that total quantities went up from 55,000 tonnes in 1975 to 150,000 tonnes in 1976 - there was, however, no longer any need for this possibility to supply skimmed milk powder food aid in the form of concessional sales and on 15 March 1976, Council Regulation (EEC) No 155/75 was repealed. I have been unable to establish how much food aid was supplied under Regulation (EEC) No 155/75 between 27 January 1975 and 1 April 1976, the period of its applicability.

3.4.2 The terms concerning the transport and distribution

During the period 1969-76, the Community financed 'as a rule' the transport of its food aid to the fob stage only, i.e. it paid for the transport to the port of shipment and the loading. For cereals the Community was required to do this under the 1967 and 1971 Food Aid Conventions but it also did so for its food aid in other products. In quite a number of cases, especially in emergencies and always when the food aid recipient was an international organization, the Community, however, financed the transport also beyond the fob stage, and, occasionally, even the distribution of the food aid. In fact, in 1973 - when the


299 See the food aid supply contracts referred to above. Contra: COURT OF AUDITORS, Special Report 1/87, 39, where it is stated that until 1980 for cereals and 1983 for dairy products the Community used the 'free alongside ship' stage rather than the 'free on board' stage, calling it 'delivery to port of shipment'.


301 See e.g. Council Regulation (EEC) No 1826/74 of 11 July 1974 laying down the general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations which stipulated in its Article 3(a): "For the purposes referred to in Article 1: (a) the cost of the skimmed milk powder, delivered to fob or a corresponding stage, shall be financed by the community." (O.J. 1974, L 190/20).

302 When the Community financed transport beyond the f.o.b. stage, it would either supply the food products c.i.f. or f.o.b. with a cash donation per tonne to cover the transport beyond f.o.b.. The latter was for example done for the dairy products supplied to the World Food Programme.
Community decided at the height of the world food crisis that it would bear all


Note that as from the procedural reform of 1975 onwards (See: Section 3.6. of this Chapter), most (in fact, all but one) food aid supply agreements between the Community and the food aid recipient no longer needed the approval of the Council before conclusion, took the form of an exchange of letter rather than a formal agreement and, most importantly, were no longer published in the O.J.. The latter did of course not facilitate my research.
costs related to the transport to the distribution centres of the cereals supplied as emergency food aid to the drought afflicted Sahel countries \( ^{303} \)- the 'rule' that the Community would only finance transport fob was the exception as the Community financed for more than half of the food aid supplied the transport beyond the fob stage. \( ^{304} \) Towards the end of the period 1969-76, the Community became, however, less generous again. \( ^{305} \)

Community law laid down no specific criteria for the decision on the financing of the transport beyond fob and distribution of food aid supplied to developing countries. Regulations concerning food aid in dairy products did stipulate that the Community would finance the transport of dairy products beyond fob and the distribution (where the foods where distributed by an international organization) only 'in exceptional cases' \( ^{306} \) but this did hardly give any indication of the basis on which the financing decisions were taken. Reportedly the Council based theses decisions on the economic situation of the recipient country and the urgency of


\[ ^{304} \text{Laurens calculated that in 1969, 91.7\% of the cereals were supplied f.o.b. and 8.3\% c.a.f. or f.o.b. with a cash donation to cover transport costs; in 1971, 55.6\% f.o.b. and 44.4\% c.a.f. or f.o.b. with a cash donation to cover transport costs; and in 1973 (the year of the world food crisis and the Sahel drought) 44.4\% f.o.b. and 55.7\% c.a.f. or f.o.b. with a cash donation to cover transport costs (LAURENS, 1976, 187).} \]

\[ ^{305} \text{Laurens calculated that in 1974 68.8\% of the cereal food aid was supplied fob and 31.1\% cif or fob with a cash donation to cover the transport costs; in 1975 that was 72.1\% fob and 27.9\% caf or fob with a cash donation to cover the transport costs (LAURENS, 1976, 187). The same year, 66.3\% of the skimmed milk powder and 50\% of the butteroil was supplied caf or fob with a cash donation to cover the transport costs (LAURENS, 1976, 188). It should be considered that the total volume of the food aid had gone up considerably and that there was no large scale emergency at hand.} \]

\[ ^{306} \text{See e.g. Council Regulation (EEC) No 1826/74 of 11 July 1974 laying down the general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations, O.J. 1974, L 190/20.} \]
the operation. It should be noted that quite often the Community did not have much choice but to finance transport and even distribution since the recipient countries not seldom lacked the means to do so. Parliament called in a number of instances for Community financing of delivery at destination in order to ensure that the food aid would actually reach the persons in need. It was noted that not seldom food aid supplied by the Community was held up for considerable time at the port of unloading because of inland transport and financing difficulties. The Audit Board remarked in its 1975 Report along the same lines:

Des renseignements très fragmentaires contenus dans les dossiers soumis à la Commission de contrôle il résulte que l'acheminement des produits s'est heurté à de nombreuses difficultés en raison de l'engorgement des nombreux ports africains, l'insuffisance des moyens de transport et de stockage et, parfois, la défaillance de certains services locaux. Ces déficiences ont parfois entraîné des pertes non négligeables.

In 1974, the Community Budget provided in Chapter 92, the food aid chapter, for the first time appropriations - for a total of 5 million u.a. - to cover exceptional (inland) transport cost. In 1975 and 1976, however, these appropriations

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307 LAURENS, 1976, 186.

308 See in this respect: LAURENS, 1976, 101 and 186.

309 E.g. European Parliament Resolution of 15 November 1974 on the proposal for a regulation laying down basic rules for the supply of skimmed milk powder as food aid to the countries of the Sahel and Ethiopia, point 5; European Parliament Resolution of 21 February 1975 on the proposal for a regulation laying down basic rules for the supply of skimmed milk powder as food aid to Somalia, point 5; European Parliament Resolution of 30 April 1975 on the proposal for a regulation establishing the general rules concerning the supply of skimmed milk powder as food aid to certain development countries and international organizations, point 6, OJ. 1975, C 111/25.

In its Resolution of 24 January 1969 on the implementation of the Food Aid Convention obligations the European Parliament had even demanded that the Community would deliver the food aid cif instead of fob (J.O. 1969, C 17/20).

310 European Parliament Working Documents, Report on the proposal for a regulation establishing the general rules concerning the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1975 programme (Rapporteur: Mr Jorgen B. NIELSEN), PE DOC 50/75, 9.

311 COMMISSION DE CONTROLE, Rapport annuel 1975, 105.

312 COMMISSION DE CONTROLE, Rapport annuel 1974, 101. These appropriations were to be used to finance the inland transport of food aid supplied to the countries of the Sahel and Ethiopia.
amounted only to 1 million u.a.. The Community's efforts in this respect were clearly insufficient.\(^3\)\(^1\)\(^3\) It should be noted, however, that in spite of the budget limitations and even before the Community budget provided special funds to this end, the Community organized and financed in a few cases the transport by air of small quantities of food aid. In November 1970 already, the Community paid for the transport by air of emergency food aid to Pakistan delivered through the International Committee of the Red Cross.\(^3\)\(^1\)\(^4\) In 1973, some of the milk products supplied to the Sahel countries were sent in by air on Community expense\(^3\)\(^1\)\(^5\) and in 1974 the Commission mounted in view of the highly critical situation in Niger an emergency airlift of 305 tonnes of skimmed milk powder by military and civilian aircraft from several Member States\(^3\)\(^1\)\(^6\). In 1975, 50 tonnes and 100 tonnes of emergency food aid were flown respectively to Zaire and Angola because of the urgency of the aid and because the ports were blocked\(^3\)\(^1\)\(^7\) and in 1976, 25 tonnes of skimmed milk powder was airlifted to Lebanon\(^3\)\(^1\)\(^8\).

\(^3\)\(^1\)\(^3\) Also lacking was active consultation of other donors in order to use the limited transport and storage facilities in the most efficient way possible (COMMISSION DE CONTROLE, Rapport annuel 1975, 105).

\(^3\)\(^1\)\(^4\) Bull. EC 1-1971, 110.

\(^3\)\(^1\)\(^5\) Of the 13,000 tonnes for the Sahel, 370 tonnes was sent by air to meet the most urgent needs (Bull. EC 6-1973, 61). In its Resolution of 11 May 1973, Parliament had called upon the Council that "in view of the emergency all the necessary decisions, especially budgetary, be taken immediately so that the Community can bear the cost of air freight for part of the supplies (Bull. EC 5-1973, 54)."

\(^3\)\(^1\)\(^6\) Bull. EC 3-1974, 73. In December 1974, the Commission undertook in view of the severe hardship suffered by the nomad population in Somalia and at the express request of the latter country's government to bear the expenses of flying in 72 tonnes of skimmed milk powder and 34 tonnes of butteroil (Bull. EC 12-1974, 73.).

\(^3\)\(^1\)\(^7\) Bull. EC 3-1975, 63.

\(^3\)\(^1\)\(^8\) Bull. EC 2-1976, 52.
When the supply agreement stipulated delivery fob (free on board)\textsuperscript{319}, the Community was responsible for the transport to the port of loading and the loading (but not the stowage costs) of the food aid products and was relieved of its responsibilities and the risks when the goods passed the ship’s rail, while the recipient was responsible for organizing the chartering of a ship, for all costs related to any delay in the arrival of the ship, for the unloading of the ship, for the transport by land to the destination and for insuring the products supplied.\textsuperscript{320} It is obvious that when the Community supplied food aid fob, it put a very considerable financial but also organizational burden on the food aid recipient. When the supply agreement stipulated delivery cif, the delivery was effected and the risks passed from the Community to the recipient when the food aid products crossed the ship’s rail, exactly as in the case of a delivery fob.\textsuperscript{321} The difference with delivery fob was, however, that in the case of delivery cif, the Community was responsible for organizing the chartering of a ship, for all costs related to any delay in the arrival of that ship, and for taking out a policy - endorsed in the recipient’s name - insuring the food aid products against the risks involved in the shipping operation. Whether or not the unloading costs were included in the delivery cif was a question of local practice. Finally when the supply agreement stipulated the delivery 'delivered place of destination', 'delivered place of distribution' or 'free at destination', the Community delivered the food aid products to a named place in the recipient country; it was responsible for the

\textsuperscript{319} 'Fob' (free on board), 'cif' (cost, insurance and freight), and 'delivered place of destination' are commercial law concepts, defined in INCOTERMS (a document drawn up by the International Chamber of Commerce in Paris) which sets out the conditions according to which responsibilities and risks relating to specific goods pass from the supplier to the buyer, in casu recipient, and the place of this transfer.

\textsuperscript{320} Normally, the recipient had to accept the goods immediately after shipment but it was accepted that it could question the conformity of the goods after landing when it concerned hidden defects which could not have been observed at the time of shipment, or when deterioration was attributable to the poor quality of packaging.

\textsuperscript{321} The recipient accepted the goods after shipment, exactly as in the case of delivery fob.
unloading and the inland transport and had to take out appropriate insurance.\textsuperscript{322}

In a first, hesitant attempt to ensure that European shipping companies would get a fair chance to obtain sea transport contracts for the food aid the Community supplied f.o.b, some of the supply agreements stipulated:

[The country of destination] undertakes to exercise the greatest care to ensure that the tendering arrangements for sea transport do not prejudice the free play of competition.\textsuperscript{322}

### 3.4.3 The terms concerning the use of food aid

During the period 1969-76, there was no Community legislation laying down general provisions regarding the terms concerning the use on which the Community supplied food aid to developing countries and organizations.\textsuperscript{324} A look at the supply agreements concluded between the Community and each food aid recipient reveals, however, that the Community supplied during this period food aid for basically three different sorts of use.\textsuperscript{325}

\textsuperscript{322}The recipient accepted the goods at the place of destination. Note that the delivery 'Delivered place of destination' as defined by the Community for its food aid operations differed in some respects from the definition given to it in the INCOTERMS.

\textsuperscript{323}E.g. Agreement between the European Economic Community and the Republic of India on the supply of skimmed milk powder as food aid, Article III, second paragraph, first sentence, O.J. 1975, L 9/21; and Agreement between the European Economic Community and Malta on the supply of butteroil and butter as food aid, Article III, second paragraph, first sentence, O.J. 1974, L 307/15.

\textsuperscript{324}Note that also the 1967 and 1971 Food Aid Conventions did not contain any specific provision with regard to the use of the cereal food aid by the recipient.

First and foremost, the Community supplied food aid to developing countries for sale to the population at normal market price or at reduced price. The Community’s main aim in this case was to give balance of payments support to the recipient country. To the extent that the food aid supplied replaced commercial food imports - which was in violation of the provisions of the supply agreements themselves and in violation of the FAO Principles on Surplus Disposal but nevertheless common practice - food aid constituted a balance of payments support and as such (potentially) a considerable help to the development effort of the recipient country. When food aid was supplied for sale, the supply agreements stipulated that the counterpart funds in local currency, resulting from these sales were to be put in special accounts and utilized in the context of specific development projects selected by the recipient countries and approved by the European Economic Community and the Republic of the Niger on the supply of food aid in the form of maize (1973), Article V (free distribution), O.J. 1973, L 310/29; Agreement between the European Economic Community and the Republic of Chad on the supply of food aid in the form of common wheat (1973), Article V (free distribution), O.J. 1973, L 310/25; Agreement between the European Economic Community and the Islamic Republic of Mauritania on the supply of skimmed milk powder as food aid (1973), Article V (free distribution), O.J. 1973, L 343/26.

Note that as from 1975 onwards these agreements were no longer published in the Official Journal and could not be readily consulted.

32 The supply agreements studied seem to suggest that supply for sale at reduced prices was rather exceptional. While the sale of the products supplied was the most widely used form of food aid distribution and was for example used for most of the food aid supplied by the United States since the early 50’s, it was also severely criticized.

37 See: Section 3.4.4 of this Chapter.
Community prior to the delivery of the food aid. In 'exceptional' circumstances, the recipient was allowed to use local currency funds to cover for example the food aid transport costs and/or the costs of selling the products on the open market. In general, however, priority was to be given to projects which encouraged increased agricultural production in the recipient country. As an example of a supply agreement stipulating distribution by sale to the population, one could refer to the 1973 Agreement between the European Economic Community and the Eastern Republic of Uruguay concerning the supply of common wheat as food aid. The latter Agreement stipulated in its Article V:

The recipient country undertakes to use the product received as aid for purposes of consumption and to apply, for the sale of the product of the product on its market, the prices normally charged on that market for products of comparable quality.

The proceeds from this sale, less the cost of sea transport, insurance and the normal cost of selling the product on the recipient country's market, shall be paid into a special account at the Central Bank of that country and allocated to the financing of one or more development schemes which shall have been proposed.

128 These counterpart funds were to guarantee that the food aid distributed in this manner really contributed to the economic development of the recipient country. Laurens observed: "C'est par l'intermédiaire de cette disposition que l'aide alimentaire de la Communauté peut être considérée un facteur contribuant au développement des pays pauvres" (LAURENS, 1976, 71). In fact, however, these counterpart funds were highly criticized. Hans Singer remarked already in 1961: "In conclusion, if local counterparts are to be used at all, the important thing seems to be to have no illusions about their nature and to try to give them a decent burial while using the occasion for such incidental advantages as the counterpart-fund technique may offer" (SINGER, H. W., "Use and Abuse of Local Counterpart Funds, International Development Review, October 1961, 14-16). Note e.g. the issue of 'fungibility' by which one refers the fact that recipient governments put forward for financing by the counterpart funds projects they would otherwise have funded themselves, so that the counterpart funds are actually funding a project or programme different from the one the donor assumes (e.g. military expenditure).


by the recipient country and approved by the Community.\footnote{Agreement between the European Economic Community and the Eastern Republic of Uruguay concerning the supply of common wheat as food aid (1973), OJ. 1973, L 343/31-32.}

This way of distributing food aid had the advantage that, apart from increasing government funds for development, it did not require the recipient government to assume important extra administrative and financial burdens. Sales to the population were relatively easy to organize and administer. Also on the part of the donor, this way of distribution did not require a big food aid staff while at the same time guaranteeing some positive impact on the development of the recipient country.

Already in its Communication to the Council of 9 November 1967, the Commission pointed at the danger that if food aid was not used in the way described above, it was likely to undermine the determination of the developing countries to solve their food supply problems.\footnote{Commission Communication to the Council of 9 November 1967, cited by RHEIN, 1969, 62.} The Commission observed:

\[
[...] en affectant l'équivalent de quelque 66 millions de $ par an à des opérations ne débouchant sur aucune action de développement, on risquerait d'affaiblir la volonté des pays bénéficiaires de régler progressivement leurs problèmes alimentaires ... et par suite, de perpétuer indéfiniment les programmes d'aide alimentaire.\footnote{RHEIN, 1969, 62.}
\]

At its meeting of 9-10 December 1968, the Council agreed in principle to the idea of distributing most Community food aid by sale to the population and using the resulting counterpart funds for development - and in particular agricultural development - projects and programmes. It insisted, however, that the Community's approach to the use of food aid would be a flexible one.\footnote{See also the debate in Parliament on 15 May 1968 with particularly interesting interventions by Mr H Vredeling (p. 105), Mr De Winter (p. 107 and Commissioner Mansholt (p. 113), Debates of the European Parliament, 1968-69, OJ. Annex, No 103.}

After some four years of 'experience', the Commission confidently suggested in its 1974 Memorandum that the Community should continue distributed food aid
mainly by sale at normal market price considering that:

[...] open market sales represent a simpler and less expensive way of handling food aid, as well as one that is more welcome to developing countries themselves.333

While the Commission recognized that, more than distribution in kind free of charge, open market sales might \textit{a priori} produce harmful interference with international trade and agricultural production in recipient countries, it considered that such adverse effects could be avoided if the FAO Principles of Surplus Disposal were strictly observed (!) and suitable precautions were taken with regard to the selling price of the food products.334 The Commission also suggested to continue working with counterpart funds but added - cautiously - that in many cases it would be a mistake to regard the creation of counterpart funds as anything more that an accounting devise.337

Second, the Community supplied food aid to developing countries and organizations for \textit{distribution in kind - free of charge} - to specific, vulnerable groups of the population (children, pregnant women, young mothers, refugees, etc.) or to workers engaged in a particular project (Food for Work projects).338 The Community’s main aim in the former case was to raise the standard of nutrition of its focus group while in the latter case food aid was mainly seen as a means of financing a specific labour intensive development project such as infrastructure works. As an example of a supply agreement stipulating free distribution in kind,

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333COM(74) 300 final, Memorandum, 11.

334COM(74) 300 final, Memorandum, 11 but also 4-5.

337COM(74) 300 final, Memorandum, 12. The Commission pointed out that counterpart funds do not constitute a real development resource in as much as the only increase in the real resources available to the aid receiving country consists in extra supplies of food. It noted that the extent of the benefit depended on how far the country takes advantage of the presence of these products to step up the rate of development. This is correct but besides the point; the main purpose of the counterpart funds is precisely to ensure that the recipient country will use the resources resulting from the food aid supplies for developmental purposes.

338COM(74) 300 final, Memorandum, 10. Most of the "Food for Work" projects supported by Community food aid were implemented through the World Food Programme.
1969-76: Surplus disposal as primary policy objective

one could refer to the 1973 Agreement between the European Economic Community and the Republic of Chad concerning the supply of food aid in the form of common wheat and the 1974 Agreement between the Community and the WFP on the supply of butteroil oil to developing countries. The former Agreement stipulated in its Article V:

The recipient country undertakes to use the products received as aid for purposes of consumption and to distribute such products to people in need free of charge.339

and the latter Agreement stipulated in its Article II:

The WFP shall undertake to use the butteroil supplied as aid to implement emergency measures for economic and social development or food projects which shall be subject to prior approval by the Community.340

Another, well-known example is the 1971 EEC-UNRWA Convention which stipulated in its Article I:

En vue de contribuer à l'assistance aux réfugiés des pays du Moyen-Orient, la Communauté met à la disposition de l'UNRWA [...] des fournitures en nature destinées à être incluses dans les distributions gratuites effectuées au titre du programme de distribution normale et du programme d'appoint de cet organisme, ainsi que des contribution en espèces qui ont pour objet le financement d'achats et de frais nécessaires à la mise en œuvre du programme alimentaire d'appoint.341

It must be noted, however, that during the period 1969-76, the Community did - by deliberate policy choice - all but focused its food aid on the vulnerable and

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340 Agreement between the European Economic Community and the World Food Programme on the supply of butteroil as food aid to developing countries (1974), Article II, O.J. 1974, L 307/11. Another, well-known example was the Convention between the European Economic Community and United Nations Relief and Works Agency for Palestine Refugees (UNRWA) concerning aid to refugees in the countries of the Near East (1976), Article 1 and 7, O.J. 1976, L 203/41.

needy groups within the recipient countries. As mentioned, the Community preferred to distribute food aid by sale to the population; for both the donor and the recipient, an easier and less expensive - also in terms of human resources - way of distributing food aid. It, however, also kept food aid out of the reach of the most needy.

Third, and as a rule only to a small extent, the Community supplied food aid to developing countries and organizations in emergencies to alleviate food shortages as a result of natural or man-made disasters such as droughts, floods, earthquakes, civil wars, etc. In this case the food aid was of course distributed in kind and free of charge. As an example of a supply agreement stipulating free distribution of the food products to disaster victims, one could refer to the 1971 Agreement between the European Economic Community and the Islamic Republic of Pakistan on the supply of common wheat flour as emergency food aid and the 1974 Agreement between the Community and the Office of the United Nations High Commissioner for Refugees. In its Article III, the former Agreement stipulated:

La république islamique du Pakistan s'engage à utiliser à des fins de consommation et à distribuer gratuitement aux populations victimes de la catastrophe du 13 novembre 1970 la farine de froment tendre reçue à titre d'aide.

and the latter Agreement stipulated in its Article IV:

The recipient body undertakes to use the products received as aid for purposes of consumption and to distribute them free of charge

32Note that the Commission in its Communication on the 1971 Food Aid Convention suggested, while confirming its preference for distribution by sale on the open market, that to give somewhat more attention to food aid actions designed exclusively to raise the nutritional standards of the least favoured population groups (Bull. EC 9-10/1971, p. 147).

33"... une aide à l'investissement et non à la consommation," (JANSSENS, 1971, 23).

34Accord entre la Communauté économique européenne et la république islamique du Pakistan relatif à la fourniture de farine de froment tendre à titre d'aide alimentaire d'urgence, Article III, J.O. 1971, L 81/15.
to the populations affected by the recent events in Cyprus.\textsuperscript{3,4,5}

Regardless the use for which the food aid was supplied, the supply agreement between the Community and the recipient always stipulated that the latter had to inform the Commission in detail about the arrival and even more importantly the use made of the food aid.\textsuperscript{3,4,4,4} In the case of distribution by sale on the local market, the supply agreement typically stipulated:

The recipient country undertakes to inform the Community of the mode of implementation of this Agreement. To this end it shall provide the Commission of the European Communities with the following information:

1. not later than 30 days after the unloading of each cargo: port and date of arrival of the vessel; nature, quantity and quality of agreements between the Community and the Office of the United Nations High Commissioner for Refugees on the supply of butteroil, skimmed milk powder, flour of common wheat and rice as emergency food aid for the populations affected by the recent events in Cyprus, Article IV, OJ. 1975, L 9/27.

the products unloaded; date on which the unloading was completed;

2. every three months until the quantities received as aid have been fully used: quantities sold, how they have sold, selling prices; normal selling costs on the recipient country’s markets;

3. on 15 January every year until the special account has been fully used:
   (a) state of this account (lodgments and withdrawals) on 31 December of the preceding year;
   (b) progress achieved in the project or projects, with an indication of total amount of financing carried out at that stage.\(^{347}\)

In the case of free distribution to target groups or to workers or in the case of free distribution to disaster victims, the supply agreement typically stipulated:

The country of destination undertakes to inform the Community of the circumstances surrounding the implementation of this Agreement. For this purpose, it shall communicate to the Commission of the European Communities the following information:

(1) not more than thirty days after the unloading of each consignment: port and date of ship’s arrival; the kind, quantity and quality of the products unloaded; date on which the discharge was completed;

(2) every three months until the quantities received as aid have been fully used: quantities distributed, number and nature of the beneficiaries, places, rate and method of distribution.\(^{344}\)

These information would normally have allowed the Commission to monitor the use and to evaluate the impact and effectiveness of the food aid supplied. In practice, however, the food aid recipients did not properly fulfil the above quoted information obligations. In 1971, already, the Audit Board, remarked:

La teneur des documents transmis à la Commission [...] ne permet

\(^{347}\) Agreement between the European Economic Community and the Eastern Republic of Uruguay concerning the supply of common wheat as food aid, Article VIII, O.J. 1973, L 343/32.

\(^{344}\) Agreement between the European Economic Community and the Islamic Republic of Mauritania on the supply of skimmed milk powder as food aid, Article VIII, O.J. 1973, L 343/27.
1969-76: Surplus disposal as primary policy objective

...and it repeated this criticism annually since. In its 1976 Annual Report, the Audit Board observed:

Les précédents rapports ont dénoncé l'insuffisance des renseignements obtenus sur les conditions de distribution ou de commercialisation des produits et sur l'utilisation des fonds de contre-partie. Ces lacunes demeurent tout aussi importantes, et, sauf dans les pays ACP où se trouvent des délégués de la Commission, il ne semble pas qu'aient été mises en œuvre les mesures appropriées de contrôle annoncées dans les réponses antérieures de l'institution.

As a result of the recipients' failure to meet its information obligations, the Commission had often no idea at all what had become of the food aid supplied and it certainly was not able on the basis of the information received to evaluate the use made of the food aid and the counterpart funds. Most remarkable, however, was that certainly in the beginning the Commission did not seem too preoccupied with this situation. It showed itself extremely flexible with regard

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349 COMMISSION DE CONTROLE, Rapport annuel, 1971, 144.

350 "Les documents [concernant tant les opérations de réception et de déchargement que les modalités de la distribution], lorsqu'ils sont transmis, le sont avec retard et leur teneur n'autorise aucun contrôle sérieux. Des démarches réitérées auprès des pays bénéficiaires paraissent nécessaires. Les renseignements obtenus sur le produit net des ventes, l'inscription au compte spécial et l'affectation à des projet d'investissement demeurent également très incomplets." (COMMISSION DE CONTROLE, Rapport annuel, 1972, 70);

"[...] les documents reçus très irrégulièrement ne permettent en aucun cas de se rendre compte ni de l'arrivée à bonne fin de la totalité de l'aide ni d'un emploi judicieux des fonds des contrepartie." (COMMISSION DE CONTROLE, Rapport annuel, 1973, 115). See also: COMMISSION DE CONTROLE, Rapport annuel, 1974, 101-103; and COMMISSION DE CONTROLE, Rapport annuel, 1975, 106.

351 COUR DES COMPTES, Rapport annuel, 1976, 130. Laurens observed that some of the information reports the Commission did receive depicted a perfect implementation and were clearly unreliable (LAURENS, 1976, 150).

352 LAURENS, 1976, 150 and 195.

353 "[...] de informatie over de uitvoering van het project en de stand van de bestedingen ontbreekt. Typisch is dat, voorzover wij weten, de Commissie ook niet tracht om die informatie in te winnen. Het enige waar ze op aandringt is een opgave van de naam en type van project dat uit de
to the recipients' information obligation and as such definitely gave the impression it was not really interested in what the recipients did with the food aid supplied. In fact, the Commission’s 'policy' on monitoring the use of the food aid by the recipient reflected a compromise between two positions both represented in the Council.4 On the one hand, there were Member States who argued that the Community should not interfere at all in the way recipient countries will benefit from the resources resulting from food aid operations and they saw, for example, no need for counterpart funds. By way of justification, the advocates of this position invoked the respect for the sovereignty of the recipient country but, more likely, they were primarily concerned that: (1) if one really wanted to follow up and evaluate the use made of the food aid, the Commission would need a far larger food aid staff; and (2) strict conditions for food aid might hinder its use for other than developmental and humanitarian reasons, such as surplus disposal and diplomatic leverage. On the other hand, there were Member States who argued that the Community had the right and even the duty to ensure that the maximum developmental benefit was derived from the resources transferred. It should be noted that the advocates of this position had strong allies in Parliament.

Already before the Community started to supply food aid in earnest, Mr Houdet remarked in dramatic wording during a debate in Parliament on 23 January 1969:

Nous risquons de voir cette aide gaspillée, si nous ne savons la doser et contrôler son emploi réel. Je ne voudrait pas croire que, dans certains pays, charançons et rats sont les vrais consommateurs de nos céréales.5

In its Resolution of 24 January 1969 adopted after this debate, Parliament:

[...] attirer l’attention sur les problèmes que pose l’affectation des fonds représentant l’équivalent de l’aide octroyée par la

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4 BOS, 1978, 46.

By way of compromise between the two positions, the Council stipulated in the supply agreements provisions which, if abided by, would have allowed the Commission to monitor the use of Community food aid but at the same time expected the Commission to be very flexible in applying these provisions. The Commission, with only a very small food aid staff, was only too happy to comply. The Community’s reluctance to follow up the use made of its food aid was also reflected in the fact that the supply agreements did not contain a provision explicitly allowing the Community to carry out checks in the beneficiary country on the observance of the terms regarding the use of the food aid and counterpart funds.

The Commission’s delegations in associated developing countries occasionally checked upon the use of the food aid supplied by the Community and the resulting counterpart funds. Those checks were, however, never very systematic or in depth. The delegations were usually short of staff and lacked an explicit mandate for such checks. Towards the end of the period 1969-76, the Commission occasionally also used private firms to carry out controls.

While the Commission in its 1974 Memorandum observed that:

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357 This was already the case in Niger, for example, with regard to food aid in cereals supplied in 1970 (COMMISSION DE CONTROLE, Rapport annuel, 1972, 71). See also: COMMISSION DE CONTROLE, Rapport annuel, 1974, 103; COMMISSION DE CONTROLE, Rapport annuel, 1975, 106; COUR DES COMPTES, Rapport annuel, 1976, 130. Reportedly, the Commission drew up in 1975 instructions for its Delegates in ACP countries specifying the latter’s duties with regard to the implementation of food aid operations and the monitoring of the utilization of the aid (COMMISSION DE CONTROLE, Rapport annuel, 1975, 54). ISMOG, which undertook a study trip to Niger in 1976 was, however, not very impressed about the involvement of the Commission Delegation. It observed: "[...] de bij hen aanwezige informatie over de distributie zelf blijkt gering te zijn" (ISMOG, 1977, 29). In an unpublished (?) ODI Working Paper on ‘The uses of food aid in Upper Volta’, Stevens, however, noted: “Probably the only national or donor agency in Upper Volta which knows with any degree of accuracy the destination of its food aid for 1973, 1974 and 1975 is the EC”.

Terms and conditions of Community food aid

[... there is some justification for the donor authority having a minimum of control over the use of funds, so as to ensure that they are not used for other than genuine development purposes [...].]

it questioned at the same time whether it was wise to really control the use of the food aid supplied, observing:

[...] it is usually the control measures over project choice, release of counterpart funds, and end-use supervision that complicate administration, increase red tape, and cause most friction between recipient countries and bilateral agencies.

On several occasions, the Commission also played down the importance of counterpart funds when it was criticised for not monitoring the use of these funds more carefully. In reply to a Parliamentary question, the Commission stated on 3 May 1976 for example:

[...] Community food aid should be regarded as a means of easing the balance of payments problems of countries with serious food deficits. The creation of counterpart funds from the sale of products is undoubtedly an important consideration in some instances but it is not the main objective of the Community's food aid policy.

Did the Commission intend to say that if the Community's main aim pursued in the developing countries by supplying food aid was to ease their balance-of-payments problems, it did not really matter what was actually done with the food aid supplied?

I tend to agree with Laurens that:

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190 COM(74) 300 final, Memorandum, 13.

191 COM(74) 300 final, Memorandum, 12.

341 Quoted by: COURT OF AUDITORS, Special Report 1/80, 6. The Commission also played down the importance of the counterpart funds in, for example, the 1974 Memorandum (COM(74) 300 final, Memorandum, 12), and in its reply to the remarks made in the 1974 Report of the Audit Board (COMMISSION DE CONTROLE, 1975, 106.).
During the period 1969-76, however, the Community was all but committed to monitoring the observance of the terms concerning the use of its food aid. As I already noted, the Community knew, in fact only vaguely what really happened to its food aid and resulting counterpart funds and it was definitely unable to evaluate the effectiveness of its food aid policy to contribute to the economic development of the recipient or to render humanitarian assistance. One can only conclude from this that the Community was not too interested in ensuring its food aid policy did indeed achieve these objectives.

3.4.4 The terms relating to the protection of commercial trade

In order to assure that agricultural products which were exported on concessional terms did not replace normal commercial imports and also that domestic production in the importing country was not discouraged, the Council of the Food and Agriculture Organization at its Twentieth Session (September-October 1954) agreed upon 'Principles of Surplus Disposal'. These FAO Principles of Surplus Disposal represent a non-legally binding code of conduct recommended to governments in the provision of food aid. They seek to guarantee that food aid operations are made without harmful interference with normal patterns of international trade and production, on the one hand, by assurances against resales and transhipments of commodities supplied on concessional terms, and, on the other hand, by the requirement of 'additionality'. The assurances against

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362LAURENS, 1976, 149.
364FAO Principles of Surplus Disposal, FAO Council Resolution 2/20, point 3: "Where surpluses are disposed of under special terms, there should be an undertaking from both importing and exporting countries that such arrangements will be made without harmful interference with the normal patterns of production and international trade".
resales and transshipments need no explanation; the requirement of 'additionality', however, does. The FAO Principles of Surplus Disposal require that the food aid supplied covers only additional consumption, i.e. consumption which would not have taken place in the absence of the food aid operation. To ensure such 'additionality', food aid supply agreements should contain a 'Usual Market Requirement' (UMR) provision which is a commitment by the recipient country to maintain the normal level of commercial imports, in addition to the imports provided for under the food aid operation.

As already pointed out, the FAO Principles of Surplus Disposal, as well as the FAO Council Resolutions 1/53 and 2/55 clarifying the Principles, are not legally binding instruments. They constitute a code of conduct. All major food aid donors, including the Community, have, however, indicated their readiness to adhere to the obligations outlined in the Principles and above mentioned

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365 FAO Principles on Surplus Disposal, FAO Council Resolution 2/20, point 7, stipulates: "Assurances against resales and transshipments
(1) In bilateral transactions involving special concessional terms, the intended beneficiary country should make every effort to prevent resale or transshipment to other countries, or the use for other than additional domestic consumption, the commodities supplied to it on special terms.
(2) Care should also be taken by the intended beneficiary to prevent exports of supplies of the same or related commodities which might be freed for sale abroad as a result of the country's imports on special terms.
(3) Where a triangular transaction occurs, under which a commodity supplied on special terms is shipped for processing in a third country, the third country should use its best endeavours to ensure that the commodities supplied on special terms are transhipped to the intended beneficiary. The same principles should apply when more than three countries are involved."

366 FAO Principles on Surplus Disposal, FAO Council Resolution 2/20, point 4 (1) as well as 6 (1) and (2).

367 See: Procedures for Notification, Consultation and Establishment of Usual Market Requirements (UMR) under the Principles of Surplus Disposal recommended by FAO, FAO Council Resolutions 1/53 and 2/55, respectively November 1969 and November-December 1970 (in consolidated form), and in particular point 10 thereof which stipulates: "In principle, the UMR should reflect the traditional commercial imports of the recipient country. The determination of a UMR should also take into account the economic and balance-of-payments position of the recipient countries and their development needs, and should not constitute an undue burden on them". For more detail, see: points 12 and following of the consolidated Resolutions 1/53 and 2/55.

The UMR is 'negotiated' between the each donor and recipient; there is no internationally agreed upon UMR for a given recipient and therefore the food aid supply agreement between the United States and a recipient country might stipulate a different UMR than the food aid supply agreement between the Community and that recipient country.
1969-76: Surplus disposal as primary policy objective

While in se not legally binding, it must be noted that for cereals - but only for cereals - the Principles were, however, incorporated the 1967 Wheat Trade Convention and were thus indirectly legally binding. Article 24 (1) and (2) of the latter Convention stipulated:

1. Les pays membres s'engagent à effectuer toutes transactions à des conditions de faveur portant sur des céréales de manière à éviter tout préjudice à la structure normale de la production et du commerce international.

2. A cette fin, les pays membres prendront les mesures qui s'imposent pour faire en sorte que les transactions à des conditions de faveur s'ajoutent aux ventes commerciales raisonnablement prévisibles en l'absence de telles transactions. De telles mesures devront être conformes aux principes et directives recommandés en matière d'écoulement des excédents par l'Organisation des Nations unies pour l'alimentation et l'agriculture et pourront prévoir qu'un niveau déterminé d'importations commerciales de blé, convenu avec le pays bénéficiaire, soit maintenu sur une base globale par ce pays. En formulant ou en mettant au point ce niveau, il conviendra de tenir pleinement compte du volume des importations commerciales au cours d'une période représentative, ainsi que de la situation économique du pays bénéficiaire, notamment de la situation de sa balance des paiements.

The 1971 Wheat Trade Convention which replaced the 1967 Convention quoted here had a similar although more restrictive provision. Article 9 of the 1971 Wheat Trade Convention was only applicable on wheat. The Community, as well as all other parties to the 1967 and 1971 Food Aid Conventions which contained no provisions of this sort, were parties to the 1967 and 1971 Wheat Trade

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364 United States, Canada, Japan, Australia, France, Germany (Fed. Rep.), United Kingdom, Italy, Belgium, the Netherlands, Denmark, Ireland, Spain (Council Resolution 2/55 ?), Greece (Council Resolutions 1/53 and 2/55 ?) [Luxembourg?, Portugal?]. The European Community, as of 1 January 1979, had indicated its readiness to adhere to the obligations outlined in FAO Council Resolutions 1/53 and 2/55 but not to the obligations outlined in the FAO Principles (agreed upon before the creation of the European Economic Community).


370 Article 24 of the 1967 Convention was applicable on 'céréales' which included 'le blé, le seigle, l'orge, l'avoine, le maïs et le sorgo' (See Article 2 (1) p) of the 1967 Convention). Since the Community, however, gave most cereal food aid in the form of wheat, this restriction was of little practical significance.
Pursuant to the obligations set out in the Principles - which for some food aid transactions were even legally binding obligations - all supply agreements between the Community and recipient countries concluded during the period 1969-76 provided for clauses stipulating the additionality principle and guarantees against re-exportation of the products supplied as food aid or the exportation of similar products.

As an example of such provisions, one could refer to Article VI and VII of the 1973 Agreement between the European Economic Community and the Republic of the Niger on the supply of food aid in the form of maize, which stipulated:

**Article VII**

The Contracting Parties undertake to implement this Agreement in such a way as to avoid any prejudice to the normal structure of domestic production and international trade. To this end, they shall take any measures required to ensure that aid supplies are in addition to, and do not replace, commercial transactions which

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might reasonably be expected in the absence of such supplies.

Article VIII

The recipient country shall take all necessary measures to prevent:

- the re-export of the product received as aid and of products and byproducts derived from them;

- the export, commercially or otherwise, within six months of the last delivery, either of the product obtained locally and of the same nature as the product received as aid or of any products or byproducts derived from them.  

All supply agreements with recipient countries provided mutatis mutandis for similar provisions. Occasionally, the supply agreement itself explicitly stipulated the Usual Market Requirement. The 1972 Agreement with Syria, for example, stipulated in its Article IV:

[...] En particulier, le pays bénéficiaire s'engage à importer commercialement de toutes provenances, entre le 1er juillet 1971 et le 30 juin 1972, une quantité minimale de 130.000 tonnes de froment tendre ou son équivalent en farine de froment tendre. 

and the 1974 Agreement with Algeria stipulated in its Article VI:

[...] In particular, the recipient country undertakes to import commercially from whatever source between 1 July 1973 and 20 June 1974 a minimum quantity of 500,000 metric tons of common wheat or its equivalent in flour of common wheat.

Usually, though, the UMR was (informally?) agreed upon in the margin of the


374 The period stipulated in Article VIII, second indent, varied.

375 Accord entre la Communauté économique européenne et la République arabe syrienne relatif à la fourniture de froment tendre à titre d'aide alimentaire (1972), Article IV, last sentence, J.O. 1972, L 95/28.

376 Agreement between the European Economic Community and the Democratic and Popular Republic of Algeria on the supply of common wheat as food aid, Article VI, OJ. 1974, L 53/34.
food aid operation as a guideline for the fulfilment of the 'additionality' requirement.

To the extent its dismal food aid monitoring system allowed it to do so, the Community took the prohibition of re-exportation and, to a lesser extent, the prohibition of exportation of similar products quite seriously. At least, the Community did not itself openly play down the importance of these prohibitions.\footnote{Note that in 1974, Ethiopia reportedly re-exported 1,800 tonnes of wheat and maize supplied for distribution to the drought victims to North-Yemen (LAURENS, 1976, 194).} The 'additionality' requirement, on the contrary, was not taken seriously at all and was as a matter of fact in open contradiction with the 'balance-of-payments support' aim of most of the Community's food aid operations.\footnote{Furthermore, it deserved to be mentioned that a strict enforcement of the 'additionality' requirement was often not realistic and hindered the use of food aid as an instrument of surplus disposal, diplomatic leverage and export market creation (in particular in the sense of replacing competing food exporters).} It is obvious that food aid will only alleviate the recipient country's balance-of-payments problems if, and to the extent that, the food products supplied as food aid replace commercial imports. This, and the fact that there has been no reported instance of enforcing the 'additionality' requirement, suggests that during the period 1969-76, the Community did in practice not fully adhere to the FAO Principles of Surplus Disposal. In its 1974 Memorandum, the Commission pleaded for strict observance of the FAO Principles of Surplus Disposal\footnote{In its 1974 Memorandum, the Commission wrote: "It must be recognized that in so far as food is not absorbed by additional consumption (i.e. consumption which would not have taken place in the absence of food aid), there is always a danger of its displacing commercial exports and thus of distorting the normal patterns of international trade. However this danger can be reduced or even totally eliminated by strict observance of the internationally accepted procedures of Surplus Disposal." (COM(74) 300 final, Memorandum, 4-5).} but I think it would be wrong to see this passage on the strict observance of the FAO Principles as anything else but hollow albeit 'mandatory' lip-service to the idea of fair trade in agricultural products. In not taking the 'additionality' requirement too seriously, the Community was, however, in good company. It was reported that between a
half and three-quarters of all food aid supplied replaced commercial imports. Virtually all food aid donors bended this FAO-rule.
3.5 The procedural and institutional aspects of Community food aid policy decision-making

During the period 1969-76, the formulation of Community food aid policy was characterized by an impairing concentration of decision-making competence in the hands of the Council. During most of this period the Council decided on even the most trivial of issues. The absence of any delegation of decision-making competence to the Commission undoubtedly reflected the Member States' wish to retain a very firm grip on this new policy; the Member States were well aware of the potential foreign policy implications of food aid operations. The absence of delegation reflected, on the other hand, however, probably also the lack of experience within the Community with food aid operations; it was only after a few years of experience that first the Commission and then the Member States realized that in fact the total concentration of decision-making powers in the hands of the Council could not work well. In the meantime, however, the impairing concentration of decision-making powers gave rise to long delays in the food aid policy formulation, which were especially detrimental in the case of emergency food aid operations. In its 1974 Memorandum, the Commission recognized that the procedure for food aid policy formulation in place did not meet the requirements of efficient management and therefore called on the Council to reallocate within the Community the responsibilities for policy formulation. It proposed that the Council would decide on the adoption of indicative medium-term and annual programmes, and on the allocation of the Community's food aid among beneficiary countries and international organizations, as well as on the basic conditions underlying the supply of Community food aid. The Commission, however, would - assisted by a Committee of the type of an agricultural

31 As I already noted before and as was also observed by Laurens: "[...] la politique d'aide alimentaire est le fruit des circonstances; elle a été élaborée au fur et à mesure des nécessités sans aucun plan préétabli." (LAURENS, 1976, 59.).

32 Note, however, that for food aid delivered through the WFP, the Director General of DG VIII could from 1972 onwards make minor changes to the projects proposed by the WFP and adopted by the Council (ISMOG, 1977, Deel II, 24.).

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Management Committee - act on behalf of the Community vis-à-vis the food aid recipients as regards the definition of specific terms and conditions under which the Community supplied food aid. For emergency food aid operations, the Commission proposed in the Memorandum, that it would itself be empowered to decide on limited quantities of emergency aid to be dispatched during the days immediately after a disaster and that for further quantities of emergency food aid the Council would take a decision by the accelerated written procedure. This Commission proposal for competence reallocation was partially and in an informal and makeshift manner adopted by the Council in 1975 but as may be inferred from the fact that in 1975 and 1976 the delays for policy formulation remained unacceptably long, the adjustment to the policy formulation procedure made by the Council - as well as the adjustment proposed by the Commission - fell far short of the procedural reforms needed. It was of course 'difficult' (if not impossible) to delegate decision-making competence to the Commission as long as the Member States were in open disagreement about the objectives of the food aid policy and thus unable to lay down the essential elements of the latter policy. This is presumably the reason why the 1975 procedural reforms (which provided for some delegations) were informal and makeshift in nature.

3.5.1 The decision on the supply of non-emergency food aid

During the period 1969-76, the Council agreed annually on a so-called 'schéma d'exécution' for food aid in cereals. Since the Community had already committed itself under the 1967 and 1971 Food Aid Conventions to grant annually a given quantity of cereal food aid, the Council did not need to decide whether to supply cereal food aid and, if so, how much; it 'merely' needed to decide on the execution of an existing commitment. On a proposal from the Commission - prepared by the

33COM (74) 300 final, Memorandum. 17-18.

Food Aid Division of the Commission's Directorate-General for Development Cooperation (DG VIII)\(^3\) - the Council decided therefore annually on, firstly, the partition of the Community's commitment under the Food Aid Convention in a Member States' part and a Community part\(^3\), secondly, the allocation of the Community part among developing countries and international organizations which had requested Community food aid\(^3\) as well as the size of the reserve, i.e. the food aid set aside for the purpose of emergency food aid actions\(^3\), and, thirdly,

\(^3\)For the preparation of the proposal, the Food Aid Division consulted the Directorate-General for Agriculture (DG VI), the Directorate-General of External Relations (DG I), the Directorate-General for the Budget (DG XIX) and the Legal Service of the Commission as well as other Divisions within DG VIII. It is not clear, to which extent, the Food Aid Division consulted the Commission's Delegates in the Associated Countries and international organizations with special expertise in the agricultural and food aid field, such as the FAO and the WFP.

Once transmitted to the Council, the proposal is first discussed in the Ad Hoc Food Aid Working Party, a Council committee of national government officials. It is at this level of experts that most amendments to the Commission's were made. Finally, the proposal was discussed in the COREPER, which normally was able to solve any problem the Ad Hoc Committee was unable to resolve so that the Council could adopt the 'schéma d'exécution' without debate (See further: ISMOG, 1977, Deel II, 7-11 and 29-30.).

\(^3\)For more details on this partition, see: Section 3.2 of this Chapter.

\(^3\)Requests could be addressed to the Commission either directly or through a Member State and had to stipulate: (1) the quality and quantity of the requested product; (2) the place of destination and delivery; and (3) the development project in the context of which the aid was going to be used (either in kind or in the form of counterpart funds). For requests of emergency food aid, no development project needed to be indicated. See further: LAURENS, 1976, 71-72.

\(^3\)Note that under the EC-ICRC Supply agreement of 3 February 1975, the Commission was competent to decide on the final allocation of the food aid (Bull. EC 3-1975, 55.).

\(^3\)The 'schema d'exécution' also listed the recipients of the cereal food aid supplied by the Member States under the Food Aid Conventions. Marenco observed that: "La Communauté ne se désintéresse donc pas de l'affectation des actions nationales. Au contraire, elle s'efforce d'harmoniser les souhaits des Etats membres afin de conférer à l'ensemble de l'aide le maximum possible de cohérence et d'efficacité" (MARENCO, 1974, 626).

It should be underlined, however, that the 'schéma d'exécution' only listed the recipients of national food aid operation 'à titre d'information' and that the Member States were completely free to choose their own recipients. By requiring them to inform the Community of their allocation decisions, the latter merely tried to coordinate the Community's and the Member States' food aid policies. The Commission noted in a Communication in 1971, however, the failure of this effort pointing at the definitive lack of coherence in the selection of actions to be undertaken (Communication of the Commission to the Council of 1971, 14.). Contra: LAURENS, 1976, 72 who noted "Il est remarquable de constater qu'en matière de programmation de l'aide alimentaire, la procédure est entièrement de compétence communautaire quel que soit le caractère communautaire ou national des actions considérées".

The 1974/75 and the 1975/76 'schémas d'exécution', for example listed also the recipients of Member States' food aid in cereals (Bull. EC 3-1975, 36; Bull. EC 3-1976, 64.). Nevertheless, there was,
the terms and conditions of each food aid operation, including the Community's contribution towards the food aid transport costs. With regard to the latter, it should be noted, however, that as from 1975 onwards and to some extent following up a proposal made by the Commission in its 1974 Memorandum, the Council no longer decided - as part of its decision on the 'schéma d'exécution' - on the specific terms and conditions of each food aid operation, exception made for the terms concerning the financing of the transport of the food aid. Instead, it approved in 1975 a set of standard terms and conditions from which the Commission could choose when drafting the supply agreement. Probably because the 'schéma d'exécution' was considered to be no more than a set of instructions to the Commission for the subsequent negotiations with the food aid recipients, it did not take the form of Regulation or Decision pursuant to Article 189 EEC but took the form of a 'decision sui generis' and was not published in the Official Journal. While in practice, the decisions on the 'schéma d'exécution' were taken by consensus, the Council could adopt the annual 'schéma d'exécution' by qualified majority, unless of course it amended the Commission's proposal in which case unanimity was required. It is important to note that Parliament was not consulted on the annual 'schéma d'exécution'.

however, hardly any coordination between the Community and the Member States cereal food aid actions.


COURT OF AUDITORS, Special Report 1/80, 89, see for more details: section 3.6.1 of this part on the conclusion of the supply agreements.

Marenco observed, however, that the 'schema d'exécution' to the extent it stipulated the Member States' part of the Food Aid Conventions' obligation, was more than a set of negotiating guidelines and should have taken the form of a formal Decision (Marenco, Aide alimentaire, 1974, 627.).

As I already noted, during the period 1969-73, COREPER was always able to reach full agreement on the 'schémas d'exécution' so that they appeared on the Council's agenda as 'A'-items (ISMOG, 1977, Deel II, 10.).
Although similar in the sense that the decision-making competence was concentrated in the hands of the Council, the procedure for food aid policy formulation for food aid in dairy products differed from the procedure outlined above. In the absence of an international commitment on the part of the Community to supply food aid in dairy products, the Council had to decide not only on the allocation and the terms and conditions of the food aid, but also - and this before anything else - on whether it wanted to supply of food aid in the form of dairy products, and, if so, how much.

Until 1974 the Community did not adopt an annual programme for food aid in dairy products but adopted ad-hoc decisions on the supply of dairy food aid. By way of example of such an ad-hoc decision, one could refer to Règlement (CEE) No 2721/72 du Conseil du 19 décembre 1972 relatif à la fourniture de lait écrémé en poudre au titre de l’aide alimentaire, in which the Council, firstly, decided to grant 60,000 tonnes of skimmed milk powder, secondly, decided on the allocation of this quantity among a number of countries and international organizations which had requested Community dairy aid, and, thirdly, decided on the Community’s contribution towards the transport costs.\(^\text{393}\) While in practice, the ad hoc decisions on dairy food aid actions were taken by consensus, the Council could adopt these decisions by qualified majority, unless of course it amended the Commission’s proposal, in which case unanimity was required.\(^\text{394}\) To the extent these ad-hoc decisions were based on Article 43 and they were when they provided for the mobilization of the dairy products on the Community market, Parliament was formally consulted.

\(^{393}\) Règlement (CEE) No 2721/72 du Conseil du 19 décembre 1972 relatif à la fourniture de lait écrémé en poudre au titre de l’aide alimentaire, J.O. 1972, L 291/28. Note that the Council decided in this Regulation also on the origin of the products to be supplied, on the procedures which could be used for awarding the supply contract, and on the financing of the food aid operations.

\(^{394}\) In addition, it should be noted that reportedly, COREPER was during the period 1969-73 always able to reach full agreement on the dairy food aid decisions so that they appeared on the Council’s agenda as ‘A’-items (ISMOG, 1977, Deel II, 10.).
From 1974 onwards, the Community adopted annual programmes for food aid in dairy products. By way of example of such an annual programme, one could refer to the 1975 butteroil programme which consisted - as all dairy annual programmes - of two separate decisions: Council Regulation (EEC) No 1541/75 of 16 June 1975 laying down general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food aid programme and Council Regulation (EEC) No 1542/75 of 16 June 1975 on the supply of milk fats as food aid to certain developing countries and

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39 For the decisions on the annual dairy food aid programmes, see:
- **the 1974 butteroil food aid programme**: Council Regulation (EEC) No 530/74 of 4 March 1974 laying down general rules for the supply of milk fats as food aid to certain developing countries and certain international organizations, O.J. 1974, L 65/1;
- **the 1975 skimmed milk powder programme**: Council Regulation (EEC) No 1347/75 of 26 May 1975 laying down the general rules for the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1975 programme, O.J. 1975, L 138/1; and Council Regulation (EEC) No 1348/75 of 26 May 1975 on the supply of skimmed milk powder as food aid to certain developing countries and international organizations under the 1975 programme, O.J. 1975, L 138/3;

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international organizations under the 1975 food aid programme. In the former decision, the Council laid down, first, the quantity of food aid to be supplied, second, the rules on the origin of the food aid product, third, the general arrangements for the financing of the food aid transport, fourth, the general rules concerning the award of the supply contracts, and, fifth, the procedure for deciding on the conditions governing the mobilization of the food aid and the procedure to be followed for deciding on the allocation of the food aid. In the latter decision, taken immediately after the first one, the Council laid down the list of the recipients, the quantities allocated to each of them and transport financing arrangements as well as the size of the emergency food aid reserve. It is not totally clear why the Council choose to split up its decision on the annual dairy food aid programmes in two separate decisions but it may be noted that while the first of the two decision was based on Article 43 EEC and therefore adopted by qualified majority after consultation of Parliament, the second decision concerning the food aid allocation was adopted following the procedure stipulated in the former decision and this procedure did not provide for the consultation of Parliament and for a decision by unanimity on the financing of transport beyond FOB.

The Community’s first decision to grant food aid in the form of sugar, Règlement (CEE) No 1475/72 du Conseil du 10 juillet 1972 relatif à la fourniture de sucre à l’UNRWA à titre d’aide alimentaire, was an autonomous decision and thus in all respects very similar to the ad hoc decisions on the supply of skimmed milk powder. It will be recalled, however, that in December 1972, only a few months after the adoption of this regulation, the Community concluded an agreement with

397OJ. 1975, L 157/6.

398Other specific terms and conditions were at least until 1975 also decided by the Council. In 1975, however, the Council approved a set of standard terms and conditions from which the Commission could choose when drafting the supply agreement. (See for more details: section 3.6.1 of this part on the conclusion of the supply agreements).

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the UNRWA which provided i.a. for the annual supply of sugar during the period 1972-75. The Council's subsequent decision, Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972, was therefore in a way more a sort of 'schéma d'exécution' as one had for food aid in cereals, with the important difference that the 'schéma' for sugar concerned the three year period covered by the Convention. In 1976, the 1972 EEC-UNRWA Convention was succeeded by the 1976 EEC-UNRWA Convention and the Council's subsequent decision, Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid was again a sort of 'schéma d'exécution' for a period of three years. It should be noted that while these regulations were based on no Treaty article in particular but on the Treaty as such, the European Parliament was nevertheless consulted. Similar to the policy formulation for food aid in cereals as well as food aid in dairy products was the absolute concentration of decision-making in the hands of the Council; the resulting delays were, however, less problematic since the Council's decision covered a period of three years.

The concentration of all decision-making power in the hands of the Council inevitably led to a protracted procedure. Already in the first years of Community

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400 Convention entre la Communauté économique européenne et l'office de secours et de travaux des Nations unies pour les réfugiés de Palestine, relative à l'assistance aux réfugiés des pays du Moyen-Orient, J.O. 1972, L 304/24. Note the possibility provided for in Article II (2) and XII to renegotiate the Convention annually.

401 Council Regulation (EEC) No 1052/73 of the Council of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972, O.J. 1973, L 105/1

402 Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid, O.J. 1976, L 118/1. The Council adopted the decision to conclude the Convention on 20 July 1976. This would suggest that the internal decision to supply food aid in sugar preceded the undertaking of the international obligation. If so, the internal decision could no longer be seen as a 'schéma d'exécution'.

403 The delays were of course also less problematic since the size of the sugar food aid programme was quite marginal and the programme had only one beneficiary.
food aid, both Parliament and the Audit Board repeatedly criticised the 'lourdeur' of the procedure and the slow pace with which the 'schémas d'exécution' were adopted. It is indeed quite astonishing that the 1970/71 'schéma' relating to the year 1 July 1970 - 30 June 1971 was not adopted until 6 April 1971, the 1971/72 'schéma' not until 23 May 1972, and the 1972/73 'schéma' not until 14 May 1973. In spite of the proposals made by the Commission in its 1974 Memorandum and contrary to the Joint Declaration of the Presidents of the Council and the Commission of 30 April 1974 on the decision-making process of the Community in which it was agreed that:

[...] a greater responsibility should be entrusted to the Commission by the application of Article 155, fourth indent of the Treaty, it being agreed that collaboration between the Commission and the competent national administrations would be assured by procedures deriving from those already applied within the Community for the management committees or other committees

little changed with regard to the policy formulation concerning normal (i.e. non-emergency) food aid. Also in the later part of the period 1969-76, the 'schémas d'exécution' and the annual programmes were often adopted well into the year concerned.

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*°*Bull. EC 6-1971, 100-101; Bull. EC 7-1972, 81-82; and Bull. EC 5-1973, 52-53. Note the annual 'schemas' related to a period from 1 July of the year N to 30 June of the year N+1. The food aid had to be delivered before 31 December of the year N+1 (RHEIN, 1969, 63.).

*®Cited by WAINWRIGHT, R., 'The Execution of Community Food Aid to Developing Countries', *CML Rev.*, 1976, 370.

*®*COURT OF AUDITORS, Special Report 1/80, 111.

*®®Note that for cereals '1974' refers in fact to the period '1 July 1973/30 June 1974', etc.
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It is quite obvious that these delays in the adoption of the 'schémas d'exécution' and annual programmes had repercussions on all further stages of a food aid operation and were unfortunately often the main single reason why normal Community food aid - in principle requested in the year N-1 - reached the recipients either too late (i.e. the year N+1 or N+2) and or at the wrong time (i.e. in the harvest period or in a year with a bumper harvest).

I have already noted that Parliament was only consulted in full on the marginally important food aid in sugar.409 It was not consulted on the 'schémas d'exécution' and only partially consulted on the ad-hoc decisions on food aid in dairy products and the annual dairy programmes.410 Furthermore, it should be noted that during most of the period 1969-76, the European Parliament had still virtually no budgetary powers and was therefore not yet in a position to influence the food aid policy in this way. As from the 1976 Budget onwards, Parliament had the final say on non-compulsory expenditure but no use was made yet of this novel right in the context of the food aid policy. Parliament repeatedly criticised the absence of any consultation on the 'schémas d'exécution' and the annual programmes, arguing that especially the allocation of food aid which was part of these 'schémas' and programmes was an 'eminently political question'.411 During the period 1969-76, Parliament nevertheless played a very active role in the food aid policy formulation debate. Often at its own initiative, it commented on every aspect of the food aid policy.412 On numerous occasions, Parliament appealed to the Commission and Council to give emergency food aid to countries struck by

409 Marginally important not only because of the quantities involved but also because both quantities and the beneficiary were already determined.

410 Parliament was not formally consulted on the decision relating to the allocation and the transport financing arrangements.

411 See e.g.: Bull. EC 8-1970, 125-6.

412 See for example the list of Written Parliamentary Questions on Community food aid in LAURENS, 1976, Annexe, G-H.
disaster. This was for example the case in June 1970 concerning emergency food aid to Peru and Rumania\textsuperscript{413}; in June 1971 concerning emergency food aid to East Pakistan\textsuperscript{414}; and in May and December 1973 concerning emergency food aid to the Sahel\textsuperscript{415}. While not necessarily as a result of the Parliament's appeal, the Council decided in all of the above mentioned cases to grant emergency food aid.

It should be noted, however that the long delays for food aid policy formulation were not merely a question of cumbersome procedures but also, as was noted by the Audit Board in its 1974 Report, due to the serious lack of staff in the Food Aid Division of DG VIII\textsuperscript{414}. While one can appreciate why the Commission stressed in its 1974 Memorandum that its proposed food aid policy would not require 'the creation of a vast executive structure' similar to that of the World Food Programme with representatives in all recipient countries, it is harder to understand why it did not explicitly state the obvious need to expand the staff in Brussels\textsuperscript{417}.

3.5.2 The decision on emergency food aid actions

By the nature itself of emergency food aid operations, it was of course usually not possible to integrate emergency food aid decisions in the 'schéma d'exécution' or annual programmes. Therefore, the latter provided for a small reserve which could be allocated when the need for an emergency food aid operation arose in the course of the year. It should be observed, however, that when the reserve of

\textsuperscript{413}Bull. EC 8-1970, 125.

\textsuperscript{414}Bull. EC 8-1971, 95.

\textsuperscript{415}Bull. EC 5-1973, 54 and Bull. EC 12-1973, 76.

\textsuperscript{416}COMMISSION DE CONTROLE, Rapport annual 1974, 99.

\textsuperscript{417}COM(74) 300 final, 18.
the year N was depleted and the situation did not allow to postpone emergency action until the adoption of the 'schéma d'exécution' or annual programme of the year N+1, emergency food aid was often granted in advance of the adoption of the new 'schéma d'exécution' or annual programme. As such, the Council agreed on four emergency food aid actions for a total of 83,600 tonnes of cereals under the 1970/71 'schéma d'exécution' before the latter was adopted and in November 1974, December 1974 and January 1975, the Council decided on the advanced allocation of respectively 150,000 tonnes of cereals to India, 70,000 tonnes to drought stricken African countries and 150,000 tonnes to Bangladesh.

While swift decision-making was obviously of special importance in the case of emergency food aid operations, there was during most of the period 1969-76 no special emergency food aid procedure. Until 1975, the Council decided - following the same protracted procedure as for the decision on the 'schéma d'exécution' - on every emergency food aid operation. Needless to say that this entailed unacceptable delays. It took the Community at least 3 months and sometimes up to 11 months to decide on an emergency food aid operation. Both the Commission and Parliament insisted in 1971 already on the introduction of special emergency food aid procedures. Parliament, for example, proposed in its Resolution of 18 October 1971 the establishment of a reserve stock for emergency food aid operations which would be managed by the Commission and the use of which it would only have to justify a posteriori. In 1971, the Member States were,
however, not ready yet to relinquish their absolute control over the food aid policy. By 1975, this had somewhat changed and the Council did take a first, hesitant step towards the reallocation of decision-making power regarding emergency food aid operations. By its decision of 14 August 1975, the Council authorized the Commission to allocate limited quantities of food aid to countries hit by natural disasters. The limitations to this delegation of power were, however, significant: first, the maximum quantities the Commission was authorized to grant were merely 5,000 tonnes of cereals, 500 tonnes of skimmed milk powder and 500 tonnes of butteroil; second, the Commission could only grant emergency food aid in response to natural disasters; the allocation of emergency food aid in response of man-made disasters such as war remained 'safely' within the Council's competence; and, third, the Commission had to inform the Member States by telex at least two working-days before the operation was undertaken to allow the latter to make any possible observations and - one may presume - block the operation the Commission intended to undertake. It should be noted that this new procedure and the delegation of decision-making power it entailed was not the object of a formal Regulation or Decision pursuant Article 189 EEC but of a 'decision sui generis' never published in the Official Journal. Could it be that this 'secretiveness' was due to doubts about the legality of this delegation? In Case 25/70, Einfuhr- und Vorratsstelle für Getreide und Futtermittel v. Köster, Berodt & Co., the Court of Justice stated with regard to the delegation of competence:

[... ] procedural requirements are satisfied from the moment that the essential elements of the matter to be decided have been fixed in conformity with the procedure provided by [the Treaty article in question].

Wainwright remarked in 1976 in a commentary on the Council's decision of 14 August 1975 that when one applied this latter criterium to the emergency procedure, it was difficult to find that the Council had regulated the essential elements or indeed given the Commission any guidelines for the exercise of its
discretion; the Council merely drew the limits of its delegation. It is indeed true that the Commission had virtually no guidelines for the exercise of its discretion. To give the Commission such guidelines would have required, however, a consensus within the Council on the main objectives of food aid and - as I observed above - such a consensus was lacking completely in the mid-seventies after the accession of the United Kingdom. Therefore, it might well be that the Council preferred not to make its procedural reform the object of a formal legal act in order 'duck' the problem of the legality of the delegation. In spite of its 'informal' nature, its questionable legality, and its significant restrictions, the Council decision of 14 August 1975 was a step, albeit a small one, on the road towards the simplification of the policy formulation procedures and the reduction of the time needed to take food aid policy decisions.

3.6 The implementation of Community food aid operations

The implementation of a Community food aid operation involves five consecutive acts: first, the conclusion of the food aid supply agreement between the Community and the food aid recipient, secondly, the decision on the conditions governing the mobilization of the food aid, thirdly, the award of the food aid supply contract, fourthly, the execution of the food aid supply contract, and fifthly, the monitoring of the compliance with the terms and conditions of the supply agreement and the evaluation of the impact of the food aid supply.

During the period 1969-76, the Community's implementation record was sorrowful. Partly this was due to the time taken to formulate the food aid policy and adopt the 'schéma d'exécution' (for cereals) and the annual programmes (for dairy products). The procedures for food aid policy implementation were, however, - even after the 1975 'assouplissements' of the procedure to conclude agreements with the recipients and of the mobilization procedures discussed below - at least as lengthy and time-consuming as the procedures for food aid policy formulation. Consequently, the already considerable delays grew worse, and were especially in the case of emergency food aid totally unacceptable.42 In view of the ever increasing number of food aid operations and quantities involved, it is not surprising to find that the situation was actually getting worse; the gap between planning and realization of a food aid operation became bigger during the last years of the period 1969-76 and this in spite the procedural reforms of 1975. Of the 643,000 tonnes of cereals committed under the 1974/75 programme 509,081 tonnes or 79.2% had been implemented by the end of 1975; of the 708,000 tonnes of cereals committed under the 1975/76 programme, only 160,620 tonnes or 22.7% had been implemented at the end of 1976. For food aid in skimmed milk powder the situation was even worse, of the 55,000 tonnes committed under the 1975

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42COMMISSION DE CONTROLE, Rapport annuel, 1972, 68. For a detailed study of the time taken by food aid operations in 1973, see: ISMOG, 1977, Deel II, 33-63. The slowness of the procedures - especially in the context of emergency operations - was much criticized in Parliament; see e.g.: European Parliament Document 55/70-71, p. 14 (Mr Vredeling) and European Parliament Document 141/71-72, p. 10 (Mr. Vredeling).
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programme, only 24,106 tonnes or 43.8% had been implemented at the end of 1975; of the 150,000 committed under the 1976 programme, only 21,028 tonnes or 14.0% had been implemented at the end of 1976. Even in the case of operations of manifest urgency, it took the Community very long to get its food aid where needed. Of the 70,000 tonnes of cereals which the Council decided in December 1974 to grant to the African countries hit by the drought, only 26,000 tonnes had been supplied by the end of 1975.

3.6.1 The conclusion of the food aid supply agreement

Once the Council had adopted the 'schéma d'exécution' (cereals) or the annual programme (dairy products) - or in the case of food aid in dairy products before 1974, in the case of food aid in other products and in the case of emergency food aid, an ad-hoc decision on the supply of food aid - negotiations were opened with the would-be recipient in view of concluding a food aid supply agreement stipulating the terms and conditions of the food aid supply.

Until 1975, all food aid supply agreements - those concerning food aid in cereals as well as those concerning food aid in milk products - were concluded by the Council on the composite legal basis of Articles 113, 114 and 228 EEC. With

\[425\] COMMISSION DE CONTROLE, Rapport annuel 1976, 128.

\[426\] COMMISSION DE CONTROLE, Rapport annuel 1975, 103.


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regard of the procedure to follow for the negotiation and conclusion of these agreements, this obviously created a serious problem since the procedure provided for in Article 113 EEC and the procedure provided for in Article 228 EEC differ considerably. In practice, however, the Community followed for the negotiation and conclusion of cereal food aid supply agreements neither the procedure of Article 113 EEC nor the procedure of Article 228 EEC but followed a third, ad hoc procedure, which was not provided for by and thus not in compliance with the Treaty. On the basis of the 'schéma d'exécution' or - in the case of emergency food aid - ad hoc Council decisions, which constituted a negotiation mandate, the Food Aid Division of the Directorate-General for Development drafted a

Accord entre la Communauté économique européenne et le Programme alimentaire mondial pour la fourniture de matières grasses du lait à des pays en voie de développement (1972), Article I, O.J. 1972, L 287/12; Convention entre la Communauté économique européenne et l'office de secours et de travaux des Nations unies pour les réfugiés de Palestine, relative à l'assistance aux réfugiés des pays du Moyen-Orient, Article II, J.O. 1972, L304/24; Agreement between the European Economic Community and the Republic of the Niger on the supply of food aid in the form of maize (1973), Niger, O.J. 1973, L 310/29; Agreement between the European Economic Community and the Republic of Chad on the supply of food aid in the form of common wheat (1973), Article 1, O.J. 1973, L 310/25; Agreement between the European Economic Community and the Eastern Republic of Uruguay on the supply of common wheat as food aid (1973), Article 1, O.J. 1973, L 343/31; Agreement between the European Economic Community and the Islamic Republic of Mauritania on the supply of skimmed milk powder as food aid (1973), Article 1, O.J. 1973, L 343/26; Agreement between the European Economic Community and Malta on the supply of butteroil and butter as food aid (1974), Article II and Annex II (f.o.b.), O.J. 1974, L 307/15 and 17-18; Agreement between the European Economic Community and the World Food Programme on the supply of butteroil as food aid to developing countries (1974), Article V (f.o.b. with a lump sum), O.J. 1974, L 307/12; Agreement between the European Economic Community and the Democratic and Popular Republic of Algeria on the supply of common wheat as food aid (1974), Article II (f.o.b.), O.J. 1974, L 53/33; Agreement between the European Economic Community and the Republic of India on the supply of skimmed milk powder as food aid (1974), Article II and Annex II (f.o.b.), O.J. 1975, L 9/21 and 24; Convention between the European Economic Community and United Nations Relief and Works Agency for Palestine Refugees (UNRWA) concerning aid to refugees in the countries of the Near East (1976), Article 4 (2) and Article 5 (port of unloading and a lump sum to cover the costs of inland transport and distribution of the sugar supplied under Article I), O.J. 1976, L 203/41; Agreement between the European Economic Community and the Office of the United Nations High Commissioner for Refugees on the supply of butteroil, skimmed milk powder, flour of common wheat and rice as emergency food aid for the populations affected by the recent events in Cyprus, Article II and Annex II (f.o.b.), O.J. 1975, L 9/27 and 31. Note that the latter supply agreement seems to be an exception to the 'rule' that in case of supply of food aid to an international organisation the Community financed the transport beyond the f.o.b. stage.

Note that as from the procedural reform of 1975 onwards, most (in fact, all but one) food aid supply agreements between the Community and the food aid recipient no longer needed the approval of the Council before conclusion, took the form of an exchange of letter rather than a formal agreement and, most importantly, were no longer published in the O.J. The latter did of course not facilitate my research.
provisional food aid supply agreement. On the basis of this draft agreement the Commission had then ‘conversations explorataries’ with the would-be recipient, the outcome of which was communicated to the Council. Hereafter, the negotiations were formally opened. While the Treaty in both Article 113 EEC and Article 228 EEC stipulated that the Commission is to conduct the negotiations, the negotiations were in fact conducted by a delegation consisting of representatives of the Member States and a representative of the Commission taking decisions by unanimity. When questioned by Mr Vredeling, MEP, about this procedure and especially the functioning of this delegation conducting the negotiations, the Commission stated:

 [...] les négotiations sont ménées par une délégation composée de représentants des Etats membres à la quelle est adjoint, comme porte-parole, un représentant de la Commission.

At the end of the negotiations, the Commission drew up the final draft of the supply agreement and the Council, after having agreed upon this draft and without consultation of Parliament, concluded the agreement with the food aid recipient.

In trying to explain this obvious aberration of Community procedures, Laurens observed:

Il y a dans [la politique d' aide alimentaire] un aspect humanitaire qui est irréductible à l'une quelconque de ces politiques

\[\text{See: JANSSENS, 1971, 19; LAURENS, 1976, 79; SCHUMACHER, 1980, 65-66. Note that Marenco observed with regard to the negotiation and conclusion of the supply agreements: "Les négotiations sont réduites à la plus simple expression, la Commission disposant d'un schéma d'accord, assorti de quelques variantes essentiellement techniques, qu'elle présente au pays ou à l'organisme bénéficiaire. Celui-ci ne trouve en général rien à redire et l'accepte tel quel." (MARENCO, 1974, 629.) and made no mention at all of the ad hoc procedure described here. Schumacher noted that these negotiations were really a waste of time since there was actually very little to negotiate about (SCHUMACHER, 1980, 65-66.).}\]

\[\text{European Parliament Written Question No 325/68, J.O. 1969, C 50/9; and European Parliament Written Question No 54/69, J.O. 1969, C 94/4.}\]

\[\text{After vetting by and discussion in the Ad Hoc Food Aid Working Party and COREPER.}\]

\[\text{Note that the Council normally authorized its President to designate the persons empowered to sign the agreement and that as a rule food aid supply agreements were signed by the President of the Council and the President of the Commission (LAURENS, 1976, 82.).}\]
For the negotiation and conclusion of dairy food aid supply agreements, the Community followed 'more or less' the procedure provided for in Article 113 EEC. 439 It should be noted that not only were the procedures for the negotiation and conclusion of the food aid supply agreements, and especially of the cereal supply agreements, of doubtful legality, they were also often of frightful length. For the food aid supplied under the 1969/70 'schéma d'exécution', adopted by the Council on 10/11 November 1969, the last supply agreements were concluded in July 1971. 440 For food aid supplied under the 1971/72 'schéma d'exécution', adopted by the Council on 23 May 1972 and often concerning food aid requests made in 1971 and even 1970, a number of supply agreements were concluded at the end of 1973 and the beginning of 1974. 441 Since there were no special procedures for the conclusion of emergency food aid supply agreements, the latter were often also long overdue. Sometimes, as in the case of emergency food aid to Ethiopia in 1973 - request on 10 September 1973, Council decision on 10 December 1973, conclusion of the supply agreement on 20 December 1973 - the conclusion of the supply agreement was relatively fast but often it took much longer.

432LAURENS, 1976, 80.

439 Article 113 EEC provides for a more demanding and specific procedure and therefore has perhaps preference over the procedure of Article 228 EEC.

440COMMISSION DE CONTROLE, Rapport annuel, 1973, 113. It should, however, also be remarked that three supply agreements were concluded almost immediately after the adoption of the 'schéma d'exécution' (Bull. EC 1-1970, 77-78.).

441COMMISSION DE CONTROLE, Rapport annuel, 1973, 112.
It should be noted, however, that especially in the case of emergency food aid actions the Commission did not await the conclusion of the supply agreement.\textsuperscript{436} Reportedly, there were even some instances in which the food aid was already supplied before the supply agreement was signed.\textsuperscript{437}

In view of establishing efficient and rapid procedures for food aid policy implementation, the Commission proposed in its 1974 Memorandum that rather than having the Council concluding the food aid supply agreement, it would itself - assisted by a Committee of the type of an agricultural Management Committee and on the basis of the general, standard terms and conditions of supply laid down by the Council - act on behalf of the Community vis-à-vis the food aid recipients as regards the definition of the specific terms and conditions under which the Community supplied food aid. In other words, the Commission proposed to the Council to enable it to conclude the food aid supply agreements with the recipients. It seems, however, that the Commission's proposal to enable it to engage the Community was 'too much for the Council to swallow'.\textsuperscript{438} The Member States' reluctance obviously stemmed from political reasons but it was also argued that such a delegation of competence might not be allowed under the terms of the Treaty.\textsuperscript{439} It was argued that food aid supply agreements were international agreements within the terms of Article 228 EEC and that the latter article provided that such agreements were negotiated by the Commission but concluded by the Council; this power to conclude international agreements could not be delegated by the Council to the Commission under Article 155 (4) EEC since the latter article only permits the attribution of newly created powers and not a proper delegation in the sense of transfer of power. It was also argued, however, that in

\textsuperscript{436} According to ISMOG, 1977, Deel II, 13, 19 and 41-42, this was even standard practice for all food aid operations.

\textsuperscript{437} ISMOG, 1977, Bijlage, 21.

\textsuperscript{438} WAINWRIGHT, 1976, 370.

\textsuperscript{439} See: WAINWRIGHT, 1976, 370-1, who was, as a member of the Legal Service of the Commission, a privileged witness of this debate.
the Cases 9/56 and 10/56, Meroni & Co. v. High Authority, the ECJ had not excluded the delegation of powers as such by a Community institution, but had defined the limits within which such a delegation should be exercised⁴⁴⁰; that it was the nature of the Community system that the general policy decisions should be taken by the Council while detailed decisions could be left to the Commission acting under powers conferred by the Council⁴⁴¹; and that there was nothing so special about the conclusion of international agreements which would exclude them from the application of the Council’s general powers to delegate, provided that proper limits were put on the power delegated. While this problem concerning the legality of the delegation proposed by the Commission in its 1974 Memorandum was never resolved, a ‘solution’ nevertheless emerged and on 14 April 1975 the Council was able to agree upon a delegation of competence to the Commission.⁴⁴² Pursuant to the new procedure the Commission would contact the food aid recipients to obtain confirmation of their requirements of aid and to regulate the details of the delivery.⁴⁴³ Consequently, the Commission would - after informing the Member States and examining objections of the latter in the Council’s Ad Hoc Working Party on food aid - send the recipients a standard letter which stipulated in annex terms and conditions of the supply choosen from

⁴⁴⁰ EUROPEAN COURT OF JUSTICE, Judgment of 13 June 1958, 4 Recueil 1958, 8. In this case the ECJ annulled a decision of the High Authority on the grounds of an irregular delegation of powers to a private body.


⁴⁴² Doc. S/556/75 COMER 140. Note that the Council’s decision of 14 April was - like its decision of 14 August 1975 discussed above - not the object of a formal Regulation or Decision pursuant Article 189 EEC but an informal decision which was never published in the Official Journal. Again, the 'secretiveness' was probably due to doubts about the legality of the procedure.

⁴⁴³ According to ISMOG, 1977, Deel II, 15, the only point for negotiation was the level of the Usual Market Requirements.
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the set of standard terms and conditions agreed upon by the Council in 1975. After written acceptance of the terms and conditions by the recipient, the Commission would start the mobilization of the products to be supplied. The procedure introduced by the Council decision on 14 April 1975 was, however, unsatisfactory in three respects. First of all, agreement on this procedure had reportedly only been possible because it was argued and accepted that the letter stipulating in annex the terms of Community food aid sent by the Commission and the subsequent acceptance of these terms by the recipient did not amount to an international agreement between the Community and the recipient. While this argument might have been a convenient way around the problem of the legality of the delegation to the Commission of the power to conclude international agreements, it was false. The exchange of letters between the Commission and the recipient country undisputedly resulted in an international agreement. Secondly, one wonders whether in view of the many restrictions imposed on the Commission, one can speak of a delegation of competence. The letter sent out by the Commission contained mainly standard terms and conditions agreed upon by the Council and was scrutinised by the Ad Hoc Working Party on food aid. Thirdly, the new procedure did not really shorten the implementation delays since it was already during the early seventies standard practice to start the mobilization of the products to be supplied as food aid before the supply agreements were concluded. At the most, it somewhat reduced the workload of the Council.

It should be noted that the long delays needed for the conclusion of the food aid supply agreements - even under the simplified procedure introduced in 1975 -

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*It was understood that if the terms and conditions of the standard letter were not acceptable or not suitable for certain recipients and substantial changes were required the Commission would first examine these changes with the Council's Ad Hoc Working Party on food aid (WAINWRIGHT, 1976, 373.).

WAINWRIGHT, 1976, 371.

At least if the recipient was a subject of international law.

Implementation of Community food aid operations

were not only due to the Community but also partly to carelessness on the part of the recipients, which sometimes took long to reply to the Community's food aid offer. One should not forget, however, that a recipient country would often be 'negotiating' food aid agreements with at least half a dozen donors and that this put a considerable strain on the scarce human resources of the Government departments involved.

3.6.2 The Commission's decision on the conditions governing the mobilization of the products to be supplied as food aid

In theory, once the supply agreement was concluded but often beforehand (especially in the case of emergency food aid), the Commission started the first phase of the mobilization procedure, namely the decision on the conditions governing the mobilization of the products to be supplied as food aid.44

While the Directorate-General for Development (DG VIII), and in particular the Food Aid Division thereof, had been responsible for the preparation of the 'schémas d'exécution', the annual programmes, ad hoc food aid decisions, and the supply agreements, the Directorate-General for Agriculture (DG VI) was responsible within the Commission for the mobilization of the food aid to be supplied.44 In order to initiate the procedure for the mobilization of the products


44While the Commission had claimed in its reply to the 1971 Report of the Audit Board that the division of responsibilities between DG VIII and DG VI was quite clear (COMMISSION DE CONTROLE, Rapport annuel, 1971, Réponse de la Commission, 227.), repeated 'clashes' between the two Directorates-General eventually led to the 'Lardinois-Cheysson' agreement of 24 October 1973, which 'formalized' the division of responsibilities. This internal agreement between the Commissioner for Agriculture and the Commissioner for Development was of course never published but it is discussed by NICORA, 1982, 69-70. The exception to this division of responsibilities was the food aid supplied under the agreements with the WFP; it is, however, not quite clear why this was so.

"[...] on notera que la gestion des aides alimentaires à l'exception de celles qui découlent des accords conclus avec le programme alimentaire mondial) relève de la Direction générale VIII "aide au
to be supplied as food aid, DG VIII had to forward to DG VI a request for implementation mentioning all relevant information about the food aid operation decided upon, such as the sort of product, the quantity, the packaging requirements and the transport arrangements. On the basis of this mobilization request, the competent departments of DG VI drew up a draft Commission decision on the conditions governing the mobilization of the products to be supplied as food aid. Pursuant to Article 4 (2) of Règlement (CEE) No 290/69 du Conseil du 17 février 1969 fixant les critères de mobilisation des céréales destinées à l'aide alimentaire (for cereal food aid under the 1967 Food Aid Convention)\textsuperscript{40}, Articles 6 and Article 7 (6) of Règlement (CEE) No 1693/72 du Conseil du 3 août 1972 fixant les critères de mobilisation des céréales destinées à l'aide alimentaire (for cereal food aid under the 1971 Food Aid Convention)\textsuperscript{41}, Article 6 and Article 7 (6) of Council Regulation (EEC) 2750/75 fixing criteria for the mobilization of cereals as food aid (for food aid in cereals from 1 November 1975 onwards)\textsuperscript{42},

developpement”, mais que la compétence de celle-ci se limite aux premières phases de l’action (préparation et conclusion des accords) et aux dernières (contrôle de l’emploi des aides), cependant que les tâches intermédiaires relèvent de la Direction générale VI "Agriculture" au sein de laquelle elles se trouvent scindées entre plusieurs divisions, selon les denrées concernées (céréales ou produits laitiers) ou selon les stades d’intervention (mise en œuvre des accords, adjudication et transport, et gestion financière des conventions: restitutions, prix des denrées et frais de mobilisations et d’acheminement…) (COMMISION DE CONTROLE, Rapport annuel, 1971, 142.).

\textsuperscript{40}\textsuperscript{40}Règlement (CEE) No 290/69 du Conseil du 17 février 1969 fixant les critères de mobilisation des céréales destinées à l’aide alimentaire, article 4 (2), J.O. 1969, L 41/3.

\textsuperscript{41}\textsuperscript{41}Règlement (CEE) No 1693/72 du Conseil du 3 août 1972 fixant les critères de mobilisation des céréales destinées à l’aide alimentaire, articles 6 et 7 (6), J.O. 1972, L 178/4. Note that Article 6 concerned normal food aid actions while Article 7 (6) concerned emergency food aid actions.

\textsuperscript{42}\textsuperscript{42}Council Regulation (EEC) 2750/75 fixing criteria for the mobilization of cereals as food aid, Articles 6 and 7 (6), O.J. 1975, L 281/90. Article 6, which concerned normal food aid, stipulated: "For a Community action, the Commission shall, after considering the market situation and in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 or, where appropriate of Regulation No 359/67/EEC, determine the conditions governing the mobilization [...]" Article 7 (6), which concerned emergency food aid, stipulated: "Detailed rules for applying this Article, and in particular the criteria according to which the Commission is to take the decision referred to in paragraph 4, shall be adopted in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75, or where appropriate, of Regulation No 359/67/EEC."
and - for example - Article 4 of Règlement (CEE) No 2721/72 du Conseil du 19 décembre 1972 relatif à la fourniture de lait écrémé en poudre au titre de l'aide alimentaire (for dairy food aid) and Article 1 (3) of Règlement (CEE) No 1475/72 du Conseil du 10 juillet 1972 relatif à la fourniture de sucre à l'UNRWA à titre d'aide alimentaire⁴³⁵, the Commission was to decide on the mobilization conditions following the 'agricultural Management Committee procedure' provided for in the relevant regulations on the common organization of the market.⁴³⁶ For cereals other than rice, for example, this procedure was laid down in Article 26 of Council Regulation (EEC) No 120/67 (which was in 1975 replaced by Council Regulation (EEC) No 2727/75 with an identical Article 26). Article 26 of Council Regulation (EEC) No 120/67 stipulated:

1. Dans le cas où il est fait référence à la procédure définie au présent article, le Comité est saisi par son président, soit à l'initiative de celui-ci, soit à la demande du représentant d'un Etat membre.

2. Le représentant de la Commission soumet un projet de mesures à prendre. Le comité émet son avis sur ces mesures dans un délai que le président peut fixer en fonction de l'urgence des questions soumises à examen. Il se prononce à la majorité de douze voix.

3. La Commission arrête des mesures qui sont immédiatement


Note that in the case of dairy products and sugar, every Council decision on the supply dairy products or sugar contained a similar provision.

⁴³⁶Note that for pursuant to Article 22 (bis) of Council Regulation (EEC) No 120/67, the decision on the mobilization conditions in the case of a mobilisation of cereals on the world market were to be taken following the same procedure; paragraph 3 of Article 22 bis read: "En cas des circonstances exceptionnelles, les produits visés à l'article 1er peuvent être mobilisées par l'achat sur le marché mondial. Les modalités d'application de ce paragraphe sont arrêtées selon la procédure prévue à l'article 26."

Article 23 bis of Council Regulation (EEC) No 359/67 on the common organization of the market in rice was mutatis mutandis identical.

Note also that for food aid in sugar and for food aid in egg products the situation was similar. See e.g.: Article 1 (3) of Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with the agency dated 18 December 1972, O.J. 1973, L 105/1; and Article 3 of Règlement (CEE) No 1577/71 du Conseil du 20 juillet 1971 relatif à la fourniture de produits d'œuf au programme alimentaire mondiale, J.O. 1971, L 167/9.
applicables. Toutefois, si elles ne sont pas conformes à l'avis émis par le Comité, ces mesures sont aussitôt communiquées par la Commission au Conseil. Dans ce cas, la Commission peut différer d'un mois au plus à compter de cette communication l'application des mesures décidées par elle.

La Conseil statuant selon la procédure de vote prévue à l'article 43 paragraph 2 du traité, peut prendre une décision différente dans le délai d'un mois.435


Article 26 of Council Regulation (EEC) No 2727/75 which replaced Regulation (EEC) No 120/67 stipulated:

1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit set by the Chairman according to the urgency of the matter. An Opinion shall be delivered by a majority of 41 votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the Opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the Community may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by qualified majority, may take a different decision within one month.

(Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals, Article 26, O.J. 1975, L 281/10.)

Accordingly, the Commission's draft decision on the conditions governing the mobilization was submitted to the competent agricultural Management Committee, where it was considered - together with other market intervention measures - by agricultural experts of the Member States. After consulting the Management Committee and 'regardless' the Opinion of the latter, the Commission adopted its decision on the mobilization conditions. In case of a negative Opinion, however, the application of the decision was deferred for maximum one month, a period within which the Council could overrule the Commission's decision.

As an example of a Commission decision on the mobilization conditions, one could refer to the Règlement (CEE) No 2463/70 de la Commission du 4 décembre 1970 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée à la république islamique du Pakistan à titre d'aide or the Règlement (CEE) No 99/72 de la Commission du 14 janvier 1972 relatif à la fourniture de lait écrémé en poudre à l'Inde à titre d'aide communautaire au programme alimentaire mondial.457 These Commission


decisions on the mobilization conditions stipulated often in considerable detail the quantity, origin, quality and packaging of the products to be mobilized, the period during which the food aid was to be delivered or the date on which the supply contract was to be awarded, the transport arrangements, the procedure to be followed for the award of the supply contract, and the intervention agency which was responsible for the latter procedure.

The involvement of DG VI and the CAP Management Committees in the decision-making on the food aid mobilization conditions clearly illustrated the Community's intention to use its food aid as an instrument of market intervention and regulation, i.e. as an instrument of surplus disposal. It should be observed, however, that this involvement came at a price. First of all, as the Audit Board noted in its 1971 and 1973 Reports, the involvement of DG VI certainly did not facilitate the management of the food aid policy. Not only was the need to brief DG VI on the food aid actions to be undertaken likely to cause delays and misunderstandings, it should also be noted that this DG did not - and perhaps could not - appreciate the particular nature of food aid mobilization operations and dealt with these operations as any other market intervention operation. Secondly, it is obvious that the vetting of the Commission's draft decision on the mobilization conditions by the Management Committees, could be a source of delays. First of all, these Committees did not meet too often and were overloaded


* The Audit Board observed in its 1971 Report that: "Cette dispersion des compétences ne semble pas de nature à faciliter la gestion administrative et financière des aides." (COMMISSION DE CONTROLE, Rapport annuel, 1971, 143.); and repeated in its 1973 Report that: "La gestion administrative et financière des aides continue par ailleurs à être répartie entre des services dispersés, ce qui n'en facilite pas la mise en oeuvre." (COMMISSION DE CONTROLE, Rapport annuel, 1973, 112.).
with other work which they often considered of more importance. Secondly, if the draft decision was not in accordance with the Opinion of the Management Committee, the whole procedure could be held up for a month. Reportedly, it took the Commission in 1973, on average, 90 days to reach a decision on the mobilization conditions. There was no special procedure for emergency food aid.

The Council was of course well aware of the time taken to reach a decision on the mobilization conditions and especially of the delays resulting from the consultation of the CAP Management Committees. It therefore decided in the context of the 1976 butteroil programme, to allow the Commission to take a decision - without the 'assistance' of the Management Committee for Milk and Milk Products - in case the quantities to be mobilized were relatively small. Article 7, second paragraph, of Council Regulation (EEC) No 694/76 laying down the general rules for the supply of milk fats to certain developing countries and international organizations under the 1976 food aid programme, stipulated:

Where supplies involve not more than 500 metric tons of butteroil or butteroil equivalent released from the stocks of intervention butter or of butter to be bought on the Community market, the Commission shall decide as to the effecting of such supplies and on the relevant procedures.

In the margin, it should perhaps be noted that for the food aid supplied under the 1967 Food Aid Convention, the Commission did not only decide on the mobilization conditions of Community food aid in cereals, but also had to authorize the mobilizations of cereals carried out by the Member States in the

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459ISMOG, 1977, Deel II, 48-50. I excluded the time taken for the mobilization decision for food aid to Jordan which for very particular reasons was 226 days. The procedure for deciding on the mobilization decision for food aid in cereals (95 days) took longer than for food aid in skimmed milk powder (36 days) or butteroil (71 days) (ISMOG, 1977, Deel II, 44.).

460Council Regulation (EEC) No 694/76 laying down the general rules for the supply of milk fats to certain developing countries and international organizations under the 1976 food aid programme, Article 7, second paragraph, O.J. 1976, L 83/5.
context of their food aid programmes if the Member States intended to mobilize the cereals on a part of the Community market (e.g. their own territory) or to use cereals held by the intervention agencies. Article 4 (1) of Règlement (CEE) No 290/69 du Conseil du 17 février 1969 fixant les critères de mobilisation des céréales destinées à l'aide alimentaire stipulated:

Pour une opération à réaliser dans le cadre d'une action nationale, l'Etat membre intéressé communique à la Commission la date à laquelle il compte entreprendre son action, la quantité concernée, le port d'embarquement, le mode de mobilisation et la période de livraison envisagée. La Commission, lorsque la communication de l'Etat membre se réfère aux situations prévues à l'article 2 paragrapgh 1 ou 2, constate, selon la procédure prévue à l'article 26 du règlement No 120/67/CEE, si les conditions prévues aux paragraphes en cause sont remplies. Dans l'affirmative, l'Etat membre est autorisé à effectuer l'opération envisagée.461

It made sense that if the Member States were using food aid as a market intervention instrument, they needed the authorization of the Commission.462 Nevertheless, this restriction on the Member States was all but eliminated for the food aid supplied under the 1971 Food Aid Convention. While the Member States were still to inform the Commission of their draft mobilization decisions which would vet them following the Management Committee procedure, the Commission could in case it thought that the Member State did comply with the mobilisation criteria laid down in Article 3 of Règlement (CEE) No 1693/72 merely:

[...suggérer...] à l'Etat membre intéressé de modifier le mode de mobilisation envisagé.463


462Note that Marenco wrote about this authorization provided for by Regulation (EEC) No 290/69 that it had been little more than a formality (MARENCO, 1974, 631.).

463Règlement (CEE) No 1693/72 du Conseil du 3 août 1972 fixant les critères de mobilisation des céréales destinées à l'aide alimentaire, article 5, J.O. 1972, L 178/4
Article 5 of Council Regulation (EEC) 2750/75 which replaced Article 3 of Règlement (CEE) No 1693/72 also merely obliged the Member States to inform the Commission of their draft decisions on the mobilization of cereals to be supplied as food aid. The latter Article 5 stipulated:

1. For a national action, the Member State concerned shall communicate to the Commission the date on which it intends to initiate its action, the financial year against which this would be charged, the proposed intervals between deliveries, the country of destination, the quantity and the product concerned, the port of loading and the envisaged method of mobilization.

2. On receipt of this Communication, the Commission shall examine, in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 or, where appropriate, of Regulation (EEC) No 359/67/EEC and in the light of the overall situation of the Community market, whether the envisaged method of mobilization meets the conditions referred to in Article 3 and shall suggest if necessary that the Member State concerned modify the envisaged method of mobilization.

Note, however, that the Commission could merely suggest to Member States to bring their method of mobilization in line with the rules applying on Community food aid mobilization. It had in fact virtually no controle over the Member States mobilization decisions and one could wonder whether this was in keeping with the Community’s competence in the field of agriculture. This lack of controle over the mobilizations of cereals by the Member States certainly complicated the management of the common market in cereals and was thus likely to strengthen the argument in favour of a complete communautarisation of food aid supplied under the Food Aid Convention.

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446 See: Section 2.2.1. of this Chapter.

447 The fact that the Council adopted this more permissive regime, was, however, a clear indication that the Member States were certainly not ready yet for such a communautarisation.
3.6.3 The award of the food aid supply contract

As I noted above the Commission's decision on the mobilization conditions indicated the procedure to be followed for awarding the food aid supply contract to a private undertaking as well as the intervention agency responsible for this award procedure.

As a rule, food aid supply contracts were awarded by tendering procedure since such a procedure guaranteed best, firstly, the equal access and treatment of all undertakings with their place of establishment within the Community, and, secondly, the conclusion of a supply contract on the basis of the most favourable terms. For cereals the basic rules on the award of the supply contracts were laid down in Règlement (CEE) No 290/69 du Conseil du 17 février 1969 fixant les critères de mobilisation des céréales destinées à l'aide alimentaire (for cereal food aid under the 1967 Food Aid Convention), Règlement (CEE) No 1693/72 du Conseil du 3 août 1972 fixant les critères de mobilisation des céréales à l'aide alimentaire (for the cereal food aid under the 1971 Food Aid Convention), and - from 1 November 1975 onwards - Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals as food aid. For

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4See e.g.: Règlement (CEE) No 899/73 de la Commission du 2 avril 1973 relatif à la fourniture de lait écrémé en poudre à la Jordanie à titre d'aide alimentaire, J.O. 1973, L 88/12; Règlement (CEE) No 356/72 de la Commission du 18 février 1972 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée à la république d'Indonésie à titre d'aide, J.O. 1972, L 44/28; Règlement (CEE) No 81/71 de la Commission du 15 janvier 1971 relatif à l'ouverture d'une adjudication pour la mobilisation de semoules de froment dur, de semoules d'orge et de semoules de maïs destinées au Comité international de la Croix-Rouge à titre d'aide, J.O. 1971, L 13/20.


dairy products the basic rules were laid down in the ad hoc supply decisions and, as from 1974 onwards in the annual Council Regulations laying down general rules for the supply, one of the two decisions making up the decision on the annual programme; by way of example one could refer to Règlement (CEE) No 1494/70 du Conseil du 27 juillet 1970 établissant les règles générales relatives à la fourniture de butteroil à la Turquie\textsuperscript{472} and Council Regulation (EEC) No 1541/75 of 16 June 1975 laying down the general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food aid programme\textsuperscript{473}. For sugar, the basic rules were laid down in Règlement (CEE) No 1475/72 du Conseil du 10 juillet 1972 relatif à la fourniture de sucre à l'UNRWA à titre d'aide alimentaire\textsuperscript{474}, Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant


\textsuperscript{473}Council Regulation (EEC) No 1541/75 of 16 June 1975 laying down the general rules for the supply of milk fats as food aid to certain developing countries and international organizations under the 1975 food aid programme, Article 5, O.J. 1975, L 157/5 which stipulated: "For the delivery of the product, including packing, labelling and shipment to the fob or a corresponding stage, and, where relevant, for its shipment beyond that stage, invitations to tender shall be issued, without prejudice to Article 4 except in case of emergency aid, where private contracts may be negotiated." The other Council Regulations laying down general rules for the supply of either skimmed milk powder or butteroil as food aid contained mutatis mutandis a similar provision.


\textsuperscript{474}Règlement (CEE) No 1475/72 du Conseil du 10 juillet 1972 relatif à la fourniture de sucre à l'UNRWA à titre d'aide alimentaire, article 1 (2), J.O. 1972, L 157/3.
to the Agreement with that agency dated 18 December 1972\textsuperscript{475}, and Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid (for food aid supplied under the 1976 EEC-UNRWA Convention\textsuperscript{476}.

While all these regulations stipulated that the supply contracts were to be awarded by tendering procedure, some of them provided for the possibility, however, that exceptionally the supply contracts could also be awarded by 'procédures autres que l’adjudication', 'une procédure accélérée', 'une procédure de gré à gré', 'un appel d’offres', 'a procedure of direct agreement', 'a procedure of mutual agreement' or 'private contract' if warranted by the urgency of the mobilization.\textsuperscript{477} Article 7 of Règlement (CEE) No 1693/72 on the cereal food aid supplied under the 1971 Food Aid Convention, for example, stipulated that in the context of an emergency food aid action, the intervention agencies could have recourse to procedures other than the invitation to tender in order to award the contracts concerning the supply of processed cereals and rice other than paddy rice as well as the contracts concerning the transport in case the cereals where taken from the intervention stocks or the transport from the fob stage onwards in the case the cereals were purchased on the market.\textsuperscript{478} It should also be noted that in order to allow the Community to react faster in case of emergency by saving time on the mobilization of food aid, Règlement (CEE) No 1693/72 du Conseil du 3 août 1972 required in its Article 7 (1) that the Member States held available for delivery at any time certain quantities of those products which have been taken over by the intervention agency, or else immediately made available the necessary

\textsuperscript{475}Council Regulation (EEC) No 1052/73 of 17 April 1973 on the supply of sugar to UNRWA as food aid pursuant to the Agreement with that agency dated 18 December 1972, Article 1 (2), OJ. 1973, L 105/1.


\textsuperscript{477}Note that this was not possible at all for food aid supplied under the 1967 Convention.

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quantities of products drawn from stocks on their market if the intervention agency did not have the necessary quantities.\textsuperscript{79} While the latter might have been a useful feature, it fell far short of the formation of emergency stocks at certain Community ports proposed by the Commission in September 1971.\textsuperscript{80} Article 7 of Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals as food aid - which replaced on 1 November 1975 Règlement (CEE) No 1693/72 du Conseil du 3 aout 1972 - provided for the same features.\textsuperscript{81} The Council came to realize, however, that these features were insufficient to guarantee the speedy mobilization of cereals and on 25 March 1976 it adopted a regulation providing for the possibility to use for all cereals albeit only in exceptional circumstances a procedure other than a tendering procedure. Article 1 of Council Regulation (EEC) No 696/76 of 25 March 1976 derogating from Regulation (EEC) No 2750/75 in respect of mobilization procedures for cereals to be supplied as food aid, stipulated:

By way of derogation from Article 4 (1) and (3) of Regulation (EEC) No 2750/75, a procedure other than a tendering procedure may be used in exceptional cases for the supply of products covered by that Regulation supplied as food aid delivered fob (or at a corresponding stage) or at a stage later than fob (or at a corresponding stage).\textsuperscript{82}

\textsuperscript{79}Règlement (CEE) No 1693/72 du Conseil du 3 aout 1972 fixant les critères de mobilisation des céréales destinées à l'aide alimentaire, article 7 (1), J.O. 1972, L 178/4. Pursuant to Article 7 (5), the quantities and nature of the products to be held available by the Member States was determined by the Council by qualified majority on a proposal from the Commission.

\textsuperscript{80}Bull. EC 9/10-1971, 147.

\textsuperscript{81}Article 7 of Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid, O.J. 1975, L 281/90. Article 7 (1) stipulated that: "[...] Member States shall hold available for delivery at any time certain quantities of [cereals in the unaltered state] which have been taken over by the intervention agency, or else immediately make available the necessary quantities of products drawn from stocks existing in their market if the intervention agency does not have the necessary quantities."


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For food aid in milk products, the use of 'faster' procedures to award the supply contract was already provided for in a number of ad-hoc dairy food aid decisions before 1974. As from 1974 onwards, however, every annual Council Regulation laying down general rules for the supply (one of the two decisions making up the decision on the annual programme) provided for the possibility to conclude private contracts.

For food aid in sugar, Article 1 (3) of Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid provided for the possibility to award in exceptional circumstances a supply contract following 'different procedures'.

In the case the supply contract was to be awarded by tendering procedure, the award procedure was initiated by the publication in the Official Journal of 'a

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notice of invitation to tender calling on private undertakings to submit tenders for the food aid supply contract. As a rule this notice - which described in detail the terms of the contract to be awarded - had to be published at least ten days before the expiry of the time limit for the submission of tenders. It should be noted that when the Commission's decision on the mobilization conditions stipulated that the food aid products were to be taken from the intervention stocks, the tendering procedure concerned the loading, transportation, processing or manufacturing where necessary (e.g. flour or butteroil), and delivery f.o.b. or beyond. When the Commission's decision stipulated that the products were to be mobilized on the market, the tendering procedure also concerned the purchase of these products.

Interested undertakings were to submit their tenders to the intervention agency named in the Commission's decision of the mobilization conditions. For their tenders to be considered, tenderers usually had to furnish security to serve as a guarantee that they would fulfil their obligations if the contract would be awarded.

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[46] See e.g.: Notice of invitation by the 'Einfuhr- und Vorratsstelle für Fette (EVSt)' to tender for the supply of 2,113 tonnes of butteroil for shipment to certain third countries as a measure of Community Aid to the World Food Programme (WFP), OJ. 1973, C 13/14; Notice from the Office Belge de l'économie et de l'agriculture (OBEA) of invitation to tender for the costs of delivery of 2,000 tonnes of skimmed milk powder to Bangladesh, OJ. 1973, C 91/14. Note, however, that there were a number of dairy food aid operations for which Community law did not require 'a notice of invitation to tender' to be published in the Official Journal. E.g.: Règlement (CEE) No 830/70 de la Commission du 5 mai 1970 relatif à la fourniture de certaines quantité de lait écrémé en poudre à titre d'aide communautaire au Programme alimentaire mondial et au Comité international de la Croix-Rouge, J.O. 1970, L 100/7.

[47] See e.g.: Règlement (CEE) No 1019/73 de la Commission du 13 avril 1973 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée au Programme alimentaire mondial à titre d'aide, article 1, J.O. 1973, L 102/8; Règlement (CEE) No 99/72 de la Commission du 14 janvier 1972 relatif à la fourniture de lait écrémé en poudre destiné à l'Inde à titre d'aide communautaire au programme alimentaire mondial, article 3, J.O. 1972, L 12/14; Règlement (CEE) No 2463/70 de la Commission du 4 décembre 1970 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée à la république islamique de Pakistan à titre d'aide, article 1, J.O. 1970, L 264/17; Règlement (CEE) No 2127/70 de la Commission relatif à la fourniture d'une adjudication pour la fourniture de butteroil destiné à la R.A.U., la Syrie, le Yémen, la Pakistan et Haiti, à titre d'aide alimentaire au programme alimentaire mondial, article 1, J.O. 1970, L 234/40.
to them. After the time limit for the submission of tenderers had expired, the designated intervention agency examined the tenders and awarded the contract to the undertaking which had submitted the most favourable tender. If the tenders received were not in line with the prices normally prevailing on the market, the intervention agency could decide not to award the contract. Immediately, after the award of the contract, the intervention agency communicated to the Commission a list of names of all tenderers and their tender as well as the name of the successful tenderer. The award of contracts for the supply food aid in

Note that sometimes more than one security had to be furnished. In some cases for example the tenderer was to furnish one relatively small security to guarantee that the food aid would be supplied in time and another much larger security to guarantee that the products supplied met the required characteristics (See: Règlement (CEE) No 1019/73 de la Commission du 13 avril 1973 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée au Programme alimentaire mondial à titre d'aide, article 3, J.O. 1973, L 102/9).

Note also that during the first years of the period 1969-76, Community law did not require in all cases tenderers for dairy supply contracts to furnish security (See e.g. Règlement (CEE) No 830/70 de la Commission du 5 mai 1970 relatif à la fourniture de certaines quantités de lait écrémé en poudre à titre d'aide communautaire au Programme alimentaire mondial et au Comité international de la Croix-Rouge, J.O. 1970, L 100/7.).

See e.g.: Règlement (CEE) No 1019/73 de la Commission du 13 avril 1973 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée au Programme alimentaire mondial à titre d'aide, article 3, J.O. 1973, L 102/9; Règlement (CEE) No 899/73 de la Commission du 2 avril 1973 relatif à la fourniture de lait écrémé en poudre à la Jordanie à titre d'aide alimentaire, article 3, J.O. 1973, L 88/12; Règlement (CEE) No 2463/70 de la Commission du 4 décembre 1970 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée à la république islamique de Pakistan à titre d'aide, article 3, J.O. 1970, L 264/18.

See e.g.: Règlement (CEE) No 1019/73 de la Commission du 13 avril 1973 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée au Programme alimentaire mondial à titre d'aide, article 3, J.O. 1973, L 102/9; or Règlement (CEE) No 2463/70 de la Commission du 4 décembre 1970 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée à la république islamique de Pakistan à titre d'aide, article 3, J.O. 1970, L 264/18. I did not find a similar provision in the Commission's decisions on the mobilization conditions of dairy food aid.

See e.g.: Règlement (CEE) No 1019/73 de la Commission du 13 avril 1973 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment tendre destinée au Programme alimentaire mondial à titre d'aide, article 3 et 7, J.O. 1973, L 102/8; Règlement (CEE) No 899/73 de la Commission du 2 avril 1973 relatif à la fourniture de lait écrémé en poudre à la Jordanie à titre d'aide alimentaire, article 4 (1), J.O. 1973, L 88/12; Règlement (CEE) No 2463/70 de la Commission du 4 décembre 1970 relatif à l'ouverture d'une adjudication pour la mobilisation de farine de froment
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butteroil destined for the World Food Programme and - from 14 July 1973 onwards - the award of contracts for the supply of skimmed milk powder held by the intervention agencies, and - from the 1974 annual programmes onwards - the award of all contracts for the supply of dairy food aid, however, were made following a different procedure. Instead of immediately awarding the contract to the undertaking which submitted the most favourable tender, the responsible intervention agency sent all tenders it had received to the Commission. In the light of the tenders received and after consulting the competent CAP Management Committee in accordance with the procedure laid down in Article 30 of the Regulation on the common organization of the market in milk and milk products, the Commission either fixed a maximum amount expressed in units of account for the contract to be awarded or cancelled the tendering procedure. In the former case, the responsible intervention agency consequently rejected all tenders for amounts above the amount fixed by the Commission and awarded the supply contract to the undertaking which submitted the lowest tender. Unlike the 'standard' award procedure described above, this procedure was worked out in some detail. The contents of the 'notice of invitation to tender' as well as the contents of the tender were defined, and specific provisions were made, for example, for limiting the award procedure for butteroil supply contracts to...
trustworthy undertakings, for the submission of the tenders, for the eventuality of several tenders for the same amount, for the information of the tenderers on the outcome of the procedure, for the release of the security, and for the payment of the successful tenderer.

It is obvious that the latter award procedure gave the Commission more control over the award of the supply contracts and that it was therefore introduced. What is not clear, however, is why a similar procedure was not used for cereal food aid supply contracts or why this procedure was not used for all dairy food aid supply contracts from the beginning onwards.

The procedure for the award of the sugar supply contracts was very similar to this procedure for dairy products. Also in the context of the award of sugar supply contracts the Commission after consultation of the relevant CAP Management Committee fixed a maximum amount for the supply contract. Unlike for dairy products, however, interested undertakings could submit their tender to any intervention agency.

It is important to note that, regardless the award procedure followed, the food aid supply contract was concluded not between the Community and the successful tenderer but between the intervention agency and the successful tenderer.

Generally speaking and especially for food aid in cereals, Community law did not lay down the tendering procedure in great detail. It was really left up to the intervention agencies to decide how to guarantee supply contracts on the most favourable terms as well as equal access for and treatment of all Community undertakings interested in participating in the tendering procedure. This was even more the case for the procedures other than the invitation to tender which - as I noted above - were occasionally used in view of the urgency of the mobilisation. Community law did not specify these procedures at all; organizing these procedures was left to the discretion of the intervention agencies.
Against this background of sketchy Community law, one is not surprised to find strong indications that these procedures were not organized correctly and that as a result not always the most favourable supply contract was concluded and the free access and equal treatment of all undertakings guaranteed. In its 1972 Report, the Audit Board noted for example that the cost per unit of delivery f.o.b. was in Italy three to four times higher than in the other Member States, or that for the transport and delivery of similar lots to one and the same port of loading in Germany there was a difference of 78% between the highest and lowest cost.**4

In its 1973 Report, the Board noted that in Italy, as regards four awards of supply contract of cereal food aid under the 1969/70 'schéma d'exécution', the successful tenderer was found to be the only tenderer, and that in Belgium, one and the same company was awarded all four contracts up for tender and in two cases it was the only tenderer."5 In its 1974 Report, the Audit Board noted that for the delivery cif of 175,000 tonnes to Bangladesh, the tenders accepted varied from 30.11 u.a. to 41.77 u.a. per tonne and that for the delivery cif of 19,450 tonnes of skimmed milk powder, the tenders accepted varied from 49.30 u.a. to 168.97 u.a. per tonne."6 While the Board shared the concern about the time taken to mobilize the products to be supplied as food aid, it criticised, however, the fact that the delay between the publication of the invitations to tender in the Official Journal and the date by which the tenders had to be submitted was in some cases so short - in one case merely four days - that 'le jeu de la concurrence s'en trouve faussé'."7 The Board also criticised the fact that the award of contracts was done on the basis of an all-in price covering the different aspects of the operation (withdrawal from the intervention stock or purchase on the market, processing of the products where applicable, cost of insurance, cost of transport) which made

**4COMMISSION DE CONTROLE, Rapport annuel 1972, 69.
**7COMMISSION DE CONTROLE, Rapport annuel 1974, 100.
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it more difficult to assess correctly the tenders submitted. As from 1975, a breakdown for deliveries cif of cereals was required in the sense that the carriage costs had to be stated separately but that was, while a step in the right direction, still insufficient.

3.6.4 The execution of the food aid supply contract

Depending on the terms of the supply contract, the undertaking to which the contract was awarded had to purchase the food aid products on the market or take them out of the intervention stocks, process or manufacture them, and deliver them 'free on board' (fob), 'cost, insurance and freight' (cif), or 'delivered at destination'. With regard to the latter transport arrangements, it should be noted that during the period 1969-76 Community law failed to define the precise nature of these obligations; it was left to the intervention agencies to specify and 'adapt' the Incoterms used to food aid supply operations.

Since the supply contract was concluded with the responsible intervention agency, the latter (and not the Commission) was to supervise the correct execution of the contract and, eventually, pay the undertaking the amount stated in his tender and release the security. If it was established that due to a fault of the undertaking the food aid was not delivered within the delays agreed upon or the quality or quantity of the food aid was not according the provisions of the supply contract or the delivery was in any other way defaulting, the security could be totally or partially forfeited and the undertaking could be paid only partially or even not at

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498COMMISSION DE CONTROLE, Rapport annuel 1974, 100.

499COMMISSION DE CONTROLE, Rapport annuel 1976, 127. Note that while the Commission recognized that the absence of any cost analysis might sometimes raise problems, it was of the opinion that the most important task was to accept the most favourable tender irrespective of its breakdown (COMMISSION DE CONTROLE, Rapport annuel 1976, Réponse de la Commission, 83.).

500With regard to the obligation to deliver food aid products fob, cif or 'delivered at destination', it should be noted that during the period 1969-76 Community law failed to define the precise nature of these obligations; it was left to the intervention agencies to specify and 'adapt' these Incoterms to food aid supply operations.

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The undertaking could of course contest in court any decision by the intervention agency to forfeit the security and/or pay only partially or not at all. It should be noted that Community law was very sketchy concerning the conditions of payment and the release of security; each intervention agency had more or less its own set of rules and practices. A more serious shortcoming, however, was the fact that - as I already pointed out above - the intervention agencies, although they were required to do so under Community law, did not all and at all time seriously check whether the undertaking executing the food aid supply contract did so in keeping with the terms of that contract. Furthermore it was noted that the bad organization of the procedures of acceptance of the food aid products made it very difficult to determine the responsibility for defaulting supplies.

Originally, the Community operated for food aid expenditure - as for common agricultural policy expenditure - made by the intervention agencies a system of a-posteriori reimbursements. In theory at the end of the year but in practice often much later, the Community paid back the food aid expenditure the intervention agencies had made. From January 1971 onwards for the 'export refund' element of food aid expenditure, from January 1972 onwards for all cereal food aid expenditure, and from April 1973 onwards for all food aid expenditure, the

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501 Note - as I already pointed out above - that during the period 1969-76, there were numerous complaints about the quality of the food products supplied as food aid (See: Section 3.1.). Also with regard to the quantities supplied there were complaints. In its 1972 Report, the Audit Board noted for example considerable differences between the quantities declared on loading and the quantities covered by off-loading attestations. In the case of a shipment of India 422.5 tonnes 'disappeared' en route, and in the case of food aid to Indonesia, 414 tonnes, while in the case of food aid to Turkey, 259 tonnes more were unloaded than shipped (COMMISSION DE CONTROLE, Rapport annual 1972, 69). The Commission tried to explain these difference by weight-loss or moisture absorbed during transport.

502 See: Section 3.1. of this Chapter.


505 Règlement (CEE) No 1703/72 du Conseil which add a second paragraph to Article 3 of Règlement (CEE) No 2052/69 du Conseil.
Community applied, however, a system of advances. The intervention agencies received from the Community advances to cover the food aid expenditure. In theory at the end of the following year the latest, the Commission checked all the expenditure made by the intervention agency and eventually sought to close the accounts of the agencies paying them whatever was still owed or requesting the reimbursement of what was paid too much.\textsuperscript{507} In practice, however, the closing of the accounts happened much later because the Member States were late in forwarding the summary statements of payments made and because of the Commission’s lack of staff to make the necessary checks. The accounts of the 1969/70 programme for example were only closed in December 1973, the accounts of the 1970-71 programme only in December 1975, the accounts for the year 1974 were closed on 22 November 1977 and the accounts for the year 1976 were closed on 12 November 1984 (1).\textsuperscript{508} It is obvious that such belated control of the expenditure made by intervention agencies could not be very effective.

3.6.5 The monitoring of the compliance with the terms and conditions of the supply agreements by the food aid recipient and the evaluation of the effectiveness of Community food aid

Once the undertaking to which the supply contract had been awarded handed over the food aid to the recipient, and this could be in the port of loading, in the port of unloading or at the place of final destination, the food aid supply agreement between the Community and the food aid recipient stipulated what the recipient was to do with the aid received. The terms and conditions of the food aid supply agreements were already discussed above and there I also indicated that the


\textsuperscript{507}LAURENS, 1976, 137-140.


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Commission - and more precisely the Food Aid Division of DG VIII which was responsible for this last phase in the implementation - did not make any serious effort to monitor the recipient's compliance with the terms and conditions of the supply agreements.

In its 1974 Memorandum, the Commission argued that the Community did not need to outpost staff in order to follow up its food aid operations and it proposed that in associated countries its delegates would perform this function while in non-associated countries the follow-up could be done through field visits of the Brussels staff, supplemented, as needed by information from the embassies of the Member States. During the years following the Memorandum some Commission delegates in associated countries did indeed check - to some extent - the use made of the food aid supplied as well as of the counterpart funds, but on the whole the Commission still made no serious effort to monitor the recipient's compliance with the terms and conditions of the supply agreements.

Furthermore, costs incurred by the Community as a result of non-compliance by the recipient with the terms of the supply agreements, such as delay and demurrage costs incurred for example in the case of a delivery f.o.b. when the recipient's ship did not arrive on time in the port of loading, or in the case of delivery c.i.f. when the ship could not be unloaded as planned on arrival in the port of unloading, were to a considerable extent never recovered from the recipients. At the end of 1976, these debts of the recipients to the Community amounted to 784,000 u.a.; the Commission had issued, however, only five revenue orders for a total of 59,258 u.a. and had recovered merely 35,115 u.a. (from an

\[5\text{COM(74) 300 final, Memorandum, 18.}\]

\[5\text{See: Section 2.2.4 of this Chapter.}\]

\[5\text{COMMISSION DE CONTROLE, 1973,114. E.g. for the 1968/69 cereal food aid programme: 10,964 u.a.; for the 1970/71 cereal food aid programme: 137,105 u.a.; for the 1971/72 cereal food aid programme: 122,125 u.a.; and for the 1972/73 cereal food aid programme: 144,403 u.a.}\]

\[5\text{In January 1976, the Commission decided to cancel outstanding debts for an amount of 24,675 u.a., debts related to the 1968-69 and 1969-70 cereal programmes (COMMISSION DE CONTROLE, Rapport annuel 1975, 105).}\]
international organization). While this was sharply criticised by the Court of Auditors, the Commission quite rightly pointed out that:

\[\ldots\] en effet, l'insistance manifestée par la Commission [de Contrôle] pour récupérer quelques dizaines de milliers d'UC pourrait assez facilement apparaître déplacée auprès de pays bénéficiaires dont les besoins réels ont été reconnus.\]

Against the background of the lack of monitoring of the compliance with the terms and conditions of the supply agreements, it will not come as a surprise that during the period 1969-76 the Community did not seriously evaluate the effectiveness in developmental and humanitarian terms of its food aid policy. Surplus disposal being the Community's primary objective, the impact of food aid in the recipient countries was undoubtedly only a secondary concern.

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\footnote{COUR DES COMPTES, Rapport annuel 1976, 129-130.}

\footnote{COUR DES COMPTES, Rapport annuel 1976, Réponse de la Commission, 45.}
Conclusion to Chapter 1

As appears clearly from the analysis above, the Community food aid policy, in line with the reasons for which this policy was initiated, was during the period 1969-76 in the very first place a surplus disposal policy. At first, the use of the food aid policy to dispose of agricultural surpluses was not even controversial. On the contrary, there was - before the accession of the United Kingdom - a clear consensus among the Member States that surplus disposal should be the primary objective of the policy. Only Parliament really criticised the food aid policy of these first years but its calls for a reform remained without reply. After the enlargement, however, there was no longer a consensus among Member States regarding the Community food aid policy and its primary objective as there had been during the initial years of this policy. On the contrary, there was profound disagreement on the primary objective of the food aid policy. Especially the United Kingdom, for reasons explained above, pushed for a thorough revision of the Community food aid policy and insisted - as was explicitly stated in a 1976 Memorandum - that:

[...] the basis of the EEC’s food aid must be changed so that it does not merely manage the flow of food surpluses but becomes an instrument of development aid.

The fundamental disagreement on the food aid policy - which first surfaced during the initial discussions on the Commission’s 1974 Memorandum, which was itself a reaction to the world food crisis of 1972/74 - persisted until 1977 and explained the absence of any dramatic policy changes in the mid-seventies.

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514 For a list of all European Parliament Reports and Written Questions on food aid during the period 1967-1973, see LAURENS, 1976, Annex, p. G-N. In particular, Mr H. Vredeling, Parliament’s most active ‘food aid’ advocate in those days insisted time and again on a development oriented food aid policy and pushed through a number of Resolutions in this sense.

While surplus disposal was undoubtedly the Community's primary objective during the period 1969-76, it was, however, as appears from the analysis above not the only objective. The Community also clearly intended to use its food aid as a means to build goodwill among Third World countries, and, to a lesser extent, as an instrument for economic and social development and humanitarian relief.516 The latter objectives were, however, clearly subordinate to the primary objective of surplus disposal.517 That Community food aid could also be used create or develop export markets, to influence the policies of the recipient countries, or to support friendly regimes in the Third World was not really considered, although this does not exclude that Community food aid exceptionally - be it intentionally or not - created or developed export markets or influenced the policies of the developing countries.518

514A fine example of food aid operations which did indeed help developing countries were some of the operations in favour of the Sahel countries in 1972-74 for which the Community bore the (air) freight charges (Bull. EC 6-1973/61).

517In an early study on Community food aid, Janssens remarks: "Tant mieux si en aidant les autres, on contribue à aléger sa propre peine" (JANSSENS, 1971, 51.). In fact, it was the other way around. It was by alleviating the surplus problem that the Community also, incidently, aided the food destitute developing countries.

518In the European Parliament, however, the use of food aid as a foreign policy instrument was considered. See e.g. European Parliament Debates, Sitting of 23 January 1969, O.J. Annex No 110, Vredeling, p.94, Westerterp, p.97, Droscher, p.96 and 98.
Chapter 2:

The European Community food aid policy during the period 1977-82: shifting the balance of compromise between the objectives of the Community's food aid policy
1 Introduction to Chapter 2

In line with the reasons for which it was initiated in the late sixties, the Community food aid policy was during the period 1969-76 primarily a surplus disposal policy. Other objectives such as building up goodwill in the Third World, economic and social development of recipient countries and humanitarian relief to disaster victims were certainly not completely absent but the balance of compromise between the objectives pursued was very much in favour of the surplus disposal objective. The world food crisis of 1972-74 painfully demonstrated, however, the need for the Community to make a bigger contribution towards the development, and especially the agricultural development, of the Third World. Cognizant of this need, the Commission proposed in 1974 a reform of the Community's food aid policy with the declared aim to make food aid into an efficient instrument for development rather than an instrument for the disposal of unplanned surpluses. At the same time, the original consensus among the Member States on the primacy of the objective of surplus disposal was lost as a result of the accession to the Community of the United Kingdom. Unlike the other Member States, the United Kingdom had little interest in continuing a food aid policy primarily aimed at disposing of agricultural surpluses and pressed for a revision of the Community food aid policy. The ensuing discussion on the objectives of the Community's food aid policy lasted for three years until March 1977 when the Council finally reached an informal agreement on the policy objectives. In this Chapter, I will examine Community food aid policy and law during the period 1977-82, a period characterized by a slow but undeniable shift in the balance of compromise between the Community's food aid policy objectives. In a first part, I will analyze successively the informal Council Decision of March 1977 on the objectives of the Community food aid policy, ensuing proposals for policy reform, the European Community's campaign against hunger in the world and the latter's impact on the food aid policy. In a second part, I will delineate and evaluate the main features of Community food aid policy and law during the period 1977-82.
Towards a development and relief oriented Community food aid policy

The informal Council Decision of March 1977 on the objectives of the Community food aid policy and ensuing proposals for policy reform

2.1.1 The informal Council Decision of 22 March 1977: a consensus in principle on the developmental and humanitarian objectives of the Community food aid policy

After three years of seemingly endless discussions, the Member States finally reached on 22 March 1977 an informal agreement on the objectives of the Community food aid policy. The three objectives of the Community food aid policy agreed upon by the Member States were: first, raising the level of nutrition of the recipient population, second, contributing to the economic development of the recipient countries, and, third, relieving distress in emergency situations. It will be noted with some surprise that neither surplus disposal, the food aid policy’s primary objective and main raison d'être of this policy so far, nor the building up of goodwill in the Third World were listed as objectives of the Community’s food aid policy. The reasons for this absence were closely related to the motive on the part of the Member States which favoured the existing surplus disposal food aid policy for agreeing to the three stated objectives referred to above. These Member States, and in particular but certainly not only France and Germany, agreed to these policy objectives because they realized that a blunt refusal of any changes to the Community’s food aid policy might well jeopardize the very existence of the policy. They had gradually become aware of the fact that to muster - certainly in the longer run - the necessary political and public support for

[1]Doc. S/534/77 ALIM 21 of 29 March 1977. See also: Agence Europe, No 2182 (new series), 24 March 1977, 10. This agreement was informal in the sense that it did not take the form of a act provided for in Article 189 EEC and was not published in the Official Journal; the agreement was merely noted in the minutes of the Council.

For the British position in the discussions, see: 'Memorandum de la délégation britannique concernant une nouvelle stratégie en matière d'aide alimentaire de la Communauté aux PVD', Doc R/2349/76-ALIM 27 du 18 octobre 1976.
a Community food aid policy, this policy would have to aim also at contributing to the economic and social development of the recipient countries and at bringing humanitarian relief and that surplus disposal (and to a lesser extent the building up of goodwill) was best and most effectively pursued in a low key, implicit manner.

The importance of the agreement of March 1977 on the food aid policy objectives cannot be overestimated. It marked the end of a period in which Community food aid was primarily an instrument for surplus disposal and the beginning of a period in which the balance of compromise between the objectives of the food aid policy would gradually shift in favour of developmental and humanitarian objectives.

Having said this, it must be underlined, however, that the March 1977 agreement on the objectives did not have a spectacular, immediate impact on Community food aid policy and law. As a matter of fact, the immediate impact was rather modest. Reflecting, and inspired by, the agreement on the policy objectives, the Council also agreed on 22 March 1977 upon the possibility of undertaking triangular operations, upon food aid allocation criteria, and upon a new procedure for deciding upon emergency food aid in case of man-made disasters. I will come back to each of these aspects later in this chapter. At this point, I only want to stress that the March 1977 did not constitute a dramatic turning point in the sense that it did not trigger important overnight changes. At the end of 1977 and even at the end of the decade, Community food aid policy and law were still very similar to the policy and law of the mid-seventies. While the Member States agreed on the objectives of the food aid policy, they were, however, very far from reaching agreement on the many concrete policy changes needed to allow Community food aid to pursue these objectives. Agreement on many of these changes was reached only painstakingly and by piecemeal during the eighties. There were two important reasons for the difficulties encountered. First, as I already pointed out, certain Member States - if not a majority of Member States - definitely continued to consider surplus disposal (or, more generally, the economic interests of the European farmers) as a very important, albeit implicit, food aid

\[\text{Bull. EC 3-1977/59-60.}\]
policy objective. While accepting that policy change was inevitable and necessary to safeguard the very existence of the food aid policy in the long term, their strategy during the years following the March 1977 agreement was, quite logically, to limit the policy changes to a bare minimum and preserve as much as possible of the 'old' surplus disposal policy. A second, related reason for the difficulties encountered in translating the March 1977 agreement in concrete changes in Community food aid policy and law concerned the reluctance on the part of some Member States to surrender control over the food aid policy to the Commission, although a delegation of decision making power was a sine-qua-non for a more effective food aid policy. The opposition to such delegation on the part of some Member States could be explained by their fear that the Commission might impede the use of food aid in pursuit of the implicit objective of surplus disposal; or by their wish to retain sufficient control over Community food aid to be able to use it in pursuit of - or at least in line with - their own national foreign policy interests; or, finally, by their opposition in principle to the delegation of decision making power to the Commission.

While the March 1977 agreement therefore did not change Community food aid policy and law overnight, it is possible to say - in retrospect - that the latter agreement initiated a process of fundamental policy change which would slowly gain momentum and eventually would lead to the first food aid framework regulation of December 1982. The first step on this long road was the Commission's 1978 proposal for a regulation on the management of food aid.

2.1.2 The Commission's 1978 proposal for a regulation on the management of food aid: a modest proposal for more efficient and more correct procedures

In June 1978, the Commission submitted to the Council a 'Communication on the procedures for the management of food aid'. The reader will recall that already in the 1974 Memorandum, the management of Community food aid was found
totally deficient and that a number of proposals were made to improve it. Consequently, some changes to the procedures were made in the years following the Memorandum. These changes, however, fell far short of what was required. The procedures in force in 1977 still led to massive wastage of time and energy - severely criticized by the Court of Auditors and the European Parliament - and were definitely not compatible with the food aid policy objectives as defined in the March 1977 agreement. At the meeting where the latter agreement was reached, the Council itself had in fact stated that it seemed desirable to seek ways of speeding up the procedures for the preparation of the annual programmes. As was already suggested in the 1974 Memorandum, the efficiency of the food aid procedures could only be improved by a substantive delegation of power from the Council to the Commission. As long as the decision-making competence would remain concentrated in the hands of the Council, the decision making procedures would necessarily be very time-consuming. Therefore, the Commission proposed in its Communication of June 1978 that while the Council should retain the competence to decide: (1) on the basic products to be supplied; (2) on the total quantities of each product to be supplied; (3) on the partition of cereals aid between Community and national operations; and (4) on the general guidelines governing the aid for a given year and the criteria for examining food aid requests, the Commission - after consultation of a food aid committee - would decide (1) on the allocation of the quantities available; (2) on the derived products to be supplied; and (3) on matters relating to the transport of food aid; and - without consultation of the food aid committee - would decide (1) on emergency actions in case of natural as well as man-made disasters; and (2) on the conditions

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3See: Section 2.1 of Chapter 1.

4See: Sections 3.5 and 3.6 of Chapter 1.

5Report on the communication from the Commission of the European Communities to the Council (Doc. 237/78) on the procedures for the management of food aid (Rapporteur: Mr P. LEZZI), European Parliament Working Document 1978-1979 of 31 October 1978, Document 414/78, 14. It should also be noted that at the same meeting the Council agreed on a shorter procedure for decisions on emergency aid in event of man-made disasters.

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governing the supply of the aid. While not required for the use food aid as a surplus disposal instrument and possibly even impeding such use, a procedural reform as proposed by the Commission was absolutely necessary if food aid was to be used in pursuit of the developmental and humanitarian objectives defined in the March 1977 agreement. The then applicable procedures were very time-consuming as well as unpredictable which made that food aid not only often arrived too late or at the wrong time but also made it very difficult to integrate it in any development programme or project. The Commission’s proposal could therefore be seen as an important step in the direction of the formulation of a development and relief oriented food aid policy. It should be noted, however, that the Commission proposed to base this regulation on the management of food aid on Article 43 EEC, i.e. the article on which the common agricultural policy was based. In preliminary discussions, the Legal Services of the Commission and the Council had come to the conclusion that Article 43 EEC constituted a sufficient legal base for food aid. The Commission noted in its communication mentioned above that:

In effect, it appeared to them [i.e. both Legal Services] that the Community rules did not exclude the objectives of other specific Community policies being associated with the objectives of the common agricultural policy.

During the debate in Parliament on the proposal, Mr C. Cheysson, the then Commissioner responsible for development cooperation made it clear that the Commission’s proposal to base the new regulation on Article 43 EEC had been motivated rather by political pragmatism than the conviction that this was indeed the correct legal basis. Mr Cheysson stated:

The Commission said Article 43, and I am not particularly proud of this reasoning. We were merely continuing on the basis of what had been done before, in order to avoid being involved in a

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4 COM (78) 204 final, 4 and 5.

7 It should also be noted that the procedural reform was also considered necessary in order to establish procedures more in keeping with the EEC Treaty.

8 COM (78) 204 final, 3.
Whole-heartedly or not, the choice of Article 43 EEC as sole legal base was a clear indication of the fact that developmental and humanitarian objectives were far from the only objectives of the new food aid policy. On the contrary, the choice of Article 43 EEC unquestionably showed that surplus disposal was to remain a very important objective.

In the second half of 1978, the Council's Working Group on Development Cooperation and, subsequently, the COREPER devoted a number of meetings to the examination of the Commission's proposal. While these meetings failed to produce a common position on the Commission's proposal endorsed by all Member States, a view which emerged from them was that the Commission's proposal was in fact not ambitious enough and that the time had come for the Commission to make a proposal for a (framework) regulation on the food aid policy which would not only include procedural clauses but also substantive clauses making food aid one of the pillars of the Community's development policy.10

In its Opinion on the Commission's proposal, the European Parliament, while welcoming the Commission's initiative to improve the food aid procedure, was highly critical with regard several aspects of the proposal. Particularly relevant in this context, however, was its candid rejection of the legal basis proposed by the Commission. Rapporteur Mr P. Lezzi stated in his report:

[Parliament] feels that the legal basis for Community food aid should be Article 235 of the EEC Treaty, on which technical and financial aid to non-associated countries is also based. Food aid should form part of development aid and not be dependent on the imponderables of agricultural policy.11

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10 COM (79) 1 final, 1 and 2 and Bull. EC 1-1979, 54.

and in point 4 of its Opinion, Parliament considered:

[...] that the basis for the Community’s food aid policy should be Article 235, not Article 43, of the EEC Treaty, since agricultural policy and the food aid policy are founded on entirely different concepts;13

For Parliament, unlike for the Commission - who wanted to table a 'realistic' proposal - the new food aid policy was to be a policy totally dedicated to the economic and social development of the recipient countries and humanitarian relief in emergencies and in no way related with the common agricultural policy and the latter’s surplus problems. It could therefore not agree with the proposed legal basis.13 Moreover, Parliament considered - as did a number of Member States - that the time had come for more radical food aid regulation which would also include substantive clauses which would turn the Community food aid policy into one of the main elements of the Community’s development policy.14

2.1.3 The Commission’s 1979 proposal for a food aid framework regulation: an ambitious proposal for a developmental and humanitarian food aid policy?

In the light of the reactions from the Council and Parliament on its 1978 proposal for a regulation on the management of food aid, the Commission submitted to the Council in January 1979 a new proposal, substantially amended to insert in the

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13 Note, however, that during the Parliamentary debate on the proposal, Mr C. Cheysson, the then Commissioner responsible for development cooperation, stated: "[...] I am willing to grant, now that the question has been raised, that in fact, Article 235 is entirely consistent with what we want to do, since it is a matter of defining a policy. I agree with this Parliament, and I will propose to the Commission that we insert [...]" (Debates of the European Parliament, Session 1978-79, Report of proceedings from 13-17 November 1978, O.J. Annex, No 236, 22.).

regulation:

[...] the legal and substantive elements required to transform food aid into an independent policy aimed at development objectives.13

In fact it is only too obvious that there could hardly be a revision of the procedures, i.e. a delegation of competence to the Commission without the substantive elements of the food aid policy being laid down. The Commission needed a regulatory framework within which to exercise its delegated competence.

In its 1978 proposal, the Commission had - as it noted in the Explanatory Memorandum to its new 1979 proposal - intentionally not included such legal and substantive elements but on the contrary had limited the proposal to procedural elements, because it was afraid that the discussion on the problems linked to the former elements would necessarily have caused considerable delays in the adoption of the urgently needed new procedures. The Commission was keen to stress, however, that it had for many years already been recommending the adoption of a regulation which would cover all elements of the food aid policy and that it was therefore only too happy to forsake - to some extent - political realism that had made it to submit the 'modest' 1978 proposal and to amend this proposal substantially.

The most significant amendments to its 1978 proposal concerned, on the one hand, the addition of articles 1, 2 and 3, respectively, on the objectives of and general guidelines for Community food aid, and, on the other hand, the legal basis of the proposed regulation.

With the aim of establishing Community food aid as an independent policy aimed at developmental and humanitarian objectives, the Commission proposed an article 1 which read:

Under its cooperation policy, the Community shall carry out food aid operations.14

13COM (79) 1 final. 3.

14COM (79) 1 final, Annex 1, 2.
and an article 2 (1) which defined as the objectives of these food aid operations:

- to raise the standard of nutrition of the recipients,
- to help in emergencies,
- to contribute to the economic development of the recipient countries.17

The further paragraphs of this article 2 stipulated that food aid should primarily be allocated on the basis of an objective evaluation of the real needs justifying the aid (paragraph 2); and provided for: (1) the possibility of making food aid conditional upon the implementation of development projects (paragraph 3); (2) the possibility of using food aid in cereals for stock building in developing countries (paragraphs 4); and (3) the possibility of financing the building of emergency stocks of foodstuffs (paragraph 5).18 The proposed articles 1 and 2 clearly and unambiguously reflected the Commission’s aspiration to turn the Community’s food aid policy into an instrument for development cooperation and humanitarian relief.

The proposed article 3, however, did exactly the opposite. With of course the interests of European agriculture in mind, this article required that food aid products should as a rule (with few exceptions) be mobilized within the Community in accordance with the rules and procedures laid down under the common market organizations.19

One cannot but observe a certain contradiction in, on the one hand, the stated objectives of the future food aid policy and, on the other hand, the general rule on the origin of food aid products laid down in article 3 which clearly implied that the future food aid policy would also still pursue common agricultural policy objectives. Furthermore, one should note the absence of certain essential

17COM (79) 1 final, Annex I, 2.
18COM (79) 1 final, Annex I, 3.
19COM (79) 1 final, Annex I, 3. The possibility to purchase food aid products in developing countries, or - as a last resort - on the markets of other exporting countries was limited by the requirement that the products in question where to be used in a emergency food aid operation or where not available on the Community market (article 3 (2) of the draft regulation).
elements of a truly developmental and humanitarian food aid policy such as the requirement that the food aid products supplied must be adapted to the dietary habits of the recipient population. The proposed regulation's composite legal basis made up of Article 43 EEC - "to stress that the products allocated will be procured primarily on the Community market" - and Article 235 EEC - "to establish food aid firmly as a new independent policy" - reflected well this contradiction and also indisputably implied that the Community, apart from the stated objectives, would still pursue common agricultural policy objectives when supplying food aid to developing countries. ^20

In spite of Parliament's disapproval of the provisions of the 1978 proposal relating to the food aid committee and the competence to decide on the total quantities of food aid to be supplied, the procedural provisions of the latter proposal were largely unamended taken up again in the proposal for a framework regulation. ^21

To translate into budgetary terms, the new content that the proposed framework regulation was to give to the Community food aid policy and to meet the stringent need for greater budgetary transparency and better management of the aid, the Commission also proposed the adoption of a regulation amending the Regulations on Community financing of expenditures incurred in respect of the supply of

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^20COM (79) 1 final 2. Mr C. Cheysson, the then Commissioner responsible for development cooperation had already during the Parliamentary debate on the 1978 proposal argued for this composite legal basis, see: Section 1.1.2. of this Chapter.

^21On Parliament's criticism, see: Section 3.5 of this Chapter.
agricultural products as food aid. One will recall that expenditure on food aid was charged against two budget headings. A portion of the expenditure relating to the refunds on exports of the product delivered was charged against the Guarantee Section of the EAGGF, while another portion relating to the world price of the product supplied, as well as other food aid related expenses, such as transport costs, were charged against the Chapter 92 ('Food Aid') of the Budget. The Commission considered this breakdown purely artificial and the cause of administrative complications at all stages of the implementation of the aid and it, therefore, suggested that all food aid appropriations should be grouped together and be charged against Chapter 92 of the Budget.

In its Opinion on the Commission's 1979 proposal for a food aid framework regulation, the European Parliament considered with regard to the procedural provisions of the proposed regulation that they constituted:

[...] an entirely suitable means of simplifying, improving and above all accelerating the Community's decision making and implementing procedures for the management of food aid,

and with regard to the substantive provisions that:

[...] the application of these guidelines would enable and initiate a

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22 Proposal for a Council Regulation (EEC) amending Regulations (EEC) 2052/69 and 1703/72, Decision 72/335/ EEC and Regulation (EEC) No 2681/74 on Community financing of expenditures incurred in respect of the supply of agricultural products as food aid, and repealing Decision 72/335/EEC, COM (79) 1 final, Annex II. This proposal was in fact a very substantially amended version of two proposals which had been submitted to the Council together with the 1978 proposal for a regulation on the management of food aid. These proposals (the proposal for a Council Regulation amending Council Regulation (EEC) No 1703/72 as regards the Community financing of expenditure arising from the implementation of food aid conventions (COM (78) 204 final, Annex II) and the proposal for a Council Decision amending the Decision 72/335/EEC on the Community financing of certain special expenditure arising from the implementation of the Food Aid Convention of 1971 (COM (78) 204 final, Annex III)) concerned, however, only the possibility for the Community to finance expenditure resulting from transport and distribution.

23 See: Section 2.2.2 of Chapter 1.

24 As it was necessary to know the value of the food aid at world prices (which represents the net flow of foreign currency to the recipient countries or organizations) and to communicate this information to the relevant international authorities the value would be indicated in the budget commentaries (COM (79) 1 final, 3.).

qualitative improvement in the food aid granted by the Community.  
Parliament was, however, very critical concerning the proposed composite legal basis, the provision on the Council’s competence to decide on the total food aid quantities, and the nature of the food aid committee. Since I will come back to the latter two issues later on, I will at this point only examine Parliament’s opposition against the proposed composite legal basis, i.e. Articles 43 and 235 EEC. During the Parliamentary debate, Mr Lange, Chairman of the Parliament’s Committee on Budgets declared:

For a long time now, we have been striving to separate food aid policy, which is part of development aid, from the common agricultural policy; and if we are to be serious about this, then Commission and Parliament, and the Council too, should abandon the practice of extending the legal basis for the agricultural policy to the food aid policy. This policy seems to me to be essentially contradictory. Food aid can only be based on Article 235 and not on Article 43 [...].

To this and similar statements, Commissioner Brunner retorted, however, that a food aid regulation based on Article 235 alone would stand no chance of being adopted by the Council. In its Resolution, Parliament nevertheless insisted that Article 235 EEC should be the sole legal basis of the new food aid regulation.

27See: Section 3 of this Chapter.
28Debates of the European Parliament, Session 1979-80, Report of the proceedings of 13 to 16 March 1979, O.J. Annex No 241, 234. Mr Lange added that he considered that Article 235 EEC and not Article 43 EEC should be the food aid policy’s legal basis, "irrespective of whether legal measures adopted in the past, which were also based on Article 43, can be legally disputed [...]". The latter had been one of the arguments for a composite legal basis advanced by Commissioner Cheysson.
30Resolution of the European Parliament of 12 February 1979, O.J. 1979, C 93/75. Interesting to note is that Parliament’s Committee on Development and Cooperation agreed - in spite of the opposition of its rapporteur, Mr Lezzi - to the composite legal basis proposed by the Commission. Point 6 of the Motion for a Resolution expressed support for the composite legal basis (European Parliament Working Documents 1978-1979, document 669/78, 6). The Motion was, however, amended in plenary session.
As it had also done in its Opinion on the 1978 proposal, Parliament again called for a food aid policy which would exclusively pursue developmental and humanitarian objectives. The Commission, however, had to think in terms of political feasibility and therefore proposed a policy - with stated developmental and humanitarian objectives (Article 235 EEC) and unstated surplus disposal objectives (Article 43 EEC) - which it hoped would be acceptable to both the Member States which wanted the Community’s food aid policy thoroughly reformed and the Member States which really wanted nothing changed. As was to be expected, the Commission’s proposal for a new food aid policy which would not merely aim at the disposal of agricultural surpluses was not radical enough for some Member States while too radical for others. The rift within the Council on food aid policy was bigger than ever before and it became clear that changing the Community’s food aid policy would be a slow process.\(^{31}\)

2.1.4 The Commission’s communication on food aid of July 1980: multi-annual food aid commitments, the use of food aid for building food security stocks and the diversification of the food aid basket

Frustrated by the Council’s inability to come to a decision on the 1979 proposal for a food aid framework regulation, the Commission submitted to the Council in the summer of 1980 a communication with the aim of making progress with regard to at least three elements of the proposed framework regulation, namely: multi-annual programming, the use of food aid for establishing stocks in developing countries, and the provision of processed products.\(^{32}\) With regard to these elements, there \textit{seemed} to be a large measure of agreement within the Council and

\(^{31}\)"Diese radikale Trennung vom bisherigen Modell des Markregulierungsinstrumentes hat jedoch den Dissens im Rat weiter verschärft" (SCHUMACHER, 1980, 56-57.).

\(^{32}\)Communication of the Commission to the Council on Food Aid of 28 July 1980, COM(80) 478 final. The Commission attributed the Council’s failure to come to an agreement on the 1979 proposal to a conflict of opinion over the powers of the different institutions. I would argue, however, that further developments will show that there was more to it than that.
the Commission therefore felt that these three elements could be adopted straight away. The Commission stressed that it - and the European Parliament - had repeatedly emphasized that:

[...] a primary objective of food aid is to assist development efforts, particularly those aimed at the economic and social advance of agricultural and rural communities.\(^{33}\)

The absence of an agreement in the Council on the proposed framework regulation meant that certain constraints on the planning and use of food aid remained and the latter largely accounted - according to the Commission - for the slow progress towards meeting the above mentioned 'primary objective'. With the aim of integrating Community food aid more closely with the overall development activities of the recipient countries and especially their national food strategies as well as providing new improved ways of responding to unforeseen events, the Commission decided to submit to the Council a draft resolution on 'the use of Community food aid to attain food security objectives in the developing countries' in which the Council would recognize, firstly, the possibility of multi-annual food aid commitments, and, secondly, the possibility to using food aid to build food security stocks in developing countries.\(^{34}\) The Commission also decided to submit

\(^{33}\)COM(80) 478 final, 1. Perhaps it should be noted that the Commission said 'a primary objective'.

\(^{34}\)COM(80) 478 final, 1. The draft resolution was contained in Annex I of COM(80) 478 final, 1. See further: Section 1.2.2 of this Chapter on multi-annual commitments; and Section 1.2.4 of this Chapter on the use of food aid for stock building.

With regard the possibility of multi-annual food aid commitments, the Commission underlined that it was essential to integrate food aid more closely into the framework of other instruments and actions for development. To accomplish such integration several mechanisms could be used and the Commission mentioned: counterpart funds; 'Food for Work' projects; 'Direct Action Programmes' such as Mother and Child Care programmes and the 'Operation Flood' project; and 'Food Security Stocks' (COM(80) 478 final, 2-3). The Commission stressed, however, that the success of any of these mechanisms depended on "effective planning and management of the action" and for the latter it was necessary to have the possibility making multi-annual food aid commitments. Such commitments would guarantee the continuity of the food aid and allow for the aid to be integrated in development programmes and projects, which are, by nature, multi-annual (COM(80) 478 final, 4.). The Commission noted that it had already in 1974 "proposed to the Council - although in more general terms - that food aid allocations might be made on a multi-annual basis." and that it repeated this proposal in 1978 and 1979 (COM (80) 478 final, 4.). The Commission suggested that the Community should implement multi-annual programming of food aid when the latter is directly linked to projects integrated with a national food strategy and when food aid is used as an additional input to projects aimed at improving food security financed by the Community or Member States (COM (80) 478 final, 5.).

With regard to the use of food aid to build up, the Commission stressed that as part of a country's
a proposal for a regulation providing the possibility of supplying products other than the 'traditional' cereals and milk products in order to be able to supply a range of products adapted to the real needs of the developing countries. As later events will show, the attempt by the Commission to speed up the process of change of the Community's food aid policy had, however, in spite of Parliament's warm support, little immediate result.

plans for food security, it must provide for storage to hold produce between harvests and additional stocks to cover lean periods. It pointed out, however, that in many developing countries no such storage facilities are available. Therefore the Commission proposed that the Community would supply small quantities of food aid for stock-building, conditional, however, on the establishment by the countries concerned of a regional, sub-regional or national food security programme (COM (80) 478 final, 6)

Proposal for a Council Regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized bodies, OJ. 1980, C 212/3 and COM(80) 478 final, Annex II. See also: Section 1.2.1. of this Chapter. The Community was of the opinion that there was an urgent need to enlarge the range of the products presently supplied. So far, the possibility to supply products other than the traditional ones existed thanks to a budgetary line post 9230, but some Member States have interpreted this possibility as clearly limited to exceptional, ad hoc operations.

The Commission suggested that sugar and vegetable oil should become part of the Community's regular food aid programme (COM (80) 478 final, 7.) For the immediate future, the supply of these products could perhaps be financed from post 9230 of the budget provided that this post would contain a regular commitment rather than a token entry. Such a regular commitment would also allow the Community to respond to requests for products such as pulses and legumes, meat, fish, children's food etc., which are very useful in emergencies. The supply of such products was at the time often financed by Article 59 of the Lomé Convention or Article 950 of the Community's Budget (COM (80) 478 final, 8) While as a rule these products should be purchased on the Community market, in emergencies or where the products are not available on the Community market they may be procured on the world market (Article 4 (1) of the proposed regulation). See also: Opinion of the Court of Auditors of the European Communities on the proposal for a Council Regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized bodies, O.J. 1980, C 326/22.

European Parliament Resolution of 21 November 1980 on a regulation laying down general guidelines for the supply of food aid other than cereals, skimmed milk powder and butteroil to certain developing countries and specialized bodies, O.J. 1980, C 327/102 (see also: European Parliament Working Documents, Session 1980-1981, Report on the proposal for a regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized bodies (Rapporteur: Mrs R. RABBETHGE), PE DOC 1-551/80.).

Parliament expressed in its Resolution on the proposal for a regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized bodies (O.J. 1980, C 327/102) its support with regard to the Commission's proposals on multi-annual commitments, triangular transactions to diversify Community food aid and the use of food aid for the building of food security stocks; see also European Parliament Working Documents, Report on the proposal for a regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized bodies (Rapporteur: Mrs R. RABBETHGE), PE DOC 1-551/80.
2.2 The European Community's campaign against hunger in the world and its impact on the food aid policy

2.2.1 The European Parliament Resolution of 18 September 1980 on 'The European Community's contribution to the campaign against hunger in the world': a call for revising the Community's food aid policy in the light of the security of food supplies and the agricultural and rural development of the development countries

Prompted by the unsettling conclusions of the 1979 World Food Conference and by new information indicating that the death rate from hunger and malnutrition in the world was likely to increase still further and to exceed the figure of 50 million deaths a year, alarmed Members of the first directly elected Parliament tabled in September 1979 four motions for a resolution on world hunger. Parliament referred these motions to its Committee on Development and Cooperation which on 10 October 1979 unanimously adopted a motion for a resolution on 'Hunger in the world' drafted on the basis of the four original motions. On 25 October 1979, Parliament held a debate of several hours on world hunger on the basis of this motion for a resolution. In view of the large number of amendments tabled, the motion for a resolution on 'Hunger in the World' was, however, referred back to the Committee on Development and Cooperation, which on 6 November 1979 adopted a new motion for a resolution on 'Hunger in the World'. This resolution on 'Hunger in the World' was adopted by Parliament on 16 November 1979. In this resolution, Parliament, "profoundly


concerned at the persistence of hunger in the world" and "aware that more structural measures and more financial and technical resources [were] necessary to cope effectively with hunger in the world", urged the Community to accept its responsibilities and the role it should play in this field." In point 6 of the Resolution, it instructed the Committee on Development and Cooperation:

> to take the initiative, as a matter of absolute priority, in proposing practical measures on food aid and financial and technical aid to agriculture and development and guaranteed food supplies not only for the developing countries but also for the world as a whole, and to submit a report to the European Parliament by February 1980 at the latest;\(^4\)

Pursuant this mandate, the latter Committee formed a special working party on world hunger and appointed Mr B. Ferrero as rapporteur. Due to technical and organizational problems, it was impossible to meet the February 1980 deadline and in fact it was only at its meeting of 8 July 1980 that the Committee on Development and Cooperation adopted the motion for a resolution on 'The European Community's contribution to the campaign to eliminate hunger in the world' and submitted this motion together with the explanatory statement of the rapporteur, Mr B. Ferrero, four Working Documents drafted by the members of the Working Party on World Hunger of the Committee on Development and Cooperation, and the Opinions of a number of other Committees, to Parliament which held a debate on the motion for a resolution on 16 September 1980.\(^5\)

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\(^4\) Resolution of the European Parliament on 'Hunger in the World' of 16 November 1979, OJ. 1979, C 309/42, recitals 1 and 4 and point 1.


The Working Documents were: Mrs Focke's Working Document on 'An effective food-aid policy which takes into account the needs of hunger-stricken countries and people - emergency aid'; Mr Sablé's Working Document on 'The relationship between agricultural production and food aid policy - external measures required under the common agricultural policy'; Mr Simmonds' Working Document on 'International trade and organization of the major markets in basic foodstuffs' and Mr. Vergeer's Working Document on 'Financial and technical cooperation with the developing countries with a view to the development of agricultural regions and the foodstuffs sector.

Furthermore, there were a number of Opinions of other Parliamentary Committees and more in particular of the Political Affairs Committee (rapporteur: Mr Jackson), the Committee on external Economic Relations (rapporteur: Mrs Wieczorek), the Committee on the Environment, Public Health
his explanatory statement, Mr B. Ferrero explained that in view of the nature and dimensions of the problem of world hunger, the campaign against poverty and hunger had to be seen as an essential and supremely important aspect of a new development strategy. He stressed, however, that to turn this campaign into a success, the concept of merely providing assistance - the 'hand-outs' policy of the past - had to be abandoned and that priority had to be given to promoting the complete restructuring of the agricultural production process. It was up to the developing countries to decide on and define freely and independently such policies of agricultural reform and restructuring but their efforts would be backed up by scientific, financial, technical cooperation with the industrialized countries.

Mr Ferrero stressed, however, that all aid policies were intrinsically limited by the fact that they form part of, and do not alter in any way, a system of international economic and political relations based on inequality and on domination by the strongest countries and the large multinationals. Hunger was merely the most dramatic and explosive manifestation of this system and could definitely not be eliminated without changing the latter system.

In his statement, Mr Ferrero did not comment explicitly on Community food aid and its potential role in overcoming hunger in the world since this was done in two of the Working Documents submitted to Parliament together with his statement. The Report by Mrs K. Focke on 'An effective food-aid policy which takes into account the needs of hunger-stricken countries and people - emergency aid' and the Working Document by Mr V. Sablé on 'The relationship between agricultural production and food aid policy - external measures required under the common

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"European Parliament Working Documents, document 1-341/80, 22. Food aid - like scientific, financial and technical aid - was to be one of the Community's instruments of support for the developing countries' agricultural and rural development policies. Mr Ferrero did not say so explicitly in the short and very general explanatory statement but this was clearly the idea. It must be noted that Parliament's Resolution, while explicitly calling for financial and technical aid in support of the developing countries' food strategies, did not mention the possible role food aid could play in this context (point 17).

"European Parliament Working Documents, document 1-341/80, 23."
agricultural policy' dealt explicitly with Community food aid. In her Working Document, Mrs K. Focke very candidly characterized the Community's food aid policy anno 1980 as follows:

The European Community's food aid policy is still dictated by agricultural interests rather than any intention to promote development; it is an inefficient way of distributing European surplus production to the poor countries, associated with high costs, countless mishaps, delays, wrangling over responsibility and bureaucratic obstacles; there is scarcely any control over how it works and what effect it achieves [...]47

In spite of this very black picture Mrs Focke gave of the Community food aid policy, she was nevertheless convinced that this policy - provided fundamental changes - could make a very valuable contribution to the campaign against world hunger. With a sense of political realism which Parliament had often lacked in the past, Mrs Focke cautioned, however, that the Community food aid policy would never exclusively serve developmental and humanitarian objectives. At the most, these objectives could become the predominant objectives. Focke stated explicitly:

Food aid is and will long remain a compromise between the agricultural interests of the donor countries and the needs of the developing countries. Our task is to work steadily to shift the balance of compromise gradually to the side of the developing countries.48

To this end, Focke made a large number of proposals for policy amendments which were eventually partly reflected in the Parliament's Resolution and to which I will come back later in this Chapter.49

In his Working Document on 'The relationship between agricultural production and food aid policy - external measures required under the common agricultural...
1977-82: Shifting the balance of compromise

policy', Mr V. Sablé also criticised the fact that the then current food aid policy was in many respects still a by-product of the common agricultural policy; he explicitly stated:

[...] the responsible Community bodies, notably the Council (the Commission already has some sound ideas in this connection), must make a serious attempt finally to divorce food aid from the question of Community surpluses, to increase the quantities to be made available regardless of favourable or rising world prices and to integrate the aid more closely into the framework of general development aid. \(^{39}\)

Among the Opinions delivered by the various Parliamentary Committees the Opinion of the Committee on Agriculture was without any doubt the most interesting for it reflected clearly the political reality Mrs Focke had pointed at, namely that the food aid policy would always also pursue common agricultural policy interests. The Committee on Agriculture stated in the conclusion of its Opinion:

Food aid should not be marked by the Community's wish to get rid of its surpluses. On the other hand, however, help must naturally centre on those products which the Community is able to produce in abundance [...] \(^{31}\)

In its Resolution on 'The European Community's contribution to the campaign to eliminate hunger in the world', the European Parliament affirmed that the campaign against hunger had to be given absolute priority in the search for fair and lasting solutions to the sources of conflict which were threatening the future of mankind and appealed to its electorate in an attempt to stimulate the political

\(^{30}\)SABLE, 1980, 106.

\(^{31}\)Opinion of the Committee on Agriculture (rapporteur: Mr J.b. Nielson), European Parliament Working Documents, Session 1980-81 document 1-341/88/Annex II, 15. The Committee, somewhat contradictory, was more development-oriented in the heading of its Opinion which specifically dealt with food aid: "The Community's food aid policy must, however, never be determined by the vagaries of agricultural markets and never be dependent on surpluses. Even less can food aid be a pretext for the production of surpluses; it must be determined exclusively by the needs of the recipient countries and the degree of urgency when emergencies occur. However, as long as the Community continues to have surpluses it is a good thing that these surpluses should be sued where they meet an evident need." (p.10).
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will needed to overcome the difficulties which are hindering the achievement of this objective.\(^5\) It requested the Council and Commission to draw up a coherent series of measures for the campaign against hunger and to implement a policy which will help to guarantee the developing countries' food supplies.\(^3\) It asked the latter Institutions to do so in the light of and on the basis of a number of practical - i.e. as precise, concrete and feasible as possible - guidelines and proposals contained in the Resolution and which concerned the relationship between industrialized and underdeveloped countries (points 4 to 14); the agricultural and rural development of developing countries (points 15 to 30); Community food aid (points 31 to 42); and international trade in agricultural and food products (points 43 to 57). Particularly noteworthy was Parliament's call for Community support for the developing countries' food strategies.\(^4\)

With regard to Community food aid, Parliament considered that:

[...] Community food aid should be reviewed and adjusted in the light of the security of food supplies and the agricultural and rural development of the development countries;\(^5\)

and it therefore insisted that food aid would be integrated in practical agricultural and rural development projects (point 32), that provisions should be made for multi-annual food aid commitments (point 32); that provision should be made for the use of food aid to establish emergency reserves in developing countries (point


\(^3\)Resolution of the European Parliament of 18 September 1980, point 3.

\(^4\)European Parliament Resolution of 18 September 1980:

"17. Regards with interest the adoption by the developing countries of suitable food strategies at local, national and regional level; considers that the Community should support these strategies and, in particular, calls on the Council and the Commission to:

- provide appropriate financial assistance based, inter alia, on multi-annual financing measures and financing provided jointly with Member States or international organisations.
- guarantee the technical aid needed to enable the developing countries concerned to define and implement their own food strategies,
- include rural development cooperation [...] in developing countries' food strategies;
- increase and improve aid for rural development of the non-associated developing countries but without prejudice to the normal evolution of relations with the ACP countries."

33); that the products supplied as food aid should be adapted more closely to the food requirements of the recipient populations (point 34); that provision should be made for triangular operations (point 34); that the Commission should strengthen, reorganize and coordinate its services to speed up the delivery, to eliminate the abuses, to increase the transparency of aid management and to improve and increase the regularity of controls (point 35); that the framework regulation on food aid would be adopted without further delay (point 36); that Community food aid in cereals would be increased beyond the minimum obligation of the Food Aid Convention (point 38); that every increase in food aid in milk products would be contingent upon the genuine possibility of direct distribution to the people concerned and upon safety guarantees with regard to health (point 39); and, finally, that the quantities to be supplied under the next Food Aid Convention were adequately increased (point 41).

The impact of the Parliament's debate and Resolution on 'The European Community's contribution to the campaign to eliminate hunger in the world' can hardly be over-estimated. For Nicora, the Parliament's debate in September 1980 made both the Commission and the Council at the highest level pay attention to the food aid policy. I think this is somewhat of an overstatement but it is certainly true that, as was observed in a 1983 report on Community food aid by Richard, the Parliament's Resolution:

"allait servir de référence aux propositions de réforme de la politique d'aide alimentaire que la Commission de Bruxelles allait présenter aux Etats membres." 

The major contribution of Parliament was to set the debate on the Community's food aid policy firmly in the context of the problem of hunger and the rural and agricultural development of the Third World.

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56NICORA, 1982.

57RICHARD, 1983, 4. "Cette nouvelle politique d'aide alimentaire se nourrit du débat engagé en 1979 par le Parlement européen sur la faim dans le monde" (RICHARD, 1982, 51). This is perhaps somewhat overstated since the efforts of the Community to redefine its food aid policy were already under way before 1979. Parliament has, however, played an important catalisator role.
2.2.2 The Special Report on Community food aid of the Court of Auditors of October 1980: recognition of the multiplicity of objectives as well as of the need for policy reform

At the request of the European Parliament, the Court of Auditors undertook in the period from November 1979 to August 1980 an in-depth study of the regularity, legality and sound management of Community food aid operations. The resulting Special Report on Community food aid covered in considerable detail virtually every aspect of the Community's food aid policy and in Section 3 of this Chapter, I will often refer to its findings. With regard to the objectives of the Community's food aid policy, however, the Court of Auditors observed:

Food aid was originally closely linked with concern over agricultural surpluses. Over the years this aspect, although still important, has receded with the Community's growing awareness of the need to help the most deprived sections of the world's population. [...]"  

Thus apart from its internal concerns with trade and agricultural policies the Community now pursues several objectives concerned exclusively with the developing countries themselves: a) to meet exceptional humanitarian needs [...]; b) to help counter a growing food deficit [...]; c) to encourage the economic development of developing countries and especially their agriculture [...]; d) to relieve the recipient country's balance of payments [...]

Quite candidly, the Court thus clearly noted that the Community pursued both agricultural and developmental/humanitarian objectives. While the Court recognized that Community food aid had "brought effective relief to destitute communities and [had] provided a number of countries with better means to tackle their economic difficulties", it made it very clear, however, that the Community could pursue its developmental and humanitarian objectives far more effectively very clearly noted that the Community pursued both agricultural and developmental/humanitarian objectives. While the Court recognized that Community food aid had "brought effective relief to destitute communities and [had] provided a number of countries with better means to tackle their economic difficulties", it made it very clear, however, that the Community could pursue its developmental and humanitarian objectives far more effectively

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34Parliament requested the Court of Auditors to undertake this study during its sitting of 18 April 1979.

35COURT OF AUDITORS, Special Report 1/80, 6.

36COURT OF AUDITORS, Special Report 1/80, 7-9.
than it did but that for that purpose the Community food aid policy would - as had frequently been argued by the Commission and Parliament - have to be thoroughly amended.61 The total quantity of food aid would have to be increased so that it would be more in line with the food aid needs of the developing countries.62 For emergency food aid, faster and more flexible procedures would have to be established and more supervision on the use of the food aid would have to be provided for.63 For 'normal' food aid, the Court suggested - apart from less cumbersome procedures and more supervision - that normal food aid should be embodied in multi-annual contractual relationships binding both parties, with their rights and obligations clearly defined in advance, to enable food aid to be integrated in the overall development process of the recipient countries.44 The Court also insisted that the Community should make the supply of 'normal' food aid conditional upon 'good' agricultural policies in the recipient countries.45 Furthermore, it considered that the Community should also participate in the establishment of stocks in developing countries in order to improve the security of the latter's food supply.46 Finally, the Court stressed the need for more international co-ordination of the policies of other donors, and in particular the Member States.47 Later events will demonstrate that the Court's Special Report on Community food aid had quite a considerable impact on the food aid policy debate.48

61 COURT OF AUDITORS, Special Report 1/80, 128.
62 COURT OF AUDITORS, Special Report 1/80, 123.
63 COURT OF AUDITORS, Special Report 1/80, 123-124.
64 COURT OF AUDITORS, Special Report 1/80, 124-6.
65 COURT OF AUDITORS, Special Report 1/80, 126-7.
66 COURT OF AUDITORS, Special Report 1/80, 127.

48 It will be noted that the Commission in its 1983 Memorandum on Food Aid for Development (See: Section 2.1 of Chapter 3) almost literally took over the recommendation that food aid should be "embodied in a multi-annual contractual relationship binding both parties, with their rights and obligations clearly defined in advance" (COURT OF AUDITORS, Special Report 1/80, 125).
2.2.3 The Council Resolution of 18 November 1980 on the use of Community food aid to attain food security objectives in the developing countries: multi-annual food aid commitments and the use of food aid for building food security stocks

The Commission, which approved the main conclusions of the Parliament’s Resolution of 18 September 1980, transmitted to the Council on 22 October 1980 a communication urging the Council to state its views on the Parliament’s Resolution and take a decision on the proposals which had already been put forward by the Commission in the field of food aid. During its meeting of 18 November 1980, the Council consequently discussed possible follow-up action to the Parliament’s Resolution and in the end adopted a Resolution on ‘Hunger in the world’. In the latter Resolution, the Council, noting that “world hunger constitutes one of the fundamental problems facing mankind and accordingly requires special efforts to deal with”, subscribed to the approach - advocated by Parliament - that the problem of hunger and malnutrition should be tackled and solutions to it sought under its various aspects, these aspects being the North-South relations, agricultural and rural development in the Third World, food aid and the consistency between the Community’s agricultural and trade policies and its development policy. Particularly noteworthy was the Council’s strong support for any action which could be undertaken within the resources available to assist developing countries which desire to define and implement national food aid programmes. The proposals referred to were the proposal for a food aid framework regulation of January 1979; the proposal for a regulation on the food aid budget of January 1979; the proposal for a regulation on food aid in products other than cereals and milk products of July 1980; and the proposal for a resolution on the use of Community food aid to attain food security objectives in the developing countries of July 1980.


strategies. With regard to food aid, the Resolution stipulated that:

The Council endorsed the view that food aid ought to be:
(i) better administrated;
(ii) seen as a development assistance instrument, especially in the agricultural and rural sectors, allowing activities in this sector to be better combined with development programmes or projects of these countries;
(iii) better adapted to the nutritional needs of developing countries.

With this in mind the Council:
(i) adopted a Resolution on the use of Community food aid to attain food security objectives in developing countries, [...];
(ii) stressed that it considers it essential that efforts be continued for the adoption without delay of the framework regulation to govern this entire area, including the possibility of supplying food aid products other than those provided at present.

The Resolution on the use of Community food aid to attain food security objectives in developing countries referred to was in fact a watered-down version of a resolution proposed by the Commission during the summer of 1980. Nevertheless, it constituted a milestone in the development of the Community food aid policy since the Council explicitly agreed on the principle of multi-annual food aid commitments and on the principle of using food aid to build food security stocks in recipient countries. With regard to the former, the Council’s Resolution read:

Food aid programmes may include, as well as annual allocations, amounts that are covered by multi-annual commitments to recipient countries, on the understanding that such quantities are in no way additional and must not represent more than a reasonable proportion.

Furthermore, the Council confirmed the prominence which the Community intended to give to the theme of food and agriculture at the upcoming North-South negotiations. It stressed that, according to the programming prospects, a substantial share of the financial and technical aid resources provided under the Lomé Convention were earmarked for agricultural and rural development projects and that it hoped that project for improving the food situation would be given a prominent place. It insisted that also financial and technical aid for non-associated developing countries should go as a matter of priority to agricultural and rural development projects and in particular to improving the food situation. Finally it should be noted that the Council confirmed its concern to see the greatest consistency between the Community’s internal and external policies and its development aid policy (Twenty-Fifth Review of the Council’s Work, 1980, 113-115.).

Twenty-Fifth Review of the Council’s Work, 1980, 114. For the whole resolution, see p. 112-115 thereof.

See: Section 2.1.4 of this Chapter.
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of the aid;³³

Interesting to note are the limitations the Council put on the amounts of food aid which the Community could commit on a multi-annual basis. These limitations did not appear in the Commission’s proposal and were indicative for the compromise which had to be reached within the Council where some Member States were very reluctant to give up the ‘flexibility’ which had always characterized Community food aid.³⁴

With regard to the use of food aid for security stock building, the Council decided:

Although food aid is predominantly intended to meet the urgent food requirements of the developing countries, a small proportion of community food aid in the form of cereals may be supplied on a case-by-case basis to one or more developing countries, where appropriate also on a regional basis, to build up security stocks for emergency situations.³⁶

Once more, the Council’s Resolution was more restrictive than the Commission’s proposal. Pursuant the Council’s resolution, for example, exclusively cereals could be used for the purpose of stock-building and the stocks were for use in emergency situations only.

As I already pointed out, the Council’s consent to multi-annual food aid commitments and the use of food aid for stock-building was a significant step forwards in the development of the Community food aid policy. It should be noted, however, that the Council’s Resolution ‘merely’ noted a consent in principle and did not have any immediate operational implications. Multi-annual food aid commitments and the use of food aid for stock-building did not become features

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³³Council Resolution of 18 November 1980 on the use of Community food aid to attain food security objectives in the developing countries, point 1, published in COM(81) 41 final Part IV, Appendix III.

³⁴The ‘flexibility’ in the sense of the absence of any longer-term commitments was (and is) much valued by those Member States who look on food aid as a surplus disposal instrument (or as an instrument of foreign policy).

³⁶Council Resolution of 18 November 1980 on the use of Community food aid to attain food security objectives in the developing countries, point 2, published in COM(81) 41 final Part IV, Appendix III.
of the Community’s food aid policy in the wake of the Resolution. The
Resolution smoothed the way, however, for the later integration of both features
in Community food aid legislation.

In its Resolution of November 1980 on 'Hunger in the world', the Council vowed
that it would continue examining the problem of hunger in the world at its
forthcoming meetings and as such this issue was back on the Council’s agenda for
its meeting of 28 April 1981.7 At this meeting it adopted a Resolution in which
it reaffirmed once again the Community’s determination to contribute very actively
to the solution of the world food problems.8 With regard to food aid, the
Resolution stated:

- the Council was pleased that the FAC was extended for two
  years providing for an increased volume of cereals aid
  (1,650,000 tonnes for 1980/81)
- the Council reaffirmed its support for measures that might help
  developing countries to introduce national food strategies and
  food aid should be used to help the beneficiary country to
  achieve the conditions necessary to realize the strategies.

While the Council had already for some time advocated the support to national
food strategies, in the Resolution of April 1981 it called for the first time explicitly
for the use of food aid in support of these strategies.

2.2.4 The 1981 Plan of Action to combat hunger in the world and the 1982
Special Programme: exceptional food aid programmes and the use of food
aid in support of national food strategies

In view of the ever deteriorating food situation, which especially in Africa - with
a population that would double over the next twenty years, with a continuous fall

7For the first truly multi-annual food aid commitment and the first time food aid was used for
stock-building, see Chapter 3, Section 3.2 and Section 3.4.

8For the Council Resolution of November 1980, see: Twenty-Fifth Review of the Council’s Work,
1980, 115.

in food self-sufficiency, and with 25 million hectares in the process of desertification - looked extremely grim, the Italian Government called at the Western Economic Summit of Ottawa in 1981 for renewed, international efforts to fight world hunger.\footnote{In the seventies, the cereal imports of the Third World doubled and the price of these imports quadrupled. For many developing countries it had become impossible to import what they needed.} On 14 September 1981, the Council welcomed this initiative, which had become known as the 'Colombo-Plan' named after the Italian Foreign Minister of the time, and invited the Commission to present shortly proposals for possible Community contributions to these international efforts to fight world hunger.\footnote{Bull. EC 9-1981/9-12.} Consequently, and also in response to the outcome of the United Nations Conference on the Least Developed Countries (Paris, 1-14 September 1980), the Commission submitted to the Council on 30 September 1981 a proposal for a Plan of Action to combat hunger in the world. This Plan of Action, the so-called the 'Pisani-Plan' (after the then Commissioner responsible for Development Cooperation), aimed at increasing the food production and food security in the Third World, and involved, on the one hand, short-term measures designed to take effect immediately, such as an exceptional food aid programme of 40 million ECU in favour of the least developed countries, and, on the other hand, longer term operations aimed at tackling the structural causes of the food problem, such as Community aid to developing countries who wish to devise and implement national food strategies (with special attention for better coordination of aid to this end from the Community, the Member States and other donors); Community aid to (regional) operations for the preservation of the agricultural potential of the developing countries (e.g. operations against erosion and desertification); and Community action at international level to improve the Third World's food supply situation (e.g. a new International Wheat Agreement, the establishment by the IMF of a 'food window', and (commercial) framework agreements on the multi-annual supply of agricultural products).\footnote{Bull. EC 9-1981/9-12. These 'accords-cadres de fourniture pluri-annuelle de produits agricoles' were a novelty. Such agreements would improve the food security in the sense that they would guarantee imports at certain prices. Negotiation of such agreements was considered with Algeria, Egypt, Morocco, and Tunisia (X., 'La Communauté et la faim dans le monde', Les Annales du Marché 281.
1981, the Council approved the broad lines and general balance of the proposed Plan.*4

The most dramatic element of the Plan was undoubtedly the exceptional food aid programme of 40 million ECU, or 230,000 tonnes of cereal equivalent, in favour of the least developed countries. In its communication to the Council, the Commission underlined that requests for emergency food aid from the least developed countries were far in excess of available resources and that increased food aid was essential to improve as far as possible the food situation in those regions of the least developed countries which were at the time experiencing excessive and dramatic food shortages.*5 It therefore had proposed for the 1982 programme a substantial increase in cereal food aid and a diversification of food aid into vegetable oil, sugar and other products. For the immediate future, however, the Commission proposed to the Council and Parliament to include in the supplementary budget No 2/1981 40 million ECU to allow for the supply of 230,000 tonnes cereals equivalent of food aid.*6 The Council, however, considered the mere provision in the budget of the necessary appropriations as an insufficient legal basis for the exceptional food aid. Consequently, the Commission submitted to the Council on 23 October 1981 a 'Proposal for a Council Regulation (EEC) concerning the supply of exceptional food aid to the least developed countries' which the Council - with some amendments - adopted on 21 December 1981.*7

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*4 Bull. EC 11-1981, 51. The Council also adopted a Resolution giving guidelines on future Community aid for agriculture and food production and agreed on improvements to emergency aid procedures (Bull. EC 11-1981, 51.).

*5 Commission Communication to the Council concerning an exceptional food aid from the least developed countries (LDC's), COM(81) 546 final, 2.

*6 COM(81) 546 final, 3-4.

The day after, Parliament adopted the budget amendment No 2/1981, providing inter alia for the 40 million ECU for the exceptional food aid. In the months which followed, the Community supplied of these 40 million ECU, a proportion equivalent to 100,000 tonnes of cereals, to the World Food Programme for use under the International Emergency Food Reserve and the rest directly to the least developed countries - free at destination - essentially in the form of cereals but also in the form of oils, legumes and sugar which were bought either on the Community market or on the market of developing countries. The acceptance of this 40 million ECU exceptional food aid programme was in many respect indicative for the changes the Community’s food aid policy was undergoing, i.e. the increase in volume to respond to the dramatic food shortages in the poorest countries, the diversification of the food aid basket, the possibility to purchase of food aid products outside the Community, the high degree of food aid channelled through specialized international organizations, absolute focus on the poorest countries, and the relatively swift manner in which this exceptional food aid programme was implemented.

The 40 million ECU exceptional food aid programme was, however, but one element of the Plan of Action to combat world hunger proposed by the Commission in September 1981. The proposed Plan also provided for longer term operations aimed at tackling the structural causes of the food problem, such as Community aid to developing countries who wish to devise and implement national food strategies. At the meeting of 3 November 1981, at which it procedures were to be followed). It should also be noted that - contrary to the Commission’s original suggestion in the Communication of 1 October 1981 - all food aid was supplied free at destination.

"A quoi bon développer des périmètres rizicoles si la politiques du prix du riz propose au paysans locaux initiative, si la politique de crédit, de commercialisation, de transport, de stockage, n'est pas conforme aux attentes et aux besoins des producteurs locaux?" (M. Hoguet, director of the cabinet of Mr Pisani cited in GIRAUD, J., 'Une nouvelles stratégie alimentaire, Actuel développement, March-April 1982, 49.). It had become understood that development efforts have a real chance of producing lasting effects only if they form an integral part of an overall policy, of a comprehensive strategy. Hence an increasing number of developing countries were persuaded to adopt an overall approach to the development of food production and to equip themselves with national food strategies. The core elements of such food strategies comprise:

- integration of individual projects into a uniform framework,
- orientation of other development measures so that they promote agricultural production, e.g. tax relief for farmers and higher agricultural producer prices,
- measures to create or enhance an institutional environment that encourages increased domestic
approved in principle the proposed Plan, the Council requested the Commission to start exploratory contacts to identify developing countries the Community could help to define food strategies and help to resolve the problems they were likely to meet by lending assistance in whatever form might be appropriate (financial aid, technical aid, food aid, other commodity aid, ...). Responding to the Council's request, the Commission selected among the many (mainly African) developing countries which had showed an interest in Community support for their efforts towards devising and implementing national food strategies, three countries, namely Mali, Kenya and Zambia, with which it had in the course of the first half of 1982 preliminary discussions. On 15 June 1982, the Council approved the Commission's proposal for guidelines for a Community policy of support for national food strategies as well as its the choice of Mali, Kenya and Zambia as candidates for a trial of its new policy. It authorized the Commission to proceed with detailed plans for local action so that operations could get under way in the autumn of 1982. In the meantime, however, exploratory talks with other eligible developing countries were continued and Rwanda joined the original three

production, e.g. provision of seed and equipment, easier access to credit, expansion of processing capacity, improvement of logistics, marketing assistance and agricultural research, the establishment of consultative bodies to coordinate donor policies and focus administrative resources in recipient countries. (SCHULTZ, 1987, 139.) Needless to say that the Community in order to be able to support effectively food strategies, it had to revise and amend its development aid, including its food aid (ALIBERT, 1982, 8.).


90The Commission applied three selection criteria: (1) the country should have an important food deficit, (2) the country should have the ability and the will to pursue the food strategy, and (3) the Community and the Member States should have an important presence in the country as aid donors (ALIBERT, J., La stratégie alimentaire dans les relation C.E.E.-A.C.P., son application en Afrique, Association pour l'Etude des problèmes d'Ou... Mer, Note n° 185, September 1982, 7.). For details on the discussions with Mali and Zambia, see: ALIBERT, 1982, 8-10.

91For excerpts from Mr Pisani's speech to the Council, see: AGENCE EUROPE, 1983, 29-36. See also X, 'CEE: un tournant dans la politique d'aide aux PVD', Agricultureet Coopération, No 51, 1982, 50-51.

At the same meeting of 15 June 1982, the Council also noted with interest the Commission's communication of 3 June 1982 concerning a Special Programme to combat hunger in the world. In response to raising Parliamentary criticism that the Community was not doing enough about world hunger, the Commission took up the opportunity offered by the 1982 supplementary budget to propose a 184 million Special Programme to combat hunger in the world. This proposed Special Programme provided *inter alia* for 35 million ECU for emergency aid to refugees, partly in the form of food aid (for e.g. boat people and refugees in Central America and Angola), 100 million ECU for the support of national food strategies (to be used to supply farmers with fertilizer, seeds, pesticides, tools, etc.), and 40 million ECU for five thematic action campaigns (at regional level) aimed at protecting and improving the developing countries' agricultural production potential (fuelwood conservation, reafforestation and control of desertification, village water supplies, control of livestock disease and basic education in rural communities). It must be observed that apart from its role in the context of the emergency aid, the Commission did in its Communication not explicitly mention the possible use of food aid in support of the national food strategies. On the contrary, it stated that:

The result of this type of operation [i.e. support of food strategies] should be a considerable short term improvement in local production

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94Bull. EC 6-1982/12 and 65; Communication from the Commission to the Council concerning a Special Programme to Combat Hunger in the World, COM(82) 320 final.

95See: COM(82) 320 final, 2. To finance this Special Programme, the Commission did not only propose to increase allocations on existing budget lines (such as Article 930, Article 941 and Article 950; note that the Commission did not propose the increase of any food aid budget line) but also proposed to create a new budget line, namely Article 958 'Special Programme to combat hunger in the world' on which 76 million ECU was to be entered (COM(82) 320 final, 24).

96COM(82) 320 final, 3-4 (on emergency aid to refugees), 4-7 (on operation in support of food strategies), 8-21 (on thematic operations); see also ALIBERT, 1982, 11-14.
and consequently a reduction in the amount of food aid required." It was understood, however, that food aid was, apart from financial aid and technical assistance, one of the instruments at the Community's disposal to help the developing countries to devise and implement their national food strategies. The Council could not reach a decision on the Special Programme in time for any appropriations to be provided for this programme in the 1982 supplementary budget.  

2.2.5 The Resolution of the European Parliament of 17 June 1982 on 'Measures following the European Parliament's debate on world hunger, [...]': rejecting the 5,000 million ECU emergency food aid programme and criticizing the lack of policy reform since its Resolution of 18 September 1980

After its debate on Hunger in the World of September 1980, the latter issue did not disappear from Parliament's agenda. On the contrary. In several Resolutions, it repeated its call for a significant Community contribution to the campaign against world hunger along the lines of the September 1980 Resolution. With regard to food aid, it reiterated on at least three occasions the need to carry out the policy changes prescribed in the latter Resolution. Parliament did, however, not merely echo the views already expressed in its September 1980 Resolution. Following the Manifesto Appeal on the elimination of death by starvation made by 54 Nobel prize-winners on 25 June 1981, Parliament adopted at the initiative

7COM(82) 320 final, 5. The proposal referred to is the proposal on alternative action.


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of Mr Pannella on 29 September 1981 a Resolution inter alia calling for a 5,000 million ECU emergency food aid programme to save, by the end of 1982, the lives of at least 5 million people "condemned to certain death from hunger and malnutrition". When the Commission failed to follow up the latter resolution and Mr Pisani, the then Commissioner responsible for Development Cooperation, publicly refused to consider the Parliament's proposal, the idea of a 5,000 million ECU emergency aid programme was taken up again in two motions for a resolution tabled on respectively 17 February 1982 and 8 March 1982, which both criticized in sharp terms the Community's inaction.

On 16 June 1982, Parliament held its second major debate on Hunger in the World to evaluate - on the basis of a report by Mr Michel - the action undertaken by the Community since the first debate of September 1980. The focus of the debate, however, was primarily on the proposal for a 5,000 million ECU emergency aid programme which sparked off an emotionally and politically charged discussion between the proponents of two differing approaches to the fight against world hunger. On the one hand, there was the approach advocated by Parliament in its Resolution of 18 September 1980, by the Commission and by the Michel report and motion for a resolution, which was based on the understanding that hunger is a permanent evil for mankind, which only profound and slow change of structures, behaviour, power, and knowledge can hope to cure. On the other

100 In fact this Resolution was approved pursuant to Rule 49 of the Rules of Procedures. Rule 49 stipulates that a resolution entered in an ad hoc register is adopted if it has obtained the signatures of more than half the members. Mr Pannella entered the motion for a resolution in the register in July 1981 and on 29 September it obtained the necessary number of signatures and was forwarded to the Commission, the Council and the Member States (European Parliament Working Documents, Session 1982-1983, document 1-281/82/corr. (MICHEL report), 16.).

101 European Parliament Working Documents, session 1981-1982, motion for a resolution on the Commission’s refusal to take action on the European Parliament’s decision concerning hunger in the world, document 1-1039/81, and motion for a resolution on starvation in the world and the attitude of the Commission of the European Community, document 1-1105/81. Mr Pisani had sent a letter to Mr Pannella in reply to the Resolution of 29 September 1981, in which he explained the reasons why making a special budget of 5,000 million ECU immediately available was not feasible and would not provide lasting solutions to the problems anyway. According to Mr Pisani the Community’s Plan of Action was the only reasonable answer to the problem of world hunger (Bull. EC 3-1982/58.).

102 Bull. EC 6-1982, 12.
hand, there was the approach advocated by Parliament in its Resolution of 29 September 1981 which called for immediate, large scale action to save people from imminent death by starvation. During the debate, Mr Pisani, downright rejected on behalf of the Commission the second approach, arguing that:

Apart from the fact that it inevitably involves waste, food aid, in spite of the allocation of counterpart fund, does not solve the main problems of agricultural and rural development, it simply skirts around them. It undermines the system of consumption and production. It creates dangerous illusions and absolves people from making the necessary effort.\textsuperscript{103}

and, having discarded this approach, continued:

The solution – because there is a solution – lies in rigorous linkage between the internal economic policies of the development countries, food aid understood as a temporary corrective, and a move to promote overall development, giving special importance to food crop raising and rural development. The solution also consists in altering international practices and international equilibria, as well as in controlling excessive variations in world prices.\textsuperscript{104}

Mr Pisani, therefore, called upon Parliament not to allow itself to be carried away by the fascination for obtaining immediate results from the correct approach to the problem of world hunger as laid down in the Parliament’s Resolution of 18 September 1980 and to reject the ‘Pannella’ approach which he considered "dangerous and, in many respects, superficial and shallow".\textsuperscript{105} After a highly agitated and passionate debate, Parliament finally chose for the first approach to the fight against world hunger and rejected implicitly the second approach by approving the motion for a resolution submitted by Mr Michel.\textsuperscript{106} While giving the Commission satisfaction on the latter point, the Resolution adopted on 17 June


1982 was, however, quite critical concerning the Council’s and Commission’s efforts in the fight against world hunger since the Parliament’s debate of September 1980. In point 4 of its Resolution, Parliament stated that:

[It] regrets [...], in the light of the steady deterioration in the food situation, that the implementing decisions have fallen far short of what was called for in Parliament’s proposals and resolutions.\(^\text{107}\)

With regard to food aid in particular, Mr Michel noted in his report that the specific proposals put forward for using food aid in a practical manner for the purposes of rural development and increasing agricultural and food production, were implemented only in part. The Council’s acceptance in its Resolution on the use of Community food aid to attain food security objectives in the developing countries of 18 November 1980 of the possibility of multi-annual food aid commitments and the use of food aid for building emergency food stock was undoubtedly an important step in the right direction. Mr Michel noted, however, that food aid was still insufficiently integrated in development efforts of the recipient countries.\(^\text{108}\) While the Council had endorsed in its Resolution on hunger in the world of 18 November 1980 the view that Community food aid ought to be better adapted to the needs of developing countries and the Commission had made some progress towards diversifying the Community’s food aid basket and had carried out a number of triangular operations, Mr Michel remarked, however, that the Council had failed to make the necessary financial resources available for food aid in other products.\(^\text{109}\) Mr Michel also wondered whether the Commission had taken any practical action to increase staff in its food aid department and to enable them to manage the aid in such a way as to ensure that it is related to


agricultural and rural development projects and programmes.\textsuperscript{10} With regard to the procedures for food aid decision making and implementation - procedures generally considered cumbersome and protracted - Mr Michel sharply criticized the fact that the Council had not yet approved the proposed food aid framework regulation and that the Commission had not yet presented a basic transport regulation.\textsuperscript{11} Finally, Mr Michel criticized the Council’s apparent refusal to increase the volume of cereal food aid and noted that the Community’s and Member States’ overall food aid effort in cereals fell still far short of the 2,500,000 tonnes Parliament had set as a target in point 38 of its Resolution of 18 September 1980.\textsuperscript{12} These observations were reflected in points 6, 9, 11, and 13 of the Resolution of 17 June 1982.

2.2.6 The IDS-ABC and the Nicora studies of July 1982 on the Community’s food aid programme: how to make food aid into an effective instrument for development and humanitarian relief?

In a letter of 14 January 1982 addressed to Mr G. Thorn, the then President of the Commission, Mr Pisani pointed out that:

\begin{quote}
Instrument très important de notre politique de coopération, développée de façon empirique au cours des dix dernières années, l’aide alimentaire n’a pas encore fait l’objet de notre part d’une analyse et d’une réflexion suffisamment approfondies et systématiques pour nous permettre de répondre en connaissance de cause aux
\end{quote}


\textsuperscript{11}\textit{European Parliament Working Documents, Session 1982-1983, document 1-281/82/corr. (MICHEL report), 37. A basic transport regulation was considered necessary to speed up food aid deliveries.}

questions que nous pouvons et nous devons nous poser, [...]"'

Especially with regard to the two central issues in the ongoing debate on the Community food aid policy, namely, on the one hand, the issue of the effectiveness of the management and implementation of the Community's food aid programmes, and, on the other hand, the issue of the principles which must be respected and the measures which must be taken to make food aid as useful a tool as possible to developing countries pursuing food security objectives, the Commission found itself in need of in-depth studies. It, therefore, charged Mr F. Nicora, a Commission official, to undertake a study on the first issue and commissioned the Institute of Development Studies and the Africa Bureau Cologne with a study on the second issue. In July 1982, both studies were ready and submitted to the Commission. In Section 3 of this Chapter, I will repeatedly refer in great detail to the findings of both the Nicora and the IDS/ABC study. At this point, however, one should review at least the main conclusions of these studies since they indisputably had an important impact on the further development of the Community’s food aid policy.

The study by Mr Nicora, 'Evaluation de l'aide alimentaire de la Communauté: exécution et gestion', which was never really made public, analyzed in great detail and in a comparative and critical manner the management and implementation of the Community's food aid programmes both from the point of view of the recipient countries and from the point of view of the European tax payer. It concluded that while:

Comme l’a constaté la Cour des Comptes dans son rapport spécial de 1980 [...], le déroulement des programmes s’est effectué jusqu’à présent dans des conditions acceptables et l’aide consentie a permis d’apporter un soulagement souvent significatif aux difficultés des populations et des économies des pays qui en ont bénéficié.\textsuperscript{114}

it had to be underlined that:

L’instrument dont dispose la Communauté n’est plus adapté à

\textsuperscript{113}\textsc{Nicora, F., Evaluation de l’aide alimentaire de la Communauté: exécution et gestion,} internal Commission study (VII/827/84-7), Annex I.

\textsuperscript{114}\textsc{Nicora, 1982, i.}
l'ampleur et à la complexité des tâches qu'implique la réalisation des programmes d'aide alimentaire qu'elle poursuit depuis un certain nombre d'années. Un effort d'adaption s'impose avec d'autant plus d'urgence que les objectifs fixés pour demain sont encore plus ambitieux.\textsuperscript{115}

If Community food aid was to contribute to the development of the recipient countries as well as render effective humanitarian assistance in emergencies, its management would have to be overhauled. To this end, the Nicora study made a large number of detailed recommendations which will be dealt with later in this Chapter.

The study by the Institute of Development Studies and Africa Bureau Cologne, 'An Evaluation of the EEC Food Aid Programme', aimed - as noted above - at establishing which principles were to be respected and which measures were be taken to make food aid as useful a tool to developing countries as possible as they pursue their food security objectives.\textsuperscript{116} Noting the high level of concern felt about the true value of the Community food aid programme and its relation to possible overproduction of agricultural commodities within the Community itself as well as the growing concern that food aid should be tailored to support the food needs and strategies of the recipient countries, the study basically provided on the basis of a series of ten country studies, existing food aid literature and an examination of internal Commission practices and procedures, a conceptional framework within which to discuss questions such as:

1. Should there be a European food aid programme at all?
2. If so, what should its objectives be?
3. What commodities should be provided, to whom, for what purpose and under what conditions?
4. What should be the method of operation of the programme with regard to planning and programming, implementation and monitoring, evaluation and feed-back?\textsuperscript{117}

Throughout the study, it was stressed that a clear mandate existed to make

\textsuperscript{115}NICORA, 1982, ii.
\textsuperscript{116}IDS/ABC, 1982, 1.1.
\textsuperscript{117}IDS/ABC, 1982, 1.3.
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Community food aid an instrument for development and humanitarian relief rather than an outlet for agricultural surpluses and that this was certainly a mandate worth pursuing. It was also stressed, however, that while food aid can definitely play a role in alleviating hunger and in supporting national food strategies, the Community food aid policy did often not allow its food aid to play this role. There was a gap between the rhetoric of the Community food aid policy and its reality. While the Community food aid policy had many positive aspects, it would, if it were to come closer to reaching its humanitarian and developmental objectives, be necessary: (a) to define the objectives more precisely; (b) to adjust both the size and the structure of the policy; and (c) to review the procedures. According to the IDS/ABC study, the food aid policy the Community needed was not the policy it had at that moment and it was underlined that the extent of the changes needed should not be underestimated. The detailed recommendations with regard to the size and structure of the policy and the procedures will be dealt with in Section 3 of this Chapter. The recommendations with regard to the objectives of the policy, however, need to be mentioned here. As had already been pointed out by the Court of Auditors in its 1980 Special Report on Community food aid, the IDS/ABC study noted that the objectives the Community pursued in its food aid policy have evolved over time and that where the original concern was very much with the disposal of agricultural surpluses, more developmental objectives had gained prominence in recent years. The study mentioned explicitly the developmental and humanitarian objectives listed by the Court of Auditors in its Special Report and the policy objectives suggested by the

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120 IDS/ABC, 1982, 5.6.
121 IDS/ABC, 1982, 1.5.
Commission in the proposed food aid framework regulation.\textsuperscript{122} These objectives, the IDS/ABC study argued, had, however, two major disadvantages: firstly, they are difficult to quantify and, secondly, they do not capture clearly the effects of food aid.\textsuperscript{123} To some extent, they misconstrue the role food aid can play.\textsuperscript{124} The study, therefore, recommended that they would be re-formulated as follows:

The objectives of the European Community food aid programme are to assist in the development of recipient countries by:

1. raising the rate of economic growth;
2. contributing to the attainment of food security;
3. ensuring that the benefits of food projects and programmes are shared by the poorer people and lead to the improvement of their nutritional standards; and
4. providing relief in emergencies or other situations of severe and unforeseen food shortages.\textsuperscript{125}

The first of these objectives would incorporate the overall macro-economic effects of food aid, including its contribution to the balance of payments, to anti-inflationary strategies, to projects funded by counterpart funds, and food for work projects. The second objective highlights the importance of food strategies and food policy issues and is designed to ensure that food aid programmes do not have a negative impact on domestic food production. The third objective covers the effect of food aid on the poor, including general support of basic needs policies and targeted nutrition interventions, instead of relying entirely on a trickle-down effect. The fourth and last objective provides a framework for relief operations, which are not covered by the other objectives, regardless whether these are strictly

\textsuperscript{122}See Chapter 2, Section 2.1 for the 1979 Proposal for a food aid framework regulation and Chapter 2, Section 2.2 for the Special Report on food aid of the Court of Auditors. The IDS/ABC study observed that in essence the developmental objectives of Community food aid are not very different from those of other major donors, particularly the US (IDS/ABC, 1982, 1.7.).

\textsuperscript{123}IDS/ABC, 1982, 5.8. See also IDS/ABC, 1982, VIII-IX: "The Community's overall policy objectives are generally right but require expansion and re-definition to deal with the changing situation and the complex effects of food aid".

\textsuperscript{124}IDS/ABC, 1982, 1.6.

\textsuperscript{125}IDS/ABC, 1982, 5.8.
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emergencies or not. The most striking difference with the objectives mentioned above, were the addition of food security as a specific objective and the broadening of the scope of the concept of emergencies to include situations of severe and unforeseen food shortage. It will be noted that, while not immediately, these recommendations on the food aid policy's objectives did not fail to have a definitive impact. Somewhat disappointingly, however, is that the IDS/ABC study apparently disregarded the possibility of existence of not explicitly stated common agricultural policy objectives and foreign policy objectives. The study merely noted that unlike U.S. food aid legislation, Community legislation missed the explicit reference to trade creation and foreign policy objectives and that "cynics would say that [surplus disposal] was still a prime objective". It might have been useful in order to understand better the constraints on reforming the Community food aid policy, to examine whether the Community was not - besides its explicitly stated developmental and humanitarian objectives - also pursuing not explicitly stated objectives.

2.2.7 The Pisani Memorandum of October 1982: the concept of policy dialogue and the use of food aid in support of food strategies

For a variety of reasons, including (a) a recent World Bank report which made clear that the impact of development aid in Sub-Saharan Africa - where the Community prided itself on being most active - had been particularly disappointing; (b) the persistence and depth of the world recession which made it difficult for the Community to do more for the development of the Third World at a time when this was perhaps needed most; (c) the repeated appeals of

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127 See the objectives of the second food aid framework regulation, Article 2 of Council Regulation (EEC) No 3972/86 of 22 December 1986. The contribution to the attainment to food security of the recipient countries and the support of efforts by recipient countries to improve their own food production were added to the list of objectives.

128 IDS/ABC, 1982, 1.7. and 1.5.
Parliament and the public opinion in the Member States to make more resources available, particularly to combat hunger, and (d) the upcoming negotiations on the terms of the Lomé III Convention, it was considered necessary in 1982 to undertake a comprehensive review of the Community's development policy and its achievements in order to reaffirm its aims and geographical scope and look afresh at methods and resources.\(^{139}\) It was "time to stop and think again".\(^{130}\) Consequently, the Commission transmitted to the Council on 4 October 1982 a Memorandum on 'The Community's development policy', better known as the Pisani Memorandum, which reviewed - perhaps not as critical as one would have wished - the achievement to date and contained an outline of the principles and guidelines on which the Community's development policy should be based over the next decade.\(^{131}\) While a detailed analysis of the Commission's Memorandum is beyond the scope of this study, there are a number of observations to be made. First of all, it must be noted - and this without great surprise - that with regard to the objectives of the Community's development policy of the 1980's, the Commission listed of course among its main objectives:

food security, involving support for the definition and implementation of economic policies which promote food production and for the application of an active rural development policy;\(^ {132}\)

Secondly, it should be noted that with regard to methods of the Community's

\(^{128}\)Bull. EC Supplement 5/82, 8-9.


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future development policy, the Commission introduced the idea that for development aid to be more successful in the future, it was absolutely essential that, between rigid conditionality imposed by international financial bodies such as the IMF and the irresponsibility of non-conditionality, ways be found of achieving a policy dialogue between the Community (and other external providers of funds) and local decision-makers on the effectiveness of the policies which the latter ask the former to support and the relevance of such policies in terms of the general objectives of the Community's development policy.\[133\] The Commission stressed time and again that ultimately the developing countries retained of course the sovereign right to determine their policies but it was clear, however, that the logical implication of this policy dialogue approach - and this the Commission was very careful not to spell out - was that if the Community could not agree with the policies the developing country proposed to pursue, the latter might not get the Community aid applied for. If, however, the Community agreed with the policies proposed, it would from its part make a firm and long term commitment to help the developing country to overcome the problems it will face in pursuing the agreed policies.\[134\] It was noted that this policy dialogue approach was already being tried out on an experimental basis in the context of the Community's support for the national food strategies of Mali, Kenya, and Zambia; the latter countries' food strategies had first been the subject of a policy dialogue between the Community and the developing country to assess the effectiveness of the strategy and identify the problems which Community aid could help to overcome, before the Community committed itself to support their food strategies. It is clear that this policy dialogue approach advocated by the Commission would have an important impact on every aspect of the Community's development policy, including its food aid and this leads us to my third observation on the Pisani

\[133\] Bull. EC Supplement 5/82, 16. In the Memorandum, the term 'political dialogue' rather than the term 'policy dialogue' is used. It is clear, however that 'political dialogue' is an unfortunate translation from French and that what is meant is 'policy dialogue', i.e. a dialogue about the policies to be pursued.

\[134\] It should be noted that many observers expressed doubts about the ability of Commission's small staff to cope with the requirements of the proposed policy dialogue approach. See: JENKINS, C., 'Development Aid: A Change in the EEC's Strategy', European Trends, No 73, 1982, 26.
Memorandum. With regard to food aid, it should be noted that the Commission was quite critical about the way in which food aid had been used so far. It stated:

Food aid, necessary though it is, sometimes discourages local production and alters consumption habits, particularly since it tends to become merely a kind of regular assistance to the balance of payments; and announced that it would propose to the Council shortly policy changes which would involve:

[...] arranging for food aid, except in emergency cases, to back up coherent food strategies instead of being an end in itself as is too often the case.

While not going into any detail with regard to these policy changes, the Memorandum did note that future food aid would of course have to be provided on terms which would permit the receiving countries to integrate it in their national food strategies. It also pointed out that food aid could not and definitely should not be the only Community instrument applied in support of national food strategies but that on the contrary food aid should be supplemented by financial resources. In the conclusions of the Memorandum, the Commission came back to the new role for food aid and insisted with regard to the objectives of Community food aid that:

In support of consistent food strategies, the Community will, among other things, deploy food aid which, emergencies apart, should be integrated into its development activity instead of existing as an end in itself.

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138 Commission Memorandum of 4 October 1982 on the Community's development policy, Bull. EC Supplement 5/1982, 6. It should also be noted that Commission stated in point 5: "The Community will supplement food aid with funds allocated according to the same criteria in all cases where other types of action and the supply of agricultural inputs would be more suitable [...]."
The European Parliament in its Resolution on the Pisani Memorandum found itself basically in agreement with the Commission's observations on food aid and stated:

[Parliament] emphatically supports the concept of food strategies [and the use of food aid in this context] believing that food aid is in the nature of a crutch which can harm as well as help [...]139

The Council discussed the Pisani Memorandum at its meetings of 8 and 22/23 November 1982. It considered the Memorandum as an extremely useful basis for an overall appraisal of the Community's development policy but did not decide on any concrete measures to be taken.140

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139 Resolution of the European Parliament of 8 July 1983, point 41. It should also be noted that Parliament also stated that: "[it] believes that EC development expenditure is too heavily weighted towards food aid, in particular of milk products, and calls for a rapid shift towards greater support for food strategies, rural development, and policies" (point 42).

140 Bull. EC 11-1982, 47.
3 The main features of Community food aid policy and law during the period 1977-82

3.1 The sort, the origin and the quality of products supplied as Community food aid

3.1.1 The sort of products supplied as Community food aid

During the period 1977-82, the Community continued to supply mainly wheat (and wheat flour), skimmed milk powder and butteroil as food aid. It thus continued to supply those products of which it had important surpluses but were unfortunately often ill-adapted to the needs of the recipient countries. When development experts raised serious doubts regarding the appropriateness of food aid in the form of milk products in view of the problems of reconstitution, conservation, distribution, changing dietary habits and allergy to lactose dairy food aid created, the Commission undertook an in depth study of the problem and in 1977 submitted a communication to the Council on the nutritional and development prospects for milk products in the Third World. Contrary to perceived wisdom, the Commission stressed that since in many developing countries the nutritional balance and health of the population depended on an increased and more stable flow of supplies of milk products, food aid in the form of milk products was therefore essential. The Commission argued that, for skimmed milk powder for example, an aid volume of 150,000 tonnes a year should be regarded as a minimum, not only to meet the vital needs but also to help launch local milk production projects. One wonders whether the Commission,

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141 Nicora observed that other donors: "ont tous fait un effort important d'adaption de la nature des produits livrés et de leur conditionnement (en association avec les opérateurs, d'ailleurs, qui ont bien senti l'intérêt qu'une amélioration qualitative de leurs prestations pouvait représenter sur le plan commercial." (NICORA, 1982, 8.)
1977-82: Shifting the balance of compromise

under the pressure of the dairy surpluses, did not take its wishes for reality. Clay and Mitchell noted in the conclusion of a study based on the 1978 dairy food aid programme:

When costs and value are compared, the cost-effectiveness of the dairy aid programme as at present constituted, is called into question. Many transfers appear to be cost-ineffective as a form of development assistance. [...] Other forms of transfer, e.g. financial transfers or export credits, could provide the same value to many recipient countries, but at lower cost to the European Community budget.

The 1982 IDS-ABC study also recommended to replace dairy food aid to some extent by financial aid or by an increase in cereal food aid since dairy food aid was much less cost-effective and harder to use efficiently. During the period 1977-82, the cost effectiveness of food aid in milk powder as a form of development assistance was, however, still far from being the Community's primary concern. Its primary concern was the one 'hinted' at by Mr P. Lardinois, the Commissioner responsible for agriculture, when he declared in Parliament:

[...] the best way to dispose of skimmed milk powder surpluses is to use them extensively for food aid.

142 It should be noted, however, that Parliament was in agreement with the Commission on the importance of the need for food aid in skimmed milk powder (See: European Parliament Resolution of 20 January 1978 on the communications concerning the 1978 programmes for food aid in cereals, skimmed milk powder and butteroil and the nutritional and developmental perspectives for dairy products in the Third World.

143 CLAY, E, and MITCHELL, M., 'Is European Community food aid in dairy products cost-effective?', European Review of Agricultural Economics, 1983, 117. To determine the cost-effectiveness of dairy food aid, the financial cost of this aid to the Community's budget was compared with the value of the aid to the recipient as the latter's potential saving in foreign exchange, i.e. the internationally traded value of the product or substitutes. Such an analysis of the cost-effectiveness does not take into account the social cost-benefit of Community food aid in dairy products.

144 IDS/ABC, 1982, 5.10-11. See also IDS/ABC, 1982, 2.15-16. Delorme noted, however, that this recommendation of the IDS/ABC study implicitly converged with the interests of North-European agro-importing countries (read: the United Kingdom) (DELORME, 1983, 241.).

145 Quoted in European Parliament Working Documents, Report on the communication concerning the 1978 programmes for food aid in cereals, skimmed milk powder and butteroil and the nutritional and developmental perspectives for dairy products in the Third World (Rapporteur: Mr H. AIGNER), PE DOC No 492/77, 19.

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As one commentator, criticizing the continued link between Community food aid and the agricultural surpluses, remarked in a Commission publication:

Les travaux d'évaluation menés au cours de l'année 1982 ont fait apparaître le caractère rigide, figé et dépassé du système européen d'aide alimentaire dont la conception, vieille d'une trentaine d'années, reposait sur la nécessité d'écouler les surplus céréales des pas industrialisés.\textsuperscript{144}

As I mentioned above, the Council - as it had already done in its Resolution of July 1974 - insisted in its Decision of 22 March 1977 very much on the need to diversify the Community's food aid basket.\textsuperscript{147} In 1977 and 1978, however, the situation with regard to the sort of product supplied as food aid was hardly any different from the situation during the period 1969-76. Apart from wheat, skimmed milk powder, butteroil and some rice, the Community supplied occasionally other cereals other than wheat, and - but only to the UNRWA - some sugar and marginal quantities of corned beef and tomato paste.\textsuperscript{148} In 1979, however, a breakthrough with regard to the diversification of Community food aid was realized. In addition to the products mentioned above the Community thus supplied in 1979 and 1980, red beans, infant food and vegetable oils and fats to Nicaragua\textsuperscript{149}, pigmeat to Malta\textsuperscript{150}, sugar to the countries of the Horn of Africa and

\textsuperscript{144}X, 'Pour une aide alimentaire au service du développement', \textit{Le Courrier}, mai-juin 1983, 9.

\textsuperscript{147}See: Section 2.1 of this Chapter.


Note that with regard to the corned beef and tomato paste, the UNRWA in fact got a cash donation with which it was to buy these products.

\textsuperscript{149}On 27 August 1979 the Commission adopted a programme of emergency food aid for Nicaragua involving inter alia for 2 m ECU for the purchase on the spot of local foodsstuffs and more particularly red beans, food for infants and vegetable oils and fats (Bull. 7/8-1979/65-66).


On 16 October 1979 the Council decided to supply 2,500 t of pigmeat to Malta. In the latter country
neighbouring countries, and infant food and chickpeas to Algeria. One should hasten to add, however, that in 1979 and 1980 the diversification was still very modest and its continuity uncertain. A number of Member States considered food aid operations in products other than the Community's traditional food aid products were only possible in very exceptional circumstances. The Commission did not agree. In its above mentioned communication to the Council on food aid of July 1980, the Commission noted:

[...] experience has shown that our aid is limited by our inability to supply a range of products adapted to the real needs. This is not only true of emergencies where we must respond with flexibility both as to the kind of product supplied as to the means of purchasing; it also hold for the "normal" food aid programme, where countries are sometimes unfamiliar with the products supplied by the Community.

Consequently, the Commission (once again) pleaded for a diversification of the Community's food aid basket far beyond what had been done so far. It considered that, in particular, sugar and vegetable oil should and could be included in the Community's regular food aid programme almost immediately. Both these

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131 On 22 July 1980, the Council agreed to an emergency food aid operation for the countries of the Horn of Africa and neighbouring countries (Ethiopia, Somalia, Sudan, Djibouti, Kenya and Uganda) in response to aid appeals from several Governments and from international organizations on behalf of refugees and drought victims. This aid involved the supply of 8,000 tonnes of skimmed milk powder, 1,250 tonnes of butteroil and 1,000 tonnes of sugar (Bull EC 7/8-1980/73).

132 On 20 October the Council agreed to grant 1m EUA to Algeria to help the victims of the El Asnam earthquake. This aid was partly used to buy 20 t of infant food which was airlifted and 52 t of infant food which was shipped (Bull EC 10-1980, p. 66). On 17 November 1980, the Council agreed to an further emergency food aid operation for the El Asnam earthquake victims. This aid involved inter alia 400,000 EUA of infant food and chickpeas (Bull EC 11-1980, p. 63).

133 COM(80) 478 final, 7.

134 COM(80) 478 final, 7-8; see also Bull. EC 7/8-1980, 73.
products were well-known and widely consumed in developing countries, were valuable for adding calories to the diet, were easy assimilable and were available in sufficient quantities on the Community market to ensure a certain continuity in the programme. For supply in emergencies, the Commission proposed that the Community should be allowed to supply food aid in products such as pulses and legumes, meat, fish, children’s food etc. Since its 1979 proposal for a food aid framework regulation insufficiently provided for the possibility to supply food aid in 'non-traditional' products, the Commission submitted - in annex to its 1980 communication - a proposal for a Council Regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized countries. In this draft Council Regulation explicit reference was made to the Council Resolution of 16 July 1974 on the diversification of Community food aid and the Council Decision of 22 March 1977 on the improvement of the Community’s food aid strategy. Article 1 of this draft regulation stipulated:

Products other than cereals, skimmed milk powder or butteroil may be made available as food aid to developing countries and specialized bodies.

While the Council did not adopt the Commission’s proposal, it must be noted, however, that the trend towards diversification hesitantly initiated in 1979 and 1980 not only continued but became notably stronger in the early eighties. In reaction to Parliament’s Resolution of 18 September 1980 at the close of its 1980 'Hunger

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153 COM(80) 478 final, 7.
156 As I noted above, in the context of emergency aid operations (under Article 950 of the Community’s Budget and Article 59 of Lomé I) the Community already supplied small quantities of these and other products. Usually, the Community donated a certain sum to be used for the purchase of these products.
157 O.J. 1980, C 212/3; COM(80) 478 final, Annex II.
158 See: Section 2.2 of Chapter I and Section 2.1 of this Chapter.
159 Proposal for a Council Regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil to certain developing countries and specialized countries, Article 1, O.J. 1980, C 212/4.
in the World' debate, in which Parliament once more strongly insisted on a food aid basket composed of products more closely adapted to the food requirements of the recipients (point 34), the Council endorsed in its Resolution of 18 November 1980 once again the view that food aid ought to be better adapted to the nutritional needs of developing countries and that with this in mind it was essential to provide for the possibility of supplying food aid in products other than those provided at present. As I already noted, it could nevertheless not reach agreement on the Commission's proposal for a regulation on the supply of food aid in products other than cereals and milk products mentioned above. In February 1981 the Commission decided to withdraw this proposal. It should be pointed out, however, that reportedly this was not in the first place the result of any fundamental objection on the part of any Member State against the diversification of the food aid basket but rather the result of the opinion held by most Member States that the problem of diversification should be dealt with in the context of the future framework regulation on food aid. Therefore, the discussion on food aid in non-traditional products was continued in the context of the 1979 Commission proposal for a framework regulation on food aid policy and management.

In the meantime, albeit not without creating some inter-institutional tension to which I will come back later, the diversification of the Community food aid basket really gained momentum in 1981 and 1982. During this two-year period, the Community supplied in addition to its 'traditional' products, millet, white maize, vegetables, vegetable oil, red beans, sugar, tomato paste, burghol, preserved meat,
legumes, tea and a cash contribution to buy corned beef and tomato paste.\textsuperscript{161}

As had been the case throughout the earlier part of the seventies, there was also during the period 1977-82 no Community law on the sort of products the Community could or should provide as food aid except for the Community’s international food aid obligations under the 1971 Food Aid Convention, the 1980 Food Aid Convention, and the 1976, 1980 and 1981 EEC-UNRWA Conventions and, perhaps, Council Regulation (EEC) No 3723/81 of 21 December 1981 on the granting of exceptional food aid to the least developed countries. The 1971 Food Aid Convention required the Community to supply "wheat, coarse grains or products derived therefrom" while under the 1980 Food Aid Convention the Community was bound to supply "wheat and other grains"; the latter were defined in Article II (1) (e) as: "[...] barley, maize, oats, rye, sorghum and rice, or products derived therefrom, including products of secondary processing [...]".\textsuperscript{162}

Under the 1976 EEC-UNRWA Convention, the Community was to supply wheat, rice, sugar, skimmed milk powder and a cash donation for the purchase of tomato paste and corned beef.\textsuperscript{163} Under the 1980 EEC-UNRWA Convention, the Community was in addition obliged to supply butteroil.\textsuperscript{164} Under the 1981 EEC-UNRWA Convention, finally, the Community was obliged to supply wheat flour, skimmed milk powder, butteroil, white sugar, milled rice, and a cash contribution

\textsuperscript{161}Twelfth Financial Report on the EAGGF (1982), Guarantee Section and food aid financing, COM(83) 531 final, 57 and 59.


Quite some ‘non-traditional’ products were supplied in the context of the 40 million ECU exceptional food aid programme (Council Regulation (EEC) No 3723/81 of 21 December 1981 on the granting of exceptional food aid to the least developed countries, Article 1, O.J. 1981, L 373/11).

\textsuperscript{162}Article II (1) of the 1971 Food Aid Convention, O.J. 1974, L 219/36; and Article I and II (1) (e) of 1980 Food Aid Convention, O.J. 1982, L 43/28.


for the purchase of corned beef and tomato paste.\footnote{The 1981 EEC-UNRWA Convention, O.J. 1981, L 392/6.} In 1982, this Convention was amended and as amended the Convention also obliged the Community to supply burghol, preserved meat, legumes and tea.\footnote{O.J. 1982, L 371/45.} Finally, one should consider Council Regulation (EEC) No 3723/81 of 21 December 1981 on the granting of exceptional food aid to the least developed countries (the 40 mECU programme), which stipulated in its Article 1:

> Special food aid is hereby approved for the least-developed countries with a view to supplying their population with various food stuffs such as cereals, oils, legumes and sugar.\footnote{Council Regulation (EEC) No 3723/81 of 21 December 1981 on the granting of exceptional food aid to the least developed countries, Article 1, O.J. 1981, L 373/11.}

### 3.1.2 The origin of products supplied as Community food aid

any decision on the mobilization of cereals as food aid should be taken after considering the market situation. Depending on the market situation, the cereals were taken from an intervention stock, bought on the market of a region with a surplus production or bought on the Community market as a whole. Community law did not rank these three possible origins but it was clear, however, that the choice between the different origins was to be made on the basis of CAP considerations and that food aid was undisputedly seen as a market intervention/regulation instrument. The procedural mechanism put into place, namely the involvement of the CAP Management Committee for Cereals as well as the fact that the Commission’s mobilization decision was prepared by the Directorate-General VI made sure that food aid also did play this role whenever necessary.170

Community law, and more precise Article 28 (3) of Council Regulation (EEC) No 2727/75 on the common organisation of the market in cereals and Article 25 (3) of Council Regulation 1418/76 on the common organisation of the market in rice, provided for the possibility to mobilize in exceptional circumstances the cereals to be supplied as food aid on the world market. In fact, it will be recalled that the predecessors of these regulations already provided for this possibility. However, during the period 1969-76, the Community bought no food aid cereals on the world market. During the period 1977-82, this changed. As I already mentioned, the Council agreed on 22 March 1977 that in order to adapt its food aid products better to the dietary habits of the recipient population the Community should in appropriate cases have the possibility to buy small quantities of food aid products not available on the Community market in developing countries, preferably neighbouring to the food aid recipient, i.e. the Community should be given the possibility to undertake 'triangular operations'.171

170 The Court of Auditors noted in its Special Report on Food Aid that in practice, rice was only mobilized in Italy, maize and sorghum in France and rolled oats in the Netherlands (COURT OF AUDITORS, Special Report 1/80, 65.).

The first 'triangular operation' was decided upon on 28 July 1978, when the Commission taking account of the situation on the Community market and the urgent need for aid in certain parts of Zaire and more precisely in the Shaba province, bought 2000 tonnes of white maize flour in neighbouring Zambia.\textsuperscript{172} The following year, it was Zambia, however, which faced severe food supply problems as a result of the failure of the maize crop, and in order to be able to supply it with white maize, the Commission decided on 19 August 1979 to buy 16,000 tonnes of this product in Kenya, which happened to have considerable surpluses that year.\textsuperscript{173} It should be noted, however, that despite successful negotiations with the Kenyan and Zambian authorities, delivery unfortunately never took place because of great difficulties of access to Zambia. While even a problem in normal times, the situation was aggravated by the bombing of road and rail routes.\textsuperscript{174} Also in 1979, the Commission decided to buy 5000 tonnes of rice in Thailand for delivery as emergency food aid to refugees in South East Asia.\textsuperscript{175} Rice was of course available on the Community market but the urgency of the need as well as the refusal of Thailand, a rice exporter, to allow the import of rice as food aid for the refugees on its territory, made the Commission decide that the 'exceptional circumstances' required by Article 25 (3) of the regulation on the common organisation of the market in rice were present. Following Parliament's call for more triangular operations in its Resolution of September 1980 and the Council's renewed approval of such operations in its Resolution of November 1980, the Community continued in the early eighties to mobilize the some of its cereal food aid in developing countries rather than in the Community. To give some examples: in 1981 rice was bought in Costa Rica.

\textsuperscript{172}COURT OF AUDITORS, Annual Report 1978, 115. White maize flour was not available on the Community market and the Community could therefore mobilize it outside the Community on the basis of Article 28 (3) of the regulation on the common organisation of the market in cereals.

\textsuperscript{173}Communication from the Commission to the Council on emergency food aid to Zambia, COM(79) 194 final, 2.

\textsuperscript{174}This illustrated well the considerable difficulties which not seldom arise in the context of triangular operations.

\textsuperscript{175}Thirteenth General Report on the Activities of the European Communities, 1979, 23.
Thailand, Pakistan and Burma to be supplied to El Salvador, Nicaragua, Cambodja, Laos, Vietnam, Maldives, Guinea and Cape Verde and white maize was bought in Zimbabwe to be supplied to Tanzania. In 1982, mil was purchased in Senegal for Niger; rice in Suriname and Thailand for Haiti and Laos; and white maize in Zimbabwe and Honduras for Tanzania, El Salvador and Nicaragua. It should be noted, however, that during the whole period 1977-82 the quantities of cereals bought on the world market remained marginal. Most cereals supplied as food aid were mobilized on the Community market.

With regard to the rules on the origin of milk products supplied as food aid, the Commission laid down in February 1977 on the basis of the surplus disposal provisions of the Council Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products, specific rules on mobilization of skimmed milk powder and butteroil to be supplied as food aid. Commission Regulation (EEC) No 303/77 of 14 February 1977 stipulated in its Articles 6 (1) and 9 (1) with regard to the origin of respectively the skimmed milk powder and the butteroil supplied as food aid:

The skimmed milk powder to be supplied shall, as appropriate:
(a) be placed at the disposal of the successful tenderer in the stores of a specified intervention agency, or
(b) be purchased on the Community market.

and:

The butteroil to be supplied shall be manufactured, as appropriate, from:
(a) butter at the disposal of the successful tenderer in the stores of a specified intervention agency, or


(b) butter or cream of Community origin available on the Community market.\textsuperscript{17}\textsuperscript{9}

In the recitals we are reminded of what is \textit{appropriate}:

[...]; whereas the skimmed milk powder and the butter, from which the butteroil is manufactured, should in principle be provided from the stocks of the intervention agencies; whereas taking into account the market situation purchases may however also be made on the Community market, in particular in the case of skimmed milk powder when intervention stocks do not correspond to the characteristics required for its particular destination; [...]\textsuperscript{17}\textsuperscript{9}

The possibility to mobilize dairy products to be supplied as food aid outside the Community was not provided for. The rules on the origin of dairy food aid products were an integral part of the common agricultural policy legislation and food aid in dairy products itself was undisputedly seen as an agricultural market intervention/regulation instrument.

With regard to the rules on the origin of products other than cereals and dairy products, I should first point out that the rules on the origin of the sugar and the products purchased with the cash donation (corned beef and tomato paste) supplied under the 1976, 1980 and 1981 EEC-UNRWA Conventions remained unchanged in comparison with the rules applicable during the 1969-76 period. The sugar supplied as food aid had to be produced and in free circulation in the Community\textsuperscript{18}\textsuperscript{0} and only when the required quantities were not available on the Community market on normal terms, the sugar could be bought on the world


\textsuperscript{17}\textsuperscript{9}Commission Regulation (EEC) No 303/77 of 14 February 1977 laying down general rules for the supply of skimmed-milk powder and butteroil as food aid, first recital, OJ. 1977, L 43/1.

\textsuperscript{18}\textsuperscript{0}Sugar was still the only food aid product for which Community law explicitly stipulated that - when mobilized within the Community - it had to be \textit{produced} in the Community. See also Section 3.1.2 of Chapter 1.
products supplied as Community food aid

market. It will be remembered that the Community in 1975 actually bought 1000 tonnes of sugar on the world market. During the period 1977-82, however, all UNRWA sugar was mobilized within the Community. Also the sugar supplied to countries of the Horn of Africa and neighbouring countries in 1980, were mobilized within the Community. The corned beef and tomato paste to be bought with the cash contribution provided for in the 1976, 1980 and 1981 EEC-UNRWA Conventions were to be mobilized on the Community market. With regard to the origin of the preserved meat, burghol, tomato paste, corned beef, tea and legumes, supplied to the UNRWA as from 1982 onwards under the amended 1981 EEC-UNRWA Convention, there where no specific provisions but it seemed it was understood these products would be bought on the Community market.

As noted above, the Community supplied from 1979 onwards also food aid in other products. Some of these products, such as the pigmeat supplied to Malta, were mobilized on the Community market. Other products, however, were mobilized by way of 'triangular operations'. The red beans, children's food and vegetable oil supplied to Nicaragua for example were bought in Costa Rica

181 Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of sugar to UNRWA as food aid, Article 1 (1) and (2), OJ. 1976, L 118/1; Council Regulation (EEC) No 1010/80 of 21 April 1980 on the supply of sugar to UNRWA as food aid, OJ. 1980, L 108/1; and Council Regulation (EEC) No 3827/81 of 21 December 1981 on the supply of sugar to the UNRWA as food aid, which in its Article 1 (1) and (2) stipulated: "1. The following quantity of white sugar produced and in free circulation in the Community shall be made available to UNRWA as food aid: [...]. 2. Should the said white sugar not be available on the Community market on normal terms, it may be purchased on the world market" (OJ. 1981, L 392/1); Council Regulation (EEC) No 434/82 on the supply of sugar to UNRWA as food aid, Article 1 (3) and (4) stipulated the same (OJ. 1981, L 392/1).

182 Bull. EC 7/8-1980, 73.

183 The 1976 EEC-UNRWA Convention, Article 3 (2) and Annex, OJ. 1976, L 203/41-2; 1980 EEC-UNRWA Convention, Article III (3) (b), OJ. 1980, L 108/56; and the 1981 EEC-UNRWA Convention, Article 3 (3) (b) and Annex, OJ. 1981, L 392/4.

184 See amendments to the 1981 EEC-UNRWA Convention, OJ. 1982, L 371/43.

185 Article 2 of Council Regulation (EEC) No 2300/79 of 16 October 1979 on exceptional aid to the Republic of Malta in the form of pigmeat, stipulated: "the exceptional aid specified in Article 1 shall be mobilized by the recipient country on the Community market in accordance with the tendering procedure. The Commission shall lay down appropriate conditions for the tendering procedure and for the use of the aid by the recipient country" (OJ. 1979, L 264/7).
1977-82: Shifting the balance of compromise

Guatemala, Argentina and even the United States. In its Decision of 22 March 1977, the Council had called for such 'triangular operations' in order to adapt Community food aid better to the needs of the recipient. Neither the Commission's January 1979 proposal for a food aid framework regulation nor its July 1980 proposal for a regulation on food aid in products other than cereals and dairy products which both explicitly provided the possibility to purchase food aid products outside the Community, were, however, adopted during the period 1977-82 which left the Community without a legal basis to undertake this sort of triangular operations. As observed, the Commission did, however, not await the adoption of habilitating legislation to go ahead with ad hoc 'triangular operations'. Following Parliament's call for more purchases of food aid products on the market of developing countries in its Resolution of September 1980 and the Council's renewed approval of such purchases in its Resolution of November 1980, some of the 'non-traditional' products supplied in 1981 and 1982 were mobilized by way of 'triangular operations'. In particular, quite a substantial part of the 'non-traditional' products supplied under the 40 million ECU exceptional food aid programme were mobilized on the market of food exporting developing countries. In 1981 and 1982, vegetable oil was bought in Côte d'Ivoire and India for respectively Upper Volta and Nepal, legumes were bought in Rwanda and Kenya for respectively Uganda and Somalia, sugar was bought in Malawi for Somalia and red beans were bought in Honduras for El Salvador and Nicaragua.

186 COURT OF AUDITORS, Special Report 1/80, 72. Note that in the European Parliament Working Documents, Working Document on an effective food aid policy that takes into account the needs of the hunger stricken countries and peoples - emergency aid (Sub-Rapporteur: Mrs K. FOCKE), PE DOC 1-341/80, 79, did not mention the vegetable oil.

187 Article 3 (2) of the 1979 proposal stipulated: "[...] in an emergency or if the product to be supplied as aid are not available on the Community market, they may be purchased on the markets of developing countries which export them. As a last resort the products may be purchased on the market of other exporting countries." (COM(79) 1 final, Annex 1, 3.) Article 4 (1), second sentence of the 1980 proposal stipulated: "[...]in an emergency or where supplies are not available on the Community market on normal terms, they may be procured by purchase on the world market." (COM(80) 478 final, Annex II, 4.)

188 It should be noted, however, that Council Regulation (EEC) No 3723/81 of 21 December 1981 on the granting of exceptional food aid to the least-developed countries, OJ. 1981, L 373/11, did not explicitly provide for this possibility but merely stipulated in its Article 4: "The Commission shall be responsible for implementing the aid operation in accordance with the existing procedures".
As Nicora remarked, these triangular operations:

[...] peuvent constituer une réponse intéressante au problème de l'adaptation aux besoins des bénéficiaires et à celui de la réduction des coûts de donateurs.\(^\text{199}\)

As during the earlier part of the seventies, the Community food aid policy during the period 1977-82 continued to benefit mainly the major cereal and dairy producers among the Member States. As I already pointed out, this fact did not fail to have a profound impact on the Community food aid policy.

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The Select Committee on the European Communities of the House of Lords noted in a highly critical manner in a 1979 Report on the European Community's Development Policy of that of a total cost of 541.59 m EUA charged under the 1979 food aid programme only 3.63 m EUA resulted in procurement from U.K.

\(^{199}\) NICORA, 1982, 10.

\(^{190}\) Source: COURT OF AUDITORS, Special Report 1980, 37.
suppliers; the U.K. received the smallest commercial return, in the form of supply contracts, of any Member State (including Luxembourg).  

3.1.3 The quality of the products supplied as Community food aid

Community law on the quality of the products supplied as food aid did not drastically change in the period 1977-82. Commission Regulation (EEC) No 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid stipulated quality requirements for dairy products supplied as Community food aid. With regard to skimmed milk powder, Article 6 (2) of Commission Regulation (EEC) No 303/77 stipulated:


If the skimmed-milk powder is to contain vitamin additives, the appropriate requirements shall be laid down separately for each individual delivery.

In exceptional cases, specific packaging requirements may be laid down.

With regard to the butteroil, Article 9 (2), first paragraph, of Commission Regulation (EEC) No 303/77 stipulated:

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191 HOUSE OF LORDS, Select Committee on the European Communities, Report on the European Community Development Policy, 1979, p. xxxiii-xxxiv. Note that the Committee recognized that the U.K. was not, in normal years a food surplus country, and therefore not readily in a position to generate commercial returns from the Community's food aid programme. It stressed, however, that British interests in transport and shipping, where comparative advantage is strong, could avail themselves of a better share of contracts under the food aid programme if transport contracts were not tied to supply contracts.


The butteroil to be supplied shall meet the quality and packaging requirements laid down in Annex II of this Regulation.194

With regard to cereals, the 1971 and 1980 Food Aid Conventions required that the cereals supplied were fit for human consumption; more specific quality requirements were laid down separately for each mobilization of cereals intended as food aid.

While it would lead us too far to analyze in detail these requirements, it should be noted that the quality requirements for dairy products as well as cereals, were, however, very similar to the requirements laid down in the mobilization decisions during the period 1969-76.195 It is important to note that Community law on quality requirements did definitely not allow for the supply of low quality products as food aid. Occasionally, the Commission laid down particular quality requirements which were less stringent than the requirements for the taking over by the intervention agencies. In its 1980 Special Report, the Court of Auditors noted eleven Commission regulations concerning food aid operations between 1977 and 1979 which allowed 15 % to 40 % of the rice to be broken, while normally not more than 5 % of the rice may be broken. The Court indicated, however, that in certain (!) cases this corresponded to the express wishes of the recipient countries.196 Anyway, even when less stringent quality requirements were laid down for specific food aid deliveries, the products supplied still had to be of fairly high quality.

Despite the high quality standards set for products supplied as Community food aid, a number of such supplies during the period 1977-82 were reported to be totally or partially unfit for human consumption.197 While the total quantity of


195Note that Article II (1) of the 1971 Food Aid Convention and Article III of the 1980 Food Aid Convention required the cereals supplied to be "suitable for human consumption".

196COURT OF AUDITORS, Special Report 1/80, 15.

food aid of disputed quality was 'relatively' small in comparison with the total quantity of food aid supplied, such deliveries were highly embarrassing and did much damage to the reputation of the Community both abroad and at home, not to speak of the damage it did to the unfortunate 'beneficiaries' who found the long awaited food unfit for consumption. Furthermore, it is unfortunately quite likely that there were more mishaps than were ever reported. As Nicora observed:

[...] la relation d'aide alimentaire étant actuellement une relation unilatérale de type caritatif, la receveur hésite en effet le plus souvent à se plaindre formellement de la qualité des prestations qui lui ont été offertes comme de purs simples cadeaux [...]198

During the closing years of seventies, there were serious complaints about the quality of 12,800 tonnes of wheat flour supplied to Egypt, 25,00 tonnes of cereals supplied to Bangladesh, 14,000 tonnes of skimmed milk powder and several batches of butteroil supplied to India, 6,000 tonnes of cereals supplied to the Democratic Republic of Yemen, 5,000 tonnes of cereals supplied to Benin, 1,200 tonnes of rice supplied to Ghana, 1,012 tonnes of rice to the Comoros, 1,350 tonnes supplied to Nicaragua, 3,750 tonnes of rice, 10,000 tonnes of sorghum and 1,500 tonnes of skimmed milk powder supplied to Niger, 3,500 tonnes of common wheat supplied to Upper Volta, 2,500 tonnes of maize to Guinea-Bissau, 4,852 tonnes of rice to South-East Asian refugees and 1,035 tonnes of rice to Cape Verde, etc.199 In 1981, the Court of Auditors noted an apparent drop in the number of deliveries of food aid of sub-standard quality but at the same time observed, without going into detail, that such deliveries were nevertheless still made.200


199See e.g.: COURT OF AUDITORS, Special Report 1/80, 81, and COURT OF AUDITORS, Special Report 1/87, 29.

As was already pointed out in Chapter 1, the quality problems were mainly the result of insufficient quality control, improper transportation and inappropriate packaging.\footnote{Note, however, that occasionally complaints about the quality were due to the fact that the recipient population was not familiar with the European variant of a product also locally consumed. The 1977 Report of the Court of Auditors mentioned the example of European sorghum (COURT OF AUDITORS, Annual Report, 1977, 82.).}

With regard to the quality control, it will be recalled that in the past Community law entrusted this control to the national intervention agencies and in the period 1977-82 Community law did not fundamentally change in that respect. It must be noted, however, that both for dairy products and cereals the intervention agencies' responsibility regarding the quality of the food aid products was made more explicit and specific than in the early seventies. Quality control remained, however, also during the period 1977-82 a weak point. This was also recognized by the 1982 IDS-ABC study which insisted in its conclusions on the need of tighter quality control.\footnote{IDS-ABC, 1982, 5.19.}

Commission Regulation 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid stipulated in its Article 8 (1) relating to skimmed milk powder for example:

> If the goods to be delivered are purchased on the Community market, the competent agency in the Member State concerned shall check that the quality and packaging comply with the conditions laid down and shall issue a certificate to that effect on the conclusion of the said check.\footnote{Commission Regulation 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid, article 8 (1), O.J. 1977, L 43/4. The quality and the packaging of the skimmed milk powder taken from the intervention stock, however, was not checked.}

Article 11 (1) of the latter Commission regulation provided for checks by the intervention agency on the quality of the butteroil.\footnote{Commission Regulation 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid, Article 11 (1), O.J. 1977, L 43/5. It was generally recognized that it was important that the quality of the butteroil was checked by}

With a view to delivery at the proposed stage the goods must be recognized as satisfying the requirements stipulated in the Regulation opening the tendering procedure. For this purpose the intervention agency of the country of shipment shall arrange for a check at the port at the time of loading on the nature, quality and packaging of the goods. Following inspection an attestation shall be issued. The costs relating thereto shall be borne by the successful tenderer.

Samples intended for analysis shall be taken and the inspection shall be carried out in accordance with the trade practices in force in the country of shipment. The successful tenderer and the recipient's representative shall be invited to take part in the operation.  

The Court of Auditors noted, however, that - in the absence of common rules - the activities of the agencies in this respect varied from Member State to Member State and that, in general, there was reason to question the effectiveness of the sample analyses carried out by them. In his 1982 study, Nicora sharply criticized the fact that each Member State still had its own quality control procedures and that there were different procedures for each food aid product. As the Court of Auditors had already done in its 1980 Report, he called for an harmonisation of the quality control procedures.

means of sampling at the moment the butter was processed into butteroil to ensure that the butteroil was not (partially) replaced by the far cheaper vegetable oil during processing. The Court of Auditors observed, however, during one of its inspection visits in Belgium that samples were only taken during office hours although some manufacturers produced butteroil 24 hours a day (COURT OF AUDITORS, Annual Report 1982, 98.).


COURT OF AUDITORS, Special Report 1/80, 81-82. Note by way of example that in 1977 Upper Volta complained about the poor quality of the 827 tonnes of milled rice and 1,000 tonnes of wheat which prior to export, had been judged as satisfactory by an official Belgian organization and by a firm of experts (COURT OF AUDITORS, Annual Report 1977, 84.).

NICORA, 1982, 40-41.
Products supplied as Community food aid

During the period 1977-82, the Commission itself did carry out a number of examinations investigating complaints about poor quality, but this was far from an alternative to serious, systematic 'preventive' monitoring of the intervention agencies (or preventive quality control by the Commission itself). While it was for the intervention agencies to carry out the checks, the Commission was, however, partly to blame for the lack of serious quality control since it reportedly made no genuine effort to verify whether the intervention agencies carried out the required quality checks, let alone to enforce these obligations.

The 1980 Budget provided for the first time a budget line 'Quality control of the products supplied as food aid' on which in the course of the budget year 200,000 EUA was entered; of this modest sum only half was actually spent, mainly on ex-post analyses. Of the 600,000 ECU in the 1981 Budget provided for quality controls, only 10% was actually used to this end and also the 1.1 million ECU in the 1982 Budget gave rise to virtually no payments. When the Court of Auditors asked the Commission early 1981 to inform it about the anticipated loading dates of food aid consignments with the intention to carry out checks on a number of food aid deliveries at the time of shipment and thus inspect whether the intervention agencies properly checked the quality of the food aid supplied, the Commission replied at the end of July that it could not do so because it did not known the dates of shipment. The intervention agencies only informed the Commission of those dates after the deliveries had taken place.

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208 In 1979 the Commission services undertook missions to recipients countries primarily intended to check on the utilization of aid. Such missions visited Bolivia, Burundi, Chad, Comoros, Djibouti, Honduras, Kenya, Lebanon, Peru, Yemen P.D.R., Zaire and Zambia. In its communication concerning food aid programmes for 1980, the Commission noted: "Among the several benefits derived from such missions is the knowledge that some of the suppliers and transport agencies have not been exigent in controlling the quality of goods delivered or the standards of packaging required by regulation as the Community has a right to expect" (Commission communication concerning food aid programmes for 1980, COM(80) 57 final, 10.).


The obvious failure of the Community to guarantee the quality of the products supplied as food aid led one recipient to take a rather unusual step. Until 1978 the quality of the skimmed milk powder and butteroil supplied to India in the context of Operation Flood gave repeatedly rise to serious complaints from the side of the Indian authorities. Following a delivery of 1,000 tonnes of skimmed milk powder from which 17 out of 21 samples tested had a rancid or stale taste, the Indian authorities, fed up with the situation, appointed a full-time agent in Europe to supervise, on the premises of the European producers the quality of the dairy products intended as food aid for India. Since, the quality of the dairy products elicited no remarks any more.\textsuperscript{213}

Poor quality deliveries were, however, also quite often due to deficient packaging. In its 1980 Special Report, the Court of Auditors reported, for example, that a great many milk powder sacks arrived at their final destination torn, making part of the milk powder unfit for consumption.\textsuperscript{214} A report on the delivery of 2,000 bags of vitaminized milk powder unloaded at Benin in December 1980 noted 192 bags which were either wet, torn or soiled as a result of on the one hand the flimsiness of the bags and incidents during transport.\textsuperscript{215} Here, however, it seems to be Community legislation itself which fell short. In its 1980 Special Report the Court of Auditors refers to only one case in which a contractor used packaging of a quality inferior to what was required by Community legislation.\textsuperscript{216} The Community's packaging requirements were, however, not strict enough, or, more precisely, did insufficiently take into account the particular and often very harsh unloading, storage, in-land transport and distribution conditions in the recipient countries. Above, I already referred to problems with regard the cotton sacks in

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{213}COURT OF AUDITORS, Special Report 1/80, 83.
\item \textsuperscript{214}COURT OF AUDITORS, Special Report 1/80, 134.
\item \textsuperscript{215}COURT OF AUDITORS, Special Report 1/87, 30.
\item \textsuperscript{216}COURT OF AUDITORS, Special Report 1/80, 82. In its Special Report 1/87, the Court of Auditors reported another two cases of insufficient packaging where the contractor was at fault. Both concerned the fastening (sealing) of skimmed milk powder bags (COURT OF AUDITORS, Special Report 1/87, 31.).
\end{enumerate}
\end{footnotesize}
which wheat flour used to be delivered and the tins used for butteroil. Also the bags used for packaging skimmed milk powder presented problems. The packaging requirements for skimmed milk powder were basically the requirements to be met for public storage in the Community laid down in Annex II of Commission Regulation (EEC) No 625/78 on detailed rules of application for public storage of skimmed milk powder. This Regulation provided for three possible qualities of packaging, to be chosen from by the manufacturer. Without surprise, the Court of Auditors observed in its 1981 Report that the strongest, but also most expensive quality of bag was apparently never used although it was quite clear that this, and often a superior, quality should be prescribed for Community food aid. The packaging requirements applicable to food aid in skimmed milk powder were probably sufficient for public storage within the Community but failed to take into account transport overseas or on rough tracks. A strong bag in Europe is often a flimsy bag in Africa. Not only were the milk powder bags often "extremely flimsy, easily damaged and not watertight", but their capacity of 25-kg was in numerous cases too big and often caused major problems in distribution. In reply to observations of the Court of Auditors, the Commission conceded in 1979 that bags with a smaller capacity were to be preferred where milk was distributed for free. The United States for example supplied skimmed milk powder also in 2 to 5 kg tins. Article 6 of Commission Regulation (EEC) No 303/77, quoted above, provided that "in exceptional cases, specific packaging

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217 COURT OF AUDITORS, Annual Report 1981, 83. Also in its 1982 Report, the Court called for an improvement of the quality of the bags (COURT OF AUDITORS, Annual Report 1982, 98). It was calculated that the extra cost per kg of vitaminized skimmed milk powder of the strongest quality of bag would only be 0.3% to 0.6% of the value of the product.

218 Just to give one example: of a consignment of 1500 t of vitaminized milk powder received by Morocco in September 1982, many of the paper bags were torn and the milk powder wasted (COURT OF AUDITORS, Special Report 1/87, 30.).

219 COURT OF AUDITORS, Special Report 1/87, 30.


requirements may be laid down" but hardly any use was made of this possibility.\textsuperscript{222} The Community’s apparent reluctance to supply food aid in appropriate packaging was of course due to the sometimes considerable extra costs involved. Finally, it should be noted that the milk powder bags only marked in code (pursuant to Commission Regulation (EEC) No 625/78 mentioned above) and not in plain language the date of manufacture and did not mention at all the recommended date by which the product was to be used.\textsuperscript{223} The latter was especially important in the case of vitaminized skimmed milk powder since this milk powder had to be used within 6 months otherwise the costly vitaminization process was wasted. The Court of Auditors insisted in its 1980 Special Report on food aid that instructions for the use of the milk powder would be indicated, and explicitly stressed in its 1982 Annual Report the need to indicate a date limit for the use of the milk powder.\textsuperscript{224}

With regard to butteroil, it will be recalled that during the seventies the metal cans in which this product was supplied had given rise to numerous complaints. Nevertheless the Commission was apparently unwilling to consider the use of broader and shorter tins which other donors used and were more durable, and during the period 1977-82, the Court again reported a number of instances in which butteroil was lost or spoiled as a result of deficient packaging.\textsuperscript{225}

Finally, a number of poor quality supplies were due to the conditions under which the food aid products were shipped. As noted above, there was during the earlier

\textsuperscript{222}In its 1979 Report, the Court of Auditors remarked that it had not found that any sizable quantity of milk powder had been delivered in smaller packages; the existence of such a possibility did not appear to have been sufficiently publicized (COURT OF AUDITORS, Annual Report 1979, 147.).

\textsuperscript{223}In its 1982 Report, the Court of Auditors suggested "[t]o mark clearly on the packages of milk powder, in particular on those containing vitaminized milk powder, the date of manufacture and the date by which the product is to be used" (COURT OF AUDITORS, Annual Report 1982, 98).

\textsuperscript{224}COURT OF AUDITORS, Annual Report 1981, 84; and COURT OF AUDITORS, Special Report 1/80, 134.

part of the seventies no Community law on the sea transport of food aid at all; during the period 1977-82 the situation was no different until July 1980. Commission Regulation (EEC) No 1974/80 of 22 July 1980 laying down general implementing rules in respect of certain food aid operations involving cereals and rice, required in its Article 4 (4) (d):

where the invitation to tender relates to the supply of goods at the cif stage, an undertaking by the tenderer to transport the goods by sea in vessels listed in the larger classes in recognized classification registers, not more than 15 years old, and attested by a competent body as meeting hygiene requirements;

This was the first and during the period 1977-82 further the only Community legislation on sea transport of food aid. Note that it only concerned food aid in cereals. For food aid in other products as well as for food aid in cereals before July 1980, however, Community legislation did not impose any restrictions on the contractors as to the choice of the ships. Under these circumstances, it was all but surprising that the contractors often chartered the ships offering the cheapest rates without taking account of flag, seaworthiness or technical suitability for carrying

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226 One should note, however, that in case of delivery fob (or fas) some food aid supply agreements required the food aid recipient to allow for fair competition when awarding the shipping contract.


228 It should be noted, however, that in some supply agreements which provided for a lump sum to cover transport costs beyond the f.o.b. stage, the Community reportedly had already for some years required the recipient to use a regular shipping line and ships of less than 15 years old (COURT OF AUDITORS, Special Report 1/80, 85).
1977-82: Shifting the balance of compromise

the food aid products. In its 1980 Special Report, the Court of Auditors observed that ships flying Community flags carried barely 10% of all Community food aid, but that ships flying flags of convenience which do often not comply with the minimum requirements to guarantee the standards of transport, carried 22%, and ships flying the flags of state-trading countries, which are frequently accused of dumping practices in shipping carried almost 5%. The Court of Auditors wondered in its 1978 Report with regard to the choice of the vessels, certainly when the Community bears the costs of transport beyond the fob stage, whether priority could not be reserved to vessels flying the flag of a Member State of the Community, or failing that, of the country receiving the aid; only in exceptional cases and for specific reasons recourse would be had to vessels of other countries.

In its communication concerning food aid programmes for 1980, the Commission announced it was its intention to submit a proposal for a framework regulation on the transport of all food aid but no such proposal was submitted.

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29COURT OF AUDITORS, Special Report 1/80, 84-85. By way of example, one could refer to the supply of 2,140 tonnes of milled rice to the Comoros. The loading of the rice was completed on 20 October 1977 and the boat was due to arrive at the Comorian ports in the third week of November. But on 16 March 1978 (!), after an eventful voyage, the ship sank in the Indian Ocean (The food aid eventually did not arrive until 16 June 1978) (COURT OF AUDITORS, Annual Report 1977, 83.). On 26 August 1978, eight days after leaving the port of shipment, the vessel carrying 1,500 tonnes of durum wheat of emergency food aid sank in the Mediterranean Sea. The successful tenderer had to carry out this project afresh but the aid only arrived in Maputo at the end of November (COURT OF AUDITORS, Annual Report 1978, 112.).

On 30 June 1978, 75% of a cargo of 500 tonnes of skimmed milk powder suffered serious damage in the North Sea and had to be replaced; the latter took two months (COURT OF AUDITORS, Annual Report 1978, 112.).

20COURT OF AUDITORS, Special Report 1/80, 85. Of the food aid supplied cif to Vietnam under the 1977 and 1978 programmes, none had been transported by Community ships but 30,000 tonnes of rice by Russian ships, 20,000 tonnes by Greek ships, 5,000 tonnes by ships from Singapore and 5,000 tonnes of skimmed milk powder by Polish ships. The Court of Auditors stressed the danger that the recipients might in fact be unaware of the identity of the donor of this aid.

21COURT OF AUDITORS, Annual Report 1978, 113. In its reply, the Commission pointed out that the choice of shipping for deliveries cif was the responsibility of the tenderer and the selection of the successful tenderer was made by the intervention agency (COURT OF AUDITORS, Annual Report 1978, 113.).

22COM(80) 57 final, 6. The Commission explained that such a regulation would have for its objectives: (1) to separate the responsibility for the transport of food aid from the responsibility for the supply; (2) to give the Commission direct control over the conditions under which shippers operate; and (3) to improve financial control and economise on transport costs.
3.2 The size and nature of the Community food aid commitments

3.2.1 The size of Community food aid commitments

During the period 1977-82, the Community's food aid commitments were at first characterized by their regularity at levels equal or slightly above the levels of the mid-seventies. The one exception was the commitment of 'merely' 105.000 tonnes of skimmed milk powder in 1977. Later, and in particular in the early eighties, however, the food aid commitments were noted for an important, albeit arguably insufficient increase in food aid in cereals, a first hesitant reduction in dairy food aid (butteroil), an exceptional, additional food aid commitment for the least developed countries and the growing significance of commitments of food aid in other products, in particular vegetable oil.

Community food aid commitments during the period 1977-82

<table>
<thead>
<tr>
<th>(in '000 tonnes and millions of EUA and ECU)</th>
</tr>
</thead>
<tbody>
<tr>
<td>-------</td>
</tr>
<tr>
<td>Cereals</td>
</tr>
<tr>
<td>Milk powder</td>
</tr>
<tr>
<td>Butteroil</td>
</tr>
<tr>
<td>Sugar</td>
</tr>
<tr>
<td>Vegetable oil</td>
</tr>
<tr>
<td>Other products</td>
</tr>
<tr>
<td>Exceptional food aid</td>
</tr>
</tbody>
</table>

\[327\]Note that '1977' in fact stands for '1976-77', etc.
1977-82: Shifting the balance of compromise

Community food aid commitments in cereals during the period 1977-82

Community food aid commitments in skmp during the period 1977-82
Size and nature of Community food aid commitments

Community food aid commitments in butteroil during the period 1977-82

Community food aid commitments in sugar during the period 1977-82
Until 1 July 1980, the Community was bound under the 1971 Food Aid Convention, as extended by successive Protocols, to supply annually 1.287.000 tonnes of cereals as food aid. As had been the case during the earlier part of the seventies, the Community did, however, not supply all this food aid itself. For the political rather than legal reasons delineated above, the fulfilment of the Community's obligation under the Food Aid Convention was partitioned between the Member States and the Community. In 1976/77 the Community's share was put at 56% of the total Community commitment under the Food Aid Convention and remained on this level during the following years. In spite of repeated requests and proposals from Parliament and the Commission to increase its cereal

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234 The 1971 Food Aid Convention expired on 30 June 1974 but was (together with the 1971 Wheat Trade Convention) successively extended to 30 June 1975 by the 1974 Protocol, to 30 June 1976 by the 1975 Protocol, to 30 June 1978 by the 1976 Protocol and to 30 June 1981 by the 1979 Protocol (unless it was in the meantime replaced by a new agreement resulting from the successful conclusion of the negotiations which were then going on (Bull. EC 3-1979, p. 72-73.).

On 1 January 1980, Greece joined the Community but since it had never been a party to the Food Aid Convention, its accession did not push up the total and the Community's commitment under the 1971 Convention.

235 See: Sections 3.2 of Chapter 1.

236 Note that during the period 1969-76, the Community had increased - quite impressively - its share from 29% in 1968/69 to 55% in 1975/76. In its second three-year indicative programme (1977-1979), the Commission had provided for a further "communautarisation" of the cereal food aid obligation under the Food Aid Convention (Bull. EC 9-1976, 18). In its communication concerning the 1978 programmes for food aid in cereals, skimmed milk powder and butteroil, the Commission insisted on a Community part of 60% (COM(77) 512 final).
food aid commitment²⁷, the Community supplied during this period until 1 July 1980 no food aid in cereals over and above its part of the Food Aid Convention contribution. It committed in 1976/77, 1977/78, 1978/79 as well as in 1979/80 exactly the same quantity of cereals: 720,500 tonnes.

Already in the mid-seventies, the Community had been severely criticized for failing to respond to the appeal launched at the 1974 World Food Conference for a substantial increase in cereal food aid. As I already pointed out above, the Community was in fact the only among the major donors which had not increased its cereal food aid commitments in the wake of the World Food Conference.²⁸ In the beginning of 1977, the prospects of any increase in the Community's cereal commitments were still very dim. It will be recalled that in view of the Council's inability to reach agreement on the increases suggested by the Commission in its proposal for a second, three-year indicative programme (1977-79), the latter decided in March 1977 to withdraw this proposal.²⁹

Towards the end of 1977, however, the situation changed. While the Member States were unable to agree on the increase proposed by the Commission in its proposal for the 1977/78 programme, the Council authorised the Commission on 28 November 1977 to negotiate within the framework of a new International

²⁷ On the Commission's proposals for an increase in the Community's cereal food aid commitment, see: Commission communication concerning the 1978 programmes for food aid in cereals, skimmed milk powder and butteroil, COM(77) 512 final; Proposal from the Commission to the Council concerning food aid regulations for 1979, COM(79) 107 final, 1-2; Proposal from the Commission to the Council concerning food aid programmes for 1980, COM(80) 57 final, 1.

²⁸ See: Section 3.2 of Chapter 1.

²⁹ Bull. EC 3-1977, 60.
Wheat Agreement an increase in the Community's cereal food aid contribution.\textsuperscript{340} After long and difficult negotiations which eventually did not result in a new International Wheat Agreement but did lead to a new international agreement on food aid in cereals, the 1980 Food Aid Convention was concluded.\textsuperscript{341} This new Convention stipulated in its Article III (3):

The minimum annual contribution of each member towards the achievement of the objective of Article I is as follows:

<table>
<thead>
<tr>
<th>Member</th>
<th>Tonnes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>35 000</td>
</tr>
<tr>
<td>Australia</td>
<td>400 000</td>
</tr>
<tr>
<td>Austria</td>
<td>20 000</td>
</tr>
<tr>
<td>Canada</td>
<td>600 000</td>
</tr>
<tr>
<td>European Economic Community and its Member States</td>
<td>1 650 000</td>
</tr>
<tr>
<td>Finland</td>
<td>20 000</td>
</tr>
<tr>
<td>Japan</td>
<td>300 000</td>
</tr>
<tr>
<td>Norway</td>
<td>30 000</td>
</tr>
<tr>
<td>Sweden</td>
<td>40 000</td>
</tr>
<tr>
<td>Switzerland</td>
<td>27 000</td>
</tr>
<tr>
<td>United States of America</td>
<td>4 470 000\textsuperscript{342}</td>
</tr>
</tbody>
</table>

It will be observed that unlike in the 1967 and 1971 Food Aid Conventions, the obligation under the 1980 Convention to supply annually a minimum of 1,650,000 tonnes of cereals rested explicitly with the Community \textit{and} the Member States. Therefore, it was normal that the Community did not supply all this food aid itself.

\textsuperscript{340}Bull. EC 11-1977, p 58-59. It must be observed that several Member States and in particular France, the United Kingdom, Italy and Belgium linked any increase in the size of the Community's food aid programme to a new Wheat Agreement (RICHARD, 1983, 67).


\textsuperscript{342}Article III, 1980 Food Aid Convention, O.J. 1982, L 43/28. The objective of Article I to which is referred is the target set by the 1974 World Food Conference of 10 m tonnes of food aid annually to developing countries. The Community and the Member States were committed to supply 16.5\% of all Food Aid Convention food aid. Note that the Commission had originally proposed to the Council that the Community/Member States would increase their share to 25\%.
Size and nature of Community food aid commitments

As had been the case in the seventies but now without creating confusion and legal dispute, the Community/Member States commitment under the 1980 Food Aid Convention was partitioned between the Member States and the Community. In 1980/81 and 1981/82, the Community's part amounted to 56.2% of the total commitment under the Food Aid Convention. It will be noted that no further progress was made towards 'communautarisation' of food aid in cereals; the partition key remained virtually the same as the one applied since 1976/77.

<table>
<thead>
<tr>
<th>Year</th>
<th>EC FAC commitments</th>
<th>MS part</th>
<th>EC part</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976/77</td>
<td>1287.0</td>
<td>565.5</td>
<td>720.5</td>
</tr>
<tr>
<td>1977/78</td>
<td>1287.0</td>
<td>565.5</td>
<td>720.5</td>
</tr>
<tr>
<td>1978/79</td>
<td>1287.0</td>
<td>565.5</td>
<td>720.5</td>
</tr>
<tr>
<td>1979/80</td>
<td>1287.0</td>
<td>565.5</td>
<td>720.5</td>
</tr>
<tr>
<td>1980/81</td>
<td>1650.0</td>
<td>726.0</td>
<td>927.7</td>
</tr>
<tr>
<td>1981/82</td>
<td>1650.0</td>
<td>726.0</td>
<td>927.7</td>
</tr>
</tbody>
</table>

The evolution in the partition of the Food Aid Convention obligations during the period 1977-82

Source: Commission, Green Europe No.216, Annex, 1.
While total commitment under the Convention as well as the partition key remained unchanged in 1980/81 and 1981/82, the Community’s cereal food aid commitment nevertheless went up by as much as 72,337 tonnes in 1981/82. Already shortly after the entry into force of the 1980 Food Aid Convention, the European Parliament asked in its Resolution on Hunger in the World of 18 September 1980:

[...] that Community aid in cereals be increased beyond the minimum obligation laid down in the new Food Aid Convention as from the 1981 financial year;\(^{344}\)

and also the Commission openly declared that it thought the size of the Community’s cereals programme, in spite of the increase in its commitment under the 1980 Food Aid Convention, still to be inadequate in relation to the requirements of the Third World.\(^{345}\) The Commission cynically observed that the increase under the new Food Aid Convention hardly constituted an appropriate response to recent public and parliamentary concern at the crisis of hunger in the world, certainly at a time when the Community enjoyed highly satisfactory grain harvests.\(^{346}\) In its proposal for the 1981/82 cereal food aid programme, the Commission proposed an increase of 17.2% over 1980/81 to 1,087,963 tonnes. This would represent about 1.1% of the developing countries import requirements and was - according to the Commission - the minimum reasonable response to the cereal deficit of the Third World.\(^{347}\) The necessary appropriations had been provided for in the 1982 Budget by the European Parliament. The Council, however, initially rejected any increase and committed only 927,663 tonnes, the quantity to be committed by the Community under the Food Aid Convention. Following the Joint Declaration on Budgetary Matters, however, the Council

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\(^{344}\) European Parliament Resolution of 18 September 1980, point 38.

\(^{345}\) Communication from the Commission to the Council concerning food aid programmes for 1981, COM(81) 41 final, 6; Bull. EC 2-1981, 40.

\(^{346}\) Communication from the Commission to the Council concerning food aid programmes for 1981, COM(81) 41 final, 16; Bull. EC 2-1981, 40.

\(^{347}\) Communication from the Commission to the Council on the 1982 food aid programmes, COM(81) 804 final, 1.
Size and nature of Community food aid commitments

decided on 3 December 1982 to increase - by way of compromise - the quantity by 72,337 tonnes to a total of 1,000,000 tonnes using in effect appropriations which the European Parliament had inserted in the 1982 Budget for quantities of cereal food aid in addition to the cereal food aid supplied under the Food Aid Convention.244

Community food aid in cereals over and above the FAC commitment during the period 1977-82

<table>
<thead>
<tr>
<th>Year</th>
<th>Food aid under the FAC</th>
<th>Additional food aid</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976/77</td>
<td>720.5</td>
<td>0.0</td>
<td>720.5</td>
</tr>
<tr>
<td>1977/78</td>
<td>720.5</td>
<td>0.0</td>
<td>720.5</td>
</tr>
<tr>
<td>1978/79</td>
<td>720.5</td>
<td>0.0</td>
<td>720.5</td>
</tr>
<tr>
<td>1979/80</td>
<td>720.5</td>
<td>0.0</td>
<td>720.5</td>
</tr>
<tr>
<td>1980/81</td>
<td>927.7</td>
<td>73.3</td>
<td>1000.0</td>
</tr>
<tr>
<td>1981/82</td>
<td>927.7</td>
<td>73.3</td>
<td>1000.0</td>
</tr>
</tbody>
</table>

As during the earlier part of the seventies the size of the cereal food aid programme during the period 1977-82 was, even after the increases in 1980/81 and 1981/82, still in no relation at all with the objective needs of the Third World for cereal food aid nor with the food aid requests addressed to the Community by developing countries. Under the 1977/78 programme, the Community received requests for food aid in cereals for a total of 2,650,000 tonnes, under the 1978/79

244On the Commission's proposal for an increase of 160,300 tonnes, see Bull. EC 10-1982, 46. On the Council's decision on an increase by 72,337 tonnes to a total of 1,000,000 tonnes, see 16th General Report, 267; and Bull. EC 11-1982, 51; it may be noted that the Council already during its meeting of 22 and 23 November 1982 reached a agreement in principle to increase the Community's cereal food aid programme. Initially, the United Kingdom, Denmark, Germany and France were opposed to any increase arguing that not all cereals available under the 1981/82 programme had been used yet, the Community was already a very generous food aid donor [1], the 1982/83 programme would soon be adopted and finally any increase would disturb the partition of cereal food aid between the Community and the Member States. The real issue was, however, whether the Member States were willing to accept the use of appropriations provided (by the European Parliament)in the 1982 Budget. Note that in 1981/82 there was a record cereal harvest in the Community (See: OECD, Review of Agricultural Policies in the OEDC Member Countries, 1980-1982, 31.).
programme, requests amounted to 3,230,000 tonnes and under the 1979/80 programme to 2,337,000 tonnes.\textsuperscript{249} Under the 1981/82 programme and this for a year in which the food outlook in the developing countries was less gloomy than in previous years, 46 countries requested a total of some 2,100,000 tonnes of cereals. In addition requests were received from a number of international organizations and NGO's.\textsuperscript{250} Throughout the period 1977-82, the total of cereal food aid requests addressed to the Community greatly exceeded the amount of cereal food aid available.

In its Resolution on the proposal for regulations concerning food aid in 1980, Parliament noted, not without a touch of despair:

\[...\] once again the serious imbalance between the quantities of food aid made available by the Community and the nutritional requirements of the developing countries;\textsuperscript{251}

The increases in 1980/81 and 1981/82 were clearly too small to re-establish a balance the availabilities and the needs. As the Commission and Parliament argued, bigger increases were absolutely necessary.\textsuperscript{252} The 1982 IDS/ABC expert study on food aid came out in support of such increases; it noted with regard to the size of the Community's cereal food aid commitment that the size was

\textsuperscript{249}Commission communication concerning food aid regulations for 1979, COM(79) 107 final, 2; and Commission communication concerning food aid programmes for 1980.

\textsuperscript{250}Note the drop in requests in 1980; according to the Commission this indicated a welcome trend towards realism in requests. It is undoubtedly true that the developing countries as a rule somewhat over-estimated their food aid requirements; at the time the requests were made, they had no idea yet what their requirements would be. It should also be noted that, supplying recipients the quantities of food aid they really needed, would often had led to very considerable problems of storage and, in the case of milk powder and butteroil, reconstitution. But even if one took into account these considerations, the quantities supplied by the Community fell much short of the needs. See on this point also: European Parliament Working Documents, Report on the proposals for regulations concerning food aid in 1980 (Rapporteur: Mr V. MICHEL), PE 1-105/80, 9.

\textsuperscript{251}Communication from the Commission to the Council on the 1982 food aid programmes, COM(81) 804 final, 4.

\textsuperscript{252}European Parliament Resolution on the proposals for regulations concerning food aid in 1980, O.J. 1980, C 117/71; see also: European Parliament Working Documents, Report on the proposals for regulations concerning food aid in 1980 (Rapporteur: Mr V. MICHEL), PE DOC 1-105/80, 9.}

\textsuperscript{253}See e.g.: Communication from the Commission to the Council concerning food aid programmes for 1981, COM(81) 41 final, 6 and 16; and Communication from the Commission to the Council on the 1982 food aid programmes, COM(81) 804 final, 1.
inadequate if - and this was the case - a principle objective was to provide assistance to developing countries with their food import requirements (and in doing so provide balance of payment support).\textsuperscript{231} Without making any concrete suggestions regarding the appropriate level of Community food aid in cereals, the expert study concluded that the evidence suggested that it might usefully be increased.\textsuperscript{234} The United Kingdom, however, was not convinced (or had no interest in being convinced) and demanded, on the contrary, repeatedly for a reduction in the size of Community food aid programmes, including the cereal food aid programme, and a reduction in its (national) part under the Food Aid Convention in view of very serious doubts about the value for the development of recipient countries of food aid in comparison with other forms of aid. As none of the other Member States for that matter, the United Kingdom was, however, all but impartial in the discussion on the size of the Community's cereal food aid programme.

Compared with other donors, the modesty of the size of the Community's programme comes clearly to the fore.

\textsuperscript{231} IDS/ABC, 1982, 3.20.
\textsuperscript{234} IDS/ABC, 1982, 5.10.
### Total cereal food aid shipments by donors during the period 1977-82

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251Source: FAO, *L'aide alimentaire en chiffres*, 1983, 14. For comparison with other food aid donors, one has to work with food aid shipment data since the food aid commitments data are not readily available for all donors and all products. For the purpose of comparing the size of programmes, this is, however, no problem.
The Community still supplied less food aid in cereals than Canada and only 7.4% of all cereal food aid. Even if one took into account also the cereal food aid supplied by the Member States, the quantity supplied was still far less than the quantity supplied by the United States.

With regard to dairy food aid, it will be noted that after trebling its dairy food aid commitment in 1976 to 150,000 tonnes, the Community reduced its commitment again to 105,000 tonnes in 1977.\textsuperscript{256} In reaction to this reduction, however, the

\textsuperscript{256}Council Regulation (EEC) of 25 July 1977, O.J. 1977, L 192/1; see also Bull. EC 7/8-1977, 68. Note that the Commission had proposed a milk powder commitment of 150,000 tonnes but that the budget provided appropriations for only 105,000 tonnes (European Parliament Working Documents, Report on the communication concerning the 1977 skimmed milk powder and butteroil food aid programmes (Rapporteur: Mr J.B. BROEKSZ), PE DOC 191/177, 11). On the Commission proposals for the 1977 skimmed milk powder programme, see also Bull. CE 5-1977, 71.
Commission stressed in its above mentioned communication to the Council on the nutritional and development prospects for dairy products in the Third World, the importance of dairy food aid for developing countries and insisted that, given the extent of the needs and the quantities of dairy products available in the Community, an aid volume of 150,000 tonnes of skimmed milk powder should be regarded as an absolute minimum. In 1978, the Community commitment of skimmed milk powder was back to 150,000 tonnes and would remain on this level in 1979, 1980, 1981 and 1982.\(^{257}\) Note that with regard to the size of the skimmed milk powder commitment the Council and the Commission were on one line.\(^{258}\) Requests for food aid in skimmed milk powder (at the moment the programme was drafted) amounted to 292,940 tonnes under the 1979 programme and to 294,000 tonnes under the 1980 programme, 287,000 tonnes under the 1981 programme, and 301,537 tonnes under the 1982 programme.\(^{259}\) In its September 1976 proposal for the second three-year indicative programme (1977-1979), the Commission had suggested to commit annually between 150,000 and 175,000 tonnes of skimmed milk powder and it will be noted that with the exception of 1977, the Community's skimmed milk powder commitment did in fact fall within


the range suggested by the Commission. 260 One should, however, have no illusions with regard to the very regular Community milk powder commitment during the period 1977-82. 261 Rather than indicating that the size of the milk powder programme was no longer linked to the situation on the milk market, it reflected the fact that during this period the dairy surpluses remained constantly high. While Parliament criticized the Commission's indicative programme for skimmed milk powder as too conservative in its estimates of the needs of the developing countries and strongly argued for an increase in the milk powder commitment referring to the massive surplus stocks of this product 262, it was always very keen to stress:

[...] that the basic principles of Community aid must be laid down in conjunction with a long-term development strategy and policy and must not be governed in any way by the existence of agricultural surpluses. 263

Time and again, Parliament reaffirmed during the late seventies:

[...] its firm commitment to a Community food aid policy that is coherent and independent of the policy supporting the agricultural

261 CLAY/MITCHELL, 1983, 104, observe that the annual dairy food aid levels were stabilized during the late seventies by informal internal agreement but that these levels had no developmental rationale.
262 On Parliament's call for a 200,000 tonnes programme, see e.g.: European Parliament Resolution of 27 April 1979 on the proposals concerning food aid regulations for 1979, points 5, 6, and 7, OJ. 1979, C 127/73; in point 7, Parliament considered: "an increase in skimmed milk powder deliveries to be important because skimmed milk powder has a very high nutritional value and is urgently needed in the developing countries and also because the Community is to all intent and purposes the sole supplier of this product"; see also European Parliament Working Documents, Report on the proposals concerning food aid regulations for 1979 (Rapporteur: Mr J.B. BROEKSZ), PE DOC 121/79, 13-14.
Parliament saw no objection to a substantial increase in aid in the event of surplus situations, but insisted that in principle Community food aid must not in any way be determined by the prevailing surplus situation. This is a dangerous argument because clearly if one increased the aid because of the surplus situation, one should in case recipients' needs remain high keep the aid on the same high level even if the surpluses would have gone down considerably.
Eventually, Parliament came to realize that food aid in skimmed milk powder was quite often all but a blessing for developing countries and that more food aid in skimmed milk powder might only benefit European farmers. In its 1980 Resolution on Hunger in the World, Parliament did no longer insist on an increase in the size of the dairy food aid programme. It rather stated that any increase in aid in the form of skimmed milk powder (and butteroil) should be contingent upon the genuine possibility of direct distribution to the people concerned and upon safety guarantees with regard to health.

In 1981 and 1982, this was reportedly to some extent also the position of the Commission which successfully resisted pressure from some Member States (and from within?) to propose an increase in the level of skimmed milk food aid beyond the 150,000 tonnes, arguing that it was currently incapable of ensuring that any additional aid in skimmed milk powder would be well utilized.

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264 European Parliament Resolution of 18 November 1977 embodying the opinion of the European Parliament on the proposals from the Commission of the European Communities to the Council for (I) a regulation amending Regulations (EEC) Nos. 2052/69, 1703/72 and 2681/74 on the Community financing of expenditure resulting from the supply of agricultural products as food aid; (II) a decision amending the Decision of 3 August 1972 (72/335/EEC) on the Community financing of certain expenditure arising from the implementation of the Food Aid Convention of 1971, point 1, OJ. 1977, C 299/57; see also European Parliament Resolution of 27 April 1979 on the proposals concerning food aid regulations for 1979, point 16, OJ. 1979, C 127/73.

265 Note that the Select Committee on the European Communities of the House of Lords in a 1980 Report on the Community's food aid policy went a step further and requested that the overall size of the dairy food aid programme would be reduced given the high budgetary cost of this programme and the dubious suitability of dairy products for many developing countries (see page XXXIII).


In her Working Document on Community food aid, Mrs. Focke argued for a limited use of skimmed milk powder as food aid but added that if requests for the 'correct' use would surpass the availabilities, Parliament should vote for an increase (European Parliament Working Documents, Working Document on an effective food aid policy that taken into account the needs of hunger-stricken countries and peoples - emergency aid (Sub-Rapporteur: Mrs K. FOCKE), PE DOC 1-341/80, 81.).

267 "[...] la Communauté estime ne pas être en mesure d'accéder à cette demande, car une utilisation efficace ne paraît pas garantie". (COMMISSION OF THE EC, L'Europe Verte, No 175, 8). See also: COMMISSION OF THE EC, 'Food aid from the Community, a new approach', Europe Information Development, December 1982, 9.

Without a proposal of the Commission for an increase in the milk powder programme, there was no change for getting an increase adopted by the Council. While there might have been a qualified majority to adopt an increase proposed by the Commission, there certainly was no unanimity needed
pointed out, food aid in skimmed milk powder raises a manifold of problems concerning to its reconstitution, its conservation, its distribution, its compatibility with local food habits, etc. The danger of a reconstitution in the wrong dosages and with germ-infested water is only too real in many developing countries. Correct and hygienic reconstitution, conservation, distribution and use can often only be guaranteed (to some extent) in the context of institutionally controlled distribution. This, however, limits the quantities of food aid a country can take in and thus the size of the donor's food aid programme.

Community food aid in butteroil was in 1974 set at 45,000 tonnes and remained at this level until 1981 included. A commitment of 45,000 tonnes was the lower limit of the range proposed by the Commission in its second, three-year indicative programme (1977-79). The Commission repeatedly called for an increase in the butteroil programme in order to keep pace with the growing demand for food aid in butteroil. In 1978 applications for butteroil addressed to the Community at the time of the drafting of the programme amounted to 92,000 tonnes, in 1979 to 149,000 tonnes, in 1980 to 136,000 tonnes, in 1981 to 117,000 tonnes, and in 1982 to 106,000 tonnes. In November 1979, the Commission proposed to increase the 1979 butteroil food aid programme with an additional 10,000 t of butteroil. In to amend a Commission’s proposal not providing for an increase.

268 In many cases, developing countries cannot afford the equipment necessary to sterilize the milk so they merely pasteurize it. This means, however, that the milk has to reach the consumer within two or three days.


271 COM(80) 57 final, 14; COM(81) 41 final, 31; and COM(81) 804 final, 19.

272 Commission proposal for a regulation amending Regulation (EEC) No 939/79 laying down general rules for the supply of milk fats to certain developing countries and specialized bodies under the 1979 food aid programme, OJ. 1979, C 300/11; see also: Bull. EC 11-1979, 70 and European
June 1979, the Council, during the discussion on the Agricultural Prices for 1979/80, had given its support to such an increase, referring to "the persistent imbalance on the butter market". The Council, however, never adopted this 10,000 tonnes increase.

In the preliminary draft budget for 1980, the Commission inserted appropriations for the supply of 65,000 tonnes of butteroil, which represented a 20,000 tonnes increase in comparison with the 1979 programme. In order to begin the execution of the 1980 programme without awaiting the adoption of the 1980 budget, the Commission proposed, however, to supply under the 1980 butteroil programme only the quantity committed under the 1979 programme, leaving open the possibility of a additional programme later in the year after the adoption of the Budget. The Council adopted this quantity but there never was an additional programme.

In its preliminary draft budget for 1981, the Commission proposed again an increase in the quantity of butteroil and added that if its request was not granted, another solution would have to be found in order to meet the developing countries substantial oils and fats requirements and it suggested the supply of vegetable oils and fats. The Budgetary Authority, however, did not accept the proposed increase in the butteroil programme and, the Commission, consequently, proposed for 1981 a butteroil programme providing for 45,000 tonnes, i.e. the same quantity as...
the previous years.\textsuperscript{276} The Council accepted this quantity.\textsuperscript{277} For the 1982 programme, the Commission proposed again the same quantities.\textsuperscript{278} Initially the Council accepted this quantity\textsuperscript{279} but later - in spite of the Community's very considerable surpluses of butter - this quantity was reduced to 41,762 tonnes (to increase the more cost-effective food aid in vegetable oil). While the reduction in butteroil food aid was fairly modest in size, it nevertheless marked a turning point in the development of the Community's dairy food aid. The size of the programme had been reduced in defiance of CAP considerations.

It is important to note that during the period 1977-82, the Community was the biggest donor of food aid in skimmed milk powder and virtually the only donor of food aid in butteroil.

\textsuperscript{276}Communication from the Commission to the Council concerning food aid programmes for 1981, COM(81) 41 final, 32.


\textsuperscript{278}Communication from the Commission to the Council on the 1982 food aid programmes, COM(81) 804 final, 1.

1977-82: Shifting the balance of compromise

Total skimmed milk powder food aid shipments by donors during the period 1977-82

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Source: FAO, *L'aide alimentaire en chiffres*, 1983, 18. For comparison with other food aid donors, one has to work with food aid shipment data since the food aid commitments data are not readily available for all donors and all products. For the purpose of comparing the size of programmes, this poses, however, no problem.

Idem.
With regard to food aid in sugar, it should be noted that the commitments of sugar remained at more or less 6,100 tonnes until 1980, in which year the Community for the first time supplied sugar to a recipient other than the UNRWA and the total commitment amounted to 7,200 tonnes, although the Commission had proposed in the preliminary draft budget a programme of 10,000 tonnes (6,200 tonnes for the UNRWA and 3,800 tonnes for emergency actions). In 1981, the Community’s commitment of food aid in sugar dropped to 6,100 tonnes but in the 1982 Community sugar food aid commitment amounted to 10,000 tonnes (6,068 for the UNRWA and 3,914 tonnes for various developing countries).

As indicated above the Community supplied during the period 1977-82, throughout the whole period to the UNRWA and as from 1979 onwards also to various developing countries and other international organizations, food aid in the form of products other than cereals, dairy products and sugar. The quantities of corned beef and tomato paste to be bought by the UNRWA with the Community’s cash contribution amounted to respectively 520 tonnes and 42 tonnes in 1977 and 1978 under the 1976 EEC-UNRWA Convention and to respectively (‘no less than’) 340 tonnes and 26 tonnes in 1979 and 1980 under the 1980 EEC-UNRWA Convention. The quantities of ‘other products’ granted in 1979 and 1980 to beneficiaries other than the UNRWA were very modest. In 1979, the Community’s commitment of food aid in ‘other products’ amounted to 5,7 m EUA; in 1980, this commitment amounted to 4.7 m ECU.

In 1981 and 1982, the Community’s commitment of food aid in ‘other products’

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282 Communication of the Commission to the Council concerning food aid programmes for 1980, COM(80) 57 final, 1.


285 See: Section 3.1 of this Chapter.


became more important. Apart from marginal quantities of corned beef, tomato paste, legumes, burghol preserved meat and tea supplied to the UNRWA under the 1981 EEC-UNRWA Convention as amended in 1982, the Community's commitment amounted in 1981 to 11,000 tonnes of vegetable oil and 3,195 tonnes of red kidney beans and in 1982 to 12,378 tonnes of vegetable oil and 7,034 tonnes of red kidney beans.288

Finally, it will be recalled that the Community decided on 21 December 1981 in the context of the Community's Plan of Action against Hunger on an exceptional 40 m ECU food aid programme in favour of the least developed countries.289 The 40 m ECU were inserted in the supplementary budget No 2/1981 on line 9230, 'Food aid in other products' and allowed the Community to supply a wide variety of products including wheat, rice, vegetable oil, sugar, beans, millet and maize for a total of about 230,000 tonnes of cereal equivalent.290 It deserves to be stressed that the quantities of food aid supplied under this 40 m ECU programme were additional to the quantities of cereals, sugar and other products mentioned above. This exceptional food aid programme, which was motivated only by the wish to come to the aid of the poorest countries, was a clear indication of the shifting balance of compromise between the objectives of the Community's food aid policy.

Earlier in this Chapter, I already mentioned the Parliament's 1982 Resolution named after its promoter, Mr. Pannella, calling for a 5000 m ECU special food aid programme.291 As I noted, the Commission was, however, very much opposed to


291See: Section 2.2 of this Chapter. Note in particular the procedure by which this Resolution was adopted.
such a programme which, it argued, would not solve the food problem and eradicated hunger in the world.\textsuperscript{292} In June 1982, the Pannella Resolution was discussed in Parliament when the latter examined (on the basis of a report by Mr V. Michel) the action against world hunger undertaken by the Community since its 'Hunger in the World' resolution of 18 September 1980. After a heated debate between Mr Michel and his supporters (who shared the Commission's view that what was needed was a long term effort rather than a spectacular and dramatic crash programme) and Mr. Pannella and his followers (who did not deny the need for a long term effort but insisted on the necessity of a huge programme for the people starving now), the majority of Parliament approved the Michel approach.\textsuperscript{293}

With regard to the size of the Community's food aid commitments in budgetary terms, it should be noted that during the period 1977-82, the commitments went up (in nominal terms) by an impressive 100\% from 375.8 m u.a. in 1977 to 766.3 m ECU in 1982.\textsuperscript{294} Only in 1981, there was a very slight drop in the food aid budget in spite of increased cereal food aid, stable dairy food aid, and the 40 m ECU exceptional food aid programme.\textsuperscript{295}

When one looks at the size of the food aid budget in comparison with the Community budget, or in other words, how much of the Community budget was spent on food aid, one cannot but note that after reaching a maximum of 4.5\% in 1980, the Community spent relatively less money on food aid in 1981 (3.6\%) and 1982 (3.3\%), the years of the Community's campaign against world hunger. Although increasing, the food aid budget did not increase as fast as the total Community budget.

\textsuperscript{292}Bull. EC 3-1982, 59.


\textsuperscript{294}It should be noted, however, that also during the period 1977-82, the Community expressed its food aid commitments in physical terms, i.e. in tonnes, rather than in money terms. This was to the advantage of the recipient countries which were as a result less vulnerable to the fluctuation of prices on the world market.

\textsuperscript{295}The 1981 drop seems to be primarily related to a drop in commitments in budgetary terms for food aid in dairy products.
### Community food aid commitments in budgetary terms during the period 1977-82

(in m.u.a.)

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| Community budget | 9607.0 | 12702.3 | 14576.7 | 15428.3 | 19327.6 | 23260.1 |
| % food aid (Grand total) | 3.9 | 3.7 | 4.4 | 4.5 | 3.6 | 3.3 |


297 Note that following the supplementary budget No 2/1981, 40 m ECU for the exceptional food aid programme in favour of the least developed countries were entered on the budget line 'Food Aid in Other Products'.

298 Before 1980, these appropriations were included in the appropriations for the products (See: 1980 Budget, O.J. 1980, L 242/547 (Remarks)).

299 An appropriation of 2,600,000 EUA was entered in Chapter 10 of the Budget. Note that the appropriations for the cash contributions under the 1976 EEC-UNRWA Convention (1975-1978) were not entered in Chapter 92 but in Chapter 94.

300 An appropriation of 3 m EUA had been entered in Chapter 10.0 for the 1981 EEC-UNRWA Convention which was being negotiated.

301 An appropriation of 200,000 EUA was entered in Chapter 10 of the Budget.
Size and nature of Community food aid commitments

The evolution of Community food aid commitments in budgetary terms during the period 1977-82

The evolution of the Community food aid budget in comparison with the Community's development cooperation budget during the period 1977-82
One cannot but note that the Community’s dairy food aid programme - i.e. the programme which more than the other programmes served as a surplus disposal instrument and of which the cost-effectiveness was poor and the value for development questioned - was clearly the most important programme in the period 1977-82. The 1982 IDS/ABC study critically remarked:

The contribution that the [Community’s food aid] programme can make to growth (in the macro-economic sense) is limited by the dominance of dairy products.

If the economic and social development was to be the primary objective of the Community’s food aid policy, the latter would have to reduce its dairy programme and correspondingly expand its other programmes (and in particular its cereals programme) which - experts agreed - were more likely to make a cost-effective, positive contribution to the development efforts of the food aid recipients. The 1982 reduction of the butteroil programme was a first, albeit modest step in that direction.

With regard to food aid in 'other products', it must be observed that the budget provided from 1977 onwards for a specific budget line, the budget line 'Food Aid in Other Products', but that until 1982, this line started every year with a token entry. In 1979, 1980 and 1981, however, expenditure incurred as a result of the supply of other products was charged to this budget line. In 1979, this amounted to 5.7 million EUA, in 1980 to 4.7 million and in 1981 to 10.2. In its 1980 Communication on food aid, the Commission insisted that in the future this budget line would contain a regular commitment rather than a token entry to allow the

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Note, however, that following the supplementary budget No 2/1981, 40 m ECU for the exceptional food aid programme in favour of the least developed countries were entered on the budget line 'Food Aid in Other Products'.

352
Size and nature of Community food aid commitments

Community to secure and develop its programme of food aid in 'non-traditional products'. Fully in agreement with this objective, Parliament entered for the first time in the 1982 Budget appropriations for food aid in products other than cereals, dairy products and sugar; it entered 5 m ECU in the budget line 'Food aid (other commodities)' and 5 m ECU in a newly created budget line 'Food aid in vegetable oil'. In the absence of a legal basis, i.e. a Council regulation authorizing food aid in non-traditional products, however, the use of these appropriations (by the Commission) turned out to be a major problem. In Section 3.5 of this Chapter, I will come back to the controversy to which the use of these appropriations gave rise. In the present context it suffices to mention that after months of difficult negotiations, a pragmatic, ad hoc solution was found which allowed for the use of the appropriations provided for in the 1982 budget. At its meeting of 25/26 October 1982, the Council adopted a decision sui generis authorizing the Commission to decide on certain emergency food aid measures in the form of products other than cereals and milk products.

As I already observed above, the appropriations entered in the budget did, however, not always give a very accurate picture of the food aid commitments in budgetary terms. This was due to what Mr H. Aigner described in a 1975 report as financial juggling and the Court of Auditors called in its 1980 Special Report budgetary juggling or budgetary acrobatics. First, because the budgetary estimates took insufficient account of the actual rate of implementation of the food aid

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305 O.J. 1982, L 31/730; the 1981 budget provided for only one Article for food aid in other products, namely Article 923 for food aid (other commodities); the 1982 budget provided for two Articles: Article 923 for food aid in vegetable oil and Article 924 for food aid (other commodities).

306 Note that also the use of the appropriations provided for food aid in sugar (Article 922 of the Budget) to the extent that these appropriations were in excess of what was needed to meet the commitments under the EEC-UNRWA Convention was problematic.

307 See: Section 3.5 of this Chapter.


309 European Parliament Working Documents, Report of Mr H. AIGNER, PE DOC 364/75; COURT OF AUDITORS, Special Report 1/80, 42 and 47.

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programmes, second, because of the absence of a differentiation between commitment and payment appropriations, third, because of the system of split-financing, and, fourth, because of unforeseeable variations in the world price of the products supplied and thus in the export refunds, there were each year important carry-overs of appropriations in Chapter 92, massive cancellations of appropriations in Chapter 92 carried over, the use of budget lines 'prior programmes' to reintroduce appropriations which had been cancelled, and transfers of appropriations between Title 6 and Chapter 92 and between 'present programme' lines and 'prior programmes' lines. As a result, the appropriations entered in the budget did not give a very accurate picture of the food aid commitment in budgetary terms. During the period 1977-82, this called forth strong criticism from both Parliament and the Court of Auditors.

In order to present food aid appropriations in the budget 'in a way that was more consistent with the nature of the operations financed' and met the need for greater

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310 On the contrary, Article 102 of the 1977 Financial Regulation applicable to Chapter 92 stipulated that: "[...] every food aid operation shall as soon as possible be made the subject of a proposal for commitment". This commitment took place as soon as the Council had approved the annual programme and concerned all appropriations even though it was perfectly clear that much of these appropriations would not be used during the budget year because of slow implementation of the programme (COURT OF AUDITORS, Special Report 1/80, 46.).

311 E.g.: 90% of the appropriations for the 1977 skimmed milk powder programme were carried over, 81% of the 1978 programme and 70.4% of the 1979 programme (COURT OF AUDITORS, Special Report 1/80, 43.). Note that appropriations entered in the EAGGF-Guarantee section could not be carried over; if these appropriations were not used at the end of the year, they had to be cancelled.

312 E.g. out of the appropriations for food aid in butteroil carried over from 1977 to 1978 24.1% were cancelled at the end of 1978 (COURT OF AUDITORS, Special Report 1/80, 43.). Note that Chapter 92 appropriations could be carried over one year but at the end of that year's grace they had to be cancelled.

313 In Chapter 92, these lines were used to reintroduce appropriations unused after two years and therefore cancelled; in EAGGF-Guarantee section, these lines were used to reintroduce appropriations unused during the year for which they were entered.

314 In Chapter 92 of the 1978 Budget, for example, 33.8 m EUA were transferred from the '1978 programme' line to the 'prior programmes' line, a line which started the year with a token entry in order not to inflate the food aid budget and in the knowledge that an important part of the appropriations on the 'current programme' would not be used (COURT OF AUDITORS, Special Report 1/80, 45.). See also for example: COURT OF AUDITORS, Annual Report 1978, 108 and 109.

315 COURT OF AUDITORS, Special Report 1/80, 42.
budgetary transparency and better management, the Commission proposed in January 1979 to group together all food aid appropriations in Chapter 92, the food aid chapter of the Budget.\footnote{COM(79) 1 final, 3; see also: Section 2.1 of this Chapter.} Both Parliament and the Court of Auditors welcomed this proposal.\footnote{European Parliament Resolution of 12 February 1979, OJ. 1979, C 93/75; COURT OF AUDITORS, Opinion of 8 March 1979, OJ. 1979, C 139 and COURT OF AUDITORS, Special Report 1/80, 32.} The Commission's proposal was, however, not adopted and that was fortunate. While the grouping of food aid expenditure in Chapter 92 might have improved budgetary transparency and management, it would have betrayed the true nature of the Community's food aid policy. Food aid was not merely an instrument of development cooperation and humanitarian assistance but also a common agricultural policy instrument and the system of split financing reflected this dual nature. To group all food aid expenditure, including the export refunds, Chapter 92 would have been bogus. A more appropriate, be it imperfect remedy for the budgetary acrobatics was undoubtedly the introduction of a system of differentiated appropriations, i.e. to distinguish within the budget between commitment appropriations and payment appropriations. Note that a system of differentiated appropriations would not only allow to clean up some the budgetary mess but was indispensable if the Community wanted to make multi-annual food aid commitments.\footnote{See more on multi-annual commitments later in section 3.2.2 of this Chapter.} The Court of Auditors strongly advocated such a system of differentiated appropriations in its 1980 Special Report but it would nevertheless take several years before the Commission took concrete steps in this direction.\footnote{COURT OF AUDITORS, Special Report 1/80, 49. Note that the Court of Auditors had already in its 1978 Report suggested the introduction of differentiated appropriations (COURT OF AUDITORS, Annual Report 1978, 109.). The 1982 Budget already provided for different columns for commitment appropriations and payment appropriations, but the appropriation entered were not differentiated yet (see: 1982 Budget, OJ. 1982, L 31.).}
3.2.2 The nature of the Community's overall and specific food aid commitments during the period 1977-82

During the period 1977-82, the overall cereal food aid commitments were - due to the 1971 Food Aid Convention and the Protocols extending this Convention and the 1980 Food Aid Convention - multi-annual. Multi-annual as well were the food aid commitments in various products under the 1976, 1980 and 1981 EEC-UNRWA Conventions. Overall food aid commitments in dairy products, however, were annual commitments. As already observed above, the Commission's proposal for a second, three-year indicative programme (1977-79) was as unsuccessful as its proposal for a first, three-year indicative programme (1974-76). Proposed in September 1976, it was withdrawn by the Commission at the Council's meeting of 22 March 1977, after which the Commission undertook no more attempts to overall multi-annual programming.

At the close of the seventies it was recognized that while it was not unimportant to have some assurances concerning the total food aid commitments in the years to come, it was far more important for a developing country to have some guarantee about quantity of food aid it could expect during following years since without such a guarantee it was very difficult to integrate food aid into its development effort. In other words, recipient-specific multi-annual commitments were recognized as more important than overall multi-annual commitments. Consequently the 1978 Commission proposal for a food aid framework regulation provided for the possibility of multi-annual food aid commitments to individual recipients. The 1979 Commission proposal was no different in this respect and

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320 With the exception of the 73,300 tonnes supplied in 1981/82 over and above the Convention commitment.

321 Note, however, that the 1980 Convention provided for a retroactive commitment for 1979.

322 Although in its 1978 and 1979 proposals for a food aid framework regulation, the possibility for deciding the total quantities of each product on a multi-annual basis was provided for.

323 Article 2 stipulated: "The Commission [...] shall take decisions [...] on: the annual or multi-annual distribution of the quantities available among countries and organizations [...]" (COM(78) 204 final, Annex 1, p. 3). The Regulation provided also for the possibility to establish the total quantities of each product on a multi-annual basis (Article 1).
in its communication of July 1980, the Commission stressed once more the need for multi-annual food aid commitments if food aid really was to make a contribution to the economic and social development of the recipient country.\textsuperscript{24} Parliament repeatedly called for multi-annual commitments and in its Resolution of 20 January 1978 on the communication concerning the 1978 programme for food aid in cereals, skimmed milk powder and butteroil, it stated:

[Parliament] calls in particular upon the Council to switch over to multi-annual food aid commitments in order to make it possible to include food aid measures in development programmes [...]\textsuperscript{25}

Also in its Resolution of 18 September 1980 on Hunger in the World, Parliament called explicitly for the introduction of multi-annual commitments.\textsuperscript{26} In its Resolution of 11 November 1980 on the use of Community food aid to attain food security objectives in developing countries, adopted in reply to Parliament’s Resolution on Hunger in the World, the Council explicitly agreed on the principle of multi-annual food aid commitments. The Council’s Resolution stated that:

Food aid programmes may include, as well as annual allocations, amounts that are covered by multi-annual commitments to recipient countries, on the understanding that such quantities are in no way additional and must not represent more than a reasonable proportion of the aid.\textsuperscript{27}

\textsuperscript{24}Article 5 for the possibility of a multi-annual commitment of food aid to a country or organization and Article 4 for the possibility of overall multi-annual commitments (COM(79) 1 final, Annex 1, 3); and COM(80) 478 final, 5.

\textsuperscript{25}European Parliament Resolution of 20 January 1978 on the communication concerning the 1978 programmes for food aid in cereals, skimmed milk powder and butteroil and the nutritional and developmental perspectives for dairy products in the Third World, point 3; note also point 8 of this resolution; see also European Parliament Resolution of 16 March 1979 on the proposals concerning food aid regulations for 1979, point 15, O.J. 1979, C 127/73.

\textsuperscript{26}European Parliament Resolution of 18 September 1980, point 32.

\textsuperscript{27}Council Resolution of 18 November 1980 on the use of Community food aid to attain food security objectives in the developing countries, point 1, published in COM(81) 41 final Part IV, Appendix III.
1977-82: Shifting the balance of compromise

Interesting to note are the limitations the Council put on the amounts of food aid which the Community could commit on a multi-annual basis. As I already pointed out above, these limitations did not appear in the Commission’s draft of this resolution and were indicative for the compromise which had to be reached within the Council where some Member States were very reluctant to give up the ‘flexibility’ which had always characterized Community food aid.

One should also note in this context that the Community was bound under the 1980 Food Aid Convention to make as much as possible multi-annual rather than annual commitments. Article III (2) of the latter Convention stipulated:

To the maximum extent possible, contributions shall be made by members [...] on a forward planning basis, so that the recipient countries may be able to take account, in their development programmes, of the likely flow of food aid they will receive during each year of this Convention. [...] \(^{330}\)

Also the Guidelines and Criteria for Food Aid, unanimously adopted in May 1979 by the FAO/WFP Committee on Food Aid Policies and Programmes stressed the importance of multi-annual commitments. In point (c) of the Guidelines, it reads:

In order to facilitate effective planning and implementation of development and nutrition programmes, governments of recipient countries needed to have assurance of adequate food supplies over a sufficiently long period. To that end, all donor countries should make every effort to accept and implement forward planning, preferably on a multi-annual basis, in physical terms as appropriate, so as to ensure continuity of food aid. [...] \(^{331}\)

\(^{328}\)See: Section 2.2 of this Chapter.

\(^{329}\)In the past, the Council had shown a reluctance to give up its powers of allocations or its final control over annual quantities by means of the budget (COM(80) 478 final, 4.). The ‘flexibility’ in the sense of the absence of any longer-term commitments was (and is) much valued by those Member States who look on food aid as a surplus disposal instrument (or as an instrument of foreign policy).


\(^{331}\)For the text, see: TOMASEVSKI, 1987, 249.
During the period 1977-82, however, all, but one or perhaps two, specific food aid commitments were still annual commitments which left recipients in the dark as to possible Community food aid supplies in the years to come. One exception was definitely the commitment to supply food aid in various products to the UNRWA under the 1976, 1980 and 1981 Conventions with this organization but as regards other exceptions, matters are not as clear. The noted 1978 commitment to supply annually 31,000 tonnes of milk powder and 12,700 tonnes of butteroil as food aid to India in the context of Operation Flood II - a vast 7-year rural development programme aimed at setting up a local dairy industry - is often referred to as a multi-annual commitment. In reality, this was not a genuine multi-annual commitment; the Council merely "[agreed] in principle to favourably consider continuing the Community's contribution to 'Operation Flood II' for a trial 3 years period". It should be noted, however, that while this commitment was not a multi-annual commitment in legal terms, it was one in political terms and as such it constituted a considerable breakthrough. Unfortunately, it was the only commitment of this sort the Community made in the late seventies. In the light of the Council agreement in principle to multi-annual commitments in its Resolution of November 1980, the Commission reportedly submitted to the Council in September 1981 proposals for two multi-annual dairy programmes, one for Honduras and one for Tunisia. There is, however, no record of these proposals being accepted. The Council did accept in 1982 food aid operation in skimmed milk powder and butteroil in favour of Zimbabwe which was presented by the Commission as the first year's allocation under a four-years' programme.

Note, however, that while the commitment was annual the implementation often took considerably longer. See: Sections 1.2.5. and 1.2.6. of this Chapter.

COM(80) 478 final, 4, footnote (1); but contra Bull. EC 1-1978/49 and Bull. EC 4-1978/69 which would lead one to believe that it was a genuine multi-annual commitment. The "unwillingness" of the Council to undertake a multi-annual commitment in the Flood II case was also noted and deplored by the Court of Auditors (COURT OF AUDITORS, Special Report 1/80, 49.).


Bull. EC 7/8-1982, 61. This operation was also mentioned as a multi-annual food aid operation by NICORA, 1982, 13.
Even if the latter operation was a genuinely, multi-annual operation (which in the absence of specific data was impossible to establish), it is still true that for all practical reasons and this in spite of the Council's agreement in principle, the Community made virtually no multi-annual food aid commitments in favour of a specific recipient. The 1982 IDS/ABC study stressed that a major problem of Community food aid was its annual programming which made it virtually impossible to provide support either for food strategies in general or for particular projects financed by counterpart funds and urgently recommended the introduction of a multi-annual programming cycle which incorporates formal, multi-annual, contractual agreements between the Community and the food aid recipient.\footnote{IDS/ABC, 1982, X. Also Nicora stressed the need for multi-annual commitments: "[...] c'est le besoin de prévisibilité et, plus encore, de sécurité" (NICORA, 1982, 11).} The resistance against multi-annual commitments ran, however, very deep.\footnote{See for more details Chapter 3.}
3.3 The allocation of Community food aid

3.3.1 The recipients of Community food aid

During the period 1977-82, the number of recipients of Community food aid in cereals as well as dairy products was still on the increase. In 1977, for example, 43 developing countries, and 5 international organizations received a total of 720,500 tonnes of cereals and 32 developing countries, 5 international organizations and an unspecified number of NGOs' received a total of 45,000 tonnes of butteroil. In 1981, however, 47 developing countries, 5 international organizations and an unspecified number of NGOs' received a total of 927,663 tonnes of cereals and 38 developing countries, 4 international organizations and an unspecified number of NGOs' received 45,000 tonnes of butteroil. Note, however, that in 1982 the number of recipients of cereals and butteroil fell more or less back to 1977 levels.

Given the total quantities of food aid available, the number of recipients was throughout the period very high. The Community gave to many but often gave not very much. As during the previous period, this scattering of Community food aid over the whole world was all but accidental but reflected a basic policy choice on the part of the Community to give food aid to - and thus create goodwill in - as many countries as possible, even if the excessive dispersion of the modest quantities of food aid available undoubtedly reduced the latter's effectiveness. It is beyond any doubt that the Community would have been able to manage its food aid better and optimize the latter's contribution to development and relief if it would have concentrated its food aid on a smaller number of countries. By 1982,

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338 The data below do not take into account the quantities of food aid supplied under the 40 m ECU exceptional food aid programme in favour of the least developed countries. They also do not take into account the "food aid" supplied to Poland in the early eighties (about 400,000 tonnes of agricultural products at concessional prices).

339 Note that this was not the case for food aid in skimmed milk powder. The number of recipients of skimmed milk powder remained at more or less the same level since 1979 (around 40) after having reached an absolute peak in 1978 with 46 recipient countries.
the Community seemed to have understood this and attempted (with some success) to bring down the number of recipients.

The biggest recipient in absolute quantities of Community food aid in cereals during the period 1977-82 was (as during the period 1969-76) Bangladesh (700,000 tonnes) closely followed by a newcomer among the Community's top cereal food aid recipients, Egypt (690,000 tonnes). In the top five, one also found the WFP (435,000 tonnes), Pakistan (240,000 tonnes) and the UNRWA (197,690 tonnes). To India and Indonesia, two of the biggest recipients in the period 1969-76 no or virtually no food aid in cereals was given in the period 1977-82.

The biggest recipient in quantities per capita, however, was Cape Verde; it received during the period 1977-82 a total of 150.34 kg of cereals for each of its inhabitants. The other countries in the top five of biggest recipients in quantities per capita were Sao Tomé (85.88 kg), Djibouti (56.45 kg), the Comoros (46.06 kg) and Guinea Bissau (43.26 kg). Note that none of these countries had a population of any significance. One could argue that these countries were the real 'favourites' of the Community, but it is also true that even the smallest consignment of cereal food aid the Community could reasonably give taking into account transport costs, was to represent an impressive quantity per capita for these countries.

Note also that of the top five of biggest recipients in absolute quantities, Egypt received in fact a very respectable 16.62 kg per inhabitant. Bangladesh received 7.93 kg per inhabitant and Pakistan 2.79 kg.

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340 Other important recipients were Sri Lanka (183,000 tonnes) and Somalia (159,500 tonnes)

341 Note that Somalia which ranked seventh on the list of top recipients in absolute quantities, received an impressive 39.69 kg per inhabitant.
## Allocation of Community Food Aid

The allocation of Community food aid in cereals during the period 1977-82 (absolute quantities and quantities per capita)

(Source of basic data: CEC, FAO and UNCTAD)

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363
### 1977-82: Shifting the balance of compromise

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Total: 1354.50 (absolute), 2.79 (per capita)
The biggest recipient in absolute quantities of Community food aid in skimmed milk powder during the period 1977-82 was - as during the period 1969-76 - the WFP which received in total 177,010 tonnes of skimmed milk powder from the Community. A close second was India with 160,000 tonnes, followed by the NGOs' (127,450 tonnes), Egypt and UNICEF (21,600 tonnes). Note that Bangladesh was not in the top five; in fact, the latter received merely 9,500 tonnes and most of this in 1978 while in the other years it usually received no food aid in skimmed milk powder from the Community. Impressive, on the contrary, was the quantity granted to India, most of which was granted in the context of the Operation Flood II. Again the largest recipient countries was an Asian mega-country but note that 3 out of the five main recipients were not developing countries but organizations. The biggest recipient in quantities per capita, however, was Grenada (10.75 kg), Antigua (8.45 kg), Cape Verde (8.36 kg), Comoros (6.82 kg.) and the Seychelles (5.15 kg). A top five with three African countries and two Latin American countries, all with a very small population. Of the big recipients in absolute quantities, India received 0.23 kg and Egypt 1.13 kg per capita.
### Allocation of Community food aid

The allocation of Community food aid in skim during the period 1977-82

(Source of basic data: CEC, FAO and UNCTAD)

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1977-82: Shifting the balance of compromise

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369
1977-82: Shifting the balance of compromise

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The biggest recipient in absolute quantities of Community food aid in butteroil during the period 1977-82 was India which received 66,500 tonnes, most of it in the context of the Operation Flood II, followed by WFP (34,700 tonnes), UNRWA (18,100 tonnes), Egypt (16,760 tonnes) and Bangladesh (15,500 tonnes).

The biggest recipients in quantities per capita, however, were Sao Tomé (11.76 kg), Cape Verde (5.07 kg), Mauritania (3.13 kg), Jordan (1.88 kg) and Lebanon (1.69 kg). India received 0.10 kg per capita, Egypt 0.40 kg and Bangladesh 0.18 kg. It is interesting to note the similarity between the top recipients in this period and the previous period.
Allocation of Community food aid in butteroil during the period 1977-82
(absolute quantities and quantities per capita)

(Source of basic data: CEC, FAO and UNCTAD)

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1977-82: Shifting the balance of compromise

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While in the period 1969-76, 50.5% of all direct Community food aid in cereals went to Asia and 33% to Africa, in the period 1977-82 the partition was exactly the reverse: 54.3% went to Africa and 34.9% to Asia. This is exactly what one would hope to find in a period during which Africa's agricultural disaster became apparent to everybody while many of the traditional cereal food aid recipients in Asia and in particular India became cereal exporters. Note that virtually no cereal food aid went to European countries and that both the Middle East (5.8%) and Latin America (4.9%) received about as much, which did 'injustice' to the latter.

Among the Asian countries, Bangladesh was the main recipient both in absolute quantities (700,000 tonnes) and quantities per capita (7.93 kg) of Community food aid in cereals. Among the African countries, Egypt (690,000 tonnes) was the main recipient in absolute terms and Cape Verde (150.34 kg !) the main recipient in quantities per capita of Community food aid in cereals; among the European recipients (2), Cyprus was both the main recipients in absolute terms (5,000 kg) and in quantities per capita (7.95 kg); among the Middle East countries, Lebanon was both the main recipient in absolute quantities (95,000 tonnes) and in quantities per capita (35.59 kg); and finally among the Latin American countries, Chile was the main recipient in absolute quantities (51,500 tonnes) and Dominica the main recipient in quantities per capita (41.30 kg).
The quantities of cereal food aid allocated to Asia which had increased sharply in the period 1969-76, remained during the period 1977-82 more or less on the same absolute level. The quantities allocated to Africa, on the contrary, remained until 1979/80 included on roughly the same absolute level but sharply increased in the early eighties. Community cereal food aid to the Middle East decreased gradually both in absolute and relative terms while cereal food aid to Latin America remained fairly stable, be it unimpressive in absolute terms.
1977-82: Shifting the balance of compromise

The evolution in the regional partition of direct Community food aid in cereals during the period 1977-82

Unlike during the period 1969-76, when slightly more skimmed milk powder went to Africa than to Asia, in the period 1977-82, 49% of all direct food aid in skimmed milk powder went to Asia and 37% to Africa. The rest went mainly to Latin America (11%) and the Middle East (4.6%).

Among the Asian countries, India - and no longer Bangladesh - was the main recipient in absolute quantities (160,000 tonnes) and Laos was the main recipient in quantities per capita (0.50 kg) of Community food aid in skimmed milk powder.

Among the African countries, Egypt (47,000 tonnes) was the main recipient in absolute terms and Cape Verde (8.36 kg) the main recipient in quantities per capita; there was only one European recipient, Malta which received 1,350 tonnes; among the Middle East countries, Jordan was both the main recipient in absolute quantities (7,500 tonnes) and in quantities per capita (2.57 kg); and finally, among the Latin American countries, Honduras was the main recipient in absolute quantities (13,380 tonnes) and Grenada the main recipient in quantities per capita (10.75 kg).
The evolution of the regional partition of direct food aid in skimmed milk powder in the period 1977-82 was quite regular. With the exception of 1977, Asia was the biggest recipient. In 1978 the latter reached a peak and fell back slightly in the following years. The quantities of food aid in milk powder to Africa during the period 1977-82 went slightly up and down but on the whole were on the increase; note that Africa was closing in on Asia in the early eighties. Direct food aid in skimmed milk powder to Latin America doubled in 1978 and then stayed roughly on that level while direct food aid in skimmed milk powder to the Middle East had to tendency to decrease.
As during the period 1969-76, Asia was during the period 1977-82 the major recipient of direct Community food aid in butteroil (53.6%), followed by Africa (31.0%). The rest was divided between Latin America (8.1%) and the Middle East (7.3%). Europe did not receive any food aid in butteroil in the period 1977-82.

Among the Asian countries, India was the main recipient in absolute quantities (66,500 tonnes) but Bangladesh was the main recipient in quantities per capita (0.18 kg) of Community food aid in butteroil. Among the African countries, Egypt (16.760 tonnes) was the main recipient in absolute terms and Sao Tomé (11.76 kg) the main recipient in quantities per capita; among the Middle East countries, Jordan was both the main recipient in absolute quantities (5,500 tonnes) and in quantities per capita (1.88 kg); and finally, among the Latin American countries, Chile was the main recipient in absolute quantities (6,500 tonnes) and Dominica the main recipient in quantities per capita (1.37 kg).
The evolution of the regional partition of direct food aid in butteroil in the period 1977-82 was marked by the fact that with the exception of 1977, Asia dominated as a butteroil food aid recipient. As from 1979, the absolute quantities as well as the partition changed little, although one could perhaps discern slight increases in favour of Asia and Africa and decreases for the Middle East and Latin America.
As during the period 1969-76, the data on the main recipients in absolute quantities of Community food aid indicated that the Community food aid policy during the period 1977-82 primarily benefitted non-associated countries although the focus on these countries was less outspoken than during the former period.

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1977-82: Shifting the balance of compromise

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and the suspension of food aid to El Salvador in 1980, resumed in 1981 but through the Red Cross.\footnote{Following up the wishes of the European Council of June 1979, direct food aid to Vietnam was first provisionally suspended by the Commission and consequently cancelled by the Council (Bull. EC 7/8-1979, 63-65). Under the 1979 programme, the Community intended to grant Vietnam as much as 86,000 tonnes. The cancellation came at a particularly difficult time because of recent crop failure. This use of food aid was denounced in Parliament. The Community continued to supply relatively small quantities of food aid to Vietnam through international organizations and, in particular the UNHCR. On the use of the freed quantities, see Bull. EC 3-1980, 61.). On the suspension of food aid to El Salvador, see: HOUSE OF LORDS, Select Committee on the European Communities, Report on the Development Policy of the EC, xxxi.} A good example of the use of food aid in support of a 'friendly' regime was the generous emergency food aid actions in favour of Nicaragua launched after the fall of the Somoza regime. To help the new government to the maximum extent possible, the Commission showed itself remarkably flexible and innovative. It put an official at the disposal of the new government to evaluate needs and arrange for the purchase; this was one of the first instances in which food aid was mobilized outside the Community market. Also in the following years, the Community - in spite of objections of the United States - would continue to supply food aid to Nicaragua. The Court of Auditors recognized in its 1980 Special Report that in the allocation of food aid 'to some extent [...] even [...] political considerations' played a role.\footnote{COURT OF AUDITORS, Special Report 1/80, 62.}

While the IDS/ABC study observed that Community food aid was slightly more concentrated on the poorest countries than food aid of most donors\footnote{IDS/ABC, 1982, 1.10.}, it should be noted that during the period 1977-82 only 36.6% of the direct food aid in cereals, 18.6% of direct food aid in skimmed milk powder and 21.3% of direct food aid in butteroil went to the least developed countries. Note, however, that while in comparison with the period 1969-76 less direct dairy food aid went to the least developed countries, there was a noted increase in the direct cereal food aid to the least developed countries (36.6% up from 16%).\footnote{Note that for dairy food aid products, the least developed countries often have a low absorption capacity, i.e. the capacity they can use under safe and satisfactory conditions.}
1977-82: Shifting the balance of compromise

The focus of direct Community food aid in cereals, skmmp and butteroil on the least developed countries during the period 1977-82
The quantities of cereal food aid granted to the least developed countries increase almost every year during the period 1977-82 but it should be observed that in the early eighties this increase was less than the increase in cereal food aid to other developing countries. With the exception of 1978, the quantities of food aid in skimmed milk powder granted to the least developed countries remained throughout the whole period on roughly the same (low) level. Also the quantity of butteroil granted to the least developed countries remained remarkably stable (at low levels).

One will read in Commission publications of the period, that the Community food aid was much more focused on the poorest countries and that the Community actually supplied in 1982, for example, 100% of its cereal food aid, 92% of its food aid in skimmed milk powder and 94% of its food aid in butteroil to the poorest among the developing countries. Given the Commission's 'generous' definition of the poorest countries, this is quite correct.

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*347* In 1982, the Commission considered a developing country to be among the poorest countries when it had a GNP not exceeding $ 730 (Communication on the 1982 food aid programme, 7.).
While Community food aid remained poorly focused on the least developed countries, one should note, however, the exceptional 40 mECU food aid programme in favour of the least developed countries decided upon in December 1981 and implemented in 1982. While much of the food aid supplied under this programme was in the form of non-traditional food aid products, most of it was in the form of cereals.
While the 1980 Food Aid Convention required its members to give full consideration to the advantages of directing a greater proportion of their food aid through multi-lateral channels and in particular the WFP\(^{349}\), and the 1979 Guidelines and Criteria for Food Aid, adopted by unanimity by the FAO/WFP Committee on Food Aid Policies and Programmes, made a similar recommendation, the Community granted during the period 1977-82 merely 19.2\% of its cereal food aid to international organizations but it should be noted that during the period 1969-76, this was only 12\%. For food aid in dairy products, most of which had been supplied indirectly during the period 1969-76, the proportion supplied indirectly fell for food aid in skimmed milk powder (from 59.9\% to 45.7\%) and plummeted for food aid in butteroil (from 65.5\% to 29.3\%). It was noted that in comparison with other donors, the Community supplied a rather high proportion of its dairy food aid directly to the developing countries.\(^{350}\)

Among the international organizations, the WFP remained by far the biggest recipient of Community food aid and it will be recalled that WFP was the Community's third biggest recipient of food aid in cereals (435,000 tonnes after Bangladesh and Egypt)\(^{351}\), the second biggest recipient of food aid in butteroil (34,700 tonnes) after India and the biggest recipient of food aid in skimmed milk powder (177,010 tonnes). Other international organizations such as UNRWA, UNICEF\(^{352}\), UNHCR and ICRC also received fairly important quantities of Community food aid. While during the period 1969-76, non-governmental organizations (NGOs') received very little Community food aid, during the period 1977-82 they played a quite important role in the Community's skimmed milk powder programme. Of the 373,140 tonnes supplied indirectly during the period 1977-82, 127,450 tonnes was supplied to NGOs'. The latter often had the kind of

\(^{349}\)1980 Food Aid Convention, Article III (13).

\(^{350}\)IDS/ABC, 1982, 1.10.

\(^{351}\)Note that part of that cereal food aid went to the International Emergency Food Reserve (IEFR) administrated by the WFP.

\(^{352}\)One will note that UNICEF did not get any Community food aid as from 1979 onwards. This does not reflect any policy decision on the part of the Community but was the result of the fact that UNICEF's regular feeding programmes were taken over by the WFP.
network in developing countries necessary to distribute skimmed milk powder without putting the health of the recipient population at risk and to reach the target groups the Community wanted to focus on. In the context of the Community's cereal and butteroil food aid programmes, NGOs' played a lesser but growing role.
Allocation of Community food aid

Direct and indirect Community food aid in cereals, skim and butteroil
during the period 1977-82

Cereals

Skim

Butteroil
1977-82: Shifting the balance of compromise

In absolute quantities, indirect Community food aid in cereals increased slightly during the period 1977-82 but there was in the early eighties a marked drop in its proportion of food aid in cereals. Indirect food aid in skimmed milk powder surpassed in 1978 direct food aid in this product; in the subsequent years it fell back but it always remained important in relation to direct food aid. Indirect food aid in butteroil represented in 1977 more than half of all butteroil food aid but dropped - with ups and downs - during the period 1977-82 to less than one third. The 1982 IDS/ABC recommended that the Community would consider to increase the proportion of food aid delivered through indirect channels 'particularly if the Community feels that it is unable to increase the size of its own food aid staff, because these international organizations are efficient and well represented on the ground.'

The evolution in direct and indirect Community food aid in cereals during the period 1977-82

333IDS/ABC, 1982, 5.11 and also X.
As I also observed in Chapter 1, also during the period 1977-82 much of the Community's indirect food aid was not as multilateral or indirect as one might have thought. The international organizations to which the Community allocated food aid could not always dispose of this aid as they saw fit but on the contrary
needed the Council's approval for every operation undertaken with this aid.

With regard to the allocation of sugar and other products, I would like to be brief. Most sugar went to the UNRWA while much of the food aid in other products went to the least developed countries if only because an important part of this food aid was supplied under the exceptional 40 mECU food aid programme in favour of the least developed countries. The small quantities involved do, however, not justify an in-depth examination of the allocation.

3.3.2 The criteria for allocating Community food aid

It will be recalled that during the period 1969-76, there were no criteria, endorsed by the Council, for the allocation of Community food aid. In the period 1977-82, this shortcoming was remedied, although the allocation criteria agreed upon by the Council were not adopted in a formal manner.

Before turning to these allocation criteria, however, I would first like to point out that the Community continued to grant emergency food aid to developing countries on the sole ground that the latter needed food aid to cope with a food shortage resulting from a natural or man-made disaster. The allocation criteria discussed below did not apply to these emergency food aid decisions. This meant that a developing country which was for example too rich to qualify for normal Community food aid could nevertheless get emergency food aid in the wake of a disaster. During the period 1977-82, the Community came (directly or through international organizations) to the aid of, for example, Tunisia (drought)\textsuperscript{34} and Lebanon (refugees/civil war)\textsuperscript{35} in 1977; Thailand (refugees from Cambodja)\textsuperscript{36} and

\textsuperscript{34} Bull. EC 12-1977, 77.

\textsuperscript{35} Bull. EC 12-1977, 77.

\textsuperscript{36} Bull. EC 7/8-1978, 67.
Allocation of Community food aid

Vietnam (floods)\textsuperscript{35}\textsuperscript{7} in 1978; Jamaica (rainstorms)\textsuperscript{35}\textsuperscript{8} and Nicaragua (revolution)\textsuperscript{35}\textsuperscript{9} in 1979; Algeria (earthquake)\textsuperscript{35}\textsuperscript{10} and Cambodja (aftermath of genocide)\textsuperscript{35}\textsuperscript{11} in 1980; Pakistan (Afghan refugees/war)\textsuperscript{35}\textsuperscript{12} and China (floods and drought)\textsuperscript{35}\textsuperscript{13} in 1981; and El Salvador (displaced persons/civil war)\textsuperscript{35}\textsuperscript{14} and Niger (drought)\textsuperscript{35}\textsuperscript{15} in 1982. There were few 'major' disasters to which the Community did not react.

Community law neither obliged the Community to come to the aid of countries and people struck by disaster nor limited it the Community's generosity by laying down any restrictive requirements for emergency food aid.\textsuperscript{35}\textsuperscript{6} In each annual programme, the Council set aside a (small) quantity of food aid to cover unexpected needs which would arise after the annual allocation decision. Community food aid allocations to countries struck by disasters were, however, not limited to this 'reserve'. Some emergency food aid allocations were part of the annual allocation decision, while others were decided upon in advance of the allocation decision.\textsuperscript{35}\textsuperscript{7} Furthermore, the reserve was also used for late requests and additional requests which had no emergency character.\textsuperscript{35}\textsuperscript{8} Whether the Community

\begin{itemize}
\item \textsuperscript{35}\textsuperscript{7} Bull. EC 10-1978, 66.
\item \textsuperscript{35}\textsuperscript{8} Bull. EC 6-1979, 84.
\item \textsuperscript{35}\textsuperscript{9} Bull. EC 7/8-1978, 65-66.
\item \textsuperscript{35}\textsuperscript{10} Bull. EC 11-1980, 63.
\item \textsuperscript{35}\textsuperscript{11} Bull. EC 6-1980, 88.
\item \textsuperscript{35}\textsuperscript{12} Bull. EC 4-1981, 41.
\item \textsuperscript{35}\textsuperscript{13} Bull. EC 5-1981, 48.
\item \textsuperscript{35}\textsuperscript{14} Bull. EC 1-1982, 38.
\item \textsuperscript{35}\textsuperscript{15} Bull. EC 5-1982, 49.
\end{itemize}

\textsuperscript{35}\textsuperscript{6} It will be recalled, however, that there were limits to the emergency food aid actions on which the Commission could decide itself. See: Section 3.5 of Chapters 1 and 2.

\textsuperscript{35}\textsuperscript{7} See Section 3.5 of this Chapter.

\textsuperscript{35}\textsuperscript{8} See: Communication on the 1982 food aid programmes, 9. Note that in 1982 - in an attempt to limit the list of recipients of the annual cereal programme to the major recipients - the cereal reserve was also intended for allocation of cereal food aid to very small recipients.
supplied food aid to a country struck by disaster and menaced by famine was a totally arbitrary, political decision. As during the earlier part of the seventies, the public opinion - read the media - played also during the period 1977-82 often an important role in the decision on an emergency food aid action.369

Most food aid allocations, however, were unrelated to any disaster or emergency. It was for these 'normal' food aid actions that the Council in March 1977 finally laid down a set of allocation criteria although it must be noted that it did so not in a formal but in an informal decision, the decision of 22 March 1977, which I already discussed in detail earlier in this Chapter.370 The Council decided that the allocation of Community food aid should be based as far as possible on an objective assessment of the real needs justifying such aid, but without excluding other pertinent considerations.371 With this in mind it agreed on the following three criteria:
- the basic food requirements;
- the per capita GNP below $300 per year (revisable); and
- the balance of payments position.

Note, however, that except for the per capita GNP, the Council did not lay down any qualifying thresholds for these criteria and even the qualifying threshold for the per capita GNP was very flexible. Countries with a per capita GNP surpassing, even considerably surpassing, the threshold where not necessarily excluded from Community food aid.372 Furthermore, no consistent and rigorous sets of rules existed to translate the Council's vague and unspecific criteria into quantities to be granted. In fact, these criteria were of little practical value. They were merely general guidelines and their importance rested in the fact that they did not explicitly include criteria such as 'the political and economic system' of the

369 Note also the role of the European Parliament discussed in Section 3.5 of this Chapter.
370 Doc. S/534/77 ALIM 21 of 29 March 1977, Annex II. See on this agreement also: Section 2.1 of this Chapter.
372 COURT OF AUDITORS, Special Report 1/80, 57-60
recipient country or its 'strategic importance' to the Community, especially as a supplier of raw materials. As mentioned above, the Council did, however, not exclude such (pertinent) considerations to be taken into account. Note also that the Community's list of allocation criteria did not include 'efforts made by the recipient countries to overcome their food problems' or 'the use made of Community food aid to that end in the past'. It is worth noting in this respect that the 1982 IDS/ABC study recommended that the Community should expand its allocation criteria to include: an assessment of how well development programmes reached the poor and the quality of the recipient's food strategy.373

The Council's criteria being of little practical value, the Commission worked out the annual allocation proposals using its own fairly complex methods which varied from one year to another and from commodity to commodity.374 In spite of this growing 'sophistication', however, the Commission was usually far from clear as to the precise grounds for its allocation proposals.375 The Community's allocation decisions remained during the period 1977-82 characterized by a certain 'flou artistique'.376

373IDS/ABC, 1982, 5.9

374See for example: Commission proposal concerning food aid regulations for 1979, COM(79) 107 final, 9-14 (cereal food aid), 17-21 (skimmed milk powder), and 26-29 (butteroil); Commission communication concerning food aid programmes for 1980, COM(80) 57 final, Annex I (cereals), Annex II (skimmed milk powder), and Annex III (butteroil); and Communication concerning food aid programmes for 1981, COM(81)41 final, 24-26 (cereals), 33-40 (skimmed milk powder) and 46-51 (butteroil)

Note that in addition of the criteria mentioned above, the Commission was said to take into account the fact whether a country had already received Community food aid in the past (regular recipients were more likely to get Community food aid). In the case of supply for free distribution, the needs taken into account were not those of the entire recipient country but those of the target group. In the case of food aid dairy products, the Commission took into account the existence of a local dairy industry and of an effective dairy distribution network, the customary diet, the standard of hygiene of the recipient population and the experience acquired in previous years. As from 1979, the Commission also introduced a number of different thresholds for per capita GNP with progressively stricter conditions.

375COURT OF AUDITORS, Special Report 1/80, 60.

376NICORA, 1982, 17 but see for example also: CATHIE, 1982, 26
For indirect food aid allocations, there were still no criteria during the period 1977-82. The total amount of indirect food aid as well as the amount allocated to each organization was decided upon arbitrarily. In its 1979 proposal for a food aid framework regulation, the Commission suggested that the Council would annually fix a percentage of the total quantity of food aid that could be channelled through international organizations but it did not indicate on which basis the Council was to fix this percentage.  

It may be concluded with regard to the food aid allocation criteria applied during the period 1977-82, that the criteria finally, albeit informally, laid down by the Council only concerned direct, normal food aid operations and that these criteria were too general to be more than guidelines and therefore hardly limited the Commission’s power to propose and Council’s power to adopt the food aid operations they considered opportune.

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37COM(79) 1 final, Article 4.
3.4 The terms and conditions of Community food aid supplies

3.4.1 The general terms of Community food aid supplies

During the period 1977-82, the Community supplied virtually all its food aid on a 100% grant basis. This compared favourably with other major food aid donors and especially the United States and Japan. The United States in fact granted during the period 1977-82 most of its food aid as concessional sales. In 1982, it supplied food aid for a total of $372 m as grants and $628 m as concessional sales.

<table>
<thead>
<tr>
<th>Gifts</th>
<th>Concessional Sales</th>
<th>Total of Gifts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia 101</td>
<td>-</td>
<td>101</td>
</tr>
<tr>
<td>Canada 209</td>
<td>5</td>
<td>214</td>
</tr>
<tr>
<td>France 136</td>
<td>-</td>
<td>136</td>
</tr>
<tr>
<td>Germany 233</td>
<td>-</td>
<td>233</td>
</tr>
<tr>
<td>Italy 119</td>
<td>-</td>
<td>119</td>
</tr>
<tr>
<td>Japan 75</td>
<td>65</td>
<td>140</td>
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<tr>
<td>United Kingdom 154</td>
<td>-</td>
<td>154</td>
</tr>
<tr>
<td>United States 372</td>
<td>628</td>
<td>1000</td>
</tr>
<tr>
<td>Total O.A.C. countries 1653</td>
<td>698</td>
<td>2351</td>
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</tbody>
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As far as food aid in cereals was concerned, the 1971 Food Aid Convention, as extended by the 1976 and the 1979 Protocols, explicitly allowed for the supply of cereal food aid on less 'generous terms'. See: Section 1.2.4. and 2.2.4. of Chapter 1.

Note that since the 1975 procedural reform, the food aid supply agreements took the form of an exchange of official letters which in annex stipulated the terms and conditions of the supply. The latter were laid down by the Council in 1975 but never published.

The share of grants in the total of food aid supplied to the Third World ranged in the period 1977-82 between a minimum of 63.3% in 1978 and a maximum of 68.2% in 1979.\footnote{FAO, \textit{Food Aid in Figures}, 1987, 21.} It should be noted that - as far as food aid in cereals supplied under the Food Aid Convention was concerned - the 1971 and 1980 Food Aid Conventions\footnote{Article II (5) of the 1971 Food Aid Convention and Article III (7) of the 1980 Food Aid Convention.} allowed that food aid was supply:

- either as gifts of cereals or gifts of cash to be used to purchase cereals for the
recipient country; 

- or as sales for the currency of the recipient country which is not transferable and is not convertible into currency or goods and services for use by the donor members;

- or as sales on credit, with payments to be made in reasonable annual amounts over periods of 20 years or more and with interest at rates which are below commercial rates prevailing in world markets. The 1980 Food Aid Convention added, however, as a policy guideline rather than a legally compelling requirement, that it was understood that:

[the food] aid shall be supplied to the maximum extent possible by way of gifts, especially in the case of least developed countries, low per capita countries and other developing countries in serious economic difficulties.

The 1979 Guidelines and Criteria for Food Aid unanimously adopted by the FAO/WFP Committee on Food Aid Policies and Programmes stipulated in its point (f) with regard to all food aid and not merely food aid in cereals that:

Food aid should be provided essentially on a grant basis to

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382 This possibility to supply the food aid as gifts of cash has never been very important to the Community. It should be observed, however, that on 27 March 1977, the Council agreed that the Member States under special circumstances were allowed to supply their part of the Food Aid Convention contribution in cash (Twenty-fifth Review of the Council's Work (1977), 98.

Note that the grain purchases under Article III (7) (a) of the 1980 Food Aid Convention were to be made from members of the 1980 Food Aid Convention and the Wheat Trade Convention in force, with preference accorded to developing members of both Conventions. In making purchases it was the general aim that the major part of such purchases came from developing countries, with priority given to developing members of the Food Aid Convention. These provisions did not exclude therefore the purchase of grain from a developing country, not a member of these Conventions. (Article III (8) of the 1980 Food Aid Convention). The 1971 Convention (Article II (6) and (7)) was less flexible in this sense, purchases had to be made from the participating countries and 35% of the cash contribution to purchase 200,000 tonnes had to be used topurchase grains in the developing member countries.

383 Under exceptional circumstances, an exemption of not more than 10% could be granted.

384 These concessional sales agreements could provide for payment of up to 15% of principal upon delivery of the cereals.

385 Article III (7) of the 1980 Food Aid Convention. Already in the 1971 Convention there was a similar but broader provision. Article II (5) of the latter provision stipulated that to the maximum extent possible the aid under the Convention should be supplied as gifts or as sales for the currency of the importing country (which is not transferable and is not convertible into currency or goods and services for the use of the member country).
developing countries, in particular to the least developed and most seriously affected among them.\textsuperscript{34}

The Community could pride itself to be in line with this policy guideline during the period 1977-82.

Interesting to note in this context was that the 1982 IDS-ABC study suggested, however, that if expanding its cereal food aid programme was beyond the financial resources of the Community, the latter should consider to move away from the grant nature of the programme. While stressing that these quantities of food aid should be additional to the then present commitments, the study advised that part of the Community food aid would be provided on a loan basis (i.e. a concessional sale basis) similar to the basis on which the United States supplied its Title 1 food aid.\textsuperscript{37}

The one exception which needs to be mentioned, even though its recipient was strictly speaking not a developing country and the degree of concessionality perhaps insufficient to really qualify as food aid, was the sale at reduced prices (between 10\% to 15\% below the world market prices) of food and agricultural products including cereals, dairy products, sugar, oils and meat, to Poland decided upon in principle by the European Council during its meeting of 1 and 2 December 1980.\textsuperscript{38}

\textbf{3.4.2 The terms concerning the transport and distribution}

With regard to the terms concerning the transport and distribution, one should note the ever increasing effort on the part of the Community. While during the mid seventies, the Community contributed to the transport costs beyond the fob stage and the distribution costs for less than half of the food aid, during the period

\textsuperscript{34}For the text, see: TOMASEVSKI, 1987, 249

\textsuperscript{37}IDS-ABC, 1982, 5.12-13. See also already: VIGUIE, 1979, 92.

\textsuperscript{38}Bull. EC 12-1980, 1.
1977-82, it supplied more and more food aid 'fob with a lump sum to cover transport and distribution costs', 'cif', or even 'delivered at destination'. Of the food aid supplied under the 1980 programme, 63.5% of the cereals, 80.5% of the skimmed milk powder and 80.8% of the butteroil was supplied on terms more favourable than fob; 38.7% of the cereals, 54.5% of the skimmed milk powder and 39.4% of the butteroil was even supplied 'delivered at destination'.

It should be noted that there was still no Community law laying down specific criteria for the decision on the financing of the transport of food aid supplied. The Council regulations on the successive annual dairy programmes merely provided for the possibility to finance in exceptional cases the costs of food aid transport beyond the stage stage. In the light of the data mentioned above, however, it is clear that a very broad interpretation was given to the concept of "exceptional cases". With regard to the financing of the distribution costs, the same regulations stipulated that such financing was also only possible in exceptional cases and always limited to food aid supplied through specialized organizations. Article 3 of Council Regulation (EEC) No 1037/82 of 26 April 1982 laying down general rules for the supply of skimmed milk powder to certain developing countries and specialized bodies under the 1982 food aid programme stipulated for example:

For the purposes of Article 1:
(a) the cost of the skimmed milk powder, delivered to the port of shipment or a corresponding stage, shall be financed by the Community;
(b) in exceptional cases, the Community may also wholly or partially finance on the basis of a decision of the Council, in accordance with the procedure referred to in Article 7:
- transport to the frontier of the country and, possibly, to the place(s) of destination, and
- distribution, where the goods are distributed by a specialized body.

399 COURT OF AUDITORS, Special Report 1/80, 34; see also Commission proposal concerning food aid regulations for 1979, COM(79) 107 final, 16, 25 and 33 and Commission communication concerning the food aid programmes for 1980, COM(80) 57 final, Annexes I, II and III.


Note that the regulation stated in one of its recitals: "Whereas, in order to enable the aid to be used effectively, arrangements should be made to finance certain transport and distribution costs."
The Council decisions on the successive annual cereal programmes merely stipulated in their Article 3:

In the case of aid allocated to agencies, where so provided in the conditions agreed with the recipient, the Community may also finance distribution costs.\footnote{1}

For food aid in cereals supplied under the Food Aid Conventions, Article II (8) of the 1971 Convention and Article III (10) of the 1980 Convention only stipulated:

Contributions in the form of grains shall be placed in a fob forward position by members.\footnote{2}

It must be noted, however, that legislation laying down criteria for the financing of transport costs beyond fob was under discussion.\footnote{3}

The Guidelines and Criteria for Food Aid, adopted in 1979 by the FAO/WFP Committee on Food Aid Policies and Programmes, recommended in its point (e) that for the poorest countries donors should undertake, to the maximum extent possible, transport and storage costs of food aid for emergencies and for the use in developmental projects.\footnote{4}

In the absence of any specific criteria for the financing of transport costs beyond fob, the Commission in the meantime and in line with the 1979 Guidelines, "restricted" in its food aid proposals Community financing of food aid transport in practice to the poorest developing countries, international organizations and countries.

\footnote{1}E.g. Article 3 of Council Decision 82/270/EEC of 26 April 1982 on the 1982 cereal food aid programme, OJ. 1982, L 120/27. Note that the decision stated in its last recital: "Whereas, in order for the aid to be used effectively, arrangements should be made in appropriate cases to finance transport and distribution costs."

\footnote{2}Article II (8) of the 1971 Food Aid Convention and Article III (10) of the 1980 Food Aid Convention. Note Article III (11) of the 1980 Food Aid Convention which stated that: "If transport costs beyond the fob position are borne by donors these shall be regarded as cash contributions under the Convention over and above the minimal annual amounts specified in paragraph 3 of this Article".

\footnote{3}See: Commission proposal concerning food aid regulations for 1979, COM(79) 107 final, 7; and Commission communication concerning food aid programmes for 1980, COM(80) 57 final, 4-6.

\footnote{4}For the text, see: TOMASEVSKI, 1987, 249.
emergency food aid operations. In view of a number of instances in which food aid did not reach its final destination but - due to a lack of financial resources for inland transport and distribution - rotted away in ports and warehouses or was misappropriated, one may wonder whether the Community's effort in respect to the transport and distribution of its food aid was already sufficient. As was noted by the IDS/ABC study, efficient transport and distribution comes at a price. Either a donor delivers the food aid fob and will then in many cases have to allow that part of the counterpart funds (if there are any) are used to cover transport costs or a donor delivers cif or free at destination.

As during the earlier part of the seventies the Community organized and financed occasionally in emergency situations the transport by air of small quantities of food aid. To mention one example, the Community delivered by plane on 12 September 1979 a small quantity of skimmed milk powder as emergency food aid to Nicaragua.

The terms relating to the sea transport at the expenses of the recipient did not alter. The recipients were only required to organize genuine tendering procedures for the sea transport contracts, thus allowing for fair and open

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395 See e.g.: Commission proposal concerning food aid regulations for 1979, COM(79) 107 final, 7. The 1982 IDS/ABC study, however, considered that per capita income was an insufficient criterion for deciding whether food aid should be supplied on a fob or cif basis and that there was an urgent need to devise a more rational and sensitive set of criteria to take account of foreign exchange resources and transport difficulties (IDS/ABC, 1982, 5.12.).

396 E.g. of the 2,000 tonnes of emergency food aid supplied to Chad, only 480 tonnes were distributed five months after the boat had been unloaded. The remaining 1,520 tonnes had been stored at different stages of the voyage in spite of the desperate need for food aid (COURT OF AUDITORS, Annual Report 1977, 84.).


398 COURT OF AUDITORS, Annual Report 1979, 146. Note, however, that in this case one could question the need for such an effort since the non-governmental organization to which the food aid was supplied had received earlier in September a shipment of 2,000 tonnes of skimmed milk powder.

399 See: Section 3.4 of Chapter 1.
1977-82: Shifting the balance of compromise

It was unclear, however, to which extent they did so. In reaction to the news that some Community food aid had been transported by Russian ships, Mr EVANS, MEP, demanded in Parliament on 10 March 1977 that all Community food aid would be transported by Community ships. As I already mentioned above, the Court of Auditors wondered in its 1978 Report with regard to the choice of the vessels, certainly when the Community bears the costs of transport beyond the fob stage but not necessarily only then, whether priority could not be reserved to vessels flying the flag of a Member State of the Community, or failing that, of the country receiving the aid. The Court considered that only in exceptional cases and for specific reasons recourse should be had to vessels of other countries.

3.4.3 The terms concerning the use of food aid

During the period 1977-82, there was still no Community legislation laying down general provisions regarding the terms concerning the use on which the Community supplied food aid to developing countries and organizations. The terms were laid down in each of the supply agreements concluded between the Community and the food aid recipients. While these agreements were since 1975 no longer published in the Official Journal and were not readily available for consultation, it could nevertheless be established that in the period 1977-82, the Community supplied its food aid for basically four different sorts of use. Note the many similarities but also the marked differences with the use of Community food aid.

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401 COURT OF AUDITORS, Special Report 1/80, 103.

403 COURT OF AUDITORS, Special Report 1/80, 103.

402 Note that also the 1971 and 1980 Food Aid Conventions did not contain any specific provision with regard to the use of the cereal food aid by the recipient. It is true that the 1980 Convention stipulated in its Article III (13) that: "[...] the members shall otherwise act in accordance with the Guidelines and Criteria for Food Aid, approved by the Committee on Food Aid Policies and Programmes of the World Food Programme." This relates, however, only to the subject matter of this Article III (13), namely the allocation of the food aid supplied under the Convention.
First, the Community supplied food aid to developing countries for sale to the population at normal market price or at reduced price. While in the case of sale at reduced price, there may also have been the intention to support the recipient’s food subsidy policy, the Community’s main aim in the case of supply for sale was to give balance of payments support to the recipient country. To the extent that the food aid supplied replaced commercial food imports food aid constituted a precious balance of payments support. When food aid was supplied for sale at normal market price or at reduced price, the supply agreements usually stipulated that the counterpart funds in local currency, resulting from these sales were to be put in special accounts and utilized in the context of specific development projects or programmes. It should be noted, however, that the recipient countries reportedly used these funds - sometimes with the permission of the Community - to cover also the costs of transport and storage and, that while internal Community documents expressed the wish that these counterpart funds be used for agricultural or food projects, the text of the supply agreements made no mention of this.

During the period 1977-82, most of the food aid in cereals was supplied for sale

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406 See: Section 3.4.3 of Chapter 1.

405 As I already pointed out in Chapter 1, distribution food aid by sale had the advantage that, apart from increasing government funds for development, it did not require the recipient government to assume important extra administrave and financial burdens. Sales at normal market price or at reduced price were relatively easy to organize and administer. Also on the part of the donor, this way of distribution did not require a big food aid staff while at the same time guaranteeing a positive impact on the development of the recipient country (See: Section 3.4.3 of Chapter 1.). It should be noted, however, that the Court of Auditors expressed serious reservations as to the sale of food aid at reduced price, especially when the distribution was done through a public ration system (e.g. Bangladesh). Only too often the food at reduced price was reserved for government officials and certain other privileged persons who alone have right of access to the government stores from which the food aid was sold (COURT OF AUDITORS, Annual Report 1980, 110).

407 Only from 1980 onwards the food aid application forms for ACP countries indicated that wherever possible the proceeds of sales of Community food aid should be used for EDF projects or for projects under the World Food Programme (European Parliament Working Documents, Working Document on an effective food aid policy that takes into account the needs of hunger-stricken countries and peoples - emergency aid (Sub-Rapporteur: Mrs K. FOCKE), PE DOC 1-341/80, 83.).
1977-82: Shifting the balance of compromise

with the resulting counterpart funds to be spent on agreed development projects; only marginal quantities of dairy food aid and no food aid in other products were supplied for sale to the population at normal market price or at reduced price. In 1980, for example, 55% of all cereal food aid, 2% of the food aid in milk powder and 12% of the food aid in butteroil were supplied for sale to the population at normal market price or at reduced price. Of the cereal food aid supplied for sale, 36% was supplied for sale at normal market price and 64% for sale at reduced price. In 1981, 63% of all cereal food aid, 0.8% of the food aid in milk powder and 14% of the food aid in butteroil was supplied for sale to the population. Of the cereal food aid supplied for sale, 49% was supplied for sale at normal market price and 51% for sale at reduced price.

Second, the Community supplied food aid in dairy products for sale to the dairy industry in support of dairy development schemes. In the period 1977-82, an important quantity of food aid in skimmed milk powder and butteroil was used in this way to support the setting up and development of the local dairy industry. In 1980, 30.5% of the skimmed milk powder and 34% of the butteroil, and in 1981, 36% of the skimmed milk powder and again 34% of the butteroil was sold to the recipient’s dairy industry. The most notorious and by far the biggest of the Community’s dairy food aid supplies for sale to the dairy industry was the food aid in skimmed milk powder and butteroil the Community granted annually from 1978 onwards to India in the context of the Operation Flood II.

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40*Calculated on the basis of the data found in IDS-ABC study, 1982, 1.16.

409Of the butteroil supplied for sale to the population, 61% was sold at reduced price. Only 29% of the skimmed milk powder supplied for sale to the population was sold at reduced price.

41Calculated on the basis of the data found in IDS-ABC study, 1982, 1.16.

411Of the butteroil supplied for sale to the population, 47% was sold at reduced price. Only 25% of the skimmed milk powder supplied for sale to the population was sold at reduced price.

412Calculated on the basis of the data found in IDS-ABC study, 1982, 1.16.
Third, the Community supplied food aid to developing countries and organizations for distribution in kind - free of charge - to specific, vulnerable groups of the population (children, pregnant women, young mothers, refugees, etc.) or to workers engaged in a particular project (food for work projects). The Community's main aim in the former case was to raise the standard of nutrition of its focus group while in the latter case food aid was mainly seen as a means of financing a specific labour intensive development project (often public infrastructure works) and (thus) a means of asset creation for the poor. A considerable amount of food aid in cereals (in 1980: 38% and in 1981: 28.5%), most of the food aid in skimmed milk powder (in 1980: 67% and in 1981: 64%) and butteroil (in 1980: 54% and 1981: 52%) and all food aid in other products was supplied for free distribution.413

Fourth, and as a rule only to a small extent, the Community supplied food aid to developing countries and organizations in emergencies to alleviate food shortages as a result of natural or man-made disasters such as droughts, floods, earthquakes, civil wars, etc. In this case the food aid was of course distributed in kind and free of charge. In 1980, 6% of the cereal food aid, 4% of the food aid in milk powder and 6% of the food aid in butteroil, and, in 1981, 8% of the cereal food aid, 5% of the food aid in milk products and 3% of the food aid in butteroil were used in emergencies.

It should be noted that during the period 1977-82, the Community did not allow yet its food aid to be used for local stock building.414

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413 Calculated on the basis of the data found in IDS-ABC study, 1982, 1.16.

414 In March 1977, such use of food aid had been suggested but the Council had not been able to agree upon it (Bull. EC 3-1977, p. 60). The Commission proposed it again in its July 1980 communication on food aid. Mrs. K. Focke, MEP, also called for the use of food aid to ensure that decentralized reserves are set up in developing countries (European Parliament Working Documents. Working Document on an effective food aid policy that taken into account the needs of hunger-stricken countries and peoples - emergency aid (Sub-Rapporteur: Mrs K. FOCKE), PE DOC 1-341/80, 86.
1977-82: Shifting the balance of compromise

The use of Community food aid in 1980

Cereals

Skimmed milk powder

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In the final years of the period 1977-82, the Community made the first hesitant attempts to use food aid in support of the food strategies of the recipient countries. In Section 2.2 of this Chapter, I already explained why and how this
approach gradually gained support in the Community. It will be remembered that in November 1981, the Council authorized the Commission to start exploratory talks to identify those recipient countries whose food strategy could be supported by Community food aid (and other aid) and that in 1982, the Community, by way of experiment, started to supply food and other aid in support of the food strategies of Zambia, Kenya, Mali and later also Rwanda while exploratory talks with other eligible developing countries were continued. While at the end of 1982, the use of food aid in support of food strategies was still of minor importance, there seemed to be little doubt that this use would become quite important. It was understood that food aid could only contribute successfully to the solution of the recipient’s food problems if it was closely associated with an overall food strategy that provided incentives to domestic agricultural production and aimed at a reduction of poverty and malnutrition. The Guidelines and Criteria for Food Aid, unanimously adopted in 1979 by the FAO/WFP Committee on Food Aid Policies and Programmes already reflected this understanding and stipulated, albeit with a lack of precision and detail, with regard to the terms concerning the use of food aid in its point (a):

Food aid should be provided in forms consistent with the development objectives of recipient countries, with the aim of promoting their long-term development efforts and ensuring that it neither acted as a disincentive to local food production nor had adverse effects on the domestic market and international trade, in particular of developing countries. [...]

in its point (i):

In [...] utilizing food aid, donor and recipient countries should give priority to:
- Meeting emergency requirements. [...] 
- Activities designed to increase agricultural, and especially food, production, to raise incomes, to meet basic needs and stimulate self-reliance and to create opportunities for employment for the populations of developing countries, particularly in rural areas [...] 
- Nutrition intervention programmes, with special emphasis on projects for improving the nutritional status of the vulnerable

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415 For more detail, see: Section 2.2 of this Chapter.

416 IDS/ABC, 1982, VII.
groups of pre-school children and expectant and nursing mothers.

and its point (j):

Donor and recipient countries should also, wherever appropriate, use food [...] assistance for the creation and maintenance of food reserves, including storage and transport facilities in developing countries.417

During the period 1977-82, however, most of the Community food aid was still supplied for use (directly or in the form of counterpart funds) in specific development projects or programmes which did not necessarily fit into a overall strategy on the part of the recipient to improve the food situation, which made it difficult to realize the positive effects and to avoid the negative effects food aid could have on the food situation in the recipient country.

It will be recalled that during the earlier part of the seventies, the Community did not have a clear picture of what really happened with its food aid and resulting counterpart funds. Although explicitly required to do so in the supply agreements, the recipients did not properly inform the Commission about the arrival or the subsequent use of the food aid and the supply agreements did not provide for an explicit authorization for the Commission to carry out checks in the recipient country on the observance of the terms and conditions regarding the use of the food aid and counterpart funds. During the period 1977-82, the recipients still failed to inform the Commission properly about the arrival of the food aid and the use made of the food aid and counterpart funds.418 In its Special Report of 1980, the Court of Auditors observed:

Recipients furnishing all the reports requested are mostly confined to the international organizations and one or two countries. Virtually no recipient arranging the sea transport himself provides

417For the text, see: TOMASEVSKI, 1982, 249.

the information required on transport. A small percentage of recipients provide the quarterly reports. None provides the annual reports on the use of counterpart funds within the required limit of 15 days after the close of the financial year.\footnote{COURT OF AUDITORS, Special Report 1/80, 104.}

In most of the countries the Court of Auditors visited in preparation of its Special Report, the reports on the use of the food aid and the counterpart funds either did not exist or were merely token.\footnote{COURT OF AUDITORS, Special Report 1/80, 105. Note that the Commission had a slightly more optimistic view on the situation. According to the latter, about half of the recipients provided the Commission with an 'acceptable' report on the use of the Community aid.} The Commission made some efforts to obtain more detailed reports to allow it to monitor the use and evaluate the impact of Community food aid and counterpart funds better but without much avail.\footnote{COURT OF AUDITORS, Special Report 1/80, 105. Note that the Commission had a slightly more optimistic view on the situation. According to the latter, about half of the recipients provided the Commission with an 'acceptable' report on the use of the Community aid.} In its Special Report, the Court of Auditors pointed out, however, that many recipient countries, especially in Africa, did not have the administrative resources to meet the information requirements imposed upon them by the Community and suggested to simplify and reduce certain requirements at least for the poorest recipients.\footnote{COURT OF AUDITORS, Special Report 1/80, 105. Note that the Commission had a slightly more optimistic view on the situation. According to the latter, about half of the recipients provided the Commission with an 'acceptable' report on the use of the Community aid.} Rather than to impose upon all recipients the same set of conditions, the Community should - the Court argued - negotiate with each recipient separately requirements adapted to their capacities and actual needs. In its 1982 Report, the Court of Auditors recommended very explicitly to revise the conditions to which the recipients of aid are subject, removing those that are unrealistic, and - contrary to what it had recommended in its Special Report - to standardize the conditions (\footnote{COURT OF AUDITORS, Annual Report 1982, 98. This observation surprises me because the conditions were standard conditions. The IDS/ABC study even reported that some recipient countries had commented on the inflexibility of the standard agreement (IDS/ABC, 1982, 4.5.).}), so that 'they were no longer different according to the Community official who drafted them or the language used'.\footnote{COURT OF AUDITORS, Annual Report 1982, 98. This observation surprises me because the conditions were standard conditions. The IDS/ABC study even reported that some recipient countries had commented on the inflexibility of the standard agreement (IDS/ABC, 1982, 4.5.).}
An important new development in this context was the provision of an 'audit clause' in most food aid supply agreements concluded since 1977. This clause required the food aid recipient to grant every facility to persons nominated by the Community to examine whether the aid had been properly delivered and used. This gave the Community the legal right to carry out checks, a right which it had not had before. It will be recalled that in the earlier part of the seventies the Community deliberately abstained from this sort of monitoring. Even now some of that attitude had remained since the 'audit clause' did not allow the checking of the amount of counterpart funds or the use made of it, although (or perhaps because) this was one of more problematic issues. Talbot observed:

Quite likely it is politically prudent - meaning expedient -not to be scrupulously demanding nor seriously inquisitive.

In 1978, the Commission reorganized its Food Aid Division and the new structure provided for a special service to check reports of misuse of food aid and, more

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426 COURT OF AUDITORS, Annual Report 1978, Reply of the Commission, 118. Note, however, that the Court of Auditors in its Special Report of 1980 claimed that it was only since 1979 that supply agreements contained an 'audit clause' (COURT OF AUDITORS, Special Report 1/80, 105). Somalia and Sri Lanka refused to conclude supply agreements with an 'audit clause' and therefore the agreements with these countries did not contain such a clause (COURT OF AUDITORS, Special Report 1/80, 105).

427 The 1980 EEC-UNRWA Convention stipulated in its Article VII: "UNRWA shall give every facility to any persons nominated by the Community for the purpose of observing the agencies' receipt, storage and distribution of the Community's aid. UNRWA shall also provide such supplemental information as may reasonably be requested by the persons so nominated." (OJ. 1980, L 108/57).

See on the inclusion of this clause also: European Parliament Resolution embodying the opinion on the proposals for a decision concluding the Convention between the EEC and the UNRWA on aid to refugees in the countries of the Near East and a regulation on the supply of sugar to UNRWA as food aid, point 4 in which it welcomed the inclusion of such an 'audit clause', O.J. C 1980, 59/70; and European Parliament Working Documents, Report on the proposals on a decision concluding the Convention between the European Economic Community and the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) on aid to refugees in the countries of the Near East and a regulation on the supply of sugar to the UNRWA as food aid (Rapporteur: Mr D. ENRIGHT), PE DOC 1-754/79, 8.

428 It must be noted, however, that the Court of Auditors reported it had met no restrictions on its audit in preparation of its Special Report in any of the countries visited (COURT OF AUDITORS, Special Report 1/80, 106). Nevertheless, the right to monitor the use of the counterpart funds was thought to be of great importance (COURT OF AUDITORS, Annual Report 1980, 110).

429 TALBOT, 1980, 283.
generally, follow up the use of Community food aid. To the extent its very small staff allowed it, this service carried out a number of on-the-spot checks. In addition, the Commission Delegates in ACP countries were instructed to audit food aid projects. As already mentioned before, also the Court of Auditors undertook audits upon record and on the spot. As a result of these efforts, the Community was increasingly - but certainly still insufficiently - aware of cases of misuse of its food aid. In its 1980 Special Report on food aid, for example, the Court of Auditors noted that the requirement stipulated in a considerable number of supply agreements to sell the food aid products at normal market prices, was in fact often not met. Furthermore, it reported that the requirement stipulated in all supply agreements providing for the sale (at normal or reduced prices) of the

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429 In 1979 for example, the Commission missions visited Bolivia, Burundi, Chad, Comoros, Djibouti, Honduras, Kenya, Lebanon, Peru, Yemen P.D.R., Zaire and Zambia to check the use of Community food aid (Commission communication concerning food aid programmes for 1980, COM (80) 57 final, 10). In 1980 for example, the Commission missions visited Egypt, India, Nicaragua, Haiti, China, Thailand, Laos, Zaire, Sri Lanka, Somalia, Djibouti, Cape Verde, Bolivia and Ecuador (Commission communication concerning food aid programmes for 1981, COM(81) 41 final, 14).

430 COURT OF AUDITORS, Annual Report 1978, Reply of the Commission, 114. The Court's annual reports contained a number of concrete examples of situations in which the Commission's Delegate had played an important role: e.g. in Niger (COURT OF AUDITORS, Annual Report 1977, 84-85).

In its Communication concerning food aid programmes for 1980, the Commission indicated that not only its delegates in ACP countries but also its Representatives in non-associated countries and regional representatives "continued" to provide valuable support both to the recipient authorities and the staff in Brussels (COM(80) 57 final, 10), COM(81)41 final, 14. The 1982 IDS/ABC study observed, however, that in those recipient countries where there was a delegation, it had usually nothing to do with food aid and when they were involved in the food aid operation, it was on an informal basis (IDS/ABC, 1982, 4.2.). The delegates did reportedly not have the time or even in some cases the interest to participate in the implementation of the food aid programme. The IDS/ABC study pleaded for a bigger and better defined role for the Commission's delegates.

431 COURT OF AUDITORS, Annual Report 1977, 84-85 (problems in Peru, Bolivia, India, Niger and Upper Volta); COURT OF AUDITORS, Annual Report 1978, 116 (countries in question were not identified by name); COURT OF AUDITORS, Annual Report 1979, 146-7 (countries in question not identified by name); COURT OF AUDITORS, Annual Report 1980, 110-112 (problems in India, Bangladesh and Zaire).
food aid products that the proceeds were to be paid into a special account in the central bank of the recipient country and used to finance one or several development projects, was in many recipient countries either not observed at all or observed only in part and after a delay. In three recipient countries there had been large diversions of funds and in one of them 1.2 million EUA had simply disappeared. Finally, the requirement stipulated in a large number of supply agreements to distribute the food aid products for free to needy sections of the population, was not always met either. Several recipient countries sold part of the food aid and used the proceeds to cover the cost of storage, transport and distribution. One recipient country sold the food aid to the armed forces at a reduced price and another country used the proceeds of the sale of the food aid to pay the maintenance and running costs of government vehicles. The 1982 IDS/ABC study also observed that many of the countries covered by the study had very poor counterpart fund accounting and that they faced many administrative difficulties in ensuring rapid and effective disbursement. It was noted that even in countries where counterpart fund accounting was thought to be adequate, the delay in agreeing on projects and releasing the funds was considerable. According to the latter study, however, to insist upon detailed accountability and budgeting could well be counterproductive; the study observed that efficient accounting was not always a feature of the most effective development programmes. If the Community would nevertheless decide to press for greater

432COURT OF AUDITORS, Special Report 1/80, 135-7. Note that the Court did not identify the countries at fault by name.

433IDS/ABC, 1982, 4.9. The study also noted that while it had been argued that certain types of financial systems inherited from formal colonial powers, and particularly those of former British colonies, have difficulties in setting up the necessary procedures for counterpart fund accounting, it had found that countries with 'good' accounting systems included former colonies of the United Kingdom, France and Spain.

434The IDS/ABC study quite correctly observed that counterpart fund accounting has in fact only one real effect and that is to provide the donor government with a second opportunity to impose conditions on the recipient governments. It argued that 'this second stab at conditionality' was on the whole less useful. The evidence suggested that attempts to improve the accountability of counterpart funds usage have often been associated with the problems of fungibility (IDS/ABC, 1982, 2.5).
accountability, stricter regulation on the counterpart funds would be needed.\textsuperscript{435}

 Occasionally 'sanctions' were taken against recipients which had not complied with the terms of Community food aid. When it was established that 1000 tonnes of cereals supplied to a central African country (our source did not mention the name of that country) under the 1978 programme for free distribution had partly disappeared, was partly sold and had partly been stored for too long and had become unfit for human consumption, all food aid to this country under the 1978 programme country still undelivered was withdrawn and the country excluded from the 1979 programme.\textsuperscript{436} Also when the Commission established in early 1980 that much of a 1977 delivery of 3,000 tonnes of skimmed milk powder to Zaire was misappropriated in the course of distributions, all direct food aid to this country was suspended.\textsuperscript{437} The Court of Auditors, however, argued in relation to this latter case of misuse - but its remarks were certainly also relevant to other cases of misuse - that the Commission was in fact partly to blame because it supplied the milk powder without consideration of the special situation in Zaire: poor communications, insufficient budgetary resources to cover the internal distribution costs, and the low wages paid to the persons responsible for distributing the milk powder free of charge (one bag of milk powder represented a month's salary for a nurse or teacher).\textsuperscript{438}

 While undoubtedly some progress was made during the period 1977-82, the Commission's monitoring of its food aid and resulting counterpart funds left much

\textsuperscript{432}For a number of concrete suggestions, see: IDS/ABC, 1982, 5.17-18.


\textsuperscript{437}COURT OF AUDITORS, Annual Report 1980, 112. Note that this was not the first time there had been problems with food aid supplied to Zaire. The Court of Auditors noted in its 1978 Report that from a report by the Commission delegate, it appeared that the marketing of 6,332 tonnes of cornflour delivered in 1978 to the port of Matadi involved serious abuse. The goods were diverted from their true destination (the provinces of Kasai and Shaba) and sold in the capital's market. The sales reportedly enabled certain traders to gain huge profits in a fraudulent manner (COURT OF AUDITORS, Annual Report 1978, 115.).

\textsuperscript{438}COURT OF AUDITORS, Annual Report 1980, 112.
to be desired. In its 1980 Annual Report, the Court of Auditors observed with regard to food aid to Bangladesh, one of the Community’s main food aid recipients:

It is [...] clear that the Commission makes no effective check as to whether the conditions laid down by it have been observed. [...] It should be noted that the persons responsible for the projects financed were unaware that the funds originated from a Community gift and the Commission did not appear to concern itself with the progress of the project.43

and the 1982 IDS/ABC study remarked:

Very little monitoring is carried out either by the Commission itself or by the Delegations in recipient countries where appropriate and the same applies to evaluation and feedback.440

Mrs K. Focke, MEP, argued in her 1980 Working Document on food aid, however, that to increase the effectiveness of food aid, one should not exaggerate the importance of improved monitoring of the use of food aid. While necessary, and possible if the Commission would increase its food aid staff, monitoring would always come up against technical as well as political obstacles. Instead, Focke suggested that the effectiveness should be increased through: (1) linkage with specific projects, particularly for agricultural development; (2) food-for-work schemes; and (3) the use for specific purposes of counterpart funds in close relationship with the objective of improving security of food supplies; in other words, for stock-piling and improving farmer’s storage capability and also for funding local training and advisory services for rural development projects. Food aid had to be developed by linkage with a form of project or programme aid in the context of national strategies for securing food supplies.441

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440IDS/ABC, 1982, 1.11.

441European Parliament Working Documents, Working Document on an effective food aid policy that taken into account the needs of hunger-stricken countries and peoples - emergency aid (Sub- Rapporteur: Mrs K. FOCKE), PE DOC 1-341/80, 82.
In general, the Community remained during the period 1977-82 badly informed about the use of its food aid, let alone about the impact and successfulness of its aid. This compared unfavourably with other major donors who were apparently more convinced of the need for monitoring, evaluation and feedback.\(^2\) The IDS/ABC study which examined the use and impact of Community food aid in 10 recipient countries, remedied to some extent this shortcoming in the sense that for the first time one had some indications the impact of Community food aid. The study examined whether, and if so, to which extent, Community food aid had made a contribution: (1) to the alleviation of the balance of payments problems of the recipient countries; (2) to the economic growth of the recipient countries; (3) to the food strategies and food security of the recipient countries; (4) to the improvement of the nutritional standards of the recipient population; (5) to the realization of public infrastructure works and the creation of assets for the poor; and finally (6) to emergency relief.

The IDS/ABC study noted that the country studies undertaken were by no means unanimous in their conclusion as to the impact of Community food aid and this was in fact an important finding in its own right.\(^3\)

With regard to the Community food aid's contribution to relief structural balance of payments deficits, which was the primary use of Community food aid, the study concluded that Community food aid had not been very successful in this respect: less than 25% of the Community food aid could be attributed such an effect.\(^4\)

Too much Community food aid had been in the form of dairy products which usually did not substitute for commercial imports and thus did not represent any foreign exchange savings.

With regard to the Community food aid's contribution to food strategies, the study observed that the majority of the countries studied had unsatisfactory food

\(^1\)IDS/ABC, 182, 4.10.

\(^2\)IDS/ABC, 1982, 3.17. It should also be noted that the country reports also often stated that it was in fact very difficult to assess the impact of Community food aid because of the lack of data and the fact that Community was only a marginal resource.

\(^3\)For more detail, see: IDS/ABC, 1982, 3.5-6. See also: IDS/ABC, 1982, 3.18.
strategies jeopardizing a positive contribution of food aid. In countries which did have a satisfactory food strategy (Pakistan, Tanzania and Mali), food aid had often been successfully used to subsidise consumption.

With regard to the Community food aid's contribution to economic growth, the study noted that this contribution could only be traced to the extent there was complete counterpart fund accounting. As I already noted, such accounting was, however, lacking in many countries. Nevertheless, the study estimated that about half of the Community's food aid contributed to economic growth.

With regard to the Community food aid's contribution to the improvement of the conditions of the poorest people in the recipient countries and more specifically its nutritional impact and its contribution to asset creation for the poor, the study's conclusion was overall positive.

With regard to supplementary feeding programmes, there had been successful as well as less successful programmes but the country reports were not able to reach clear judgments about the cost-effectiveness of such programmes in

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44Not all countries had the administrative skills to run such strategies; many would need technical and financial assistance to provide the necessary administrative infrastructure (IDS/ABC, 1982, 3.22.).

44IDS/ABC, 1982, 3.6. Note, however, that if food aid is used in this way in countries without a satisfactory long-term food strategy but just to keep the food prices low, food aid had a distinctly negative impact on the long-term food situation because of the absence of an incentive for governments to change their food policies (the case of Egypt) or because of the disincentive effect on local production (the case of Somalia) (IDS/ABC, 1982, 3.22.). In those cases, food aid did in fact have the negative effects mentioned in the Introduction to this study. It should be observed, however, that food aid was not really responsible for these negative effects (IDS/ABC, 1982, VIII); the responsibility was rather with the food and agricultural policies and strategies - or the lack thereof - of the recipients.

47IDS/ABC, 1982, 3.9. and 3.18. Note that only food aid which was sold and generated counterpart funds was considered to make such a contribution.

48IDS/ABC, 1982, 3.19. Note that the study found that supplementary feeding programmes and food for work projects in some countries encouraged the development of community spirit (e.g. India, Senegal and Peru) while in other countries they encouraged a dependent mentality (e.g. Tanzania where these projects were consequently banned, and in some cases also Ethiopia)(IDS/ABC, 1982, 3.15.).

49Failure was apparently often related to a lack of nutrition and health education, inadequate hygiene in the preparation of the food, the irregularity of supplies and the incomplete nature of the rations provided.

Success was often related to the use of efficient NGO structures, the involvement of the local population in preparing and distribution the food and the design of feeding programmes to take account of the special problems of food aid.
general, nor about the desirability of using food commodities in such programmes.450 Several reports, however, did draw the attention to the heavy administrative and organizational burden such programmes often put on the recipient countries.451

With regard to the Community’s food aid contribution to asset creation for the poor, one should consider on the one hand the contribution made by dairy development projects and on the other hand food for work projects. With regard to the former, the study noted that the biggest of these project, the Operation Flood II in India, was a clear success452, but added that similar projects in other countries such as Bangladesh, Egypt, Mali and Tanzania, were far less successful and the question was raised whether the Indian experience was repeatable in countries with lower administrative skills and less experience in organizing large-scale, national programmes of this type.453 With regard to food for work projects, the experience was generally positive, especially when the WFP was involved, and impressive achievements were recorded in Ethiopia (re-afforestation projects) and Peru (a wide range of community projects such as micro-dams, roads and drinking water supply).454 It should be noted that there were, however, doubts concerning the cost-effectiveness even of the successful projects.

Finally, with regard to emergency relief, the study established that in the three countries which had major emergency relief programmes (Ethiopia, Pakistan and

450IDS/ABC, 1982, 3.12. Generally speaking, the nutritional impact of dairy food aid was apparently less evident (IDS/ABC, 1982, 3.22.).

451The Community was criticized for focusing its supplementary feeding programmes on school children rather than mothers and young children while the latter were generally considered to be a higher priority group (IDS/ABC, 1982, 3.12 and 22.).

452Operation Flood II had developed a considerable impact on employment at different levels: the village level, the professional level of milk processing and the level of the dairy equipment industry and the daily cash income from milk had proved to be of great importance for rural families and especially for the landless and small farmers (IDS/ABC, 1982, 3.13.).


454IDS/ABC, 1982, 3.14 and 3.23. The factors for success clearly included an orientation to the complete community and/or the creation of a social and political system which ensures that the benefits of public works schemes are evenly spread; (2) a competent administration of the public works schemes; and (3) well organized food supplies (IDS/ABC, 1982, 3.15 and 3.23.).
Somalia) the situation was generally speaking satisfactory; Community food aid contributed to the alleviation of the human suffering caused by the disasters which had hit these countries.\footnote{IDS/ABC, 1982, 3.17 and 3.23. The study identified as important factors to the success of these emergency actions: (1) the existence of a competent indigenous organisation such as the Relief and Rehabilitation Commission in Ethiopia (?); (2) an effective donor organization could be established in the recipient country (CARE in Somalia); or (3) the presence of large international organizations (UNHCR for Afghan refugees in Pakistan).}

It was pointed out, however, that in many cases it was simply impossible for the Community to respond quickly because of its distance from the scene and the cumbersome nature of many of its procedures.\footnote{Nicora came to a similar conclusion: "[...] à quelques exceptions près et quels que soient les aménagements de procédure envisagés, l'aide alimentaire, en tant que telle, n'est pas en mesure de faire face aux situations 'd'aide d'urgence proprement dites'." (NICORA, 1982, 32.).}

The study recommended that the Community would finance national or regional emergency food stocks in disaster prone areas.\footnote{The study also reported on the problem of leakage, i.e. the flow of emergency food aid from the recipient target population group or area to other population groups or other areas. Especially in Somalia this seemed to have occurred. Most of the leakage there was due to the fact that the recipients (refugees) actually sold part of the food aid they received to obtain food and non-food products not included in the ration such as meat, sugar, vegetables and soap. These sales did apparently push down the price of local cereals slightly but did not create dramatic problems. (IDS/ABC, 1982, 3.17.)}

The study recommended that the Community would finance national or regional emergency food stocks in disaster prone areas.\footnote{IDS/ABC, 1982, 3.17 and 3.23.}

As a final conclusion, the IDS/ABC study emphasized that - contrary to the grim accounts in part of the literature and in the popular press - the impact of Community food aid was in many ways positive. There was, however, still a long way to go before Community food aid would achieve the highest developmental impact possible.\footnote{IDS/ABC, 1982, 3.21 and 3.23.}

The IDS/ABC study recommended the Community to supply food aid for sale rather than for free distribution. Food aid supplied for bulk sale was - the study pointed out - cheaper to handle and could play a direct role in supporting government food security and development policies.\footnote{It was undisputed that the distributional effects of overall government policy outweigh those of particular food aid projects.}

Counterpart funds could be used to help ensure that the benefits of the food aid were directed towards rural development in general and basic needs of the poorest in...
particular.460

3.4.4 The terms relating to the protection of commercial trade

During the period 1977-82, the food aid supply agreements stipulated as during the earlier part of the seventies and pursuant to the FAO Principles on Surplus Disposal, on the one hand, prohibitions on the re-exportation of the products supplied as food aid and on the exportation of similar products, and, on the other hand, the requirement of additionality.461 For food aid in cereals supplied under the 1980 Food Aid Convention, Article III (9) of the 1980 Food Aid Convention explicitly required that:

Aid transactions under paragraphs 7 and 8 of this Article shall be carried out in a way consistent with the concerns expressed in the FAO Principles of Surplus Disposal and Guiding Lines.462

Also the Criteria and Guidelines for Food Aid, adopted by the FAO/WFP Committee on Food Aid Policies and Programmes, stressed the need to supply food aid on terms which would avoid adverse effects on international trade.463 With regard to the re-exportation prohibitions the Court of Auditors noted in its 1980 Special Report on food aid that there had in fact been two cases in which Community food aid had been re-exported.464 With regard to the additionality requirement (the UMR clause), the Court noted that the Community had occasionally threatened defaulting recipient countries with the suspension or

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460 IDS/ABC, 1982, 3.21 and 2.23.
461 COURT OF AUDITORS, Special Report 1/80, 102.
462 Article III (9) of the 1980 Food Aid Convention. For the situation before the entry into force of the 1980 Food Aid Convention, see: Section 3.4.4 of Chapter 1.
463 In particular the international trade in agricultural products of developing countries. See point (a) of the Guidelines and Criteria for Food Aid, TOMASEVSKI, 1987, 249.
464 COURT OF AUDITORS, Special Report 1/80, 136.
reduction of aid but had never gone as far as to put its threats into practice. In its 1979 Report, it had remarked, however, that the Community imposed upon the recipient countries a series of obligations which "[...] in certain cases run counter to the purpose of the aid". The Court undoubtedly referred to the additionality requirement which certainly in those cases in which the food aid was supplied as balance-of-payments support ran counter to the purpose of the aid.

While the Court did not come to this conclusion, I would like to repeat what I have said before about the additionality requirement, namely that the Community did not take this requirement very serious - the lack of any sanctions would prove this point - and its inclusion was merely lip-service, albeit 'mandatory' lip-service, to the idea of fair trade in agricultural products. The other major food aid donors had a similar attitude. There was a growing body of empirical evidence to indicate that food aid had in fact been substituting in many cases for commercial imports.

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465 COURT OF AUDITORS, Special Report 1/80, 103.

466 COURT OF AUDITORS, Annual Report 1979, 147.

3.5 The procedural and institutional aspects of Community food aid policy decision-making

In comparison with the previous period, the procedures for Community food aid policy formulation remained, with some exceptions, unaltered during the period 1977-82. The Council retained its absolute control over 'normal' food aid operations. Even minor issues were still decided on by the Council, which of course often led to protracted delays in the adoption of the annual food aid programmes and was also - one could argue - in violation of the division of competences between the Institutions laid down in the EEC Treaty. Community food aid programmes were usually only adopted until well into the year they related to.

<table>
<thead>
<tr>
<th>Year</th>
<th>cereals</th>
<th>skmp</th>
<th>butteroil</th>
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<tbody>
<tr>
<td>1979</td>
<td>8 May 1979</td>
<td>8 May 1979</td>
<td>8 May 1979</td>
</tr>
<tr>
<td></td>
<td>3 Dec. 1982</td>
<td></td>
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</tbody>
</table>

The time lag between the submission of the Commission proposals and the decision by the Council was normally between two to seven months. For the 1980 food aid programmes for example, the Commission submitted its proposals on 13 February 1980 but the Council only adopted the programmes on 28 May 1980. For the 1982 food aid programme, the Council did slightly better but it

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468 Note that for cereals '1977' refers in fact to the period '1 July 1976/30 June 1977', etc.


470 COURT OF AUDITORS, Annual Report 1980, 105. Interesting to note, however, is that Nicora in his 1982 study on the implementation of Community food aid noted that according to him (but many would disagree) the delays in the adoption of the annual programmes were not to blame on the decision making process of the Community but rather on the fact that the Commission tabled its proposals too late. Nicora stated: "ce qui est en cause, c'est le moment même choisi par la
still took 95 days for the programmes tabled by the Commission to be accepted by the Council.\(^{471}\) The late adoption of the annual programmes repeatedly compelled the Council - in view of critical food shortages in some developing countries and with no food aid left any more under last year's programmes - to decide on food aid operations in advance of the adoption of the relevant programmes. This was the case, for example, in 1981, when the Council decided on 27 March to authorize the Commission to mobilize in advance about 50% of the volume of cereals earmarked for 27 countries under the 1981 cereal food aid programme as proposed by the Commission in February 1981.\(^{472}\)

The delays caused by the excessive concentration of decision-making power in the hands of the Council were not only severely criticized by Parliament and the Court of Auditors but also by other food aid donors and several food aid recipients since these delays meant that the Community did not meet its international commitments in time.\(^{473}\) It is important to stress that the time taken to decide on the annual food aid programmes was not only long but also quite unpredictable.\(^{474}\) As a result, one never knew in advance when the implementation of the food aid programmes could be started and this made it very difficult to plan the arrival at destination of Community food aid in the 'between-harvest' period but before the weather made many inland roads impassable. As during the period 1969-76, this late and unpredictable adoption of the annual programmes had repercussions on all further stages of the food aid operation and was one of the main reasons for the long delays in the implementation discussed in the next Section.\(^{475}\)


\(^{472}\)Bull. EC 3-1981/56.


\(^{474}\)See: IDS/ABC, 1982, 4.7.

\(^{475}\)See: Section 3.6 of this Chapter.
Cognizant of the problems caused by the delays in the food aid policy formulation, the Council recognized at its meeting of 22 March 1977 that it seemed indeed desirable to seek ways of speeding up the procedures.\textsuperscript{476} At the Council meeting of 28 November 1977, the Commission noted that the procedures in force:

[...] were leading to a wastage of time and energy and were scarcely compatible with the basic objective of food aid, which was to combat hunger in the short term\textsuperscript{477}

and announced that it would present proposals for a re-organization of the food aid policy management. It did so in June 1978 when it submitted to the Council a proposal for a regulation on the management of food aid.\textsuperscript{478} The broad lines of this proposal were already discussed above\textsuperscript{479} but I would like to recall that the Commission proposed that the Council should retain the competence to decide: (1) on the basic products to be supplied; (2) on the total quantities of each product to be supplied; (3) on the partition of cereals aid between Community and national operations; and (4) on the general guidelines governing the aid for a given year and the criteria for examining food aid requests, but that the Commission - after consultation of a food aid committee - would decide: (1) on the allocation of the quantities available; (2) on the derived products to be supplied; and (3) on matters relating to the transport of food aid; and - without consultation of the food aid committee - would decide: (1) on emergency actions in case of natural as well as man-made disasters; and (2) on the conditions

\textsuperscript{476}See: European Parliament Working Documents, Report on the communication on the procedures for the management of food aid (Rapporteur: Mr P. LEZZI), PE DOC 414/78, 14. Presumably the Council was not only referring to the procedures for the policy formulation but also to the procedures for food aid policy implementation.

\textsuperscript{477}Commission communication on the procedures for the management of food aid, COM(78) 204 final, 1.

\textsuperscript{478}Commission communication to the Council on the procedures for the management of food aid, COM (78) 204 final.

\textsuperscript{479}See: Section 2.1 of this Chapter.
governing the supply of the aid. For reasons I already explained above the Commission's 1978 proposal was replaced by the more ambitious proposal of January 1979. With regard to the procedural aspects of the food aid policy, however, the latter proposal took over the provisions of the previous one and this in spite of the criticism of Parliament on these procedural aspects. While Parliament stated in its Resolution on the 1978 proposal that:

[It] regards the Commission's proposals, taken as a whole, as calculated to improve radically the implementation of the Community's food aid [...],

it had serious misgivings concerning the proposed Food Aid Committee to the extent that in case of disagreement between this Committee and the Commission, responsibility for the management of food aid would automatically transfer back to the Council. Parliament recognized the usefulness of such a Committee but insisted this Committee should be merely advisory and that the Commission should have the last word. In its Opinion on the 1978 proposal, the Parliament's Committee of the Budgets introduced for the first time an argument into the discussion which was to become one of the most hotly disputed food aid policy issues in the eighties, namely the issue of the decision on the size of the Community's food aid commitments, or, in other words, the issue of the relation between Parliament's budgetary power and the Council's legislative power in the field of food aid. In the first years following the amendment of Article 203 EEC by the Treaty amending Certain Financial Provisions, the Council and the Commission regarded food aid expenditure as compulsory expenditure and Parliament did not formally dispute this classification. In its Opinion on the

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40 Commission communication to the Council on the procedures for the management of food aid, COM (78) 204 final, 4 and 5.

41 See: Section 2.1 of this Chapter.


44 Such a committee could play a very useful role in the coordination of Community and Member States food aid policies.
Commission's 1978 proposal on the management of food aid, however, the Parliament's Committee on the Budgets challenged this classification. The Council had always argued that the quantities of food aid were pre-determined by international agreements and that the corresponding expenditure was thus compulsory but - as the Committee on the Budgets pointed out - in the case of food aid in dairy products, the quantities were definitely not pre-determined by international agreement. Furthermore, the Committee noted that it could not be argued that the quantities of food aid were laid down by regulation before the Budgetary Authority decided on the food aid appropriations. The practice was that the Council did not take a decision on the size of the commitments until after (long after) the budget had been adopted. An important part of Community food aid expenditure was therefore definitely non-compulsory and, consequently, Parliament and not the Council should have the last word. Mr Scott-Hopkins, the draftsman of the Opinion of the Committee on the Budgets, sharply noted that:

In its proposed regulation, the Commission seems to be reserving to the Council the power to decide on the annual global quantities of food aid, which implies the classification of expenditure as compulsory; the Committee on the Budgets should therefore table an amendment to this proposal, restoring to the Budgetary authority the powers to which it is entitled.\(^4\)

In its Resolution on the 1978 Proposal, Parliament stated that:

[...]

and called for the deletion of the provision which gave the Council the power to decide on the total quantities of food aid and its replacement with a provision stipulating that the budget would lay down the total quantities of food aid. The first shot in an inter-institutional war (which would last for eight years) had been fired.

\(^4\) European Parliament Working Documents, Opinion of the Committee on Budgets (Draftsman: Mr. SCOTT-HOPKINS), PE DOC 474/78, 23.

In its Resolution on the 1979 proposal, Parliament declared that:

[It] considers the new proposals to be an entirely suitable means of simplifying, improving and above all accelerating the Community's decision-making and implementing procedures for the management of food aid.**47**

It deeply regretted, however, that the Commission had not taken into account its objections to the proposed Food Aid Committee and reiterated its view that it was the responsibility of the Budgetary Authority, and not only of the Council, to decide on the size of the Community's food aid commitments.**48** The Commission as well as the Council stuck, however, to their classification of food aid expenditure as compulsory expenditure. In reply to a Parliamentary Written Question by Mr Croze, the Commission answered on 9 July 1979:

The Commission has examined the question raised by the Honourable Member in the light of all current information.

It considers the classification of food-aid expenditure as justifiable now as when originally introduced and the reasons for the original Decision as still valid, arising as they do out of the interrelationship between the products supplied under food aid and the common organization of the agricultural markets - whose legal basis is Article 43 of the EEC Treaty and, in part, the Community's international commitments.

Hence, in the preliminary draft budget for 1980 the Commission has retained the compulsory classification for food-aid expenditure.**49**

As I noted above, the Commission's 1979 proposal triggered a long and difficult debate among the Member States; it would take the latter almost four years to

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**47**European Parliament Resolution of 14 November 1979, point 2, O.J. 1979, C 296/16.


**49**O.J. 1979, C 192/22.
agree upon the proposal. In the mean time the procedures characterized by the excessive concentration of decision-making power in the hands of the Council and the resulting delays remained applicable.

The 1980 Special Report on Food Aid of the Court of Auditors, the 1982 IDS/ABC study and the 1982 Nicora study, all denounced, explicitly or implicitly, the excessive concentration of decision-making power, although they identified this feature as merely one of several shortcomings in the food aid procedures.

During the period 1977-82, the only substantial improvement in the food aid policy formulation procedures related to emergency food aid operations. It will be recalled that in 1975 the Council delegated to the Commission - albeit within strict limits - the power to decide on emergency food aid operations in case of natural disasters. As part of the decisions taken on 22 March 1977, the Council decided to go one step further and to delegate to the Commission also the power to decide on emergency food aid operations (in cereals and dairy products) in case of man-made disasters. It should be noted, however, that while in case of natural disasters the Commission was to give the Member States two working days to raise objections against an intended operation, in case of man-made disasters,

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490See: Section 2.1 of Chapter 3.

491COURT OF AUDITORS, Special Report 1/80, 118. The Court stated: "Implementation of food aid is too slow because it is encased in a procedure of fearsome complexity. [...] Programming and management of food aid need to be completely recasted."

492IDS/ABC, 1982, 4.12. The IDS/ABC study stated: "[...] the programme lacks an efficient structure for planning and implementing a food aid programme that is essentially developmental in its objectives [...]"

493NICORA, 1982, ii. Nicora stated: "L'instrument dont dispose la Communauté n'est plus adapté à l'ampleur et à la complexité des tâches qu'implique la réalisation des programmes d'aide alimentaire qu'elle poursuit depuis un certain nombre d'années. Un effort d'adaptation s'impose avec d'autant plus d'urgence que les objectives fixés pour demain sont encore plus ambitieux."

494See for more detail: Section 3.6 of this Chapter.

495Bull. EC 3-1977, 60. Note that the Commissioner for development cooperation was authorized by the Commission to take the decisions on emergency food aid operations on behalf of the Commission.
the Commission had to obtain the favourable opinion of COREPER. If COREPER did not give its opinion within eight days, the Member States had a further two days to raise objections. If the COREPER's Opinion was negative or Member States made objections or for emergency food aid actions of more than 5,000 tonnes of cereals, 500 tonnes of skimmed milk powder or 500 tonnes of butteroil, the competence to decide on the emergency operation was with the Council.

While the introduction of a special procedure for emergency food aid in case of man-made disasters was the only substantial improvement in the food aid procedures in the period 1977-82, one should mention that in the context of the exceptional, 40 m ECU food aid programme in favour of the least developed countries adopted on 21 December 1981, the Council delegated to the Commission the power to decide on the allocation of the food aid supplied under this programme. Furthermore, it will be recalled that in 1982 the Commission - using appropriations entered by Parliament - decided itself, first without any Council authorization and later on the basis of the Council's Decision sui generis of 25/26 October 1982, on the allocation of food aid in other products. It should finally also be noted that the Commission's proposal for the 1982 cereal food aid programme only provided for food aid for the bigger recipients (i.e. more than 5,000 tonnes) while the small recipients were merely listed with a token entry. It was not the Commission's intention to exclude the latter countries from participating in the food aid programming, but in order to shorten the time needed for the preparation and adoption of the annual programme it was considered wise

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496 COURT OF AUDITORS, Special Report 1/80, 52.

497 Article 4 of Council Regulation (EEC) No 3723/81 of 21 December 1981 on the granting of exceptional food aid to the least-developed countries, OJ. 1981, L 373/11, stipulated: "The Commission shall be responsible for implementing the aid operation in accordance with the existing procedures. It shall keep the Member States informed of progress with the operation." Presumably the Council referred to the procedures of emergency food aid of 1975 (natural disasters) but it should be noted, however, that what the Commission did - at least with regard to its decision on the allocation - was beyond the "existing procedures". It decided on the allocation of products for which no procedures had ever been agreed upon (e.g. vegetable oil and sugar) or surpassed the quantitative limitations for cereals.

498 For more details, see below.
1977-82: Shifting the balance of compromise

to focus the annual programme on the larger recipients and consider food aid to
the small recipients at a later stage using a different simplified procedure under
which the Commission would be empowered to decide on the allocation. The
1982 cereal food aid programme adopted by the Council did indeed list only major
recipients with a specific allocations while small recipients were mentioned with
a token entry and the programme provided for a "larger than normal" reserve. The
Council Decision on the 1982 programme did, however, not provide for any
different, simplified procedure under which the Commission would be empowered
to decide on the allocation of food aid to these small recipients.

While this was merely a 'formal' change without much importance, it must be
noted that from 1979 onwards the Commission presented its proposals for food aid
in cereals, skimmed milk powder and butteroil all at the same time (and in one
document) and the Council adopted them at the same time, although they
remained three distinct decisions.

Parliament continued to play a very active role in the food aid policy formulation
debate during the period 1977-82. Often at its own initiative, it debated and
commented on various aspects of the food aid policy (the most noted and
influential of these debates were those held in September 1980 and June 1982

\[\text{\textsuperscript{499}}\text{Communication from the Commission to the Council on the 1982 food aid programmes, COM(81) 804 final, 6-7.}\]


\[\text{\textsuperscript{501}}\text{Stretching the concept of emergency to its very limit (and beyond), one could, however, use the 1975 and 1977 procedures for emergency food aid in case of natural and man-made disasters.}\]

\[\text{\textsuperscript{502}}\text{See also in this context: European Parliament Working Documents, Report on the assessment of Community development policies and the role of the EP (Rapporteur: Mr V. MICHEL), PE Doc 1-942.}\]

It should perhaps be noted that during the period 1977-82 also the Economic and Social Committee
became interested in the Community's food aid policy. It created a working group to examine
Community food aid and adopted on 23 September 1981, at its own initiative, an opinion on the food
aid policy (Communication from the Commission to the Council concerning food aid programmes for
1981, COM(81), 41 final, 12; and Bull. EC 9-1981, 45.).
mentioned above\textsuperscript{503} and on many occasions called upon the Commission and the Council to undertake emergency food aid operations in favour of countries or populations hit by disaster\textsuperscript{504}. Members of Parliament also tabled a considerable number of Written Questions regarding Community food aid.

While during the period 1977-82 Parliament had not yet any decisive influence over the policy formulation, it claimed as from 1978 onwards a share in the food aid policy formulation on the basis of its budgetary powers. As I already mentioned above, Parliament challenged in 1978 for the first time the classification of food aid expenditure as compulsory expenditure and argued that at least part of the food aid expenditure was non-compulsory and therefore for Parliament to decide upon.\textsuperscript{505} It is clear that to the extent that the budget was not merely a necessary but a sufficient legal basis empowering the Commission to effect expenditure (even in the absence of a Council decision) or to the extent that the Council was bound by the budget, the classification of food aid expenditure as non-compulsory expenditure would give Parliament considerable power over the food aid policy. This debate on the nature of food aid expenditure and the policy-making ramifications of Parliament's budgetary power grew to a climax when Parliament entered in the 1982 budget extra appropriations for Community food aid in cereals and appropriations for Community food aid in vegetable oil, sugar (for recipients other than the UNRWA) and other products and demanded that these appropriations would be used. The debate on the scope of the budgetary power of Parliament was of course not restricted to the field of food aid. The food aid policy was merely one of the battle fields of the inter-institutional war waged by Parliament, usually but not always in alliance with the Commission, against the Council to give real meaning and bite to its explicit budgetary competence and, through the latter competence, a firm grip on various Community policies. A first truce was reached on 30 June 1982 when Parliament, the Council and the

\textsuperscript{503}See: Section 2.2 of this Chapter.

\textsuperscript{504}E.g.: Bull. EC 7/8-1979, 64 (emergency food aid to South-East Asian refugees); Bull. EC 5-1980, 64 (emergency food aid to Ethiopia); and Bull. EC 10-1980, 66 (emergency food aid to Algeria).

\textsuperscript{505}See above in this Section.
Commission agreed on the Joint Declaration on various measures to improve the budgetary procedure. The Joint Declaration, which soon would prove to be an uneasy truce, provided for: (1) a definition of compulsory expenditure and an annex in which all expenditure was classified according to this definition; (2) a procedure for the classification of new expenditure; (3) rules on the inter-institutional collaboration in the context of the budgetary procedure; and (4) rules on other matters such as Parliament’s margin of manoeuvre, the maximum rate if increase and last but not least the relation between the legislative power and budgetary power. Of direct relevance to the food aid policy, was, first of all, the classification of expenditure related to food aid in cereals\(^{506}\), food aid in sugar\(^{507}\) and other expenditure resulting from the Convention between the EEC and UNRWA as compulsory expenditure while expenditure related to food aid in milk products, food aid in vegetable oil, food aid in other products, transport costs and other expenditure associated with food aid was classified as non-compulsory expenditure. This classification was made according to the new definition of compulsory expenditure:

\[
\text{[...]} \text{compulsory expenditure} \ [\text{is}] \text{such expenditure as the budgetary authority is obliged to enter in the budget to enable the Community to meet its obligations, both internally and externally, under the Treaties and acts adopted in accordance therewith.}^{508}
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Furthermore the Joint Declaration was relevant for the food aid policy with regard to the question whether the budget was not merely a necessary but also a sufficient legal basis for Commission action. The Joint Declaration stated:

The implementation of appropriations “entered for significant new Community action shall require a basic regulation. [...],”\(^{509}\)

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\(^{506}\)In footnote, it was added, however, that expenditure relating to cereal food aid was non-compulsory as far as it did not relate to the Food Aid Convention.

\(^{507}\)In footnote, it was added, however, that expenditure relating to food aid in sugar was non-compulsory as far as it did not relate to the EEC-UNRWA Convention.

\(^{508}\)Joint Declaration of 30 June 1982 by the European Parliament, the Council and the Commission on various measures to improve the budgetary procedure, point I (1), O.J. 1982, C 194/1.

\(^{509}\)Joint Declaration of 30 June 1982 by the European Parliament, the Council and the Commission on various measures to improve the budgetary procedure, point IV (3) (c), O.J. 1982, C 194/3.
and thus implicitly recognized that in case of minor, ad hoc Community action the Commission could actually use appropriations entered in the Budget without an act of the Council.

With regard to the question to which extent the Council was bound by the budget - a third issue raised in the food aid policy field - the Joint Declaration brought, however, little clarification. The budget imposed of course a ceiling on the expenditure the Council could call for but was the Council obliged to use the appropriations entered in the budget? Mr Gordon-Smith, Director-General of the Legal Service of the Council strongly argued against the existence of such an obligation observing that:

The wording used [in the Joint Declaration] does not indicate such an intention, which would in any case be contrary to the right of initiative of the Commission and the power of appreciation which the Council must retain as legislative authority.510

Mr Strasser, the Commission’s Director-General of the Budget, and Mr Dewost, then member of the Legal Service of the Commission, shared this interpretation.

Strasser noted:

[...] cette disposition n’exclut toutefois pas que la Commission garde son libre arbitre et que le Conseil ne parvienne pas à l’unanimité requise.511

and Dewost asserted:

[...] bien entendu, ils ne sauraient être interprétés comme implicant une obligation de proposer ou de légiférer pour le Conseil.512

While they were correct to state that the Joint Declaration could not be


interpreted as stipulating an obligation for the Council to use to appropriations entered in the budget, the question remained whether such an interpretation, which undeniably limited the 'scope' of Parliament's budgetary power, was acceptable to the latter institution.

As I already observed above, the Joint Declaration quickly proved to be an uneasy truce. In the food aid policy field, it actually resolved few of the disputes existing before 30 June 1982.

With regard to the extra appropriations for food aid in cereals, it will be recalled that Parliament had provided in the 1982 budget appropriations for the supply of 160,300 tonnes of cereals in addition to the 927,663 tonnes the Community was to supply under the 1980 Food Aid Convention. The Council, however, refused to use these appropriations and adopted in April 1982 an annual programme of 'merely' 927,663 tonnes. The question raised here was a double one: first, was there any obligation on the part of the Council to use the appropriations entered in the budget, and, second, if the Council refused to undertake any action, was the budget itself perhaps a sufficient legal basis to empower (and oblige) the Commission to use the appropriations entered in the budget. With regard to the second question, the Joint Declaration stipulated explicitly that the use of appropriations entered for significant new Community action required a basic regulation\(^1\) and, thus, implicitly recognized that in case of minor, ad hoc Community action the Commission could actually use appropriations entered in the Budget without an act of the Council. One could not possibly argue, however, that the increase in the cereal food aid programme Parliament wanted to realize was a minor, ad hoc Community action and a Council decision would therefore be necessary to use the appropriations entered in the budget. This brings us back to the first question: was there an obligation on the part of the Council to take such a decision? As noted above, the Joint Declaration, which was not very helpful in answering this question, could not be interpreted as stipulating such an obligation.

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\(^1\)Joint Declaration of 30 June 1982 by the European Parliament, the Council and the Commission on various measures to improve the budgetary procedure, point IV (3) (c), OJ. 1982, C 194/3.
Nevertheless, Parliament continued to demand that all appropriations available for food aid in cereals would be used. Only on 3 December 1982, the Council would - by way of compromise and without recognizing any obligation to do so - use part of the appropriations entered by Parliament to increase the 1982 cereal food aid programme by 72,337 tonnes. The underlying issue, however, was not resolved.

With regard to the appropriations for food aid in vegetable oil, food aid in sugar (in addition to the sugar supplied to the UNRWA) and food aid in other products, the situation was even more complicated. Considering that the intended food aid actions in the form of sugar, vegetable oil and other products were merely minor, ad hoc Community actions (actions ponctuelles non-significatives) in the meaning of the Joint Declaration of 30 June 1982, the Commission and Parliament were confident that the former would be able to use the appropriations entered in the 1982 budget without authorization of the Council. On 17 August 1982, the Commission, consequently decided to grant food aid in sugar (1,500 tonnes) and vegetable oil (2,000 tonnes) to the UNHCR for Afghan refugees in Pakistan and food aid in vegetable oil (350 tonnes) for refugees in Thailand. At the COREPER meeting of 15 September 1982, however, several Member States, and in particular the United Kingdom, Germany and Denmark, raised strong objections; according to these Member States the Commission had exceeded its powers when taking the decisions on the food aid operations. The operations in question were not - as the Commission and Parliament argued - minor, ad hoc operations but, on the contrary, significant, new actions for which, pursuant to the Joint Declaration of 30 June 1982, a Council 'authorization' was needed.

Especially Germany, supported by Denmark, insisted that no further actions of this

514 Also note that at the end of 1982, there were very considerable surpluses of cereals which no doubt also influenced the Council's decision to increase its cereal food aid programme. Furthermore, one could note that the Council also adopted on 3 December 1982, the first food aid framework regulation, which was - as I will explain in Chapter 3 - in several respects unacceptable for Parliament. Was the increase also meant to sweeten this bitter pill?

515 On the Council's decision on an increase by 72,337 tonnes to a total of 1,000,000 tonnes, see 16th General Report, 267; and Bull. EC 11-1982, 51.

516 Doc. 9479/82 (ALIM 111).
nature would be undertaken without a decision of the Council. The Commission, however, intended to undertake emergency food aid actions in favour of Nicaragua (2,700 tonnes of vegetable oil and 1,500 tonnes of red beans), Sri Lanka (350 tonnes of sugar) and refugees in El Salvador (500 tonnes of red beans). While the Commission explicitly insisted that it could decide on these actions itself, it nevertheless proposed by way of compromise an ad hoc, transitory solution. Pursuant to this solution, the appropriation available for food aid in sugar, vegetable oil and other products would be considered to be reserves for ad hoc food aid actions similar to the reserves provided for in the annual programmes for food aid in cereals and dairy products; and the procedure for using these appropriations would be the 1977 procedure for emergency food aid (in cereals and dairy products) in case of man-made disasters. The United Kingdom, Germany and Denmark, however, rejected this compromise, insisting on the principle that only the Council could take a decision on the proposed actions. Its compromise being rejected, the Commission was reportedly considering to ignore the opposition of certain Member States and decide on the above mentioned emergency food aid actions. On 20 October 1982, however, COREPER was able to agree on a temporary, ad hoc solution along the lines of the Commission’s compromise proposal. This solution, casted in the form of a decision sui generis, was subsequently approved by the Council at its meeting on 25/26 October 1982.

While stating that the underlying issue remained unresolved, the Council authorized the Commission in view of the particular circumstances to supply until 31 December 1982 certain quantities of emergency food aid in products other than cereals and dairy products. Before supplying this food aid, however, the Commission had to obtain a favourable opinion of COREPER, or in other words, it had to follow the 1977 procedure for emergency food aid (in cereals and dairy products) in case of man-made disasters. The maxima amounts of food aid the Commission could allocate in the context of a specific action were: 1,000 tonnes

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517 Perhaps, it should be noted that none of the Member States had any objection as to the substance of the actions themselves with the exception of the United Kingdom which had reservations of a political nature regarding the emergency food aid to Nicaragua.

518 Doc. 10320/82, ALIM 134, Annex 1.
of sugar, 1,000 tonnes of vegetable oil and 500,000 ECU of food aid in other products. If more aid was needed (or if there were no appropriations left any more), only the Council was competent to take a decision on the emergency food aid action. Originally applicable until 31 December 1982, the Council decided twice to extend the Decision sui generis of 25/26 October 1982 and the latter would eventually remain in force until 30 June 1983 to enable the Commission to carry out projects for emergency food aid in the sugar, vegetable oil and other products pending the introduction of the procedure provided for in the first food aid framework regulation adopted on 3 December 1982. This episode of inter-institutional conflict, which concerned ridiculously small food aid operations, is a fine example of the strong opposition on the part of some Member States to share their decision-making powers in the field of food aid (as in other fields) with the Commission and, indirectly but perhaps even more importantly, Parliament.

To come back to the issue of the delays in food aid policy formulation dealt with earlier in this Section, I would like to stress that it was clear that to remedy these delays, it would not be sufficient to delegate decision-making power from the Council to the Commission but that it would be necessary to assign more staff to food aid management and to organize better the relations between the different services involved. While the Commission reorganized in 1978 its Food Aid Division, the staff of this Division was not substantially increased and the relations with other services remained badly organized. Nicora, an insider, admitted in his 1982 study that the internal organization of the Commission was indeed deficient and he noted for example that the desk officers of DG VIII and DG I as well as the departments of DG VIII responsible for other aid instruments were not

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519 The intended emergency food aid operation in favour of Nicaragua exceeded the maxima laid down in the Decision sui generis of 25/26 October 1982, but during the same meeting the Council indicated his agreement regarding this operation (Doc. 10320/82, ALIM 134, Annex 2).

520 On this last comment, see: Section 2 of the Conclusion.

521 The personnel problem was stressed for example in COURT OF AUDITORS, Annual Report 1979, 147; COURT OF AUDITORS, Special Report 1/80, 140-141 but also by the Commission in its Communication to the Council on the 1981 food aid programmes, 9.
involved in the preparation of the decisions on food aid operations. Not surprisingly the country studies carried out in the context of the 1982 IDS/ABC study all found that very little coordination had been effected between the various types of Community aid. In 1982 still, the Commission carried out another reorganization integrating the food aid division administratively with the division responsible for agricultural development assistance and the protection of the environment. This reorganization clearly reflected the Commission's aspiration to use food aid more effectively in the fight against hunger, but, unfortunately, the food aid service remained seriously understaffed and, therefore, quite unlikely to carry out successfully its new, ambitious tasks. increased while such an increase was needed if the Community really wanted to use its food aid in support of food strategies.

Finally, a critical observation is called for with regard to the coordination - or rather the absence thereof - of the Community's food aid policy with the food aid policies of the Member States and other donors. In a written answer to a question by Mrs K. Focke, MEP, the Commission stated in 1980:

Some coordination, mainly bilateral, of the food aid provided by the Member States takes place when the programmes are adopted. Furthermore, the Member States and the Commission are informed when aid projects are implemented. In a number of special cases (congested ports) shipment arrival schedules have been drawn up, mainly in liaison with FAO services and other donors.

[...] When Community aid programmes are drawn up, account is taken of the information available from the FAO on other donors and also of other known donor programmes (USA PL 480 etc.). Coordination of this kind avoids duplicated effort and shows which countries have the largest deficit.

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522 NICORA, 1982, 68.
524 CLAY, 1985, 42-3.
525 Answer reported in European Parliament Working Documents, Working Document on an effective food aid policy that takes into account the needs of hunger-stricken countries and peoples - emergency aid (Sub-Rapporteur: Mrs K. Focke), PE Doc 1-341/80, 62, footnote 1, and 63, footnote 1.
As Focke consequently wrote in her Working Document on Community food aid, the Commission’s information on coordination was somewhat laconic and not very reassuring.\textsuperscript{526} In 1982 Nicora talked about "le caractère embryonnaire de ce type de coordination" and called for (far) more coordination between donors: (1) with regard to food aid policy formulation, although he recognized that the Community was already making a considerable effort in this context\textsuperscript{527}; and (2) with regard the programming and implementation of specific food aid actions both at the headquarters of the donors and in the field.\textsuperscript{528} Priority was of course to be given to the coordination between the Community and the Member States.

\textsuperscript{526}Answer reported in European Parliament Working Documents, Working Document on an effective food aid policy that takes into account the needs of hunger-stricken countries and peoples - emergency aid (Sub-Rapporteur: Mrs K. Focke), PE Doc 1-341/80, 62-63.

\textsuperscript{527}Presumably he was thinking of the coordination efforts undertaking in the context of the WFP and more in particular the Committee on Food Aid Policies and Programmes, where the Community had observer status.

\textsuperscript{528}NICORA. 1982, 54.
3.6 The implementation of the Community food aid operations

In spite of the growing awareness of the problems caused by the slow implementation of the Community food aid programmes, the implementation record remained during the period 1977-82 dismal. During the late seventies, the average time taken for a food aid operation from the Commission's proposals up to the loading stage was 341 days for cereals, 499 days for skimmed milk powder and 437 days for butteroil. Even in the case of operations of manifest urgency, it took on average 90 to 120 days for the food aid to reach the port of unloading.

In 1982, the situation had worsened for food aid in cereals (398 days from Commission proposal up to the loading stage) but had slightly improved for dairy products (439 days for skimmed milk powder and 365 days for butteroil).

In view of these long delays, it was not surprising that on 31 December 1977, 302,066 tonnes of cereals, 130,276 tonnes of skimmed milk powder and 44,276 tonnes of butteroil to be supplied under the 1977 or previous programmes remained to be supplied. In 1978, the Commission managed to catch up some of its backlog but at the end of the year still 86,991 tonnes of cereals, 138,735 tonnes of skimmed milk powder and 36,280 tonnes of butteroil remained to be supplied. With the exception of food aid in cereals, the backlog was further reduced in 1979 but in 1980, however, the implementation record worsened again and at the end of that year, 245,699 tonnes of cereals, 104,477 tonnes of skimmed milk powder and 463 days for butteroil.

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529 COURT OF AUDITORS, Special Report 1/80, 109. The time taken for an operation up to a port of unloading in Africa for example was on average 367 days for cereals, 525 days for skimmed milk powder and 463 days for butteroil.

530 Exceptionally, however, food aid was delivered in just of few days; see: emergency food aid to Nicaragua in 1979. Note also that the long delays were not only due to the Community's cumbersome procedures but also the market possibilities (absence of offers), time necessary for the recipient to organize transport in case of a delivery fob, and changes in the delivery time at the request of the recipient (COURT OF AUDITORS, Annual Report 1981, Reply of the Commission, 199.).


532 COURT OF AUDITORS, Annual Report 1978, 111.

milk powder and 28,970 tonnes of butteroil remained to be supplied.\textsuperscript{534} On 30 June 1980 still 14\% of the skimmed milk powder allocated to developing countries under the 1978 programme had to reach the port of shipment.\textsuperscript{535} On 31 December 1982, 339,185 tonnes of cereals, 65,673 tonnes of skimmed milk powder and 25,092 tonnes of butteroil, granted under the 1982 (or previous programmes) was not even in the course of delivery yet.\textsuperscript{536}

Worst of all was that the procedures in place did not allow to predict with any precision when the food aid could actually be supplied, while the correct timing of the mobilization and the supply of the food aid (just before or at the beginning at the between-harvest period)\textsuperscript{537} is of great importance.

To an important extent, the dismal implementation record was of course due to the time taken to formulate the food aid policy for which - with the exception of emergency food aid in the case of man-made disasters and some particular actions - the procedures were in spite of proposals to that end not modified.\textsuperscript{538} It should be noted, however, that the procedures for food aid policy implementation were - as they had been during the earlier part of the seventies - at least as cumbersome as the procedures for food aid policy formulation and thus added to the delays.

In 1982, it took on average for skimmed milk powder - the most problematic product - 212 days between the adoption of the programme and DG VIII’s request for mobilisation to DG VI, 57 days between the request and the last publication of the Commission regulation on the conditions for the mobilisation and finally 75

\textsuperscript{534}COURT OF AUDITORS, Annual Report 1980, 109. At the end of 1979, 144,550 tonnes of cereals, 78,424 tonnes of skimmed milk powder and 10,428 tonnes of butteroil remained to be supplied (COURT OF AUDITORS, Annual Report 1979, 146.).

\textsuperscript{535}COURT OF AUDITORS, Special Report 1/80, 109.

\textsuperscript{536}COURT OF AUDITORS, Annual Report 1982, 96.

\textsuperscript{537}COURT OF AUDITORS, Special Report 1/80, 67. During the between-harvest period, when food is scarce, food aid represents a major nutritional contribution and helps to curb sharp price increases. The between-harvest period is, however, in many countries also the rain season and roads become then impassable. Therefore the food aid should be supplied just before or at the beginning of the between-harvest period.

\textsuperscript{538}See: Section 3.5 of this Chapter. See also: COURT OF AUDITORS, Annual Report 1977, 82.
days between the above publication and shipment.\textsuperscript{539}

In its Resolution on Hunger in the World of 18 September 1980, the European Parliament called on the Commission:

[...] to strengthen, reorganize and coordinate its services more effectively with a view to:
- improving and speeding up the provision of aid (in particular by means of a basic regulation on transport),
- eliminating abuses and increasing the transparency of aid management, taking account of past criticism and of those contained in the special report of the Court of Auditors,
- improving and increasing the regularity of controls, beginning with quality control;\textsuperscript{540}

In the Special Report on food aid of 1980, to which Parliament's Resolution cited above referred to, the Court of Auditors noted reassuringly that:

In the course of this study, a number of cases of bad management have been mentioned. The Court of Auditors would, however, stress that these are not the rule and that most of the operations have proceeded satisfactorily and in close co-operation with the intervention bodies of the various member states, whose role is often decisive.\textsuperscript{541}

In the conclusion of the chapter specifically dealing with the management of Community food aid, the Court noted, however, that:

Implementation of food is too slow because it is encased in a procedure of fearsome complexity [...]. Programming and management of Community food aid need to be completely recasted.\textsuperscript{542}

and in the conclusion of the report, it stated:

[...] the improvement of Community food aid implies the introduction of efficient and flexible procedures in order to cure the weaknesses brought out in Chapters B, C and D of this report,

\textsuperscript{539}COURT OF AUDITORS, Annual Report 1982, 97.


\textsuperscript{541}COURT OF AUDITORS, Special Report 1/80, 128.

\textsuperscript{542}COURT OF AUDITORS, Special Report 1/80, 118.
concerning:
- the financial aspects of the aid;
- programming;
- implementation, from mobilization to distribution.\textsuperscript{543}

Nevertheless, the Commission did not table any proposals to reorganize the implementation of the food aid operations. While it admitted that the system was very complicated and cumbersome, it stressed that it had the advantage of using the existing mechanisms in the Community (DG VI; CAP Management Committees) and the Member States (the intervention agencies) for the supply and the financing of food aid.\textsuperscript{544}

In the absence of any change, the conclusion reached by the 1982 IDS/ABC study was quite similar to the conclusion of the Court of Auditors' Special Report:

The message of this chapter is clear. It is not that the Community programme is vastly inefficient or that it is riddled with corruption; indeed the country reports show that given the limited resources available the food aid programme is managed relatively well. [...] However, much more remains to be done: the programme lacks the efficient structure for planning and implementing a food aid programme that is essentially developmental in its objectives; and it lacks the resources on the ground to carry such a structure into practice.\textsuperscript{545}

Also the 1982 Nicora study concluded on the Community's management of food aid in this way:

Comme l'a constaté la Cour des Comptes dans son rapport spécial de 1980, et ainsi que l'a souligné l'avant-propos de ce rapport, le déroulement des programmes s'est effectué jusqu'à présent dans des conditions acceptables [...] L'instrument dont dispose la Communauté n'est plus adapté à

\textsuperscript{543}\textit{COURT OF AUDITORS}, Special Report 1/80, 128.


\textsuperscript{545}IDS/ABC, 1982, 4.12. The 1982 IDS/ABC study noted that the country reports made in the context of the study were: "[...] unanimously in their view that the present structure and mode of operation of the Community food aid programme make it quite incapable of functioning effectively in the field of long-term development assistance."

The IDS/ABC study criticized in the first place the absence of a formal cycle to take the food aid programme from initial planning through implementation to final evaluation.
1977-82: Shifting the balance of compromise

l'ampleur et la complexité des tâches qu’implique le réalisation des programmes d'aide alimentaire qu'elle poursuit deouis un certain nombre d'années. Un effort d'adaptation s'impose avec d'autant plus d'urgence que les objective fixés pour demain sont encore plus ambitieux.\(^{546}\)

Nicora criticized especially the 'lourdeur', extreme complexity and lack of transparency of the procedures in force\(^{547}\); the excessive centralisation of the system\(^{548}\) and its insensitivity with regard to the problems and needs of the beneficiaries\(^{549}\); the malfunctioning organisation of the services in Brussels as specially reflected in a lack of follow-up, feedback and coordination\(^{550}\); and the lack of equipment and, above all, staff ('une organisation sans force de frappe').\(^{551}\) As noted, remedies to these shortcomings would have to be found if the Community really wanted to use its food aid as a development policy instrument, and in particular as an instrument in support of food strategies.

3.6.1 The conclusion of the food aid supply agreement

\(^{544}\)NICORA, 1982, ii.

\(^{547}\)Nicora suggested inter alia that the Community, as do other donors, should publish a sort of a manual of food aid procedures.

\(^{548}\)Which was clearly reflected, for example, in the fact that the Commission's delegations were hardly involved in the food aid operations and - in the countries were there was no delegation - the total absence of a Community representation.

It was also reflected in the fact that the intervention agencies could not even make the smallest of changes to the modalities of a food aid operation; they always needed the Commission's agreement.

\(^{549}\)Nicora expressed his doubts with regard to the sensitivity of DG VI, responsible for most of the implementation, for the problems and needs of developing countries.

\(^{550}\)As already noted above the Commission was not very good at monitoring the use and evaluating the impact of its food aid; there was also a lack of detailed information on manner the food aid operations were carried out by the intervention agencies and the private undertakings, and to the extent that this information was available within the Commission, it was not passed on to the interested services.

Nicora observed: "Une constatation s'impose de toutes les façons: avec 700 millions d'UCE d'engagements annuels, avec 500 à 600 livraisons par an, le système ne peut plus continuer à souffrir de la sous-information chronique qui le caractérise actuellement." (NICORA, 1982, 80.).

\(^{551}\)NICORA, 1982, 77-84.
Implementation of the Community food aid operations

It will be recalled that the procedure for the conclusion of the food aid supply agreements was significantly amended in 1975. Formal agreements concluded by the Council were replaced by agreements concluded by an exchange of letters between the Commission and the food aid recipient. During the period 1977-82, this procedure remained unchanged. While this procedure seemed all but cumbersome, the Court of Auditors noted in its 1980 Special Report on food aid that this stage between the adoption of the food aid programme and the mobilization of the products to be supplied as food aid was remarkable for being the lengthiest part of the whole implementation procedure. For 1978 direct food aid the average time taken to conclude the supply agreements was 129 days for cereals, 272 days for skimmed milk powder and 216 days for butteroil. Reportedly, these delays were due to, first, the need to adapt the timing to the recipients' requirements, second, the need to ensure some measure of coordination with other food aid donors, third, the constraints of the Community's agricultural markets, and, fourth, negligence on the part of the recipients which fail to reply to the Commission's letter. It should be noted that the legal relationship between the Community and the food aid recipient established by the exchanges of letters was - even by Commission experts - not well understood. Nicora, for example, referred to this relationship as 'une relation de type quasi contractuel'. It should therefore be stressed again that - under international law - the exchange of letters, albeit perhaps a very informal procedure, led to a legally binding international agreement between the Community and the recipient.

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552See: Section 3.6 of Chapter 1. Note, however, that the Council kept control over the terms and conditions of the food aid supply.

553COURT OF AUDITORS, Special Report 1/80, 111-113.


555NICORA, 1982, 35.

556Provided of course the recipient was a subject of international law.
1977-82: Shifting the balance of compromise

As had already been the case in the mid-seventies, there were also in the period 1977-82 no real negotiations between the Community and the food aid recipient on the terms and conditions of the food aid supply agreement. After the Council had decided how much food aid would be supplied and whether the Community would at least partially finance transport beyond the fob stage, the Commission usually just sent its letter with in annex the standard terms and conditions to which the recipient was to reply with a letter accepting the aid. Nicora noted:

*Cet échange est une simple formalité [...]. Il ne correspond pas à aucune véritable discussion, encore moins à une négotiation.*

Reportedly, other donors did enter into real negotiations with the food aid recipients. The Commission often did not even wait until it had received the letter of acceptance from the recipient to start the mobilization of the food aid to be supplied.

3.6.2 The Commission's decision on the conditions governing the mobilization of the products to be supplied as food aid

The procedure for the Commission's decision on the conditions governing the mobilization of the products to be supplied as food aid remained basically unchanged during the period 1977-82.

For food aid in cereals, the procedure was - as from 1 November 1975 onwards - laid down in Article 6 (for normal food aid actions) and Article 7 (6) (for emergency food aid actions) of Council Regulation (EEC) 2750/75 of the Council fixing criteria for the mobilization of cereals as food aid which replaced

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37NICORA, 1982, 8.

38NICORA, 1982, 8. Clay, however, noted that as from 1982, the geographical departments within DG VIII were given an increased role in the negotiations of food aid at country level; a change related to the new thematic emphasis on food strategies (CLAY, 1985, 42-3.).
respectively Article 6 and Article 7 (6) of Règlement (CEE) No 1693/72 du Conseil du 3 aout 1972 discussed above and stipulated:

For a Community action, the Commission shall, after considering the market situation and in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 or, where appropriate of Regulation No 359/67/EEC, determine the conditions governing the mobilization [...].

and

Detailed rules for applying this Article, and in particular the criteria according to which the Commission is to take the decision referred to in paragraph 4, shall be adopted in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75, or where appropriate, of Regulation No 359/67/EEC.

The Article 26 of Council Regulation (EEC) No 2727/75 on the common organization of the market in cereals referred to, replaced - but was mutatis mutandis identical to - the Article 26 of the Council Regulation (EEC) No 120/67 on the common organization of the market in cereals discussed above. The new Article 26 provided for the well-known CAP Management Committee procedure and stipulated:

1. Where the procedure laid down in this Article is to be followed, the Chairman shall refer the matter to the Committee, either on his own initiative or at the request of the representative of a Member State.

2. The representative of the Commission shall submit a draft of the measures to be adopted. The Committee shall deliver its Opinion on the draft within a time limit set by the Chairman according to the urgency of the matter. An Opinion shall be delivered by a majority of 41 votes.

3. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the Opinion of the Committee, they shall forthwith be communicated by the Commission to the Council. In that event the

50 Council Regulation (EEC) 2750/75 of the Council fixing criteria for the mobilization of cereals as food aid, Article 6, O.J. 1975, L 281/90.

51 Council Regulation (EEC) 2750/75 of the Council fixing criteria for the mobilization of cereals as food aid, Article 7 (6), O.J. 1975, L 281/90.
Community may defer application of the measures which it has adopted for not more than one month from the date of such communication.

The Council, acting by qualified majority, may take a different decision within one month.\textsuperscript{562}

The Article 26 of Council Regulation (EEC) No 359/67 on the common organization of the market in rice also referred to in Regulation (EEC) No 2750/75, was \textit{mutatis mutandis} identical to the Article 26 quoted in full above.

Note that in 1976 Council Regulation (EEC) No 359/67 was replaced by Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organization of the market in rice, which in its Article 27 provided for the same procedure as the one laid down in the Article 26 quoted in full above.\textsuperscript{563}

For dairy products, the procedure for the Commission's decision on the conditions governing the mobilization was - as it had been during the period 1969-76 - laid down in Article 30 of Council Regulation 804/68 on the common organization of the market in milk and milk products.\textsuperscript{564} It will be recalled that this Article 30 provided for a typical CAP Management Committee procedure as the one provided for in Article 26 of Council Regulation (EEC) No 2727/75 discussed


above. The Council was of course well aware that this consultation of the CAP Management Committees could give rise to considerable delays and therefore had decided in the context of the 1976 butteroil programme, to allow the Commission to take a decision on the conditions governing the mobilization in case the quantities to be mobilized were relatively small. As I noted in Section 3.6 of Chapter 1, Article 7, second paragraph, of Council Regulation (EEC) No 694/76 laying down the general rules for the supply of milk fats to certain developing countries and international organizations under the 1976 food aid programme, stipulated:

Where supplies involve not more than 500 metric tons of butteroil or butteroil equivalent released from the stocks if intervention butter or of butter to be bought on the Community market, the Commission shall decide as to the effecting of such supplies and on the relevant procedures.\(^3\)\(^4\)\(^5\)

It should be noted, however, that such a 'delegation of competence without Management Committee control' did not repeat itself in the period 1977-82.

For food aid in sugar, the Commission - pursuant to, for example, Article 1 (4) of Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA (for sugar supplied under the 1976 EEC-UNRWA Convention)\(^6\)\(^7\), and Article 1 (4) of Council Regulation (EEC) No 3827/81 of 21 December 1981 on the supply of sugar to UNRWA (for sugar supplied under the 1981 EEC-UNRWA Convention)\(^8\)\(^7\) - decided during the period 1977-82 upon the conditions governing the mobilization following the CAP Management Committee procedure provided for in the Council Regulation on the common organization of

\(^3\)\(^4\)\(^5\)Council Regulation (EEC) No 694/76 laying down the general rules for the supply of milk fats to certain developing countries and international organizations under the 1976 food aid programme, Article 7, second paragraph, OJ. 1976, L 83/5.


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the market in sugar.\textsuperscript{566}

As I observed above, the Community started during the period 1977-82 to supply quantities of other products. Community law did, however, not provide for a general procedure to decide on the mobilization conditions; the procedure was laid down on an ad hoc basis. In the context of the food aid in pigmeat to Malta in 1979, for example, the Council decided that the pigmeat was to be mobilized by Malta on the Community market under conditions laid down by the Commission. In its 1980 proposal for a Council Regulation laying down general rules for the supply as food aid of products other than cereals, skimmed milk powder or butteroil, the Commission proposed in Article 4 (2) and (3) thereof that where the products to be supplied were subject to a common organization of the market, the mobilization conditions were to be determined by the Commission in accordance with the management committee procedure and where the products were not subject to such an organization, the mobilization conditions were to be determined by the Commission without any Member State's involvement or control.\textsuperscript{569} As I already pointed out, this proposal was, however, never adopted.

In general, this phase of the implementation of the food aid actions was comparatively short. The average time taken to come to a Commission decision on the mobilization conditions was 36 days for cereals, 47 days for skimmed milk powder and 45 days for butteroil.\textsuperscript{570} The time taken differed, however, considerably depending on the timing of meetings of the competent CAP Management Committees. It should be noted that also in the case of emergency food aid, the Commission was to take a decision on the mobilization conditions which was to be scrutinised by the CAP Management Committees. A lot of


\textsuperscript{569}COM(80) 478 final, Annex II, Article 4.

\textsuperscript{570}COURT OF AUDITORS, Special Report 1/80, 113. Accounting from the day of DG VIII's request for mobilization to DG VI onwards.
valuable time was lost here. For emergency food aid in skimmed milk powder to Peru and to Mozambique, the time needed for the Commission to adopt its decision on the mobilization conditions was respectively 29 and 22 days.\(^5\)\(^7\)\(^1\)

It happened of course that after the Commission decided on the mobilization conditions, the situation in the recipient country changed in such a way that the mobilization conditions should be amended. The Commission did not always show itself to be flexible enough to allow for such amendments. In 1977 for example it ignored a explicit request from the Ghanaian authorities to deliver to the emergency cereal aid in sacks instead of in bulk and to another port than the one originally agreed upon because of congestion problems at the latter. As a result of the Commission’s refusal to modify its decision on the mobilization conditions, the bagging and transportation of this emergency food aid proceeded at a very slow pace and under very bad conditions. According to a report by the Commission delegate, on 30 January 1979, i.e. 14 months after the food aid had arrived, only 65% had been distributed, 2.5% had been declared unfit for human consumption and 32.5% remained stored in unsafe conditions in the port.\(^5\)\(^7\)\(^2\)

Making changes in the original mobilization decision - even when the change only relates to the port of arrival - often caused major problems and considerable delay because these changes had to be made by the Commission following the procedures described above. Furthermore, often a lot of time had past before the competent Commission service was informed by other Commission services, by the intervention agencies or by the recipients about the need for changes. Especially but not only for outsiders, the procedures were so complex and the division of responsibilities so unclear, that they did often not know whom to address.

It is important to recall that at this point in the procedure DG VI (Agriculture) took over from DG VIII (Development cooperation). The division of tasks within the Commission was during the period 1977-82, still as laid down in the 'Lardinois-

\(^5\)\(^7\)\(^1\)COURT OF AUDITORS, Special Report 1/80, 117. In the case of emergency food aid in skimmed milk powder to Nicaragua it only took 7 days.

\(^5\)\(^7\)\(^2\)COURT OF AUDITORS, Annual Report 1978, 114.
Cheysson' agreement of 24 October 1973. Nicora observed, however, that while the agreement was intended to clarify the division of tasks, it never succeeded in achieving this aim: the terms of the agreement were often too vague and general and sometimes even contradictory (as for example with regard to competence in financial matters). This obliged the Commission services involved to give a pragmatic interpretation which gradually led to the situation in which the services of DG VI and the food aid division of DG VIII all but coordinated their respective tasks; they interpreted their responsibilities as exclusive responsibilities and were very reluctant to involve or consult the other services involved ('cloisonnement des services' as Nicora called it). The Court of Auditors remarked in its 1980 Special Report on food aid that although the division of responsibilities among between DG VI and DG VIII was understandable and even logical, it was obvious that the absence of a single hierarchical authority, covering the whole of the process of food aid, was bound to be prejudicial to its efficiency and meant that no manager had, at any given moment, either an overall picture or knowledge of the stage reached by a food aid operation. A more precise definition of the respective tasks including consultation and coordination was definitely called for.

In the margin, it should perhaps be noted that for the food aid in cereals, the Member States - pursuant to Article 5 of Council Regulation (EEC) No 2750/75 - were also in period 1977-82 still obliged to inform the Commission of their draft decisions on the mobilization of cereals to be supplied as food aid. The latter Article 5 stipulated:

573NICORA, 1982, 69. The text of this agreement may be found in the Documentary Annex to the Nicora study (annex 29).

574"Le document précise (3è tiret) que '...le FEOGA couvre les dépenses correspondant à...'; mais cette précision est précédée (2è tiret, 6è ligne) par l'indication suivant laquelle le DG VIII '... est également responsable pour les aspects budgétaires ...' (NICORA, 1982, 70. footnote 1.).


1. For a national action, the Member State concerned shall communicate to the Commission the date on which it intends to initiate its action, the financial year against which this would be charged, the proposed intervals between deliveries, the country of destination, the quantity and the product concerned, the port of loading and the envisaged method of mobilization.

2. On receipt of this Communication, the Commission shall examine, in accordance with the procedure laid down in Article 26 of Regulation (EEC) No 2727/75 or, where appropriate, of Regulation (EEC) No 359/67/EEC and in the light of the overall situation of the Community market, whether the envisaged method of mobilization meets the conditions referred to in Article 3 and shall suggest if necessary that the Member State concerned modify the envisaged method of mobilization.577

As I already noted in Section 3.6 of Chapter 1, the Commission could, however, merely suggest to Member States to bring their method of mobilization in line with the rules applying on Community food aid mobilization. It had in fact virtually no control over the Member States mobilization decisions and one could wonder whether this was in keeping with the Community's competence in the field of agriculture. It will certainly not have facilitated the management of the cereals market.578

3.6.3 The award of the food aid supply contract

Whereas in the period 1969-76, the criticism on Community rules on the award of the food aid supply contracts primarily concerned the relative absence of such


578For food aid in cereals supplied by the Member States under the 1980 Food Aid Convention, Commission Regulation (EEC) No 3423/81 of 30 November 1981 stipulated an additional requirement in its Article 1 (1): "Member States shall communicate to the Commission for each calendar year month, not later than four weeks after the end of the month in question, the data listed in the Annex concerning exports of cereal and rice products effected by way of food aid, both national and Community, under the Food Aid Convention." (OJ. 1981, L 345/50.). By way of justification, the Commission noted that the implementation of undertakings made under the 1980 Food Aid Convention was to be carried out in close liaison with management of the common organization of the markets in cereals and rice in respect of both Community and national food aid operations.
rules and the high degree of discretion given to the intervention agencies which organized the award procedures, in the period 1977-82, the Community laid down fairly detailed sets of rules on the contract award in Commission Regulation (EEC) 303/77 for food aid in dairy products and in Commission Regulation (EEC) No 1974/80 for food aid in cereals. Both regulations stipulate that in principle the supply contracts were to be awarded by tendering procedure but that in exceptional cases, i.e. in cases of special urgency or, for dairy food aid, also when the quantities involved are relatively small, the contract could be awarded by direct award procedure. While the award procedures stipulated in these regulations are in essence identical to the procedures applied until then, they were now regulated in more detail.

With regard to dairy food aid, Article 2 (1) of Commission Regulation (EEC) No 303/77 laying down general rules for the supply of skimmed milk powder and butteroil as food aid stipulated that the delivery of skimmed milk powder or butteroil as food aid was to be carried out only by undertakings established within the Community. For food aid in butteroil, Article 9 (3) of Regulation (EEC) No 303/77 stipulated also that only those processing undertakings approved for that purpose by the Member State on whose territory the manufacturing of the butteroil took place could be entrusted with the supply of butteroil. Furthermore the latter article stipulated that only those undertakings which provided sufficient guarantee that they will comply with the obligations laid down in the regulation were to be approved and that the approval was to be withdrawn when these conditions were no longer satisfied.


When the Commission decided in its decision governing the conditions of the mobilization that the supply contract for dairy food aid was to be awarded by tendering procedure, the intervention agency or agencies entrusted with supplying the goods had, pursuant to Article 13 of Commission Regulation (EEC) 303/77, to give notice of an invitation to tender indicating in particular, first, the quantity of goods to be supplied, second, the destination and the delivery stage, third, the closing date and the address for the receipt of tenders, fourth, the date by which the delivery was to take place, fifth, if appropriate, the warehouse where the butter or skimmed milk powder were stored, and finally, in case of delivery 'to the port of unloading' or 'free at destination', the name and address of the recipient's agent responsible for taking delivery. The notice of invitation was to be published in the Official Journal at least 12 days before the closing date for submission of tenders. Article 14 (1) of Commission Regulation (EEC) No 303/77 stipulated that tenders had to be submitted in writing and either handed to the intervention agency against a recipient or sent by registered letter to the intervention agency. The intervention agency could, however, also authorize the use of telex. If the goods to be supplied were purchased on the market the tender was to be handed in to the intervention agency of the Member State on whose territory the goods were to be manufactured and packaged. Article 14 (2) stipulated that where the invitation to tender was in respect to several lots, each tender had to relate to one lot only but to the whole of the lot. Article 14 (3) stipulated that tenders were to indicate: (a) the name and address of the tenderer; (b) the port of shipment chosen from among Community ports accessible for ocean-going ships, provided that the individual tendering procedure did not provide any special limitations (in

584 Article 14 (1) of Commission Regulation 303/77, OJ. 1977, L 43/5.
585 Article 14 (2) of Commission Regulation (EEC) No 303/77 stipulated further, however, that the regulation concerning an individual tendering procedure could provide that tenders which related to only a partial quantity of 500 tonnes or a multiple of 500 tonnes of the total quantity were nevertheless valid. In that case the tenderer had to state the minimum partial quantity which might be awarded to him. See: OJ. 1977, L 43/5.
case of a delivery 'to the port of shipment' only one port could be indicated in a tender); (c) the amount tendered, exclusive taxes, expressed in the currency of the Member State to whose intervention agency the tenderer was submitted and to which the tenderer undertook to make the delivery concerned on the terms laid down (note that the amount tendered had to include the insurance costs and in the case of butteroil manufactured from the intervention stocks, the purchase price of the butter).56 Furthermore the tender, to be valid, had to indicate when relevant what proportion of the amount tendered covered the cost of transportation to the port of shipment and what proportion covered the cost of transportation beyond the port of shipment.57 Tenders could not contain conditions and/or reservations which were not expressly authorized and had to be accompanied by proof that a tendering security had been lodged, a commitment by the tenderer that he will abide by the conditions of the tendering procedure and, in case of a delivery of butteroil, a document certifying the approval by the Member State where the manufacturing took place and the commitments listed in Article 10 (2).58 Once submitted, tenders could not be withdrawn.

Article 16 (1) stipulated that in the light of the tenders received and in accordance with the CAP Management Committee procedure (the procedure laid down in Article 30 of the Council Regulation on the common organization of the market in milk and milk products), the Commission fixed a maximum amount for the contract to be awarded or decided to make no award.59 All tenders for amounts (when converted in u.a.) exceeding the maximum amount fixed by the Commission were refused and the successful tenderer was the one whose tender was the


58 These commitments referred to were: the commitment to pay - within 90 days of the final date fixed by the intervention agency for delivery - for the butter delivered by the intervention agency a price equal to the intervention price applicable on the day fixed as the closing date for receipt of tenders or the day of the conclusion of the directly awarded contracts; the commitment not to make any complaint concerning the quality and nature of the butter made available by the intervention agency; and the commitment to manufacture the butteroil to be delivered only from the butter handed over by the intervention agency for that purpose. See: Article 10 (2) of Commission Regulation (EEC) No 303/77, O.J. 1977, L 43/4.

lowest. If the tendering procedure was carried out simultaneously by several intervention agencies and if two or more of them receive tenders for the same, most favourable amount, the Commission decided, after consultation of the Management Committee for Milk and Milk Products, which intervention agency was to award the contract. Where a single intervention agency had received more than one tender for the same, most favourable amount, the award was made by the drawing of lots. Each tenderer was immediately notified by the intervention agency of the result of its participation in the tendering procedure and the intervention agency informed the Commission of the name and address of the successful tenderer.

With regard to the direct award procedure, Commission Regulation (EEC) No 303/77 remained very vague. It merely stipulated in its Article 18 that the intervention agency entrusted with the delivery was to conclude a supply contract on the most favourable terms as regards costs and forward a copy of such contract to the Commission. Note that the rights and obligations arising from the award of a dairy food aid supply contract were not transferable.

With regard to food aid in cereals, it should be noted that Commission Regulation (EEC) No 1974/80, unlike Regulation (EEC) No 303/77 concerning dairy food aid, stipulated no restrictions or conditions regarding the undertakings to whom the supply contract could be awarded. This was a regrettable lacuna because it made it impossible to exclude from the tendering procedure undertakings with a notable bad record of contract execution. In its 1979 Report, the Court of Auditors criticized the fact that an intervention agency had awarded supply


contracts to a firm which in the past had made several deliveries of dubious quality. DG VIII had brought this matter to the attention of DG VI but 'refusing to allow [this firm] to tender would in fact have caused legal problems'. When a cereal supply contract was to be awarded by tendering procedure, Article 3 of Commission Regulation (EEC) No 1974/80 required that a notice of invitation to tender (drawn up in accordance with Annex I of the Regulation) was published in the Official Journal (in annex to the Commission's regulation on the conditions governing the mobilization. The notice had to be published no later than 10 days before the deadline for the submission of tenders. The tenders had to be submitted in writing and either handed in to the intervention agency (designated in the notice) against a receipt or sent thereto by registered letter, telex or telegram. Where the tendering procedure concerned several lots, each tender had to relate to only one lot but a tender was only valid if it related to an entire lot. Pursuant to Article 4 (3) of Regulation (EEC) No 1974/80, a tender - to be valid - had to indicate: (a) the reference number of the tendering procedure; (b) the name and address of the tenderer; (c) the number and net weight of the lot to which the tender related; (d) a single port of shipment selected from Community ports accessible to sea-going vessels; (e) the Member State in which the tenderer was going to complete customs export formalities (when the cereals were purchased on the Community market); and, of course, (f) the amount of the tender expressed per tonne of product in the currency of the Member State where the tendering procedure is taking place. To be valid the

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597 Article 4 (1) of Commission Regulation (EEC) No 1974/80 also stipulated that the tenders had to reach the intervention agency before 12 noon, local time, on the closing date for the submission of tenders specified in the notice.
599 Article 4 (3) of Commission Regulation (EEC) No 1974/80, O.J. 1980, L 192/12. With regard to the costs to be taken into account in the tender, Annex II of the Regulation contained a non-exhaustive list. When the tender involved the supply of intervention products, the costs to be taken into account were: 1. transport costs to the place of delivery; 2. costs arising from the unloading or landing at the place of delivery and, where appropriate, the cost
tender had also to be accompanied by: (a) proof that the security, which was to serve as a guarantee that the tenderer would fulfil its obligations, was furnished\(^\text{600}\); (b) an undertaking by the tenderer to comply by the tendering conditions; (c) an undertaking by the tenderer to apply as soon as possible for an export license in respect of any quantities for which he would be awarded a contract; (d) in the case of a supply cif, an undertaking by the tenderer to transport the goods by sea in vessels listed in the larger classes in recognized classification registers, not more than 15 years old, and attested by a competent body as meeting hygiene requirements; and, finally, (e) when the tender involved intervention products, an undertaking by the tenderer to supply those products without substitution.\(^\text{601}\) Once submitted, a tender could no be withdrawn any more.\(^\text{602}\)

Immediately after the time limit for submission of tenders expired, the intervention agency responsible for conducting the tendering procedure opened the tenders and read them in public.\(^\text{603}\) The intervention agency had to award (within 48 h) the

relating to all operations which immediately precede the shipping, loading or transshipment operation;
3. costs relating to the completion of customs formalities;
4. weighing, inspection and analysis costs;
5. packaging costs;
6. ancillary costs to be borne by the shipper;
7. costs relating to the insurance referred to in Article 12 (3);
8. freight and marine insurance.

When the tender involve the mobilization of the product on the Community market:
1. price of the product and packaging;
2. costs arising from loading and transportation to the place of delivery;
3. costs arising from loading or landing at the place of delivery and, where appropriate, the cost relating to all operations which immediately precede the shipping, loading or transshipment operation;
4. costs relating to the completion of customs formalities;
5. weighing, inspection and analysis costs;
6. ancillary costs to be borne by the shipper,
7. freight and marine insurance.

\(^\text{600}\) The amount of this security was laid down by the Commission in its decision on the conditions governing the mobilization of the cereals to be supplied as food aid. It could be furnished, at the option of the tenderer, in cash or in the form of a guarantee given by a credit establishment which satisfied the criteria laid down by the Member State to which the intervention agency responsible for the tendering procedure belonged. See: Article 5 of Commission Regulation (EEC) No 1974/80, OJ. 1980, L 192/12.


supply contract to the tenderer who submitted the most favourable tender. Where two or more tenderers submitted tenders for the same, most favourable amount, the intervention agency awarded the supply contract to one of these tenderers by drawing lots. If the intervention agency considered that the tenders were not in line with the prices normally prevailing on the market, it could decide - with the agreement of the Commission - not to award the supply contract. Note the important difference with the tendering procedure for the award of dairy food aid supply contracts. In the case of the latter procedure, all tenders were sent to the Commission, which then, after consultation of the Management Committee for Milk and Milk Products, fixed a maximum amount for the contract to be awarded or decided not to award the contract at all. The intervention agency would award (or not award) the supply contract on the basis of the Commission's decision. In the context of the tendering procedure for the award of cereal food aid supply contracts the intervention agencies played a more important role. The Commission neither fixed a maximum amount nor decided not to award the contract. The award was the full responsibility of the intervention agency, although it should be noted that it could only decide not to award the supply contract after having obtained the agreement of the Commission. In most cases, however, the Commission was not involved in the tendering procedure and the procedure was thus considerably shorter than the tendering procedure for dairy food aid supply contracts. The Court of Auditors remarked in its 1980 Special Report that it was difficult to explain why the successful tenderer was selected by the intervention agencies in case of cereals and by the Commission in case of milk products.

The intervention agency communicated the results of the tendering procedure to all the tenderers by letter or telex not later than the first day following the award decision. It also informed the Commission of the outcome of the procedure.

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606 COURT OF AUDITORS, Special Report 1/80, 131.

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It should be noted, however, that the information transmitted by the intervention agency often not allowed the Commission to judge the merits of the choice of supplier or of the price tendered.\textsuperscript{609}

When a cereal supply agreement was to be awarded by \textit{direct award procedure}\textsuperscript{610}, Article 9 of Commission Regulation (EEC) No 1974/80 required that the intervention agency designated for the purpose concluded - after ensuring competition between several tenderers - the contract on the basis of the most favourable terms.\textsuperscript{611} The provisions relating to the contents of a tender (Article 4 (3)) and most provisions relating to the undertakings which had to accompany a tender (Article 4 (4) (b)-(e)) were \textit{mutatis mutandis} also applicable to the direct award procedure.\textsuperscript{612} Note that for cereal food aid supply contracts, the direct award procedure was thus better worked out than for dairy food aid supply contracts and one could hope that this would improve the chances of obtaining the best price.\textsuperscript{613}

It is important to note that, regardless the award procedure followed, the food aid supply contract - and this was true for food aid in cereals as well as food aid in milk products - was concluded \textit{not} between the Community and the successful tenderer but between the intervention agency and the successful tenderer and that the intervention agency in this context did not act as an agent for the Community


\textsuperscript{610}COURT OF AUDITORS, Special Report 1/80, 120.

\textsuperscript{611}Note that in order to be able to react 'fast' in emergencies, the Member States were - pursuant to Article 7 (1) of Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals as food aid - also during the period 1977-82 required that: "[...] [to] hold available for delivery at any time certain quantities of [cereals in the unaltered state] which have been taken over by the intervention agency, or else immediately make available the necessary quantities of products drawn from stocks existing in their market if the intervention agency does not have the necessary quantities." (Article 7 of Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid, O.J. 1975, L 281/90.).


\textsuperscript{613}According to the Court of Auditors in its 1980 Special Report, there was in the case of an award by direct award procedure no certainty of obtaining the best price (COURT OF AUDITORS, Special Report 1/80, 77.).
in the sense that the latter would be liable for damages resulting from measures taken by the agency. There existed, however, a great deal of confusion with regard to the legal nature of the relationship between the Community and the intervention agency. The Court of Auditors in its 1980 Special Report noted for example:

Generally the agricultural produce provided under Community food aid is mobilized within the Community [...] with the national intervention agencies acting as agents of the Commission.44

This confusion became very obvious when Eurico s.r.l., an Italian undertaking which had been awarded (by direct award procedure) a contract to supply 3,750 tonnes of rice to Niger, sued the Ente Nazionale Risi, the Italian Intervention Agency which had awarded the contract, for not paying it in full. The Ente Nazionale Risi had in view of the bad quality of the rice supplied and on explicit instructions of the Commission, not paid Eurico the total amount of the invoice, Lit. 1,770 m but Lit. 270 m less. The Tribunale di Milano, by judgment of 19 June 1980, dismissed Eurico's claim, however, on the ground that the Ente Nazionale Risi was not a proper defendant since it had acted as an agent of the Commission and that the action should have been brought directly against the Commission. Eurico therefore brought the action against the Commission before the same Tribunale di Milano but - to its surprise - found that the Commission argued that it was not a proper defendant. Genuinely confused, the Tribunale stayed the proceedings and submitted the following question to the Court of Justice for a preliminary ruling:

Was the Ente Nazionale Risi, the Italian intervention agency, vested with specific authority to act in the name of the EEC ["mandato con rappresentanza"] for the purpose if concluding the private contract for the purchase of 3,750 metric tons of husked long-grain rice intended for the Republic of the Niger by virtue of the Commission Decision of 10 September 1976 [...] and the legislative measures referred to therein expressly or by implication?

Not happy with the way in which the question was phrased, the Court of Justice

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44COURT OF AUDITORS, Special Report 1/80, 63.
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noted that it was apparent from the facts of the case and from the grounds of the order for reference that the question by the Tribunale di Milano sought, in reality, to establish whether it is to the Commission or to the national intervention agency that any liability would attach, under Community provisions regarding food aid vis-à-vis an undertaking which the national intervention agency had chosen as the other party to a contract.

Eurico argued that when the Ente Nazionale Risi concluded the contract, it had clearly acted in the capacity of an agent on behalf of the Commission. In support of this view, it pointed out that, as matter of law, the existence of such a relationship could be deduced, on the one hand, from the terms of the Commission Decision of 10 September 1976, Article 1 of which imposes an obligation directly upon the Ente Nazionale Risi, and, on the other hand, from an examination of the Community rules, from which it is apparent that Community food aid operations constitute the performance of an obligation which are entirely the responsibility of the Community and that the action of the national intervention agencies in such food aid operations is taken directly on behalf of the Community. For that reason, the principles concerning the division of powers and responsibilities as between the Community and the Member States or their intervention agencies, developed in the context of the implementation of the Common Agricultural Policy, cannot be transposed to the field of food aid. As regards the facts, the existence of the agency relationship was confirmed by the Commission's behaviour during the performance of the contract, since it involved itself totally at every stage of the contract and thus intended to take direct responsibility for all effects of the contract concluded on its behalf by the Ente Nazionale Risi.615

The Court of Justice, however, followed the Commission's argumentation. As I also already pointed out, the Court noted that the Community food aid legislation was closely modelled on the legislation governing the common agricultural policy and that Community food aid legislation divided powers between the Community and the Member States in a manner identical to that laid down for the

implementation of the common agricultural policy. With regard to the scope of the powers of the Member States and their intervention agencies as well as their non-contractual liability towards third parties, there was, however, a well-established case-law according to which the Commission could not be held liable for damage caused to private individuals by the agencies of Member States in application of Community law and that the liability had to be determined by the national courts in accordance with the national law of the Member State concerned. The Court argued that the same principle had to be applied to contractual liability where the national intervention agencies conclude food aid supply contracts. Consequently only the intervention agency to which the implementation of the Commission’s decision to supply food aid was entrusted, could incur liability towards the undertakings with whom it concluded the supply contract. The fact that the Commission intervened in a very active way during the performance of the contract at issue is without significance as regards the division of powers and liability. The letters and the telex messages which the Commission sent to the Ente Nazionale Risi - the Court noted - did not bind the national authorities and had no legal effect other than to express the opinion of the Commission. The Court had ruled in this way in a series of common agricultural policy cases and in particular, in its Judgment of 27 March 1980 in Case 133/79, Sucrimex v. Commission and later in its Judgement of 10 June 1982 in Case 217/81, Interagra v. Commission\(^6\)\(^1\)\(^6\). The Court thus replied to the question submitted to it by the Tribunale di Milano that only the national intervention agency, which was responsible of the carrying out of the food aid operations decided on by the Commission, could be held liable to the undertaking to which it has, by contract, delegated the actual implementation of the operations for any damage suffered by the latter.\(^6\)\(^1\)\(^7\)

The importance of the Court’s Judgment in Eurico v. Commission, rested in the fact that it greatly clarified the role and the position of the intervention agencies


\(^6\)\(^1\)\(^7\) Judgment of 18 October 1984, Case 109/83, Eurico v. Commission, point 22.
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and the nature of their legal relationship to the Community, which even for insiders had been all but clear. The Court’s ruling created, however, a feeling of uneasiness. The Court could be criticized on the ground that its ruling, and for that matter the whole common agricultural policy case law, was unfortunately out of touch with Community practice. According to the Court, the Member States’ liability for any damages resulting from implementation by the intervention agencies was justified by the fact that authority to implement had been delegated to them. Often, however, this delegation was a legal fiction. As the facts in the Eurico v. Commission case showed, the Commission did, despite the delegation of the powers, interfere without restriction. Whenever it thought fit, it acted just as if the intervention agencies were decentralized parts of the Community administration and gave them instructions regarding the implementation. As I already noted above, the Court ruled in Sucrimex v. Commission and Interagra v. Commission, two prominent common agricultural policy cases, and in Eurico v. Commission, that these instructions were merely opinions of the Commission and did not bind the intervention agencies in any way. In practice, however, but the Court seemed to ignore this completely, it was not easy for an intervention agency to refuse to act in accordance with the Commission’s opinions: the Commission might in turn refuse to recognize the expenses made by the intervention agency on behalf of the Commission. The fact that such a refusal could be challenged before the Court of Justice hardly affected the de facto force of the instructions. Given the persuasive authority that the Commission’s instructions had, it might perhaps have been argued that the Commission should have abstained from all interference in implementation. This solution, however, seemed both impractical and unwise. In many cases, efficient management required the Commission, the main interlocutor of the food aid recipients, to interfere in the implementation and give instructions to the intervention agencies. Moreover, it should be noted that the wrongful implementation of the Community decision to grant food aid could engage the international liability of the Community. For instance, if food aid

delivered was unfit for human consumption, it was the Community which was liable to the recipient. It was therefore often quite justifiable for the Commission to give intervention agencies explicit instructions but it seemed only logical that in those instances the Commission could be held liable for any damages caused by measures taken pursuant to its instructions. The Sucrimex/Interagra/Eurico case law effectively shielded the Commission from liability for its acts and was quite unfair to the Member States which were held liable for damages resulting from measures over which they had little control. I think that the Court was wrong to link the question of liability so closely to the division of powers in cases where the delegation of implementing powers to the Member States was de facto either fictitious or not respected. In Eurico v. Commission, justice would undoubtedly have been served better with a ruling more sensitive to Community reality. It would have been fairer to the Member States and less confusing to the individuals involved if the Commission had been held responsible. While open for criticism, the Court’s ruling in Eurico v. Commission had, however, the merit of bringing light in the darkness of legal relationships between the Commission, the intervention agencies and the private undertakings to whom the supply contract was awarded.

Nicora criticized the award procedures for cereal as well as dairy food aid contracts for being:

[...] longues, lourdes et hétérogènes suivant les produits en cause.619

but he (cautiously) added, however, that:

Cette critique ne vise pas à mettre en cause, du moins à ce stade et pour une assez longue période de temps, l'utilisation des instruments déjà existants au titre de la PAC (organismes nationaux d'intervention). Encore moins l’utilité du rôle indispensable joué par la concertation entre DG VI et les Etats membres (Comité de gestion).620

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619 NICORA, 1982, 22.

The 1982 IDS/ABC study observed, however, quite correctly that the involvement of the national intervention agencies could reduce significantly the influence the Commission could exert particularly over the timing of food aid shipments.621

The Court of Auditors observed in its 1980 Special Report that the intervention agency in the case of cereals or the Commission in the case of dairy products had to decide fairly often not to award the supply contract because no satisfactory tenders were received. When this happened, a new Commission regulation on the conditions governing the mobilization was necessary which resulted of course in considerable delays.622

Note that while the award of supply contracts for cereals to be mobilized within the Community was fairly well organized during the period 1977-82, the same could not be said about the award of supply contracts for cereals to be mobilized outside the Community. As I mentioned before, the Community mobilized, as from 1978 onwards, some of its food aid in cereals in developing countries. In these cases, the Commission - and for the Commission, DG VIII - negotiated and concluded the supply contracts; Community legislation, however, did not stipulate any specific procedure. In its 1982 Report, the Court of Auditors remarked with regard to 2000 tonnes of white maize bought by the Commission in Honduras for 458,000 ECU, i.e. at a price which greatly exceeded the then prevailing world market price, that since the purchase price had been negotiated without an invitation to tender, it was difficult to view the contract concluded as an example of sound financial management.623 In reply to this criticism, the Commission observed that in the cases where food aid was bought outside the Community, it was not always possible to hold formal consultations with various suppliers. The Commission did implicitly recognize, however, that the Court’s criticism was not

621IDS/ABC, 1982, 1.11.

622COURT OF AUDITORS, Special Report 1/80, 113.

unfounded and noted that it was conducting various tests with a view to devising more structured arrangements for purchasing outside the Community, notably by drawing up standard contracts and asking its Delegates - when possible - to discuss prices tentatively with potential suppliers in the region.636

It will be recalled that the Community supplied during the period 1977-82 also food aid in products other than cereals and dairy products. For sugar food aid supply contracts, the award procedure was during the period 1977-82 laid down in for example Council Regulation (EEC) No 1034/76 of 30 April 1976 on the supply of white sugar to UNRWA as food aid (for sugar supplied under the 1976 EEC-UNRWA Convention)624 or Council Regulation (EEC) No 3827/81 of 21 December 1981 on the supply of sugar to the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) as food aid (for sugar supplied under the 1981 EEC-UNRWA Convention625. These Council Regulations merely stipulated that for the award of the supply contract normally a tendering procedure was to be organized but that in exceptional circumstances other procedures could be used. The Commission, however, provided in its decision concerning the conditions of the mobilization for more detail on the award procedure. One could, for example, refer to Commission Regulation (EEC) No 434/82 of 25 February 1982 on a standing invitation to tender for the mobilization of Community white sugar for the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) as food aid.627 Given the minor importance of food aid in sugar, I will not delineate this procedure, here but merely remark that it was quite similar to the award procedure for dairy food aid supply contracts (the Commission also fixed maximum amounts) and that there was not one award but

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624COURT OF AUDITORS, Annual Report 1982, Reply by the Commission, 221.
627OJ. 1982, L 55/34.
a succession of partial awards spread in time.
For food aid in sugar to recipients other than the UNRWA and for food aid in other products such as vegetable oil and beans, the procedure used for the award of the contracts remained rather obscure. This was true for food aid in other products mobilized within the Community as well as for food aid in other products purchased outside the Community. The supply contracts were awarded following ad hoc procedures. For the emergency food aid supplied to Nicaragua in 1979, for example, the Commission bought products outside the Community following three different procedures: part of the food aid was bought by the Commission directly, through the agency of a European broker, part was bought on the spot by a Commission employee and part was bought by the Nicaraguan government against reimbursement. It seems, however, that in most cases, it was the Commission - and for the Commission, DG VIII - which concluded the supply contracts. The criticism of the Court of Auditors (and the Commission’s reply) with regard to the purchase of white maize from Honduras mentioned above, was of course also relevant in this context. There was definitely an urgent need for (clear) rules governing the award of these food aid supply contracts.

In spite of the fact that the award procedures were - at least for cereal supply contracts and dairy supply contracts for the supply of Community products, i.e. the vast majority of contracts awarded - quite well worked out in Community legislation, there were reportedly still many instances in which there was evidence that the award procedures had not been organized correctly and, as a result, the most favourable supply contract had not been concluded and/or the free access and equal treatment of all undertakings not guaranteed. Delorme criticized the lack of competition among tenderers and the concentration of food aid deliveries in the hands of a small number of undertakings, who earn profits that were 'as

628 COURT OF AUDITORS, Special Report 1/80, 71.

illicit as they are exorbitant'.\textsuperscript{630} In its 1980 Special Report, the Court of Auditors did not hide its dissatisfaction with the existing award procedures.\textsuperscript{631} It noted, for example, with suspicion that in the case of wheat flour the selection of the supplier seemed closely linked with the agency receiving the tenders, in the sense that often the successful tenderer had the same nationality as the intervention agency\textsuperscript{632}, and that there were, on average, only 2.6 tenderers per batch.\textsuperscript{633} Not what one would call a highly competitive tendering procedure. The Court of Auditors also noted that inspections made showed that tenders had been considered inadmissible without the slightest explanation and that, on other occasions, the lowest tenderers had not been successful, also without explanation.\textsuperscript{634} The Court considered that competition would be greatly improved - and the Community more likely to conclude a favourable contract - if the Commission would no longer contend itself with tenders at overall fixed prices but require tenders to indicate clearly the cost of the different parts of the supply operation, i.e. the withdrawal from the intervention stocks or the purchase on the market, the checking, the insurance, the transport up to the fob stage and, if relevant the cost of transport beyond the fob stage and the cost of processing and packaging the commodity.\textsuperscript{635} During the period 1977-82, the Commission had made some further, albeit hesitant steps in this direction by requiring in its Regulation (EEC) No 303/77 concerning dairy food aid that the tenders showed separately the cost of the transport to the loading

\textsuperscript{630}DELORME, 1983, 241. Delorme referred to the Court of Auditors' Special Report but I did not find such strong wording in the latter report.

\textsuperscript{631}See for some interesting statistical data: COURT OF AUDITORS, Special Report 1/80, 72-73.

\textsuperscript{632}75\% for France, 82\% for Belgium and 62\% for Germany.

\textsuperscript{633}COURT OF AUDITORS, Special Report 1/80, 74.

\textsuperscript{634}COURT OF AUDITORS, Special Report 1/80, 73 and 78.

\textsuperscript{635}COURT OF AUDITORS, Special Report 1/80, 76-77. See also in COURT OF AUDITORS, Annual Report 1977, 83 and COURT OF AUDITORS, Annual Report 1978, 112. Note that some of the intervention agencies did require a detailed tender.
implementation of the Community food aid operations

While the Commission admitted that the lack of information left it open to abuse, it did not require detailed tenders. Note that other food aid donors usually awarded the contract for transport beyond the fob stage separate from the contract for the supply of the food aid products fob. This reportedly guaranteed them a far better deal on sea transport. Within the Community, however, such a change, which would - one would presume - significantly have increased the workload of the understaffed Food Aid Division, was not really considered. The Commission did recognize, however, that the fact that sea transport (i.e. transport beyond the fob stage) was also the responsibility of the undertaking which supplied the food aid products fob was in general unsatisfactory since it meant that 'an important element of both expenditure and managerial responsibility [was] beyond its control.'

The Court of Auditors considered that competition could also be improved by extending the time-limits for the submission of tenders (which was in practical terms often not more than a few days) and by allowing more time for the loading of the goods. The short time-limits played very much in favour of the few, large firms which were familiar with the procedures and could afford to 'read the Official Journal'. Smaller firms which could not and did not aspire to become regular tenderers but could occasionally undoubtedly come up with the most favourable tender, also found it difficult to participate in a tendering procedure because of the high security and because of the formal requirements regarding the submission of the tenderer (e.g. telex). It should be clear, however, that obtaining the most favourable supply contract and guaranteeing the free access and equal treatment of all undertakings would unfortunately often be incompatible with speeding up the implementation of Community food aid; the Commission would have to decide which of these objectives deserved a relative priority.

636 Regulation (EEC) No 1974/80 concerning cereal food aid that the tenders showed separately the cost of transport cif.

637 See: NICORA, 1982, 49


639 COURT OF AUDITORS, Special Report 1/80, 78-79.
3.6.4 The execution of the food aid supply contract

Depending on the terms of the supply contract, the undertaking to which the contract was awarded had to purchase the food aid products on the market or take them out of the intervention stocks\textsuperscript{640}, process or manufacture them, and deliver them to the delivery stage agreed upon.\textsuperscript{641}

It will be recalled that during the period 1969-76, Community law failed to define the delivery arrangements in detail, let alone provide for arrangements adapted to food aid supply operations; it was left to the intervention agencies to specify and 'adapt' the Incoterms fob, cif and 'free at destination', to food aid supply operations. During the period 1977-82, however, the Community made at least for food aid in dairy products a significant effort to remedy this shortcoming. Commission Regulation (EEC) No 303/77 (concerning dairy food aid) provided for four delivery arrangements especially worked out for dairy food aid supply operations. Article 2 of Commission Regulation (EEC) No 303/77 provided for four possible delivery arrangements (worked out in Annex I of the Regulation):

\textsuperscript{640}Note that for skimmed milk powder taken from the intervention stocks, Article 7 of Commission Regulation (EEC) No 303/77 stipulated that the intervention agency would not hand over this skimmed milk powder unless a security for delivery had been lodged; the intervention agency was to make available the skimmed milk powder in the case of a railway truck or a lorry, loaded (but not stowed) on the means of transport at the loading platform of the warehouse; or in the case of any other means of transport (e.g. container), on the loading platform of the warehouse (OJ. 1977, L 43/3.).

For butter (for the manufacturing of butteroil) taken from the intervention stocks, Article 10 of Commission Regulation (EEC) No 303/77 stipulated also that a security for processing and delivery had to be lodged before the intervention agency could hand over the butter; the intervention agency was to make available the butter loaded (but not stowed) on the means of transport at the loading platform of the cold store (OJ. 1977, L 43/4.). Note that the butter supplied by the intervention agency was to be paid by the successful tenderer.

For cereals taken from the intervention stocks, Article 12 (5) and 13 (3), the successful tenderer was to insure the goods until shipment has effectively taken place.

\textsuperscript{641}Note that the rights and obligations arising from the supply contract were not transferable and that the successful tenderer could not on his own initiative cancel the operation for which the contract had been awarded (See: Article 17 of Commission Regulation (EEC) No 303/77, OJ. 1977, L 43/6; and Article 11 of Commission Regulation (EEC) No 1974/80, OJ. 1980, L 192/13.).
delivery to the port of shipment\(^{642}\), delivery to the port of unloading, ship’s hold\(^{643}\), delivery to the port of unloading, deposit on quay or on lighter\(^{644}\), and delivery

\(^{642}\) Under this arrangement, delivery was deemed to have taken place and the risks passed from the successful tenderer to the recipient at the moment when the products were deposited at the port of shipment designated for the delivery, at the berth indicated by the recipient or his agent. Costs beyond such delivery were borne by the recipient in accordance with Article 3 of the Regulation. The successful tenderer had to effect delivery on a date within the period fixed therefor. The recipient determined the delivery schedule with him. Where the recipient was unable to take delivery of the goods on time, his agent was to notify the successful tenderer without delay. In that case, the successful tenderer and the agent of the recipient could agree a new date for the start of delivery, and, if necessary, a new schedule. In any event, the costs resulting from the delay were, except in case of force majeure, borne by the recipient. (Commission Regulation (EEC) No 303/77, Annex I, point I, OJ. 1977, L 43/10.)

\(^{643}\) Under this arrangement, delivery was deemed to have taken place and the risks passed from the successful tenderer to the recipient at the moment when the latter’s agent actually took possession of the goods in the ship’s hold at the port of unloading. The recipient bore all the costs incurred subsequent to delivery, including unloading costs (e.g. breaking bulk, hoisting, reception) as well as lighterage. Any demurrage cost or dispatch money at the port of unloading was respectively charged or payable to the recipient. The rates thereof and the rules relating thereto, laid down in the contract between the successful tenderer and the carrier, had to be agreed between the successful tenderer and the receiving agent of the recipient. (Commission Regulation (EEC) No 303/77, Annex I, point II, OJ. 1977, L 43/10.) Where delivery was made ‘to the port of unloading’ the intervention agency concerned had to notify as soon as possible the recipient’s agent (indicate by the Commission), of the name of the vessel, the date of loading, the port of unloading and other particulars as noted at the time of dispatch. The successful tenderer had to notify the recipient of the expected date of arrival of the vessel at the port of unloading at least 10 days before that date. The successful tenderer also had to ensure that the charter party contained a term that the captain had to notify the recipient at least 72 hours in advance of the estimated date of arrival of the vessel at the port of unloading. (Commission Regulation (EEC) No 303/77, Article 5 (1), OJ. 1977, L 43/3.). Note, however, that reportedly information on the expected time of arrival of the food aid was in practice the exception rather than the rule (COURT OF AUDITORS, Annual Report 1978, Reply of the Commission, 117; and also COURT OF AUDITORS, Special Report 1/80, 132.) Note also that the Commission Delegate in the recipient countries was not informed of the arrival of the food aid.

\(^{644}\) Under this arrangement, delivery was deemed to have taken place and the risks passed from the successful tenderer to the recipient at the moment when the products were actually deposited on the quay at the port of unloading, or where appropriate, on the lighter. The recipient bore all the costs incurred subsequent to the delivery, including reception costs and lighterage. Any demurrage costs or dispatch money at the port of unloading was respectively charged or payable to the recipient. The rates thereof and the rules thereto, laid down in the contract between the successful tenderer and the carrier, must be agreed between the successful tenderer and the receiving agent. (Commission Regulation (EEC) No 303/77, Annex I, point III, OJ. 1977, L 43/10. See also Article 5 (1) of Commission Regulation (EEC) No 303/77, OJ. 1977, L 43/3, referred to in the previous footnote. With regard to the information on the arrival of the food aid, see previous footnote.
'free at destination', and stipulated explicitly that for the delivery of dairy food aid the arrangements used in commercial trade were to be disregarded. Also for cereal food aid, Community law laid down delivery arrangements but these arrangements were in no way especially adapted to the specific nature of cereal food aid supply operations; on the contrary, these arrangements were the FOB and CIF delivery arrangements commonly used in commercial trade. It is interesting to note that Commission Regulation (EEC) No 1974/80 which stipulated these two delivery arrangements for cereal food aid did not explicitly provide for the possibility of delivery at destination, although some cereal food aid was supplied

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645 Under this arrangement, delivery was deemed to have taken place and the risks passed from the successful tenderer to the recipient at the moment when the products actually arrived at the place of destination fixed for the delivery. The recipient bore all the costs incurred subsequent to delivery, including reception costs and any transhipment costs. (Commission Regulation (EEC) No 303/77, Annex I, point IV, O.J. 1977, L 43/10.)

Where delivery was made 'free at destination', the intervention agency concerned shall as soon as possible notify the recipient's agent (indicated by the Commission), of the date of loading, the means of transport used for transporting the goods to their destination, the port of unloading and other particulars as noted at the time of dispatch. The successful tenderer shall notify the recipient of the estimated date of arrival of the goods at their destination at least two days before that date. (Commission Regulation (EEC) No 303/77, Article 5 (2), O.J. 1977, L 43/3.)


647 Under this arrangement, the successful tenderer was to deliver the goods on board of the vessel (in accordance with a loading schedule adopted in agreement with the recipient). The successful tenderer was to load and stow the merchandise on board of the vessel at his own expense and bore the risks, in particular of loss or deterioration of the goods, until they had effectively passed the ship's rail at the port of shipment. Where the recipient was unable to take delivery of the goods in time, the successful tenderer was required to comply with any extension which did not exceed 60 days; in the event of an extension exceeding 60 days, the successful tenderer could, at his request, be released from his obligations. At the recipient's request and with the Commission's approval, the intervention agency could also alter the port of loading. (Article 12 of Commission Regulation (EEC) No 1974/80). Both in the case of delays in taking delivery and in the case of change of port of loading, the additional costs were borne by the recipient (Article 18 of Commission Regulation (EEC) No 1974/80).

648 Under this arrangement, the successful tenderer was responsible for the costs arising from placing the goods on board the vessel and bore the freight and unloading charges, including wharfage and lighterage charges as well as any demurrage at the port of destination. Note, however, that the successful tenderer bore all the risks relating to the goods, in particular of loss or deterioration, only until they effectively passed the ship's rail at the port of shipment. Nevertheless, the successful tenderer had to provide at his own expense a marine insurance policy covering all risks of carriage endorsed to the order of the recipient. The successful tenderer was to communicate to the recipient, as soon as they came to his knowledge, the name of the vessel, the loading date and the presumed date of arrival at the port of discharge. He also had to stipulate in the transport document that the captain had to advise the recipient at least 72 hours in advance of the date of arrival at the port of discharge (Article 13 of Commission Regulation (EEC) No 1974/80, O.J. 1980, L 192/14.).
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up to this stage.

Since the supply contract was - as I explained above - concluded with the responsible intervention agency, the latter (and not the Commission) was to supervise the correct execution of the contract and, eventually, pay the undertaking the amount stated in his tender and release the security/ies. If it was established that due to a fault of the undertaking the food aid was not delivered within the delays agreed upon or the quality or quantity of the food aid was not according the provisions of the supply contract or the delivery was in any other way defaulting, the security could be totally or partially forfeited and the undertaking could be paid only partially or even not at all. In Section 3.6.4 of Chapter 1, I noted that Community legislation during the period 1969-76 was very sketchy concerning the conditions of payment and the release of the securities; each intervention agency had more or less its own set of rules and practices. During the period 1977-82, this shortcoming was remedied. Articles 21 to 25 of Commission Regulation (EEC) No 303/77 (concerning dairy food aid) and Articles 17 to 20 of Commission Regulation (EEC) No 1974/80 (concerning cereal food aid) stipulated in considerable detail the conditions for payment and the release of the securities.\textsuperscript{49}

A more serious shortcoming already identified in the period 1969-76, however, was not or only partly remedied in the period 1977-82. As I noted already, it was usually the intervention agencies' task to monitor the execution of the supply contract. The food aid supply contract was in most cases between the successful tenderer and an intervention agency. The intervention agencies, however, reportedly did not all and at all times seriously check whether the undertaking executing the food aid supply contract did so in keeping with the terms of that contract.

As I already noted in Section 3.1.3 of this Chapter, Commission Regulation 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid stipulated in its Article 8 (1) relating to skimmed milk powder:

If the goods to be delivered are purchased on the Community market, the competent agency in the Member State concerned shall check that the quality and packaging comply with the conditions laid down and shall issue a certificate to that effect on the conclusion of the said check.\(^650\)

Article 11 of the latter Commission regulation stipulated with regard to food aid in butteroil:

1. The competent agency of the Member State concerned shall check that Article 9 (1)(b) and (2) and Article 10 (2) (c) are complied with and shall issue a certificate to that effect on conclusion of the said check.

2. For the purpose of the check referred to in paragraph 1, the successful tenderer shall notify the competent agency carrying out the check, of the date when the manufacturing and packaging of the butteroil is to begin, at least three working days before that day. The butteroil may only be dispatched from the place of manufacture and packaging after authorization by the competent authority.\(^651\) [...]


\(^650\)Commission Regulation 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid, article 8 (1), O.J. 1977, L 43/4. The quality and the packaging of the skimmed milk powder taken from the intervention stock, however, was not checked. Article 7 (2) required, however, that the successful tenderer, before accepting skimmed milk powder taken from the intervention stocks, had to ensure that the quantity made available corresponded to the quantity to be delivered and that the packaging was dry, clean and undamaged.

\(^651\)Commission Regulation 303/77 of 14 February 1977 laying down general rules for the supply of skimmed milk powder and butteroil as food aid, Article 11 (1), O.J. 1977, L 43/5. It was generally recognized that it was important that the quality of the butteroil was checked by means of sampling at the moment the butter was processed into butteroil to ensure that the butteroil was not (partially) replaced by the far cheaper vegetable oil during processing. The Court of Auditors observed, however, during one of its inspection visits in Belgium that samples were only taken during office hours although some manufacturers produced butteroil 24 hours a day (COURT OF AUDITORS, Annual Report 1982, 98.).
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operations involving cereals and rice stipulated in its Article 15 (1):

With a view to delivery at the proposed stage the goods must be recognized as satisfying the requirements stipulated in the Regulation opening the tendering procedure. For this purpose the intervention agency of the country of shipment shall arrange for a check at the port at the time of loading on the nature, quality and packaging of the goods. Following inspection an attestation shall be issued. The costs relating thereto shall be borne by the successful tenderer.

Samples intended for analysis shall be taken and the inspection shall be carried out in accordance with the trade practices in force in the country of shipment. The successful tenderer and the recipient's representative shall be invited to take part in the operation.652

As I already mentioned above, the Court of Auditors noted, however, that - in the absence of common rules - the activities of the agencies in this respect varied from Member State to Member State and that, in general, there was reason to question the effectiveness of the sample analyses carried out by them.653 In his 1982 study, Nicora sharply criticized the fact that each Member State still had its own quality control procedures and that there were different procedures for each food aid product. As the Court of Auditors had already done in its 1980 Report, he called for an harmonisation of the quality control procedures.654

It will be recalled that the intervention agencies received from the Community advances to cover the food aid expenditure. In theory at the end of the following


When the inspection revealed that the goods did not satisfy the requirements stipulated, they had to be refused and replaced. Where some quantities were missing the successful tenderer had to make up the cargo.

Note the appeal procedure in Article 15 (3)

653COURT OF AUDITORS, Special Report 1/80, 81-82. Note by way of example that in 1977 Upper Volta complained about the poor quality of the 827 tonnes of milled rice and 1,000 tonnes of wheat which prior to export, had been judged as satisfactory by an official Belgian organization and by a firm of experts (COURT OF AUDITORS, Annual Report 1977, 84.).

year, the Commission checked all the expenditure made by the intervention agency and eventually sought to close the accounts of the agencies paying them whatever was still owed or requesting the reimbursement of what was paid too much.\textsuperscript{655} In practice, however, the closing of the accounts happened much later because the Member States were late in forwarding the summary statements of payments made\textsuperscript{656} and because of the Commission's lack of staff.\textsuperscript{657} In November 1977, the Commission decided on the closing of the accounts related to the financial year 1974. No other decisions regarding the closing of accounts were taken in the period 1977-82, which meant that at the end of 1982, the accounts relating to the financial year 1975 were still to be closed.\textsuperscript{658} It is obvious that such belated control of the expenditure made by intervention agencies, could not be very effective. Delays of this magnitude were of course contrary to sound financial management, since only continuous monitoring could prevent errors from being repeated year after year.\textsuperscript{659} Furthermore, expenditure wrongfully made by the intervention agencies remained charged to the Community budget for years on end.

In this Section, I have so far only dealt with food aid in cereals and dairy products mobilized on the Community market, i.e. the overwhelming part of Community food aid. One will recall, however, that the Community supplied in the period 1977-82 also other products and products mobilized outside the Community. For other products for which there was a common organization of the market (such as sugar for example) and which were mobilized within the Community, the undertakings supplying the food aid were also paid by the relevant intervention agency. For 'other products' for which there was no common organization of the

\textsuperscript{655}See: Section 3.6.4 of Chapter 1.

\textsuperscript{656}COURT OF AUDITORS, Special Report 1/80, 47.

\textsuperscript{657}The Commission observed in reply to Court of Auditors' criticism: "As the staff allocated to the financing of food aid expenditure has not been increased at the same rate [as the food aid operations], priority has had to be given to day-to-day management [...]" (COURT OF AUDITORS, Annual Report 1977, Reply of the Commission, 81. With regard to the latter, see also: NICORA, 1982, 61.

\textsuperscript{658}COURT OF AUDITORS, Annual Report 1982, 95.

\textsuperscript{659}COURT OF AUDITORS, Annual Report 1980, 110.
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market or for products mobilized outside the Community, the undertakings supplying the food aid - which had contracted directly with the Commission - were paid by the Commission.\textsuperscript{660}

3.6.5 The monitoring of the compliance with the terms and conditions of the supply agreements by the food aid recipient and the evaluation of the effectiveness of Community food aid

Once the undertaking to which the supply contract had been awarded handed over the food aid to the recipient, and this could be in the port of loading, in the port of unloading or at the place of final destination, the food aid supply agreement between the Community and the food aid recipient stipulated what the recipient was to do with the aid received. The terms and conditions of the food aid supply agreements were already discussed above.\textsuperscript{661} Where during the period 1969-76, the Commission - and more precisely the Food Aid Division of DG VIII which was responsible for this last phase in the implementation - did not make any serious effort to monitor the recipient's compliance with the terms and conditions of the supply agreements, during the period 1977-82 some progress was made in this respect.\textsuperscript{662} In 1978, the Commission reorganized its Food Aid Division and the new structure provided for a special service to check reports of misuse of food aid and, more generally, follow up the use of Community food aid.\textsuperscript{663} To the extent its very small staff allowed it, this service carried out a number of on-the-spot checks.\textsuperscript{664} In addition, the Commission Delegates in ACP countries were instructed


\textsuperscript{661}See: Section 3.4.3 of this Chapter.

\textsuperscript{662}See: Section 3.4.3 of this Chapter.

\textsuperscript{663}COURT OF AUDITORS, Annual Report 1978, Reply of the Commission, 114.

\textsuperscript{664}In 1979 for example, the Commission missions visited Bolivia, Burundi, Chad, Comoros, Djibouti, Honduras, Kenya, Lebanon, Peru, Yemen P.D.R., Zaire and Zambia to check the use of Community food aid (Commission communication concerning food aid programmes for 1980, COM (80) 57 final, 10).
to audit food aid projects. As already mentioned before, also the Court of Auditors undertook audits upon record and on the spot. As a result of these efforts, the Community was increasingly aware of cases of misuse made of its food aid but remained overall badly informed about the use of its food aid.

As during the period 1969-76, costs incurred by the Community as a result of non-compliance by the recipient with the terms of the supply agreements, such as delay and demurrage costs, were to a considerable extent never recovered from the recipients. At the end of 1982, these debts of the recipients to the Community amounted to 0.7 m ECU. In many cases the Commission found it quite impossible to really pressure dirt poor recipient countries to pay their debts.

Still badly informed about the use the recipient country really made of its food aid, the Commission was of course also during the period 1977-82 unable to

In 1980 for example, the Commission missions visited Egypt, India, Nicaragua, Haiti, China, Thailand, Laos, Zaire, Sri Lanka Somalia, Djibouti, Cape Verde, Bolivia and Ecuador (Commission communication concerning food aid programmes for 1981, COM(81) 41 final, 14).

665 COURT OF AUDITORS, Annual Report 1978, Reply of the Commission, 114. The Court's annual reports contained a number of concrete examples of situations in which the Commission's Delegate had played an important role: e.g. in Niger (COURT OF AUDITORS, Annual Report 1977, 84-85).

In its Communication concerning food aid programmes for 1980, the Commission indicated that not only its delegates in ACP countries but also its Representatives in non-associated countries and regional representatives "continued" to provide valuable support both to the recipient authorities and the staff in Brussels (COM(80) 57 final, 10). See also: COM(81)41 final,14. The 1982 IDS/ABC study observed, however, that in those recipient countries where there was a delegation, it had usually nothing to do with food aid and when they were involved in the food aid operation, it was on an informal basis (IDS/ABC, 1982, 4,2.) The delegates did reportedly not have the time or even in some cases the interest to participate in the implementation of the food aid programme. The IDS/ABC study pleaded for a bigger and better defined role for the Commission's delegates.

666 COURT OF AUDITORS, Annual Report 1977, 84-85 (problems in Peru, Bolivia, India, Niger and Upper Volta); COURT OF AUDITORS, Annual Report 1978, 116 (countries in question were not identified by name); COURT OF AUDITORS, Annual Report 1979, 146-7 (countries in question not identified by name); COURT OF AUDITORS, Annual Report 1980, 110-112 (problems in India, Bangladesh and Zaire).

667 In 1982, for example the Commission only recovered one debt from the recipient countries. The most important debtors were Egypt (253,558 ECU) and Bangladesh (165,252 ECU) (COURT OF AUDITORS, Annual Report 1982, 96.).
evaluate seriously the impact and the effectiveness of its food aid policy. The lack of continuous evaluation was hardly made up for by the (very instructive) 1982 IDS/ABC study, commissioned by the Commission to evaluate the impact of Community food aid.  

668 The findings of this study have been referred to throughout this Chapter.
Eight years after the first food aid operations, the Council laid down on 22 March 1977 in an informal decision the objectives of the Community’s food aid policy. After three years of debate triggered by the Commission’s 1974 Memorandum on Food Aid but animated by the opposition of the United Kingdom to the then food aid policy, the Member States agreed on three objectives for the food aid policy: raising the level of nutrition of the recipient population; contributing to the economic development of the recipient countries; and relieving distress in emergency situations. For reasons delineated above, neither surplus disposal, the main raison d’être of Community food aid up to that point, nor the building up of goodwill in the Third World were among the objectives explicitly mentioned in the Council’s decision. The latter did, however, not mean that surplus disposal or more generally the promotion of domestic agricultural interests was no longer an important policy objective or that the Community no longer aspired to use its food aid to make friends in the Third World. The analysis of the main features of Community food aid policy and law since the Council’s Decision undertaken in Section 3 of this Chapter confirmed this finding in many respects. The importance of the Council’s Decision cannot, however, be overestimated. In retrospect, one can say that it was certainly not one of these pious Council statements of principle which never get translated in concrete policy changes. On the contrary, the Council’s decision marked the end of a period in which Community food aid was primarily an instrument of surplus disposal and the beginning of a period in which the balance of compromise between the objectives would gradually shift in favour of developmental and humanitarian objectives. As this Chapter sufficiently demonstrates, the Council’s agreement on the objectives of the food aid policy did not have a spectacular, immediate impact on Community food aid policy and law. While the Member States might have reached agreement on the (explicit)
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objectives of the food aid policy, reaching agreement on the many concrete policy changes needed to allow the Community to pursue these objectives would - for reasons delineated above - prove to be a long and difficult process. Milestones in this process were, first, the Commission's 1979 proposal for a food aid framework regulation, second, the European Community's campaign against hunger in the world, initiated by the European Parliament with its Resolution of 18 September 1980 but followed up by the Commission's and Council's 1981 Plan of Action and the 1982 Special Programme providing inter alia for the experimental use of food aid in support of national food strategies, and, third, three critical, but very instructive and influential studies on the Community's food aid policy: the 1980 Special Report of the Court of Auditors, the 1982 IDS/ABC study and the 1982 Nicora study.

During the period 1977-82, the Community took numerous small and not so small steps towards a more development and relief oriented food aid policy. One could mention for example the supply of products other than cereals and dairy products, triangular operations, improvement in the quality of the products supplied, increased quantities of cereal food aid and stable quantities of dairy products, 'quasi' multi-annual commitments, increased focus on the poorest developing countries, more cereal food aid supplied through international organizations, the definition of allocation 'criteria', generous financing of food aid transport beyond fob, better defined terms on the use of food aid, minor improvements in the food aid policy formulation and more important improvements in the implementation of the food aid policy. With each of these steps, the balance of compromise between the objectives of the food aid policy shifted a little bit in favour of the developmental and humanitarian objectives. Contradicting the grim accounts of Community food aid found in the literature and the popular press, the three in-depth studies all stressed that Community food aid had brought effective relief to destitute economies and had provided a number of countries with better means to tackle their economic difficulties 

L'instrument dont dispose la Communauté n'est plus adapté à l'ampleur et à la complexité des tâches qu'implique la réalisation des programmes d'aide alimentaire qu'elle poursuit depuis un certain nombre d'années. Un effort d'adaptation s'impose avec d'autant plus d'urgence que les objectives fixées pour demain sont encore plus ambitieuses.  \[670\]

At the end of the period 1977-82, the battle for a development and relief oriented Community food aid policy was not about to be concluded.

\[670\]NICORA, 1982, ii.