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as an instrument
for economic and social development
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Prospects for and constraints on
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European Community food aid law

Volume II

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Thesis submitted for assessment with a view towards obtaining the degree of Doctor of the European University Institute in Law
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Chapter 3:

The European Community food aid policy during the period 1983-89: economic and social development and humanitarian relief as the primary policy objectives
I Introduction to Chapter 3

Fourteen years after the Community first supplied food aid, the Council finally adopted in December 1982 a regulation laying down the objectives and the principal substantive and procedural elements of its food aid policy, Council Regulation (EEC) No 3331/87 of 3 December 1982 on food aid policy and food aid management. It will be recalled that the Commission had tabled its proposal for a food aid framework regulation in January 1979. It took the Council almost 4 years to decide on this proposal for a more development and relief oriented food aid policy. As I pointed out in Chapter 2, the Council's Decision of 22 March 1977 on the objectives of the Community's food aid policy did certainly not have a spectacular, immediate impact on Community food aid policy and law. While in March 1977 the Member States might have agreed in principle that development cooperation and humanitarian relief were to be the (explicit) objectives of the food aid policy, reaching agreement on the many concrete policy changes needed to allow the Community to pursue these objectives proved to be a long and difficult process. This was best reflected in the Council's inability to agree upon the Commission's 1979 proposal. In spite of the fact that the framework regulation was not adopted, the Community took during the period 1977-82, however, numerous steps towards a more development and relief oriented food aid policy. With each of these steps, the balance of compromise between the objectives of the food aid policy shifted a little more in favour of the developmental and humanitarian objectives, although other objectives and in particular common agricultural policy objectives were clearly still among the objectives pursued. In this Chapter, I will examine Community food aid policy and law during the period 1983-89, a period in which the Community established - in two steps - a food aid policy the primary objectives of which is now undoubtedly

the economic and social, and in particular the agricultural and rural, development of the recipient countries and humanitarian relief for disaster victims. In a first section, I will analyze successively the above mentioned (first) food aid framework regulation of 3 December 1982, the Commission’s communication of April 1983 proposing a radical food aid policy reform and the Council’s reaction thereon, the repercussions of the African crisis of 1984-85 on the food aid policy, the (second) food aid framework regulation of 22 December 1986, the Commission regulation of 8 July 1987 on the mobilization of products supplied as Community food aid and finally the latest developments in the Community’s food aid policy up to the Council's Resolution of 23 November 1989. In a second part, I will delineate and evaluate the main features of Community food aid policy and law during the period 1983-89.
From the first to the second food aid framework regulation and beyond

2.1 The first food aid framework regulation, Council Regulation (EEC) No 3331/82 of 3 December 1982, and subsequent policy initiatives

2.1.1 Council Regulation (EEC) No 3331/82 of 3 December 1982 on food aid policy and food aid management: the emergence of development cooperation and humanitarian relief as important policy objectives and the continued relevance of the promotion of domestic agricultural interest as a policy objective

As I pointed out in the introduction of this Chapter, it took the Council almost 4 years to agree upon the Commission's 1979 proposal for a food aid framework regulation. This is a very long time, certainly if one considers that during this period the issue of food aid, and more precisely the issue of making food aid into a genuine instrument for economic development and humanitarian relief to combat hunger in the world, was constantly on the political agenda. When one, somewhat artificially, distinguishes between (1) the objectives, (2) the substantive elements and (3) the procedural elements of the food aid policy, it seems that the Council's difficulties to agree upon the food aid framework regulation concerned primarily the procedural elements.

With regard to the objectives and the substantive elements of the Community's food aid policy, the framework regulation, rather than drastically reforming and innovating the policy, reflected and crystallized (in a legal instrument) the change in the Community's food aid policy the Council had agreed upon in principle during the first years of the period 1977-82. The policy objectives laid down in the framework regulation were in fact those the Council had already agreed upon informally during its meeting of 22 March 1977. The substantive policy elements such as the food aid allocation criteria (Article 2 (2)), the possibility of multi-
annual food aid commitments (Article 2 (3), Article 4 (1) and Article 5), the possibility of using food aid for the building of food security stocks in developing countries (Article 2 (4)), and the possibility of undertaking triangular operations (Article 3 (1)), had also already been accepted in principle by the Council 'long' before it adopted the framework regulation. The same cannot be said with regard to the procedural elements of the food aid policy and later in this section I will suggest some reasons why the latter elements seemed to be so problematic. First, however, I need to explain that the policy objectives stated in the framework regulation were not the only objectives pursued by the Community’s food aid policy.

The food aid framework regulation of December 1982 laid down for the first time in a formal manner the objectives of the Community’s food aid policy. The framework regulation stated in its first recital that:

Whereas food aid is provided on humanitarian grounds and constitutes one of the essential aspects of the Community’s policy of cooperation with the developing countries; and stipulated in its Article 1 that:

Under its cooperation policy with the developing countries, the Community shall carry out food-aid operations.

and in its Article 2 (1) that:

The food-aid operations referred to in Article 1 shall have the following objectives in particular:

- to raise the standards of nutrition of the recipient peoples,

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2It will be observed that the Council in fact adopted without any substantial amendments the Articles 1 and 2 (1) as proposed by the Commission in its 1979 draft regulation, which was not that surprising since the objectives proposed by the Commission in 1979 were after all the policy objectives the Council had agreed upon in principle in March 1977. The amendments made by the Council were of a stylistic nature. In Article 1: “Under its cooperation policy with developing countries, [...]” instead of “Under its cooperation policy, [...]”. In Article 2 “The food aid operations referred to in Article 1 [...]” instead of “These food aid operations [...]”; “[...] the standard of nutrition of the recipient peoples” instead of “[...] the standard of nutrition of the recipients”, and “[...] the balanced economic and social development [...]” instead of “[...] the economic development [...]”.


Council Regulation (EEC) No 3331/82: an unsatisfactory compromise

- to help in emergencies,
- to contribute towards the balanced economic and social development of the recipient countries.⁵

It will be noted that surplus disposal, the undisputed raison d'être of the Community's food aid policy during the seventies, was not mentioned in the framework regulation as an objective of the food aid policy. It will be recalled that it had not been mentioned in the Council's informal Decision of 22 March 1977 either. As I already noted in comments on the latter Decision, it would also with regard to the framework regulation be wrong, however, to conclude from this 'absence' that surplus disposal, or more generally the promotion of domestic agricultural interests, was therefore no longer an objective of the Community's food aid policy. While for obvious political reasons, it was not stated explicitly as an objective, it is clear that it remained also after the adoption of the framework regulation a Community food aid policy objective. However, the balance of compromise between the food aid policy's objectives, which during the period 1969-76 had been so overtly in favour of surplus disposal and during the period 1977-82 had started to shift, was after the adoption of the food aid framework regulation of December 1982 in favour of the developmental and humanitarian objectives.

The substantive elements of the food aid policy laid down in the framework regulation as well as the legal basis of the regulation clearly demonstrated, on the one hand, the emergence of development cooperation and humanitarian relief as important policy objectives, and, on the other hand, the continued relevance European farmers' economic interests as a policy objective.

The legal basis of the framework regulation was a composite legal basis made up of Article 43 EEC and Article 235 EEC which cannot but be interpreted as a recognition of the fact that the food aid policy continued to pursue common

⁵OJ. 1982, L 352/1.
agricultural policy objectives.6 The substantive elements of the food aid policy laid down in the framework regulation were equally revealing with regard to the objectives really pursued. On the one hand, the framework regulation - with the clear aim of making food aid into an effective instrument for economic and social development and humanitarian relief - stipulated explicitly that the allocation of food aid should be done primarily on the basis of an objective evaluation of the real needs (Article 2 (2)), and provided for the possible linkage of food aid to annual or multi-annual development projects, priority being giving to projects which promoted the production of food, and thus arguably the possibility of multi-annual food aid commitments (Recitals, Article 2 (3) and also Article 4 (1) and Article 5).7 Furthermore, the framework regulation provided for the possibility of using food aid for the building of food security stocks in developing countries (Article 2 (4)), the possibility of triangular operations diversifying the Community’s food aid basket as well as speeding up food aid operations in emergencies (Article 3 (1) second paragraph), and the possibility of supplying at the developing countries’ request derived products (Article 3 (2)).8 These provision made the pursuit of economic development and humanitarian relief possible and credible.

On the other hand, however, the framework regulation stipulated that Community food aid products were to be mobilized within the Community and according with the rules and procedures laid down under the common organization of markets (Article 3 (1) first paragraph). Only exceptionally, namely in an emergency or if the products were not available on the Community market, Community food aid products could be mobilized outside the Community and in particular in another

6Using the competence given under Article 43 EEC necessarily implied that the common agricultural policy objectives, defined in Article 39 EEC are being pursued.

7See, however, Section 3.2.2 where I will explain that the Council gave in its Resolution of November 1983 a very restrictive interpretation to these articles de facto excluding genuine multi-annual commitments.

8See for more details on the significance of these policy elements in the context of a development and relief oriented food aid policy: Section 3 of this Chapter.
developing country (Article 3 (1) second paragraph). Furthermore, the framework regulation stipulated explicitly that the Council in defining the basic products to be supplied as aid had to take into account the available stocks of the products in question (Article 4 (1) fifth indent). As I already pointed out above, a food aid policy which exclusively pursued developmental and humanitarian objectives would not stipulate a requirement of Community origin as the one laid down in Article 3 (1) paragraph 1 of the 1982 framework regulation. An exclusively developmental and relief oriented food aid policy would quite obviously endeavour to optimize within the given budgetary constraints both the quality and the quantity of the food aid supplied. Article 3 (1) first paragraph excluded such an optimization of the quality and the quantity of food aid supplied. As to the quality of the food aid, it is clear that requiring that food aid products must as a rule be products mobilized in the Community means that quite often the food aid product supplied were not as well adapted to the needs and the dietary habits of the recipient population as possible. In the absence of the requirement of Community origin, the Community would undoubtedly buy far more products on the world market, more familiar to the recipient peoples and taking better account of the latter's prejudices and preferences. As to the quantity of the food aid, it is equally clear that the requirement of Community origin means that - given the Community's high agricultural prices - the Community could supply (much) less food aid than it would be able to supply when the food aid products were bought on the world market. The requirement of European origin made in fact only sense in the context of a food aid policy which also served the economic interests of the European farmers for it created a market for their surplus production. While - as I observed above - the framework regulation did not mention the disposal of surplus production, or more generally the promotion of domestic agricultural interests, as a food aid policy objective, the Commission - or its key food aid administrators - have been willing at occasions to admit that the

\*\*If one could buy food aid on the world market rather than on the Community market, one could (in some instances) also save on the transport of the food aid. Furthermore if one bought food aid on the market of another developing country, this in itself could constitute an important contribution to the agricultural development of the latter developing country.\*\*
Community's food aid policy would even after the adoption of the framework regulation continue to serve the interests of the European farmers. Shortly after the Commission had tabled its proposal for a food aid framework regulation, L.D.M. Mackenzie, the then Head of the Food Aid Division of the Commission observed at the Bruges Week of 1979 on Prospects for Agriculture in the European Economic Community:

"[...] the real beneficiaries are not only the populations of the developing countries concerned, but Community suppliers who benefit from the continuing extra demand"\(^{10}\)

"[...] the fundamental attitudes [towards food aid] which stick into the head of many people and which must be changed [is] that food aid is a charitable enterprise benefitting only the recipient; [...]"\(^{11}\)

It was argued, however, that the fact that food aid served the interests of the European farmers did not necessarily exclude the pursuit of developmental and humanitarian objectives. The Community could - it was argued - simultaneously pursue objectives of the common agricultural policy and of the development policy. Quite correctly, it was observed that in order to avoid the dangers associated with food aid as discussed in the introduction to this study, food aid had to be integrated in the development programmes, projects and strategies of the recipient countries. As was already pointed out above, such integration, however, can only be achieved if there is a "guarantee of continuity" of food aid supplies, i.e. if the Community is prepared to enter into multi-annual food aid commitments.\(^{12}\) Such multi-annual food aid commitments would not be possible, however, (at least on a large scale) as long as the Community continued to consider food aid as an instrument for the disposal of unplanned, accidental surpluses which could vary in size or might even disappear from one year to another. These unplanned surpluses.

\(^{10}\)MACKENZIE, 1979, 344. "The availability of a continuing demand for at least 150,000 tonnes skimmed milk powder is clearly of interest to the Community milk industry and the CAP. It would be possible also to greatly increase our aid in butteroil with benefits for both European industry and the recipients, particularly in North Africa, the Middle East and Asia" (MacKenzie, 346.)

\(^{11}\)MACKENZIE, 1979, 347.

\(^{12}\)MACKENZIE, 1979, 346.
accidental surpluses were (and are) a formidable problem for the common agricultural policy but food aid could no longer be one of the solutions given to this problem if the Community was serious about using food aid for development. This did not mean, however, that the Community food aid policy could no longer serve objectives of the common agricultural policy. Quite on the contrary. The only way the Community could guarantee the continuity of its food aid and enter into multi-annual food aid commitments was by planning for certain surpluses when deciding on the levels of agricultural production. As such, the Community food aid policy would serve the common agricultural policy and the interests of the European farmers (and food processing industry) by providing a regular and continuing market for Community products. Mackenzie, and undoubtedly many others at the Commission, who tried to convince the Member States which traditionally had benefitted from the food aid policy to reform the latter policy into an effective instrument for development cooperation and humanitarian relief argued they should not resist such reform since:

[...] food aid is a useful ally of the CAP when it follows its own development objectives of meeting emergency needs, improving nutritional standards and, particularly, through continuity of aid, assisting economic and social development.13

[...] when the Community policy takes account of the legitimate criticism made of food aid in general and takes steps to counteract them it will serve not only the cooperation and development policy but also the CAP in providing a regular and continuing market for quality Community products.14

In a publication of the Commission’s Directorate-General for Agriculture of November 1981, one found the same reasoning attempting to establish that in fact the Community’s food aid policy even if it would be transformed into an instrument of development cooperation and humanitarian relief it would still serve the interests of European farmers and food processing industries, be it no longer as a means of disposal of unplanned, accidental surpluses, but as a means of

13 MACKENZIE, 1979, 347.

14 MACKENZIE, 1979, 348. Italics added.
increasing the internal demand for agricultural products. This publication of DG VI stated:

En règle générale, l'aide alimentaire de la Communauté européenne complète utilement la politique agricole commune lorsqu'elle reste fidèle à ses propres conceptions en matière de politique de développement [...].
Elle se détruit elle-même si elle essaie de tenir compte des exigences à court terme de la politique agricole commune.
Une des tâches de l'agriculture européenne consiste à assurer la régularité et la permanence d'un approvisionnement en produits communautaires de haute qualité aux fins de l'aide alimentaire. [...] [13]

[...] l'aide alimentaire est selon toute probabilité plus utile pour l'agriculture européenne si elle vise son objectif propre plutôt que les objectives à court terme de la politique agricole.15

It is obvious, however, that where this reasoning might reconcile the Member States which traditionally benefitted from the Community's food aid policy with the reform of the policy, it was totally unacceptable for the United Kingdom. For the latter, a food aid policy which would artificially increase internal demand for agricultural products - and thus increase the cost of the common agricultural policy - was even less acceptable than a food aid policy which aimed at disposing of unplanned, accidental surpluses. Furthermore, also for the partisans of a development oriented food aid policy a food aid policy along the lines described here was not acceptable either. They argued that whether food aid products are unplanned surpluses or deliberately produced surpluses, Community products remain often ill adapted to the needs and are (far) more expensive than products bought on the world market.

Whether the objective of the food aid policy did indeed shift from the disposal of unplanned, accidental surpluses to the increase of the internal demand for agricultural products remains to be established. Important at this point, however, is to observe the Commission's overt admission in the period leading up to the adoption of the first food aid framework regulation that even a reformed food aid policy would continue to serve the interests of European farmers. As I pointed out

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above, this was also reflected in several substantive provisions of the first framework regulation.

The emergence of development cooperation and humanitarian relief as important policy objectives and the continued relevance of the promotion of domestic agricultural interests as (implicit) policy objective was also reflected in the procedural provisions of the first framework regulation. In comparison with the provisions on the objectives and the substantive elements of the food aid policy, these procedural provisions were truly innovative but - as I already noted above - also quite problematic.

Confirming the emergence of development cooperation and humanitarian relief as important policy objectives was the considerable streamlining of the procedures for food aid policy formulation by a substantial delegation of competence from the Council to the Commission. Apart from decisions on emergency food aid (Article 6 (a) and (b)) - a competence already delegated, albeit informally, in the seventies - the Commission has given the competence: (1) to decide on the allocation of food aid (Article 5, first and second indent); (2) to decide on the quantities and nature of the cereals the Member States had to make available for emergency action and international reserves (Article 5, third indent); and (3) to decide on the conditions governing the supply of aid, and in particular, the general conditions applicable to the recipients (Article 6 (c)).

The Council, however, retained the competence: (1) to decide on the total quantities of each product (Article 4 (1) first indent); (2) to apportion the cereals aid provided for under the Food Aid Convention (Article 4 (1) second and third indent); (3) to determine the countries and organizations eligible for food aid (Article 4 (1) fourth indent); (4) to determine the basic and derived products to be supplied as aid (Article 4 (1) fifth and sixth indent), and, finally, (5) to lay down the general criteria for the transport of food aid beyond the f.o.b. stage (Article 4 (1) seventh indent).

This new division of competences allowed (in principle at least) for a considerable improvement in the procedure for food aid policy formulation. One could expect that it would now take the Community less time to agree upon a food aid
operation, that the time taken by this procedure would be more predictable and that the mobilization and shipment could take place at the time the food aid was most needed. In this respect, the procedural provisions reflected the emergence of development cooperation and humanitarian relief as important food aid policy objectives.

It should be noted, however, that the Council still retained quite important competences, especially with regard to the decision on the sort of products which could be supplied as food aid, the total annual and multi-annual quantities of food aid and the countries and organizations eligible for food aid. Furthermore, much of the competence delegated to the Commission was subject to a management committee procedure which gave the Council the possibility to overrule the Commission. While delegating to the Commission, the Council did not want to lose control over the food aid policy and as I will suggest below this was not unrelated with the continued relevance of the promotion of domestic agricultural interests as objective.

The procedural provisions reflected, however, also in a more direct manner the continued relevance of the promotion of domestic agricultural interests as a policy objective. In spite of their cumbersome and unadapted nature and the delays they entailed, Article 3 (1) first paragraph of the framework regulation stipulated that Community food aid products were to be mobilized according the procedures laid down under the common organization of markets. It will be recalled that this meant that the Commission's decision on the conditions governing the mobilization were vetted by the competent CAP management committee and that the national intervention agencies played a major role in the implementation of the food aid operations. Furthermore, within the Commission, DG VI (Agriculture) continued to be the main responsible department for the implementation of food aid operations. It can thus be concluded that Community food aid remained firmly embedded in the common agricultural policy and 'controlled' by the Commission officials (DG VI) and Member States' officials (in the CAP management committees) responsible for agriculture.
I noted above that the procedural provisions of the first framework regulation had been the most controversial. Why did the Member States - or at least some Member States - make such a fuss about the procedures. The answer is threefold. First of all, some Member States - in particular those Member States with strong farmers interest groups and benefiting from the food aid policy as it existed in the seventies - had, as I already mentioned above, never been very keen on reforming the Community’s food aid policy. They did realize, however, that both in view of the strong opposition of some other Member States to the existing food aid policy and in view of the public opinion which was very concerned about the world food problem, they were left with no alternative but accepting a policy reform if they wanted to safeguard the existence of the policy itself. They thus agreed to many aspects of a developmental and humanitarian food aid policy. Having done this, however, they wanted to control their rhetoric. Stipulating that the Community food aid policy is to pursue developmental and humanitarian objectives and providing for some of the policy features necessary to pursue the latter objectives, is without much danger as long as the Council stayed firmly in control over the policy. An all together quite different thing was to hand over control to the Commission and Parliament since the latter might pursue the developmental and humanitarian objectives with 'inappropriate' zeal. It should not be excluded either that at the other end of the spectrum, those Member States who wanted the Community to pursue a truly development and relief oriented food aid policy were also hesitant to hand over too much competence, uncertain as they were as how development minded the Commission really was or would be in the future. DG VI (Agriculture) has undoubtedly far more cloud within the Commission than has DG VIII (Development Cooperation). The latter Member States were, however, in an uncomfortable position since they were well aware that to benefit developing countries the food aid policy had to be managed efficiently and efficient management required delegation of competence to the Commission.

A second reason for the importance given to the procedural issues was related to some Member States’ fear to loose control over the political aspects of food aid donations. They were worried that the Commission - if given too much competence - might use food aid as an instrument in pursuit of the Community's
foreign policy interests, as defined by the Commission. A third and last reason for the fuss made about the food aid procedures, relates that the general aversion on the part of some Member States towards any expansion of the Commission's or (indirectly) Parliament's competence. Given the many hesitations regarding the delegation of competence to the Commission, it was not surprising that it took the Council long to agree and that once it had reached a compromise this compromise turned out to be unacceptable to both the Commission and Parliament. As a matter of fact, the adoption by the Council of the first food aid framework regulation gave rise to a major inter-institutional conflict between the Council and the European Parliament. In Section 3.5 of this Chapter, I will deal in some depth with the substance of this conflict. At this point, however, I would merely want to point out that Parliament considered the framework regulation to be illegal and this for reasons of substance - Article 4 (1) of the Framework Regulation would be in violation of Article 203 EEC defining the Parliament's budgetary powers and Article 8 (2) of the latter Regulation would be in violation of Article 205 EEC entrusting the Commission with the implementation of the budget - as well as for reasons of form since the Council, by breaking off unilaterally the conciliation procedure on the framework regulation, violated the Joint Declaration of 4 March 1975. In 1983, Parliament refused to deliver an Opinion on the proposal for a regulation laying down for 1983 implementing rules for the framework regulation and the Council, having repeatedly asked Parliament for its opinion, eventually adopted the 1983 implementing regulation without having received an opinion. Frustrated by the limited impact of its refusal to deliver an opinion and, possibly, afraid of giving the impression of holding up the adoption of the annual food aid programme over a matter the importance of which was not appreciated by their electorate, Parliament changed strategy in 1984. While giving a favourable opinion on the proposal for a regulation laying down for 1984 implementing rules for the framework regulation, it strongly deplored in its opinion the reference to the latter regulation, insisted on its deletion and demanded that the Commission would propose a new framework regulation. The procedural provisions of the food aid regulation were, however, not the only
provisions to be subjected to criticism. Also the provisions on the objectives as well as substantive provisions came under attack very soon after the adoption of the framework regulation. As I will argue below, these provisions were in fact already outdated when they finally were approved.

2.1.2 The Commission’s 'Food Aid for Development’ Memorandum of April 1983: a proposal for a total overhaul of the Community food aid policy

Very soon after the adoption of the first food aid framework regulation, it became clear that this regulation would not last very long. There was of course first of all the 'disagreement' on the procedural provisions but perhaps even more important, it can be argued - as I noted above - that the first framework regulation, and in particular the provisions relating to the objectives and its substantive provisions, was in many respects already outdated by the time it was adopted. The food aid policy objectives and substantive elements laid down in the framework regulation - adopted by the Council without any significant amendment - predated in fact the Community's intens debate on its food aid policy and the in-depth studies and evaluations mentioned above. The framework regulation as adopted did not - or at least insufficiently - reflect the conclusions that emerged and had to be drawn from the debate and the studies. It was therefore hardly surprising that merely four months after the Council had adopted the framework regulation, the Commission submitted to the latter a communication entitled 'Food Aid for Development' in which it proposed significant adjustments to the Community’s food aid policy. Stressing the need to tackle the world food problem and the insufficient nature of changes in the Community’s food aid policy so far to cope with this enormous task, it explicitly stated that:

Therefore the time has come to adjust the instruments available - in particular food aid - to suit a new set of circumstances, and that is the

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16Commission communication to the Council, Food Aid for Development, COM(83) 141 final. The Commission even explicitly stated it the introduction to the communication that the proposals it contained were very largely based on the evaluation work carried out in 1982 (COM(83) 141 final, 2.).
Apart from emergency food aid, the Commission distinguished between on the one hand food aid which is to contribute to the food production policies and development efforts of the recipient country (support for food strategies, nutritional programmes and specific development schemes), and, on the other hand, food aid supplied to help the recipient country to overcome passing difficulties due to an exceptionally bad harvest or a decrease in its purchasing power on the world market or to meet the needs of particularly destitute sections of the population. For the second sort of food aid operations, the so-called one-off operations, the Commission argued that the type of programming in use at the time for all recipients of food aid - i.e. allocations made on a ad hoc basis and reviewed annually - sufficed and could be continued in the future. For the first sort of food aid, however, the Commission pleaded for a fundamental review of the programming system in order to allow food aid to be fitted into a programme of support for the recipient countries' food production policies and development efforts. As had already been suggested by the Court of Auditors in its 1980 Special Report on Community food aid, the Commission argued in favour of a system of multi-annual and contractual programming. The Commission proposed that the Community would enter into a dialogue with the recipient country in order to work out besides the overall aid requirement, the conditions that are to govern aid use over a period of several years. The result of such a dialogue would be put down in writing in a 'food aid contract' setting out the respective rights and obligations of the two partners. It should be noted, however, that the Commission explicitly stated that the multi-annual food aid commitments

17COM(83) 141 final, 2.
18COM(83) 141 final, 19-20.
19COM(83) 141 final, 18. The Commission quite rightly observed that this contractual approach would mean additional workload and would entail an eventual staffing problem both at headquarters in Brussels and in the Delegations (COM (83) 141 final, 20, footnote 1.). It should also be noted that the Commission hoped that the contractual approach would form a basis for better coordination between the Community's and Member States' food aid policies (COM(83) 141 final 19.).
undertaken by the Community under such food aid contracts would always have to be within the confines of the budget for such commitments. Nevertheless, the Commission’s suggestion to revise fundamentally - albeit within certain limits - the Community food aid’s programming reflected clearly the prominence the Commission wanted to be given to development cooperation as a policy objective. Apart from these changes in the programming, the Commission also suggested changes to the then current policy with regard to the products supplied as food aid, the payment of transport costs and the allocation of food aid. These suggestions are analyzed in detail in Section 3 of this Chapter but since they also offer some indications as to the objectives the Commission wanted the Community’s food aid policy to pursue, they deserve some attention here. With regard to the products supplied, the Commission admitted that the link between the existence of exportable surpluses and food aid was often still too rigid and proposed to examine how this link could be loosened. The starting point of its examination - and this clearly underlined the continued relevance of the promotion of European agricultural interests as a food aid policy objective - was, however, that when deciding on the kind of product to supply as food aid, one should not only take into account the requirement of meeting the specific needs of the populations receiving the aid but also the requirement that:

use should be made of products available within the Community, [...] 

Consequently, the Commission defended the continued use of milk powder and butteroil as food aid products in spite of the fact that the IDS/ABC study had advised against it on the basis that it was a cost-inefficient, expensive and possibly

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20 COM(83) 141 final, 19.

21 COM(83) 141 final, 20. "Although drawing on exportable availabilities of donors will probably remain one of the essential features of food aid, the instrument will have to be developed to make it more able to meet the various different requirements of recipient countries, and consequently, the field of action will gradually have to be extended." (COM(83) 141 final, 4.)

22 COM(83) 141 final, 20.
dangerous kind of aid in many cases. Mr Chr. Jackson, MEP, according to whom "the Commission's development experts seem to have been hijacked by agriculturalists", noted:

My impression that the Commission was looking for arguments to sustain ongoing disposal of surpluses is heightened by the continuing commitment to milk powder aid, despite recent disclosures that it is calories rather than protein which should form the main component of feeding programmes, and despite the IDS/ABC call for the EC to switch to a greater volume of cereal aid.

and concluded that:

The Commission does not face up to the fact that in development terms it should be a prerequisite that we supply either what is appropriate or cash to buy it, not the products we happen to have in the larder.

The continued relevance of the promotion of domestic agricultural interests as a food aid policy objective also emerged very clearly from the conclusion of the communication in which the Commission explicitly stated:

The Community is among the biggest and most efficient agricultural producers in the world. Moreover, Europe considers that it has the capacity and the responsibility to continue meeting the food requirements of the world's population.

According to Mrs K. Focke, MEP, this statement masked the unresolved conflict

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23 COM(83) 141 final, 22; IDS/ABC, 1982. It must be noted, however, that the Commission did suggest that in countries where milk consumption poses problems and milk is not part of the habitual diet, milk products should gradually be replaced by products such as food legumes, fish and vegetable oils, purchased locally or in the Community (COM(83) 141 final, 23-24).

24 JACKSON, C., 'Right instincts, wrong policy', Food Policy, 1983, 243. Mr Jackson is on the whole quite disappointed with the Food Aid for Development communication which he called an apologia pro vita sua in respect of food aid. He criticized the fact that the communication ignored alternative approaches to developing means to cope with the problems of world hunger and refused to accept the Commission's assertion that food aid "must serve" to counteract deterioration in the nutrition situation and the balance of payments. Citing Clay and Singer, he pointed out that whether food aid has a positive effect depends on the way it is used and to that extent it is very important to control this use. The communication, however, failed to analyze carefully the control methods to ensure a positive development impact (JACKSON, 1983, 243.).

25 COM(83) 141 final, 243.

26 COM(83) 141 final, 26.
between the European agricultural and development policies.\textsuperscript{27} It is indeed so that having regard to the cost of European agricultural production, it would not be in the interest of the developing countries if the Community would aim at meeting the food requirements of the world's population.

The Commission's proposals on the payment of transport costs and the criteria for the allocation of food aid - on the contrary - confirmed without reservations the importance the Commission wanted to give to development cooperation and humanitarian relief as objectives of the Community's food aid policy. With regard to the payment of transport costs, the Commission in fact suggested that the Community would - in the interest of the efficiency of the aid operation - make it a rule that costs of transporting products were to be covered up to the cif or 'free at destination' stage.\textsuperscript{28} With regard to the allocation of food aid, the Commission recognized that in order to contribute to development, the allocation of food aid would have to be based not only on quantitative criteria but also qualitative criteria. The decision to grant Community food aid should therefore take into account: (a) the support which food aid schemes can give to efforts to develop the production or the marketing of food products; and (b) the ability and the desire of the recipient country to integrate these efforts in a coherent policy or strategy.\textsuperscript{29}

Furthermore, the Commission stressed that a large proportion of the food aid should continue to be channelled via international organizations and non-governmental organizations.\textsuperscript{30}

The Commission's communication 'Food aid for development' - and this in spite of the fact that it was correctly criticized for its "deplorable lack of specific detail,

\textsuperscript{27}FOCKE, K., 'Providing aid or using surpluses', \textit{Food Policy}, 1983, 244.

\textsuperscript{28}COM(83) 141 final, 24. See for more detail: Section 3 of this Chapter.

\textsuperscript{29}COM(83) 141 final, 10.

\textsuperscript{30}The Commission recognized, however, that it was more difficult to assign international organizations and non-governmental organizations a role in operations to support food policies and strategies (COM (83) 141 final, 25.).
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clear options, practical proposals, figures and medium term budget proposals\textsuperscript{31} and was in some respects indeed "naive and rather confused"\textsuperscript{32} - was undoubtedly another significant step in the direction of a food aid policy with predominantly developmental and humanitarian objectives.\textsuperscript{33} At the same time, however, the communication confirmed - albeit without explicitly saying so - the continued relevance of the promotion of European agricultural interests as a food aid policy objective. The Commission's conclusion to its communication that the revision of the food aid policy delineated above would enable Community food aid to reach a stage in its evolution where it is unambiguously placed at the service of development in the recipient countries is undoubtedly exaggerated.

2.1.3 The Council's Resolution of 15 November 1983 defining a number of guidelines for improved integration of food aid in the development process in recipient countries

At its meeting of 14 June 1983, the Council held a first wide-ranging exchange of views on the main points of the Commission's communication on 'Food aid for development' which led to a series of provisional conclusions on how to integrate

\textsuperscript{31}FOCKE, 1983, 244. For Mrs Focke the Commission's proposals pointed in the right direction and were consistent with the terms of the Ferrero Resolution on combating world hunger but she insisted that there was a need for more specific proposals as to how these "guidelines" should finally be translated into practice (FOCKE, 1983, 245.).

\textsuperscript{32}MATZKE, 1984, 96. Matzke mentioned as an example the priority the Commission intended to give to the establishment of counterpart funds. In my opinion, however, its naivety was particularly apparent in its assertion that the proposals made in the communication would not entail additional expenditure (COM(83) 141 final, 27.). It was clear, though, that the contractual, policy dialogue approach would require a considerable expansion of the Commission's staff. Also the fact that the Commission did not make a major point out of the need for more staff - it merely mentioned this in a footnote - indicated a certain naivité. Furthermore, the Commission failed to explain how the Community was going to cover all food aid transport costs without increasing the food aid budget.

\textsuperscript{33}It should, however, also be noted that many of the proposals made by the Commission in its communication were not new. The European Parliament had already called for most of the changes suggested by the Commission in its communication (e.g. the qualitative allocation criteria, i.e. food aid only where the conditions in the recipient countries are such that food aid will not discourage local production; the diversification and change of the food aid basket in view of the specific needs of the recipient populations). Among the more original proposals were the suggestion to pay for all transport costs and the proposals with regard to the use of the counterpart funds.
food aid better into the development policies of recipient countries. These provisional conclusions were completed and further worked out at the Council meeting of 15 November 1983 at the end of which the Council approved 'a Resolution defining a number of guidelines for improved integration of food aid in the development process in the recipient process'.

While the Commission's intention with its communication of April 1983 was clearly to go beyond the first food aid framework regulation, the Council rejected in fact the idea of substantial changes to the food aid policy as laid down in the framework regulation and limited itself - as indicated by the title of the Resolution - to defining a number of guidelines for this policy.

As the Commission's communication on 'Food aid for development', the Council's Resolution of 15 November 1983 confirmed the importance of developmental and humanitarian objectives for the Community's food aid policy while at the same time implicitly recognizing the continued relevance of the promotion of European agricultural interests as a food aid policy objective. On the one hand, the Council confirmed the importance of developmental and humanitarian objectives by stressing the need to integrate Community food aid as thoroughly as possible into the development policies, and particularly the agricultural and agri-foodstuffs development policies of the recipient countries. To allow for such integration the Council recognized the need for multi-annual food aid programmes which would be drawn up following a dialogue with the recipient country. With regard to the products to be supplied as food aid, the Council - acknowledging the importance of the choice and possible diversification of the products to be supplied in ensuring the effectiveness of food aid - explicitly stated that:

The products must in the very first place meet the recipients' needs and comparison of different products must take account of the cost-specific nutritional quality ratio (e.g. animal or vegetable protein content, calorific

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3 Bull. EC 6-1983, 98.

4 Council Resolution of 15 November 1983, Presse Release 10543/83 (Presse 189), 4-10. See also Bull. EC 11-1983/59.

5 In the preamble of the Resolution, one can read: "The Council is therefore of the opinion that the Community's aid policy, the framework of which is outlined in Council Regulation No 3331/82, would be all the better able to contribute to this aim if it met the following guidelines: [...]."
and encouraged triangular operations. The Council also came out in favour of the use of quantitative as well as qualitative food aid allocation criteria, in favour of focusing food aid on low income food deficit countries without, however, excluding the most deprived section of the population in other developing countries and emergency situations, in favour of the supply of food aid via international organizations and NGO's and in favour of improved monitoring of the use of counterpart funds.\textsuperscript{3} Food aid to refugees, the Council underlined, had to enable refugees to meet their real needs in swift, planned manner, while not making their subsequent economic and social reintegration more difficult.\textsuperscript{30}

Having said this, it should be observed that the Council was on the whole not prepared to go as far as the Commission in turning food aid into an instrument for development and that this more reserved attitude was clearly due to the Council's implicit wish that Community food aid would continue to serve European agricultural interests by offering an expedient outlet for unplanned surpluses. While accepting the need for multi-annual food aid programmes and a policy dialogue with the recipient country to draw up such programmes, the Council insisted that these programmes could only be of an indicative nature - the basic decision on the quantity of aid to be supplied would still be taken on an annual basis - and could only constitute "a reasonable share of the annual volume of Community aid".\textsuperscript{40} The Council clearly did not want the Community to commit food aid for more than one year in a (legally) binding way or for significant quantities, which one can probably best explain in the light of the Council's wish to safeguard food aid as an instrument to dispose of unplanned surpluses. Since the availability of these unplanned surpluses may vary from one year to another,

\textsuperscript{3}Council Resolution of 15 November 1983, point 5.

\textsuperscript{30}See for more details: Section 3 of this Chapter.

\textsuperscript{30}With regard to the Commission's proposal on the financing of the transport of food aid, the Council merely recognized the importance of examining the issue (Council Resolution of 15 November 1983, point 9.).

\textsuperscript{40}Council Resolution of 15 November 1983, point 3.
the Council was understandably hesitant to commit too much of its food aid on a multi-annual basis and to the extent it did so, it did not want this commitment to be a really binding one. Consequently, it also dropped the Commission’s idea of multi-annual food aid contracts. It is clear that this reserved and ambivalent Council position on multi-annual programming was very much in line with the interests of these Member States which traditionally benefitted from food aid in the sense that the latter offers an expedient outlet for unplanned, accidental agricultural surpluses. It should be noted, however, that also the United Kingdom was not too fond of the idea of multi-annual food aid programming either and this because multi-annual food aid programming is in fact only possible if the Community plans the production of the surpluses which will be supplied as food aid. The United Kingdom was of course not keen on giving the common agricultural policy such an excuse for surplus production. Note, however, that it should not be excluded that some Member States (also) objected to binding multi-annual commitments since such commitments would limit the foreign policy use of food aid (instead of being able to put pressure or make a goodwill gesture annually, the Community would be able to do so only every so many years) or made in more difficult to control the foreign policy implications of food aid operations (a food aid operation in favour of country x, perfectly acceptable in the year N, may be a foreign policy embarrassment in the year N+2).

With regard to the products to be supplied as food aid, the Council - while recognizing that food aid products must in the very first place meet the recipients’ needs and that more use should be made of local products (i.e. more triangular operations) - stressed that:

[...] purchases must first of all take account of products available on the Community market [...]41

The Council thus confirmed the requirement of European origin implicitly stipulated in Article 3 (1) first paragraph of the first framework regulation and the requirement stipulated in Article 4 (1) fifth indent of that regulation to define the

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basic products to be supplied as aid taking into account the available stocks of the products in question.

One can therefore conclude that in its Resolution of 15 November 1983 the Council, while shifting the balance of compromise slightly in favour of the developmental and humanitarian objectives, showed itself unwilling to shift this balance as much as the Commission had suggested in its communication on 'Food aid for development' and basically confirmed - in a stronger though equally implicit manner as the Commission had done - the continued importance of the promotion of European agricultural interests (primarily by way of disposing of unplanned surpluses) as a food aid policy objective.42

2.1.4 Council Regulation (EEC) No 1755/84 of 19 June 1984 on the implementation in relation to food of alternative operations in place of food aid deliveries

An issue the Council had surprisingly not touched upon in its Resolution of 15 November 1983 on guidelines for improved integration of food aid in the development process in recipient countries but which had been explored by the Commission in its communication on 'Food aid for development' was the issue of food projects in place of food aid.43 It had been recognized by the Commission that there were situations in which the supply of food aid to countries normally eligible for such aid could be inadvisable owing to the results of the harvests or state of stocks. In such situations food aid supplies were likely to disrupt the market in local foodstuffs and other means to support these countries' food policies should be found. On the other hand, cutting of food aid could endanger development projects financed directly or indirectly (through counter part funds) or disencourage developing countries which were successful in increasing their

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42For the Commission the promotion of European agricultural policy would take the form of the artificial creation of demand on the internal market for European agricultural products.

43Commission communication on 'Food aid for development', COM(83) 141 final, 11.
agricultural output. To overcome this dilemma, a new Article 929 'Food projects in place of food aid' was inserted in the 1983 Budget. This budget line provided for the possibility of granting financial aid in the form of grants for agricultural and food projects to beneficiary countries which considered that they could do without some of the Community food aid which is (or would normally be) allocated to them. The savings on the supply of foodstuffs would allow for the granting of financial aid. For 1983, Article 929 provided for 500,000 ECU and the Commission decided to grant this sum to Niger in substitution of some 3,000 tonnes of cereals which this country, as a regular recipient of Community food aid could have expected to receive. In agreement with the Commission, the Office des produits vivriers du Niger used this money to supplement its own resources and to enable it to increase its ability to make purchases on the local market with an aim at market stability. Since the Commission reckoned that, while at first these 'food projects in place of food aid' would in fact not amount to more than a few random operations, there was a fair prospect that these projects would become ever more important, it was deemed useful to define from the outset the principles governing the implementation of these food projects. Consequently, it submitted to the Council on 30 November 1983 - two weeks after the latter's Resolution discussed above - a proposal for a regulation on the implementation in relation to food of alternative operations in place of food aid, which was adopted by the Council on 14 June 1984. This is not the place to go into a detailed analysis of the Council

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"COM(83) 695 final, 1."

"Bull. EC 12-1983/75-76."

"COM(83) 695 final, 2."

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Regulation (EEC) No 1755/84 on the implementation in relation to food of alternative operations in place of food-aid deliveries. It should be noted, however, that the adoption of this regulation was not without impact on the balance of compromise of food aid policy objectives in the sense that it clearly constituted a shift in favour of the developmental objectives. Perhaps somewhat exaggerated but certainly not incorrect, Siegfried Schultz observed:

This "substitution", which will help eliminate otherwise rather dubious deliveries of products from Europe, is a test of the extent to which EC food aid differed from the mere disposal of surpluses.4

2.1.5 The generalization of the food strategy support approach and its consequences for the Community's food aid policy

The reader will recall that a central part of the Community's Plan to Combat World Hunger, launched in 1981 in response to the ever deteriorating world food situation and the Parliament's September 1980 Resolution, was the idea of supporting the formulation and implementation of food strategies of developing countries. While it received requests for such support from many developing countries, the Community decided to support in the initial phase the food strategies of only four countries (Kenya, Zambia, Mali and Rwanda) in order to test the viability of and to gain experience with this new approach before applying it on a larger scale.4

As I already outlined above, the basic principles which have guided the Community's approach to the support of food strategies were:

(1) formulation and implementation of a food strategy is primarily the

4SCHULTZ, 1984, 142.

"See: Section 2.2 of Chapter 2. Benin, Burundi, Ethiopia, Ivory Coast, Niger, Madagascar, Senegal, Somalia, Tanzania, Uganda, Zaire, Tunisia and Morocco also expressed their wish for Community support in the area of food strategies (Commission staff paper, 'Food strategies: review and prospects', SEC(84) 1692, 14.). It should be noted, however, that while Mali, Kenya, Rwanda and Zambia were selected, the Commission had preliminary discussions with some other countries, accorded technical assistance for the preparation and coordination of measures to be taken in support of Tanzania's food strategy, and supported a background study on the Ugandan food sector carried out at the request of the Ugandan Government (SEC(84) 1692, 14-15.).
responsibility of the country concerned;

(2) Community support should be complementary to national efforts;

(3) optimal coordination is sought with Member States and other donors whose actions may contribute to the food strategy objectives; to that end the Commission favoured the setting up of special (informal and advisory) 'working groups' or 'consultative committees' in the developing countries consisting of representatives of the main Ministries, public bodies and donors involved in food strategy issues to be the forum for policy dialogue;

(4) an effort is made to reach agreement on a number of mutual commitments in view of attaining the food strategy objectives; these mutual commitments are generally pluri-annual in order to ensure continuity.50

As I already indicated above, at the time when the Community embarked on food strategies, no instruments were specifically earmarked to support the exercise.51 The Commission used, however, different existing instruments as such European Development Fund financial aid, STABEX transfers, Article 928 of the Budget (Special aid programme) and food aid.52 Of particular interest in the context of this study is of course the use of food aid as an instrument of support for food strategies. It will be remembered that the Council in its Resolution of November 1980 explicitly endorsed and encouraged the use of food aid in the context in food strategy support.53 More recently, the Council's Resolution of 15 November 1983 had defined a number of guidelines which would allow the integration of food aid into a food strategy.54 As I discussed in the introduction of this study, the use of food aid in support of food strategies was seen as a way out of the dilemma which the granting of food aid often presented, namely that while food aid was absolutely

50Commission staff paper, 'Food strategies: review and prospects', SEC(84) 1692, 15-16.

51See e.g. the European Parliament's Resolution of September 1980 and the Council's Resolution of November 1980, see: Section 2.2 of Chapter 2.

52Commission staff paper, 'Food strategies: review and prospects', SEC(84) 1692, 16-18.

53See: Section 2.2 of Chapter 2.

54See: Section 2.1 of this Chapter.
necessary for many food deficit countries, the food aid actually allowed the governments not to see through the hard and difficult reforms necessary to boost agricultural production. By linking the supply of food aid to national food strategies aimed at promoting domestic production, it was hoped to overcome this problem. As such, food aid was used - directly, through counterpart funds, or triangular operations - in support of the food strategies in the four pilot countries, to an important extent through the use of counterpart funds. In Mali, for example, food aid was used to support the cereals market restructuring policy. The main focus of this policy was on increasing the producer prices. Food aid was provided to the cereals marketing board to improve its financial position and to allow it to increase prices paid to the farmers without at the same time increasing consumer prices. Also in Kenya and Rwanda food aid was channelled to the main marketing board to strengthen its position. Triangular Community food aid operations have benefitted Kenya, as a supplier, and Mali and Zambia as receivers. The Community’s experimental support of food strategies was, however, in none of the four pilot countries an unqualified success. On the whole, the food strategies were relatively successful in promoting the liberalisation of the cereals market. They were, however, unsuccessful in boosting the productivity of small farmers and improving the nutritional situation of the population. In all four pilot countries, there was a period of initial success followed by weakness in identifying and implementing concrete measures. In order to guarantee the success of this approach a number of modifications were clearly needed. While it is beyond the

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55 See: Section 1 of the Introduction.


57 SCHULTZ, 1987, 141.

58 SCHULTZ, 1987, 142. See also COM(86) 198 final, 34.

59 Communication from the Commission to the Council on Implementation of food strategies and prospects for the future, COM(86) 198 final, 26-34. The Commission argued in this communication that apart from efforts at restructuring marketing and price policies, the food strategies should also: - focus on strengthening production (by reforming the support structures for rural communities; by reforming the agricultural structures (land reform, irrigation projects); by improving the credit facilities; and by more applied agricultural research), - give higher priority to consumption and nutrition (by re-establishing demand for local products, by nutritional programmes for vulnerable or disadvantaged groups, by linking nutritional programmes
scope of this study to examine in detail the various modifications called for, one should, however, note the changes the Community would have to make to its food aid policy in order to allow food aid to contribute (better) to the support of food strategies. In its communication to the Council of April 1986 on 'Implementation of Food Strategies and Prospects for the Future', the Commission explicitly stated:

At the practical level, some adaptation in procedures for allocating food aid are necessary, giving it a more contractual nature implying multi-annual programming and advance planning on the use of the counterpart funds generated.\(^6\)

In the same communication, the Commission also stressed the positive contribution to the food strategies of developing countries the Community could - and in fact had already made - by using food aid instruments such as the substitution under Article 929 of the Budget and triangular operations, the use of which, however, was at the time still quite restricted.\(^4\) In short, if the Community was serious about using food aid as efficiently as possible in support of the food strategies of developing countries, further modifications to its food aid policy would be needed.

Furthermore, the Commission considered that:
- the coordination between the Commission and the Member States needed to be stepped up and, at a later stage, the coordination should be extended to include other donors;
- the development instruments as well as their integrated use could be improved;
- it was absolutely necessary to remove any fears on the part of the beneficiary countries about the implications of the policy dialogue as regards external interference in domestic concerns (by defining the subject matter of the policy dialogue clearly and relating it directly to potential action by donors, by ensuring that the dialogue is in the direct interest of the authorities of the beneficiary countries (supplementary resources); by clearly defining the public bodies with which to talk and making certain that these bodies have full authority in the field in question.

\(^6\) COM(86) 198 final, 33.

\(^4\) COM(86) 198 final, 33. Attention was drawn to the fact that these instruments could help countries with food surpluses avoid a sharp fall in prices. Triangular operations would allow for part of the surplus to be exported while the substitution would on the one hand avoid the negative impact food aid would have in such a situation and on the other hand would make available extra financial aid which could be used to expand storage facilities.
This need for policy modifications became acute when the Community decided - after the experimental phase in which the food strategy approach had been tried out in a very small group of countries - to 'generalize' the food aid strategy approach and to make a guiding factor in cooperation with all ACP countries. The emphasis of the Third Lomé Convention (1985-1990) was clearly and hardly surprising on the rural and agricultural development of the ACP countries.

Pour la Communauté, le véritable enjeu de Lomé est désormais dans les campagnes. Souci permanent du Commissaire Pisani, le développement agricole et rural doit constituer la priorité des priorités.

Article 5 of the Convention stated explicitly:

With a view of attaining more balanced and more self-reliant economic development in the ACP States, special efforts shall be made under this Convention to promote rural development, food security for the people and the revival and strengthening of agricultural-production potential in the ACP States.

and Article 12 stipulated with regard to agricultural cooperation aimed at food security:

Operations in this field shall be designed and executed to support the agricultural food policies and strategies adopted by the ACP States.

It was quite clear that food aid was to be one of the 'operations' supporting food strategies. The Third Lomé Convention, unlike its predecessors, even explicitly recognized the role food aid could play in the development of the ACP countries,
provided this form of aid is integrated in the ACP countries’ development policies, and in particular rural and agricultural development policies, and coordinated with other forms of aid. Article 35 of the Convention stipulated:

1. Food aid operations shall be decided on the basis of the rules and criteria adopted by the Community for all recipients of this type of aid.

Subject to those rules and the Community’s freedom of decision in this matter, food aid operations shall be governed by the following guidelines:

(a) except in urgent cases, Community food aid, which shall be a transitional measure, must be integrated with the ACP States’ development policies. This calls for consistency between food aid and other cooperation measures;

(b) where products supplied as food aid are sold, they must be sold at a price which will not disrupt the domestic market. The resulting counterpart funds shall be used to finance the execution or running of projects or programmes with a major rural development component;

(c) where the products supplied are distributed free of charge, they must form part of nutrition programmes aimed in particular at vulnerable sections of the population or be delivered as remuneration for work;

(d) food aid operations that form part of development projects or programmes or nutrition programmes may be planned on a multi-annual basis.

(e) as a matter of priority, the products supplied must meet the needs of the recipients. In the selection of such products, account must be taken in particular of the ratio of cost to specific nutritive value and of the effect the choice might have on consumer habits;

(f) where in a recipient ACP State, the trend of the food situation is such as to make it desirable for food aid to be replaced in whole or in part by operations designed to consolidate the current trend, alternative operations may be implemented in the form of financial and technical assistance, in accordance with the relevant Community rules. These operations shall be decided upon at the request of the ACP State concerned.68

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It is clear that to the extent the food strategy approach was expanded to all ACP countries and the Community really wanted to use its food aid following the guidelines of Article 35 of Lomé III, the changes to the Community’s food aid policy the Commission had proposed to turn food aid into an effective instrument of support for the food strategies became all the more required and urgent.

2.1.6 The African crisis of 1984-85 and its repercussions on the Community’s food aid policy

The dramatic images of death, starvation and utter despair in the Korem hunger camp shot by a BBC team and aired on 26 October 1984 triggered a tidal wave of solidarity in the industrialized world, especially with Ethiopia - where, as we suddenly 'discovered', almost 6 million people or 15% of the population was threatened by starvation - but also with other African countries, equally hit by a devastating drought.67 Harvets were 30 to 40% below normal levels and the FAO’s first estimates were that the most seriously affected countries in Africa would need a minimum of 3,500,000 tonnes of cereals in total for the 1984/85 season and 2,000,000 tonnes in emergency aid to survive until the next harvests expected in October/November 1985.68

The Community had already before the dramatic images from the Korem camp would wake up public opinion, realized the dramatic situation in many African countries and had already April 1984 decided on a first emergency plan for Africa under which - in addition to emergency food aid supplied under its normal food

67One will remember the "Do They Know It’s Christmas/Feed The World" song, composed by Bob Geldof and Midge Ure released on 26 November 1984, song by many of British leading pop stars and earning £ 8 million for the Band Aid Trust for financing the fight against the famine in Africa and especially Ethiopia; the song "We Are the World" released on 28 January 1985 song by 45 American pop stars the earnings of which were also used for fighting the famine; and finally the giant 'Live Aid' show on 13 July 1985, a mega-happening simultaneously in Philadelphia and London with 60 of the world most famous pop stars and reaching a public of 1,5 billion people, generated £ 50 million worldwide for the famine victims in Africa (GLASER, ‘Live Aid: le plus grand show télévisé de l’histoire’, Le Courrier, Septembre-Octobre 1985, 8.).

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The aid programme - it supplied 60 million ECU of food aid (210,000 tonnes of cereals, 7,330 tonnes of milk powder, 2,350 tonnes of butteroil and 1,000 tonnes other food products) and 23 million ECU of emergency aid.\(^6\)

Realizing the enormous dimensions of the famine and in response to urgent calls for additional Community action, the Commission adopted on 31 October 1984 a second emergency plan for Africa amounting to 60 million ECU, of which 25 million ECU for food aid, first and foremost designed to aid Ethiopia.\(^7\)

On 3 and 4 December 1984, the European Council of Dublin decided on a third emergency plan to relief famine victims in the eight worst hit countries of Africa, i.e. Ethiopia, Sudan, Mali, Mauretania, Niger, Chad, Angola and Mozambique.\(^7\)

The so-called 'Dublin Plan' provided for the supply within the shortest delays possible of 1,200,000 tonnes of cereals (or equivalent) asking the international community to supply the other 800,000 tonnes needed to cover the short term needs of Africa.\(^7\)

The food aid to be supplied under the 'Dublin Plan' was to be supplied partly by the Community (300,000 tonnes under its normal 1985 programme and 500,000 tonnes exceptional aid) and partly by the Member States (400,000 tonnes).\(^7\)

\(^6\) A.T., 1985, 47. See for list of beneficiaries, p. 48. Note that this aid was financed by Article 950 appropriations.


Note that this aid was again in addition to the aid supplied under the 1984 programme and financed by Article 950 appropriations.

\(^7\) Bull. EC 12-1984/18-19 (Conclusions of the Presidency).

\(^7\) Bull. EC 12-1984/103-104. The quantities of food aid eventually supplied under the 'Dublin Plan' eventually amounted to 1,265,715 tonnes of cereals, exceeding the 1,200,000 tonnes initially envisaged. Especially the Member States delivered more food aid than agreed upon in Dublin (Rep. 1985, 102.). The other industrialized countries showed themselves equally generous as the Community and its Member States; the United States supplied the equivalent of 2,6 million tonnes of cereals and other donors another 1 million tonnes. Consequently, by the end of June 1985, the most urgent food needs of the countries most affected appeared to have been covered (COM (85) 308 final, 1.).

\(^7\) The 500,000 tonnes of cereals additional emergency food aid to the value of 175 million ECU were to be financed from Article 137 of the Lomé II Convention (80 million ECU) and Article 950 of the Budget, the latter supplemented for this purpose by transfers for a total of 90 million ECU (COURT OF AUDITORS, Annual Report 1985, 101.). It should be noted, however, that while originally the 'Dublin Plan' was centred exclusively on food aid and it was intended to spend the 175
While the African crisis triggered an unprecedented generosity on the part of the Community and its Member States, which undoubtedly kept alive millions of Africans who otherwise would have perished, it also showed - and this at a time it could be ill-afforded - the shortcomings of its food aid system to operate efficiently in emergency situations. When food emergencies occur, the Community's food aid policy should allow for adequate quantities of suitable products to reach those affected as soon as possible. The experience gained during the African crisis had made it clear, however, that the Community's food aid policy did allow this only to certain degree and therefore needed to be modified.

A first lesson that could be drawn from the Community's experience during the African crisis was the need to improve the early warning systems for detecting production shortfalls beforehand. During the African crisis, the governments of the countries hit by the drought as well as the international community had - due to a lack of exact information - at first certainly underestimated the seriousness of the crisis and had therefore been slow in respectively appealing for and granting the necessary aid. Early warning systems monitoring agro-meteorological conditions and crop growth would allow to detect food crises in advance and organize in time emergency aid operations. The administrations of most African countries were - owing to a lack of human and financial resources - unable,
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however, to operate such systems on a satisfactory basis.\textsuperscript{75} While the Community was already helping the developing countries to improve their capacity to collect and process data on agro-meteorological conditions and crop growth, it was clear that the Community had to step up its efforts in this field, in particular as regards:

- restoring or reinforcing the capacity of the national authorities to institute permanent monitoring systems covering the various aspects of data collection, transmission and processing;
- creating small agro-meteorological stations;
- organizing the centralization of the available data; and
- developing remote sensing observation systems covering the whole African continent.\textsuperscript{76} Such efforts were to be an integral part of the Community's food aid policy, because without them, emergencies would be known too late for Community food aid to be supplied in time. Already at its meeting of 23 May 1985, the Council considered that early warning machinery and procedures should be developed further to avoid being caught unaware by comparable famines in the future.

A second lesson that could be drawn from the Community's experience during the African crisis was the need to increase emergency aid resources so as to ensure a very rapid, appropriate and flexible response to the needs.\textsuperscript{77} It is communication on 'Famine in Africa' to the European Council, the Commission stressed explicitly: it is vital to get the food faster to the people who need it, using in the first instance the food and transport resources available on the spot and in adjacent countries. To do this it will be necessary [...] in future to earmark appropriate funds.\textsuperscript{78}

\textsuperscript{75}COM(85) 308 final, 4.

\textsuperscript{76}COM(85) 308 final, 4-5.

\textsuperscript{77}Commission communication to the European Council (Milan, June 1985), COM(85) 335 final, 2-3; Commission communication to the Council, COM(85) 308 final, 6.

\textsuperscript{78}Commission communication to the European Council (Milan, June 1985) on 'Famine in Africa', COM(85) 335 final, 2.
The Community would in particular need to increase its emergency aid resources in order to be able to respond with special, additional emergency food aid operations to large-scale famine situations (a special reserve allocation in the budget), to undertake more triangular operations (more suitable products; shorter delivery time), to supply more processed, ready-to-eat products (particularly suited for the first aid consignments), to ensure that all emergency food aid is delivered 'free at destination', to contribute towards the expansion and/or renewal of the port facilities, storage capacity, means of transport and operational road and rail networks of the recipient countries, and to develop and coordinate airlifts. Apart from the inadequate size of the Community's food aid programme to respond to large-scale famine situations and the problems relating to the appropriateness of the products supplied as Community food aid, the African crisis had clearly shown that a key problem confronting the Community's emergency food aid efforts was the lack of adequate port, road and rail infrastructure and means of transport in the recipient countries. By the end of June 1985, only 232,000 tonnes of the 1,265,000 tonnes of cereals provided for under the 'Dublin Plan', had arrived at their final destination, whereas 700,000 tonnes were lying at the port of unloading. Already in a Resolution of 17 January 1985 on 'the delivery of food aid in the countries affected by the drought', Parliament - well aware of the major technical obstacles to the delivery of food aid to its final destination - called on the Commission:

[...] to carry out as a matter of urgency, the investigations needed to implement a plan for the equipment and construction of infrastructures, enabling [the Community's emergency] aid to be delivered in the best
possible conditions.¹

There were, and still are, of course no ready-made and fast solutions to this logistical problem but it is clear that it makes no sense to supply emergency food aid which cannot - or not in time - be delivered to their final destination and that therefore Community efforts to improve the infrastructure and transport capacity of the recipient countries should be considered as an integral part of the Community’s food aid policy. In the context of the African crisis, the Community did in fact get quite involved in the inland transport of the emergency food aid. As an example in point of such Community efforts, one could refer to the Commission’s efforts to finance quickly the refurbishing of the Sudan railway² and its efforts to organize a vast airlift operation in that country, known as the 'Sudan Airbridge', using nine heavy transport aircraft and three helicopters from the Member States and the USA, which in the period from May through October 1985 delivered more than 10,000 tonnes of food to the extreme West of Sudan.³ The Commission contributed 7 million ECU to this operation, largely in the form of money for fuel.⁴

A third lesson that could be drawn from the African crisis experience was the need to simplify and speed up yet further the Commission’s procedures for the allocation of food aid, and to improve the coordination between the Community and the Member States. In order to be able to cope with the enormous task

¹European Parliament Resolution of 17 January 1985 on ‘the delivery of food in the countries affected by famine’, point 2, O.J. 1985, C 46/59. In its Resolution of 14 March 1985 on ‘the campaign against hunger in Africa’, Parliament again called “for the Community to participate in the establishment of the infrastructure essential for the delivery of [the emergency] aid” (O.J. 1985, C 94/82.) and in its Resolution of 11 July 1985 on ‘Emergency measures to be taken to assist African countries threatened by famine’, it called upon the Commission, the Council and the Member States to take immediate action to increase the transport capacity in the recipient countries (PE Texts 5/85, 26.).

²On 5 June 1985, the Community and Sudan signed the financing agreement for the projects to rehabilitate Sudan’s railway in order to distribute food aid (Bull. EC 6-1985/92.).


⁴COM(85) 599 final, 4.
presented by the African crisis and to act as fast as was required by the dramatic situation faced, the Commission had established within DG VIII (Development Cooperation) a special emergency unit made up of a small number of officials working on a stand-by basis and with large decision making powers, and had simplified and speeded up the emergency and ordinary food aid procedures. Furthermore, the Commission decentralized many of its powers of decision to its delegates in the field. These ad hoc arrangements had allowed the Community to accelerate its food aid operations in favour of Africa considerably. At its meeting of 23 May 1985, the Council observed with satisfaction that 65% of all food aid committed in Dublin had already been delivered or was on its way. In its communication to the Council and the European Parliament of 31 October 1985, the Commission could announce that 94% of the special emergency food aid and 88% of the aid under the normal food aid programme had been supplied to the recipient countries. For Community standards the mobilization had been done in record time. In some cases, the time between a request being made and the aid being dispatched and landed had been reduced to 40 to 60 days. Also the coordination of the aid operations of the Member States and the Community was more successful than ever before. The Commission organized and chaired five coordination meetings with the Member States from November 1984 to July 1985, bringing together the persons actually involved in operations. This coordination made possible joint planning of aid offers and dispatch and receipt operations, in

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83 A.T., 1985, 49; COM(85) 599 final, 3. The special emergency unit had the power to decide on the use of food aid within the overall allocations by country. In order to accelerate the food aid procedures, use was also made of simplified invitations to tender organized with the help of DG VI and the Embassies of the recipient countries.

86 COM(85) 599 final, 4.

87X., 'News Round-Up', The Courier, July-August 1985, XII.

88 Commission communication to the Council and the European Parliament on 'Rehabilitation and revival plan for the African countries most affected by the drought, COM(85) 599 final, 2.

89 COM(85) 599 final, 3.

90 It should be noted that the Commission organized also two coordination meetings with the 4 international organizations and the 24 European non-governmental organizations and had many contacts with the other major donors (COM(85) 599 final, 4.).

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order to relief the congestion of port and inland transport facilities. Nevertheless, both the Community procedures as well as the coordination left much to be desired. This was also recognized by the Council at its meeting of 23 May 1985 already referred to above, during which it was agreed that care should be taken to ensure that the promised aid was mobilized and transported in a co-ordinated and synchronized way so that it reached recipient countries under the best conditions and that further progress should be made in speeding up the procedures for mobilizing aid, in addition to the improvement already made.¹¹

In order to improve the coordination, the Commission suggested in its communications on 'Famine in Africa', the setting up of "an autonomous and decentralized European emergency aid capability" based principally on: (1) a crisis staff, supported by a permanent unit within the Commission, and (2) a proper system of coordination, set up in advance and taking in the whole range of resources deployed by the Member States.⁹² With regard to the improvements to be made to the procedures, the Commission did not make any specific suggestions but referred to the review of food aid procedures which was undertaken at that moment.⁹³

When at the end of 1985, in most African countries - with the noted exception of Ethiopia and to some extent also Niger - the spectre of famine seemed to be receding, there was a huge risk of public opinion and (thus) the politicians in the Community losing interest in the food problems of Africa while it was quite clear that the generous emergency food aid should be followed up immediately by aid to restart agricultural activity in the countries affected by the famine and longer term aid for the implementation of their food strategies to guard against the


⁹²Commission communication to the European Council (Milan, June 1985), COM(85) 335 final, 3; Commission communication to the Council, COM(85) 308 final, 7.

⁹³In preparation of a proposal for a new food aid framework regulation.
effects of further disasters.* The European Council, when deciding on the 'Dublin Plan' in December 1984 had already acknowledged:

the need to undertake urgent action to speed up and support the recovery and rehabilitation process in African countries and to provide the Community's active support for their efforts to achieve self-sufficiency and security in food; also in implementing long-term operations to combat drought and desertification.**

Desperately trying to cope with the emergency food aid requirements, the Community paid during the first half of 1985, however, little attention to anything but emergency aid. Parliament criticized the Community's shortsightedness* in a Resolution of 14 March 1985 on 'the campaign against hunger in Africa', in which it stressed:

the need for emergency aid to include the dispatch, within the next few weeks, of products and equipment (seeds, fertilizers, tools, etc.) which are essential for the resumption of agricultural production [...]***

and had emphasized:

the need, over and above emergency aid, to take the structural measures that are the only way to ensure food supplies on a medium- and long-term basis; [and]

the urgent need to continue with the implementation of food strategies in the countries affected by the famine [...]****

At its meeting of 23 May 1985, the Council showed itself in agreement with Parliament and explicitly noted in the conclusions of this meeting that while the emergency food aid supplied under the 'Dublin Plan' was very necessary, medium-term measures for rural development, self-sufficiency in food supplies and fighting desertification and drought were the only means of effectively tackling the food

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**Bull. EC 12/1984, 19 (Conclusions of the Presidency).

***European Parliament Resolution of 14 March 1985 on 'the campaign against hunger in Africa', point 8, O.J. 1985, C 94/82.

situation in Africa. The Council did, however, not go further than recognizing the need for such medium-term measures. Following up its Resolution of 14 March 1985 and in view of the meeting of the European Council at the end of June, the European Parliament adopted on 12 June 1985 a Resolution on 'the drought and famine in Africa and the forthcoming European Council meeting in Milan' in which it called on the European Council to adopt a 'Milan Plan' for a systematic and coordinated emergency campaign to combat the causes of famine and drought, with adequate means and resources, and provisions ensuring maximum speed in its implementation. In line with this Resolution of Parliament but without submitting a draft for such a 'Milan Plan', the Commission stressed in its communications to respectively the European Council and the Council on 'Famine in Africa' of June 1985 the need for the emergency aid so generously supplied to Africa to be accompanied by and, at a certain point, give way to aid for restarting agricultural activity and long-term aid to implement food strategies aimed at realizing food security, and environmental conservation programmes. At its meeting on 28 and 29 June 1985, the European Council welcomed the Commission's communication. It did, however, not agree upon the 'Milan Plan' Parliament had called for but, on the contrary, formulated only very general and vague declarations as regards the need for medium and long-term measures for the rehabilitation of African countries affected by the famine. The need for concrete Community aid measures to help these African countries to restart agricultural activity was, however, quite obvious and the Commission, therefore, perhaps somewhat belatedly, proposed in a communication to the Council and the

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9News Round-Up, *The courier*, May-June 1985, XII.


10Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 7-11; Commission communication to the European Council on 'Famine in Africa', COM(85) 335 final, 3.

11Bull. EC 6-1985/16 (Conclusions of the Presidency).

12This was sharply criticized by the European Parliament in its Resolution of 10 July on 'the Milan Summit', O.J. 1985, C 229/71-2.

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European Parliament of 31 October 1985, a 'Rehabilitation and revival plan for the African countries worst affected by the drought'. Leaving aside long-term aid to implement food strategies and environmental conservation measures, this Plan focused on two types of action, namely, on the one hand, action for the agricultural revival of the famine-hit countries, and, on the other hand, action to reinforce the latter countries' own capacity to deal with any famines in the future. Experience gained during the African crisis had shown that the main difficulties encountered by the drought-hit countries in tackling the famine related to shortcomings in organisation, delay in detecting the crisis, tardy supply of external aid and inadequacies in the internal transport. To reinforce as much as possible in the short term these countries' own capacity to tackle with more success future famines, the Commission proposed that the Community should help these countries:

(1) to strengthen their own organizational capacity for defining and implementing their own emergency plans;

(2) with the early detection of famine situations;

(3) to build up through preferably triangular food aid operations (decentralized) safety stocks of food and seeds to deal with initial emergencies given the fact that it will always take months for Community food aid to reach the famine areas.


104 COM(85) 599 final, 8.

105 The Community's aid would primarily consist of technical assistance and advise on drawing up contingency plans, especially as regards systems of transport and distribution of aid but might also involve some financing to ensure the efficient functioning of the central emergency units to be set up in every country for the implementation of the contingency plans (COM(85) 599 final, 8.).

106 Community technical assistance and logistical and operating resources to ensure basic agro-meteorological surveillance, to strengthen the facilities for transmitting information gathered on the ground to the central unit (logistics, radio), and to reinforce systems for "warning lights" as regards scarcity of food (population movements, market prices of food, etc.) (COM(85) 599 final, 8-9).

107 This aid will involve constituting these stocks, preferably from surpluses in the country or in the regions (triangular operations), supplying storage equipment and ensuring that the stocks are protected (COM(85) 599 final, 9.)
With regard to the agricultural revival of the countries affected by the famine, the Commission proposed that the Community would, on the one hand, take action to ensure that the famine-hit countries were able to import the basic agricultural inputs such as seeds, fertilizers, pesticides, etc. for the 1986-87 season and that farmers had the means to buy these imports (through systems of agricultural credit), and, on the other hand, finance a number of measures to accompany the re-establishment of displaced persons such as restoring drinking-water facilities and the supply of high protein food supplements those worst affected by the famine, i.e. children and pregnant women. The Commission proposed that the Rehabilitation and Revival Plan would be financed by a Community contribution amounting to 100 million ECU of non-allocated reserves still available under the 4th and 5th European Development Fund, and a Member States' contribution, of the same size. In addition, the Commission pointed at the possibility to finance certain of the plan's local costs from food aid counterpart funds. On 4 November 1985, the Council adopted the Commission's Rehabilitation and Revival Plan and in December 1985 and January 1986, the Commission signed the financing agreements for a total of 100 million ECU with the 8 beneficiary countries (Ethiopia, Sudan, Mali, Mauretania, Niger, Chad, Angola and Mozambique) under the Rehabilitation and Revival Plan. The Commission was, however, quite aware that the short-term actions provided for by the Rehabilitation and Revival Plan would have no sense if the more fundamental problems of food production and security were not tackled too. Therefore, the

108This aid will focus on strengthening capacities for unloading and storing goods and getting them away from the ports; getting rid of the main bottle-necks in rail and road links by fords and temporary bridges, and ensuring that the heavy-transport fleet is well-maintained (supply of spare parts, technical assistance) and perhaps reinforced (COM(85) 599 final, 9-10.).

109COM(85) 599 final, 10-11.

110COM(85) 599 final, 11-12.

111News Round-Up, The Courier, March-April 1986, X (with a list of the projects and programmes financed); see also News Round-up, The Courier, May-June 1986, XIV (which mentioned the amount of 108 million ECU); DOYLE, S., 'Implementing the Dublin Plan', The Courier, January-February 1987, 7-8.
Lomé III Convention, which entered into operation on 1 May 1985 and provided for the means to launch longer-term actions, focused - as I already mentioned above - on rural development and food security. Furthermore, motivated by the same awareness that long-term action was needed to remedy African’s food situation, the Commission submitted in January 1986 communication to the Council and the European Parliament on ‘Protecting Natural Resources - Fighting Desertification in Africa’ and the Council at its meeting of 17 April 1986 adopted in principle this Community plan of action against the desertification.112 It would be beyond the scope of this study, however, to enter into details regarding these longer-term actions.

The African crisis had an unmistakable impact on the further evolution of Community’s food aid policy and this in two respects. First of all, the crisis showed very clearly the limited ability of the Community’s food aid system, as it was in place at the outbreak of the crisis, to come efficiently to the aid of countries affected by famine. The Community’s food aid policy did not allow for a very rapid, appropriate and flexible response to the needs of these countries. Most of the shortcomings of the Community’s food aid policy could, however, be overcome during the crisis by improvisation and ad hoc arrangements: the European Council decided on an exceptional emergency programme, the ‘Dublin Plan’; a special emergency unit with important decision making powers was established; simplified procedures for the mobilization of the food aid were introduced; for the first time, there was serious coordination of emergency food aid operations with the Member States; the Commission became very involved in the inland transport of the aid in a number of particularly problematic cases; etc. While these ad-hoc arrangements allowed the Community to make a very valuable contribution to the alleviation of the famine in spite of the shortcomings of the Community’s food aid policy, they very clearly indicated the need for further policy reform. In its communications on ‘Famine in Africa’ of June 1985, the


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Commission already clearly outlined what would have to be changed in the Community's food aid policy.\textsuperscript{113} As I mentioned above, the Commission pleaded in these communications for a significant increase in the Community's financial resources for emergency food aid, Community aid to the setting up of early warning systems, more triangular operations, more aid for the inland transport of the food aid, a further simplification and speeding up of food aid procedures, a permanent unit within the Commission which would in times of crisis be the backbone of a crisis staff, and a full-fledged system of coordination of the efforts of the Member States and the Community. In addition, there was - as the Commission pointed out in its communication on the Rehabilitation and Revival Plan for the African countries most affected by the famine - clearly a need for expanding the possibility of using food aid (preferably mobilized by triangular operations) for the building of (decentralized) food security stocks to deal with food emergencies in the very first instances before international aid can arrive.

The African crisis had, however, also a considerable impact on the Community's food aid policy debate in a second respect. In the most dramatic way possible, it confirmed the need - already accepted by the Community since the early eighties - to give absolute priority to and increase substantially Community aid for agricultural and rural development. It was, therefore, not surprising that the African crisis not only initiated the discussion on food aid policy reforms necessary to allow Community emergency food aid to help as efficiently as possible countries affected by famine, but also significantly intensified the ongoing debate on policy reforms necessary to optimize the contribution of 'normal' Community food aid to the agricultural and rural development efforts of the developing countries.

\textsuperscript{113}Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 3-7; Commission communication to the European Council on 'Famine in Africa', COM(85) 335 final, 2-3.
2.2 The second food aid framework regulation, Council Regulation (EEC) No 3972/86 of 22 December 1986, and subsequent food aid policy developments

2.2.1 Council Regulation (EEC) 3972/86 of 22 December 1986 on food aid policy and food aid management: the currently applicable food aid framework regulation

Against the background of the dramatic experience of the African crisis and certainly partly in response to the European Parliament’s repeated calls for a new food aid framework regulation, the Commission informed the Council at the close of the latter’s meeting of 17 April 1986 at which the food aid policy pursued by the Community since 1983 was discussed, that it would forthwith submit a proposal for a new food aid framework regulation with the aim:

[...] de faire de l’aide alimentaire un instrument encore plus efficace d’aide au développement et d’appui à la recherche de l’autosuffisance alimentaire des PVD, ainsi que d’adapter mieux cette aide aux besoins des populations bénéficiaires.14

Three months later, the Commission submitted to the Council a first, and two months after that, a second (slightly amended) proposal for a new food aid

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It should be noted that Le Courrier reported that the Commission had also announced at the end of the Council’s meeting of 17 April 1986 that it would submit a proposal for a regulation on the mobilization of food aid. This cannot be correct since the competence to decide on the rules for mobilization rested with the Commission itself so that there was no need for a proposal to the Council!
The Commission contended that the system of food aid management governed by the food aid framework regulation of 3 December 1982 did not allow for good management of food aid and this while good food aid management was frequently a prerequisite for the success of development policies of which food aid was an integral part. It therefore felt that it was essential to review the latter framework regulation on the basis of experience gained. In proposing this new framework regulation the Commission wanted, first of all, to make food aid a more fully integrated part of development aid, secondly, to remove certain ambiguities in the food aid legislation concerning the division of decision making powers, which regularly caused difficulties and clashes between Community institutions, and, thirdly, to avoid the splitting up and hence the dilution of management responsibilities by strengthening the Commission's implementing powers in accordance with the spirit of the European Single Act.

With regard to its first aim, namely the fuller integration of food aid with development aid policy, the Commission first of all stressed the importance of triangular operations and criticized the strict limitations imposed on such operations by the food aid framework regulation of 3 December 1982. It will be recalled that the framework regulation only allowed triangular operations when the Community market was unable to supply the products needed or in cases of emergencies. The Commission quite correctly pointed out that these limitations could lead to a considerable loss of efficiency in terms of aid management and to

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115Proposal for a Council Regulation (EEC) on food aid policy and food aid management repealing Regulation (EEC) No 3331/82 (submitted to the Council by the Commission), COM(86) 418 final dated 17 July 1986 and Proposal for a Council Regulation (EEC) on food aid policy and food aid management (submitted to the Council by the Commission) REVISION, COM(86) 418/2/rev. final dated 29 September 1986. The changes made to the first version of the proposal were really quite trivial. The most important one concerned the title of the proposed regulation which in the second version does not contain the words "repealing Regulation (EEC) No 3331/82".

116COM(86) 418/2/rev. final, 1. It should be noted that the Commission explicitly said that the quality of food aid management affected the Community's image in the developing countries and in the eyes of the public opinion.

Efficient management called for rational and transparent implementation procedures, a clear division of responsibilities and some degree of concentration of those responsibilities.

117COM(86) 418/2/rev. final, 2.
the abuse of the "emergency concept". While the Commission insisted that possibility of undertaking triangular operations should be kept within limits which did not jeopardize the basic principle of mobilizing food aid products on the Community market, it proposed a widening of the scope for carrying out this sort of operations. The Commission also proposed to insert in the framework regulation the requirement that products supplied as food aid should as far as possible fit the dietary habits of the recipient countries. Concerning the conditions under which the Community was to give food aid, the Commission proposed to add to the relevant article of the framework regulation of 3 December 1982:

Where food aid is provided as backing for a development programme spread over a number of years, it may be supplied on a multi-annual basis linked to the programme in question.

Finally it should be noted that the Commission with the aim to allow for a fuller integration of food aid with development aid policy proposed that all products, and not only cereals as stipulated in the framework regulation of 3 December 1982, could be used to build food security stocks.

In proposing a new food aid framework regulation, the Commission also wanted to remove certain ambiguities in the food aid legislation concerning the division of decision making powers. To this end, it proposed that while under the new framework regulation the Council would remain competent to decide on the quantities of 'contractual aid', the budgetary authority, i.e. Parliament in this case, would determine the amounts (in money terms) available for each product which the Commission would convert into estimates of quantities on the basis of the current prices and taking into account the likely trend of those prices. In the event of price changes prior to the implementation of the aid, the estimated quantities for non-contractual aid were to be adjusted by the Commission so as to

118COM(86) 418/2/rev. final, 2-3. See Article 3 of the draft regulation.
119Article 2 (4) last sentence of the draft regulation.
120Article 2 (5) of the draft regulation.
Council Regulation (EEC) No 3972/86 and subsequent policy developments

ensure that food aid operations remain within the budget limits.\textsuperscript{121}

Finally, the Commission wanted a new food aid framework regulation to strengthen the Commission’s implementing powers so as to avoid the splitting and hence the dilution of management responsibilities. To this end, it proposed - firstly - that while the Food Aid Committee would act as a management committee with regard to decisions on the list of products to be supplied as food aid, on the limits within which triangular operations could be carried out, and on the arrangements for mobilizing products both on the Community market and external market, with regard to the decisions on the allocation of food aid to eligible recipients it operate as an advisory committee.\textsuperscript{122} Secondly, the Commission proposed that a failure of the Food Aid Committee to register an opinion would no longer have the effect of an unfavourable opinion and would not postpone the implementation of the Commission’s decision any more.\textsuperscript{123} Thirdly, the Commission proposed to eliminate the provision in Article 3 (1) of the framework regulation of 3 December 1982 which stipulated: “The products shall be mobilized in accordance with the rules and procedures laid down under the common organizations of markets” and which lead to procedures for the mobilization of food aid which were cumbersome, sketchy and ineffective. Pursuant Article 5 of the proposed framework regulation, it would be up to the Commission to lay down the new rules and procedures for the mobilization of food aid. Therefore, the new framework regulation proposed to the Council remained silent on this point. In the explanatory memorandum to the Commission’s proposal, the latter already indicated that the current, deficient procedures would have to be replaced with procedures which, first of all, would ensure that food aid management was kept separate from the management of the common agricultural policy, secondly, would apply to all products and not only Community products for

\textsuperscript{121}COM(86) 418/2/rev. final, 3-4.

\textsuperscript{122}COM(86) 418/2/rev. final, 4.

\textsuperscript{123}Article 8, second paragraph of the draft regulation.
which there existed a common organization of the market, and, thirdly, would enable the Commission - by eliminating the national intervention agencies - to assume full responsibility for managing the implementation of food aid operations.\(^{124}\)

As I already noted above, the European Parliament had ever since the adoption of the food aid framework regulation of 3 December 1982 repeatedly called on the Commission to submit a new proposal for a food aid framework regulation because it considered the current regulation as illegal in that it undermined Parliament's budgetary powers.\(^{125}\) It is important to note, however, that Parliament did not 'merely' call for a new food aid framework regulation to see its budgetary powers recognized and respected. As it made quite clear in numerous resolutions on Community food aid since the adoption of the food aid framework regulation of 3 December 1982, a new food aid regulation was also needed for food aid to become a genuine instrument for development and relief.\(^{126}\) Very well reflecting

\(^{124}\)COM(86) 418/2/rev. final, 5.


Parliament was also particularly unhappy with the role and powers of the Food Aid Committee and the fact that the Council in adopting the regulation of 3 December 1982, prematurely and unilaterally terminated the conciliation procedure in progress.

Council Regulation (EEC) No 3972/86 and subsequent policy developments

Parliament’s still critical position with regard to the substantive aspects of the Community’s food aid policy after the adoption of the framework regulation of 3 December 1982. Mrs K. Focke, the then Chairman of the Parliament’s Development Committee, declared in an interview published in September 1986:

I am quite convinced that food aid is a necessity, especially in disaster situations like those we had in 1984 and 1985 [...] I am not satisfied, as I have said hundreds of times, with a system of food aid which is renewed every year according to the Community’s surpluses, often with quite the wrong sort of contributions for the eating habits of the countries which receive them, and on terms that discourage agricultural production there. This is where I think food aid as it is at present is not a factor of development.

I strongly hope that the European Commission is at last going to present us with a new outline regulation that stresses emergency food aid and the fact that the food aid policy is to be an integral part of an appropriate food strategy in each of the recipient countries [...]. What we have to do, outside any emergencies of course, is to subordinate food aid to agricultural development and food production by the countries in question.

Time and again, Parliament stressed the need of integrating food aid into a whole range of operations designed to improve the food situation in developing countries. Parliament also stressed the need to supply food aid products adapted to the dietary habits of the recipient populations and the need for more triangular operations. It repeatedly expressed strong support for alternative projects in place of food aid in order to encourage local food production and the use of food aid for the establishment of buffer food stocks so that faster, more effective aid

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127 Interview by L. PAGNI, The Courier, September-October 1986, 2-3. Focke also pleaded in favour of more triangular operations and against the use of food aid as a means of commercial penetration.


can be deployed in emergencies.\textsuperscript{130} It supported the special emergency reserve and called for a decrease in cost-ineffective food aid (such as milk powder and butteroil) and an increase in more cost-effective food aid (such as cereals, sugar, vegetable oil).\textsuperscript{131} It stressed the need to attach more importance to the transport of the aid.\textsuperscript{132} And finally, Parliament stressed the need to increase the efficiency of food aid management and encouraged the moves towards more effective coordination of food aid between the Member States and the Community, and the Community and other donors.\textsuperscript{133}

In the light of Parliament’s resolve to make food aid into a genuine instrument for development and relief, it is hardly surprising that the latter institution was not fully satisfied with the proposal for a new food aid framework regulation the Commission after years of prodding finally submitted. During the Parliamentary debate on the proposal, Mr Jorge Campinos, the rapporteur, declared:

\[\ldots\] as compared with the 1982 regulation, the Commission’s proposal shows undoubted progress both as regards the Management Committee, budgetary matters and the principle of separating food aid from the CAP. Nevertheless, as was pointed out on several occasions within the Committee on Development, there are certain omissions in the Commission’s proposal.

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In its Resolution of 24 October 1986, Parliament stated with a clear lack of enthusiasm:

[Parliament] approves the broad lines of the Commission’s proposal provided that the Commission takes into account the amendments it has adopted;\footnote{European Parliament Resolution of 20 October 1986 on ‘closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a Regulation on food aid policy and food aid management, point 14, O.J. 1986, C 297.}

Parliament’s criticism on the Commission’s proposal focused on procedural/institutional as well as substantive aspects of Community food aid. Its first main criticism concerned the respect of its budgetary powers. While the Commission acknowledged in its explanatory memorandum that in the case of non-contractual aid, it would be for the budgetary authority, i.e. Parliament in this case, to set "amounts" (which for each product, the Commission would then convert into quantities), Parliament’s satisfaction at seeing its budgetary powers respected was damped by the Commission’s insistence that Parliament, as budgetary authority, could only determine the appropriations provided for food aid in the budget but not the quantities of food aid themselves. The latter decision - the decision on the quantities - was for the Commission to take and it would do so by converting the appropriations into quantities on the basis of current prices, and taking into account, where appropriate, the likely trend of those prices. Even if the Commission would always convert the appropriations into quantities correctly (and could Parliament really be certain that would be the case) Parliament was afraid - and not without reason - that such a strict adherence to budgetary orthodoxy might in fact give the Commission the possibility to frustrate the political will with regard to the quantities of food aid it had expressed via the budget. Rather than giving the Commission the complete discretion to increase or reduce the quantities the Parliament had in mind in line with the international price trends, the latter
wanted that the framework regulation to state that the appropriations entered in the budget shall correspond to *maximum* quantities shown in the remarks columns of the budget. If changes in world prices meant that these maximum quantities could not be met, there would have to be transfers of appropriations or possibly a supplementary budget. In order to maximise the influence its budgetary powers allowed it to have over the food aid policy, Parliament insisted that the new framework regulation should provide for an Article 4a stipulating:

The budget shall determine the appropriations and the corresponding overall maximum annual or multiannual quantities available by product.

Parliament shall be consulted prior to any subsequent transfer of funds within Chapter 92 of the budget.\(^{136}\)

Parliament's second main criticism concerned the role and powers of the Food Aid Committee. While Parliament welcomed the Commission's proposal that the implementation of the latter's decisions on the allocation of food aid would no longer be dependent on a favourable opinion of the Food Aid Committee, it remained critical with regard to the role and powers given to the latter Committee. There were still a number of Commission decisions which had to be submitted to the Food Aid Convention and which - in case of an unfavourable opinion of the latter - could be overruled by the Council.\(^{137}\) Parliament appreciated the fact that, unlike under the framework regulation of 3 December 1982, the failure of the Food Aid Committee to render an opinion did not longer have the same effect as an unfavourable decision; the possibility of a blocking minority was excluded in the Commission's proposal. As it had already done in 1979 in its opinion on the food aid framework regulation of 3 December 1982, Parliament insisted, however, that the Food Aid Committee would have no more than an advisory role for all

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\(^{136}\)PE Texts 9/86/II, 66. See also European Parliament Report on the proposal for a Regulation on food aid policy and food aid management (Rapporteur: Mr Jorge CAMPINOS), PE Doc A 2-140/86, p. 15-17 and also the Opinion of the Committee on the Budgets, p. 22-24.

\(^{137}\)The decision on the list of products to be supplied as aid, the decision on the limits within which triangular operations could be carried out, and the decision on the arrangements for mobilizing food aid products.
decisions to be taken by the Commission. Therefore, it requested the advisory nature of the Food Aid Committee to be stipulated in Article 7 of the proposed framework regulation and Article 8, which provided for the management committee procedure, to be deleted.

Parliament's third main criticism concerned the requirements and restrictions stipulated in the proposed framework regulation which limited the usefulness of food aid as an instrument for development and relief and revealed a continued link between the food aid policy and the common agricultural policy. Rapporteur Mr Jorge Campinos noted in this respect:

The Commission's proposal is a prime facie improvement in that it reaffirms the aim of separating food aid from the CAP. In fact, as we will see, it is merely a statement of intent, as the proposed regulation retains more than just vestiges of the previous situation. The Community's policy, as expressed in this proposal for a regulation, is still related to the structural production of agricultural surpluses intended for use as food aid.

While the proposed framework regulation undoubtedly extended the scope for triangular operations in comparison with the framework regulation of 3 December 1982, triangular operations were still rather the exception than the rule. The rule was that food aid was to be mobilized on the Community market. While Parliament did not suggest to change the basic rule of Community origin of the food aid products, it did insist on extending the scope for triangular operations very considerably. Even within Parliament, however, there was opposition to this enlargement of the scope for triangular operations. In the carefully worded Opinion of the Committee on Agriculture it was stated:

Whilst the food aid policy should not be regarded as a means of disposing

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140 European Parliament Report on the proposal for a Regulation on food aid policy and food aid management (Rapporteur: Mr Jorge CAMPINOS), PE Doc A 2-140/86, p. 19-20; and PE Texts 9/86/II, p. 66 for the text of the proposal as amended by the European Parliament. For more details, see: Section 3.5 of this Chapter.
of the Community's agricultural stocks, the Community cannot permit itself the luxury of purchasing on third country markets products available on its own. 

The proposed framework regulation did provide for the possibility to grant food aid on a case by case basis to enable the building up of reserve stocks but stipulated that such aid should not represent more than a residual percentage of Community food aid. Considering that in fact the only rapid and effective response to food shortages in countries hit by some sort of a disaster is to set up reserve stocks, Parliament actually suggested the restriction on the use of food aid for stock building to be deleted.

Parliament finally also criticized the Commission's proposal for not mentioning, let alone integrating, the possibility of alternative operations in place of food aid deliveries provided for by Council Regulation (EEC) No 1755/84 and suggested to insert an Article 2a which would do exactly that.

In spite of its criticism on the Commission's proposal, Parliament believed - and explicitly stated so - that if its amendment were taken into account, the proposed food aid framework regulation would:

[...] allow the Community, by setting up alternative operations in place of food aid, triangular operations and multiannual programmes linked to development policies, to play an effective part in making structural improvements in the food situation in developing countries;

While for Parliament the Commission's proposal did not go far enough in making

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141 European Parliament Report on the proposal for a Regulation on food aid policy and food aid management (Rapporteur: Mr Jorge CAMPINOS), PE Doc A 2-140/86, Opinion of the Committee on Agriculture, p. 25.

142 European Parliament Report on the proposal for a Regulation on food aid policy and food aid management (Rapporteur: Mr Jorge CAMPINOS), PE Doc A 2-140/86, p. 20; and PE Texts 9/86/II, p. 65 for the text of the proposal as amended by the European Parliament. For more details, see: Section 3.5 of this Chapter.


food aid into an effective instrument for development and humanitarian relief, for the Council it went too far. The Council discussed the Commission’s proposal and reached agreement in principle upon a new food aid regulation at its meeting of 11 November 1986.\textsuperscript{145} Pursuant to Parliament’s request to open a conciliation procedure should the Council depart from the former’s Resolution, a conciliation meeting was held on 15 December 1986 during which the Council agreed to change its position on the question of the fixing of the food aid quantities by assigning this task to the Commission but refused to amend its position on the role and competence of the Food Aid Committee.\textsuperscript{146} The only concession it was willing to make in this respect was that the new framework regulation would only be valid for a limited period of time and would be amended in the light of the results of the on-going discussion on the role and competences of management committees in general. On 22 December 1986, the Council formally adopted the new food aid framework regulation, Regulation (EEC) No 3972/86 on food aid policy and food aid management.\textsuperscript{147} As was to be expected, the regulation eventually adopted by the Council departed on several crucial points from the proposal submitted by the Commission, and even more from the proposal as amended by Parliament. While the new framework regulation was not what the Commission and Parliament would have liked it to be, it must be stressed, however, that the latter regulation nevertheless represented a very clear shift in the balance of compromise between the objectives of the food aid policy in favour of the developmental and humanitarian objectives. This shift becomes particularly apparent when one compares the new framework regulation with its predecessor, which - it will be recalled - represented itself already a considerable shift in the balance of compromise between food aid policy objectives.

\textsuperscript{145}Council of the European Communities, Secretariat-General, Press Release 10309/86 (Presse 167), p. 10; see also: News Round-up, The Courier, January-February 1987, XVI. As Parliament had requested in its Resolution of 24 October 1986, the common position - substantially departing from its Opinion - was forwarded to it.

\textsuperscript{146}COM(87) 492 final, 7.

The first important difference between the old and the new framework regulation was the legal basis. While the old framework regulation was based on a composite legal basis made up of Article 43 EEC and Article 235 EEC, the new framework regulation is exclusively based on Article 235 EEC and thus ostentatiously cuts one of the most apparent links between the food aid policy and the common agricultural policy.

The second important difference between the old and the new framework regulation concerned the marked emphasis on the integration of food aid into developing countries' policies aimed at improving their food security and food production (food strategies). While the old framework regulation explicitly stressed the need for food aid to be made into a real instrument of the Community's policy of cooperation with the developing countries, it was less clear with regard to the sort of development effort it was to support. The new regulation, on the contrary, is very explicit in this respect: food aid is in the very first place to be used to improve the food security situation of the recipient countries. The new framework regulation embraces the food strategy approach. Already in the recitals, the new framework regulation explicitly links food aid to policies aimed at promoting food security and in particular food strategies. More importantly, however, Article 2 (1) of the new framework regulation stipulates in addition to the three specific objectives already stated in the first framework regulation, two 'new' objectives which state very clearly the Community's intention to use food aid to promote food security and food production in the recipient countries. Article 2 (1) of the current framework regulation now reads (the underlining is mine and indicates the 'new' objectives):

The food aid operations referred to in Article 1 shall have the following objectives in particular:
- to promote food security in the recipient countries and regions,

The current framework regulation states that: "Whereas food aid must be integrated into developing countries' policies aimed at improving their food security, in particular by food strategies;" (Regulation (EEC) No 3972/86, recital 2, O.J. 1986, L 370/1). It should perhaps be noted that this recital was not yet in the Commission's proposal but was for the first time suggested by Parliament and taken up by the Council. The Commission agreed, however, to this amendment (See: Debates of the European Parliament, 1986-1987 Session, Report of Proceedings from 20 to 24 October 1986, O.J. Annex No 2-344, p. 271).
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- to raise the standard of nutrition of the recipient population,
- to help in emergencies,
- to contribute towards the balanced economic and social development of recipient countries,
- to support efforts by recipient countries to improve their own food production.\(^{149}\)

Furthermore, Article 2 (2) of the new framework regulation - a provision without equivalent in the old framework regulation - stipulates explicitly:

The Community's food aid shall be integrated as thoroughly as possible into the development policies, and in particular the agricultural and agri-foodstuffs policies, and food strategies of the countries concerned. [...]\(^{150}\)

The third important difference between the old and the new framework regulation concerns a number of new provisions which are to allow food aid to be more efficiently used to promote food security in the recipient countries. The first of these provisions relates to the possibility of undertaking multi-annual food aid operations. Article 2 (5) of the new framework regulation - and this in contrast to the old framework regulation - explicitly and uncontestably provides for the possibility of multi-annual food aid operations. Article 2 (5) stipulates in particular:

[...] Where food aid is provided as backing for a development programme spread over a number of years, it may be supplied on a multiannual basis

\(^{149}\) Council Regulation (EEC) No 3972/86, Article 2 (1), O.J. 1986, L 370/1. It should perhaps be noted that these two additional objectives were not in the Commission's proposal. Surprising as it may be, the Commission had in fact proposed no changes to Article 2 (1) of the first framework regulation. It was Parliament which suggested a number of changes to Article 2 (1). The objectives suggested by Parliament were:

- to provide emergency assistance to countries suffering from drought, famine or other natural disasters;
- to contribute to policies in recipient countries which will reinforce their food security;
- to raise the standards of nutrition of the recipient population;
- to contribute towards the balanced economic and social development of the recipient countries. (PE Texts 9/86/II, p. 65).


\(^{150}\) Council Regulation (EEC) No 3972/86, Article 2 (2), O.J. 1986, L 370/2. It should be noted that Article 2 (2) was neither in the Commission's original proposal nor was it one of the amendment suggested by Parliament.
linked to the programme in question.\textsuperscript{151}

The second of the provisions referred to above concerns the disincentive effect food aid may have on the local food production in the recipient countries. To avoid this effect, Article 2 (2), second sentence, stipulates:

Where the products supplied by the Community as aid are sold, the price thereof must not be liable to disrupt the domestic market.\textsuperscript{152}

The third of the provisions which are to allow food aid to be more efficiently used to promote food security in the recipient countries relates to the characteristics of the products supplied as food aid. Whereas the old framework regulation had remained mute on this issue, Article 2 (3) of the new regulation stipulates:

Products supplied as food aid shall as far as possible fit the dietary habits of the recipient population and have no adverse effects on the recipient countries.\textsuperscript{153}

It should also be noted that whereas the old framework regulation explicitly stated that when deciding on the sort of products to be supplied as food aid, the available stocks of agricultural products was to be taken into account, the new framework regulation is free from such explicit linkage between food aid and the Community’s surplus stocks.

The fourth of the provisions referred to above concerns the allocation criteria for food aid. In Article 2 (4), the new framework regulation stipulated - as the old framework regulation in its Article 2 (2) - that food aid shall be allocated primarily on the basis of an objective evaluation of the real needs justifying the aid, but adds: "with economic considerations also being taking into account".

\textsuperscript{151}Council Regulation (EEC) No 3972/86, Article 2 (5), O.J. 1986, L 370/2. The rest of Article 2 (5) was virtually identical to its equivalent in the old framework regulation with the exception of the requirement that the use of the counterpart funds is to be laid by common agreement. It should also be noted that - unlike the old framework regulation in its recital 3 - the new framework regulation in its recital 4 no longer imposes any quantitative restrictions on multi-annual food aid commitments (Council Regulation (EEC) No 3972/86, recital 4, O.J. 1986, L 370/1).

\textsuperscript{152}Council Regulation (EEC) No 3972/86, Article 2 (2), second sentence, O.J. 1986, L 370/2. It should be noted that Article 2 (2) was neither in the Commission’s original proposal nor was it one of the amendments suggested by Parliament.

\textsuperscript{153}Council Regulation (EEC) No 3972/86, Article 2 (3), O.J. 1986, L 370/2. Article 2 (3) was only partially in the Commission’s original proposal and completed by Parliament.

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Furthermore, it completes the non-exhaustive list of criteria to which particular consideration will be given with two new criteria: "the existence of particularly impoverished population groups" and "the economic and social impact and financial cost of the proposed action".\(^{134}\)

The fifth of the provisions which are to allow food aid to be more efficiently used to promote food security in the recipient countries relates food reserve stocks. Already under the old framework regulation it was possible to grant a residual percentage of food aid in cereals to enable the recipient countries to build up stocks. Under the new framework regulation also food aid in non-cereals can be used for the purpose of stock building and there are no longer any explicit quantitative restrictions. Article 2 (6) reads:

> In granting food aid, priority shall be given to needs for immediate consumption. Nevertheless, in order to improve food security in the developing countries and to ensure that their needs are met, food aid may be granted in justified cases to enable reserve stocks to be build up by the recipients.\(^{155}\)

The sixth and last of the provisions referred to above concerns triangular operations. Under the old framework regulation triangular operations were possible only in an emergency or if the products were not available on the Community market. While reaffirming the principle of Community origin of food aid products, the new framework regulation still very considerably extends the scope for triangular operations. Article 3 now reads:

> Products shall normally be mobilized on the Community market. However, products supplied as aid may be purchased in the recipient country or in another developing country, if possible one belonging to the same geographical region as the recipient country:

- if those products are not available on the Community market, or
- in an emergency within the meaning of the second subparagraph of Article 6 where such purchases are likely to enable the aid to reach its destination


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more rapidly, or
- where the following conditions are met:
  (a) stocks or surpluses of the necessary products are in fact available in a developing country, if possible one of the countries determined in the third indent of Article 4 (1), at a total cost including transport which compares favourable with the cost of similar products mobilized from the Community market, taking into account the beneficial effect of the purchases to the developing country from which such purchases are made;
  (b) such purchases are not liable to disrupt the market of the supplying countries nor have any negative effects on the food supply of their populations;
  (c) such purchases remain in the aggregate at a level compatible with the principle that food aid should be mobilized on the Community market;
  (d) such purchases in a developing country shall be integrated as thoroughly as possible into Community development policy towards that country, in particular as regards the promotion of its food security.\footnote{550}{Council Regulation (EEC) No 3972/86, Article 3, OJ. 1986, L 370/2.}

The fourth important difference between the old and the new framework regulation concerns the rules and procedures for the mobilization of the food aid products. The old framework regulation stipulated that food aid products were to be mobilized in accordance with the common agricultural policy rules and procedures and established thus - apart from very inefficient and incomplete set of mobilization procedures - a very close and evident relation between the common agricultural policy and the food aid policy. Every single Commission decision on the mobilization within the Community of a product for which there was a common organization of the market was scrutinised by the relevant management committee. The new framework regulation, however, makes no reference to the common agricultural policy rules and procedures any more but, on the contrary, announces in its Article 12 that new rules and procedures specific for the mobilization of food aid products were to be laid down by the Commission
pursuant to Article 5 - before 30 June 1987 the latest. Article 6 (1) c of the new framework regulation gives the Commission the competence to decide on the engagement of the mobilization procedures and the supply of products without requiring the consultation of the relevant common agricultural policy management committee. Article 6 (1) c, furthermore, gives the Commission - and not the national intervention agencies - the competence to conclude the food aid supply contracts. As such, the new framework regulation frees the Community food aid policy of some of the most evident and problematic links with the common agricultural policy and allows for much faster and less cumbersome implementation of food aid operations.

The fifth and last important difference between the old and the new framework regulation concerns the procedures for food aid policy decision making. While the procedures provided for in the old framework regulation represented a noted progress in comparison with the procedures that had been in force until December 1982, they still fell short of what was required to guarantee the efficient management of Community food aid. A further delegation of decision making powers from the Council to the Commission was clearly necessary. The new framework regulation differs from its predecessor in the sense that it provides for such delegation. Under Article 5 of the new regulation the decision on the sort of products to be supplied as food aid and the decision on the total quantities of food aid - under the old framework regulation Council decisions - are now to be taken by the Commission. Particularly, giving the Commission the competence

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157 Council Regulation (EEC) No 3972/86, Article 12, O.J. 1986, L 370/4. It should be pointed out that in the period until the adoption of the new rules and procedures but not later than 30 June 1987, Article 3 of the old framework regulation remained applicable.

158 Council Regulation (EEC) No 3972/86 of 22 December 1986, Article 6 (1) c, O.J. 1986, L 370/3. This provision only took full effect after 30 June 1987. Before that date - and this pursuant to Article 12 of the new framework regulation - Article 3 of the old framework regulation and thus the regulations on the common organization of the market was still applicable.

159 See previous footnote.

to decide on the total food aid quantities represented an important concession on the part of the Council, a concession which - as I already noted - was only made at the very last moment, i.e. during the conciliation procedure of 15 December 1986.\footnote{COM(87) 492 final, 7.}

There can be no doubt about the fact that the new framework regulation represents a significant shift in the balance of compromise between the objectives of the food aid policy in favour of the developmental and humanitarian objectives and in detriment of the objective of promoting Community agricultural interests. It must be noted that this shift was, however, not as significant as the Commission and certainly Parliament would have liked it to be. The new framework regulation still contains a number of both substantive and procedural provisions which intended to guarantee that the Community food aid policy continues to promote also the interests of European farmers.

With regard to the substantive provisions, one should of course in the first place refer to Article 3 of the new framework regulation, cited above, which stipulates the principle of Community origin of the food aid products and the related restriction on triangular operations. Secondly, the framework regulation refers only in its recitals to Council Regulation (EEC) No 1755/84 of 19 June 1984 which provided for the possibility of alternative operations in place of food aid deliveries, while the provisions of this Regulation should have been integrated in the framework regulation as an important aspect of the new policy. Not integrating this feature in the framework regulation has the effect of marginalizing its importance. Thirdly, almost all provisions which are to guarantee that Community food aid does indeed contribute to the economic and social development of the recipient countries and renders humanitarian relief in emergencies are characterized by their non-committing wording. They all seem to have their build-in escape clause, they are rather guidelines than stringent legal requirements. Article 2 (2) stipulates that the Community’s food aid shall be integrated \textit{as thoroughly as possible} into the development policies of the recipient
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countries. Article 2 (3) merely requires that food aid products as far as possible fit the dietary habits of the recipient countries and have no adverse effects on the recipient countries. Article 2 (4) stipulates that food aid shall be allocated primarily on the basis of an objective evaluation of the real needs justifying the aid and lists four criteria to which particular consideration should be given when allocated food aid adding, however, that this does not exclude taking into account other pertinent considerations. Article 2 (5) stipulates that the granting of food aid shall, if necessary, be conditional on the implementation of annual or multi-annual development projects. Furthermore this Article specifies that food aid provided as a backing for a development programme spread over a number of years may be supplied on a multi-annual basis linked to the programme in question. Finally, it should be noted that the food aid framework regulation basically gives the Member States complete freedom to pursue their own food aid policy whereas a coordination of the food aid efforts of the Community and the Member States would have been much in the interests of the developing countries.

With regard to the procedural provisions, it should be noted that the latter guarantee that the Council retains ultimate control over every single 'normal' food aid operation. Some decisions are still to be taken by the Council itself, while other decisions can be overruled by it when a majority in the Food Aid Committee does not agree with them. Especially the latter, namely the continuation of the system of scrutinising of Commission decisions by a management committee type of Food Aid Committee, objected to by the Commission as well as Parliament as undermining (directly or indirectly) their competences, is particularly indicative. These procedural provisions clearly reflect a distrust on the part of some Member States to what the Commission/Parliament might actually do if they could run the

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162 Would it not have been better to stipulate: "Except for food aid given in emergencies, the granting of food aid will be conditional upon the implementation ...".

163 Instead of "may", it would be better "shall be".

164 I.e. a negative opinion or the absence of an opinion.
food aid policy without constant supervision.  

The Council was quite aware that certain provisions of the new framework regulation and especially the procedural provisions concerning the role and powers of the Food Aid Committee were unacceptable to both the Commission and Parliament and it seems also to some of the Member States. However, by limiting the validity of the new regulation in time (Article 13) and agreeing to discuss the matter of the Food Aid Committee again in the light of the outcome of the ongoing discussion on management committees, the Council itself made quite clear from the outset that the currently applicable framework regulation had only a temporary character and that the debate was to go on.

On 21 May 1987, the Council laid down in Regulation (EEC) No 1420/87 implementing rules for food aid framework regulation of 22 December 1989. In this Regulation, the Council lists the countries and organizations eligible for food aid and sets out the criteria to be met by non-governmental organizations to receive Community food aid. Furthermore, the Council lays down the general criteria for covering the cost of transporting food aid beyond the fob stage and the distribution cost. Finally, this Regulation stipulates that food aid can only be supplied where the recipient countries undertake to comply with the supply terms and gives the Commission the power to take all measures necessary to ensure the proper execution of the food aid operations and obliges the Member States to assist the Commission in this task, especially by providing it with all relevant

165 Directorate-General VIII would definitely follow a very development oriented course with little attention for the agricultural interests of some of the Member States.


168 Council Regulation (EEC) No 1420/87 of 21 May 1987, Articles 2 and 3, OJ. 1988, L 136/1-2. See for more detail: Section 3.4.2 of this Chapter.
2.2.2 The European Parliament Resolution of February 1987 on the fight against hunger: more triangular operations and alternative operations

Less than two months after the adoption of the current framework regulation, Parliament made clear in a Resolution of 19 February 1987 on 'the fight against hunger' that the Community's food aid policy as now defined by the framework regulation in fact still left much to be desired.\(^{170}\) Considering the amendments it proposed to the Commission's draft framework regulation and the framework regulation eventually adopted, this is hardly surprising. In its Resolution of 19 February 1987, Parliament stressed once more that the principal objective of development cooperation must be to combat hunger and to guarantee the basic food requirements of the people through the achievement of rapid growth in indigenous agricultural production and considered that this fight against hunger requires that a series of measures be taken \emph{inter alia} with regard to food aid.\(^{171}\) Having underlined the importance the Community food aid policy will continue to have in the foreseeable future in the context of fight against hunger, Parliament reiterated its demands:

[...] for better coordination of food aid operations with other development aid instruments and greater use of triangular operations and alternative


\(^{170}\) European Parliament Resolution of 19 February 1987 on 'the fight against hunger', O.J. 1987, C 76/117-120; see also European Parliament Reports, Report on the fight against hunger (Rapporteur: Mr José Manuel MEDEIROS FERREIRA), PE DOC A 2-193/86. Note also the European Parliament Resolution of ... 1987 on 'North-South cooperation', point 9 in which Parliament \emph{inter alia} insists on the need to give more attention to "...the transformation of food aid into an instrument of development policy ..." (O.J. 1987, C ...); see also European Parliament Reports, Report on 'North-South cooperation' (Rapporteur: Mrs Katharina FOCKE), PE DOC A 2-203/86.

\(^{171}\) European Parliament Resolution of 19 February, point 1 and 2, O.J. 1987, C 67/117. Other measures to be taken concern the relations between the industrialized and developing countries, the agricultural and rural development of the developing countries and the international trade in agricultural and food products.
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operations in place of food aid.172

With the problems encountered during the African crisis in mind, Parliament also insisted that significant improvements had to be made in the effectiveness of emergency food aid operations, particularly by establishing regional food stocks and improved monitoring and early warning systems, and by organizing transport both inside and outside the countries concerned more effectively.173 To this end it proposed that: (1) the overall tendering system (for foodstuffs and transport) be uncoupled; (2) the choice of fob and cif shipment methods be made as carefully as possible, to ensure that aid does reach its destination and that local authorities (where appropriate) receive assistance to this end; and (3) there be supervision, backed up by penalties, to ensure that tenderers comply with the tender specifications drawn up by the Commission, as regards both the actual resources used and the operation itself, and do so from the beginning to the end of the transport operation.174 Parliament also stressed the importance of incorporating non-governmental organisations into the Community’s food aid policy as well as the importance of Community food aid for the countries of Latin America and Asia, demanding in fact an overall increase in Community food aid, and especially in food aid to the countries of Central America.175 Noteworthy is also that Parliament called upon the Commission:

[...] to equip itself with the necessary internal machinery to ensure that the programme can be properly administered.176

Finally, Parliament suggested that the Commission:

174European Parliament Resolution of 19 February 1987, point 17, OJ. 1987, C 76/119. Note that this point 17 was not in the Motion of Resolution by Mr José Manuel Medeiros Ferreira but in fact summarizes a motion for a resolution by Mrs Dury on the problems associated with the transport of food aid to all destinations (PE DOC B 2-1566/85 and also in annex to the Medeiros Ferreira Report, PE DOC A 2-193/86, p. 18-19).
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...includes a wider range of products in the programmes of food aid for the starving, with due regard for the dietary habits and nutritional requirements of the local people and the interests of regional production.\(^\text{177}\)

In other words, it stressed once again the need for more triangular operations. The Resolution of 19 February 1987 made it quite clear that also after the adoption of the food aid framework regulation, the debate on the Community food aid policy was to continue. In the conclusions of his report, the rapporteur Mr José Manuel Medeiros Ferreira stated:

A certain amount of emphasis is [...] starting to be placed in the EEC's food aid policy on alternative and triangular operations, although a more fundamental reform of the policy still remains to be carried out.\(^\text{178}\)

The Parliament's demands for e.g. more alternative operations in place of food aid, more triangular operations, an internal machinery (within the Commission) capable of properly administrating food aid as an instrument for development and humanitarian relief, and a bigger effort of the Community regarding the transport of food aid, the building up of regional food stocks and improving monitoring and early warning systems marked this institution's determination to shift the balance of compromise between the objectives of the policy even more in favour of the developmental and humanitarian objectives.

2.2.3 Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community aid

As I pointed out above the Council's food aid framework regulation does not provide for detailed rules for the mobilization of the products to be supplied as food aid but stipulates that it is up to the Commission to lay down such rules and

\(^\text{177}\)European Parliament Resolution of 19 February 1987, point 20, O.J. 1987, C 76/120.

\(^\text{178}\)European Parliament Reports, Report on 'the fight against hunger' (Rapporteur: Mr José Manuel MEDEIROS FERREIRA), PE DOC A 2-193/86, 17.
requires the latter does so before 30 June 1987. In the meantime, Article 3 of
the old framework regulation which stipulated that the food aid products were to
be mobilized in accordance with the rules and procedures laid down under the
common organization of markets remained applicable. Failing to meet the
deadline with a week, the Commission adopted on 8 July 1987 - having received
not without difficulty the required favourable opinion of the Food Aid Committee
Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the
mobilization in the Community of products to be supplied as Community food
aid. The importance of this regulation on the mobilization of food aid can
hardly be overestimated. Whereas the principle of disassociating Community food
aid from the common organization of the markets was enshrined in the food aid
framework regulation of 22 December 1986, it is the Commission’s regulation of
7 July 1987 which actually gives form to this disassociation. While for a detailed
analysis of the procedures and rules governing the mobilization on the Community
market of food aid products, I refer to Section 3 of this Chapter, I cannot but
point out some of the most striking innovations brought about by the Commission’s
mobilization regulation. A first dramatic difference with the pre-July 1987
situation is that no longer the national intervention agencies but the Commission
itself is directly responsible for the mobilization of the food aid. The basis for
this new organization was laid in Article 6 (1) c of the framework regulation of 22
December 1986, giving the Commission the competence to conclude the food aid
supply contracts, but worked out in detail in the Commission’s regulation on the

competence to lay down rules for mobilization) and Article 12 (deadline 30: June 1987), O.J. 1986,
L 370/3-4.

180 Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the
mobilization in the Community of products to be supplied as Community food aid, O.J. 1987, L 204/1.

181 Commission Regulation (EEC) No 2200/87 of 7 July 1987, Articles 7, 8, 9, 10 and 11, O.J. 1987,
L 204/3-5.
Note also that before July 1987, in case the products to be supplied were taken from the stocks held
by the national intervention agencies, the latter would hand over these products to the undertaking
which was going to process and/or transport the products and were later paid by the Commission.
Under the new regulation, however, these products were no longer handed over by the intervention
agencies but actually sold at a fixed price in accordance with the provisions of the common agricultural
204/2).
mobilization of food aid products of 7 July 1987.

A second equally dramatic difference is that the Commission decisions on the mobilization within the Community of food aid in form of products for which there exists a common organization of the market - decisions which until July 1987 were scrutinised by the relevant common agricultural policy management committee as if it concerned market intervention/management decisions - are now taken without any consultation of these, or for that matter, any other management committees. Again, the basis for this new, simplified procedure was laid in Article 6 (1) c of the framework regulation of 22 December 1986 which gives the Commission the competence to decide on the engagement of the mobilization procedures and the supply of products without any reference being made to common agricultural policy management committees. The Commission's regulation on the mobilization of food aid products of 7 July 1987, however, worked out in detail the procedure in which the common agricultural policy management committees indeed play no role any longer.

A third difference with the pre-July 1987 situation concerns the obligation for the private enterprises tendering for food aid contracts to make in the case of supply free-at-port-of-landing or supply free-at-destination a bid for each of the different stages of supply and the possibility for the Commission - should this be cheaper - to award the contract for a different stage of supply from that stated in the notice of invitation to tender. A fourth, important difference concerns the obligations for the private undertakings supplying and transporting the food aid, which were modified in various respects in order to better ensure the correct implementation of the food aid operations. Particularly noteworthy in this respect is the abandoning of 'Incoterms' terminology, the detailed description of the obligations

\[\text{Pursuant to Article 12 of the framework regulation of 22 December 1986, Article 3 of the framework regulation of 3 December 1982, which stipulated that the food aid products were to be mobilized according the CAP rules and procedures, remained applicable until new rules and procedures were laid down and at the latest until 30 June 1987.}\]

\[\text{Commission Regulation (EEC) No 2200/87 of 7 July 1987, Article 7 (3) f and 9 (4), OJ. 1987, L 204/3-4. In the case of supply free-at-port-of-landing or supply free-at-destination, the costs for sea transport and subsequent overland transport were repeatedly excessive.}\]

\[\text{Commission Regulation (EEC) No 2200/87 of 7 July 1987, Articles 12-24, OJ. 1987, L 204/5-11.}\]
of the undertakings in the case of delivery free-at-port-of-shipment, supply free-at-port-of-landing and supply free-at-destination, and the rules relating to the financial securities and administrative penalties for the non-observance of obligations. New is also that undertakings which commit serious infringements of any of their obligations can be denied the right to participate in the tendering procedures. A fifth and last difference I would like to mention at this point is the provision for systematic checks - prior to the commencement of loading operations at the port of shipment as well as at the final stage of delivery - by specialized, private undertakings in order to guarantee that the provisions of the food aid supply contract relating to quantity, packaging, etc. have been complied with.

It is quite clear that the Commission regulation on the mobilization of food aid products of 7 July 1987 - providing for less cumbersome and food-aid-specific procedures, for more precise obligations for the undertakings supplying the food aid, and for systematic checks of the food aid supplied, testifies clearly of the Community’s desire to make food aid into an effective instrument for economic development and humanitarian relief.

2.2.4 The Commission’s proposal of October 1987 for a regulation amending the food aid framework regulation of 22 December 1986: changing the role and powers of the Food Aid Committee

As I noted above, the food aid framework regulation of 22 December 1986 was, pursuant to its Article 13, only applicable until 31 December 1987. As I explained, the Council was at the time of the adoption of the framework regulation reconsidering the role and powers of management committees and therefore, by way of concession to the European Parliament during the conciliation procedure.

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186 Commission Regulation (EEC) No 2200/87 of 7 July 1987, Article 10 and 16, O.J. 1987, L 204/4 and 8. For more detail, see: Section 3.6 of this Chapter.
was willing to agree that the new framework regulation which it was about to adopt and which provided for a Food Aid Committee of a committee type unacceptable to Parliament, the Commission and also some of the Member States, would be of limited validity and would be amended in the light of the new rules on the management committees. The Council agreed on such new rules on 13 July 1987. Consequently, the Commission submitted to the Council in October 1987 a proposal for a regulation amending framework regulation of 22 December 1986 in order to adapt the latter regulation to make it conform with the new rules on the management committees. In its proposal of September 1986 for the framework regulation of 22 December 1986, the Commission had proposed a dual-purpose committee which would act as an advisory committee on the food aid allocation decisions and as a management committee when called on to deliver an opinion on the decisions concerning the products's list, the rules for mobilization and the limit on triangular operations. In its proposal for the amended framework regulation, the Commission renewed its proposal for a dual-purpose committee. It proposed a Food Aid Committee which would on matters concerning budgetary implementation act as an advisory committee working according to Procedure I of the Council Decision of 13 July 1987, and, on decisions regarding the list of products, the total quantities and the rules for mobilizing products, act as a management committee working according to Procedure II, variant (a) of the Council Decision of 13 July 1987.

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18 Commission proposal for a Council regulation (EEC) amending Regulation (EEC) No 3972/86 on food-aid policy and food-aid management, COM(87) 492 final. The Commission argued that the Food Aid Committee procedure laid down in Article 8 of the framework regulation did not correspond with any of the procedures laid down in the Council's Decision of 13 July 1987 (see p. 2) but this is not the case. The procedure provided for in Article 8 of the framework regulation corresponds with Procedure III, variant (a) of the Council Decision of 13 July 1987. For a detailed analysis, see: Section 3.5 of this Chapter.

19 Pursuant to Procedure II, variant (a), an unfavourable opinion of the committee on a Commission decision has for a consequence that the application of that decision will be deferred for a period of not more than one month during which the Council can take a different decision. For a detailed and critical analysis of the Commission's proposal, see: Section 3.5 of this Chapter.
During the parliamentary debate on this Commission proposal on 20 November 1987, Parliament was, however, successful in convincing the Commission that also with regard to the Commission’s decision on the total quantities the Food Aid Committee should act as an advisory committee working according to Procedure I rather than as a management committee working according to Procedure II. The Commission adapted its proposal in this sense.\textsuperscript{190} Parliament also insisted that it would be made very explicit that the Commission decision on the total quantities was to reflect the budgetary appropriations. On this point, however, the Commission did not follow Parliament and the latter therefore suggested in its resolution of 21 December 1987 that the amended framework regulation would explicitly stipulate that the Commission will:

- Establish, in accordance with budgetary appropriations, the total quantities for each product on an annual or multiannual basis.\textsuperscript{191}

It will immediately be noted that Parliament was far less radical in its Resolution of 21 December 1987 than it had been in its 1986 Resolution on the proposal for the framework regulation of 22 December 1986 or its 1979 Resolution on the proposal for the framework regulation of 3 December 1982. In the latter resolutions, Parliament had always insisted that the Food Aid Committee would be of an advisory nature only. While neither in the report on the proposal by Rapporteur Mr Amédée Turner nor during the debate in Parliament this remarkable change in position was mentioned, let alone explained, it may be that Parliament chose to refrain from making any radical proposals regarding the Food Aid Committee in order to focus on the provision which was most critical for its competences, namely the provision relating to the decision on the total

\textsuperscript{190}See: Debates of the European Parliament, Proceedings November 1987, Annex OJ. No 2-358/301 Declaration by Mr. Narjes, Vice-President of the Commission.

Council Regulation (EEC) No 3972/86 and subsequent policy developments

quantities.192

If Parliament and the Commission had hoped that their common front would strengthen their position vis-à-vis the Council and would persuade the latter to adopt the proposed amendment to the framework regulation, they were to be disappointed.193 Instead of adopting the Commission's proposal for an amendment of the framework regulation, the Council - unable to come to an agreement - merely extended on 14 December 1987 the latter regulation for half a year, i.e. until 30 June 1988.194 Half a year later, however, the Council again extended the framework regulation but this time for one year, i.e. until 30 June 1989.195 Confronted with the Council's obvious refusal to amend the food aid framework regulation, the Commission brought on 14 September 1988 an action for annulment against the Council before the Court of Justice. In Section 3.5 of this Chapter, I will discuss in detail the contentions and main arguments of the Commission. At this point, it suffices to mention that the Commission claimed that the Court should declare void Council Regulation (EEC) No 1870/88 of 30 June 1988 in so far as it extends the term of validity of the second, fourth and fifth


193Commissioner Naijes had expressed such hopes during the debate in Parliament on the proposal on 20 November 1987 (Debates of the European Parliament, Annex O.J. No 2-358/301).


indents of the Article 5 of the framework regulation.\footnote{Action brought on 14 September 1988 by the Commission of the European Communities against the Council of the European Communities (Case 250/88), O.J. 1988, C 277/11. For a detailed analysis, see: Section 3.5 of this Chapter. Note the action brought on 21 September 1988 by the Commission against the Council to obtain on the same grounds the nullification of Article 8 (2) and (3) of Council Regulation (EEC) 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems and Article 3 of Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations (Case 308/88), O.J. 1988, C 320/10.} After the Court's negative decision in the case 16/88 the Commission decided, however, to drop its action.

2.2.5 Council Regulation (EEC) No 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems and Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations: going beyond the current framework regulation (I)

While the temporary character of the food aid framework regulation of 22 December 1986 concerns in the first place the procedural aspects of the food aid policy, the substantive aspects are still in evolution too. The balance of compromise between the objectives of the food aid policy is still shifting. Very interestingly, however, it seems to be shifting in two directions. In this heading, I will describe how the adoption of Council Regulation (EEC) No 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems and Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations represented a shift in the balance of compromise in favour of the developmental and humanitarian objectives of the food aid policy. On the contrary, the Commission's proposal for a Regulation establishing a financing facility for imports of food products by developing countries from the European Community - a proposal
which I will examine in the next heading - represents the first significant attempt in years to shift the balance again in favour of European agricultural interests.\textsuperscript{197}

As a logical result of the reform of food aid to make it into a real instrument for development and to increase food security in developing countries and as a practical application of the painful lessons learnt during the African crisis, Parliament created in the 1987 Budget within the food aid chapter a new heading 9281 and allocated 10 million ECU to it which - as was stipulated in the Remarks - was intended to enable the Community to participate in storage programmes and early warning systems set up either by international organizations or by developing countries.\textsuperscript{198} It was agreed to use these appropriations entered in the 1987 Budget on an experimental basis and by the end of the year almost all appropriations had been committed. By way of example, one could mention that 2.55 million ECU went to Ethiopia for emergency storage facilities to be used at various locations in famine-prone areas and that 2.35 million ECU went to Bangladesh for the extension of an ongoing project to rehabilitate warehouses in areas with severe food security problems.\textsuperscript{199} In its 1988 preliminary draft budget, the Commission proposed to continue this heading with the same allocation of funds. Such a continuation of this 'programme' and thus the loss of its experimental character made it necessary to have a legal basis for implementing the appropriations and therefore the Commission submitted to the Council in March 1988 a proposal for

\textsuperscript{197}Commission proposal for a Council Regulation (EEC) establishing a financing facility for imports of food products by developing countries from the European Community, COM(88) 431 final.

\textsuperscript{198}COM(88) 119 final, 1. More specifically, operations under heading 9281 might include measures to improve village storage facilities in order to reduce post-harvest losses, building small village storage units, training in cereal stock management, and financing the purchase of cereals for security reserve stocks. In the past, the Community had already contributed to both storage programmes and early warning systems but the possibilities for doing so were clearly insufficient. The Community could only participate in food aid storage programmes on a minimum, temporary, emergency basis with food aid funds, or, in Lomé Convention countries, under (large) projects related to rural development. With regard to early warning systems, it must be noted that in some Lomé projects warning systems are a feature (European Parliament Reports, Report on the proposal for a regulation on the implementation of storage programmes and warning systems (Rapporteur: Mr Amédée E. TURNER), PE DOC A 2-149/88, 8.)

\textsuperscript{199}COM(88) 119 final, 5. Other beneficiaries were Burkina Faso (1.2 million ECU), Chad (0.46 million ECU), Tanzania (1.2 million ECU), Sudan (2 million ECU) and the WFP (0.13 million ECU).
a Regulation on the implementation of storage programmes and early warning systems. This proposed regulation basically provided for a flexible framework for the implementation of the various operations possible under heading 9281 of the Budget. It stipulated that the operations - the Community's contribution to which shall take the form of financial or technical assistance - shall be aimed at strengthening developing countries' food security and may also be intended as specific support for food aid operations, increasing their efficiency. It stipulated Community support of this kind could be given to developing countries, international organizations and non-governmental organizations, stipulated in more detail the sort of operations the Community could support, stipulated that the Community's support could either be on a unilateral basis or by means of co-financing with Member States or with other donors but would always be in the form of grants, and stipulated that the aid could cover both external and local expenditure necessary for the implementation of the operations, including maintenance and operating expenses. Interesting to note is that participation in invitations to tender is open on equal terms to all natural and legal persons of Member States as well as of the recipient country and may even be extended to other developing countries. As regards procedure, the Commission proposed that the operations would be decided upon by itself after consulting the Food Aid Committee which would act as a management committee working according to Procedure II, variant (a) of Council Decision of 13 July 1987. In case of emergency or for small operations (up to 500,000 ECU), however, the Commission would be able to take a decision without consultation of the Food Aid Committee.
but with notification of the Member States.

On 8 July 1988, Parliament adopted - without debate - a legislative resolution on the Commission's proposal. Since it was Parliament itself which had instigated this new 'policy feature' by creating the heading 9281 in the 1987 Budget and by providing for 10 million ECU in appropriations, it of course fully endorsed the Commission's proposal except on one point. With regard to the Food Aid Committee, Parliament insisted that the Committee would eventually act in this context as a purely advisory committee working according Procedure I of the Council Decision of 13 July 1987.

On 4 August 1988, the Council adopted the Regulation (EEC) No 2507/88 on the implementation of storage programmes and early warning systems. The Regulation deviates in several respects from the Commission’s proposal. First of all, the Regulation explicitly links the Community’s contribution to the implementation of storage programmes to its food aid operations and as such limits the scope of the new policy feature. Article 1 stipulates:

[...] It may also contribute to the implementation of storage programmes in those countries in order to support food aid operations in accordance with the regulations concerning Community food aid policy and food aid management, and with those concerning the substitute measures or corresponding operations [...]
While such a link was certainly intended by the Commission, the latter had not made it explicitly in order to retain as much flexibility as possible. The Council cut out this flexibility. Furthermore, the Regulation - unlike the Commission’s proposal - requires that the Commission ensures that the operations the Community would support are integrated with other Community aid instruments, including the use of counterpart funds resulting from the sale of food aid, and that they are line with the Community’s development policy. The Regulation also stipulates repeatedly that the operations to improve storage systems are to be small-scale operations. Interesting to note is that the Regulation - unlike the Commission’s proposal - stipulates that in case the aid is granted by means of co-financing with Member States or with other donors, the Community character of the aid is, wherever possible, to be preserved.

Most importantly, perhaps, and certainly most controversially, the Regulation provides for a decision making procedure which differed substantially from what was proposed by the Commission, let alone by Parliament. Pursuant to Article 8 of the Regulation, the Food Aid Committee acts in this context as in the context of food aid operations, i.e. as a regulatory committee working according to Procedure III of Council Decision of 13 July 1987. Needless to say that this is unacceptable to both the Commission and Parliament and on 21 September 1988, the former bought action against the Council claiming the nullification of the second subparagraph of Article 8 (2) and Article 8 (3) of Regulation (EEC) No 2507/88 of 4 August 1988. In December 1989, the Commission dropped this

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214 Action brought on 21 September 1988 by the Commission of the European Communities against the Council of the European Communities (Case 308/88), O.J. 1988, C 320/10.
action in the light of the Court’s decision in case 16/88 in which the latter rejected - in a different context - the Commission’s legal argumentation. As regards procedure, it should furthermore be noted that the Commission can, pursuant Article 9, still decide on contribution to storage programmes without consultation of the Food Aid Committee in case of emergency or minor operations but that minor operations are now, however, defined as operations not exceeding 400,000 ECU. While both substantive and procedural provisions of the Regulation eventually adopted by the Council limit the flexibility of the Commission, it should be underlined that the possibility to support storage programmes and early warning systems it provides, represents a shift in the balance of compromise between food aid policy objectives in favour of the developmental and humanitarian objectives and especially of the latter objective. It is clear that for food aid to be effective in case of emergencies, it has to arrive in time. Both the early warning systems as well as improved local storage facilities will help to ensure that Community food aid is available when and where needed. Operations to improve storage facilities and early warning systems are in fact indispensable annexes to food aid operations.

The other Council Regulation which represented a shift in the balance of compromise between the objectives of the food aid policy in favour of the developmental and humanitarian objectives was the Council Regulation (EEC) No 2508/88 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organisations. In the 1986 Budget, Parliament had created a new article, article 951, and had allocated 5.5 million ECU to it. Pursuant to the Remarks, these appropriations were to be used to contribute, at a minimum rate of 25%, to the cost of purchases of foodstuffs made directly by non-governmental organisations in order to provide

215See: Section 3.5 of this Chapter.


217Council Regulation (EEC) No 2508/88 of 4 August on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations, OJ. 1988, L 220/4.
emergency aid to disaster victims.\textsuperscript{214} In the 1987 Budget, the budgetary authority again allocated appropriations to this article 951 but stipulated in the Remarks that these appropriations could also be used to contribute to the cost of purchases of foodstuffs made by international organizations.\textsuperscript{219} In 1986 and 1987, the Community co-financed the purchase of foodstuffs by organizations which were delivered to thirteen different countries among which Ethiopia, Afghanistan, Lebanon, Angola and Nicaragua.\textsuperscript{220} The experience gained in the course of these operations revealed, however, that the appropriations of budget article 951 could be even more effective in combatting hunger if their use were extended to the purchase of seeds and if they could be used under circumstances other than emergencies.\textsuperscript{221} Therefore, the budgetary authority provided for 10 million ECU in the 1988 Budget stipulating that these appropriations could also be used to contribute to the purchase of seeds and to enable intervention in cases other than disasters.\textsuperscript{222} These appropriations - no longer experimental or negligible - needed, however, a legal basis for their use\textsuperscript{223} and, hence, the Commission submitted to the Council in March 1988 a proposal for a regulation on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations.\textsuperscript{224} The Commission's draft regulation provided for the possibility for the Community to contribute - minimum 25\% and maximum 75\% of the total cost - to the financing of the purchase (in the Community or in developing or other non-member countries) and transport of

\textsuperscript{214}COM(88) 158 final, 3.

\textsuperscript{219}COM(88) 158 final, 3.

\textsuperscript{220}COM(88) 158 final, 3.

\textsuperscript{221}COM(88) 158 final, 3.

\textsuperscript{222}COM(88) 158 final, 3.

\textsuperscript{223}One could argue that the use of the appropriations entered in Article 951 of the 1986 and 1987 Budget could also be justified on the basis of Article 6 of the food aid framework regulation.

\textsuperscript{224}Commission proposal for a regulation on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations, COM(88) 154 final.

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foodstuffs and seeds by international bodies and non-governmental organizations for supply to needy sections of the population of developing or other non-member countries faced with serious difficulties as a result of natural disasters or exceptional circumstances. As regards procedure, the draft regulation stipulates that the Commission, after consultation of the Food Aid Committee acting as a management committee according to Procedure II, variant (a) of the Council Decision of 13 July 1987, would decide on the granting of contributions towards the purchase of foodstuffs or seeds. In case of contributions for emergency aid or aid amounting to 500,000 ECU or less, however, the Commission may take a decision without consultation of the Food Aid Committee and merely has to inform the Member States.

The co-financing the purchase of foodstuffs and seeds by organizations stemming from an initiative of Parliament itself, it of course endorsed the Commission’s proposal. In its Resolution of 8 July 1988 - adopted without debate - Parliament proposed merely one amendment, be it one of a fundamental nature. In Parliament’s opinion, the Food Aid Committee should act in this context as a purely advisory committee working according to Procedure I of the Council Decision of 13 July 1987. Parliament called on the Commission to change its proposal in this sense.

Deviating substantially from the Commission’s proposal, the Council adopted on 4 August 1988 Regulation (EEC) No 2508/88 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations. As was perhaps to be expected the Council reduced both in procedural and substantive terms the discretion of the

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223 Articles 1 and 2 of the proposal for a regulation, COM(88) 158 final, Annex, 2.
224 Articles 3 and 4 of the proposal for a regulation, COM(88) 158 final, Annex, 2.
227 European Parliament Resolution of 8 July 1988 on the proposal from the Commission to the Council for a Council regulation (EEC) on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organisations, PE Texts 7/88, 85. See also European Parliament Reports, Report on the proposal on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organisations (Rapporteur: Mr Michael McGOWAN), PE DOC A 2-148/88.
Commission when deciding on co-financing operations. As regards substance, it may first of all be noted that for food products the Regulation - unlike the Commission’s proposal - limited co-financing to purchases of products which pursuant to Community legislation could be supplied as food aid. Second, the Regulation identifies as the beneficiaries of the aid needy sections of the population of developing countries and implicitly excludes needy sections of the population of non-member states which the Commission proposal had also identified as possible beneficiaries.

Third, while the Commission proposal provided for the possibility to co-finance purchases undertaken in the Community or in developing or other non-member states, the Regulation only authorizes the co-financing of purchases undertaken in the Community or in developing countries. It should be noted, however, that in one respect the Regulation seems to give the Commission more flexibility than its own proposal. While the Commission proposal stipulated that the aid co-financed by the Community was to go to sections of the population in serious difficulties as a result of natural disasters or exceptional circumstances, the Regulation does not require that the difficulties are the result of natural disasters or exceptional circumstances, but merely that the target sections of the population are unable to make up food shortages from their own means or resources.

As regards procedure, it should first of all be noted that pursuant to Article 3 (2) of the Regulation, the Food Aid Committee acts in this context as in the context of food aid operations and decision on storage programmes and early warning systems, i.e. as a regulatory committee working according to Procedure III of Council Decision of 13 July 1987. As I already pointed out before, a committee of this type is unacceptable to both the Commission and Parliament and on 21

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September 1988, the former bought action against the Council claiming the nullification of the second subparagraph of Article 3 (2) and Article 3 (3) of Regulation (EEC) No 2508/88 of 4 August 1988.\footnote{Action brought on 21 September 1988 by the Commission of the European Communities against the Council of the European Communities (Case 308/88), O.J. 1988, C 320/10.}

Furthermore, it should be noted that the Commission can, pursuant to Article 4, still decide on the co-financing of purchases without consultation of the Food Aid Committee in case of emergency or minor purchases, but that minor operations are now, however, defined as operations not exceeding 400,000 ECU.\footnote{Article 9 of Council Regulation (EEC) No 2507/88 of 4 August 1988, O.J. 1988, L 220/2.} In spite of the substantive as well as procedural limits to the discretionary powers of the Commission introduced in the Regulation eventually adopted by the Council, it should be underlined that the possibility to finance to up to 75% of the cost of purchases of food products and seeds by international bodies and non-governmental organizations represents a shift in the balance of compromise between food aid policy objectives in favour of the developmental and humanitarian objectives. To the extent this Regulation allows the Community, firstly, to supply more aid and especially more aid to international bodies and non-governmental organizations, not seldom the most appropriate channel for aid; secondly, to supply more aid specifically focused on the needy sections of the population of developing countries; thirdly, to expand the possibilities for the purchase of products on the market of developing countries ensuring as such that the products supplied are better adapted to the dietary habits and will be supplied faster and at lesser cost; and, finally, to supply seeds often needed after a disaster to ensure a next harvest, it reinforces Community food aid as an instrument for the economic and social development of the recipient countries and humanitarian relief in emergencies.
2.2.6 The Commission's proposal for a Council Regulation (EEC) establishing a financing facility for imports of food products by developing countries from the European Community: going beyond the framework regulation (2)

As I already pointed out repeatedly, the European Community, unlike the United States for example, supplied virtually all its food aid on a grant basis. Needless to say that this aspect of the Community's food aid policy is particularly beneficial to the recipient developing countries. It is obvious that food aid in the form of concessional sales, such as US Title I food aid, is less useful to developing countries than food aid in the form of grants. In the light of the evolution of the Community's food aid policy since the late seventies, it is therefore quite surprising as well as revealing that the Commission proposed in the summer of 1988 to give the Community also the possibility to make concessional sales to developing countries. In a proposal of July 1988, the Commission proposed the establishment of a financing facility to allow - by providing for a period of repayment of more than 3 years and a grant element of not less than 35% of the total cost - developing countries to import European Community agricultural products. In justification of its proposal for such a financing facility, the Commission pointed out that the Community is currently facing increased competition from the United States for exports of agricultural products to developing countries. Where the United States has at its disposal a wide range of concessional credit and other price reduction schemes in order to facilitate food exports to developing countries and uses these schemes widely and aggressively, the Community is ill-equipped to promote efficiently its agricultural exports.

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25Note, however, that Community aid did not always cover the total cost of the aid operation. In an important number of food aid operations the Community will only cover the costs of transport partially and the Community's financing of the purchase and transport of food products and seeds by international bodies and non-governmental organizations under Council Regulation (EEC) No 2508/88 of 4 August is explicitly limited to a maximum of 75% of the total cost.

26Commission proposal for a regulation establishing a financing facility for imports of food products by developing countries from the European Community, COM(88) 431 final.

27Commission proposal for a Council regulation establishing a financing facility for imports of food products by developing countries from the European Community, COM(88) 431 final.
Developing countries quite naturally ask the Community as favourable facilities as the United States offers and at the moment it is unable to respond to such requests.\(^{23}\) To remedy this unsatisfactory situation, the Commission proposed the introduction of the possibility of granting a concessional credit to certain food exports from the Community to developing countries.\(^{29}\) The Commission explicitly declared that this new instrument has a dual objective: on the one hand, it is intended to meet developing countries' food import needs on concessional terms without, however, hindering the recipient countries' efforts towards a greater degree of self-sufficiency or damaging the export prospects of food-exporting developing countries; and, on the other hand, it is to contribute to the Community's efforts to reduce imbalances in agricultural markets suffering from structural surpluses, and enhancing the Community's food aid export policy.\(^{30}\) While the Commission stated explicitly in its communication to the Council that these concessional sales will be independent from the Community's food aid policy, one cannot but define these sales as food aid operations. With a grant element of not less than 35% and a period for loan repayment of not less than 3 years, these concessional sales fall undisputedly within the internationally agreed and commonly used definition of food aid.\(^{31}\) Therefore, the Commission, when

\(^{23}\) COM(88) 431 final, 1. Attempting to match the terms offered by the United States, there has been inappropriate use of the export refunds instrument as well as recourse to the use of national export credits, which have of course created internal competition problems within the Community (COM(88) 341 final, 1-2).

\(^{29}\) The facility will be operated in such a way that the Community bears the cost of the grant element, but that the financial markets will provide the credit for the remaining cost to the importing country. In view of the delicate economic and financial situation of many of the importing countries, it will be necessary, however, for the Community to underwrite the loans in order to interest the financial markets (COM(88) 431 final, 4).

It should perhaps be noted that in parallel with the introduction of this instrument, the Commission proposed the establishment of a strict framework for Member States' practices regarding commercial agricultural export credits. A proposal for a directive establishing the terms and conditions of officially supported export credits for agricultural products is annexed to the Commission's proposal on the financing facility (COM(88) 431 final, 2 and Annex 2).

\(^{30}\) COM(88) 431 final, 3.

\(^{31}\) See: Section 1 of the Introduction. The concessional sales under the draft regulation would qualify as food aid under the definition of food aid of the FAO's Principles of Surplus Disposal and the United States, the oldest and biggest food aid donor also defines similar concessional sales as food aid.

In fact, in the sixth recital of the draft regulation, the Commission itself recognizes that the
proposing the establishment of the financing facility, in fact proposes to diversify the Community’s food aid policy instruments. In addition to food aid operations on a grant basis, alternative food operations in place of food aid, operations in support of storage programmes and early warning systems and the co-financing of purchases of food products and seeds by international bodies and non-governmental organizations, the Commission proposed to include in the Community food aid policy a new instrument, namely that of the concessional sales, the objectives of which are - as is explicitly stated - not only to help developing countries but to dispose of surpluses and promote agricultural exports. Apart of course from the immediate pretext for the proposal, there are a number of indications that the balance of compromise between these objectives tilts heavily in favour of the disposal of surpluses and agricultural export promotion. There is, first of all, the choice of the legal basis, Article 43 EEC, secondly, the fact that it is explicitly stated in the Article 6 of the draft regulation that the grant element is to be regarded as intervention measures designed to regulate the agricultural markets, thirdly, the fact that the grant element is financed out of the EAGGF-guarantee section of Budget, and, finally, the provision that concessional sales can only relate to agricultural products originating in the Community.

While the Commission did not propose any target for the volume of exports under the arrangement, it noted in the Explanatory Memorandum that budgetary provisions have been made under the assumption that during the first year of application, the facility would allow exports of approximately 2 million tonnes of concessional sales constitute food aid operations: “whereas conformity with FAO Principles will be ensured through the supply of food aid being facilitated by a credit to the importing country of more than 3 years duration together with a grant element of not less than 35% on terms equivalent to interest rates significantly below commercial rates [...]” (COM(88) 431 final, Annex 1, 2). Furthermore, the Commission suggests that the Food Aid Committee would be the competent advisory committee (COM(88) 431 final, 5).

Article 6 of the proposal for a regulation, COM(88) 431 final, Annex 1, 4. Nevertheless, the Commission suggests in the Explanatory Memorandum that the Food Aid Committee would be the competent advisory committee (COM(88) 431 final, 5).

Article 5 of the proposal for a regulation, COM(88) 431 final, Annex 1, 4.
wheat and 35,000 tonnes of skimmed milk powder and 21,000 tonnes of butteroil. If adopted, the impact of this new instrument on the food aid policy would therefore be quite important. It would more than double the volume of Community food aid in cereals and result in an increase of 37% in Community food aid in skimmed milk powder and of 84% in Community food aid in butteroil. While budgetary provisions were made on the assumption that wheat, skimmed milk powder and butteroil will be supplied, it should be noted that the draft regulation did not explicitly limit the range of Community products which may be eligible for concessional sales. It is obvious, however, that the products which will actually be the object of concessional sales will be the products of which the Community has structural surpluses and for which it wants to create additional export markets. The development of the Community’s global exports of food products and the general situation on the market were explicitly mentioned in Article 2 of the draft as criteria to give particular consideration to when deciding on the award of the financing facility.

It should be underlined that while the concessional sales are in the first place intended to promote European agricultural interests, the interests of the developing countries are not ignored. The Commission noted that concessional sales will help many developing countries to cover better their severe food deficits and will also provide support for their development policies in as far as these sales free additional resources for development. To ensure a positive impact on developing countries, the Commission suggested in its proposal that when deciding on a concessional sale, one should take into consideration, apart from the overall economic situation of the recipient country, its food import requirements and its balance of payment situation, also its efforts in carrying out food and agricultural adjustment policies as well as the impact of the concessional sales on the agricultural exports of other developing countries. Furthermore, the draft

244 COM(88) 431 final, 4. The grant element is estimated at 76 million ECU for concessional sales for a total of 190 million ECU with a 40% grant element (COM(88) 431 final, financial statement). Note that the cost of the facility has been calculated on the assumption that no purchasing country will default.

245 Article 2 (a) of the proposal for a regulation, COM(88) 431 final, Annex 1, 3.
regulation stipulated that the implementation of the facility should be consistent with the recipient countries' own development policy, and in particular its agricultural and rural development policy, and with the Community's development policy.\footnote{Article 3 of the proposal for a regulation, COM(88) 431 final, Annex 1, 3.} Therefore, the draft regulation required that products supplied under the financing facility should be marketed in such a way as not to disturb the local market in the recipient country and that the concessional element of the funds resulting from the sale of the products should be used in support of agreed development programmes and the implementation of adjustment policies.\footnote{Article 3 of the proposal for a regulation, COM(88) 431 final, Annex 1, 3.} It should be stressed, however, that the agricultural policy objectives and the developmental objectives of the financing facility are often incompatible and that in this respect it is important that the agricultural policy objectives are definitely the predominant objectives. It is quite revealing that at a moment when the Community's food aid policy - after more than 10 years of reform - is primarily pursuing developmental and humanitarian objectives, the Commission proposes to diversify the food aid policy's instruments by including an instrument the primary objective would undisputedly be the promotion of European agricultural interests.\footnote{It should be noted that the Commission proposed in Article 8 of the draft regulation, a purely advisory committee (COM(88) 431 final, Annex 1, 5).}

In its 1989 Resolution on 'the common agricultural policy and the developing countries', Parliament stated - as a first reaction to the proposal - that it:

[...]

prefers conventional food aid to subsidized export credits such as those which have long been applied extensively by some Community countries and the USA, in accordance with Public Law 480, and as recently also proposed by the Commission for the Community;

and

Asks in particular that within the context of GATT binding reciprocal agreements should be reached between the industrialized countries not to misuse food aid in any form whatever for the disposal of surpluses, thus circumventing once more the desired increased discipline in the use of
Mrs Katharina Focke, the Rapporteur, downright rejected the newly proposed facility noting that it "runs the risk of compounding the former adverse effects of food aid with an additional debt burden".249 Focke recognized that the Community is at present at a disadvantage for not having an export promotion instrument similar to Title 1 of PL 480 but rather than giving the Community a similar instrument, she suggested a GATT regulation to ban concessional sales.

In its report on the Commission's proposal for a regulation establishing a financing facility, Rapporteur Mr G. Guermeur proposed - without any motivation except for the fact that a majority of the members of the Parliament's Committee was against the proposal and this probably because Mrs K. Focke had already been sufficiently clear in the report mentioned above - that Parliament should reject the proposal.250 Note, however, that the Parliament's Committee on Agriculture, Fisheries and Food, in its Opinion warmly and unreservedly welcomed the proposal, noting:

The advantages of this new instrument for the developing countries are obvious. With regard to the common agricultural policy, the new instrument will make it possible to increase the quantities of agricultural products for export, thus effectively complementing the Community's traditional instrument, namely export refunds, and making the Community more competitive against its traditional competitors.251

Probably in the first place because of the drop in most surpluses during the last two years, the Commission's proposal has died a silent death in COREPER but one should not exclude a resurrection if and when surpluses return to "normal".


2.2.7 The Council Resolution of 21 November 1989 on food aid policy guidelines for the nineties

Expressing once again deep concern at the grave decline in the ability of a considerable number of countries especially in sub-Saharan Africa to feed their population adequately, the Council adopted on 23 November 1988 a Resolution on food security in sub-Saharan Africa in which it called on the Member States and the Commission to continue vigorously with their support for food security policies, while ensuring that their measures are coordinated and consistent. In particular it called on the Commission to use for this purpose all the development policy instruments available to it, not in the least food aid. It was stressed that the recent reforms of Community food aid policy now allowed food aid to contribute much better to efforts to establish food security. More could and should, however, be done. This opinion was also reflected and worked out in a Resolution adopted by the Council on 21 November 1989. Adopted in the light of the developments and changes which have occurred since the second framework regulation and which have aggravated the economic situation of many developing countries (increase in the price of imported food and balance of payments deficit), the Council defined in this Resolution a number of guidelines for the Community's food aid policy in the early nineties. With regard to the products supplied as Community food aid the Council called upon the Commission to allocate the products best suited to local conditions, allowing for their cost-efficiency ratio, and to that end to exercise total flexibility within the range of products to be supplied. It also reiterates the advantages of increased use, wherever desirable and possible, of products bought locally or in another developing country (triangular operations) and calls for efforts to overcome the present impediments to the implementation of triangular operations. With regard to the Community food aid commitments,

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the Council insisted that in order, in particular, to cope with structural deficits, the Community may carry out multi-annual programming of food aid operations. It added, however, that such operations must meet specific criteria and conditions which still had to be agreed upon. The Council recommended that in any case each multi-annual programme be subject to a detailed mid-term review with the possibility of altering its initial guidelines. With regard to the allocation of Community food aid, the Council stressed that non-emergency food aid should normally be provided only when there is a food import requirement and where its provision will improve food security or meet the needs of a vulnerable group. Furthermore, the Council invited the Commission to consider ways of enhancing the role of international organizations and non-governmental organizations in the Community's food aid operations (ex-ante evaluation, distribution and monitoring) in the light of their detailed local knowledge and experience of many recipient countries. With regard to the use of Community food aid, the Council reiterated in line with its Resolution of 31 May 1988 that food aid may be used in support of structural adjustment programmes either by the use of counterpart funds generated by the sale of the products supplied, or by free or subsidized distribution targeted to vulnerable groups or groups affected by the adjustment measures. The Council stressed that whereas the first priority in use of counterpart funds must be to benefit rural development, these funds could, where structural adjustment programmes exist, also be used to back up measures to attenuate the social consequences of such adjustment. In general, the Council emphasized the importance of better integration of food aid with other forms of development assistance at the planning, programming and implementation stages. The Council also stressed that where it is possible to identify vulnerable groups, free distribution measures are desirable. Such operation should, however, be limited to avoid that they do not disrupt local production or markets or increase rural depopulation. With regard to food aid policy decision-making the Council focused on the need for the Community and the Member States to coordinate their action more closely. Finally, in order to ensure satisfactory programming of food aid, the Council stressed the importance of ex ante and ex post evaluations. Concerning the latter, the Council launched the idea of evaluating annually the operation of the...
previous programme. In spite of their vagueness, these food aid policy guidelines of November 1989 are not without significance since they may be seen as an indication of Council's intention to continue efforts to make food aid into a better instrument for development; they certainly set the agenda for further discussion on the changes required to that end.
The main features of Community food aid policy and law during the period 1983-89

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

The food aid framework regulation of December 1982, and in particular Article 3 (2) thereof, stipulated with regard to the sort of products supplied as Community food aid that apart from basic products, i.e. unprocessed products, the Community could supply as food aid also derived products, i.e. products of first and second stage processing. Article 3 (2) stated:

The Community may supply products of first stage processing as food aid. At the request of the recipient countries, it may furthermore supply limited quantities of products of second stage processing, in particular cereal based products.¹

Furthermore, the first framework regulation required that the decision on the sort of basic product to be supplied should made on the basis of common agricultural policy considerations. Article 4 (1), fifth indent stipulated:

[The Council shall] define the basic products to be supplied as aid, taking into account the available stocks of the product in question;²

With the exception of these provisions, which merely reflected and generalized the existing practice³, the first framework regulation, however, neither included nor excluded any product from the Community’s food aid basket. It should especially


²Article 4 (1) fifth indent of Council Regulation (EEC) No 3331/82 of 3 December 1982, OJ. 1982, L 352/2. Note that the Commission’s proposal did not require that the situation of the stocks would be taken into account.

³Also before the adoption of the first food aid regulation the Community had supplied food aid in products of first and occasionally even second stage processing. The need to take into account the situation on the Community market existed already for cereals and dairy products and was now generalized.
be noted that the framework regulation laid down no rules or guidelines to ensure that the products supplied as Community food aid were products which would have a positive rather than a negative impact on the recipient countries and their population. The absence of such rules or guidelines was, however, not that surprising in view of the fact the proposal for the substantive provisions of the framework regulation dated from January 1979 and was adopted without important changes.

While the framework regulation of December 1982 provided for hardly any substantive rules regarding the sort of products to be supplied as Community food aid, it did stipulate in its Article 4 (1) the procedure for deciding on the sort of products to be supplied as Community food aid. Article 4 (1) of the first food aid framework regulation stated:

In the field of food aid, the Council shall:

- define the basic products to be supplied as aid [...]  
- determine the derived products to be supplied as food aid; [...]*

The Council did this for the first time in its so-called 1983 implementing regulation, Council Regulation (EEC) No 1992/83 of 11 July 1983 laying down implementing rules for 1983 for Regulation (EEC) No 3331/82 on food aid policy and food aid management. The food aid basket it was able to agree upon after long and difficult discussions, compromised:

<table>
<thead>
<tr>
<th>CCT heading No</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>03.02</td>
<td>Fish, dried, salted or in brine; smoked fish [...]</td>
</tr>
<tr>
<td>04.02 A II and B I</td>
<td>Milk and cream, in powder or granules</td>
</tr>
<tr>
<td>ex 04.03</td>
<td>Butteroil (as defined in Annex III to Regulation (EEC) No 1354/83)</td>
</tr>
</tbody>
</table>


07.05 B  Dried leguminous vegetable, shelled, [...]  

ex Chapter 10  
(ex 10.01 to 10.07)  

Cereals (other than for sowing)  

11.01  

Cereals flours  

ex 11.02  

Cereal groats and cereal meals; other worked cereals (for example, rolled, flaked, polished, pearled or kibbled but not further prepared), except rice falling within heading No 10.06  

11.04 A  

Flour of the dried leguminous vegetables falling within heading No 10.06  

15.07 A  

Olive oil  

15.07 D II  

Fixed vegetable oils, fluid or solid, crude, refined or purified [...]  

16.04 D  

ex 16.04 F  

Sardines  

Anchovies  

17.01 A and B  

Beet sugar and cane sugar, in solid form  

ex 19.03  

Macaroni, spaghetti and similar products*  

The importance of this list should be well understood. Products which did not fall within one of the list's categories could not be supplied as Community food aid.  

While this of course excluded a considerable number of products from Community food aid operations, it will be noted that some of the list's categories were defined

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*It should be noted, however, that if the need should arise to supply food aid in the form of a product not falling within one of the categories, the Council could of course always allow for food aid in that specific product by an ad-hoc decision.
in very broad terms and thus covered many specific products. The best example of this was perhaps 'cereals'.

While the products comprised in the food aid basket agreed upon by the Council were basically products of which the Community had already supplied important or less important quantities in the previous years, the Council's decision on this list of food aid products was nevertheless a turning point. As discussed above, food aid in products other than cereals and milk products had during the seventies and early eighties no legal basis other than the budget or an ad hoc Council decision, be it a formal one as in the case of the exceptional 40 m ECU food aid programme or an informal one as the decision of 25/26 October 1982. The 1983 implementing regulation 'institutionalized' and 'de-marginalized' food aid in products other than cereals and dairy products. In other words, it finally 'legalized' the diversification of the Community's food aid basket, an essential feature of a development and relief oriented policy the Council had agreed to in principle nine years earlier in its Resolution of November 1974. It should immediately be noted, however, that this diversification of the Community's food aid basket had its limits. Article 1 (1), second paragraph of Council Regulation (EEC) No 1992/83 of 11 July 1983, i.e. the 1983 implementing regulation, stipulated referring to products other than cereals and dairy products:

The products listed in the last three indents will be made available in 1983 to certain developing countries or certain organizations in the form of specific projects or emergency aid [...]
the 1983 implementing regulation, the Council decided that products other than cereals and dairy products could only be use as emergency aid or project aid, and, therefore, could not be made available as programme food aid, i.e. as bulk supplies for sale on the open market of the recipient country. The subsequent implementation regulations all stipulated such a restriction. The importance of this restriction should, however, not be exaggerated. In view of the characteristics and the rather modest quantities of these products available, they were in fact unlikely to be used as programme food aid.

It should also noted that in its proposal for the 1983 implementing regulation, the Commission provided for a provision stipulating:

[...], in order to take account of the specific food requirements or dietary habits of the recipient countries, food-aid operations may involve products other than those listed in Annex III.

and reserved for itself the right to decide, after consultation of the Food Aid Committee, on such operations in products not listed in the implementing regulation. The Council 'eliminated' this proposed provision which would clearly have allowed for greater diversification and meeting the specific needs of the recipients even better.

In subsequent implementation regulations, other products were added to the Community's food aid basket as initially defined in the 1983 implementing regulation and delineated above. In 1984, the Council added mackerel (ex CCT heading No 16.04 F) and dried grapes (CCT heading No 08.04 B), in 1985, food

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11Article 7 (2) and (3) of the Proposal for a Council regulation laying down implementing rules on food aid management, COM(83) 83 final, 11.


With regard to mackerel, sardines and anchovies, it should be remarked that Parliament in its Opinion
preparations not specified (CCT heading No 21.07 G), biscuits (CCT heading No 19.08 B), and food preparations of flour, meal, etc (CCT heading No 19.02)\textsuperscript{13}, and in 1986, meat of bovine animals, frozen (CCT heading 02.01 A II b)), meat of bovine animals, salted, in brine, dried or smoked (ex CCT heading 02.06 C I a)), prepared or preserved meat (ex CCT heading 16.02 B III b)), [fish] other (CCT heading No 16.04 G), and vegetables prepared or preserved otherwise than by vinegar or acetic acid, tomatoes (CCT heading No 20.02 C)\textsuperscript{14}. Whether this further diversification was always motivated by the wish to supply to the recipient countries products as well adapted to the local needs and dietary habits as possible will be discussed below. Some of the new products seemed, however, rather 'suspicious' in this respect.

As I mentioned, the first framework regulation of December 1982 did not require the products supplied as Community food aid to be adapted to the needs of the recipients. Shifting the policy's balance of compromise further in favour of development and humanitarian relief, the second framework regulation of 28 December 1986, the currently applicable framework regulation, remedied this legislative shortcoming. Article 2 (3) of the second framework regulation stipulated with regard to the sort of products supplied as Community food aid:

Products supplied as food aid shall as far as possible fit the dietary habits of the recipient population and have no adverse effects on the recipient countries.\textsuperscript{15}

on the 1986 implementing regulation demanded the deletion of these products for the Community food aid products' list (European Parliament Resolution of 17 January 1986, Annex II as amended by the European Parliament, O.J. 1986, C 36/208.).


Note that the Commission's proposal stipulated 'Products supplied as food aid shall as far as possible fit the dietary habits of the recipient population' and Parliament added to this 'and shall only be provided if it can be shown that there will be no adverse effect on the recipient country'.
As I already observed in Section 2 of this Chapter, Article 2 (3), as almost all provisions of the framework regulation of December 1986 which are to guarantee that Community food aid does indeed contribute to the economic and social development of the recipient countries and renders humanitarian relief, is characterized by its non-committing wording. By using the phrase 'as much as possible', this provision has its build-in 'escape clause' and is rather a guideline than a stringent legal requirement. Nevertheless, this provision marks a drastic shift of the balance of compromise between the food aid policy objectives in favour of the developmental and humanitarian objectives. This shift is even better illustrated by the fact that whereas the old framework regulation explicitly stated that the decision on the composition of the food aid basket should take into account the situation of the stocks, the new framework regulation is free from such explicit linkage between food aid and the Community's surplus stocks.

Surprisingly and quite unfortunately, the provisions of the second framework regulation regarding the sort of product to be supplied as food aid did not reflect the agreement reached by the Council at its meeting of 23 May 1985 to consider when deciding on the composition of the food aid basket also the cost-effectiveness ratio of food products. Pursuant the latter agreement, butteroil, for example, while remaining part of the Community's food aid basket, became less important in favour of a more cost-effective product, namely vegetable oil. An explicit requirement in the framework regulation to take account of the cost-effectiveness of products would be welcome.16

Noteworthy is also that the second framework regulation no longer explicitly mentions - as did the first framework regulation in its Article 3 (2) - the possibility to supply as food aid products of first and second stage processing. Community food aid legislation in fact no longer distinguishes between basic and derived products and with this distinction also the quantitative limitation on food aid in products of second processing stage disappeared.

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16 Note that - as delineated in section 3.3.2 of this Chapter - the second framework regulation does stipulate in this respect that the Commission, when deciding on a specific food aid allocation, should consider the cost-effectiveness of the intended food aid operation. See, however, Council Resolution of 21 November 1989, point 4, Press Release 9940/89 (Presse 214-G), 17.
The second framework regulation also changed the procedure for deciding - with the above cited Article 2 (3) as a guideline - on the sort of products supplied as Community food aid. Article 5 of the second food aid framework regulation states:

The Commission, after consulting the [Food Aid] Committee [...] and taking account of the general policy guidelines for food aid, shall:
- adopt a list of products which may be supplied as aid, [...]

From the 1987 programme onwards, no longer the Council but the Commission, under the 'supervision' of the Food Aid Committee, decides on the composition of the Community's food aid basket. In fact, very little changed. The Commission's 1987 list of food aid products was identical to the Council's 1986 list with one exception: as from 1987 onwards the Community could also supply tuna (ex CCT heading 16.04 E). As from 1 January 1988, Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff established on the basis of the nomenclature of the harmonized system a new combined nomenclature of goods (to meet the requirements of both the Common Customs Tariff and the external trade statistics of the Community). This reorganisation was not without effect on the list of possible Community food aid products; while no new category of products was added nor an existing category dropped, a number of categories were defined either broader or narrower. Pursuant to Commission Decision 88/189/EEC of 16 March concerning the establishment of overall quantities of food aid for 1988 and establishing a list of products to be supplied as food aid, the Community could supply as food aid in 1988:

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<table>
<thead>
<tr>
<th>CN code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>0202</td>
<td>Meat of bovine animals, frozen</td>
</tr>
<tr>
<td>0210 20</td>
<td>Meat of bovine animals, salted, in brine, dried or smoked</td>
</tr>
<tr>
<td>0305</td>
<td>Fish, dried, salted or in brine; smoked fish [...]; fish meal fit for human consumption</td>
</tr>
<tr>
<td>ex 0402</td>
<td>Milk and cream, in powder, granules or other solid forms</td>
</tr>
<tr>
<td>ex 0405 00</td>
<td>Butteroil (as defined in Annex III to Regulation (EEC) No 1354/83</td>
</tr>
<tr>
<td>0713</td>
<td>Dried leguminous vegetables, shelled, whether or not skinned or split</td>
</tr>
<tr>
<td>0806 20</td>
<td>Dried grapes</td>
</tr>
<tr>
<td>Chapter 10</td>
<td>Cereals</td>
</tr>
<tr>
<td>1101 00 00</td>
<td>Cereal flour</td>
</tr>
<tr>
<td>1102</td>
<td>Cereal groats, meal and pellets</td>
</tr>
<tr>
<td>1103</td>
<td>Cereal grains otherwise worked, except rice of CN code 1006; germ of cereals, whole, rolled, flaked or ground</td>
</tr>
<tr>
<td>1104</td>
<td>Flour and meal of the dried leguminous vegetables of CN code 0713</td>
</tr>
<tr>
<td>1509</td>
<td>Olive oils</td>
</tr>
<tr>
<td>ex 1507, ex 1508, ex 1512, ex 1513, ex 1514, ex 1515</td>
<td>Vegetable oils and their fractions, whether or not refined, but not chemically modified, for human consumption</td>
</tr>
<tr>
<td>1602 50</td>
<td>Other prepared or preserved meat, meat offal or blood of bovine</td>
</tr>
</tbody>
</table>
1983-1989: Development and relief as primary policy objectives

animals

ex 1604 13 to 1604 16 00 Prepared or preserved fish: sardines, sardinella and brisling or sprats; tunas, skipjack and Atlantic bonito (Sarda spp.); mackerel; anchovies

1701 Cane or beet sugar and chemically pure sucrose, in solid form

ex 1901 Food preparations of flour, meal, etc, not elsewhere specified or included

ex 1902 Uncooked pasta, not stuffed or otherwise prepared

ex 1905 Sweet biscuits; waffles and wafers

2002 Tomatoes prepared or preserved otherwise than by vinegar or acetic acid

ex 2106 10 Food preparations not elsewhere specified or included: protein concentrates and textured protein substances derived from milk.19

For 1989, the Commission added groundnuts (ex CN code 1202), cheese and pigmeat to the Community’s food aid basket and expanded two existing categories; with regard to vegetable oils, the Commission added vegetable oils ex CN code 1511 and with regard to prepared or preserved fish (ex CN code 1604 13 to 1604 16), it added 'other'. While the Council’s implementing regulations of the first framework regulation limited the use of products other than cereals and dairy products to project and emergency food aid operations, there was no longer any such restriction as from 1987 onwards. Vegetable oil and sugar, for example, can now also be supplied as programme food aid. The distinction between products

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Products supplied as Community food aid

for all uses (cereals and dairy products) and products for use in the context of projects and emergencies (all other products) is no longer made.

While the Community's food aid basket was increasingly diversified and is now therefore undoubtedly better adapted to the needs of the recipients and, while Community law no longer explicitly links the sort of product to be supplied as food aid to surplus stock availability, most of the products included in the Community's food aid basket are, nevertheless, products of which the Community usually has significant surpluses.

During the period 1983-89 the most important food aid products were still wheat, skimmed milk powder and butteroil, or in other words, products of which the Community produced - at least until recently - problematic surpluses. Whereas the stocks of cereals and dairy products went up and down depending on the size of the harvest and the export possibilities, they remained until 1988 consistently high. On 30 September 1985 the Community's common wheat stocks amounted to 11.2 million tonnes with a book value of over 2 billion ECU and costing yearly 330 million ECU; the Community's skimmed milk powder stocks amounted to 487,000 tonnes with a book value of 726 million ECU and costing yearly 71 million ECU; and the Community's butter stocks amounted to 1.2 million tonnes with a book value of 3.3 billion ECU and costing yearly 382 million ECU.20 On the same day one year later, the Community's common wheat stocks amounted to 9.1 million tonnes with a book value of over 1.8 billion ECU and costing yearly 319 million ECU; the Community's skimmed milk powder stocks amounted to 956,000 tonnes with a book value of 1.7 billion ECU and costing yearly 137 million ECU; and the Community's butter stocks amounted to 1.4 million tonnes with a book value of 4.4 billion ECU and costing yearly 441 million ECU.21 The problem of these persistent surpluses and the huge and eventually unsustainable budgetary

20COMMISSION OF THE EC, The situation of the agricultural markets, report 1985, COM(85) 722 final, 4. The yearly cost includes both the storage cost and the capital cost (interest) but did not take account of the 'loss' when stocks were sold from intervention.

21COMMISSION OF THE EC, The situation of the agricultural markets, report 1986, COM(86) 700 final, 9. Note that the data on the stocks on 30 September 1985 mentioned in this report differ from the data found in the 1985 report given above.
cost of the common agricultural policy forced the Community to re-think the latter policy. As is well known, it made since the early eighties onwards increasingly more drastic adjustments in the form of more restrictive pricing, less permanent and more restrictive intervention, restriction of support by the establishment of binding quotas and guarantee thresholds and the introduction of co-responsibility levies for producers. It is beyond the scope of this study to give a detailed picture of the successive adjustments to the common agricultural policy. I merely want to note that for milk, for example, the Community introduced in 1984, on top of an already existing, ineffective co-responsibility levy, a quota system under which the price guarantee was limited to a given quantity of milk, and, that for cereals, the Community introduced in 1986 a co-responsibility levy for cereal producers, superseding a system of guarantee thresholds that were never applied in practice. The most drastic adjustments so far, however, have undoubtedly been the introduction of stabilizers and budget discipline mechanism decided on in principle by the European Council in February 1988. It will be recalled that the main aim of these adjustments is: (1) to bring agricultural production more in line with demand; and (2) to reduce existing Community intervention stocks. It must be noted that especially the latter adjustments have not been without results. Community stocks of butter and skimmed milk powder which in October 1987 still stood at respectively 1 million tonnes and 708,000 tonnes were in October 1988 at only 183,000 tonnes and 13,000 tonnes, the lowest levels in many years. Albeit perhaps less drastic, also the Community's cereal stocks went down from 18 million tonnes in 1986/87 to 14.2 million tonnes in 1987/88 and 11 million tonnes

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23 For cereals, for example, the Council decided on the introduction of a guarantee threshold for producers fixed at 160 million tonnes (for all cereals together) for the period 1988/89 to 1991/92: if the actual level of production exceeds the threshold level an additional co-responsibility levy will have to be paid by the producers and the next marketing year the intervention prices will automatically be reduced by 3%.

at the beginning of 1988/89. While the importance of the reduction of the surpluses since 1988 cannot be overestimated, it should be observed that this reduction is of very recent date. For most of the period 1983-89, the Community was still struggling with bulging cereals and dairy surpluses and the Community food aid policy was naturally expected to contribute and indeed contributed to the alleviation of the surplus problem. It should be noted that also many of products other than cereals and dairy products were included in the Community's food aid basket for reasons which were at least partly related to the promotion of domestic agricultural interests or the interests of food manufacturers. For food aid in vegetable oil and sugar, this was all too obvious. In the period 1983-89, the Community's stocks of sugar, for example, were usually above 2 million tonnes and it was only in 1987 and 1988 that there was a substantial decrease of the stocks which were on 30 September 1988 at 1 million tonnes. Also other products were often added to the Community's food aid basket under pressure of one or more Member States to the benefit of the latter's producers rather than in the interest of the recipients, although this does not mean that most of these other products were not useful additions to the Community's food aid basket. In fact, with the exception of biscuits and 'food preparations not specified', none of the products added to the Community's food aid basket in the period 1983-86, were added at the proposal of the Commission. Products such as dried grapes, sardines, mackerel, anchovies, macaroni, spaghetti, meat of bovine animals and

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28The Commission justified the inclusion of biscuits and 'milk bars' (the food preparation not specified the Commission wanted to supplied) by pointed out that these new products would create the opportunity of providing survival rations in extremely limited cases of emergency (e.g. earthquakes, hurricanes and cyclones or sudden movements of refugees) where the need is to provide at very short-notice food rich in proteins and in readily consumable form (COM(84) 481 final, 4.).

29See: COM(83) 83 final, 17; COM(84) 26 final, 12, COM(84) 481 final, 9; and COM(85) 482 final, 11.
prepared or preserved meat were all added by the Council 'at its own initiative' and usually one can make a safe guess as to which Member State(s) had lobbied for the inclusion of a specific product.

Greece for example requested and obtained the inclusion of first the very expensive olive oil and later dried raisins on the list; and Italy demanded and obtained the inclusion of pasta (macaroni, spaghetti and similar products). The Commission's objections that demand for pasta was minimal and that there was a serious danger of creating new dietary habits, were set aside. Recently, porc meat was, under heavy Danish pressure, added to the food aid basket. It is clear that the Commission may find it often difficult to resist Member States' pressure to include certain products on the products' list. It is difficult to argue that a product can under no circumstance and in no recipient country be a suitable product. The inclusion on the list does not mean, however, that this product will actually be supplied. For each specific food aid operation the Commission will have to make sure that, pursuant to Article 2(3) of the second framework regulation, the product supplied as far as possible fits the dietary of the recipient population and have no adverse effect on the recipient countries. It deserves to be noted in this context that in its resolution of 21 November 1989, the Council called upon the Commission always to allocate the products best suited to local conditions, allowing for their cost-efficiency ratio, and to that end exercise total flexibility within the range of products which may be supplied.30

Clay observed in a 1985 study reviewing food aid policy changes since 1978 that the commodity composition of food aid remained for most donors one of the areas of greatest friction between, on the one hand, developmental and humanitarian concerns and, on the other hand, domestic surplus disposal pressures.31 This definitely was and, albeit in a more subtle way, still is the case for the Community. The Commission noted in its communication 'Food aid for development' that the link between the existence of surpluses and food aid was often too rigid but noted also that:

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30Press Release 9940/89 (Presse 214-G), 17.

An answer to the question of what kind of product to supply as food aid must be sought taking account of two requirements, which may contradict each other:

i. use should be made of products available within the Community, while making sure they are as varied as possible;

ii. the specific needs of the population receiving the aid must be taken into account in the most appropriate manner possible by encouraging local production, where possible, and taking care not to make the recipient countries dependent on products that are new to them and which would have to be imported commercially once they were no longer forthcoming as gifts.32

While choosing its words carefully, the Commission was willing to admit that in deciding on the composition of the food aid basket the Community could not just consider the needs of the recipients and the dangers associated with specific products (such as dairy products and wheat) but also had to consider the product availability, or in other words, the surplus stock situation, within the Community.

As I already remarked above, some observers, and in particular Mr Chr. Jackson, MEP, commented at the occasion that the Commission's development experts seemed to have been hijacked by the agriculturalists.33 Mr Jackson noted:

My impression that the Commission was looking for arguments to sustain ongoing disposal of surpluses is heightened by the continuing commitment to milk powder aid, despite recent disclosures that it is calories rather than protein which should form the main component of feeding programmes, and despite the IDS/ABC call for the EC to switch to a greater volume of cereal aid.

and concluded that:

The Commission does not face up to the fact that in development terms it should be a prerequisite that we supply either what is appropriate or cash to buy it, not the products we happen to have in the larder.34

It is, however, probably fairer to say that the Commission experts were merely realistic about the constraints on the food aid policy and the latter's reform into a policy in the interest of the developing countries. I will return to this in the

32COM(83) 141 final, 20. Italics added.
34JACKSON, 1983, 243.
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conclusion of this study.

As it had done since the late sixties, Parliament repeatedly criticized the links between the food aid policy and the common agricultural policy, stressed that the Community had to seek solutions to the problems of agricultural surpluses other than food aid, insisted that the Community's food aid products matched the dietary needs and habits of the recipients and castigated in particular food aid in dairy products. Nevertheless, Parliament did not exclude completely the use of food aid as a surplus disposal instrument. In a Resolution of 12 July 1985 on the beef and veal sector, for example, it stated that:

[it] Requests the Commission to do everything it can to dispose of stocks in the short term and thereby contribute to putting the beef and veal market in order; at the same time, points to the problem that these stocks cannot be disposed of on the domestic market since this would again have a disruptive influence on the market; proposes that some of these stocks be disposed of in the form of meat preserved as part of a diversified programme of food aid to the developing countries; and in a Resolution of 11 July 1986 on a special fund to reduce stocks, it called on the Commission:

fully to exploit the still available scope for food aid without, however, deterring the developing countries from giving the necessary boost to the output of domestic agriculture. 

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33E.g.: European Parliament Resolution of 15 February 1985, point 5: "[The European Parliament] repeats, to this effect, its opposition to any use of food aid as a means of disposing of surpluses of Community agricultural produce" (O.J. 1985, C 72/137); European Parliament Resolution of 13 December 1985, point 1: "[The European Parliament] stresses that Europe must seek solutions to the problem of agricultural surpluses other than exports and food aid;" (O.J. 1985, C 352/239); European Parliament Resolution of 24 October 1986, point 4: "[The European Parliament] stresses the need for the foodstuffs made available to the developing countries to match the dietary needs and habits of the recipient; notes that dairy products usually do not meet these requirements and in addition, their cost-effectiveness is particularly poor [...]"; and European Parliament Resolution of 19 February 1987, point 20: "[...] includes a wider range of products in the programmes of food aid for the starving, with due regard for the dietary habits and nutritional requirements of the local people and the interests of regional production;" (O.J. 1987, C 76/120.).


As I noted above, the second food aid framework regulation of December 1986 dropped the requirement to consider the Community's stock situation and introduced the requirement to consider the interests of the recipient country. The actual composition of the Community's food aid basket has, however, not drastically changed since and this cannot but lead us to the conclusion that while Community law no longer explicitly mentions the stock situation as a factor to be taken account in the decision on the sort of products supplied as Community food aid, it apparently still is a factor of some importance. It may be argued that the fact that the considerable reduction or even quasi-disappearance of surplus stocks of certain food aid products has not led to the elimination of these products from the Community's food aid basket, points to the contrary, but it remains to be seen what the impact of a prolonged absence or quasi-absence of surpluses will be on the composition of the Community's food aid basket. I will take up this point again in the conclusion of this study.

While some food aid critics seem to think differently, it should be stressed at this point that in the context of a development and relief oriented food aid policy the supply of surplus products is of course in itself not objectional as long as the products supplied correspond to the needs of the food aid recipients. It will be recalled that in particular for dairy products, the latter was, however, not seldom problematic. Dairy products were and are in many circumstances ill-adapted to the dietary habits of the recipient population, difficult to use well and not cost-
efficient. As I will discuss in more detail below, the Community reduced in response during the period 1983-89 its dairy food aid programme considerably while increasing, for example, food aid in vegetables and vegetable oil, products better adapted to the dietary habits of the recipient population. It can, however, not be denied that in certain situations also dairy products are suitable food aid products. Food aid in dairy products is especially appropriate in support of dairy development programmes. It would therefore be unfortunate, if—as pleaded for by some food aid critics for many years already—dairy products would in the light of the present stock situation indeed be eliminated from the Community food aid basket. I would like to stress that so far there are no grounds to fear such elimination but as I already pointed out above, one should see what happens if the present stock situation continues.

In conclusion of this heading on the sort of product supplied as Community food aid, it should be noted that there are two international agreements to which the Community is a party and which contain provisions concerning the sort of product to be supplied as food aid, namely the 1986 Food Aid Convention and the Third

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38 As I already noted above, dairy products do not fit the traditional dietary habits of quite a number of recipient populations. In some countries in Africa and South-East Asia, people are even intolerant for lactose and get diarrhoea from it. In other countries, food aid in dairy products changes the traditional dietary habits and creates new import needs. Even in countries which in dairy products are part of the population’s normal diet, food aid in dairy products is problematic. The reconstitution of the skimmed milk powder often presents serious problems. The local reconstitution of skimmed milk powder may pose very serious health hazards given the scarcity throughout the Third World of clean water. A more centralized and controlled reconstitution very often faces the problem of limited reconstitution and storage facilities and an inapt distribution infrastructure. With regard to food aid in butteroil, it has been noted that to meet the developing countries’ substantial oils and fats requirements, it would in many cases make far more sense for the Community to supply vegetable oils and fats rather than butteroil. The latter costs about 4,000 EUA per tonne, colza oil about 450 EUA per tonne. Also with regard to skimmed milk powder, it has been noted that in terms of unit of protein (even more so in terms of unit of carbohydrate) almost all other sources provide a cheaper source of the same number of units.

39 See: Section 3.2.1 of this Chapter. Note that the 1990 Budget no longer provides for appropriations for food aid in milk powder as such but for food aid in milk powder and other equivalent products. Appropriations entered in Article 9210 can be used for food aid in milk powder substitutes.

40 See: Section 3.4.3 of this Chapter.
Lomé Convention.41

The 1986 Food Aid Convention, which replaced the 1980 Food Aid Convention still applicable during the earlier part of the period 1983-8942, obliged the Community to supply food aid in cereals or to be more precise 'grain' or 'grains' which the Convention defined in Article II (1) (e) as 'wheat, barley, maize, millet, oats, rye, sorghum and rice, and any other type of grain suitable for human consumption that the Food Aid Committee [of the Food Aid Convention] may decide, or products derived therefrom, including products of secondary processing [...]'.43

The Third Lomé Convention, the first Lomé Convention to deal explicitly with food aid, stipulated in its Article 35 (1) (e) that:

as a matter of priority, the products supplied must meet the needs of the recipients. In the selection of such products, account must be taken in particular of the ratio of cost to specific nutritive value and of the effect the choice might have on consumer habits;44

The Community was to take this provision into account for all food aid supplied to ACP countries.

41It will be recalled that during the seventies and the early eighties, also the successive EEC-UNRWA Conventions required the Community to supply specific products as food aid. In the period 1983-89 this was only the case in 1983 when the 1981 EEC-UNRWA Convention (OJ. 1981, L 392/4) as amended by the Convention approved on 21 December 1982 (OJ. 1982, L 371/42) and 17 October 1983 (OJ. 1983, L 293/17) was still in force. The 1984 and 1987 EEC-UNRWA Conventions did, however, no longer require the Community to supply specific products. The products to be supplied would be agreed upon in the framework of the food aid programmes (See: 1984 EEC-UNRWA Convention, Article 3, OJ. 1984, L 188/18; and 1987 EEC-UNRWA Convention, Article 3, OJ. 1987, L 136/44.).

421986 Food Aid Convention, OJ. 1986, L 195/16. For the 1980 Food Aid Convention, see: Section 3.1.1 of Chapter 2.

43Note, however, that the 1986 Food Aid Convention (as its predecessors) allows the donors to grant cash rather than the cereals in kind. This cash is then to be used to buy the cereals mentioned. See: Article III (1) and (7) of the 1986 Food Aid Convention. Furthermore, the 1986 Food Aid Convention also stipulates in its Article VII (2): "Members shall, as appropriate, 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" (1986 Food Aid Convention, Article VII (2), OJ. 1986, L 195/18.). While the wording of Article VII (2) is not very stringent and the requirement 'only' concerned food aid in cereals supplied under the Food Aid Convention, it is nevertheless worth mentioning.

3.1.2 The origin of products supplied as Community food aid

With regard to the origin of the products supplied as Community food aid, the first framework regulation stipulated in its Article 3 (1):

The products shall be mobilized in accordance with the rules and procedures laid down under the common organizations of markets.\(^{45}\)

At the time of the adoption of the first framework regulation, the 'rules and procedures laid down under the common organizations of markets' referred to in the first paragraph of Article 3 (1) were in the first place of course the specific food aid rules laid down in Council Regulation (EEC) No 2727/75 of 28 October 1975 on the common organisation of the market in cereals, and in particular Article 28 thereof\(^{46}\), Council Regulation (EEC) No 1418/76 of 21 June 1976 on the common organisation of the market in rice and in particular Article 25 thereof\(^{47}\), Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing criteria for the mobilization of cereals intended as food aid, and in particular Articles 3 and 6 thereof\(^{48}\), and - to limit this list of the main food aid products - Council 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, and in particular Articles 6 (1) and 9 (1) thereof\(^{49}\). I discussed these provisions in detail in Chapters 1 and 2 and


\(^{49}\)Articles 6 (1) and 9 (1) of 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, O.J. 1977, L 43/3-4.
I will not repeat myself here. The reader will recall that for cereals, Community legislation explicitly required that any decision on the mobilization of cereals as food aid had to 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. Furthermore, Community law provided for the possibility of mobilizing in exceptional circumstances the cereals to be supplied as food aid on the world market. For dairy products, Community legislation stipulated that in principle the skimmed milk powder and the butteroil had to be provided from the stocks of the intervention agencies but - taking into account the market situation - purchases could also be made on the Community market. Community law did not provide for the possibility of mobilizing dairy products on the world market. It will also be recalled that the involvement of the common agricultural policy’s Management Committees, which scrutinized the Commission’s mobilization decisions, and the role of DG VI (Agriculture) in the preparation of the Commission’s decisions, ensured that this legislation on the origin of Community food aid products was, whenever necessary, applied in the interest of common agricultural policy.

For cereals, the above mentioned provisions regarding the origin of the cereals supplied as food aid remained applicable until the entry into force of Article 3 of the second food aid framework regulation, i.e. until the adoption of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid.\footnote{See: Section 3.1.2 of Chapter 1 and Section 3.1.2 of Chapter 2.}

For milk products, however, the above mentioned Commission Regulation (EEC) No 303/77 of 14 February 1977 was replaced by Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and

supply of skimmed-milk powder, butter and butteroil as food aid. Of direct relevance to the origin of the dairy products supplied as food aid were Articles 3 (1) and 5 (1) of the latter regulation. Article 3 (1) stipulated with regard to skimmed milk powder and butter:

The skimmed milk powder or butter to be supplied shall, as appropriate:
(a) be placed at the disposal of the successful tenderer by the intervention agency specified in the notice of invitation to tender, or
(b) come from the Community market and have been produced in the Community.

and Article 5 (1) stipulated with regard to butteroil:

The butteroil to be supplied be manufactured, as appropriate from:
(a) butter placed at the disposal of the successful tenderer by the intervention agency specified in the notice of invitation to tender, or
(b) cream or butter which comes from the Community market and has been produced in the Community.

In the recitals we are reminded at what is appropriate:

[...]; whereas skimmed milk powder, butter and the butter from which butteroil to be supplied has to be manufactured should, as a general rule, be drawn from intervention agency stocks; whereas, however, account being taken of the situation on the market, provision be made for the purchase of goods, on the Community market, particularly in cases where the intervention stocks of skimmed milk powder or butter do not possess the characteristics required for the particular destination required; [...]

The provisions on the origin of the dairy products of Regulation (EEC) No 1354/83 were in fact very similar to the provisions of its predecessor, Regulation (EEC) No 303/77, the only difference being that Article 3 (1) of Regulation

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(EEC) No 1354/83 explicitly required the milk products being bought on the Community market to be produced in the Community. There was no such requirement in Regulation (EEC) No 303/77 but presumably this was just an oversight.

For food aid in products other than cereals and dairy products, it was often less evident which 'rules laid down under the common organizations of markets' Article 3 (1) first paragraph referred to.

For food aid in vegetable oil, for example, the situation was all but clear during the first few years the Community supplied food aid in the form of this product. In June 1984, however, the Council amended Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats adding an Article 36a which stipulated:

1. Olive oil supplied as food aid shall be purchased on the Community market or shall come from stocks held by the intervention agencies.

Vegetable oils specified in Article 1 (2) (b) which are supplied as food aid shall be purchased on the Community market.

2. However, in an emergency or in the event of unavailability on the Community market, the products specified in paragraph 1 may be purchased in a developing country.

3. The criteria for mobilizing the products, and especially the criteria for purchasing the products on the Community market or for deciding on the use of olive oil held by the intervention agencies, shall be adopted by the Council acting by a qualified majority on a proposal from the Commission.

It should of course also be noted that the scope of Commission Regulation (EEC) No 1354/83 was somewhat larger in the sense that it also concerned butter.

See also comments in Sections 3.1.2 of Chapter 1 and Chapter 2.
4. Detailed rules for the mobilization and delivery of products supplied as food aid shall be adopted in accordance with the procedure laid down in Article 38.35

Pursuant to paragraph 3 of the latter article, the Council adopted on 29 October 1985 Regulation (EEC) No 3067/85 setting criteria for mobilization on the Community market for vegetable oils for supply as food aid. The latter regulation stipulated in its Article 2:

1. If an intervention agency holds stocks of olive oil of the quality required, these shall be used provided that transport and packaging can be carried out in a satisfactory way and at a reasonable cost.

2. If the requirements of paragraph 1 cannot be met, the olive oil shall be purchased on the Community market as a whole.

3. Other vegetable oils shall be purchased on the Community market as a whole.56

Note that Community legislation did not provide the possibility of purchasing vegetable oil on the world market as such. Council Regulation (EEC) No 1556/84 amending Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats allowed 'only' for the purchase of vegetable oil in a developing country. It is interesting and quite revealing that during the discussions preceding the adoption of this amendment, Italy and Greece were fiercely opposed to the inclusion of the possibility to purchase vegetable oils outside the Community.

For other products, such as meat, dried vegetables, fish, biscuits, pasta and tomatoes, no specific rules regarding their origin when supplied as Community food aid had been laid down under the common organizations of markets and for some of these products there was not even a common organization of the market.


While one could presume that the rules referred to in Article 3 (1) first paragraph of the first framework regulation were in the former case, the rules on surplus disposal and more generally the management of the market, in the latter case (the case of the products for which there was not even a common organization of the market), there was, however, a genuine legislative gap. The Commission decided on an ad hoc basis on the origin of these food aid products.

In view of the contents of the 'rules laid down under the common organizations of markets' to which Article 3 (1) first paragraph referred, one cannot but conclude that this latter article of the first framework regulation implicitly but unmistakably stipulated a requirement of Community origin of the products supplied as food aid. As I already explained in Section 2 of this Chapter, a food aid policy which exclusively pursued developmental and humanitarian objectives would not stipulate such a requirement of Community origin.7 The requirement of European origin made in fact only sense in the context of a food aid policy which also served the economic interests of the European farmers for it created a market for their surplus production. Article 3 (1) first paragraph reflected therefore clearly the continued relevance of the promotion of domestic agricultural interests among the objectives of the food aid policy.

The requirement of Community origin of the products supplied as food aid was, however, not absolute. I already noted that for some products supplied as Community food aid, the rules laid down under the common organizations of the markets provided for the possibility to purchase these products outside the Community. More importantly, however, the first framework regulation itself provided for the possibility undertake under certain circumstances so-called 'triangular operations, i.e. the purchase of the products to be supplied as Community food aid in a (neighbouring) developing country. Already in the late seventies and the early eighties, the Commission undertook an ever increasing

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7See: Section 2 of this Chapter.
number of such 'triangular operations'. While the Council had repeatedly approved the principle of 'triangular operations' (such operations would allow the Community to supply products better adapted to the needs and dietary habits of the recipients), the Commission often found itself without legal basis for such purchases outside the Community. To 'legalize' and promote these operations, the first framework regulation stipulated in its Article 3 (1) second paragraph:

... in an emergency or if the products are not available on the Community market, the products supplied as aid may be purchased in another developing country, if possible belonging to the same geographical region as the recipient country.

While this provision was obviously very much in the interest of the food aid recipients, it should immediately be noted that its scope was limited in several ways.

First, the latter provision allowed for the purchase of food aid products in 'another developing country' (if possible of the same geographical zone) but not for the purchase of products on the market of industrialized countries or on the market of the recipient country. The limitation of purchases outside the Community to purchases in ('neighbouring') developing countries is not difficult to understand and can easily be justified. The Community's concern was to supply products better adapted to the needs and dietary habits of the recipients and the best way to realize this objective was purchase food products in the same geographical, climatological zone as the recipient country; generally speaking, food products

58See: Section 3.1.2 of Chapter 2.


60For cereals and sugar this was not a problem since Community law explicitly allowed these products to be purchased on the world market. For other products, however, this was not the case.


62Note, however, that for cereals and sugar, the 'rules laid down under the common organizations of markets' allowed for the purchase of products on the world market, i.e. also on the market of industrialized countries and on the market of the recipient country. For vegetable oil, the 'rules laid down under the common organization of the market' allowed for the purchase in developing countries, i.e. presumably also in the recipient country.
which could be bought in other industrialized countries were unlikely to fit the needs and dietary habits any better than Community products. Furthermore, purchasing of food aid in other developing countries was likely to benefit the latter countries’ agricultural development and open the way for more regional trade. Finally, while the Community was keen on promoting the agricultural development of developing countries, it did of course not want to help other industrialized countries to reduce their surplus stocks which is exactly what it would be doing if it would buy its food aid from them. It seems, however, that Article 3 (1) second paragraph of the first framework regulation should have required that the products bought in 'another developing country' were also produced in this country and that the products purchased were not products which had been imported from developing countries with an already strong agriculture ('quadrangular operations?') or from industrialized countries. A far more serious shortcoming was that Article 3 (1) second paragraph did not provide for any provision which would exclude the purchase of food products which were needed to cover domestic needs.

As I mentioned, Article 3 (1) second paragraph did also not allow for the purchase of the food aid products in the recipient country itself; this limitation seems difficult to justify and on the whole unfortunate.

Second, Article 3 (1) second paragraph allowed for 'triangular operations' only 'in an emergency' or 'if the products are not available on the Community market'. For the Commission to undertake a triangular operation, either of these conditions had to be fulfilled. With regard to the latter condition, the successive annual implementing regulations all stipulated:

In order to establish that they are unavailable, the Commission shall have regard to the availability of stocks of the products in question and to the Community’s needs as regards such products.69

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The Commission's judgment was scrutinized by the Food Aid Committee but also DG VI (Agriculture) and the Legal Service could be relied upon to watch over the fulfilment of this condition. In 1984, Nicaragua in need of food aid but with its ports closed as a result of American mining, asked Community for food aid in vegetable oil. DG VIII wanted to mobilize the vegetable oil in neighbouring Honduras but DG VI and the Commission's Legal Service posed their veto because there was plenty of vegetable oil available on the Community market and there was strictly speaking no emergency. No triangular operation was undertaken.

Also 1984, and to be more precise in May 1984, the Commission decided that the Community would purchase 10,000 tonnes of rice in Thailand with the UNHCR acting as the Commission's local agent. This rice was to be used for the UNHCR's refugees' programme in Thailand. When the UNHCR asked in June 1984 for a cash advance to make the purchase, the Commission all of a sudden suspended the transaction, whilst considering whether the rice should not be supplied from the Community market in view of the fact that there was plenty of rice available and that the operation was not really an emergency operation. It had been clear from the beginning onwards, however, that Thailand, a rice exporting country, would never allow rice to be imported. The UNHCR decided in order to avoid interruption of the rice supplies to the refugees to pay for the food aid supplies out of its own reserves while nevertheless labelling the rice as "gift of the EEC". It was only in March 1985 that the Commission eventually decided - undoubtedly after considerable inside fighting - to go ahead with this food aid operation.\(^{46}\)

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\(^{46}\)The question was whether the ports would still have been blocked at the time the food aid shipped from Europe would arrive. Nicaragua had all interest in trying to get food aid purchased in Honduras because as a relatively rich country, Nicaragua would have to pay for the transport of the food aid itself.

\(^{46}\)COURT OF AUDITORS, Annual Report 1984, 82. It may well be that the Commission finally decided to justify this operation on the basis of the "rules laid down under the common organization of the market in cereals" which allowed under exceptional circumstances for the purchase of cereals...
As one could have expected, Article 3 (1) second paragraph led to the abuse of the "emergency concept". To allow for triangular operations in products which were readily available on the Community market, the Commission could only argue the existence of an emergency and while Article 6 of the first food aid framework regulation provided for a definition of 'emergency', this definition did not apply to Article 3 (1) second paragraph and the Commission was quite creative in defining situations as emergencies. I do not criticize the Commission for its creativity but see the abuse of the emergency concept as an indication that Article 3 (1) second paragraph was too restrictive.

Third, the scope of Article 3 (1) second paragraph was also restricted by the successive implementing regulations which all excluded dairy products from 'triangular operations' by stipulating:

Milk products supplied as food aid must have been manufactured and purchased in the Community.

It is clear that this provision was dictated by agricultural policy concerns about the size of the milk products surpluses.

In spite of these limitations, Article 3 (1) second paragraph did not fail to have a significant impact on the food aid policy of the years leading up to the second framework regulation. The number of triangular operations during these years was considerably higher than in the late seventies and early eighties. The FAO on the world market, including the purchase in the recipient country itself.

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66Article 6, second paragraph of the first framework regulation stipulated: "For the purposes of (a) and (b) [of the first paragraph of this article] 'emergency' shall mean an unforeseeable situation in which famine or a danger of famine poses a serious threat to the lives or health of the population in a country which is unable to meet the food deficit through its own means and resources." (OJ. 1982, L 353/3.

data available on triangular operations and local purchases of cereals furthermore suggest that the Community’s effort in this respect compared very favourably with the efforts made by other major food aid donors and in particular the United States. Note, however, Japan’s effort as well as the efforts of some of the Member States.

### Triangular transactions and local purchases in cereals by donors in the years 1982/83 - 1985/86 (in ‘000 t.)

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<td>20.6</td>
<td>19.6</td>
<td>19.0</td>
<td>75.3</td>
<td>2.79</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>8.2</td>
<td>7.2</td>
<td>60.4</td>
<td>21.0</td>
<td>96.8</td>
<td>3.59</td>
</tr>
<tr>
<td>United States</td>
<td>0.7</td>
<td>-</td>
<td>7.2</td>
<td>0.5</td>
<td>8.4</td>
<td>0.31</td>
</tr>
<tr>
<td>Purchases by WFP</td>
<td>31.2</td>
<td>33.5</td>
<td>34.4</td>
<td>32.7</td>
<td>131.8</td>
<td>4.89</td>
</tr>
<tr>
<td>Others</td>
<td>63.5</td>
<td>42.0</td>
<td>51.4</td>
<td>32.8</td>
<td>189.7</td>
<td>7.04</td>
</tr>
<tr>
<td>TOTAL</td>
<td>659.2</td>
<td>431.3</td>
<td>764.7</td>
<td>841.4</td>
<td>2696.7</td>
<td>100.0</td>
</tr>
</tbody>
</table>

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*FAO, Food aid in figures, 1987, 98.
To give a few example of 'triangular operations' undertaken, one might refer to the white maize bought in Zimbabwe for supply to Zambia, the beans bought in Kenya for Zimbabwe and Sao Tomé, the sugar bought in Mauritius and Suriname for Comoros and Ecuador, the millet bought in Niger for neighbouring Sahelian countries, the beans bought in Turkey for Lebanon, the rice bought in Thailand for refugees, the white maize in bought Guatemala for Nicaragua and the pulses bought in Senegal for Cape Verde. It should be stressed, however, that in spite of its 'policy importance' and the attention I devote to it, triangular operations represented during the years 1983-86 on average merely 5% of the Chapter 92 food aid appropriations.

Direct triangular transactions during the period 1983-86

<table>
<thead>
<tr>
<th>Year</th>
<th>mECU</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>26.825</td>
</tr>
<tr>
<td>1984</td>
<td>23.099</td>
</tr>
<tr>
<td>1985</td>
<td>22.877</td>
</tr>
<tr>
<td>1986</td>
<td>25.582</td>
</tr>
</tbody>
</table>

See e.g.: ARROWSMITH, K., 'The European Community's food aid', *Green Europe*, 1987, 13.

Data on indirect triangular operations are not available.
In its communication on food aid for development of April 1983, the Commission underlined the importance of 'triangular operations' pointing out that such operations are at the same time aid towards stabilizing the market in the producer country and aid in the form of products adapted to the needs and dietary habits of the recipient country. Furthermore triangular operations could - the Commission argued - also encourage trade between neighbouring countries and hence spark off a gradual process leading to regional food security.\textsuperscript{71} The Commission criticized, however, the restrictions to triangular operations embedded in Article 3 (1) second paragraph but also pointed out that not all recipient countries were so keen on 'triangular operations'. Certain beneficiaries actually preferred to receive as food aid products which were not produced in the region but which they would have to import anyway to satisfy an urban demand they could not afford to ignore for political and social reasons.\textsuperscript{72} While favouring an extension of the possibilities to undertake triangular operations, the Commission was, however, far from questioning the basic requirement of Community origin of the products supplied as food aid.\textsuperscript{73}

In its Resolution of 15 November 1983, the Council explicitly agreed to an increase in triangular operations pointing out - as the Commission had done - that such operations make it possible, with a view to national development, to meet the needs of the recipients, to fit into a balanced production policy on the part of the supplier country, to contribute to a system of regional food security and to ensure transport savings.\textsuperscript{74} On the other hand, the Council also very clearly confirmed the basic requirement of Community origin of the products supplied as food aid by stating that food aid purchases had first of all to take account of products available

\textsuperscript{71}Commission communication on food aid for development, COM(83) 141 final, 16-17.

\textsuperscript{72}Commission communication on food aid for development, COM(83) 141 final, 17.

\textsuperscript{73}Note that in the conclusion of the communication, the Commission noted: "The Community is among the biggest and most efficient agricultural producers in world. Moreover, Europe considers that it has the capacity and the responsibility to continue meeting the food requirements of the world's population." (COM(83) 141 final, 26.).

\textsuperscript{74}The latter advantage had not been mentioned by the Commission.
on the Community market.75

The European Parliament, an early advocate of 'triangular operations', explicitly repeated its support for such operations in its opinions on the 1985 and 1986 implementing regulations and actually proposed an important extension of the possibility to undertake 'triangular operations'.76 Instead of stipulating 'Except in the case of emergency operations or where products have to be purchased in a developing country because they are unavailable on the Community market, tenders shall be called for within the Community market', Parliament suggested that the implementing regulations would stipulate:

Except in the case of emergency operations or where products are available for purchase in a developing country, tenders shall be called for within the Community: [...]

In its communications on 'Famine in Africa' of June 1985, the Commission noted that the 'African experience' had shown (again) that the food products supplied as Community food aid did not necessarily correspond to local conditions and habits and pointed out that purchases of local products - sometimes in the same country or neighbouring countries - often proved more suitable and allowed for


76European Parliament Resolution of 15 February 1985, point 7: '[...] Requests the Commission whenever possible to conducts three-ways operations in which developing countries can be supplied with commodities produced in other developing countries. Food aid will in this way act as a stimulus to agricultural production in the developing countries and will moreover be consistent with the usual diet of the recipients" (O.J. 1985, C 72/137.); see also European Parliament Working Documents, Report on the proposal for an interim regulation laying down implementing rules for Regulation (EEC) No 3331/82 on food aid policy and food aid management (Rapporteur: Mr Y. GALLAND), PE Doc 2-1708/84, 18; and European Parliament Resolution of 17 January 1986, point 3: '[...]Stresses once again the importance of aid supplied in the form of products from developing countries and reiterates its request to the Commission whenever possible to set up three-way operations, to encourage agricultural production in such countries and, furthermore, to enable the dietary habits of the recipients to be respected" (O.J. 1986, C 36/209); see also European Parliament Working Documents, Report on the proposal for a Regulation laying down implementing rules for Regulation (EEC) No 3331/82 on food aid policy and food aid management (Rapporteur: Mr G. GUERMEUR), PE Doc A 2-201/85, 20.

In its proposal for a new food aid framework regulation, the Commission first of all dropped all reference to the above mentioned rules and procedures laid down under the common organizations of the agricultural markets, which, it will be recalled, ensured that Community food aid would serve CAP interests. Secondly and undoubtedly with domestic agricultural interests in mind, the Commission provided for an explicit requirement of Community origin of the products supplied as food aid. Thirdly and finally, it provided for an extension of the possibility to undertake triangular operations stressing the importance of such operations as a means of fostering the integration of food aid with development aid policy and criticizing the strict limitations imposed on such operations by the food aid framework regulation of December 1982. The Commission added, however:

One essential condition for making use of this new opportunity was that it should be kept within limits which did not jeopardize the basic principle of mobilizing on the Community market the products to be used for food aid.

The Commission proposed that the new framework regulation in its Article 3 should stipulate with regard to the origin of the products supplied as Community food aid:

Products shall be mobilized on the Community market.

However, products supplied as aid may be purchased in another developing country, if possible one belonging to the same geographical region as the recipient country:

- if those products are not available on the Community market, or

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7Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 3; See also Commission communication to the European Council on 'Famine in Africa', COM(85) 335 final, 2.

7°The Commission correctly pointed out that these limitations could lead to a considerable loss of efficiency in terms of aid management and - as I already noted - to the abuse of the "emergency concept". It therefore proposed, on the one hand, that the scope for carrying out triangular operations in cases of emergencies should be established more precisely, and, on the other hand, that the scope for carrying out triangular operations should be widened.

80COM(86) 418/rev. final, 2-3.
Products supplied as Community food aid

- in an emergency, within the meaning of the second paragraph of Article 6, provided such purchases enable the aid to reach its destination more rapidly, or

- where the following conditions are met:
  - such purchases give effect to Community development policy, in particular as regards the promotion of developing countries' self-sufficiency in food;
  - the products in question are in fact available in a developing country belonging to the same geographical region;
  - such purchases are not liable to disrupt the market of the supplying countries;
  - such purchases remain in aggregate at a level compatible with the principle that aid should be mobilized on the Community market.  

In its Article 5 (1) third indent, the Commission’s draft regulation proceeded:

In accordance with the procedure laid down in Article 8 (1), the Commission shall:

[...]

- establish a limit for the purchases referred to in the third indent of Article 3, having regard to the situation on Community markets.

As was to be expected Parliament considered that the Commission’s proposal did not go far enough and while it agreed that Community food aid products should normally be Community products, it pleaded for a further extension of the possibility for undertaking triangular operations. Consequently, it amended Article 3 and deleted Article 5 (1) third indent. Article 3 as amended by Parliament stipulated:

Products shall be mobilized on the Community market.

However, products supplied as aid may be purchased in another developing country, if possible one belonging to the same geographical region as the recipient country:

- in an emergency, within the meaning of the second paragraph of

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^1COM(86) 418/2/rev. final, Article 3 of the draft regulation.

^2COM(86) 418/2/rev. final, Article 5 (1) of the draft regulation.

Article 6, provided such purchases enable the aid to reach its destination more rapidly, or

- where the following conditions are met:
  - such purchases give effect to Community development policy, in particular as regards the promotion of developing countries' self-sufficiency in food;
  - the products in question are in fact available in a developing country belonging to the same geographical region;
  - such purchases are not liable to disrupt the market of the supplying countries.*

Mr Jorge Campinos, then MEP, noted in his report on the Commission's proposal for a new framework regulation that while the scope for triangular operations had been extended, the latter operations were still subject to restrictions arising from the link between food aid policy and the common agricultural policy and he pointed, first, to the first indent of paragraph 2 of Article 3 which allowed triangular operations when the products were not available on the Community market, and, second, to the fourth point of the third indent which stipulated that the triangular operations were to remain in aggregate at a level compatible with the principle that aid should be mobilized on the Community market.** Mr Campinos suggested the deletion of these provisions and Parliament followed his suggestion. It should be noted that even within Parliament, however, there was opposition to this enlargement of the scope for triangular operations. In the carefully worded Opinion of the Committee on Agriculture it was stated:

Whilst the food aid policy should not be regarded as a means of disposing of the Community's agricultural stocks, the Community cannot permit itself the luxury of purchasing on third country markets products available on its

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**This was one of the reasons why Mr Campinos came to the conclusion that: "The Commission's proposal is a prime facie improvement in that it reaffirms the aim of separating food aid from the CAP. In fact, as we will see, it is merely a statement of intent, as the proposed regulation retains more than just vestiges of the previous situation. The Community's policy, as expressed in this proposal for a regulation, is still related to the structural production of agricultural surpluses intended for use as food aid. (European Parliament Report on the proposal for a Regulation on food aid policy and food aid management (Rapporteur: Mr Jorge CAMPINOS), PE Doc A 2-140/86, 19.)"
While one can sympathise with the Parliament’s position and understand it in the light of the internal opposition to more triangular operations, I would argue, however, that Parliament was not consistent to the extent that it proposed, on the one hand, the deletion of the fourth point of the third indent of the second paragraph of Article 3 (triangular operations should remain in aggregate at a level compatible with the requirement of Community origin) but, on the other hand, did not even criticize the requirement of Community origin itself. In fact, the provision which it wanted to delete was no more than the logical and inevitable outcome of the latter provision.

At the end of the short Parliamentary debate on the Commission’s draft regulation, Mr F. Andriessen, Vice-President of the Commission and responsible for Agriculture agreed on behalf of the Commission to drop Article 5 (1) third indent. He declared:

[...] I am willing to delete from the proposal the provisions of Article 5 with regard to establishing a limit for triangular operations. But I hope you will understand that the principle must be upheld that, where European food aid is concerned, purchases must be primarily made within the Community.

This was a smart move of the Commission because while giving in little on the substance and it would, albeit informally and only for internal purposes, still set a limit to triangular operations, it freed itself from the scrutiny of the Food Aid Committee. It is true that the Commission when deciding informally on the level of triangular operations would no longer have to consider the situation on Community markets but Article 3 of the Commission’s draft still contained sufficient guarantees to ensure that the Community’s agricultural interests would be amply considered.

On 22 December 1986, the Council adopted the second food aid framework framework
regulation, Council Regulation (EEC) No 3972/86, which with regard to the origin of the products supplied as Community food aid stipulated in its Article 3:

Products shall normally be mobilized on the Community market. However, products supplied as aid may be purchased in the recipient country or in another developing country, if possible one belonging to the same geographical region as the recipient country:

- if those products are not available on the Community market, or
- in an emergency within the meaning of Article 6 (2) where such purchases are likely to enable the aid to reach its destination more rapidly, or
- where the following conditions are met:

(a) stocks or surpluses of the necessary products are in fact available in a developing country, if possible one of the countries determined in the third indent of Article 4 (1), at a total cost including transport which compares favourably with the cost of similar products mobilized from the Community market, taking into account the beneficial effects of the purchases to the developing country from which such products are made;

(b) such purchases are not liable to disrupt the market of the supplying countries nor have any negative effects on the food supply to their populations;

(c) such purchases remain in the aggregate at a level compatible with the principle that aid should be mobilized on the Community market;

(d) such purchases in a developing country shall be integrated as thoroughly as possible into Community development policy towards that country, in particular as regards the promotion of its food security.\(^\text{a}\)

The Council’s Article 3 differed considerably from both the Commission’s draft and Parliament’s amended version thereof.\(^\text{b}\) While the Council agreed to dropping all reference to the above mentioned rules and procedures laid down


\(^\text{b}\)Article 5 (1) third indent which the Commission had deleted from its proposal at the end of the Parliamentary debate was not taken up again by the Council.
under the common organizations of the agricultural markets, it formulates the requirement of Community origin more explicit than the Commission and Parliament by stipulating that food aid products shall *normally* be mobilized on the Community market; the addition of 'normally' reinforces the hierarchy of origins. This reinforcement is probably not superfluous necessary but shows clearly how important the Council thought it was not be misunderstood on this point. Second, Article 3 provides not only for the possibility of 'triangular operations' but also for the possibility of 'local purchases' i.e. purchases in the recipient country. In the context of a development and relief oriented food aid policy, this is a most useful extension and is surprising that neither the Commission nor Parliament had thought of making a proposal in this sense. Third. Article 3, third indent, expresses a preference for the purchase of food aid products in countries which are eligible for Community food aid, i.e. countries which struggle with food security problems and need to develop their agriculture, and, as I pointed out above, triangular operations could contribute to the gradual achievement of the latter objectives. Fourth, Article 3, third indent, requires that the total cost of a triangular operations to compare favourably with the cost of a food aid operation in similar products mobilized from the Community market but it immediately excludes an objective comparison of the costs by adding that the comparison should take into account the beneficial effects of the purchases to the developing country from which such purchases are made. While the latter beneficial effects are hard, if not impossible, to quantify and the comparison therefore likely to be subjective, this provision - which neither the Commission nor Parliament had proposed - is nevertheless useful in the sense that it stresses that 'triangular operations' are not an end in themselves and that the Commission should use its scarce resources as efficiently as possible. One could, however, also read in this provision an attempt of the 'agricultural lobby' to limit triangular operations. Fifth, Article 3, third indent, requires not only that the triangular operations are not liable to disrupt the market of the supplying countries but also that these operations have no negative effects on the food supply of their populations; a welcome protection of the population of the exporting countries which had not been suggested by either the Commission or Parliament. Sixth,
Article 3, second indent, requires that purchases in a developing country are integrated as thoroughly as possible into Community development policy towards that country, in particular as regards the promotion of its food security. This requirement can also be found in the Commission's draft and the Parliament's amendment thereof, but the Council formulates this requirement better.

While not following Parliament and clearly asserting the requirement of Community origin of products supplied as Community food aid, the Council modified the Commission's draft provisions regarding the origin of food aid products mainly to take better account of the interests and needs of the developing countries. Nevertheless, Article 3 is - as the Commission's draft and the Parliament's amendment thereof - poorly drafted and inconsistent. As Article 3 stands now, triangular operations and local purchases undertaken because the products are not available on the Community market or undertaken in an emergency do not have to consider the danger of possible disruption of the market of the supplying countries or the negative effects on the food supply of their populations; and, they do not have to be integrated in the Community development policy towards the supplying country. This does not make any sense; it is clear that Article 3 should at least be reorganized.

It should be noted at this point that in 1987 and 1988 the number of triangular transactions and the Community's expenditure on such transactions has gone up quite significantly. In 1987 expenditure amounted to 43,855 mECU and in 1988 to 82,616 mECU. It is difficult, however, to compare these data with the data mentioned above for the years 1983-86 since the latter data do not include indirect triangular operations. In any case, triangular operations account at present for not even 10% of Community food aid operations\(^9\), which is all but impressive.

Most triangular operations were carried out in Eastern Africa and this is easily explained. This region, where white maize is the basic staple, is characterized by the presence of, on the one hand, countries which usually produce a surplus of the latter product, and, on the other hand, countries which normally have a deficit of this product. In the Sahel region, for example, the existence of surpluses in some

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\(^9\)HUBY, 1989, 64.
countries and deficits in other is less frequent.

Recent studies have highlighted and confirmed that the triangular operations have undoubtedly a number of advantages. In comparison with 'normal' food aid operations, triangular operations are (at least on paper) often more cost-efficient, their delivery delays are shorter and allow for food aid operations in products better adapted to the local dietary habits. In practice, however, triangular operations prove not seldom to be problematic and this explains - at least partially - why triangular operations remain limited. A first problem relates to the local prices. Often triangular operations are not undertaken or, if they are undertaken, less interesting because of the local prices are just too high. A second problem relates to difficulties encountered by the Community (and other donors) to get trading partners with the experience to make a proper job of negotiating a supply contract or providing and transporting goods within reasonable delays. Reportedly many triangular operations fail to get off the ground because there are no qualified staff in the local firms and local authorities. A third and last problem relates to the sort of products asked for by the recipient and the sort of products on offer. Depending on the region, most developing countries tend to want in the first place wheat, rice or white maize as food aid. Few developing countries, however, produce sufficient wheat or rice to export it and the possibilities for triangular operations in these products are therefore limited. A number of developing countries, such as for example Senegal, Mali and Sudan, regularly have exportable surpluses of millet and sorghum but these products are almost never asked for by food aid recipients. These three problems may help to explain why in spite of the expanded possibilities for triangular operations under the present applicable second framework regulation and their potential to improve the

9See i.a.: HAY et al., European Community Triangular Food Aid, FSG/CEC. 1988.

92See on the problems encountered: HUBY, L., 'Food aid of a more original kind', The Courier, November-December 1989, 64.
efficiency of food aid actions as well as their contribution to the agricultural
development of the supplying developing country and the establishment of a
system of regional food security, triangular operations have not become in recent
years a far more important element of the Community's food aid policy. In its
Resolution of 21 November 1989 the Council reiterated the advantages of
increased use, wherever desirable and possible, of triangular operations but it also
recognized the existence of certain "impediments" to the implementation of such
operations.

It should be noted in this context that the 1986 Food Aid Convention, as its
predecessor, the 1980 Convention, requires in Article III (7) its members, who
intend to purchase the cereals they are to supply under the Convention in another
country, to make those purchases from other members and by preference from
developing members to the Convention. Since no developing country apart from
Argentina is a member to the 1986 Food Aid Convention, it is clear that this
requirement would at least in theory have been a considerable restriction on the
possibility to carry out triangular operations. The Convention stipulates further
in the same Article III (7), however, that:

These provisions shall not, however, exclude the purchase of grain
from a developing country, not a member of this Convention [...]

It will be recalled that Article 3 of the second framework regulation also provides
for the possibility to undertake local purchases. So far, there have, however, been
(very) few of such purchases of food aid products within the recipient countries
and most of them have been through international or non-governmental
organizations.

In this context, it also deserves to be noted that Council Regulation (EEC) No
2508/88 of 4 August 1988 on the implementation of co-financing operations for

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93 Theoretically, because the Community supplies and is likely to supply in the future far less
cereals originating from outside the Community than its cereal food aid commitment over and above
its Food Aid Convention commitment. (The quantities of cereal food aid which the Community does
not supply under the Food Aid Convention are not subjected to the Convention's rules).
the purchase of food products or seeds by international bodies or non-governmental organizations stipulates in its Article 2 (1):

The Community contribution may cover the purchase, in the Community or in the developing countries, of the food products referred to in Article 1 [...] and does not require organizations to buy 'European'.

Note, however, that the Commission had proposed that international organizations and NGOs would be allowed to purchase the food aid products 'in the Community or in developing or other non-member countries'. The Council did, however, not want to go this far.

While the basic requirement of Community origin of the products supplied as Community food aid indicates the continued relevance of the promotion of domestic agricultural interests among the objectives of the Community's food aid policy, it should be noted that it is not only the considerable extension of the exceptions to this requirement of Community origin (triangular operations and local purchases) which highlights the decline in importance of the latter objective in favour of the promotion of the development of the recipient country and the alleviation of human suffering. The shift in the balance of compromise between the food aid policy's objectives is even more underscored by the absence of any reference to common agricultural policy legislation in Article 3 of the second framework regulation. It will be recalled that its predecessor in the first framework regulation referred with regard to the origin of the food aid products mobilized within the Community explicitly to 'the rules and procedures laid down under the common organizations of markets' and that in the present Article 3 any reference to these rules and procedures was dropped. These rules and procedures have all been replaced by Article 4 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down the general rules for the mobilization in the

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<sup>*Article 2 (1) of Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations, O.J. 1988, L 220/4.</sup>

<sup>**COM(88) 158 final, Article 2 (1) of the Commission's draft.**</sup>
Community of products to be supplied as food aid. The latter article only stipulates:

Depending on the mobilization procedures determined for each supply operation, the product shall:

(a) be purchased or have been purchased on the Community market;

(b) be purchased from an intervention agency designed in the notice of invitation to tender, or be manufactured from goods purchased from such a body [...]"}

As for the choice between the market and the intervention stocks, Community law does no longer provide for any criteria or guidelines. Community law does no longer require the Commission to consider the situation of the agricultural markets before deciding on the mobilisation, as former legislation did for cereals, nor does it lay down the obligation to use first of all the products held in the intervention stocks, as was the case for dairy products. While under the former legislation, the involvement of the common agricultural policy management committees 'forced' the Commission to take account of domestic agricultural interests, under the present legislation the Commission was freed from this scrutiny. As I will explain in detail in Section 3.6 of this Chapter, the above mentioned management committees no longer play a role in food aid operations.

In the absence of any criterion or guideline and freed from the scrutiny of the common agricultural policy management committees, the Commission can for the first time base its choice between purchase on the Community market or purchase

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6 Note, however, that pursuant to Article 12 of the second framework regulation the rules and procedures laid down under the common organizations of markets remained applicable until the entry into force of Commission Regulation (EEC) No 2200/87 of 8 July 1987.

7 Article 4 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down the general rules for the mobilization in the Community of products to be supplied as food aid, OJ. 1987, L 204/2.

8 Note only that Commission Regulation (EEC) No 2200/87 states in its recitals that: "Whereas it should be made clear that the arrangements for mobilizing, and in particular for mobilizing products from the stocks held by the intervention agencies, are adopted in the context of the Community rules on trade in the products concerned;".

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from the intervention agencies on considerations of aid efficiency alone. It should be observed, however, that it is still DG VI which prepares the Commission decision on the mobilisation.

As I noted above, the rules on the origin of products supplied as food aid laid down in Article 3 of the second framework regulation and Article 4 of Commission Regulation (EEC) No 2200/87 represented a major shift in the balance of compromise between the objectives of the Community food aid policy in favour of the latter's developmental and humanitarian objectives. Not everybody, however, was satisfied with the balance struck and this is hardly surprising considering that 90% of all food aid is still mobilized within the Community. Having underlined the importance the Community food aid policy will continue to have in the foreseeable future in the context of fight against hunger, Parliament reiterated in its Resolution on the fight against hunger of 19 February 1987 its demands:

[...] for better coordination of food aid operations with other development aid instruments and greater use of triangular operations and alternative operations in place of food aid.99

In a 1989 Resolution on the common agricultural policy and developing countries, Parliament suggested that the adverse effect the liberalization of agricultural trade, the reduction of subsidies and resulting higher world market prices is likely to have on the balance of payments and the budget of poor, food importing developing countries with a structurally high food deficit (e.g. Egypt or Bangladesh), could be alleviated by additional food aid provided inter alia that there is an increase in triangular operations.100


In Chapter 1 and 2, I pointed out that certain Member States, as the main producers of the surpluses the Community supplied as food aid, benefitted considerably more from the food aid policy and that the uneven distribution of the 'spoils' did not fail to have an important effect on the evolution of the food aid policy. To the extent that the Community continued to supply mainly surplus products such as wheat and dairy products, it is only normal that the main producers of these products also continued to benefit from the food aid policy more than other Member States. It should be noted in this respect that at present 80% and more of the wheat supplied as Community food aid comes from France, virtually all rice comes from Italy and dairy products mainly come from Germany and the Benelux.

3.1.3 The quality of products supplied as Community food aid

In its 1987 Special Report on the quality of Community food aid, the Court of Auditors estimated that in the period 1976-1985 between 200 and 400 lots out of a total of about 8000 were in some way deficient, including deficiencies which had nothing to do with the quality of the food aid products sensu stricto. Contradicting the 'horror stories' one could regularly read in the press, these data seemed to suggest that the percentage of deficient lots was in fact not that high and almost 'acceptable'. There are, however, reasons to fear that the situation

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101 The Court of Auditors reports in Annex 1 of its Special Report 1/87 90 cases of faulty deliveries and estimates that they represent a number of lots to which it is difficult to put a figure but which must be in the region of between 200 and 400 (COURT OF AUDITORS, Special Report 1/87, 4.).

102 This was sometimes insufficiently stressed in the press which of course preferred to focus on the dramatic mishaps documented in the report. In this respect, Parliament was right to regret the 'distorted version of the report which has sometimes been given in the press' (European Parliament Resolution of 10 March 1988, point 3, O.J.1988, C 94/136.). During the Parliamentary debate on the Court's Special Report, the Rapporteur Mrs Fuillet commented: "Although [...] drawbacks existed, they certainly did not warrant the abuse which some parts of the press, particularly in Belgium, the United Kingdom and Italy, indulged in, giving public opinion a very bad image of the Community [...]" (Debates of the European Parliament, O.J. 1988, Annex No 2-363/50.). During the same debate, MEP Cicciomessere pointed out, however, that: "It is probably only thanks to the scandal that has been caused in certain countries by this report, as well as the previous report on food aid, that the Commission has been persuaded to take certain action, changing as a result certain regulations and practices. The fact that the press has focused attention on us and our work on this occasion has been a stimulating factor of considerable importance." (Debates of the European Parliament, O.J. 1988,
Products supplied as Community food aid

was in fact much worse than the number of irregularities established by the Commission and the Court of Auditors or the number of complaints by the recipients would lead us to believe. The random checks carried out by the Commission and the Court were limited in scope, and, as I already mentioned above, it is known that many food aid recipient countries are very reluctant to complain about the quality of the food aid. Reportedly, they consider it improper and impolite to complain about a gift and will often accept even poor quality goods. It should also be noted, the recipient countries often also lack the technical and administrative means to check the quality of the food aid constantly and in due time and to pursue complaints in case of sub-standard quality deliveries. Furthermore, even if the number of faulty lots would not exceed 5%, there is no reason for complacency. Bad quality food aid deliveries seriously damage the Community's reputation both among Third World countries and at home and it is obvious that for the recipient population the consequences can be rather dramatic if the long awaited food aid turns out to be totally or partially unfit for human consumption.

In several of its annual reports and in its 1987 Special Report on the quality of Community food aid, the Court of Auditors explicitly noted a few dozen cases of food aid supplies of sub-standard quality. As I already observed earlier in this study, it is not that Community law applicable in those years (1983-86) allowed for the supply as food aid of sub-standard quality products. For cereals supplied as

Annex No 2-363/52-53.)

The 90 cases mentioned above are cases of unsatisfactory delivery the Court of Auditors found during audit visits performed between 1981 and 1985 and as a result of an enquiry into the cases handled by the food aid disputes department of DG VIII (COURT OF AUDITORS, Special Report 1/87, 4.). They certainly do not represent all cases of unsatisfactory delivery.

COURT OF AUDITORS, Special Report 1/80, 134; COURT OF AUDITORS, Special Report 1/87, 18. During an audit visit to Ghana in January 1985, the Court of Auditors discovered that 300 tonnes of rice supplied under the 1983 programme had been unfit for human consumption and that the Ghanese authorities had not submitted any official complaint with the Commission nor submitted any claims to the insurers (COURT OF AUDITORS, Special Report 1/87, 18.).

food aid, the 1980 and 1986 Food Aid Conventions required that these cereals were fit for human consumption and more specific quality requirements were laid down separately for each mobilization of cereals intended as food aid. To mention one example, one could refer to Commission Regulation (EEC) No 1978/83 of 18 July 1983 on the delivery of common wheat flour to Swaziland which stipulated in its Annex 1, point 9:

Characteristics of the goods:

- flour of fair and sound merchantable quality, free from abnormal smell and pests
- moisture: 14% maximum
- protein content: 10.5% minimum (N x 6.25 on dry matter)
- ash content: 0.62% maximum referred to dry matter.\(^{106}\)

For dairy products, the quality requirements were laid down in Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid, and in particular Article 3 (2) and Article 5 (2).\(^{107}\)

Article 3 (2) stipulated with regard to skimmed milk powder and butter:

As regards composition, quality and packaging:

(a) the skimmed milk powder must meet the requirements laid down in Annex I. If the skimmed milk powder for delivery is to contain vitamin additives, the notice of invitation to tender shall contain a reference to Annex I (B);

(b) the butter must meet the requirements laid down in Annex II;

(c) in special cases, specific requirements as regards composition, quality and packaging may be laid down in the notice of invitation to tender.

Article 5 (2) stipulated with regard to butteroil:

The butteroil to be supplied must meet the requirements laid down as regards composition, quality and packaging in Annex III. In


\(^{107}\)Before May 1983, Commission Regulation (EEC) No 303/77, and in particular Article 6 (2) and Article 9 (2) thereof, were still applicable. See: Section 3.1.3 of Chapter 2.
special cases, specific requirements as regards composition, quality and packaging may be laid down in the notice of the invitation to tender.

The Annexes either referred to the legislation concerning the quality required for intervention or laid down in considerable technical detail the quality requirements. The quality requirements of other products were laid down separately for each mobilization.

A general conclusion which can be drawn from all these provisions regarding the quality of the products supplied as food aid, is - as I already noted above - that Community law definitely did not allow for the supply of sub-standard quality products. Only occasionally and then reportedly often at the request of the recipient, the Commission allowed for the supply of products of a lesser quality than customary in Community trade or required for entry into intervention. For cereals and rice, the stipulated standards as regards quality were sometimes even higher.10 As during the pre-1983 period, the quality problems during the period leading up to the second framework regulation and the adoption of Commission Regulation (EEC) No 2200/87 - the period covered by the Court of Auditors' 1987 Special Report - were in my view still mainly due to: (1) insufficient quality control; (2) inappropriate packaging; and (3) but to a lesser degree, improper transportation.

In the period leading up to the second framework regulation and Commission Regulation (EEC) No 2200/87, the main responsibility for quality control still rested with the intervention agencies. With regard to cereal food aid, 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 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

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10 COURT OF AUDITORS, Special Report 1/87, 8.
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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.\textsuperscript{109}

With regard to dairy food aid, Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid stipulated in its Articles 7 and 8:

Article 7

Member States shall take the measures necessary to ensure that the health standards in force on their territory are met and that there is no fat other than butterfat in the products supplied under this Regulation.

Article 8

1. If the skimmed milk powder or butter to be supplied is purchased on the Community market, the competent body of the Member State in which the tender was lodged shall check that the composition, quality and packaging of the products comply with the conditions laid down in Chapter 1 of this Title.

2. Where the skimmed milk powder is to contain vitamin additives, or where the butter is to be processed into butteroil, the competent body of the Member State concerned shall check that the provisions laid down in Chapters 1 and 2 of this Title have been complied with during manufacturing process.

3. The competent body of the Member State shall issue a certificate on completion of the checks referred to in paragraph 1 and 2. The cost of these checks shall be borne by the successful

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tenderer.\textsuperscript{110}

Note that for dairy products coming from the intervention stocks, no quality checks were called for. It is true that when taken into store, the dairy products were checked to see whether they conformed to the quality standards for intervention but by the time these dairy products were mobilized, they may well have deteriorated. The fact was that the instances of poor quality were most frequent where the products came from intervention stocks.\textsuperscript{111} Note also that for cereals, the participation of the recipient's representative and successful tenderer were invited to take part in the control operation\textsuperscript{112} while for dairy products this was not the case. Furthermore, in the case of cereals, the intervention agency entrusted the control to an independent laboratory while in the case of dairy products it was the intervention agency itself which carried out the checks.\textsuperscript{113} Both for cereals and milk products, Community legislation only provided for quality checks before shipment and not at the port of landing or the place of destination.

\textsuperscript{110}Articles 7 and 8 (1) - (3) of Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid, OJ. 1983, L 142/4-5. For the purpose of the checks referred to in paragraph 2 of Article 8, the successful tenderer shall notify the competent control body, in writing, of the date when manufacture is to begin, at least three working days before that date. The lots to be supplied may be dispatched from the place of manufacture and packaging only after authorization by the competent body (Article 8 (4)). From the time when the checks referred to in paragraphs 1 and 2 are completed, the products shall be subject to customs control, or to a form of administrative control offering equivalent guarantees, up to the time when they have left the geographical territory of the Community (Article 8 (5)).

\textsuperscript{111}COURT OF AUDITORS, Special Report 1/87, 8. The Court of Auditors reported several instances in which the skimmed milk powder supplied came from out-of-date intervention stocks. In 1982, India received 5000 t of skimmed milk powder which was older than had been stipulated in the supply agreement (seven to eight months old instead of six months) and of the skimmed milk powder supplied to Mali that same year 11 tons had to be destroyed because it had gone bad (COURT OF AUDITORS, Special Report 1/87, 28.).

\textsuperscript{112}Although it must be observed that the recipients seldom did participate. In its reply to the Court's observations, the Commission noted, however, that it did not consider that the recipient's absence could lead to less thorough checking on the part of the intervention agencies (COURT OF AUDITORS, Special Report 1/87, 45.).

\textsuperscript{113}In its reply to the Court's observations, the Commission noted in this respect that since the intervention agencies were supposed to operate in the Community public interest the fact that they themselves carry out the checks should not mean that they are less objective (COURT OF AUDITORS, Special Report 1/87, 45.). If this was indeed the case, why then was the quality of the cereals checked by an independent laboratory?
With regard to products other than cereals and dairy products and cereals purchased outside the Community market, Community food aid legislation did not explicitly provide for quality control. The latter was a serious shortcoming to the extent that Community food aid in these products was becoming increasingly more important.

With regard to the quality checks to be carried out by the intervention agencies, the Court of Auditors remarked in its 1987 Special Report:

> The large number of instances of poor quality detected in goods that have [...] been certified as complying with the required standards, suggests that, in many cases, this attestation by the intervention agency is issued without thorough checks [...]114

To mention just one of those instances, one could refer to the delivery of 15,000 tonnes of maize delivered to Mozambique in July 1983. In this case the responsible (French) intervention agency - after carrying out the quality check itself instead of commissioning this task to an independent laboratory as Commission Regulation (EEC) No 1974/80 explicitly required - had declared that the goods were of the required quality while this was definitely not the case. In fact, the maize delivered was found to be old, full of broken grains, foreign grains, impurities and was totally unfit for human consumption.113 The only excuse given by the agency was that the mobilization regulation did not specify that the maize had to be 'fit for human consumption' (!).116 Two years later, under the 1985 programme, the same intervention agency declared that 8,000 tonnes of maize supplied by the same successful tenderer but this time for Burkina Faso were of the required quality while subsequent tests revealed again that the maize was in fact of unacceptable quality and was probably maize fodder.117 It is known that in

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114 COURT OF AUDITORS, Special Report 1/87, 11.
115 COURT OF AUDITORS, Special Report 1/87, 28.
116 COURT OF AUDITORS, Special Report 1/87, 11.
117 COURT OF AUDITORS, Special Report 1/87, 28. In its 1987 Special Report, the Court of Auditors reported that other supplies of maize from France have also caused problems. Complaints have been made by Tanzania concerning 4000 tonnes, by Zambia concerning 500 tonnes, by Ethiopia concerning 5000 tonnes, by Kenya concerning 150 tonnes, by Uganda concerning 150 tonnes and by

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a number of Member States the intervention agencies were 'too' close to the food aid contractors to entrust them with the quality control.\textsuperscript{118}

In view of the fact that the intervention agencies could often not be relied upon to ensure the quality of the products supplied as food aid, it was hardly surprising that the Commission carried out more and more quality controls itself. A far larger proportions of the budget appropriations provided for this purpose was used. In 1985, the Commission used 64% of the 1.7 m ECU available; in 1983, the Commission still used no more than 10% of the available appropriations.\textsuperscript{119} Since many of the complaints relating to the quality of dairy products concerned dairy products from intervention, the Commission became in particular involved in quality checks of these products and, reportedly, not without success.\textsuperscript{120} It should be noted, however, that certain intervention agencies hindered the execution of such checks arguing that there was no legal basis entitling the Commission to undertake such action. The Commission subsequently decided that it would no longer carry out these checks in its own name but on behalf and at the request of the recipients.\textsuperscript{121} The latter failed, however, to appease the intervention agencies who continued to oppose the Commission's checks and it was clear that the relevant legislation would have to be amended to allow explicitly for such checks.

Poor quality deliveries were, however, also quite often due to inappropriate

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Niger concerning 26,000 tonnes. As regards the maize supplied to Niger, the Commission's inspection team brought back a sample to Brussels; it was not even acceptable as animal fodder. The Commission decided not to allocate any further consignments of maize (COURT OF AUDITORS, Special Report 1/87, 28.).

\textsuperscript{118}See also: CHOLLET, J., 'The mobilization of food aid', \textit{The Courier}, November-December 1989, 66.

\textsuperscript{119}Only from 1984 onwards the Commission really started using the appropriations available for food aid quality control (COURT OF AUDITORS, Annual Report 1984, 83.)

\textsuperscript{120}The Commission claimed that these checks had resulted in a considerable decrease in the number of complaints about poor quality (COURT OF AUDITORS, Special Report 1/87, 11.).

\textsuperscript{121}The supply agreements were amended in order to inform the recipient countries of this change.
packaging. Judging from the mishaps reported by the Court of Auditors, packaging seemed to be especially problematic for skimmed milk powder and butteroil. In the period leading up to the second framework regulation and Commission Regulation (EEC) No 2200/87 of 8 July 1987, the packaging requirements for dairy products were laid down in Annex I and Annex III of Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid.\textsuperscript{122} For ordinary skimmed milk powder, the packaging requirements were those for intervention laid down in Annex II of Commission Regulation (EEC) No 625/78 of 30 March 1978.\textsuperscript{123} For vitaminized skimmed milk powder and butteroil, Commission Regulation (EEC) No 1354/83 of 17 May 1983 laid down specific packaging requirements as well as tests to check whether the packaging met the requirements. It would lead us too far to analyze the latter requirements in detail but it can be observed that these requirements insufficiently took account of the particular and often very harsh unloading, storage and in-land transport and distribution conditions in the recipient countries. This may be deduced from the many mishaps I already referred to above. The Court of Auditors noted in its 1987 Special Report that virtually every time it had been asked to examine stocks of butteroil, it had recorded that many of the canisters in which the butteroil was supplied were badly dented or cracked and leaking. In Pakistan, for example, more than 20\% of the canisters did not withstand the various handling processes they had to go through (transfer from ship to train, from train to lorry and from lorry to ox cart).\textsuperscript{124} The canister, a cylinder with a 5 kg capacity, was too tall and therefore not sufficiently resistant to shocks; more compact, almost disc-shaped canisters would be more suitable. Also the cartons in which the butteroil canisters were usually placed were often open and damaged on arrival; it was suggested that these cartons should be secured with metal hoops.


\textsuperscript{123}See also: Section 3.1.3 of Chapter 2.

\textsuperscript{124}COURT OF AUDITORS, Special Report 1/87, 30.
and that the glue used for making up or sealing the cartons should have long lasting, water-resistant qualities.\textsuperscript{12} In its reply to the Court's observations, the Commission pointed out that the packaging assemblies for the transport of butteroil underwent 'destructive' tests laid down in Annex III of Commission Regulation (EEC) No 1354/83 of 17 May 1983\textsuperscript{13} and that - since they survived these tests - the thickness of the sheet metal and the quality of the carton used had to be considered adequate. Furthermore, the Commission noted that the packaging requirements were those used in international trade and that the use of thicker sheet metal would increase the load weight and hence the transport cost without, however, providing an absolute guarantee against damage to the canister or the content in case of a drop or fall. The Commission did admit, however, that metal hoops to secure the cartons could be quite useful.\textsuperscript{17} The Court of Auditors also noted in its 1987 Special Report that the bags used for packaging milk powder were 'extremely flimsy, easily damaged and not watertight'. In the case of a delivery of 1000 tonnes of skimmed milk powder to Tunisia in November 1983, a large proportion of the bags were torn, sometimes even through the inside polyethylene layer which spoilt the milk powder by excessive humidity. Interesting to note was that milk powder which Tunisia imported commercially at the same time had been packaged with an extra outer bag and was in perfect condition.\textsuperscript{18}

As I noted in Chapter 2, there were in the period 1977-82, repeated complaints about the size of the bags (25-kg) in which food aid in skimmed milk powder was normally delivered (in spite of the fact that Community law provided for the possibility to supply the skimmed milk powder in smaller bags).\textsuperscript{19} The Court of

\textsuperscript{12}COURT OF AUDITORS, Special Report 1/87, 6 and 30.

\textsuperscript{13}These tests, which were already provided for in Commission Regulation (EEC) No 303/77, simulated an accident rather than normal handling conditions. They were monitored by an approved body which issued a certificate of conformity.

\textsuperscript{17}COURT OF AUDITORS, Special Report 1/87, Replies of the Commission, 43.

\textsuperscript{18}COURT OF AUDITORS, Special Report 1/87, Special Report 1/87, 7 and 30.

\textsuperscript{19}See: Section 3.1.3 of Chapter 2. Article 6 of Commission Regulation (EEC) No 303/77 already provided that "in exceptional cases, specific packaging requirements may be laid down." Article 3 (2) c of Commission Regulation (EEC) No 1354/83 contained a similar provision. However, for vitaminized skimmed milk powder, Commission Regulation (EEC) No 1354/83 explicitly provided for the possibility to package the food aid product in a packaging more suited to the requirements of
Auditors did not explicitly repeat this criticism in its Special Report. It did observe that for vitaminized skimmed milk powder, Commission Regulation (EEC) No 1354/83 provided for the possibility of shipping the powder in 1-kg or 2-kg sachets packed in lots of 20 kg but noted that this packaging was little used and could still not compare with the tins of 2 and 5 kg used by the United States and Switzerland.\textsuperscript{10} The Commission did not reply to the criticism on the packaging of skimmed milk powder.

An important aspect of the packaging of food aid products are the markings on the packages. For cereals, Community legislation normally stipulated that the bags indicated in letters at least 5 cm high the type of cereals and the name of the donor, the European Communities, and often also the name of the recipient in the official language(s) of the recipient country. If the cereal food aid was supplied through an international organization or if the cereals were supplied for free distribution in kind this was also marked on the bags. By way of example, one could refer to the markings on the bags of durum wheat supplied to Tunisia through the League of Red Cross Societies under the 1986 programme. Pursuant to Annex I, point 10, second paragraph of Commission Regulation (EEC) No 3308/86 of 29 October 1986:

[...\sloppy] on the sacks shall be printed a red crescent 15 cm high with the points facing to the left as well as the following (in letters of at least 5 cm high):

\textbf{'BLE DUR / DON DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE / ACTION DE LA LIGUE DES SOCIETES DE LA CROIX-ROUGE ET DU CROISSANT-ROUGE / POUR DISTRIBUTION GRATUITE / TUNIS'}\textsuperscript{11}

For dairy products, the marking requirements were laid down on the Annexes to

\textsuperscript{10}COURT OF AUDITORS, Special Report 1/87, 7.

\textsuperscript{11}See e.g. Commission Regulation (EEC) No 3308/86 of 29 October 1986 on the opening of a new tendering procedure for the supply of durum wheat to the League of Red Cross Societies (LRCS) as food aid, O.J. 1986, L 305/25, Annex I, point 10. Note, however, that cereals were often supplied in bulk.
Commission Regulation (EEC) No 1354/83 of 17 May 1983.\textsuperscript{132} For skimmed milk powder, for example, Community legislation required that:

The bags shall bear the following information in the language(s) specified in the notice of invitation to tender:

(a) the description 'spray skimmed milk powder';
(b) the words 'Gift of the European Economic Community', plus the particulars given in the notice of invitation to tender;
(c) the net weight;
(d) the month and year of manufacture;
(e) the processing undertaking either in code or in clear;
(f) the number of the Regulation authorizing the tendering procedure and the description of the lot as given in the invitation to tender.

This information must appear on at least one side of the bag and cover at least one-third of the surface area. If glue is used for labelling, it must be water-resistant.\textsuperscript{133}

The marking requirements for vitaminized skimmed milk powder, butter and butteroil were mutatis mutandis the same. Occasionally the required markings were missing and then the successful tenderer (and the intervention agency which should have noticed this negligence) is at fault but most problems regarding markings related to shortcomings in the Community's relevant legislation.\textsuperscript{134} The Court of Auditors had already in its 1979 Annual Report remarked with regard to these marking requirements that it was unfortunate that the packages of butteroil and milk powder did not indicate how the products should be used.\textsuperscript{135} In its 1987 Special Report it repeated this observation.\textsuperscript{136} The Court also criticized again the


\textsuperscript{134}COURT OF AUDITORS, Special Report 1/87, 7.

\textsuperscript{135}See: Section 3.1.3 of Chapter 2.

\textsuperscript{136}COURT OF AUDITORS, Special Report 1/87, 31.
fact that usually the bags of vitaminized skimmed milk powder did not give an uncoded indication of the date of manufacture, and no indication at all of the expiry date, which was a serious omission since vitaminized skimmed milk powder can only be kept for 6 months.\textsuperscript{137} It should be noted that other donors usually indicated the date of manufacture, the expiry date and directions for the use. Furthermore, the Court of Auditors observed that the markings on the packaging which indicated that the product is a gift of the Community are, on the one hand, sometimes not sufficiently obvious, and, on the other hand, sometimes inappropriate. In 1983, the Commission Delegation in Morocco noted with regard to a milk powder delivery to the latter country:

The packaging gives more publicity to the contractor than to the fact that the product is a gift form the Community.\textsuperscript{138}

On the other hand, the marking 'Gift of the European Economic Community' was likely to create confusion among final consumers when the aid was intended for sale. Reportedly the sale of butteroil marked 'Gift of the European Economic Community' by the authorities of Cape Verde created a real scandal although the sale was totally regular and in line with the supply agreement.\textsuperscript{139} It was obvious that also in this respect Community legislation could be improved.\textsuperscript{140}

Finally, a number of poor quality supplies were definitely due to the conditions under which the food aid products were shipped. As I already noted in Chapter 2, 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 - still applicable during the period leading up to the second framework

\textsuperscript{137}See also: Section 3.1.3 of Chapter 2. After 6 months the vitamins start to break down and eventually disappear. Non-vitaminized skimmed milk powder can in some cases cause serious gastric disorders (COURT OF AUDITORS, Special Report 1/87, 31.).

\textsuperscript{138}COURT OF AUDITORS, Special Report 1/87, 32.

\textsuperscript{139}COURT OF AUDITORS, Special Report 1/87, 32.

\textsuperscript{140}In its reply to the Court's observations, the Commission merely stated that it continued to ensure that any failings regarding proper markings were penalized, and that the responsibility for checking correct markings was with the Member State of mobilization (COURT OF AUDITORS, Special Report 1/87, Replies of the Commission, 43.).
regulation and Commission Regulation (EEC) No 2200/87 of 8 July 1987 - stipulated in its Article 4 (4) (d) with regard to sea transport of cereals financed by the Community:

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;

With regard to the sea transport of dairy products financed by the Community, Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid stipulated in its Article 18 (1):

The successful tenderer shall arrange for transport by the fastest usual sea route to the port of destination specified in the notice of invitation to tender and shall conclude a contract at his own expense, on the usual terms, for the carriage of the goods.

Marine transport shall be in vessels meeting all the technical and health requirements for transport of milk products. Vessels shall be not more than 15 years old in the case of transport by charter service and not more than 25 years old in the case of transport by liner service.

In the event of default or unsatisfactory transportation the successful tenderer shall, at the recipient's request, make all the necessary transport arrangements, including charter reservations.141

During the period leading up to the second framework regulation and Commission Regulation (EEC) No 2200/87 of 8 July 1987, this legislation, and especially the requirements regarding the quality of the vessels used, seemed to have reduced the mishaps during sea transport considerably. In its 1987 Special Report the Court of Auditors reported no misadventures since 1983.

141 Article 18 (1) of Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid, OJ. 1983, L 142/8. Note that this article concerned only supplies cif and that Article 19, which concerned supplies free-at-destination, did not stipulate similar requirements but the absence of a reference to Article 18 cannot but be an oversight.
Note that the Community resisted the temptation to reserve the food aid shipments it financed for vessels flying the flag of a Member State, or failing that, of the country receiving the aid.¹⁴²

The 1987 Special Report of the Court of Auditors on the quality of food aid was finished in January 1987 and based on finding of the preceding years. It therefore did not take into account the second framework regulation adopted on 22 December 1986, Commission Regulation (EEC) No 2200/87 of 8 July 1987 on the general rules for the mobilization in the Community of products to be supplied as Community food aid and the Commission Notice of 14 August 1987 on the supply of various products as food aid by invitation to tender or direct award procedure adopted pursuant Article 5 of the latter Commission Regulation. With regard to the quality of the products supplied as Community food aid, the framework regulation and the Commission's Regulation and Notice introduced a number of important changes. The Court of Auditors itself remarked about these new rules that they agreed with its recommendations for improvement on several important points.¹⁴³ In its Resolution of 10 March 1988 on the quality of food aid, the European Parliament noted:

[...] that the rules and administrative procedures and structures introduced in recent months, in large measure in response to the concerns of the Court of Auditors, make for more effective control and provide a better guarantee of the quality of aid.¹⁴⁴

It remains to be established whether this optimism is justified.

¹⁴²See on this also: Section 3.1.3 of Chapter 2.

¹⁴³The Court referred in particular to the second food aid framework regulation but had apparently also knowledge of the draft version of what would become Commission Regulation (EEC) No 2200/87 (COURT OF AUDITORS, Special Report 1/87, 4.). In the introductory paragraphs of its reply to the Court's observations, the Commission also pointed out as a general observation that, broadly speaking, the new rules followed the line indicated by the Court of Auditors. (COURT OF AUDITORS, Special Report 1/87, Replies of the Commission, 42.).

As regards the quality requirements of the products supplied as food aid, the currently applicable legislation is laid down in Article 5 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 which stipulated:

The characteristics of the products mobilized and the requirements regarding market preparation shall be published in the Official Journal of the European Communities.\(^{145}\)

and in the subsequently published Commission Notice of 14 August 1987 on the supply of various products as food aid by invitation to tender or direct award procedure.\(^{146}\)

For skimmed milk powder, the Commission Notice merely refers - as Commission Regulations (EEC) No 303/77 of 14 February 1977 and No 1354/83 of 17 May 1983 had done before - to the quality requirements laid down in Annex I (1) to Commission Regulation (EEC) No 625/78 of 30 March 1978 on detailed rules of application for public storage of skimmed milk powder.\(^{147}\) The Notice also stipulates that the control methods to be used when checking the quality of the skimmed milk powder are the methods laid down in Annex I (a) and (b) of the latter Commission Regulation.\(^{148}\)

For vitaminized skimmed milk powder, the Commission Notice does the same but stipulates in addition an age requirement and specific requirements regarding the

\(^{145}\) Article 5 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid, O.J. 1987, L 204/3.

\(^{146}\) Commission Notice of 14 August 1987 on the supply of various products as food aid by invitation to tender or direct award procedure, O.J. 1987, C 216/3.

Note that strictly speaking the Notice does not contain legal binding quality requirements. The provisions of the Notice are more a point of reference to which the Commission will (usually) refer when laying down the requirements for specific food aid operations.


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vitamin content. Note that all these provisions are identical to the requirements laid down in Commission Regulation (EEC) No 1354/83 of 17 May 1983.\textsuperscript{150}

For butter, the Notice stipulates some quality requirements and the control methods but leaves other quality requirements to be specified in the notice of invitation to tender which is annexed to the Commission's decision on the conditions governing mobilization of the butter to be supplied as food aid.\textsuperscript{151} All provisions of the Notice are identical to the ones laid down in Commission Regulation (EEC) No 1354/83 of 17 May 1983.

Also for butteroil, the Notice stipulates detailed quality requirements and control methods which are identical to the requirements and methods already laid down in Commission Regulation (EEC) No 1354/83 of 17 May 1983.\textsuperscript{152}

For cereals, the Notice laid down quality requirements for common wheat, durum wheat, barley, maize, sorghum, common wheat flour, maize flour, maize meal, oats flakes, wholly milled round-grain rice (non-parboiled), wholly milled long-grain rice (non-parboiled), and broken rice.\textsuperscript{153} While the wording differs, the Notice requires that all these cereals are when supplied as food aid, fit for human

\textsuperscript{149}Commission Notice of 14 August 1987, points I.1.B.1., 2., and 3., OJ. 1987, C 216/3. As regards the additional requirements concerning the vitamin content, for example, the Notice stipulates that the vitaminized skimmed milk powder should have a vitamin A content in IU/100 grams of 5,000 to 10,000; a vitamin D content in IU/100 grams of 500 to 1,000; and that the vitamin mixture incorporated into the milk must be guaranteed to contain 10 times as much vitamin A as vitamin D. Furthermore, it is required that the vitamins incorporated in the milk must be of pharmaceutical quality and produced for human consumption. The vitamin A must be in the form of palmitate and/or acetate.

As regards the age requirement, the Notice stipulates that the vitaminized skimmed milk powder must have been manufactured not more than one month (counting from the first day of the first full week following manufacture) before the control certificate is issued.

\textsuperscript{150}They were literally copied with a reference to Article 8 (3) of Commission Regulation (EEC) No 1354/83 of 17 May 1987, a regulation which was no longer valid, left unchanged!


\textsuperscript{152}Commission Notice of 14 August 1987, points I.3.1. and 2., O.J. 1987, C 216/7. As regards the quality requirements, the Notice stipulated in point I.3.1.1. (composition requirements) that the milk-fat content should not be less than 99.8% and the solids-non-fat and water content not more than 0.2%. In point I.3.1.2. (quality requirements sensu stricto), the Notice stipulated:

(a) free fatty acids content expressed as oleic acid, not more than : 0.35%;
(b) peroxide value expressed in miliequivalent of activated oxygen per kilogram not more than: 0.5%;
(c) neutralizers, preservatives, antioxidants: none;
(d) taste and smell: clean, absence of off-taste and off-smell.

\textsuperscript{153}Commission Notice of 14 August 1987, point II.A.1.to II.A.11., O.J. 1987, C 216, 8-10.
consumption, of fair sound merchantable quality and free of odour and pests. In addition, the Notice lays down more specific quality requirements for each of these cereals and it also indicates, at least for wheat and wheat flour, the quality control tests.\textsuperscript{154} Previously the quality requirements for cereals had been laid down for each cereal food aid operation separately in the Commission regulations laying down the conditions governing the mobilization and in particular in the notices of invitation to tender which were annexed to these regulations.\textsuperscript{155} A cursory check does not suggest, however, that the Notice stipulates stricter quality requirements than the notices of invitation to tender used to stipulate.

The notice finally also lays down quality requirements for vegetable oils, and in particular refined rapeseed oil, refined sunflower oil, refined palm oil and olive oil. As for cereals the Notice requires that the vegetable oils are of sound, fair and merchantable quality and meet a number of additional, more specific requirements.\textsuperscript{156}

It should be noted that - as is explicitly remarked in the introductory paragraph to the Notice and repeated again in a footnote concerning the quality of cereals - the _

\textsuperscript{154}To give one example of the more specific requirements and control methods, one could refer to point II.A.6. which stipulated for common wheat flour:
- moisture: 14\% maximum (ICC Method No 110);
- protein content: 10.5\% minimum (N x 6.25 in terms of dry matter) (ICC Method No 105);
- Hagberg falling number of at least 220, including the preparation (agitation) time of 60 seconds (ICC Method No 107);
- Zeleny index of at least 20 (ICC No 116);
- ash content: 0.62\% maximum, referred to dry matter (ICC Method No 104).

Note that for wheat and durum wheat, the Notice also refers to the quality requirements laid down in Regulation (EEC) No 1569/77 (OJ. 1977, L 174/15.) as last amended by Regulation (EEC) No 417/87 (O.J. 1987, L 42/24.).

\textsuperscript{155}The only general requirement being the one imposed by the successive Food Aid Conventions that the cereals supplied as food aid are fit for human consumption.

\textsuperscript{156}Commission Notice of 14 August 1987, points III.A.1. to 4., OJ. 1987, C 216/11-12. To give one example of the more specific requirements, one could refer to point III.A.4. which stipulated for olive oil:
- water and impurities: 0.2\% maximum;
- free fatty acids: not more than 3\% expressed as oleic acid;
- beta-sitosterol: not less than 93\% of the total sterol content;
- absence of contaminants;
- absence of soap;
- good taste;
- absence of taste defects;
- oxidation: - Kreiss test: negative,
  - peroxide number: below 20 milliequivalents of active oxygen per kilogram of oil.
1983-1989: Development and relief as primary policy objectives

the Notice and repeated again in a footnote concerning the quality of cereals - the Commission can always deviate from the above mentioned quality requirements and lay down different requirements in the regulations on the conditions governing the mobilization of the products to be supplied as food aid should this be necessary. In the case of cereals, it is in theory at least up to the recipient to specify the quality of the cereal food aid granted to it. The quality requirements of the Notice are merely given for guidance and easy reference. 157

As I observed above, the problem of sub-standard quality supplies is, however, as a rule not related to the quality requirements laid down in Community law; these requirements are usually sufficiently high. It will be recalled that during the pre-1987 period food aid quality problems were mainly due to: (1) insufficient quality control; (2) inappropriate packaging; and (3) to a lesser degree, improper transportation. Does the currently applicable legislation as laid down in the second framework regulation, Commission Regulation (EEC) No 2200/87 of 8 July 1987 and the Commission Notice of 14 August 1987, allow to remedy these pre-1987 flaws?

With regard to quality control the difference with the pre-1987 period is considerable. It will be recalled that during the pre-1987 period, the responsibility to ensure that the products supplied as Community food aid were of the required quality was with the intervention agencies. In its 1987 Special Report as well as in previous reports, the Court of Auditors had raised serious doubts about the effectiveness of the checks undertaken by the intervention agencies. Furthermore, the Community's legislation on quality control of dairy products supplied as food aid had some obvious gaps and explicit legislation on quality control of products other than cereals and dairy products as well as of cereals purchased outside the Community did not exist.

The currently applicable rules on quality control are laid down in Article 16 of

157 See footnote 1 to point II of the Commission Notice of 14 July 1987, OJ. 1987, C 216/8. In the case of dairy products and vegetable oils, the Notice indicates the quality the Community would normally supply.
Commission Regulation (EEC) No 2200/87 of 8 July 1987.\textsuperscript{158} The latter article sets out a meticulous system of quality (and quantity) control applicable to all products mobilized in the Community to be supplied as Community food aid, putting an end to the patchy and inconsistent quality control legislation of the pre-1987 period and at the same time highly 'simplifying' the situation. This system is described in detail below in Section 3.6.4 of this Chapter but I would like to indicate already at this point some of the salient features of the new system which according to recent statements of Community officials has proved to be complete success virtually eliminating food aid supplies of sub-standard quality.\textsuperscript{159} First, the quality checks are no longer carried out by the intervention agencies but by specialized, private undertakings selected in advance by the Commission by invitation to tender pursuant Article 10 of Commission Regulation (EEC) No 2200/87 of 17 May 1987 and usually referred to as the 'monitoring agencies'.\textsuperscript{160} Unlike the intervention agencies, these agencies serve only one master, focus on only one task, and have a clear interest in doing this task as professional as possible. Second, the quality of the food aid products is checked (by the designated monitoring agency and using the tests) not only at the port of shipment but in case of supply free-to-port-of-landing and supply free-to-destination also at respectively, the port of landing and the place of final destination.\textsuperscript{161} It is obvious that this final check of the products at the stage where the quality really matters, namely the stage at which the recipients take delivery is very helpful in ensuring the quality of the food aid products and reducing disputes and scandals. Useful is also that while the final check is carried out only at the port of landing or the


\textsuperscript{160}It should be noted that the Commission could in theory at least also have entrusted this task to its own officials but this would undoubtedly have been more expensive and would probably have required extra staff.

\textsuperscript{161}For the new delivery arrangements, free-at-port-of-shipment, free-at-port-of-landing and free-at-destination, introduced by Commission Regulation (EEC) No 2200/87 of 8 July 1987, see: Section 3.6.4 of this Chapter.
place of destination, a first check is already carried out before shipment; deficient products can thus be replaced before shipment which saves time and money. Third, the new system provides for a far better worked-out system of certificates issued by the monitoring which (reliably) testify the conformity of the products supplied and the obligation for the successful tenderer to replace or supplement products when the monitoring agency establishes the non-conformity. Fourth, all interested parties are invited to participate in the sample taking and may contest the results of the checks carried out by the monitoring agency. In the latter case, a laboratory appointed by mutual agreement will repeat the checks and settle the dispute.

The new quality control system makes the Commission more interventionist and is of course more expensive. It may also be noted that some traders' organizations, such as 'the Grain and Feed Trade Committee of the EEC', were reportedly fiercely opposed to the new system and especially the use of specialized undertakings to check the food aid deliveries. Recently, however, these organizations have taken a more positive attitude, even regretting the unconditional opposition they manifested in the beginning. In its Resolution of 10 March 1988 on the quality of food aid, Parliament stated that it:

5. Underlines the fundamental advance represented by the new regulation's establishment of effective quality control [...]

7. Continues to monitor with interest the operation of the quality control system adopted by the Commission [...] 

8. Asks the Commission to encourage participation by the recipient countries in the procedures for supervision, quality control and monitoring of deliveries; [...] 

9. Asks the Commission to attach particular importance to quality control at the manufacturing and packaging stages;"
While the new quality control system has in fact been in operation for too short a time to draw any definitive conclusion on its functioning and effectiveness, Commission officials - as I already noted - seem very pleased with the results obtained so far. In the first year of application, there were definitely some practical problems with the implementation of this new, radically different system and Commissioner Christophersen openly admitted this in Parliament in March 1988. It will take some years of experience before one can seriously evaluate the present system. At first view, however, the new system, which in many respects reflects the recommendations made by the Court of Auditors, should allow the Community to ensure far better the quality of its food aid products. The only major shortcoming which can already be identified is the fact that the control system does not apply to Community food aid products purchased in developing countries.

As I noted in Chapters 1 and 2 and earlier in this Chapter, quality problems with food aid products were in the pre-1987 period also often due to inappropriate packaging. The standard packaging requirements, or market preparation requirements, currently applicable are laid down in Article 5 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 which stipulates:

The characteristics of the products mobilized and the requirements regarding market preparation shall be published in the Official Journal of the European Communities.\(^\text{165}\)

and in the subsequently published Commission Notice of 14 August 1987 on the supply of various products as food aid by invitation to tender or direct award procedure.\(^\text{166}\)

\(^{165}\) Article 5 of Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid, O.J. 1987, L 204/3

\(^{166}\) Commission Notice of 14 August 1987 on the supply of various products as food aid by invitation to tender or direct award procedure, O.J. 1987, C 216/3.

Note that strictly speaking the Notice does not contain legal binding packaging or marking requirements. The provisions of the Notice are more a point of reference to which the Commission will (usually) refer when laying down the requirements for specific food aid operations.
For skimmed milk powder, vitaminized skimmed milk powder, butter and butteroil, the Notice copies the packaging requirements sensu stricto and the marking requirements from Commission Regulation (EEC) No 1354/83 of 17 May 1983, the only differences with the old requirements being: (1) a small change in the wording of the requirements for butteroil; and (2) the deletion of the obligation to indicate the number of the Regulation authorizing the tendering procedure and the description of the lot as given in the notice of invitation to tender.\footnote{Commission Notice of 14 August 1987, point I., O.J. 1987, C 216/3-8.}

For cereals, the Notice stipulates packaging requirements - but no marking requirements - for cereals in grain form, for flour and meal and for oats flakes, giving a choice out of several sort of bags, except for oats flakes for which only one sort of bag is stipulated.\footnote{Commission Notice of 14 August 1987, point II., O.J. 1987, C 216/10-11.} In the pre-1987 period, the packaging requirements were laid down for each food aid operation separately and this makes the comparison difficult. It seems, however, that the packaging requirements of the Notice reflect the previous practice.

For vegetable oil, finally, the Notice stipulated some comparatively vague and obvious packaging requirements and no marking requirements.\footnote{Commission Notice of 14 August 1987, point III., O.J. 1987, C 216/12.}

It should be noted that the requirements regarding market preparation laid down in the Notice are - as the Commission explicitly notes in the introductory paragraph of the Notice - without prejudice to the special provisions laid down where appropriate on a case-by-case basis by the Commission, and that - as indicated in footnote 1 on page 8 of the Notice - the packaging requirements for cereals are merely given for guidance. In practice, there are, however, very few cases in which Community food aid is delivered in 'special' packaging.

The currently applicable packaging (and marking) requirements differ little from the pre-1987 requirements which were especially with regard to skimmed milk powder, vitaminized skimmed milk powder, butter and butteroil, the Notice copies the packaging requirements sensu stricto and the marking requirements from Commission Regulation (EEC) No 1354/83 of 17 May 1983, the only differences with the old requirements being: (1) a small change in the wording of the requirements for butteroil; and (2) the deletion of the obligation to indicate the number of the Regulation authorizing the tendering procedure and the description of the lot as given in the notice of invitation to tender.\footnote{Commission Notice of 14 August 1987, point I., O.J. 1987, C 216/3-8.}

Community legislation does still not require the bags to carry instructions on the use or, more importantly, an indication of the expiry date.

\footnote{Commission Notice of 14 August 1987, point II., O.J. 1987, C 216/10-11.}

\footnote{Commission Notice of 14 August 1987, point III., O.J. 1987, C 216/12.}
powder and butteroil criticized as being insufficient and inappropriate. The major difference with the pre-1987 situation is, however, that the compliance with the packaging requirements is checked (by designated the monitoring agency) in the same, rigorous manner as the quality of the food aid products. Therefore, while the new rules do not provide for 'better' packaging, the compliance with the rules will be better ensured.

Finally, as regards improper transportation, I noted earlier in this Section that already in mid-eighties the situation seemed to have improved. It will be recalled that both Article 4 (4) (d) Commission Regulation (EEC) No 1974/80 of 22 July 1980 laying down general implementing rules in respect to certain food aid operations involving cereals and rice, and Article 18 (1) of Commission Regulation (EEC) No 1354/83 of 17 May 1983 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid, laid down quite demanding requirements with regard to the sea-worthiness of ships that could carry Community food aid in the case the Community paid for sea transport. The currently applicable requirements with regard to the ships transporting Community food aid in case of delivery free-at-port-of-landing or free-at-destination are laid down in article 14 (2) of Commission Regulation (EEC) No 2200/87 of 8 July 1987. Article 14 (2) stipulates:

The successful tenderer shall arrange for maritime transport

- in vessels which are listed in the higher category of the classification societies in use in the Member States and which meet all the health requirements for the transport of foodstuffs,

and

- in conformity with the rules on the prevention of the distortion of free and fair competition on a commercial basis as laid down in Regulations (EEC) No 954/79, (EEC) No 4055/86, (EEC) No 4056/86, (EEC) No 4057/86 and (EEC) 4058/86 concerning the maritime transport policy of the Community. Shipping may not be carried out by shipping companies whose practices have caused

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injury to Community shipowners, or whose country has restricted free access to cargo by shipping companies of Member States or by ships registered in a Member State in accordance with its legislation, particularly during the validity of a published decision taken by the Council under Article 11 of Regulation (EEC) No 4057/86 or Article 4 (1)(b) of Regulation (EEC) No 4058/86.

The first paragraph of Article 14 (2) overlaps with the pre-1987 legislation but the second paragraph is new. It will be recalled that in the past the fact that a considerable part of Community food aid was transported on ships flying Eastern European flags and flags of convenience had been criticized in Parliament and that even the Court of Auditors had suggested at one point that for the transport of Community food aid paid for by the Community preference should be given to Community shippers. Article 14 (2) second paragraph reflects a desperate but unsuccessful lobbying effort on the part of Community shipowners to have exclusivity over food aid shipping financed by the Community. For political\(^{171}\), financial\(^{172}\) and practical reasons\(^{173}\), the Commission has strongly opposed such exclusivity.

It should be noted that the interpretation given to Article 14, second paragraph - an interpretation which is contested by the shipowner lobby - has resulted in a situation in which this provision has been of no practical significance yet. The Commission argues it is only during the validity of two specific Council decisions taken in the context of the Community’s maritime transport policy that it can exclude non-Community shipping companies. So far the Council has reportedly not yet taken any such decision.

It should also be mentioned in this context that in recent years the Community has made efforts to limit losses due to the lack of proper storage facilities in the recipient countries. What is the use of setting high quality and packaging

\(^{171}\)Such legislation would be hard to reconcile with the Community’s general stance against protectionism and unfair practices in maritime transport.

\(^{172}\)Such legislation would make Community food aid shipment significantly more expensive.

\(^{173}\)Would a ship with a Korean crew, built in Japan, flying a Panamanian flag but (partially) owned by a Belgian company be allowed to transport Community food aid?
requirements for food aid products, carefully monitoring the compliance with these requirements and ensuring proper sea transport, if on arrival the conditions of storage are such that pests and damp cause heavy losses? Since 1987 on an experimental basis and since 1988 on the basis of Council Regulation (EEC) No 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems, the Community has - as an integral part of its food aid policy - financed the improvement of the storage facilities of food aid recipients. In Section 2.2.5 of this Chapter I already discussed the importance and main features of the latter regulation and I would merely want to add here that in 1988 and 1989 the Community's budget provided for 10 m ECU in commitment appropriations on the relevant budget line, Item 9281, and that in the years 1987-1988 the Community financed in this context operations involving: prefabricated storage units to house food aid for emergencies and for refugees and displaced persons (Ethiopia, Malawi and Mozambique); the temporary renting of storage sheds to prevent food aid spoiling (Pakistan and Niger); the rehabilitation of storage sheds (Burkino Faso and Bangladesh); and the construction of storage units (Tanzania and Sudan). These operations undoubtedly helped to preserve the quality of Community food aid products after their arrival in the recipient country.

To come back to my initial question, namely whether the currently applicable legislation remedies the flaws which during the pre-1987 period were the main reasons for food aid deliveries of faulty quality, I think one may conclude that the optimism of Parliament expressed in its Resolution of 10 March 1988, cited above, is on the whole justified.


175HUBY, 1989, 65.
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 1983-89, the Community's food aid commitments were characterized, on the one hand, by a (notable) increase in the Community's cereal food aid commitments and - albeit with ups and downs - in the commitments of food aid in vegetable oil and 'other products', and, on the other hand, by a drastic decrease in the Community's dairy food aid commitments. This evolution in the size of the respective food aid commitments reflected a clear policy choice to reduce - in spite of the enormous dairy surpluses burdening the Community until recently, but in view of the fact that these products were very often less suitable and cost-ineffective - food aid in dairy products, and to increase cereal food aid, food aid in vegetable oil and food aid in 'other products' which were considered to be products more in line with the needs of the recipient countries.

With regard to the Community's food aid commitments during the period 1983-89, one should also note the important, exceptional food reserve aid commitments made during and in the years following the African crisis; these commitments allowed the Community to respond better to calls for emergency food aid. Finally, it may be noted that the recent drop in the Community's surplus stocks, especially of dairy products - caused by adjustments to the common agricultural policy - has not (yet) had a significant negative impact on the size of the Community's food aid commitments.

All this seems to suggest that the size of the Community's food aid commitments is no longer related to the situation on the relevant markets but to the needs of the developing countries. It should, however, be noted in this respect that the WFP in a 1987 report on the Community's food aid policy observed that the trend in the level of Community food aid is in contrast to the needs of developing countries and the potential for the EC to increase its food aid programme to a level commensurate with its economic status, its share of world food trade and the

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1As far as cereals are concerned, the drop in surplus stocks is definitely also to an important extent due to the 1988 and 1989 bad harvest in the USA.
size of its food stocks.

As I already noted in the introduction to this study, the food aid needs of many developing countries have increased considerably since 1987 as a result of the increase in food prices on the world market and the fact that ever more developing countries are forced to undertake structural adjustment measures and in this context need more food aid.

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</thead>
<tbody>
<tr>
<td>Cereals</td>
<td>1043.3</td>
<td>1127.7</td>
<td>1160.0</td>
<td>1160.0</td>
<td>1160.0</td>
<td>1360.0</td>
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<td>Milk powder</td>
<td>150.0</td>
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<td>94.1</td>
<td>94.1</td>
<td>110.0</td>
<td>94.1</td>
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<tr>
<td>Butteroil</td>
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<td>32.7</td>
<td>28.7</td>
<td>27.3</td>
<td>27.3</td>
<td>25.0</td>
<td>25.0</td>
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<td>Sugar</td>
<td>16.1</td>
<td>13.5</td>
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<td>11.0</td>
<td>11.0</td>
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<td>8.6</td>
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<td>34.0</td>
<td>42.0</td>
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<td>Other products</td>
<td>147.4</td>
<td>147.0</td>
<td>211.7</td>
<td>121.8</td>
<td>279.6</td>
<td>291.3</td>
<td>200.0</td>
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<tr>
<td>Exceptional reserve</td>
<td>-</td>
<td>2</td>
<td>3</td>
<td>386.7</td>
<td>160.6</td>
<td>200.0</td>
<td>-</td>
</tr>
</tbody>
</table>

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Note, however, the special emergency operations in favour of Africa decided upon in April and October 1984 and financed by Article 950 appropriations (See: Section 2.1 of this Chapter and below in this Section).

Note, however, under the 'Dublin Plan' the Community was to supply 500,000 tonnes of cereal equivalent additional food aid. This exceptional commitment amounting to about 175 million ECU was to be financed from EDF funds available for Article 137 of the Lomé II Convention (80 million ECU), and from Article 950 of the Budget, the latter supplemented for this purpose by transfers for a total of 90 million ECU. Eventually, the Community spent 'only' 107 million ECU of the 175 million ECU on food aid as such and used the rest for other forms of aid. Consequently, the Community did not supply an extra 500,000 tonnes but 'merely' an extra 312,000 tonnes of cereal equivalent as food aid.
1983-89: Development and relief as primary policy objectives

Community food aid commitments in cereals during the period 1983-89 (excluding exceptional food aid reserve commitments)

Community food aid commitments in skm in during the period 1983-89
Size and nature of Community food aid commitments

Community food aid commitments in butteroil during the period 1983-89

Community food aid commitments in sugar during the period 1983-89
1983-89: Development and relief as primary policy objectives

Community food aid commitments in vegetable oil during the period 1983-89

Community food aid commitments in 'other products' during the period 1983-89
During the period 1983-89, the Community and its Member States were committed under the 1980 and 1986 Food Aid Conventions, as extended by successive Protocols, to supply as food aid annually, first, 1,650,000 tonnes, and, as from 1 July 1986 onwards, 1,670,000 tonnes of cereals.\(^4\) By Council decision - first pursuant to Article 4 (1) second indent of the first food aid framework regulation of 3 December 1982, and, then, pursuant to Article 4 (1) first indent of the second food aid framework regulation of 22 December 1986 - the total commitment was shared between the Community and the Member States.\(^5\) As had been the case since the late seventies, the Community's share amounted during the first years of the period 1983-89 to 56% while the Member States share was 44%; as from 1


\(^{5}\)Note that the Council pursuant to Article 4 (1) third indent of the first food aid framework regulation and Article 4 (1) second indent of the second food aid framework regulation also apportioned among the Member States the national cereals operations under the Food Aid Convention.
July 1986 onwards the partition is in fact 55.5% against 44.5%. This partition is fully arbitrary, it does not reflect any objective criteria. It will be recalled that in the seventies this partition was highly controversial but since the 1980 Food Aid Convention which explicitly stipulated, as does the currently applicable 1986 Convention, that the obligation to supply cereal food aid rested on the Community and its Member States, the partition is no longer an issue. This was very clearly illustrated by Parliament's Resolutions of 17 February 1984 and 23 January 1987 on the apportionment of the quantities of cereals provided for under the Food Aid Convention for respectively the period 1 July 1983 to 30 June 1985 and the period 1 July 1986 to 30 June 1989. In these resolutions one no longer found any calls for the 'communautarisation' of cereal food aid and the partition was not criticized at all.

The partition of the Food Aid Convention commitments during the period 1983-89

<table>
<thead>
<tr>
<th>Year</th>
<th>EC FAC commitments</th>
<th>MS part</th>
<th>EC part</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982/83</td>
<td>1650.0</td>
<td>722.3</td>
<td>44</td>
</tr>
<tr>
<td>1983/84</td>
<td>1650.0</td>
<td>722.3</td>
<td>44</td>
</tr>
<tr>
<td>1984/85</td>
<td>1650.0</td>
<td>722.3</td>
<td>44</td>
</tr>
<tr>
<td>1985/86</td>
<td>1650.0</td>
<td>722.3</td>
<td>44</td>
</tr>
<tr>
<td>1986/87</td>
<td>1670.0</td>
<td>742.7</td>
<td>44.5</td>
</tr>
<tr>
<td>1987/88</td>
<td>1670.0</td>
<td>742.7</td>
<td>44.5</td>
</tr>
<tr>
<td>1988/89</td>
<td>1670.0</td>
<td>742.7</td>
<td>44.5</td>
</tr>
</tbody>
</table>

Throughout the period 1983-89, however, the Community's cereal food aid commitments always surpassed its Food Aid Convention commitments. In 1983,

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the Community's total commitment of food aid in cereals was 115,700 tonnes above the Convention commitment; in 1989, this 'extra'-commitment amounted to 432,300 tonnes. In the years between, the Community usually committed annually 232,300 tonnes of cereal food aid over and above its Convention commitment. It should be noted, however, that from 1985 to 1988, during and in the years following the African crisis, the Community also made annually a considerable exceptional food aid reserve commitment, most of which concerned food aid in cereals. This exceptional food aid reserve commitment is dealt with separately further on in this Section.

<table>
<thead>
<tr>
<th></th>
<th>Food aid under the FAC</th>
<th>Additional food aid</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983</td>
<td>927.7</td>
<td>115.7</td>
<td>1043.4</td>
</tr>
<tr>
<td>1984</td>
<td>927.7</td>
<td>200.0</td>
<td>1127.7</td>
</tr>
<tr>
<td>1985</td>
<td>927.7</td>
<td>232.3</td>
<td>1160.0</td>
</tr>
<tr>
<td>1986</td>
<td>927.7</td>
<td>232.3</td>
<td>1160.0</td>
</tr>
<tr>
<td>1987</td>
<td>927.7</td>
<td>232.3</td>
<td>1160.0</td>
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<tr>
<td>1988</td>
<td>927.7</td>
<td>232.3</td>
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<tr>
<td>1989</td>
<td>927.7</td>
<td>432.3</td>
<td>1360.0</td>
</tr>
</tbody>
</table>
Pursuant to the division of competence stipulated in the first framework regulation applicable during the first years of the period 1983-89, the Council decided on the size of the Community's food aid commitments. As I will explain in considerable detail in Section 3.5 of this Chapter, Parliament was fiercely opposed to this Council competence; it feared that the latter would undermine its budgetary competence to decide on most of the food aid budget appropriations. For food aid in cereals, however, this fear proved unfounded. For the 1983, 1984, 1985 and 1986 programmes the Council always accepted the total quantities of cereal food aid proposed by the Commission; and the quantities proposed by the latter corresponded to the appropriations available in the respective budgets.\footnote{For the 1983 programme, see: COM(83) 83 final, 3 and 12; and Article 1 of Council Regulation (EEC) No 1992/83 of 11 July 1983 laying down the implementing rules for 1983 for Regulation (EEC) No 3331/82 concerning food aid policy and food aid management, OJ. 1983, L 196/2. It will be recalled that in 1983, Parliament refused to give its Opinion on the 1983 implementing regulation. For the 1984 programme, see: COM(84) 26 final, 2 and 11; European Parliament Resolution of 13 April 1984, point 1, O.J. 1984, C 127/253; see also European Parliament Working Documents, Report on the 1984 implementing regulation (Rapporteur: Mr P. LEZZI), PE Doc 1-119/84, 8; and Annex 1 of Council Regulation (EEC) No 1278/84 of 7 May 1984 laying down the implementing rules for 1984 for Regulation (EEC) No 3331/82 concerning food aid policy and food aid management, O.J. 1984, L 124/3.}
Size and nature of Community food aid commitments

Pursuant to the new division of competence introduced by the second food aid framework regulation, the Commission establishes, as from the 1987 food aid programme onwards, in the light of budgetary appropriations the size of the food aid commitments. In 1987 and 1988, the cereals commitment remained on the 1986 level. In 1989, the commitment was increased by 200,000 tonnes but it should immediately be noted that the Commission at the time eliminated the exceptional food aid commitment.

Throughout the period 1983-89, there seemed to have been a high degree of consensus between Parliament, a majority of the Member States in the Council and the Commission, and more recently between Parliament and the Commission regarding the size of the Community's cereal food aid commitment. This was, however, not because all agreed on the level of the Community's cereal food aid commitment but mainly because the question of further increases in Community food aid in cereals was now raised in the context of the debate on the size of the Community's exceptional food aid reserve commitment.

*For the 1985 programme*, the quantities the Commission proposed and the Council accepted corresponded with the appropriations entered in the preliminary draft budget; it was agreed that the quantities were to be reconsidered after the adoption of the 1985 budget; after the adoption of the 1985 budget, however, it turned out that the quantities provided for in the 1985 implementing regulation did not need to be amended. See: COM(84) 481 final, 3 and Annex A, 3; European Parliament Working Documents, Report on the 1985 implementing regulation (Rapporteur: Mr Y. GALLAND), PE Doc 2-1708/84, 15; European Parliament Resolution of 15 February 1985, point 1, OJ. 1985, C 72/136; and Annex I of Council Regulation (EEC) No 457/85 of 19 February 1985 laying down the implementing rules for 1985 for Regulation (EEC) No 3331/82 concerning food aid policy and food aid management, OJ. 1985, L 54/4.


It should be noted that the Community's annual cereals commitment has since 1983 been split up in an initial instalment which corresponds to the quantity the Community was bound to supply under the Food Aid Convention, and a second instalment which corresponds to the Community's cereal food aid effort over and above its Food Aid Convention obligation. Note that the quantity of this second instalment has always been expressed as a maximum quantity. As I will observe below, also the commitments of food aid in products other than cereals have been expressed as maxima. Originally, this was done, mainly to facilitate agreement between the Member States on the size of the commitments; not all Member States agreed on the levels of food aid proposed by the Commission; by indicating that the commitments were 'maximum commitments' and thus implying that not all food aid needed to be supplied but that the available appropriations could be given a different use, it was easier to obtain the agreement of those Member States which wanted the size of the commitments reduced. It should be noted, however, that as a rule (with some exceptions\(^1\)) the food aid commitments were used fully. At present, the Commission continues to split the Community's cereals commitment in an initial instalment (of a fixed quantity) and a second instalment (of a maximum quantity) and this presumably because of the element of flexibility it introduces. It will not come as a surprise that Parliament repeatedly objected to this 'a maximum of' formula and its implicit 'threat' to supply less food aid.

Compared with other donors, and especially the United States, and in the light of the continually increasing need for food aid in cereals, the Community's cereal food aid programme, in spite of the 30% increase in the period 1983-89 and even if one takes into account the cereals supplied under the exceptional food aid programmes, remained relatively modest in size. The Community supplied during this period 9.53% of all cereal food aid. This made it the second largest cereal food aid donor but it still only supplied less than 1/5 of the quantity supplied by the United States. It is true that the United States were also the largest cereal

\(^1\)E.g. butteroil in 1989. It may also be noted that annually marginal amounts, set aside for last minute emergencies, remained unused during the year they related too.
exporters but in 1986/87 the United States exported for example 28.3 million of wheat while the Community exported 15 million tonnes. The relative importance of the United States and the Community as commercial exporters is badly reflected in their respective cereal food aid commitments. The Commission has sought to justify the size of its cereal food aid commitment by pointing out that it represents more or less 1% of the import needs of the Third World but why would the Community cover merely 1% of the import needs?

### Total cereal food aid shipments by donors during the period 1983-86

<table>
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<tr>
<th></th>
<th>1982/83</th>
<th>1983/84</th>
<th>1984/85</th>
<th>1985/86</th>
<th>Total (in '000 tonnes)</th>
<th>%</th>
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<td>12494.2</td>
<td>10804.1</td>
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13Source: FAO, *Food aid in figures*, 1987, 34. 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.
It is important to note with regard to the size of the Community’s cereals commitments - but this holds true also for the size of the Community’s commitments of food aid in products other than cereals - that the first framework regulation did not yet stipulate any explicit criteria or guidelines to be taken into account when deciding on the size of the cereal food aid commitments.\textsuperscript{14} The second framework regulation, at least to some extent, does. Article 2 (3) of this regulation stipulates:

Products supplied as food aid shall as far as possible fit the dietary habits of the recipient population and have no adverse effects on the recipient countries.

I already discussed this article in the context of Community legislation on the sort of products the Community could supply as food aid. It is obvious, however, that

\textsuperscript{14}Implicitly, however, Article 4 (1), fifth indent of the first framework regulation discussed above in Section 3.1.1 of this Chapter does give some guidance.
this provision also has repercussions on the size of the commitments of the various products. Some products will only in relatively few cases fit the dietary habits of the recipient population and have no adverse effects on the recipient countries. The size of the commitments of the latter products should normally be small. It should be noted, however, that also in the second framework regulation there is still no provision explicitly linking the size of the commitments to the size of the needs of developing countries. The only provision in Community law which goes in that direction is Article I of the 1986 Food Aid Convention which stipulates:

The objective of this Convention is to ensure, through a joint effort by the international community, the achievement of the World Food Conference target of at least 10 million tonnes of food aid annually to developing countries in the form of grain suitable for human consumption, as determined by the provisions of this Convention.¹⁵

One could argue that pursuant to the latter article all parties to the Food Aid Convention, including the Community, have to consider, when deciding on their cereal food aid commitments, the achievement of the 10 million tonnes target.¹⁶ Apart from this 'guideline', Community law does not contain any other relevant provisions.

Turning to the Community's dairy food aid, it should be noted that one of the most remarkable features of Community food aid policy in the period 1983-89 was the apparent absence of any linkage between the size of the Community's dairy food aid commitment and the size of the dairy surplus stocks. It will be recalled that this was not the case in the seventies when there was undoubtedly a close link between the size of the commitment and the size of the surplus stocks. During the period 1983-89, however, the Community's dairy food aid commitment was significantly cut in size at a time that the dairy surpluses had become so large that they constituted a real menace to the common agricultural policy and even to the

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¹⁵Article I of the 1986 Food Aid Convention, OJ. 1986, L 195/16.

¹⁶It should be noted that the 10 million tonnes target was set by the World Food Conference in 1974; in the eighties, this objective was achieved but at that time the Third World's food aid needs were already considerably higher.
Community itself. In fact, the cost of administering and disposing of the surplus stocks threatened the financial foundations of the Community. It is truly amazing that at a time when it was generally recognized that everything possible had to be done to dismantle the surplus stocks and re-establish a balance between supply and demand, the Community reduced rather than increased its dairy food aid commitments. On the other hand, it should also be noted that the Community’s dairy food aid commitment was not cut but kept on a level which the Commission defined as the minimum to respond to the (justified) requests of developing countries, when - as a result of the adjustments made to the common agricultural policy - the dairy surpluses plummeted in 1988 and 1989. With regard to the latter, I already noted above that it remains to be seen what the impact of the new surplus stock situation will be in the longer run, but, so far, dairy food aid levels have remained stable. The evolution of the size of the dairy food aid commitments therefore strongly suggests that the Community’s food aid policy was definitely no longer the surplus disposal policy it had been in the past.

Decided upon by the Council as proposed by the Commission, the quantities of dairy food aid in 1983 and 1984 corresponded to the appropriations Parliament had provided for in the respective budgets. While skimmed milk powder remained in 1983 still at its 1982 level (150,000 tonnes) before being cut by 18% in 1984 (122,500 tonnes), butteroil, which had already been reduced in 1982, was reduced again by 13% in 1983 (36,500 tonnes) and another 10% in 1984 (32,760 tonnes). In 1985, the Commission proposed - presumably under pressure of the dairy surpluses - to increase skimmed milk powder again to 150,000 tonnes and

butteroil to 40,000 tonnes. These proposed dairy food aid quantities corresponded to the appropriations entered in the preliminary draft budget, the budget not yet being adopted at the time of its proposal. The Council, however, did not agree with the proposed increases and, on the contrary, further cut the Community’s commitment of food aid in dairy products. Community food aid in skimmed milk powder was reduced by another 11% (108,600 tonnes) and food aid in butteroil by 12% (28,700 tonnes). Note that Parliament in its Opinion on the 1985 implementing regulation had proposed an even more drastic cut. While it had been agreed that the quantities would be revised once the budget was adopted, no such revision was undertaken since the dairy food aid appropriations finally entered in the budget corresponded to the quantities approved by the Council. In 1986, the Commission initially again proposed an increase in both food aid in skimmed milk powder (120,000 tonnes) and food aid in butteroil

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18COM(84) 481 final, Annex A, 3.

19For the 1985 programme, the quantities the Commission proposed and the Council accepted corresponded with the appropriations entered in the preliminary draft budget; it was agreed that the quantities were to be reconsidered after the adoption of the 1985 budget; after the adoption of the 1985 budget, however, it turned out that the quantities provided for in the 1985 implementing regulation did not need to be amended. See: COM(84) 481 final, 3 and Annex A, 3; European Parliament Working Documents, Report on the 1985 implementing regulation (Rapporteur: Mr Y. GALLAND), PE Doc 2-1708/84, 15; European Parliament Resolution of 15 February 1985, point 1, O.J. 1985, C 72/136; and Annex 1 of Council Regulation (EEC) No 457/85 of 19 February 1985 laying down the implementing rules for 1985 for Regulation (EEC) No 3331/82 concerning food aid policy and food aid management, O.J. 1985, L 544/4.


Parliament suggested a maximum of 87,100 tonnes of skimmed milk powder and 17,200 tonnes of butteroil (instead of the 150,000 tonnes of skimmed milk powder and 40,000 tonnes of butteroil proposed by the Commission and the 108,600 tonnes of skimmed milk powder and 28,700 tonnes of butteroil initially adopted by the Council (European Parliament Resolution of 15 February 1985, Annex I as amended by the European Parliament, O.J. C 72/135.).

21See: COM(85) 482 final, 2. In the 1985 Budget, the remarks next to the dairy food aid budget lines unfortunately do not indicate the quantities of dairy food aid the appropriations correspond to (O.J. 1985, L 206/923 and 925.).
Size and nature of Community food aid commitments

(35,000 tonnes). As in 1985, these proposals were - in the absence of the budget - again based on the dairy food aid appropriations entered in the preliminary draft budget. Before the Council could take a decision on the 1986 implementing regulation, the 1986 budget was adopted and the Commission submitted a new proposal with different dairy food aid quantities (108,600 tonnes of skimmed milk powder and 28,700 tonnes of butteroil). These quantities did, however, not correspond to the appropriations entered in the 1986 budget. For skimmed milk powder the appropriations entered in the budget would allow a commitment of 94,100 tonnes; while for butteroil, in spite of the fact that the budget appropriations had been cut, the available appropriations would actually allow for a commitment of 29,300 tonnes, i.e. an increase of 600 tonnes over the year before. The Commission could apparently not accept these quantities and therefore made deviating proposals in spite of the fact that - as it had explicitly stated in its first proposal - the food aid quantities were always contingent on the relevant budget appropriations. In its Opinion on the 1986 implementing regulation, Parliament suggested, however, the commitment of 94,100 tonnes of skimmed milk powder, the quantity corresponding to the 1986 budget appropriations, and 27,000 tonnes of butteroil, a quantity less than the one the budget appropriations actually allowed for. With regard to butteroil, Parliament explicitly invited the Commission - in the light of the comparative study on the

2COM(85) 482 final, 2 and 9. The Commission did not give any justification for the level of the dairy food aid appropriations entered in the preliminary draft budget.

3Note that the remarks next to the dairy food aid budget lines indicated totally incorrect that the appropriations entered were to cover the supply of respectively 120,000 tonnes of skimmed milk powder and 35,000 tonnes of butteroil (OJ. 1985, L 358/957 and 959.).

4COM(85) 482 final, 3. Note that the Commission did, however, not commit itself to make a proposal for amended quantities after the approval of the budget. The Commission merely stated that it could do so and in footnote to Annex I of its proposal for regulation, it stipulated that it 'reserves the right to amend its proposal as regards these quantities in the light of the outcome of the budgetary procedure'. As I will discuss in more detail in Section 5 of this Chapter, Parliament stressed repeatedly that in fact the this was not a right which the Commission could exercise more or less at its discretion but a duty, in order to ensure that Parliament's acknowledged powers were actually respected (See e.g. European Parliament Working Documents, Report on the 1986 implementing regulation (Rapporteur: Mr G. GUERMEUR), PE Doc A-2 201/85, 18.).

relative cost-effectiveness of butteroil and vegetable oil as food aid - to make the necessary adjustments within Chapter 92 of the budget to reduce the volume of butteroil to 27,000 tonnes and increase the amount of vegetable oil proportionately. The Council approved on 27 January 1986 a skimmed milk powder programme of 94,100 and a butteroil programme of 27,300 tonnes. In comparison with 1985, and against the proposal(s) of the Commission, the Council reduced in 1986 once again the Community's commitments of food aid in skimmed milk powder and butteroil with respectively 13% and 5%. One could make two interesting observations with regard to the size of the dairy food aid commitments in the period 1983-86. First, it should be noted that the Parliament's fear that the Council's competence to decide on the size of the commitments was also in the context of dairy food aid unwarranted; the Council in fact always adopted (be it perhaps after long and difficult negotiations) quantities which reflected the budgetary decisions of Parliament. Second, the reduction of the dairy food aid commitments in spite of the huge surpluses is due to Parliament and the Council rather than to the Commission; the latter repeatedly proposed to increase dairy food aid commitments again.

Pursuant to the new division of competence introduced by the second food aid framework regulation, it is since the 1987 food aid programme up to the Commission to decide, in the light of the food aid budget appropriations, on the total quantities of each product to be supplied as food aid. For 1987, the Commission approved a skimmed milk powder commitment of 94,100 tonnes and a butteroil commitment of 27,300, keeping both commitments on their 1986 level.

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For 1988, the Commission initially approved a skimmed milk powder commitment of again 94,100 tonnes, and a butteroil commitment of 25,000 tonnes but later in the year increased the skimmed milk powder commitment to 110,000 tonnes.\textsuperscript{30}

Finally for 1989, the Commission decided on a skimmed milk powder commitment of 94,100 tonnes and a butteroil commitment of 25,000 tonnes.\textsuperscript{31}

It should be noted that, as the quantity of the second instalment of the cereal food aid commitment and for similar reasons, the quantities of the dairy commitments were and are expressed as maxima, implying that the Community could actually supply less dairy food aid. In 1989, in fact, there were insufficient justified requests for food aid in butteroil and only 14,000 tonnes were allocated. While for cereals, I commented that the Community’s efforts were obviously insufficient in the light of the need for cereal food aid, for food aid in dairy products it seems that the Community’s present commitment of food aid in skimmed milk powder relates well to the needs whereas its commitment of food aid in butteroil may even be too high and could be usefully reduced in favour of vegetable oil, often a more suitable and cost-effective product.\textsuperscript{32}

While during the period 1977-82, the Community was by far the largest donor of food aid in skimmed milk powder and virtually the only donor of butteroil, during the period 1983-86, due to, on the one hand, the drastic reduction in the Community’s dairy food aid commitments, and, on the other hand, an important increase in the dairy food aid programmes of the United States, the latter was the main donor of food aid in skimmed milk powder and an increasingly more important donor of butteroil.


\textsuperscript{32}Note, however, that in 1989 also some food aid in vegetable oil remained unallocated.
1983-89: Development and relief as primary policy objectives

Total skimmed milk powder food aid shipments by donors during the period 1983-86

<table>
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<tr>
<th></th>
<th>1983</th>
<th>1984</th>
<th>1985</th>
<th>1986</th>
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<th>%</th>
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</table>

Source: FAO, *Food aid in figures*, 1987, 38. 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.
Size and nature of Community food aid commitments

Total butteroil food aid shipments by donors during the period 1983-86\(^\text{34}\)

<table>
<thead>
<tr>
<th>Donor</th>
<th>1983</th>
<th>1984</th>
<th>1985</th>
<th>1986</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>-</td>
<td>-</td>
<td>558</td>
<td>-</td>
<td>558</td>
<td>0.32</td>
</tr>
<tr>
<td>European Community</td>
<td>20831</td>
<td>53861</td>
<td>23183</td>
<td>30362</td>
<td>128217</td>
<td>74.13</td>
</tr>
<tr>
<td>Germany</td>
<td>896</td>
<td>2100</td>
<td>1450</td>
<td>-</td>
<td>4446</td>
<td>2.57</td>
</tr>
<tr>
<td>Netherlands</td>
<td>35</td>
<td>88</td>
<td>187</td>
<td>500</td>
<td>810</td>
<td>0.47</td>
</tr>
<tr>
<td>Switzerland</td>
<td>-</td>
<td>18</td>
<td>-</td>
<td>-</td>
<td>18</td>
<td>0.20</td>
</tr>
<tr>
<td>United States</td>
<td>-</td>
<td>64</td>
<td>24074</td>
<td>14767</td>
<td>38905</td>
<td>22.69</td>
</tr>
<tr>
<td>Others</td>
<td>-</td>
<td>15</td>
<td>-</td>
<td>-</td>
<td>15</td>
<td>0.01</td>
</tr>
<tr>
<td>TOTAL</td>
<td>21762</td>
<td>56146</td>
<td>49452</td>
<td>45629</td>
<td>172989</td>
<td>100.00</td>
</tr>
</tbody>
</table>

Skimmed milk powder food aid shipments by donors during the period 1983-86

\(^{34}\text{Source: FAO, Food aid in figures, 1987, 41. For comparison with other food aid donors, one has to work with food aid shipment data since the food aid commitments data are not readily available for all donors and all products. For the purpose of comparing the size of programmes, this poses, however, no problem.}\)
While there is a fairly clear line in the evolution of the commitments of food aid in cereals and milk products, the first going up because it was considered a 'good' food aid product and the second going down for the opposite reason, it is difficult to 'understand' the evolution of the commitments of food aid in sugar, vegetable oil and 'other products'. The overall trend is one of increase but while one would expect the commitments of food aid in these products to be increased gradually and steadily (with the aim of diversifying the Community's food aid basket and supplying products the 'developmental' value of which had been recognized), they actually went up and down without apparent reason or justification. These up and downs do not correspond to changes in the surplus situation nor do they seem to relate to changes in the needs of the Third World.

As for cereals and dairy commitments, neither the first nor the second framework regulation provide for any explicit criteria or guidelines to be taken into account when deciding on the size of the Community's commitments of food aid in products other than cereals, milk powder and butteroil. As for cereals and dairy
Size and nature of Community food aid commitments

food aid, the decision on the size of the commitments is a purely political decision.

Decided upon by the Council as proposed by the Commission, the quantities of food aid in sugar, vegetable oil and 'other products' in 1983 and 1984 corresponded to the appropriations Parliament had provided for in the respective budgets. The Community's commitment of food aid in sugar, which in 1982 had amounted to 10,000 tonnes, was in 1983 increased to 16,100 tonnes (an impressive 61% increase) but in 1984 again reduced to 13,500 tonnes. The Community's commitment of food aid in vegetable oil, on the contrary, went down in 1983 to 6,100 tonnes (12,400 tonnes in 1982) but was significantly increased in 1984 to 20,000 tonnes. The Community's commitment of food aid in 'other products', relatively marginal in 1982, was increased to 147,400 tonnes of cereal equivalent in 1983; in 1984 this commitment remained on virtually the same level (147,000 tonnes).

In 1985, the Commission proposed to decrease the commitment of sugar to 11,000 tonnes, to decrease the commitment of vegetable oil to 12,600 and to increase the commitment of 'other products' to 162,000 tonnes. These quantities corresponded to the appropriations entered in the preliminary draft budget. The Council agreed with the reduction of food aid in sugar to 11,000 tonnes but rejected the quantities proposed for vegetable oil and 'other products'; for the former, the Council decided to reduce the Community's commitment even further (to 9,100 tonnes),

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36 COM(84) 481 final, Annex A, 3.
while for the latter, it decided on a very significant increase (to 211,700 tonnes).\textsuperscript{7} Note that Parliament in its Opinion on the 1985 implementing regulation had proposed the same quantities as eventually approved by the Council for vegetable oil and 'other products' but had asked for increase in food aid in sugar to 13,600 tonnes.\textsuperscript{9} While it had been agreed that the quantities would be revised once the budget was adopted, no such revision was undertaken since the food aid appropriations finally entered in the budget corresponded to the quantities approved by the Council.\textsuperscript{9} In 1986, the Commission initially proposed a status quo for food aid in sugar (11,000 tonnes), an increase for food aid in vegetable oil (to 20,000 tonnes) and a decrease of food aid in 'other products' (to 149,800 tonnes).\textsuperscript{40}

As in 1985, these proposals were - in the absence of the budget - again based on the food aid appropriations entered in the preliminary draft budget. Before the Council could take a decision on the 1986 implementing regulation, the 1986 budget was adopted and the Commission submitted a new proposal with the same

\textsuperscript{7}For the 1985 programme, the quantities the Commission proposed and the Council accepted corresponded with the appropriations entered in the preliminary draft budget; it was agreed that the quantities were to be reconsidered after the adoption of the 1985 budget; after the adoption of the 1985 budget, however, it turned out that the quantities provided for in the 1985 implementing regulation did not need to be amended. See: COM(84) 481 final, 3 and Annex A, 3; European Parliament Working Documents, Report on the 1985 implementing regulation (Rapporteur: Mr Y. GALLAND), PE Doc 2-1708/84, 15; European Parliament Resolution of 15 February 1985, point 1, O.J. 1985, C 72/136; and Annex 1 of Council Regulation (EEC) No 457/85 of 19 February 1985 laying down the implementing rules for 1985 for Regulation (EEC) No 3331/82 concerning food aid policy and food aid management, O.J. 1985, L 54/4. Also for the 1986 programme, the quantities the Commission proposed and the Council accepted corresponded with the appropriations entered in the preliminary draft budget; with regard to the quantities of cereal food aid, however, there was after the adoption of the budget no dispute. See: COM(85) 482 final, 3 and 9; COM(85) 857 final, 1-4; European Parliament Resolution of 17 January 1986, O.J. 1986, C 36/209-10; European Parliament Working Documents, Report on the 1986 implementing regulation (Rapporteur: Mr. G. GUERMEUR), PE Doc A 2-201/85, 18; European Parliament Resolution of 13 March 1986, point 1, O.J. 1986, C 88/76; and Annex 1 of Council Regulation (EEC) No 232/86 of 27 January 1986 laying down the implementing rules for 1986 for Regulation (EEC) No 3331/82 concerning food aid policy and food aid, O.J. 1986, L 29/5.


\textsuperscript{40}See: COM(85) 482 final, 2. In the 1985 Budget, the remarks next to the dairy food aid budget lines unfortunately do not indicate the quantities of dairy food aid the appropriations correspond to (O.J. 1985, L 206/923 and 925.).

\textsuperscript{40}COM(85) 482 final, 2 and 9. The Commission did not give any justification for the level of the food aid appropriations entered in the preliminary draft budget.
quantity for sugar (11,000 tonnes) and with different quantities for food aid in vegetable oil (9,100 tonnes) and 'other products' (211,700 tonnes). These quantities did, however, not correspond to the appropriations entered in the 1986 budget. For sugar the appropriations entered in the budget would - according to the Commission's own calculations - allow for a commitment of 3,900 tonnes; for vegetable oil the appropriations would allow for a commitment of 4,900 tonnes and the appropriations for food aid in other products were almost only half of what they were in 1985. In spite of the fact that the Commission had explicitly stated in its first proposal that the food aid quantities were always contingent on the relevant budget appropriations, it nevertheless proposed deviating quantities. In its Opinion on the 1986 implementing regulation, Parliament suggested, however, the commitment of 3,900 tonnes of sugar powder, the quantity corresponding to the 1986 budget appropriations, the commitment of 9,000 tonnes of vegetable oil and a commitment of 211,700 tonnes of 'other products', quantities in excess of what the budget appropriations allowed for. It will be recalled, however, that Parliament had asked the Commission - in the light of the comparative study on the relative cost-effectiveness of butteroil and vegetable oil as food aid - to make the necessary adjustments within Chapter 92 of the budget to reduce the volume of butteroil to 27,000 tonnes and increase the amount of vegetable oil proportionately. The Council approved on 27 January 1986 a sugar food aid commitment of 3,900 tonnes, a vegetable food aid commitment of 8,600 tonnes and a commitment of food aid in 'other products' of 121,824 tonnes. In comparison with 1985, and against the proposal(s) of the Commission, the Council reduced in

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41COM(85) 857 final, 5.
42COM(85) 857 final, 5.
43COM(85) 482 final, 3.
1986 once again the Community’s commitments of food aid in sugar, vegetable oil and 'other product' with respectively 64%, 5% and 42%.

As I already noted above, as from the 1987 programme onwards the Commission (and no longer the Council) decided, in the light of the budget appropriations, on the total quantities of each product to be supplied as food aid. For 1987, the Commission approved a sugar food commitment of 11,000 tonnes (a 182% increase), a vegetable oil commitment of 34,000 tonnes (a 295% increase) and a commitment of food aid in 'other products' of 279,700 tonnes (a 129% increase). For 1988, the Commission decided upon the same commitments of food aid in sugar and vegetable oil and a slightly higher commitment of food aid in 'other products' (291,262 tonnes). Finally for 1989, the Commission decided to increase commitments of food aid in sugar to 14,200 tonnes (a 29% increase) and vegetable oil to 40,000 tonnes (a 17% increase) and to decrease the commitment of food aid in 'other products to 200,000 tonnes (a 31% drop).

Note that also the quantities of the commitments of food aid in sugar, vegetable oil and 'other products' have always been expressed as maxima, implying that the Community could supply less food aid in these products. At least on one occasion, it was decided not to supply all the sugar provided for under the programme but supply instead financial aid.

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51 See: 16 m ECU for the educational programme of the UNRWA.
The available data do not allow to compare the Community’s food aid effort in sugar and 'other products' with the efforts of other donors. As far as vegetable oil is concerned, it may be observed that during the period 1983-86 the Community was third largest donor after the United States, which supplied up to 50 times as much vegetable oil (in 1986), and Canada.

Total shipments of food aid in vegetable oil by donors during the period 1983-86

<table>
<thead>
<tr>
<th></th>
<th>1983</th>
<th>1984</th>
<th>1985</th>
<th>1986</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Australia</td>
<td>2549</td>
<td>1497</td>
<td>450</td>
<td>2982</td>
<td>7478</td>
<td>0.47</td>
</tr>
<tr>
<td>Canada</td>
<td>31608</td>
<td>39985</td>
<td>42253</td>
<td>70304</td>
<td>184150</td>
<td>11.63</td>
</tr>
<tr>
<td>Denmark</td>
<td>-</td>
<td>1482</td>
<td>220</td>
<td>-</td>
<td>1702</td>
<td>0.11</td>
</tr>
<tr>
<td>European Community</td>
<td>3268</td>
<td>8918</td>
<td>8540</td>
<td>8407</td>
<td>29493</td>
<td>1.86</td>
</tr>
<tr>
<td>Finland</td>
<td>571</td>
<td>1451</td>
<td>972</td>
<td>1003</td>
<td>3997</td>
<td>0.25</td>
</tr>
<tr>
<td>Germany</td>
<td>750</td>
<td>3515</td>
<td>3397</td>
<td>7417</td>
<td>15079</td>
<td>0.95</td>
</tr>
<tr>
<td>Greece</td>
<td>30</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>30</td>
<td>0.00</td>
</tr>
<tr>
<td>Ireland</td>
<td>-</td>
<td>100</td>
<td>100</td>
<td>-</td>
<td>200</td>
<td>0.11</td>
</tr>
<tr>
<td>Italy</td>
<td>-</td>
<td>-</td>
<td>445</td>
<td>-</td>
<td>445</td>
<td>0.02</td>
</tr>
<tr>
<td>Japan</td>
<td>-</td>
<td>219</td>
<td>1532</td>
<td>-</td>
<td>1751</td>
<td>0.11</td>
</tr>
<tr>
<td>Netherlands</td>
<td>6195</td>
<td>3636</td>
<td>1571</td>
<td>707</td>
<td>12109</td>
<td>0.76</td>
</tr>
<tr>
<td>Norway</td>
<td>-</td>
<td>200</td>
<td>135</td>
<td>-</td>
<td>335</td>
<td>0.20</td>
</tr>
<tr>
<td>Spain</td>
<td>31</td>
<td>1</td>
<td>17</td>
<td>-</td>
<td>49</td>
<td>0.00</td>
</tr>
<tr>
<td>Sweden</td>
<td>8711</td>
<td>8601</td>
<td>7782</td>
<td>3507</td>
<td>28601</td>
<td>1.81</td>
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<td>Switzerland</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>130</td>
<td>130</td>
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</tr>
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<td>-</td>
<td>124</td>
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<td>-</td>
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<td>United States</td>
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<td>270593</td>
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<td>418387</td>
<td>1289062</td>
<td>81.41</td>
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<tr>
<td>Others</td>
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<td>2322</td>
<td>6048</td>
<td>-</td>
<td>8370</td>
<td>0.53</td>
</tr>
<tr>
<td>TOTAL</td>
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<td>342644</td>
<td>383736</td>
<td>512844</td>
<td>1583405</td>
<td>100</td>
</tr>
</tbody>
</table>
It will be recalled that in December 1981 the Community adopted an exceptional food aid programme of 40 m ECU in favour of the least developed countries. In the years that followed, this act of generosity was, however, not repeated. While the need of the poorest among the developing countries all but abated, the Community did not make any exceptional food aid commitment in 1982 or 1983. It was in fact only during the African crisis, when public opinion 'demanded' exceptional measures to fight the famine devastating large parts of Africa, that the Community again undertook exceptional food aid commitments. It will be recalled that the Community decided already in April and October 1984 on important additional food aid commitments financed by Article 950 appropriations but the most significant commitment was decided on at the very highest level in December 1984. On 3 and 4 December 1984, the European Council of Dublin decided on a plan, the so-called 'Dublin Plan' to supply within the shortest delays possible 1,200,000 tonnes of cereals (or equivalent) to the famine victims in the eight worst

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5See: Section 3.2.1 of Chapter 2.
hit countries of Africa, i.e. Ethiopia, Sudan, Mali, Mauritania, Niger, Chad, Angola and Mozambique. The food aid to be supplied under the 'Dublin Plan' was to be supplied partly by the Community (800,000 tonnes) and partly by the Member States (400,000 tonnes). Of the 800,000 tonnes to be supplied by the Community, 300,000 tonnes would be supplied under its normal 1985 programme and 500,000 tonnes would constitute an exceptional food aid commitment. This exceptional commitment amounting to about 175 million ECU was to be financed from EDF funds available for Article 137 of the Lomé II Convention (80 million ECU), and from Article 950 of the Budget, the latter supplemented for this purpose by transfers for a total of 90 million ECU.

It should be noted, however, that while originally the 'Dublin Plan' was centred exclusively on food aid and it was intended to spend the 175 million ECU all on food aid (500,000 tonnes), it was in fact implemented with a view also to basic needs as regards to health, child nutrition, shelter for displaced populations and seeds and agricultural tools. Therefore, the Community eventually 'only' spent 107 million ECU of the 175 million ECU on food aid as such and used the rest for other forms of aid. Consequently, the Community did not supply an extra 500,000

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33 Bull. EC 12-1984/18-19 (Conclusions of the Presidency). Note that as I observed in Section 2 of this Chapter that the Dublin Plan was in fact already the third emergency operation for Africa. The Community had long before the dramatic images from the Korem camp would wake up public opinion, realized the dramatic situation in many African countries and had already April 1984 decided on a first emergency plan for Africa under which it supplied 60 million ECU of food aid (210,000 tonnes of cereals, 7,330 tonnes of milk powder, 2,350 tonnes of butteroil and 1,000 tonnes other food products) and 23 million ECU of emergency aid. (A.T., 1985, 47. See for list of beneficiaries, p. 48.)


34 COURT OF AUDITORS, Annual Report 1985, 101. 80 mECU + 90 mECU still left the Community 5 m ECU short, but a sum of that size could, one presumes, be found without to many difficulties.
tonnes but 'merely' an extra 312,000 tonnes of cereal equivalent as food aid.\textsuperscript{5}

While it is beyond any doubt that the unprecedented generosity on the part of the Community (and its Member States) kept alive millions of Africans who otherwise would have perished, it is unfortunately also true that the African crisis caught the Community in many respects badly prepared for this sort of mega-emergency situations. The African crisis clearly showed inter alia the necessity to increase emergency aid resources so as to ensure a very rapid, appropriate and flexible response to the needs.\textsuperscript{34} As I already noted in Section 2 of this Chapter, the Commission stressed explicitly in its communication on 'Famine in Africa' to the European Council:

it is vital to get the food faster to the people who need it, using in the first instance the food and transport resources available on the spot and in adjacent countries. To do this it will be necessary [...] in future to earmark appropriate funds.\textsuperscript{37}

The European Council, at its meeting in Milan on 28 and 29 June 1985, reacted favourably to the idea of an exceptional food aid reserve commitment.\textsuperscript{38} Consequently, the Commission proposed as part of the 1986 food aid programme, an exceptional food aid reserve commitment of initially 500,000 tonnes of cereal

\textsuperscript{5}\footnote{Nevertheless, the Community, Member States included, surpassed their original goal of 1,200,000 because the Member States supplied 632,000 tonnes instead of 400,000 tonnes and the Community supplied under its normal food aid programme 321,000 tonnes instead of 300,000 tonnes (COURT OF AUDITORS, Annual Report 1985, 102.).}

\textsuperscript{34}\footnote{Commission communication to the European Council (Milan, June 1985), COM(85) 335 final, 2-3; Commission communication to the Council, COM(85) 308 final, 6.}

\textsuperscript{37}\footnote{Commission communication to the European Council (Milan, June 1985) on 'Famine in Africa', COM(85) 335 final, 2. The Community would in particular need to increase its emergency aid resources in order to be able to respond with special, additional emergency food aid operations to large-scale famine situations (a special reserve allocation in the budget), to undertake more triangular operations (more suitable products; shorter delivery time), to supply more processed, ready-to-eat products (particularly suited for the first aid consignments), to ensure that all emergency food aid is delivered 'free at destination', to contribute towards the expansion and/or renewal of the port facilities, storage capacity, means of transport and operational road and rail networks of the recipient countries, and to develop and coordinate airlifts. (Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 3 and 5-6. Commission communication to the European Council (Milan, June 1985) on 'Famine in Africa', COM(85) 335 final, 2-3.)}

\textsuperscript{38}\footnote{Bull. EC 6-1985, 91.}
Size and nature of Community food aid commitments

equivalent\textsuperscript{29}, and - in its amended proposal tabled after the adoption of the 1986 budget - of 546,900 tonnes of cereal equivalent\textsuperscript{30} to be used to cover exceptional food shortages. Most of this food aid would be in the form of cereals but supplies in the form of any of the other Community food aid products were possible. In its Opinion on the 1986 implementing regulation, Parliament expressed its agreement with the Commission’s proposal for an exceptional food aid reserve commitment of 546,900 tonnes of cereal equivalent.\textsuperscript{40} The Council apparently thought Parliament’s and the Commission’s ‘generosity’ to be somewhat exaggerated because it eventually approved an exceptional food aid reserve commitment of ‘merely’ 386,700 tonnes of cereal equivalent.\textsuperscript{61} In a Resolution of 13 March 1986, Parliament criticized this Council decision noting that:

\texttt{[...]} the Council, by allocating only 386,700 tonnes of cereal equivalent food aid reserve, whereas the 1986 budget contains appropriations allowing for the establishment of a food reserve of 546,000 tonnes of cereal equivalent, has deliberately prejudiced the binding nature of the budget;\textsuperscript{62}

In 1987, the Commission - for the first time competent to decide in the light of the budget appropriations on the size of the food aid commitments - approved a significantly smaller exceptional food aid reserve commitment of 160,600 tonnes of cereal equivalent. This may be explained by the fact that against the background of an overall improved food situation, the Community actually used in 1986 only 135,000 tonnes of the available 386,700 tonnes.\textsuperscript{63} The 160,000 tonnes

\textsuperscript{29}\texttt{COM(85) 482 final, 4-9.}

\textsuperscript{30}\texttt{COM(85) 857 final, 2 and 5. It will be recalled that the Commission tabled an amended proposal after the adoption of the 1986 budget.}

\textsuperscript{40}\texttt{European Parliament Resolution of 17 January 1986, point 7 and Annex I as amended by the European Parliament, OJ. 1986, C 36/210 and 208.}


\textsuperscript{62}\texttt{European Parliament Resolution of 13 March 1986, point 1, OJ. 1986, C 88/76.}

\textsuperscript{63}\texttt{Note that according to the Twentieth General Report on the Activities of the Community (1986), 341, 150,000 tonnes was used. The exceptional food aid was used to cover exceptional food shortages in Ethiopia and Mozambique.}
available in 1987 was fully used. In 1988, the Commission initially did not provide for any exceptional food aid reserve commitment but later - when the 1988 budget was finally adopted - amended its decision in the light of the budget and approved an exceptional food aid reserve commitment of 200,000 tonnes. In 1989, finally, the Commission eliminated the exceptional food aid reserve commitment but - as I already mentioned above - it increased the cereal food aid commitment by 200,000 tonnes.

Before turning to the budgetary dimension of the Community food aid commitments during the period 1983-89, there are three additional observations with regard to the size of the Community’s commitments to be made. First, the data on the commitments mentioned above do not include the normally quite marginal quantities of food aid supplied - usually in the form of cash or special foodstuffs - in the context of emergency operations ex Article 950 of the budget or under the Lomé Convention. Secondly, the data on Community food aid commitments also do not include the important quantities of food aid the Community decided in July 1989 to grant in 1989 and 1990 to Poland, including a total of 500,000 tonnes of wheat of breadmaking quality, 300,000 tonnes of feed grain, 10,000 tonnes of beef and veal, 5,000 tonnes of olive oil and 20,000 tonnes of citrus fruit, at a total estimated cost of 110 million ECU, plus 15.2 million ECU for transport.

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6 Twenty-first General Report on the Activities of the Community (1987), 323. The exceptional food aid commitment was used to cover exceptional food shortages in Ethiopia (50,000 tonnes), Mozambique (95,000 tonnes) and Angola (15,600 tonnes).

7 Twenty-second General Report on the Activities of the Community (1988), 385. These 200,000 tonnes were used to cover exceptional shortages in Mozambique and Bangladesh.

8 These quantities were, however, quite significant during the African crisis.

Third, the data on Community food aid commitments mentioned above also do not take account of the food aid supplied in the context of 'co-financing operations'. It will be recalled that in the 1986 Budget, the Budgetary Authority had created a new budget line, article 951, and had allocated 5.5 million ECU to it. Pursuant to the Remarks, these appropriations were to be used to contribute, at a minimum rate of 25%, to the cost of purchases of foodstuffs made directly by non-governmental organizations in order to provide emergency aid to disaster victims.\textsuperscript{69} In the 1987 Budget, the budgetary authority again allocated appropriations to this article 951 (5.5 million ECU) but stipulated in the Remarks that these appropriations could also be used to contribute to the cost of purchases of foodstuffs made by international organizations.\textsuperscript{70} In 1986 and 1987, the Community co-financed the purchase of foodstuffs by organizations which were delivered to thirteen different countries among which Ethiopia, Afghanistan, Lebanon, Angola and Nicaragua.\textsuperscript{71} The experience gained in the course of these operations revealed, however, that the appropriations of budget article 951 could be even more effective in combating hunger if their use were extended to the purchase of seeds and if they could be used under circumstances other than emergencies.\textsuperscript{72} Therefore, the budgetary authority provided for 10 million ECU in the 1988 Budget stipulating that these appropriations could also be used to the latter ends.\textsuperscript{73} These appropriations - no longer experimental or negligible - needed, however, a legal basis for their use\textsuperscript{74} and, hence, the Commission submitted to the Council in March 1988 a proposal for a regulation on the

\textsuperscript{69}COM(88) 158 final, 3.
\textsuperscript{70}COM(88) 158 final, 3.
\textsuperscript{71}COM(88) 158 final, 3.
\textsuperscript{72}COM(88) 158 final, 3.
\textsuperscript{73}COM(88) 158 final, 3.
\textsuperscript{74}One could argue that the use of the appropriations entered in Article 951 of the 1986 and 1987 Budget could also be justified on the basis of Article 6 of the food aid framework regulation.
implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations. On 4 August 1988, the Council adopted Regulation (EEC) No 2508/88 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations. The quantities supplied in the context of these 'co-financing operations' are, however, not considered above.

With regard to the size of the Community's food aid commitments in budgetary terms, it should be noted that during the period 1983-89, the commitments, at 769.9 m ECU in 1983, peaked in 1986 at 1088.4 m ECU (due in particular to the very large exceptional food aid reserve, appropriations for which were entered on the cereal food aid line) but then fell back to 829.4 m ECU in 1989. 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 the Community spent not only in absolute terms but also in relative terms less and less money on its food aid policy. It will be recalled that in 1980 the Community spent 4.5% of its budget on food aid. In the mid-eighties the Community spent only between 2.7% and 3% of its budget on food aid and in the late eighties the food aid budget represented as little as 1.8% of the Community budget. Within the Community's development policy, food aid is, however, quite important; Chapter 92 appropriations, for

75Commission proposal for a regulation on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations, COM(88) 154 final. The Commission's draft regulation provided for the possibility for the Community to contribute - minimum 25% and maximum 75% of the total cost - to the financing of the purchase (in the Community or in developing or non-member countries) and transport of foodstuffs and seeds by international bodies and non-governmental organizations for supply to needy sections of the population of developing or other non-member countries faced with serious difficulties as a result of natural disasters or exceptional circumstances.

76Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies and non-governmental organizations, OJ. 1988, L 220/4. As was perhaps to be expected the Council deviated considerably from the Commission's proposal reducing both in procedural and substantive terms the discretion of the Commission when deciding on co-financing operations. For more details, see: Section 2.2 and Sections 3.1, 3.4 and 3.5 of this Chapter.
example, account for 20% of the Community's overall development effort. In other OECD countries, food aid accounts on average only for about 11% of development policy expenditure.\(^\text{77}\)

\(^{77}\text{In this comparison the export refund or similar element of the cost of food aid is not taken into account.}\)
1983-89: Development and relief as primary policy objectives

Community food aid commitments in budgetary terms during the period 1983-89\(^8\)

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<td>1088.4</td>
<td>896.5</td>
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| Community budget  | 26533.0 | 29264.4 | 30616.0 | 36052.2 | 37452.8 | 45344.2 | 46425.8 |
| % food aid        | 2.9      | 2.7      | 2.9      | 3.0      | 2.4      | 1.8      | 1.8      |

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The evolution of Community food aid commitments in budgetary terms during the period 1983-89

The evolution of the Community food aid budget as a part of the Community's general budget during the period 1983-89
It should be noted that while the dairy food aid commitments in tonnes were reduced significantly as from 1983 onwards, the budgetary commitments continued to increase until 1986 included. It was only in 1987 that the budget appropriations for dairy food aid began to drop. As during the period 1977-82, the dairy food aid programme - the most controversial programme - remained also during the period 1983-89 the Community's most important food aid programme in budgetary terms. It should be noted, however, that the gap between the dairy and the cereals programme became considerably smaller.

As was also the case during the period 1977-82, the appropriations entered in the budget did during the period 1983-89, however, not always give a very accurate picture of the food aid commitment in budgetary terms. This was due to what had been called by the Court of Auditors in its 1980 Special Report budgetary juggling or budgetary acrobatics. For various reasons, already outlined in Section 3.2.1 of Chapter 2, there were each year important carry-overs of appropriations in Chapter 92, 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.

The introduction in the 1985 budget of differentiated appropriations, i.e. commitment appropriations and payment appropriations, allowed for the elimination of 'prior programmes' lines and the transfers of appropriations to these lines. Nevertheless, the number of transfers of (commitment and payment)
appropriations as well as the amount of (payment) appropriations carried over remained substantial.\textsuperscript{12} In fact, such transfers and carry-overs are virtually unavoidable under the present system of split-financing of food aid expenditure. It is not difficult to understand why. The world market prices for products supplied as food aid are liable to change during a budget year. If the world market prices go up, this should normally entail a transfer of appropriations from the food aid budget lines in the EAGGF to Chapter 92. If the world market prices go down, transfers in the other direction are needed. But not only the world market prices change; also the export refunds may be raised and lowered (independently from changes in the world market prices) and again such changes should normally entail transfers between the EAGGF and Chapter 92. It should be noted, however, that for obvious political and technical reasons, the Commission is very hesitant to propose to the Budgetary Authority such transfers \textit{between} Chapter 92 and the EAGGF.\textsuperscript{13} In fact, such transfers have been very rare. Shortfalls in appropriations in Chapter 92 as a result of an increase in the world market price of one of the food aid products have usually not been made up by transfers from the EAGGF but rather - to the extent possible - by transfers from other headings \textit{within} Chapter 92 (on which the Commission could decide itself) and by slowing down the implementation of the programme. Needless to say, however, that these manoeuvres within Chapter 92 frustrate the will of the Budgetary Authority and undermine the relevance of the food aid budget adopted by the latter.

It will be recalled that the Commission proposed in January 1979 already to group together all food aid appropriations in Chapter 92.\textsuperscript{14} This would evidently solve the
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problem of transfers between Chapter 92 and the EAGGF and it would also make the same budgetary rules applicable on all food aid appropriations. Under the system of split-financing, this was not the case; to give one example, one could note that while the Chapter 92 appropriations which remain unused at the end of the year are automatically carried over to the next year, the corresponding EAGGF appropriations can not be carried over and lapse. While positively received by both Parliament and the Court of Auditors, the Commission's 1979 proposal to abandon the system of split-financing was never adopted by the Council. Six and half years later, in July 1985, the Commission thought the time to be ripe for another try and tabled a similar proposal to allow all food aid appropriations to be grouped in Chapter 92. During the 1984 and 1985 budget procedures, the delegations of several Member States had reportedly indicated their willingness to accept an amendment in this sense.

In attempt to take away fears voiced in Parliament that the new system would inflate Chapter 92 with appropriations 'which do not constitute food aid proper', the Commission announced that it intended to keep within Chapter 92 the appropriations for export refunds clearly separate so that 'it would not be possible to confuse appropriations representing actual aid with those corresponding to commercial expenditure on obtaining the food commodities'. The Court of Auditors in its Opinion of 18 December 1985 endorsed the Commission's proposal noting:

Whereas charging all expenditure relating to Community food aid operations to Title 9 of the budget would have the advantage of consolidating the budgetary system for food aid appropriations, of enabling estimates of appropriations to be better adapted to actual needs, of facilitating the administration of such appropriations and of giving a clearer picture of the total budgetary cost of food aid

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1See: 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.

2Proposal for a Regulation amending Regulation (EEC) 2681/74 on Community financing of expenditure incurred in respect of the supply of agricultural products as food aid, COM(85) 370 final.

COM(85) 370 final, 2.
The Court insisted, however, that the Commission would amend its proposal to include an express provision that the export refunds would be kept separate within Chapter 92. Once more, however, the Commission’s proposal failed to get adopted. The Commission had to settle for a rearrangement of all appropriations for food aid export refunds - formerly scattered all over the EAGGF - in one single budget heading of the EAGGF, Article 292 of the Budget.

Since 1988, the system of split-financing has led to an acute financial crisis. As a result of the substantial rise in world market prices, in particular of milk powder, the appropriations entered in Chapter 92 were insufficient to carry out the programmes in full. With no other option left, the Commission proposed to the Budgetary Authority the transfer of appropriations from the EAGGF food aid lines. These transfers were favourably considered by the budgetary authority at an inter-institutional meeting in April 1989. An initial transfer (of 82 million ECU) was made in June 1989 but additional appropriations were not transferred until November 1989. As a result the Commission was obliged to slow down the implementation of the 1989 food aid programme.

In Chapter 2, I welcomed the failure to adopt the first proposal to abandon the system of split-financing. I argued there that while the grouping of food aid appropriations in Chapter 92 might improve budgetary transparency and facilitate budgetary management, it would betray 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

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**Bull. EC 4-1989.

the system of split financing reflected this dual nature. While the balance of compromise between the domestic agricultural objectives and the developmental and humanitarian objectives of the Community's food aid policy continued to shift in favour of the latter, one could argue that this reasoning still holds true. On the other hand, keeping the export refund appropriations separate within Chapter 92 is in the present phase of development of the Community's food aid policy perhaps a sufficient indication of the latter's dual nature. It seems unlikely, however, that the system of split-financing will be abandoned. Within the Commission, the powerful DG VI has become very sensitive regarding any cut in "its" budget. Furthermore, the latter DG and especially its Legal Service, is very much opposed to creating a special regime for food aid exports, arguing that making exceptions to the present system of export refunds would make it more difficult to operate this system and invite fraud. The possible solution seems the setting up of a "pipeline" between Chapters 92 and 29, i.e. a set of simplified rules and procedures concerning the transfer of appropriations between these two budget chapters. It may be noted, however, that in its Resolution of 21 November 1989 the Council merely stated that it "is anxious to see a satisfactory solution found to the problem of financing food aid". It was obviously unable to agree on anything concrete.

Finally, it deserves to be mentioned that not all food aid policy appropriations are entered in Chapter 92 or the food aid lines of the EAGGF. The exceptional food aid delivered during the African crisis (under the Community's operations decided upon in April, October and December 1984 (the Dublin Plan)) was financed by appropriations entered in Article 950 of the Budget, 'Aid to disaster victims', supplemented for this purpose by several transfers, and EDF appropriations available under Article 137 of Lomé II. The same is true for a number of emergency operations with a small food aid element. Also the appropriations for the co-financing operations with international or non-governmental organizations are not entered in Chapter 92 or the food aid lines of EAGGF but in Article 951, 'Contribution to financing the purchase of food products and seeds by non-

governmental and international organizations'. The expenditure relating to the mega-food aid operations in favour of Poland (110 million ECU plus 15.2 million ECU for transport) is entirely charged to the EAGGF Guarantee Section of the 1989 and 1990 Budget. If one wants a complete picture of the Community’s food aid commitments in budgetary terms, one should of course also consider these appropriations.

3.2.2 The nature of the Community’s overall and specific food aid commitments during the period 1983-89

I already stressed several times the importance and the necessity of multi-annual food aid commitments in the context of a development oriented food aid policy. It will be recalled that the multi-annual nature of commitments was during the period 1977-82 one of the focal points of the discussion on the reform of the food aid policy. The first food aid framework regulation of December 1982 provided for the possibility to commit food aid on a multi-annual basis. In the recitals of the latter regulation, one could read:

Whereas food aid should be made into a real instrument of the Community’s policy of cooperation with the developing countries, thereby enabling the Community to participate fully in multiannual development projects;

Whereas it is necessary [...] that the Community should be able to provide a steady overall flow of aid and be in a position, in appropriate cases, to undertake to supply to the developing countries minimum quantities of products under specific multi-annual programmes as well as to enter into undertakings in relation to international organizations, provided that such commitments do not amount to more than a reasonable share of the volume of aid.  

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*See: Section 3.2.2 of Chapter 2.

With regard to overall multi-annual food aid commitments, the first framework regulation stipulated in its Article 4 (1) first indent:

In the field of food aid, the Council shall:

- decide on the total quantities of each product on an annual or multiannual basis, [...]”

With regard to specific multi-annual food aid commitments, the framework regulation stipulated in its Article 4 (1), fourth indent:

In the field of food aid, the Council shall:

[...]

- determine the countries and organizations to which food aid may be supplied on an annual or multiannual basis, [...]”

and in its Article 5:

The Commission, following consultations with the Committee as provided for in Article 7 and in accordance with the procedure laid down in Article 8, shall:

- fix the apportionment among recipient countries and organizations [...] of the quantities available under the annual and multi-annual programmes [...]”

It should immediately be noted, however, that it was all but undisputed whether Article 5 really provided for the possibility of specific multi-annual commitments. Under Article 5, the Commission could allocate to a specific developing country or organization a quantity of food aid available under a multi-annual programme; this does not necessarily mean, however, that the commitment itself was a multi-annual commitment. Interpreting Article 5 'generously' and in the light of the above quoted recital as well as in the light of Article 4 (1), fourth indent, one

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could argue that Article 5 did allow for specific multi-annual food aid commitments. Looking at the Commission’s proposal for the 1983 implementing regulation, it becomes clear that the latter was convinced that it would be able to supply food aid to specific countries and organizations on a multi-annual basis. For the Council, however, the matter was apparently not that obvious and it decided not to make any provision for multi-annual commitments in the 1983 implementing regulation stating that the issue of multi-annual commitments needed further study.

In its communication of April 1983 on Food aid for development, the Commission strongly argued in favour of a system of multi-annual and contractual programming. It proposed the conclusion of 'food aid contracts' stipulating inter alia the quantities of the products to be supplied annually over the period covered by the contract. In the Commission’s view, the Community’s food aid programme would have to be in three parts: (1) the first part would contain the multi-annual commitments made by the Community; (2) the second part would deal with other allocations, made on an ad hoc basis and reviewed annually; and (3) the third part would be reserved for emergency aid and aid to refugees and displaced persons. It should be noted, however, that the Commission - expecting opposition - was careful to add that the multi-annual commitments would always have to be within the confines of the budget for such commitments.

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100COM(83) 83 final, 8. See in particular Article 1 of the draft regulation.


102COM(83) 141 final, 18.

103COM(83) 141 final, 19-20.
The Council's Resolution defining a number of guidelines for improved integration of food aid in the development process in recipient countries, adopted on 15 November 1983 in reaction to the Commission's Food aid for development Memorandum, evidently also dealt with the issue of multi-annual commitments. The Council recognized that the integration of food aid in the development policies of the recipient countries required multi-annual food aid programmes drawn up following a dialogue with the recipient country. The Council insisted, however, that these programmes could only be of an indicative nature - the basic decision on the quantity of aid to be supplied would still be taken on an annual basis - and could only constitute "a reasonable share of the annual volume of Community aid". The Council clearly did not want the Community to commit food aid for more than one year in a (legally) binding way and significant quantities. The most obvious explanation for this refusal of genuine multi-annual commitments was the wish of the Council to safeguard food aid as an instrument to dispose of unplanned surpluses. Since the availability of these unplanned surpluses may vary from one year to another (and the experience of the last two years has shown that these variations may be quite drastic), the Council was understandably hesitant to commit too much of its food aid on a multi-annual basis and to the extent it did so, it did not want this commitment to be a really binding one. While this reserved and ambivalent Council position on multi-annual commitments was very much in line with the interests of these Member States for which food aid traditionally offered an expedient outlet for unplanned, accidental agricultural surpluses, it should be noted, however, that also the United Kingdom was not too fond of the idea of multi-annual food aid programming and this because multi-annual food aid programming is in fact only possible if the Community plans the production of the surpluses which will be supplied as food aid. The United Kingdom was of course not keen on giving the common

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105 See also: Section 2.1.3 of Chapter 2. Note, however, that with regard to cereal food aid, the Community was pursuant to the 1980 and 1986 Food Aid Convention internationally bound to supply in the years cover by these Conventions annually 927,700 tonnes of cereals; its flexibility to adjust the size of its commitment in function of the available surpluses was therefore already restricted.
agricultural policy such an excuse for surplus production. Above, I already mentioned, but it deserves to be repeated here, that it should not be excluded that some Member States (also) objected to binding multi-annual commitments on foreign policy grounds. It is obvious that such commitments would limit the foreign policy use of food aid (instead of being able to put pressure or make a goodwill gesture annually, the Community would be able to do so only every so many years) or would make in more difficult to control the foreign policy implications of food aid operations (a food aid operation in favour of country x, perfectly acceptable in the year N, may be a foreign policy embarrassment in the year N+2).  

While the Council's Resolution of 15 November 1983 did of course not amend the enigmatic provisions of the first framework regulation on multi-annual commitments, it gave a very restrictive interpretation to these provisions and 'de facto' excluded genuine, multi-annual commitments. In line with the Council's Resolution, the Commission stated not without frustration in the recitals of its proposal for the 1984 implementing regulation:

Whereas [multiannual] programmes will be of limited duration, and purely indicative, and the amount of aid to be supplied will be decided each year by the competent Community body;

Whereas these commitments can therefore be included in the quantities annually made available to certain developing countries and specialized organizations;

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106 See also: Section 2.1.3 of this Chapter.

107 The Commission nevertheless asked that this would be noted in the Minutes of the Council meeting.

108 COM(84) 26 final. Annex A, 2. With some surprise, one has to note that Parliament did not criticize the interpretation given to the framework regulation's provisions on multi-annual commitments by the Council's Resolution of 15 November 1983. On the contrary, it noted in its Resolution of 13 April 1984, point 2: "[...] Welcomes the fact that as of this year multiannual operations may be implemented, as advocated on several occasions by the European Parliament." (OJ 1984, C 127/253). See also: European Parliament Working Documents, Report on the 1984 implementing regulation (Rapporteur: Mr P. LEZZI), PE Doc 1-119/84, 9.
Some of the Member States reportedly disagreed with this reasoning and insisted that the implementing regulation would explicitly indicate the overall multi-annual commitments as well as include a list of countries and organizations which could benefit from specific multi-annual commitments. In the end, the Commission's point of view seemed to have prevailed because the 1984 implementing regulation did not stipulate any overall multi-annual commitments nor did it include a list of countries and organizations eligible for multi-annual food aid operations. The Commission's draft recitals - probably too intelligible and explicit for comfort - were dropped and replaced by:

Whereas, in [certain] circumstances and subject to appropriate conditions, multiannual food aid programmes can make a positive contribution to the development of the recipient country; whereas, however, it is not intended to lay down multiannual quantities of food aid.\(^{109}\)

The Council implicitly admitted that since the specific multi-annual commitments were decided on annually and were thus not multi-annual, it really had no sense to lay down overall multi-annual quantities of food aid. The 1985 and 1986 implementing regulations contained the same recital and further no reference to multi-annual commitments.\(^{110}\)


See also: COM(84) 481 final and COM(85) 428 final as well as European Parliament Resolutions of 15 February 1985 (OJ. 1985, C 72/132) and 17 January 1986 (OJ. 1986, C 36/209). Note that Article 35 (d) of the Lomé III Convention, concluded in December 1984, stipulated that food aid operations which form part of development projects or programmes or nutrition programmes could be planned on a multi-annual basis. This provision seemed to have been interpreted in the same restrictive way not allowing for genuine multi-annual commitments. Article 35 started by pointing out that food aid operations shall be decided on the basis of the rules and criteria adopted by the Community for all recipients of this type of aid.
While the Commission occasionally reminded the Council of the need of multi-annual commitments in the context of a development oriented food aid policy\textsuperscript{11}, one would have to wait for the second food aid framework regulation of December 1986 for the situation to change. The second framework regulation, the currently applicable basic law, stipulates with regard to multi-annual commitments in its recitals:

Whereas food aid should be made into a real instrument of the Community's policy of cooperation with the developing countries, thereby enabling the Community to participate fully in multiannual development projects;

Whereas it is necessary to that end that the Community could be able to provide a steady overall flow of aid and be in a position, in appropriate cases, to undertake to supply to the developing countries minimum quantities of products under specific multiannual programmes linked to development policies as well as to enter into undertakings in relation to international organizations;\textsuperscript{112}

and in its Article 2 (5), last sentence:

Where food aid is provided as backing for a development programme spread over a number of years, it may be supplied on a multiannual basis linked to the programme in question.\textsuperscript{113}

Furthermore, Article 4 (1) third indent stipulates:

In the field of food aid, the Council shall:

\textsuperscript{11} In the conclusions of its communication to the Council of April 1986 on 'Implementation of Food Strategies and Prospects for the Future', the Commission explicitly stated: "At the practical level, some adaptation in procedures for allocating food aid are necessary, giving it a more contractual nature implying multi-annual programming and advance planning on the use of the counterpart funds generated." (COM(86) 198 final, 33.).

\textsuperscript{112} Council Regulation (EEC) No 3972/86 of 22 December 1986 on food aid policy and food aid management, O.J. 1986, L 370/1. Note that the recitals were identical to the recitals of the first framework regulation with the exception of the provision that multi-annual food aid commitments should never amount to more than a reasonable share of Community food aid.

\textsuperscript{113} Article 2 (5), last sentence, of Council Regulation (EEC) No 3972/86 of 22 December 1986 on food aid policy and food aid management, O.J. 1986, L 370/2. This provision was adopted by the Council as it was proposed by the Commission (COM(86) 418/2/rev. final, Annex, 3.) and approved by Parliament (European Parliament Resolution of 24 October 1986, O.J. 1986; see also European Parliament Working Documents, Report on the proposal of a regulation on food aid policy and food aid management (Rapporteur: Mr J. CAMPINOS), PE Doc A 2-140/86, 19.).
I9K3-H9: Development and relief as primary policy objectives

[...]
- determine the countries and organizations to which food aid may be supplied on an annual or multiannual basis [...]

and Article 5, second indent:
The Commission [...] shall:
[...]
- establish the total quantities for each product on an annual or multiannual basis, [...]

It seems that especially in the light of Article 2 (5), last sentence, there can be little doubt about the possibility for the Community to undertake genuine multiannual commitments. It remains to be seen, however, how this provision is interpreted and applied.

While not explicitly laid down in Community law, the prerequisites for multiannual commitments reportedly are: (1) a structural need for imports; and (2) a need for funds to finance a development programme lasting several years. This being the prerequisites, one would expect that the Community would already have undertaken numerous multi-annual commitments. In fact, this has not been the case. Since the entry into force of the second framework regulation, the Community multi-annual agreements for the supply of dairy products used in the context of dairy development programmes with India (in 1987, in support of the follow-up of Operation Flood II\textsuperscript{14}) and with China (in 1988). It has also concluded with Kenya and Mali (both in 1988) multi-annual agreements for the supply of cereal food aid. In both cases, the food aid is used in the support of domestic cereals market reform programmes. Besides an older agreement with Cape Verde, however, these were the Community’s "only multi-annual food aid agreements."\textsuperscript{15} While the number of multi-annual commitments is thus small, it should be noted, however, that for dairy products at least, the quantities involved are in relation to the total available quantities quite important. For skimmed

\textsuperscript{14}See: Section 3.2.2 and Section 3.4.3 of Chapter 2 and Section 3.4.3 of this Chapter.

\textsuperscript{15}Reportedly this agreement with Cape Verde already exists since 1984. It provides for the annual supply of fixed quantities of cereals; the counterpart funds generated by the sale of these cereals are used for land conservation and the construction and maintenance of roads.
milk powder the multi-annual commitments amounted to 25,760 tonnes in 1987 and 30,230 tonnes in 1989 or respectively 27% and 32% of all skimmed milk powder supplied by the Community; for butteroil the multi-annual commitments amounted to 8587 tonnes in 1987 and 5076 tonnes in 1989 or respectively 31% and 20% of all butteroil supplied by the Community. The quantities of cereals supplied on a multi-annual basis are, on the contrary, marginal.

The Commission reportedly intends conclude in the future more multi-annual supply agreements, especially with countries carrying out a structural adjustment policy and with international and non-governmental organizations. In its Resolution of 21 November 1989, the Council stated:

In order, in particular, to cope with structural deficits, the Community may carry out multi-annual programming of food aid operations. However, such operations must meet specific criteria and conditions which the Commission and the Member States will have to establish in time for the next meeting of the Development Council. The Council also recommends that each multi-annual programme be subject to a detailed mid-term review with the possibility of altering its initial guidelines.116

The matter is thus under discussion but one can read between the lines of the Resolution the hesitation of the Council. It is clear, however, that the limited use made so far of the possibility to supply aid on a multi-annual basis reflects the continued relevance of domestic agricultural and foreign policy interests in the Community’s food aid policy.

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3.3 The allocation of Community food aid

3.3.1 The recipients of Community food aid

During the period 1983-89, the number of recipients of Community food aid dropped significantly. To take just one example, one could note that in 1977, the Community allocated a total of 720,500 tonnes of food aid in cereals to 43 developing countries and 5 international organizations; in 1981, 47 developing countries, 5 international organizations and an unspecified number of NGOs' received a total of 927,663 tonnes of cereals; but in 1989, however, merely 22 developing countries, 5 international organizations and an unspecified number of NGOs' received a total of 1,360,000 tonnes of cereals. In total, only 28 developing countries, 6 international organizations and an unspecified number of NGO's were allocated Community food aid in 1989. In fact, the trend to limit the number of recipients already started in 1982 and reflected the Community's understanding that to realize that the maximum developmental impact the Community it would have to concentrate its resources on fewer and especially on the most needy countries as well as supply more food aid through international and non-governmental organizations. The foreign policy reasons which in the seventies and early eighties led the Community to supply food aid to as many countries as possible and limit the quantities supplied through international organizations have become definitely less prominent in shaping the Community's food aid policy. Also in the allocation one can clearly see the shift in the balance of compromise between the various food aid policy objectives.

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1 Note that the data below do include the quantities supplied from the exceptional food aid reserve in 1986, 1987 and 1988; they do not include the quantities supplied under the special emergency plans for Africa decided on in 1984 (including the Dublin Plan). This affects in particular the data on the allocations of cereal food aid. Furthermore, it should be noted that for all products, the quantities of direct emergency food aid supplied in 1986 only the recipient regions and not the recipient countries were identified. Finally, the data at our disposal for 1983-1985, occasionally add the food aid received by a country indirectly through an international organizations or NGO to the food aid received directly.
The biggest recipient in absolute quantities of Community food aid in cereals during the period 1983-89 was Bangladesh (1,132,000 tonnes; also the biggest recipient during the periods 1969-76 and 1977-82) closely followed by Egypt (1,085,000 tonnes; also second in the period 1977-82). Other major recipients of cereal food aid were the WFP (999,720 tonnes; also third in the period 1977-82), Mozambique (616,000 tonnes), the NGOs (646,100 tonnes; a noteworthy newcomer in the list of top recipients), Ethiopia (520,000 tonnes), the UNHCR (494,560 tonnes) and Sri Lanka (290,000 tonnes).

The biggest recipient in quantities per capita, however, was Cape Verde (182.63 kg; also in the period 1977-82, Cape Verde was the top cereals recipient per capita). The other countries in the top five of biggest recipients in quantities per capita were Sao Tomé (92.5 kg) and Djibouti (85.37 kg), both also the top five of the period 1977-82, followed by two new-comers, Mauritania (45.45 kg) and Mozambique (42.95 kg). It should be noted that the quantities supplied to the biggest recipients in absolute terms represented also in relation to their population all but negligible quantities: Bangladesh (10.90 kg), Egypt (22.61 kg), Mozambique (42.95 kg) and Sri Lanka (17.63 kg).

Note also that a considerable quantity (273,470 tonnes) was allocated to the UNHCR/WFP.

Note that the emergency food aid in cereals supplied in 1984 and 1985 to Africa in addition to the Community's cereal food aid programme for these years was not taken into account.

Other important recipients were Sri Lanka (183,000 tonnes) and Somalia (159,500 tonnes).
### 1983-89: Development and relief as primary policy objectives

The allocation of Community food aid in cereals during the period 1983-89

(absolute quantities and quantities per capita)

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

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**DIRECT AID**

| ORGANISATIONS       |       | 137.80| 211.80| 285.00| 344.19| 324.88| 342.54| 396.40| 2042.61    |
| WFP                 |       | 90.00 | 115.00| 110.00| 144.19| 135.81| 170.00| 234.72| 999.72     |
| UNRWA               |       | -    | -    | 5.00 | 6.07 | 9.35 | 1.24 | -    | 21.66      |
| UNHCR               |       | 30.20| 79.20| 145.00| 135.00| 35.00 | 20.00| 50.16 | 494.56     |
| ICRC                |       | 15.00| 15.00| 20.00 | 40.00 | 8.00  | 40.00 | -    | 138.00     |
| LICROSS             |       | 2.60 | 2.60 | 10.00 | 20.00 | 20.00 | 30.00 | -    | 115.20     |
| UNHCR/WFP           |       | -    | -    | -    | 120.00| 73.19 | 80.28 | -    | 273.47     |
| V.G.O.'s            |       | 9.47 | 15.00| 50.00 | 80.00 | 158.92| 162.71| 170.00| 646.10     |

**INDIRECT AID**

| 147.27 | 226.80 | 335.00 | 424.19 | 483.80 | 505.25 | 566.40 | 2608.70 |
| GRAND TOTAL         | 1301.37| 221.43| 1158.49| 1278.00| 1333.60 | 1387.25 | 1350.00| 8630.14 |
The biggest recipient in absolute quantities of Community food aid in skimmed milk powder during the period 1983-89 was - as during the periods 1969-76 and 1977-82 - the WFP which received in total 184,280 tonnes of skimmed milk powder from the Community. The second largest recipient were the NGO’s (166,600 tonnes) followed by India (129,000 tonnes), Egypt (34,450 tonnes), China (29,200 tonnes) and Tunisia (22,500 tonnes).

The biggest recipients in quantities per capita were Grenada (7.02 kg), Cape Verde (5.75 kg), Nicaragua (3.37 kg), Tunisia (3.11 kg) and Comoros (2.84 kg). While the population of Grenada, Cape Verde and Comoros is so small that even the smallest of allocations represents a lot per capita, the same cannot be said of Nicaragua and Tunisia. One could say that the latter countries were the Community’s real favourites. Note that of the other main recipients in absolute terms Egypt received 0.72 kg per capita, India 0.17 kg and China 0.03 kg.
1983-89: Development and relief as primary policy objectives

The allocation of Community food aid in stamp during the period 1983-89
(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 1983-89 was WFP with 38,710 tonnes (second in the period 1977-82), followed by India (35,700 tonnes; first in the period 1977-82), Egypt (11,900 tonnes), China (11,430 tonnes) and UNRWA (6,690 tonnes).

The biggest recipients in quantities per capita, however, were Sao Tomé (1 kg), Cape Verde (2.10 kg), Mauritania (2.26 kg), Guyana (0.99 kg) and - quite noteworthy - Nicaragua (0.71 kg). India received 0.05 kg, Egypt 0.25 kg and China 0.01 kg per capita.
The allocation of Community food aid in butteroil during the period 1983-89
(absolute quantities and quantities per capita)

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

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### 1983-89: Development and relief as primary policy objectives

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| DIRECT AID |       | 23.89 | 12.76 | 14.96 | 8.49 | 16.25 | 10.54 | 5.72 | 102.59         | 0.19              |

| ORGANISATIONS |       | 9.94 | 8.50 | 9.35 | 7.90 | 8.15 | 9.70 | 4.50 | 58.04         |                   |
| WFP          |       | 6.00 | 6.00 | 6.00 | 4.56 | 3.65 | 8.50 | 4.00 | 38.71         |                   |
| UNHCR        |       | 0.94 | 1.00 | 1.25 | 0.80 | 1.50 | 1.20 | -    | 6.69          |                   |
| UNHCR/UNICEF |       | 1.40 | 0.20 | 1.10 | -    | -    | -    | -    | 2.70          |                   |
| ICRC         |       | 1.00 | 0.80 | 0.50 | 1.50 | -    | 0.59 | -    | 4.30          |                   |
| ICRC/UNICEF  |       | 0.60 | 0.50 | 0.50 | 1.04 | 1.00 | -    | -    | 3.64          |                   |
| N.G.O.'s     |       | 1.20 | 1.25 | 1.35 | 2.80 | 5.40 | 0.55 | -    | 14.50         |                   |

| INDIRECT AID |       | 11.99 | 10.00 | 10.20 | 9.25 | 10.50 | 15.10 | 5.05 | 72.53         |                   |

| GRAND TOTAL  |       | 35.87 | 32.76 | 25.16 | 17.74 | 27.20 | 25.64 | 10.77 | 175.13        |                   |
The main recipients of food aid in sugar during the period 1986-89 were the NGOs (11,000 tonnes), UNRWA (7,740 tonnes), UNHCR (4,500 tonnes) and WFP (4,000 tonnes). Sugar was supplied directly to few countries and among those few most went to Kenya (2,000 tonnes).
The allocation of Community food aid in sugar during the period 1986-89

(absolute quantities and quantities per capita)

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

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The main recipients of food aid in vegetable oil during the period 1986-89 were the NGOs (15,660 tonnes), Egypt (12,000 tonnes), the WFP (10,820 tonnes), Bangladesh and India (both 9,000 tonnes) and Mozambique (7,200 tonnes). The main recipients in quantities per capita were Sao Tomé (3 kg), Cape Verde (1.8 kg), Nicaragua! (1.48 kg), Botswana (0.87 kg) and Comoros (0.66 kg).
## Allocation of Community food aid

The allocation of Community food aid in vegetable oil during the period 1986-89
(absolute quantities and quantities per capita)

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

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The main recipients of food aid in other products during the period 1986-89 were the NGOs (19.16 mECU), UNRWA (14.28 mECU), Nicaragua (11.81 mECU), the UNBRO/WFP (11.77 mECU) and Mozambique (8.99 mECU).
# Allocation of Community food aid

The allocation of Community food aid in other products during the period 1986-89

*(absolute quantities and quantities per capita)*

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

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It will be recalled that in the period 1969-76, 50.5% of all direct Community food aid in cereals went to Asia and 33% to Africa and that in the period 1977-82 the partition was exactly the reverse: 54.3% went to Africa and 34.9% to Asia. In the period 1983-89, 67.7% of the Community’s direct cereal food aid went to Africa, 26.3% went to Asia, 4.8% went to Latin America and 1.2% went to the Middle East. Hardly surprising, the focus on Africa clearly increased. Among the African countries, Egypt (1,085,000 tonnes) was by far the biggest recipient in absolute terms; Cape Verde (182.63 kg) was the main recipient in quantities per capita. Among the Asian countries, Bangladesh was the main recipient in absolute quantities (1,132,000 tonnes) while Sri Lanka was the main recipient in quantities per capita (17.63 kg). Bolivia was the biggest Latin American recipient of direct food aid in cereals in absolute terms (80,720 tonnes); the biggest recipient in quantities per capita was Dominica (19.48 kg). In the Middle East, only Lebanon received regularly Community food aid in cereals (63,000 tonnes in total; 23.12 kg per capita).
The quantities of direct cereal food aid allocated to Africa went up sharply in 1983 and 1984 after which they have been going down slightly while always remaining at far higher levels than the quantities supplied to other regions. The quantities allocated to Asia went up and down without there being a clear trend. The quantities allocated to Latin America and the Middle East were marginal throughout the period 1983-89.

It will be recalled that during the period 1969-76 slightly more direct food aid in skimmed milk powder went to Africa than to Asia while in the period 1977-82, 49% of all direct food aid in skimmed milk powder went to Asia and 37% to Africa. In the period 1983-89, this situation remained almost unchanged. 49.7% went to Asia while 35.7% went to Africa. Latin America received 13.0% and the Middle East 1.5%.

Among the Asian countries, India remained the main recipient in absolute quantities (129,000 tonnes, most of it supplied under Operations Flood II and III)
and was also the main recipient in quantities per capita (0.17 kg) which was a good indication of the fact that, with the exception of China in the last three years, other Asian countries received virtually no direct food aid in skimmed milk powder. Among the African countries, Egypt was the main recipient in absolute terms (34,450 tonnes) and Cape Verde (5.75 kg) the main recipient in quantities per capita; these two countries had also been the main African recipients in the period 1977-82. In the Middle East, only Lebanon regularly received direct food aid in skimmed milk powder. Among the Latin American countries, Nicaragua was the main recipient in absolute quantities (11,400 tonnes) and Grenada the main recipient in quantities per capita (7.02 kg).

The evolution of the regional partition of direct Community food aid in skimmed milk powder during the period 1983-89 was characterized by a very sharp drop in quantities of skimmed milk powder supplied directly to Africa. Also the quantities supplied to Asia dropped during the first years of the period but recovered significantly after 1986.
As during the periods 1969-76 and 1977-82, Asia was also during the period 1977-82 the major recipient of direct Community food aid in butteroil (53.5%), followed by Africa (38.7%). The rest was divided between Latin America (6.9%) and the Middle East (0.9%).

Among the Asian countries, India remained the main recipient in absolute quantities (35,700 tonnes) and also became the main recipient in quantities per capita (0.05 kg) of Community direct food aid in butteroil. Among the African countries, Egypt was once again the main recipient in absolute terms (11,900 tonnes) and Mauritania was the main recipient in quantities per capita (2.26 kg); among the Middle East countries, only Lebanon received some direct food aid in butteroil from the Community (900 tonnes). Finally, among the Latin American countries, Nicaragua was clearly the main recipient in absolute quantities (2,400 tonnes) while Guyana was the main recipient in quantities per capita (0.99 kg).
The evolution of the regional partition of direct food aid in butteroil in the period 1983-89 was as the evolution of the regional partition of direct food aid in skimmed milk powder characterized by a very sharp drop in the quantities of butteroil supplied to Africa; in fact in the last two years more direct food aid in butteroil was allocated to Latin America than to Africa. The quantities allocated to Asia dropped sharply until 1986; in 1987 they went up impressively but in the last two years they dropped again.
During the period 1986-89, almost all food aid in sugar (91.1%) went to Africa; the rest (8.9%) went to Latin America and it should be noted that the latter only received food aid in sugar in 1986.
1983-89: Development and relief as primary policy objectives

The regional partition of direct Community food aid in sugar during the period 1986-89

The evolution in the regional partition of direct Community food aid in sugar during the period 1986-89
During the years 1986-89, most food aid in vegetable oil went to Africa (49.5%); the rest went to Asia (32.3%) and Latin America (18.2%). In Africa, Egypt was the main recipient in absolute terms (12,000 tonnes); in Asia, India and Bangladesh shared this position (both 9,000 tonnes); in Latin America, most direct food aid in vegetable oil went to Nicaragua (5,000 tonnes). Note that Africa became quickly more important as a recipient region while Asia lost in importance.

The regional partition of direct Community food aid in vegetable oil during the period 1986-89
During the years 1986-89, most food aid in other products went to Latin America (50.3%), closely followed by Africa (44.1%). The rest went to Asia (0.9%) and the Middle East (4.7%). In Latin America, Nicaragua was by far the biggest recipient (11.81 m ECU) while in Africa, Mozambique was the main recipient (8.99 m ECU). During the period 1986-89, Latin America and Africa were in turn the main recipient region.
The regional partition of direct Community food aid in other products during the period 1986-89.
It will be recalled that for the period 1977-82 the IDS/ABC study observed that Community food aid was slightly more concentrated on the poorest countries than food aid of most donors. Nevertheless, it was noted that during this period 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. During the period 1983-89, direct food aid in cereals (42.7%) and butteroil (22%) were focused more on the least developed countries. Furthermore, it should be noted that 13% of the direct food aid in skimmed milk powder, 3.6% of the direct food aid in sugar, 27.9% of the direct food aid in vegetable oil and 5.4% of the direct food aid in other products went to least developed countries.

It is even more important to observe, however, that little direct Community food aid went to countries other than low-income food-deficit countries. In fact, 92.6% of all direct food aid in cereals, 82.4% of all direct food aid in skimmed milk

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\(^{1}\text{IDS/ABC, 1982, I.10.}\)
powder, 89.3% of all direct food aid in butteroil, 76.8% of all direct food aid in sugar, 87.1% of all direct food aid in vegetable oil and 91.3% of all direct food aid in other products were supplied to low-income food-deficit countries.
1983-89: Development and relief as primary policy objectives

The focus of direct Community food aid in cereals, skim milk powder and butteroil on the low-income food-deficit countries during the period 1983-89.
The focus of direct Community food aid in sugar, v.o. and o.p. on the low-income food-deficit countries during the period 1986-89
The focus of direct Community food aid in cereals, skmp and butteroil on the least developed countries during the period 1983-89.
Allocation of Community food aid

The focus of direct Community food aid in sugar, v.o. and o.p. on the least developed countries during the period 1986-89

Sugar

Vegetable oil

Other products
1983-89: Development and relief as primary policy objectives

The evolution of the focus of direct Community food aid in cereals on the low-income food-deficit countries during the period 1983-89

The evolution of the focus of direct Community food aid in st身份 on the low-income food-deficit countries during the period 1983-89
The evolution of the focus of direct Community food aid in butteroil on the low-income food-deficit countries during the period 1983-89

The evolution of the focus of direct Community food aid in sugar on the low-income food-deficit countries during the period 1986-89
1983-89: Development and relief as primary policy objectives

The evolution of the focus of direct Community food aid in vegetable oil on the low-income food-deficit countries during the period 1986-89

The evolution of the focus of direct Community food aid in other products on the low-income food-deficit countries during the period 1986-89
The evolution of the focus of direct Community food aid in cereals on the least developed countries during the period 1983-89
The evolution of the focus of direct Community food aid in butteroil on the least developed countries during the period 1983-89

The evolution of the focus of direct Community food aid in sugar on the least developed countries during the period 1986-89
It will be recalled that while the advantages of supplying food aid through international and non-governmental organizations were generally recognized, the percentage of Community food aid in cereals supplied indirectly was during the seventies all but impressive. The situation was somewhat different for dairy food aid which initially to a considerable but then rapidly declining degree was supplied through international organizations. Very little food aid in whatever product was supplied through non-governmental organizations until the late seventies. The period 1983-89, however, was characterized by an impressive increase in the
quantities of food aid supplied through international organizations and NGOs. Indirect food aid represented 31.2% of the food aid in cereals (up from 19.0%), 54.2% of the food aid in skimmed milk powder (up from 45.7%), 41.4% of the food aid in butteroil (up from 29.3%), 84.6% of the food aid in sugar, 43.2% of the food aid in vegetable oil and 69.8% of food aid in other products. Even more impressive is, especially in the case of cereals, sugar, vegetable oil and other products, that with few exceptions indirect aid became each year more important.

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 (999,720 tonnes after Bangladesh and Egypt)^4, the biggest recipient of food aid in butteroil (38,710 tonnes) and in skimmed milk powder (184,280 tonnes). Other international organizations such as UNRWA, UNHCR, ICRC and Licross also received fairly important quantities of Community food aid. Especially the UNHCR quite important quantities of cereals (494,560 tonnes). The most remarkable change, however, concerned the quantities supplied to NGOs. While during the period 1969-76, non-governmental organizations (NGOs) received very little Community food aid and during the period 1977-82 they only played an important role in the Community’s skimmed milk powder programme, during the period 1983-89 the NGOs became major food aid recipients of all products. They received 646,100 tonnes of cereals, 166,660 tonnes of skimmed milk powder, 14,500 tonnes of butteroil, 11,100 tonnes of sugar, 15,660 tonnes of vegetable oil, and for 19.16 m ECU food aid in other products. In fact, NGOs were the main recipients of food aid in sugar, vegetable oil and other products.

^4The Community has annually made considerable voluntary contributions to the WFP’s regular resources. It deserves to be noted that contrary to provisions in the WFP’s General Regulations which envisage a two-thirds to one-third proportion between pledges in commodities and in cash, the Community’s allocations have been predominantly in commodities with the cash component (for transportation) roughly averaging 13 of the total contributions over the last 10 years (WFP/CFA: 24/4, 11). The Community has also contributed to the IEFR to which it has contributed both commodities and cash for triangular operations and local purchases.

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Allocation of Community food aid

Direct and indirect Community food aid in cereals, skmp and butteroil during the period 1983-89
1983-89: Development and relief as primary policy objectives

Direct and indirect Community food aid in sugar, v.o. and o.p. during the period 1986-89
The evolution in direct and indirect Community food aid in cereals
during the period 1983-89

The evolution in direct and indirect Community food aid in skmp
during the period 1983-89
1983-89: Development and relief as primary policy objectives

The evolution in direct and indirect Community food aid in butteroil during the period 1983-89

The evolution in direct and indirect Community food aid in sugar during the period 1986-89
3.3.2 The criteria for allocating Community food aid

Fourteen years after the first food aid allocation, the Council finally formally agreed in December 1982 upon a set of food aid allocation criteria. Article 2 (2)
of the first food aid framework regulation stipulated:

Food aid shall be allocated primarily on the basis of an objective evaluation of the real needs justifying the aid. To that end particular consideration shall be given to the following three criteria, without excluding other pertinent considerations:
- basic food needs;
- per capita income;
- the balance-of-payments situation.7

It will be observed that these allocation criteria were in fact the criteria which the Council had already agreed upon informally in March 1977.* In commenting upon the March 1977 criteria, I noted that the latter criteria were vague and did not provide for qualifying thresholds. Furthermore, I noted that there existed no consistent and rigorous sets of rules to translate these unspecific criteria into quantities to be granted. In fact, I concluded, these criteria were of little practical value; they were merely guidelines the importance of which rested mainly in the fact that they did not explicitly include criteria such as 'the political and economic system' of the recipient country or its 'strategic importance' to the Community but required the Community to base its allocation decisions primarily on the food needs and the economic situation of the requesting countries. A similar evaluation is called for with regard to the criteria provided for in Article 2 (2) of the first framework regulation. Note also that in spite of the specific recommendation of the 1982 IDS/ABC study to include among the allocation criteria an assessment of how well development programmes reached the poor as well as an assessment of the quality of the recipient's food strategy, no such criteria were included in Article 2 (2) of the first framework regulation.9 The allocation criteria of the first framework regulation also only concerned the allocation of direct food aid; the framework regulation did not contain any criteria or guidelines regarding the partition between direct and indirect food aid or regarding the allocation to specific organisations.

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*See: Section 3.3.2 of Chapter 2.

9IDS/ABC, 1982, 5.9.
In principle in the light of the criteria stipulated in Article 2 (2) of the first framework regulation but in practice with the single concern of avoiding that food aid would be supplied to countries which (a qualified minority of) Member States thought should not receive food aid (in particular for foreign policy reasons), the Council decided, pursuant to Article 4 (1), fourth indent, each year again as part of the annual implementing regulation of the first framework regulation on the list of countries eligible for Community food aid. In the same context but without the 'guidance' provided for by Article 2 (2) of the first framework regulation which only applied to countries, the Council decided, also pursuant Article 4 (1), fourth indent, on the list of international organizations eligible for Community food aid and laid down the criteria non-governmental organizations had to satisfy to be eligible for Community food aid. While initially some Member States had insisted that these decisions would be taken by unanimity, the first framework regulation stipulated that the Council could take these decisions on eligibility by qualified majority. It may be noted that the decisions on the list of eligible international organizations and on the eligibility criteria for non-governmental organizations were apparently not controversial. With regard to international organizations, the Council adopted in 1983 - without any amendment - the list proposed by the Commission. This list included the ICRC (International Committee of the Red Cross), Licross (League of Red Cross Societies), UNHCR (Office of the United Nations High Commissioner for Refugees), UNICEF (United Nations Children's Fund), UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East) and WFP (World Food Programme). The successive implementing regulations of the first framework regulation contained - always in line with the Commission's proposal - the same list with the exception of the 1986 implementing regulation in which the Council added UNBRO, the United Nations Children's Fund.

See: Section 3.5 of this Chapter.

Border Relief Operation, to the eligible international organizations. Except for the latter organization, the eligible international organizations were in general those through which the Community had also during the seventies and early eighties supplied food aid.

The eligibility criteria for non-governmental organizations were equally non-controversial. The successive implementing regulations of the first framework regulations all stipulated (with only minor linguistic differences) in their Article 2 (2):

The aid may [...] be placed at the disposal of non-governmental organizations which must inter alia:

(a) have their headquarters in a Member State of the Community or, exceptionally, in a third country;

(b) have a status that is characteristic of an organization of this type;

(c) have shown that they have the capacity to carry out food aid operations successfully;

(d) have given an undertaking to comply with the supply terms laid down by the Commission pursuant to Article 6 of Regulation (EEC) No 3331/82.  

The great diversity and the large number of non-governmental organizations made it difficult, if not impossible, to draw up an exhaustive list of non-governmental organizations eligible for Community food aid. Quite rightly the Council thus preferred to lay down the above listed eligibility criteria. These criteria basically allowed, on the one hand, for food aid to be allocated to any 'serious' non-

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UNBRO, the United Nations Border Relief Operation, is set up to give relief and assistance to the roughly 250,000 Cambodian refugees in Thailand.

13 Note, however, that no food aid had been supplied to UNICEF since the late seventies neither had this organization asked for any.

governmental organization, by preference but not necessarily a 'Community' organization, and, on the other hand, for exclusion of organizations which showed themselves incompetent to carry out a food aid operation. Such reasonable and very flexible criteria could hardly have been controversial. For information, an updated list of the non-governmental organizations recognized by the Commission as fulfilling the eligibility criteria was published regularly in the C Series of the Official Journal.

While the eligibility of international and non-governmental organizations was not controversial, the decision on the list of eligible countries, on the contrary, was in particular when this list was drawn up for the first time in 1983, quite controversial and it should be noted - to nobody's surprise I would add - that the controversy did not always concern the question whether a particular country met the allocation criteria of Article 2 (2) of the first framework regulation but had often a foreign policy issue at its core. If one compares, for example, the list of eligible countries proposed by the Commission in 1983 with the list finally adopted by the Council, it may be noted that the Council eliminated Liberia, Cameroon, Congo, Colombia, El Salvador, Burma, Cambodia and Laos from the list and added Ecuador, Haiti, Malawi, Malta and St. Kitt-Nevis. 15 Reportedly, the Council was all but unanimous with regard to the inclusion or exclusion of El Salvador, Vietnam, Malta, Honduras, Thailand and China.

It should also be noted that in 1983, most Member States had initially insisted that the Commission would propose different lists for each food aid product and would only include in these lists those countries which were likely to receive food aid in the coming year. The Commission, on the contrary, proposed one, wide-ranging list which included all countries which in principle would be eligible for Community food aid. It is true that the inclusion of countries to which the Commission did not intend to supply food aid might (theoretically at least) be misunderstood by these countries, create false hopes, and lead to diplomatic embarrassment. Furthermore, it is also true that there were for example countries

which should have been eligible for cereal food aid but not for dairy food aid and visa-versa. Nevertheless, the Commission, eager to have as much room for manoeuvre as possible when deciding on the allocation of food aid, proposed only one list. Eventually the Council adopted only one list.\(^\text{16}\) In 1984, the list remained unchanged\(^\text{17}\); in 1985, the Council added, following the Commission’s proposal, Burma\(^\text{18}\); and in 1986 added, again following the Commission’s proposal, (El) Salvador and Guatemala\(^\text{19}\).

It is important to note that 'blacklisted' countries, i.e. 'non-listed' countries could nevertheless receive Community food aid, be it indirectly, i.e. through an international or non-governmental organization, or as emergency food aid. I will come back to the latter later but it is clear that this made it easier for Member States to accept the exclusion of a country they thought should be eligible for food aid. To give only one example, Vietnam was blacklisted by the Community because of its invasion of Cambodia\(^\text{20}\); in practice, however, it received Community food aid through international organizations active in the latter country, be it that the quantities involved were modest.

On the other hand, it should be stressed that inclusion on the list of eligible countries or on the list of eligible international organizations referred to above did by no means signify that a country or organization would in fact get any food aid. The lists were truly lists of eligible countries and organisations.

Pursuant Article 5, first indent of the first framework regulation, the Commission

\(^{16}\)But the list would be reviewed annually which was not what the Commission had in mind.

\(^{17}\)Note, however, that during the discussions on the list various Member States asked for the exclusion of Malta, Honduras, Thailand, China and Haiti or asked for the inclusion of Vietnam.


\(^{19}\)COM(85) 482 final, 11; and Annex III (1) to Council Regulation (EEC) No 232/86 of 27 January 1986 laying down implementing rules for 1986 for Regulation (EEC) No 3331/82 on food aid policy and food aid management, OJ. 1986, L 29/7. In its explanatory memorandum, the Commission considered that Malta, given its food situation and level of development, should no longer receive food aid. The Commission did, however, not eliminate Malta from its proposed list of eligible countries and neither did the Council.

\(^{20}\)See: Section 3.3.2 of Chapter 2.
decided, from the 1983 food aid programme onwards, on the allocation of the available quantities of food aid among the eligible countries and organizations. While the framework regulation did not stipulate any criteria for the allocation of food aid to international and non-governmental organizations, it stipulated in Article 2 (2), already quoted above, that the decisions on the allocation of food aid to countries should be primarily based on the basic food needs, the per capita income and the balance-of-payments situation of the countries requesting Community food aid, without, however, excluding other pertinent considerations. These vague and unspecific allocation criteria, which did not even provide for qualifying thresholds, clearly left the Commission with a large margin of discretion. The latter defined for its own purposes more precise and operational criteria and qualifying thresholds but these were never made public. It may be noted, however, that the Commission reportedly allocated in 1983 for example cereal food aid only to countries with a per capita income of less than $805 and also considered (in some cases) whether on the basis of past experience the food aid (in particular dairy food aid) was likely to be used correctly and whether the food aid was integrated in the recipient’s overall efforts to improve the food

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21 Pursuant Article 5, second indent, the Commission was also competent, to amend, in so far as necessary, allocations during the implementation in the light of the capacity of the recipient to absorb aid.

22 Note that the Commission’s allocation decisions were prepared by the Food Aid Division but discussed with the competent Desk Officers.

23 An internal Commission document noted that for cereals allocation decisions, the Commission took into account three specific factors: (1) the country’s cereals import needs (considering here basic food needs, the country’s economic development, and its external finances); (2) particularly difficult conditions such as drought or civil disturbance; and (3) whether or not the country intended to use the allocation for a food-related development project, particularly in the framework of the implementation of food strategies. The same document noted with regard to dairy allocation decisions that the Commission took into account five specific factors: (1) the capacity of the recipient country to make good use of the aid (i.e. in the first place of the dairy products themselves and secondly of the possible counterpart funds); (2) the level of development of the country; (3) the importance of milk consumption in the local diet (milk is not consumed but in a limited number of countries and many (adult) populations do not tolerate lactose); (4) the existence of local sources of proteins and fats which are substitutes for the milk products; and (5) the speed with which earlier food aid actions have been implemented. A detailed study of the allocation decisions presented to the Food Aid Committee might have shed some light on the criteria used but the allocation decisions relating to this period were not readily available for consultation.
Obviously, the final allocation decisions were all but the outcome of quasi-mathematical calculations and may often have been somewhat arbitrary. By this I do not intend to imply that Community food aid was often granted to countries positively less needy than others but it cannot be denied that it is often hard to explain on the basis of objective data why country X is granted 5,000 tonnes and country Y 15,000 tonnes.

With regard to the Commission's allocation decisions and the difficulties involved, one should, however, make the following observations. First, developing countries, uncertain as to how much aid they will eventually receive and often unable to assess with precision the seriousness of the food shortfall, tend to paint an even gloomier picture than is necessary. The requests for food aid and the data they are based on were therefore often less than helpful in deciding on what would constitute an appropriate response from the Community. Secondly, since it took the Community on average at least six months to get the food aid to the recipients, the Commission was often called to take a decision in the context of a factual situation which by the time the food aid arrived might well have changed considerably. Thirdly and finally, it was not always known what other donors were

In its Food aid for development Memorandum, the Commission recognized with regard to the allocation of food aid that in order to contribute to development, the allocation of food aid would have to be based not only on quantitative criteria but also qualitative criteria. The decision to grant Community food aid should therefore take into account: (a) the support which food aid schemes can give to efforts to develop the production or the marketing of food products; and (b) the ability and the desire of the recipient country to integrate these efforts in a coherent policy or strategy (COM(83) 141 final, 10.).

Two concrete examples of allocations decisions, reported in the 1986 Report of the Court of Auditors, illustrate my point. A first example concerns food aid to Niger, where as a result of uneven and inadequate rainfall, the cereals harvest of October 1984 was estimated at 1,071,000 tonnes, a shortfall of 422,000 tonnes compared with the average of previous years. Against a background of large-scale movements of population, the government announced import needs of some 500,000 tonnes, with 395,000 tonnes to be covered by food aid; the Commission amended this assessment to 450,000 tonnes with 350,000 tonnes of food aid. The Commission's decisions taken from September 1984 onwards involved almost 70,000 tonnes of cereals (i.e. 20% of the requirements) delivered between October 1984 and July 1985. Niger also received food aid from the USA (118,000 tonnes), the WFP (26,000 tonnes) and Japan (18,000 tonnes) (COURT OF AUDITORS, Annual Report 1986, Reply of the Commission, 238.).

A second example concerns food aid to Burkina Faso. The government of the latter country announced in 1984 a shortfall in its cereals production of 300,000 tonnes. The Commission, however, assessed the real shortfall at 170,000 tonnes of which 60,000 tonnes of which could be met by commercial imports. It accordingly estimated the food aid requirements at 110,000 tonnes and decided to grant 11,000 tonnes of cereals (i.e. 1% of the production and 10% of the food aid needs) (COURT OF AUDITORS, Annual Report 1986, Reply of the Commission, 239.).
going to do and this evidently complicated a decision on an appropriate Community effort.

It is important to mention that the allocation decisions were scrutinized by the Food Aid Committee; while this might have made the Commission more careful in taking its allocation decisions, it should be noted that between 1983 and 1986 included, the Food Aid Committee only twice did not render a favourable opinion on the Commission's allocation decisions. Both cases concerned a food aid allocation to Malta and were controversial because the latter country had a relatively high income per capita and high economic growth rate. The Council was, however, in both cases, unable to muster a qualified majority necessary take a different decision overruling the Commission's initial decision.\(^8\)

Apart from the allocations referred to until now, the Commission also decided on emergency food aid allocations. Article 6, first paragraph, of the first framework regulation stipulated:

In accordance with the Council decisions referred to in Article 4 and of the decisions taken under Article 5, the Commission shall decide on:

(a) emergency action for countries facing serious difficulties as a result of sudden and unforeseeable natural disasters and shall inform the Member States thereof;

(b) emergency action for countries facing serious difficulties as a result of exceptional circumstances comparable to natural disasters, after consulting the Member States by telex, giving them 48 hours to make any objections;

[...]

Both the substantial and the procedural rules applicable to these allocations of emergency food aid differed from the rules and procedures applicable to the allocation of 'normal' food aid, discussed above. While Article 6, first paragraph, explicitly referred to the Council decisions referred to in Article 4 and thus inter alia to the list of eligible countries, it was always understood and explicitly stated

\(^8\)Bull. EC 6-1984, 82.
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in the recitals of the successive implementing regulations that the Community’s emergency food aid operations were not limited to countries which the Council had identified as eligible for Community food aid. Furthermore, the allocation criteria stipulated in Article 2 (2) were not relevant in this context. Emergency food aid could be sent to a country in spite of the fact that this country had no structural food deficit, a high income per capita and no balance-of-payment problems. In fact, emergency food aid could be sent to any country faced which an emergency and the latter concept was defined in Article 6, second paragraph, of the first framework regulation as:

[...] an unforeseeable situation in which famine or a danger of famine poses a serious threat to the lives or health of the population in a country which is unable to meet the food deficit through its own means and resources.21

While I will come back to the procedural aspects of emergency food aid allocations in Section 3.5 of this Chapter, I would like to note already that these allocation decisions were not scrutinized by the Food Aid Committee. On the other hand, it is important to note that the quantity the Commission could allocate in the context of the specific emergency was explicitly limited by Article 6, third paragraph, of the first framework regulation to the quantities which the people affected by the emergency require in order to cope with the situation for a period not exceeding three months.

During the period 1983-86, the Community came (directly or through international organizations) to the aid of, for example, Ecuador (floods)29 and Chad (civil war)30 in 1983; Mozambique (drought)31 and Ethiopia (Eritrea) (drought and civil war)32

27See e.g. Council Regulation (EEC) No 457/85 of 19 February 1985 laying down implementing rules for 1985 for Regulation (EEC) No 3331/82 on food aid and food-aid management, OJ. 1985, L 54/1. The fourth recital reads: "Whereas a list of the countries and organizations eligible for food aid operations should be drawn up without prejudice to emergency operations;"


29Bull. EC 3-1983, 68.

30Bull. EC 4-1983, 55.

31Bull. EC 4-1984, 57.
in 1984; Chile (earthquake)\(^3\) and Lebanon (civil war)\(^4\) in 1985; and Thailand (refugees)\(^3\) and Syria (drought)\(^5\) in 1986. There were few 'major' disasters to which the Community did not react. I will not come back to its reaction to the biggest disaster of all in these years, the African crisis of 1984-85; the Community's extra-ordinary response to this crisis was sufficiently dealt with above.\(^7\)

With the entry into force of the second food aid framework regulation of December 1986, the above quoted Article 2 (2) of the first framework regulation was replaced by the currently applicable Article 2 (4) of the second framework regulation. The latter article stipulates:

> Food aid shall be allocated primarily on the basis of an objective evaluation of the real needs justifying the aid, with economic considerations also being taken into account. To that end, particular consideration shall be given to the following criteria, without excluding other pertinent considerations:
> - basic food needs,
> - per capita income and the existence of particularly impoverished population groups,
> - the balance of payments situation,
> - the economic and social impact and financial cost of the proposed action.\(^*\)

The changes to the allocation criteria of the first framework regulation are not without significance. First of all, the new criteria require that before deciding on the allocation one should consider the potential of food aid to contribute to the economic and social development of the would-be recipient. Secondly, the new

\(^{\text{3}}\)Bull. EC 3-1984, 72-73.

\(^{\text{4}}\)Bull. EC 5-1985, 74.

\(^{\text{5}}\)Bull. EC 6-1985, 92.

\(^{\text{6}}\)Bull. EC 2-1986, 79.

\(^{\text{7}}\)Bull. EC 6-1986, 92.

\(^{\text{7}}\)See: Section 2.1 and Section 3.2.1 of this Chapter.

criteria seem to provide for a sort of cost-benefit analysis to the extent that one should also consider the relation between the potential contribution to the development of the would-be recipient and the cost of the food aid operation. If a bigger contribution to the development of the would-be recipient for the same cost (to the Community) could be realized by other means than food aid, food aid should not be granted. Thirdly, the new criteria recognize that even countries which do not belong to the very poorest may be justified recipients when there are in these countries particularly impoverished population groups to whose benefit food aid could be used. Representing well the present allocation policy, the Council stressed in its Resolution of 21 November 1989 that apart from emergency situations, the choice of food aid as development aid instrument should be based on a careful examination of the actual requirements of the recipients and the most appropriate ways in which these can be met. Non-emergency food aid - according to the Council - should normally be provided only where there is a food import requirement and where its provision will improve food security or meet the needs of a vulnerable group.

The allocation criteria of Article 2 (4) remain, however, vague and do not provide for qualifying thresholds. Furthermore, the second framework regulation fails - as did the first framework regulation - to provide for criteria or guidelines regarding the partition between direct and indirect aid and the allocation of food aid to organizations.

As under the first framework regulation, the Council, pursuant Article 4 (1), third indent of the second framework regulation, decides, in principle in the light of the allocation criteria of Article 2 (4) quoted above but in practice to avoid that food aid is supplied to countries which (a qualified minority of) Member States think should not receive food aid (in particular for foreign policy reasons), on the list of eligible countries. This list is, however, no longer part of annual implementing regulations but of the implementing regulation of the second framework regulation, Council Regulation (EEC) No 1420/87 of 21 May, which is of
undetermined validity." In the latter implementing regulation the Council, pursuant Article 4 (1) third indent, also laid down the list of eligible international organizations and the eligibility criteria for non-governmental organizations. In comparison with the lists of eligible countries and international organizations and eligibility criteria for non-governmental organizations laid down in the successive implementing regulations of the first framework regulation and in particular in comparison the 1986 implementing regulation, the currently applicable lists of eligible countries and international organizations and eligibility criteria for non-governmental organizations differed little. With the exception of Malta which is no longer a country eligible for Community food aid, the list of eligible countries remained unchanged. At present, the following countries are eligible for Community food aid: Angola, Antigua and Barbuda, Bangladesh, Benin, Bolivia, Botswana, Burkina Faso, Burma, Burundi, Cape Verde, Central African Republic, Chad, China, Comoros, Costa Rica, Djibouti, Domenican Republic, Dominica, Ecuador, Egypt, Equatorial Guinea, Ethiopia, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Jordan, Kenya, Lebanon, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Nepal, Nicaragua, Niger, Pakistan, Peru, Philippines, Rwanda, Saint Christopner and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tomé and Prinipe, Senegal, Seychelles, Sierra Leone, Somalia, Sri Lanka, Sudan, Swaziland, Syria, Tanzania, Thailand, Togo, Tunisia, Uganda, North Yemen (Arab Republic), South Yemen (Democratic Republic), Zaire, Zambia and Zimbabwe.40

It should be noted that while most least developed countries (33 out of 39) and low-income, food-deficit countries (44 out of 66) are included in the list of eligible countries, Afghanistan and Laos, both least developed countries, and Cote d'Ivoire, Liberia, Nigeria, Vietnam, Cambodia, all low-income, food-deficit countries, are not

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eligible for Community food aid. The exclusions of at least four of the seven countries mentioned here are obviously politically motivated. Note, however, that also under the second framework regulation, the exclusion from the list of eligible countries does not prevent Community food aid from being sent to these countries, be it indirectly or as emergency aid and, consequently, as a rule, in modest quantities. In 1987, for example, emergency food aid was supplied indirectly to Vietnam (15,000 tonnes of cereals) to ameliorate conditions following drought and typhoons, to Cambodia (14,000 tonnes of cereals) to mitigate the effects of the drought on the rice harvest, and to Laos (20,000 tonnes of cereals) to support the population in drought affected areas.

The current list of eligible international organizations includes the ICRC (International Committee of the Red Cross), Licross (League of Red Cross Societies), UNHCR (Office of the United Nations High Commissioner for Refugees), UNICEF (United Nations Children's Fund), UNRWA (United Nations Relief and Works Agency for Palestine Refugees in the Near East), WFP (World Food Programme) and UNBRO (United Nations Border Relief Operation). With the exception of the latter organization (added in 1986), this list has not changed since it was first drawn up in 1983. There has been some talk about including other international organizations and in particular the WHO (World Health Organization) but so far no concrete steps in this direction have been taken.

The conditions of eligibility for non-governmental organizations are defined in Article 1 (2) of the presently applicable implementation regulation. This article stipulates:

Aid may also be placed at the disposal of non-governmental organizations which must inter alia:

(a) have a statute that is characteristic of an organization of this type:

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41 The other least developed countries not included in the list of eligible countries are the micro-states Samoa, Buthan, Kiribati, Vanuata and Tuvalu.

(b) have their headquarters in a Member State of the Community or, exceptionally, in a third country;

(c) show that they have the capacity to carry out food aid operations successfully;

(d) have given an undertaking to comply with the supply terms laid down by the Commission.  

It will be noted that these requirements are mutatis mutandis identical to those laid down in the successive implementing regulations of the first framework regulation discussed above. The comments made there still hold true for the present eligibility criteria.

Pursuant to Article 5, fourth indent of the second framework regulation, the Commission decides on the allocation of the available quantities of food aid 'taking account of the general policy guidelines for food aid', which evidently include the allocation criteria stipulated in Article 2 (4) already quoted above.  

As I already noted, these criteria are vague and unspecific and, in addition, are of little help to decide on allocations to international and non-governmental organizations. For the latter allocations or more generally speaking for the partition between direct and indirect aid, Community law still provides no guidance. All Community institutions, the Council included, have repeatedly stressed the importance of indirect food aid and the marked ability of international and non-governmental organizations to carry out food aid operations which require an organizational infrastructure in the recipient country. Neither in the first nor in the second framework regulation this acknowledgement is, however, reflected.


44 Note that Article 5, last indent, of the second framework regulation also gives the Commission the power to adjust, when necessary, allocations during the implementation of programmes.

45 The WFP Secretariat's 1987 report observed that previous allocations and current needs are the principle factors determining allocations between the EC's direct and indirect food aid. This would explain the regularity of the partition observed in Section 3.3.1 of this Chapter.
The least one would expect is a policy statement in favour of indirect food aid. The 1986 Food Aid Convention contains in Article V such a policy statement. While the Convention leaves its totally up to the donors to decide on the recipients of their food aid, it requires that:

Members shall give full consideration to the advantages of directing a greater proportion of food aid through multilateral channels, in particular the World Food Programme.\footnote{Article V (3) of the 1986 Food Aid Convention, O.J. 1986, L 195/17.}

To come back to the allocation of food aid among eligible countries, it is clear that the criteria of Article 2 (4) are of little practical value for the Commission when faced with the difficult task of allocating too little to too many. The observations made above regarding the difficulties entailed in assessing correctly the food aid needs of recipients, remain valid. There is no magic solution but ever closer cooperation and exchange of information with other donors and with international organizations, in particular, the FAO and the WFP, may allow already for much better informed allocation decisions.

As was the case under the first framework regulation, the Commission decides, apart from the allocations referred to so far, also on emergency food aid allocations. Article 6 (1) of the second framework regulation stipulates:

In accordance with the Council decisions referred to in Article 4 and the decisions taken under Article 5, the Commission shall decide on:

(a) emergency action to help countries, groups of refugees or other vulnerable sections of the population having to face serious unforeseen difficulties as a result of natural disasters; it shall inform Member States of such action;

(b) emergency action to help countries, groups of refugees or other vulnerable sections of the population having to face serious unforeseen difficulties as a result of exceptional circumstances comparable to natural disasters, after consulting the Member States by telex and giving them 48 hours to put forward any objections;
Both the substantial and the procedural rules applicable to these allocations of emergency food aid, differ significantly from the rules and procedures applicable to the allocation of 'normal' food aid. While Article 6 (1) explicitly mentions the Council decisions referred to in Article 4 and thus inter alia to the list of eligible countries, it is understood and explicitly stated in the recitals of Council Regulation (EEC) No 1420/87 of 21 May 1987, the currently applicable implementing regulation, that the Community's emergency food aid operations are not limited to countries which the Council has identified as eligible for Community food aid. Furthermore, the allocation criteria stipulated in Article 2 (4) are not relevant in this context. As during the pre-1987 period, Community law allows emergency food aid to be sent to a country in spite of the fact that this country has no structural food deficit, a high income per capita and no balance-of-payment problems. In fact, emergency food aid can be sent to any country faced which an emergency and the latter concept was defined in Article 6 (2) of the second framework regulation as:

[...] an exceptional, unforeseen situation in which famine or an imminent danger thereof, poses a serious threat to the lives or health of the population in a country which is unable to cope with the food shortfall using its own means and resources.47

It may be noted that the new definition of the concept 'emergency' is both stricter and more liberal than the definition provided for in the first framework regulation. It is stricter in the sense that it adds the words 'exceptional' (situation) and 'imminent' (danger of famine) but is more liberal in the sense that it drops the word 'unforeseeable' and replaces it by 'unforeseen'. In practice, however, these changes have been of little significance.

Unlike the normal food aid allocation decisions, the emergency food aid allocation decisions are not scrutinized by the Food Aid Committee48 but it should be noted that the quantity the Commission can allocate in the context of the specific

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48 See for more detail: Section 3.5 of this Chapter.
Emergency is explicitly limited by Article 6 (3) of the second framework regulation to the quantities which the people affected by the emergency require in order to cope with the situation for a period not exceeding four months. To give just one, fairly typical example of the many emergency food aid operations undertaken by the Community since 1987, one could refer to an emergency food aid operation (2,712 tonnes of cereals) to Mozambique in 1988 requested by the Deutsche Welthungerhilfe to be delivered to schools and orphanages (14,000 recipients) in Manica Province and 20,000 refugees in two camps in Sofala Province.

Evidently, it is often very difficult to assess correctly and in time the food aid needs of a recipient country and to decide - within the limits of the availabilities - on an appropriate Community response. Above I already noted how difficult it is in the absence of reliable data to take a decision on the allocation of normal food aid; it is even more difficult to take a correct and especially timely decision on the allocation of emergency food aid. During the African crisis, the governments of the countries hit by the drought as well as the international community had - due to a lack of exact information - at first certainly underestimated the seriousness of the crisis and had therefore been slow in respectively appealing for and granting the necessary aid. To avoid this, early warning systems monitoring agro-meteorological conditions and crop growth would have to be set up. Such early warning systems would allow to detect food crises in advance and to organize in time emergency aid operations. Already at its

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*It will be recalled that under the first framework regulation, this was three months.

News Round-Up, The Courier, September-October 1988, XIV.

The administrations of most African countries were - owing to a lack of human and financial resources - unable, however, to operate such systems on a satisfactory basis (COM(85) 308 final, 4.). While the Community was already helping the developing countries to improve their capacity to collect and process data on agro-meteorological conditions and crop growth, it was clear that the Community had to step up its efforts in this field, in particular as regards:
- restoring or reinforcing the capacity of the national authorities to institute permanent monitoring systems covering the various aspects of data collection, transmission and processing;
- creating small agro-meteorological stations;
- organizing the centralization of the available data; and
- developing remote sensing observation systems covering the whole African continent (COM(85) 308 final, 4-5.).
meeting of 23 May 1985, the Council considered that early warning machinery and procedures should be developed further to avoid being caught unaware by comparable famines in the future. In its communication on the Rehabilitation and Revival Plan for the African countries, the Commission also proposed that in order to reinforce as much as possible in the short term Africa's own capacity to tackle with more success future famines that the Community should help these countries inter alia with the early detection of famine situations. Also Parliament insisted that significant improvements had to be made in the effectiveness of emergency food aid operations, among others by improved monitoring and early warning systems. It is obvious, however, that early warning systems would not merely allow to react in time to emergencies but in 'normal' times would allow for more accurate assessments of the food shortfall and food aid needs. As I already noted above, the Community has - as an integral part of its food aid policy - since 1978 on an experimental basis and since 1988 on the basis of Council Regulation (EEC) No 2507/88 of 4 August 1988, the possibility of financing the setting up of new or the improvement of existing early warning systems, which should be able to give food aid donors and recipients a better idea of the size of next harvest and food shortfall. While most of the appropriations entered in the relevant budget line, Item 9281, seem to be used for the improvement of storage facilities, the Community was for example involved in the setting up of an early warning system in the Sahel region of Chad.

52This included Community technical assistance and logistical and operating resources to ensure basic agro-meteorological surveillance, to strengthen the facilities for transmitting information gathered on the ground to the central unit (logistics, radio), and to reinforce systems for "warning lights" as regards scarcity of food (population movements, market prices of food, etc.) (COM(85) 599 final, 8-9).


55For more details on the importance and the main features of this regulations, see: Sections 2.2.5 and 3.4.3 of this Chapter.
3.4 The terms and conditions of Community food aid supplies

3.4.1 The general terms of Community food aid supplies

As it had done before 1983, the Community supplied also during the period 1983-89 virtually all its food aid on a 100% grant basis. It should be noted, however, that Community law did not require such 'generosity'. Neither the first nor the currently applicable, second food aid framework regulation stipulate that the Community should give its food aid for free and the 1980 and 1986 Food Aid Conventions, under which the Community supplied most of its cereal food aid, explicitly provided for the possibility to supply food aid on less favourable terms.1

Article IV of the 1986 Food Aid Convention stipulated:

Food aid under this Convention may be supplied on any of the following terms:

(a) gifts of grain or gifts of cash to be used to purchase grain for the recipient country;

(b) 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 member;

(c) sales on credit, with payment 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;1

Article IV continued, however, by stating that the above was:

on the understanding that such aid shall be supplied to the maximum extent possible by way of gifts, especially in the case of

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1Article III (7) of the 1980 Food Aid Convention, OJ. 1982, L 43/29; and Article IV of the 1986 Food Aid Convention, OJ. 1986, L 195/17. The only difference between these two provisions was in the footnote to 'sales for the currency of the recipient country'.

2Article IV of the 1986 Food Aid Convention, OJ. 1986, L 195/17. Note with regard to (b), that under exceptional circumstances, an exemption of not more than 10% may be granted. This limitation may be waived for transactions which are to be used for the expansion of economic development activity in the recipient country, provided that the currency of the recipient country is not transferable or convertible in less than 10 years. Note with regard to (c), that the credit sales agreement may provide for payment of up to 15% of principle upon delivery of the grain.
least developed countries, low per capita income countries and other developing countries in serious economic difficulties.¹

It should also be recalled that 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 developing countries, in particular to the least developed and most seriously affected among them.²

The Community could pride itself to be in line with this policy guideline. As a rule, the Community supplied its food aid for free and this compared favourably with other major food aid donors and especially the United States. The United States in fact granted during the period 1983-89 still a very considerable part of its food aid as concessional sales. In 1987, for example it supplied food aid for a total of $929m as grants and $584m as concessional sales. In 1987, the United States was in fact the only food aid donor to supply part of its food aid as concessional sales.

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A comparison of the general terms of food aid supplies of the major donors in 1987³

<table>
<thead>
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<th>Gifts</th>
<th>Concessional sales</th>
<th>Total % of gifts</th>
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<td>Total D.A.C. countries</td>
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<td>584</td>
<td>2865</td>
</tr>
</tbody>
</table>


²For the text, see: TOMASEVSKI, 1987, 249.

The share of grants in the total of food aid supplied to the Third World ranged in the period 1983-87 between a minimum of 71.4% in 1986 and a maximum of 76.7% in 1985.*

One should, however, make three observations with regard to the Community’s ‘supply for free’ practice which do not find their reflection in the data referred to above. First, one should note in this context the recent introduction of ‘co-financing’ operations. It will be recalled that at the request of organizations active in the fight against hunger, the budgetary authority provided on a newly established budget line, Article 951, in the 1986 and 1987 Budgets for 5.5 million ECU to be used to contribute, at a minimum rate of 25%, to the cost of purchases of foodstuffs made directly by non-governmental organizations or international organizations (since 1987) in order to provide emergency aid to disaster victims.7 In 1986 and 1987, the Community co-financed the purchase by organizations of foodstuffs which were delivered to thirteen different countries among which

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*FAO, *Food Aid in Figures, *1987, 21. The 1987 value (71.6% grants) is, however, calculated on the basis of the above quoted OECD data.

7COM(88) 158 final, 3.
Ethiopia, Afghanistan, Lebanon, Angola and Nicaragua. Since these 'co-financing operations' were clearly going to be a permanent feature of the Community's food aid policy and the appropriations involved were no longer experimental or negligible, the Council adopted on 4 August 1988, Regulation (EEC) No 2508/88 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations, which allowed the Community to contribute to the financing of food aid operations by international and non-governmental organizations in favour of needy sections of the population of developing countries. Article 2 (2) of the latter Regulation stipulates:

The amount of the Community contribution towards the purchase and transport of food products or seeds shall be a minimum of 25% and a maximum of 75%.

These co-financing operations constitute an exception to the 'supply for free' practice of the Community although - and this is important to underline - it is not the recipient country but another donor organization which has to pay the other part of the bill of the food aid supplied. In 1988 and 1989, the budget provided for 10 million ECU for such 'co-financing operations'. According to Commission sources, this instrument is enjoying increasing success with the non-governmental organizations since it allows them to buy in the countries in which they distribute aid as well as to buy products which are not available as food aid.

A second observation regarding the general terms on which the Community supplied food aid during the period 1983-89 concerns a Commission proposal

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8COM(88) 158 final, 3.
9The 1988 Budget provided for 10 m ECU for these 'co-financing operations'.
10Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies and non-governmental organizations, OJ 1988, L 220/4. Note that the Regulation does not limit the food aid operations to emergency operations and that the Regulation also allows for the purchase of seeds.
which - it should immediately be added - has not yet been accepted by the Council and seems at present quite unlikely to be accepted. As I already discussed in some detail in Section 2.2 of this Chapter, the Commission proposed in July 1988 the establishment of a financing facility to allow - by providing for a period of repayment of more than 3 years and a grant element of not less than 35% of the total cost - developing countries to import European Community agricultural products.\textsuperscript{12} Whereas the United States has at its disposal a wide range of concessional credit and other price reduction schemes in order to facilitate food exports to developing countries, the Community is in comparison ill-equipped to promote efficiently its agricultural exports. Developing countries naturally ask the Community as favourable terms as the United States offers and at the moment it is unable to respond to such requests.\textsuperscript{13} To remedy this unsatisfactory situation, the Commission proposed the introduction of the possibility of granting a concessional credit to certain food exports from the Community to developing countries.\textsuperscript{14} While the Commission stated explicitly in its communication to the Council that these concessional sales will be independent from the Community's food aid policy, one cannot but define these sales as food aid operations. With a grant element of not less than 35% and a period for loan repayment of not less than 3 years, these concessional sales fall undisputedly within the internationally

\textsuperscript{12}Commission proposal for a regulation establishing a financing facility for imports of food products by developing countries from the European Community, COM(88) 431 final.

\textsuperscript{13}Attempting to match the terms offered by the United States, there has been inappropriate use of the export refunds instrument as well as recourse to the use of national export credits, which have of course created internal competition problems within the Community (COM(88) 341 final, 1-2).

\textsuperscript{14}The facility will be operated in such a way that the Community bears the cost of the grant element, but that the financial markets will provide the credit for the remaining cost to the importing country. In view of the delicate economic and financial situation of many of the importing countries, it will be necessary, however, for the Community to underwrite the loans in order to interest the financial markets (COM(88) 431 final, 4).

It should perhaps be noted that in parallel with the introduction of this instrument, the Commission proposed the establishment of a strict framework for Member States' practices regarding commercial agricultural export credits. A proposal for a directive establishing the terms and conditions of officially supported export credits for agricultural products is annexed to the Commission's proposal on the financing facility. (COM(88) 431 final, 2 and Annex 2.)
agreed and commonly used definition of food aid.\textsuperscript{15} Therefore, the Commission, when proposing the establishment of the financing facility, in fact proposed to diversify the Community’s food aid policy instruments. In addition to food aid operations on a 100% grant basis and co-financing operations, the Commission proposed to include in the Community food aid policy a new instrument, namely that of the concessional sales. While the new instrument is primarily intended to promote domestic agricultural interests, it should be noted that the interests of the developing countries are not ignored. Concessional sales would undoubtedly help many developing countries to cover better their severe food deficits and would also provide support for their development policies in as far as these sales free additional resources for development.\textsuperscript{16}

While the Commission did not propose any target for the volume of exports under the arrangement, it noted in the Explanatory Memorandum that budgetary provisions have been made under the assumption that during the first year of application, the facility would allow exports of approximately 2 million tonnes of

\textsuperscript{15}See: Section 1 of the Introduction. The concessional sales under the draft regulation would qualify as food aid under the definition of food aid of the FAO’s Principles of Surplus Disposal and the United States, the oldest and biggest food aid donor also defines similar concessional sales as food aid.

In fact, in the sixth recital of the draft regulation, the Commission itself recognizes that the concessional sales constitute food aid operations: "whereas conformity with FAO Principles will be ensured through the supply of food aid being facilitated by a credit to the importing country of more than 3 years duration together with a grant element of not less than 35% on terms equivalent to interest rates significantly below commercial rates [...]" (COM(88) 431 final, Annex 1, 2). Furthermore, the Commission suggests that the Food Aid Committee would be the competent advisory committee (COM(88) 431 final, 5).

\textsuperscript{16}As I already noted in Section 2.2 of this Chapter, the Commission suggested in its proposal that when deciding on a concessional sale, one should take into consideration, apart from the overall economic situation of the recipient country, its food import requirements and its balance of payment situation, also its efforts in carrying out food and agricultural adjustment policies as well as the impact of the concessional sales on the agricultural exports of other developing countries (Article 2 (a) of the proposal for a regulation, COM(88) 431 final, Annex 1, 3.). Furthermore, the draft regulation stipulated that the implementation of the facility should be consistent with the recipient countries’ own development policy, and in particular its agricultural and rural development policy, and with the Community’s development policy (Article 3 of the proposal for a regulation, COM(88) 431 final, Annex 1, 3.). Therefore, the draft regulation required that products supplied under the financing facility should be marketed in such a way as not to disturb the local market in the recipient country and that the concessional element of the funds resulting from the sale of the products should be used in support of agreed development programmes and the implementation of adjustment policies (Article 3 of the proposal for a regulation, COM(88) 431 final, Annex 1, 3.).

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wheat and 35,000 tonnes of skimmed milk powder and 21,000 tonnes of butteroil. If adopted, the impact of this new instrument on the food aid policy would therefore be quite significant. It would more than double the volume of Community food aid in cereals and result in an increase of 37% in Community food aid in skimmed milk powder and of 84% in Community food aid in butteroil.

The Commission's proposal was, however, not received very well. As I already noted earlier in this Chapter, Parliament stated in a first reaction to the proposals in its 1989 Resolution on 'the common agricultural policy and the developing countries', that it:

[...] prefers conventional food aid to subsidized export credits such as those which have long been applied extensively by some Community countries and the USA, in accordance with Public Law 480, and as recently also proposed by the Commission for the Community;

and

Asks in particular that within the context of GATT binding reciprocal agreements should be reached between the industrialized countries not to misuse food aid in any form whatever for the disposal of surpluses, thus circumventing once more the desired increased discipline in the use of subsidies[...]

It will also be recalled that Mrs Katharina Focke, the Rapporteur, downright rejected the newly proposed facility noting that it "runs the risk of compounding the former adverse effects of food aid with an additional debt burden". Focke recognized that the Community is at present at a disadvantage for not having an export promotion instrument similar to Title 1 of PL 480 but rather than giving the Community a similar instrument, she suggested a GATT regulation to ban

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17COM(88) 431 final, 4. The grant element is estimated at 76 million ECU for concessional sales for a total of 190 million ECU with a 40% grant element (COM(88) 431 final, financial statement). Note that the cost of the facility has been calculated on the assumption that no purchasing country will default.

18While budgetary provisions were made on the assumption that wheat, skimmed milk powder and butteroil will be supplied, it should be noted that the draft regulation did not explicitly limit the range of products which may be eligible for concessional sales.

concessional sales. While Parliament's Committee on Agriculture, Fisheries and Food, in its Opinion on the proposal warmly and unreservedly welcomed the latter\textsuperscript{20}, Rapporteur Mr G. Guermeur proposed in his half-a-page report adopted by the Parliament's Committee on Development and Cooperation that Parliament should reject the proposal.\textsuperscript{21} In the 1989 budget the Commission had introduced in the EAGGF-Guarantee Section a new budget line, Article 296, 'Facilities for financing imports of agricultural products from the European Economic Community into developing countries'.\textsuperscript{22} In the 1990 budget, however, this budget line had been eliminated again.\textsuperscript{23} With significantly lower surplus stocks and high demand on the world market, the Commission might have second thoughts about its proposal. At the moment it seems that the proposal has died a silent death but - as I noted earlier - one should not exclude a resurrection if and when the surpluses go up again.

A final observation on the general terms of the Community's supplies relates to various transactions which are to be situated in the grey zone between commercial and concessional transactions, i.e. transactions which are on the one hand not really normal commercial transactions but on the other hand are perhaps not concessional enough to be classified as food aid. A first of such transactions is the sales of butter to the Soviet Union. It may be that in certain cases the degree of concessionality of the butter sales to the USSR was such that one should also

\textsuperscript{20}The Committee noted that: "The advantages of this new instrument for the developing countries are obvious. With regard to the common agricultural policy, the new instrument will make it possible to increase the quantities of agricultural products for export, thus effectively complementing the Community's traditional instrument, namely export refunds, and making the Community more competitive against its traditional competitors." (European Parliament Working Documents, Report on the proposal for a regulation establishing a financing facility for imports of food products by developing countries from the European Community (Rapporteur: Mr G. GUERMEUR), PE Doc A 2-36/89/A, Annex.).

\textsuperscript{21}Mr. Guermeur did so without any motivation except for the fact that a majority of the members of the Parliament's Committee on Development and Cooperation was against the proposal (European Parliament Working Documents, Report on the proposal for a regulation establishing a financing facility for imports of food products by developing countries from the European Community (Rapporteur: Mr G. GUERMEUR), PE Doc A 2-36/89/A, 5-6.).


regard these sales as food aid. If so, these sales would evidently constitute an exception to the Community's 'supply for free' practice referred to above.\textsuperscript{24} A second example of such transactions are the 'multi-annual' contracts for the commercial supply of agricultural products between the Community and ACP countries. A third and last example of such transactions I want to mention here are the commercial agricultural exports to a developing country for which the export refunds are fixed for one year rather than three months, thus offering more price stability to the importing developing country. These transactions are on balance probably rather commercial than concessional transactions but nevertheless deserve to be mentioned here, if only as a clear indication of the complexity of the situation. These last observations should, however, not obscure the fact that in the period 1983-89, the Community continued to supply virtually all its food aid on a 100% grant basis.

3.4.2 The terms concerning the transport and distribution

With regard to the terms concerning the transport and distribution of Community food aid, it will be recalled that during the seventies and early eighties there was no Community law laying down specific criteria for the decision on the financing of transport beyond the fob stage while - at least in the period 1977-82 - Community financing of the distribution costs seemed only possible in the case of food aid supplied to international organizations.\textsuperscript{25} In the period 1983-89, this and a number of other aspects of food aid transport and distribution changed significantly.

Article 4 (1), last indent of the first food aid framework regulation of December 1982 stipulated:

\textsuperscript{24}The evaluation of the concessionality of these sales will require further research.

\textsuperscript{25}See: Section 3.4.2 of Chapters 1 and 2.
In the field of food aid, the Council shall:

[...]

- lay down general criteria for the transport of food aid beyond the fob stage.26

Consequently, the Council laid down in Articles 3 and 4 of the 1983, 1984, 1985 and 1986 implementing regulations:

Article 3

Where the Commission considers that the Community should meet transport costs for food aid beyond the fob stage, it shall take account of the following general criteria:
- whether the recipient country is included on the list of least-developed countries,
- whether the recipient country is a land-locked country,
- the financial situation of the recipient country,
- whether the food aid is intended for specialized organizations or NGOs referred to in Article 2,
- the need to procure the product on the market of a developing country,
- the need to provide food aid on an emergency basis,
- the need to make a given food-aid operation more effective.

Article 4

Distribution costs may be met by the Community where necessary for the proper execution of the food aid operations concerned.27

The general criteria on the financing of transport costs beyond the fob stage laid down in Article 3 were clearly very flexible and were really more guidelines than


Note that 'transport' must be understood to include 'distribution'.

criteria; they did not seriously restrict the Commission’s discretion. With regard to the financing of distribution costs, Article 4 stipulated no elaborate criteria for such financing but was nevertheless important to the extent that it no longer limited the financing of distribution costs to food aid supplied to international and non-governmental organizations.

It may be noted that there was apparently a high degree of consensus with regard to these criteria since the Council always adopted unamended the criteria proposed by the Commission and Parliament never suggested other criteria.2

In application and often with explicit reference to the general criteria laid down by the Council, the Commission decided in the context of the 1983 programme—the first programme to which the new rules for the financing of transport costs applied—to supply food aid on a ‘free at destination’ basis to all the landlocked recipient countries (13) and to supply food aid cif to the other recipient countries on the list of least developed countries (13). The Commission also decided to supply food aid cif to a number of recipient countries facing serious financial difficulties and in cases where this seemed necessary to ensure the effectiveness of the food aid operation (10). All emergency food aid and food aid supplied to international or non-governmental organizations was supplied either cif or free at destination. Only for 15 recipient countries, the Community financed the transport of food aid merely up to the fob stage.

For the three main food aid products this meant that under the 1983 programme, 79% of the cereals, 82% of the skimmed milk powder and 83% of the butteroil were supplied on terms more favourable than fob; 34% of the cereals, 47% of the skimmed milk powder and 36% of the butteroil were even supplied ‘free at destination’. This compares favourably with food aid supplied under the 1980 and 1982 food aid programmes for example; under the 1983 programme the Community supplied more food aid and in particular more food aid in cereals on

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2 COM(83) 83 final, 9; COM(84) 26 final, Annex A, 4; COM(84) 481 final, Annex A, 2; and COM(85) 482 final, 7.
terms more favourable than fob. The 1983 budget provided for 71 million ECU on the food aid transport budget line. It should be noted, however, that - in the interest of the efficiency of the food aid operations - the Commission suggested in its 1983 communication on 'Food aid for development' that the Community would in fact organize and finance the transport of all its food aid beyond the fob stage. The Commission argued that this would help to avoid the many practical problems that arise because recipient countries, where sea transport is not well organized, often had trouble in collecting the goods in due time and in the proper conditions, which resulted in extra expense for these recipient countries as well as for the Community. Furthermore the Commission argued that the financing of the transport costs for all food aid would probably also allow for better control over the costs and the choice of vessels because tendering procedures (no longer organized by the recipient) would be wider in scope and fairer. In its Resolution of 15 November 1983 in reaction to the Commission communication, the Council acknowledged:

[...] the importance of examining, on the basis of a proposal to be made by the Commission on the general criteria relating to the transporting of aid beyond the FOB stage, in the light of practice and from the point of view of the effectiveness of aid, the question of the Community bearing the cost of transporting food aid.

There is, however, no indication that the Council ever seriously considered

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29It may be recalled that 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 'free at destination'. (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.) Under the 1982 programme, 72% of the cereals, 81.1% of the butteroil and 79.5% of the skimmed milk powder was supplied on terms more favourable than fob (Annexes to the annual programmes, OJ. 1982, L 120/4, 8 and 28). It should be observed, however, that the percentage of food aid supplied free at destination in 1982 and 1983 went down in comparison with 1980.

30Note that this was actually 9% less than was available in the 1982 budget.

31COM(83) 141 final, 24.

32COM(83) 141 final, 25. See for more details: Sections 3.6.4 of Chapter 2 and 3.

financing the transport of all food aid and this in spite of the fact that this would have costed the Community - according to 1984 Commission estimates - only 10 million ECU extra.

While the food aid transport appropriations in the 1984 and 1985 budget were less than in the 1983 budget, the Community financed considerably more transport during these years. It will be recalled - how could one possibly forget - that 1984 and 1985 were the years of the African crisis and the transport of much of the food aid supplied to famine stricken Africa was financed by the Community. As I already pointed, the African crisis was in many respects a very instructive experience for the Community painfully revealing many of the shortcomings of its food aid policy. One of the lessons that could be drawn was the need to increase emergency aid resources so as to ensure a very rapid, appropriate and flexible response to the needs. In its communication on 'Famine in Africa' to the European Council, the Commission stressed explicitly:

> it is vital to get the food faster to the people who need it, using in the first instance the food and transport resources available on the spot and in adjacent countries. To do this it will be necessary [...] in future to earmark appropriate funds.

The Commission underlined the Community would in particular need to increase its emergency aid resources in order to be able to ensure that all emergency food aid is delivered 'free at destination', to contribute towards the expansion and/or renewal of the port facilities, storage capacity, means of transport and operational road and rail networks of the recipient countries, and to develop and coordinate

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34 The 1984 budget provided for 66 million ECU and the 1985 budget for 62.2 million ECU. Note, however, that in 1985 eventually as much as 95 million ECU was charged to the food aid transport budget line and that in 1984 as well as 1985, a considerable part of the transport was financed by EDF appropriations and Article 950 appropriations.

35 Commission communication to the European Council (Milan, June 1985), COM(85) 335 final, 2-3; Commission communication to the Council, COM(85) 308 final, 6.

36 Commission communication to the European Council (Milan, June 1985) on 'Famine in Africa', COM(85) 335 final, 2.

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Apart from the inadequate size of the Community's food aid programme to respond to large-scale famine situations and the often deficient appropriateness of the products supplied as Community food aid, shortcomings I already dealt with above, the African crisis clearly showed that a key problem confronting the Community's emergency food aid efforts was precisely the lack of adequate port, road and rail infrastructure and means of transport in the recipient countries. By the end of June 1985, only 232,000 tonnes of the 1,265,000 tonnes of cereals provided for under the 'Dublin Plan' had arrived at their final destination, whereas 700,000 tonnes were lying at the port of unloading. Already in a Resolution of 17 January 1985 on 'the delivery of food aid in the countries affected by the drought', Parliament - well aware of the major technical obstacles to the delivery of food aid to its final destination - called on the Commission:

[...]


to carry out as a matter of urgency, the investigations needed to implement a plan for the equipment and construction of infrastructures, enabling [the Community's emergency] aid to be delivered in the best possible conditions.

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7 Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 3 and 5-6. Commission communication to the European Council (Milan, June 1985) on 'Famine in Africa', COM(85) 335 final, 2-3.

8 In its communications on 'Famine in Africa' of June 1985, the Commission pleaded inter alia for more aid for inland transport. (Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 5-6; Commission communication to the European Council on 'Famine in Africa', COM(85) 335 final, 2-3.). Also Parliament repeatedly stressed the need to attach more importance to the (inland) transport of the aid (European Parliament Resolution of 15 February 1985, point 13, O.J. 1985, C 72/137-8; European Parliament Resolution of 17 January 1986, point 11, O.J. 1986, C 36/210; European Parliament Resolution of 24 October 1986, point 9, O.J. 1986, C 297.).

9 European Parliament Resolution of 10 July 1985 on 'The Milan Summit', recital D, O.J. 1985, C 229/72. As I already pointed out in Section 2.2 of this Chapter, it must be noted, however, that this was not only a result of the lack of adequate infrastructure. In some of the countries hit by famine the distribution of food aid was in addition hindered by civil strife. Especially in the Eritrea and Tigre provinces of Ethiopia the situation was particularly difficult in that respect. See e.g. European Parliament resolution of 17 January 1985 on 'the distribution of food aid in Ethiopia', O.J. 1985, C 46/59; European Parliament Resolution of 14 March 1985 on the campaign against hunger in Africa, points 5-6, O.J. 1985, C 94/82.

10 European Parliament Resolution of 17 January 1985 on 'the delivery of food in the countries affected by famine', point 2, O.J. 1985, C 46/59. In its Resolution of 14 March 1985 on 'the campaign against hunger in Africa', Parliament again called "for the Community to participate in the establishment of the infrastructure essential for the delivery of [the emergency] aid" (O.J. 1985, C 94/82.) and in its Resolution of 11 July 1985 on 'Emergency measures to be taken to assist African countries threatened by famine', it called upon the Commission, the Council and the Member States to take immediate action to increase the transport capacity in the recipient countries (PE Texts 5/85, 26.).
As I already noted in Section 2.2 of this Chapter, there were, and still are, of course no ready made and fast solutions to this logistical problem but it is clear that it makes no sense to supply emergency food aid, or any other food aid, which cannot - or not in time - be delivered to their final destination. The African crisis made it quite clear that Community efforts to improve the infrastructure and transport capacity of the recipient countries should be considered as an integral part of the Community’s food aid policy.

It will be recalled that in the context of the African crisis, the Community did in fact get quite involved in the inland transport of the emergency food aid. As an example in point of such Community efforts, one could refer to the Commission’s endeavour to finance quickly the refurbishing of the Sudan railway and its efforts to organize a vast airlift operation in that country, known as the ‘Sudan Airbridge’, using nine heavy transport aircraft and three helicopters from the Member States and the USA, which in the period from May through October 1985 delivered more than 10,000 tonnes of food to the extreme West of Sudan. The Commission contributed 7 million ECU to this operation, largely in the form of money for fuel.

The 1986 budget provided for 102 m ECU for food aid transport, an increase of 64% in comparison with 1985.

Article 4 of the successive implementation regulations, quoted above, allowed the Community to cover distribution costs when this would be necessary to ensure the proper execution of the food aid operations concerned. It is difficult to give a clear picture of the Community’s efforts in this respect. It may be noted, however, that appropriations for food aid distribution were included in appropriations

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41 On 5 June 1985, the Community and Sudan signed the financing agreement for the projects to rehabilitate Sudan's railway in order to distribute food aid (Bull. EC 6-1985/92.).


43COM(85) 599 final, 4.
entered on budget line, Item 9270 'Exceptional measures for implementing food aid'. These appropriations amounted during the period leading up to the second framework regulation never to more than 800,000 ECU and were also intended to cover inter alia storage, disinfection, special inland transport and air transport. With regard to the latter, I would like to remark that while Community legislation did not explicitly provide for the transport of food aid by air, it did not exclude it either. In emergencies, the Community did occasionally supply small quantities of food aid by air.

As the first framework regulation, the currently applicable, second framework regulation of December 1986 stipulates in its Article 4 (1), last indent:

   In the field of food aid, the Council shall:
   
   [...] 
   
   - lay down general criteria for covering the cost of transporting food aid beyond the fob stage. 4

Pursuant to the latter provision, the Council laid down in Article 2 of Regulation (EEC) No 1420/87 of 21 May 1987 laying down implementing rules for Regulation (EEC) No 3972/86 on food aid policy and food aid management the following, currently applicable general criteria for financing food aid transport costs:

1. The Community shall meet transport costs for food aid to the fob stage.

2. The Community shall also meet the costs beyond the fob stage in the following cases in particular:
   - emergency situations,
   - the supply of food aid to low-income, food-deficit countries.

3. Where the Commission considers that the Community should meet transport costs for food aid beyond the fob stage in other cases, it shall take account of the following general criteria:
   - whether or not the recipient country is a landlocked country,
   - the financial situation of the recipient country, if this is such that it cannot meet such costs,
   - whether the food aid is intended for the international organizations or for the non-governmental organizations referred to in Article 1,
   - the need to ensure that the food aid operation concerned is more

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effective.

4. The Community shall meet inland transport costs only in duly substantiated exceptional circumstances, account being taken of the general criteria listed above.

5. If the food aid is sold in the recipient country, the Community should meet inland transport costs only in exceptional cases.

It should be noted that the Commission - quite content with the flexibility offered by the pre-1987 rules - had in fact repeated in its original proposal for the implementing regulation the above quoted Article 3 of the old implementing regulations.\textsuperscript{4} The Council, however, apparently considered that the time had come to lay down somewhat less permissive rules. Unlike the old rules, which merely listed 7 situations in which the Commission could consider financing the food aid transport beyond fob, the present rules explicitly identify emergency food aid operations and food aid operations in favour of low-income, food deficit countries as priority cases for Community financing the transport beyond the fob stage. Surprisingly, food aid operations channelled through international or non-governmental organizations are not included in this priority list. It will be recalled that the Community traditionally financed the transport of food aid supplied through organizations or at least granted a cash contribution to this end.\textsuperscript{4,5} The new rules also explicitly state that the transport of all Community food aid will be financed up to at least the fob stage. For the cereal food aid supplied under the 1986 Food Aid Convention, the Community was also internationally bound to do so pursuant to Article III (6) of the latter Convention which stipulated:

\begin{quote}
Contributions in the form of grain shall be placed in a forward position by members. However, donors are encouraged, as appropriate, to bear the costs of transporting their grain contributions under this Convention beyond the fob stage, especially in emergency situations or in the case of shipments to low-income, food deficit countries. [...]\textsuperscript{4,7}
\end{quote}

\textsuperscript{4} COM(87) 48 final, 4-5.

\textsuperscript{4,5} See: Section 3.4.2 of Chapter 1 and 2.

\textsuperscript{4,7} Article III (6) of the 1986 Food Aid Convention, OJ. 1986, L 195/17.
The stricter conditions for the financing of inland transport cannot go unnoticed either. While the financing of inland transport is not seldom an absolute necessity for the food aid to reach its destination, it is usually very expensive especially when compared to the transport costs up to the port of unloading. It is nevertheless surprising that so shortly after the African crisis which had clearly shown the need for a Community effort with regard to inland transport, the Council required that inland transport would only be financed in 'substantiated exceptional circumstances'. A final note on the last paragraph of Article 2 of Council Regulation (EEC) No 1420/87 of 21 May 1987, quoted above. What this provision actually says is that in many cases in which food aid is supplied for sale, the inland transport costs can be covered by the proceeds of the sales. While it had always been common practice among recipients to do this (often without the express authorization of the Community), it should not be disguised that as a result less of the counterpart funds are used to finance development projects.

It is important to note that at present the Community only occasionally finances transport merely up to the fob stage. Almost always the transport financing arrangements are more generous.

The 1987 budget provided for a record 139.1 million ECU for food aid transport, but the 1988 budget, however, only provided for 95 million ECU and the 1989 budget for 84.4 million ECU. Note that these appropriations are intended to cover the transport costs beyond the fob stage; the transport costs up to the fob stage are included in the cost of the products and charged against the product budget lines of Chapter 92. The food aid transport appropriations are also intended to cover costs such as insurance, loading, unloading, coordination and other costs not included in the transport contracts but constituting an inevitable consequence of them. Could it be that the decline of food aid transport appropriations was warranted by the fact that the new organization of food aid transport as laid down in Commission Regulation (EEC) No 2200/87 of 8 July 1987 which allowed for a better control of the costs. This seems unlikely. On the contrary, the new system has reportedly led to a slight increase of the tendering
costs because the contractors are now to cover all the risks. But perhaps considerable savings are made now that the loading, transport, unloading and taking-over is all better coordinated and less costly mishaps occur?

With regard to the distribution of food aid, Article 3 of Council Regulation (EEC) No 1420/87 of 21 May 1987 stipulated:

Distribution costs may, in exceptional circumstances, be met by the Community where necessary for the proper execution of the food aid operations concerned.

Note that in comparison with the pre-1987 provision on the financing of distribution costs, the currently applicable provision is more restrictive. The old provision, which the Commission had suggested to repeat in its proposal of the current implementing regulation, did not include the words 'in exceptional circumstances'. As for the transport financing rules, the Council decided, however, to restrict somewhat the Commission's discretion. One wonders, however, whether in practice this makes an important difference since the appropriations available for distribution are such that the Community can only finance distribution in exceptional circumstances any way. Appropriations for distribution are provided for in the budget line, Article 927, 'Other expenditure associated with food aid'. In the 1987 budget, 2 million ECU was entered on Article 927, in 1988, 5 million ECU and, in 1989 6.5 million ECU. It should be noted, however, that these appropriations are also intended to cover expenditure entailed by supervision and coordination of cooperations between the successful tenderer and the recipient of conditions governing the supply, delivery, distribution and use of products for food aid, and also the conditions for the use of counterpart funds resulting from the sale of such products. As I already noted and as I explain in more detail below, this supervision is entrusted pursuant to Commission Regulation (EEC) No 2200/87 of 8 July 1987 to specialized, private undertakings, usually referred to as the monitoring agencies, and this, rather than the distribution of food aid, accounts for the increase in the available appropriations. Furthermore, the appropriations

\[CHOLLET, J., 'The mobilization of food aid', The Courier, November-December 1989, 67. See also: Section 3.6.4 of this Chapter.\]
of Article 927 are also intended to cover the cost of pilot experiments on new transport, packaging and storage methods and techniques proposed for international trade, and also the cost of analyzing and evaluating significant food aid actions. Finally, the modest appropriations of Article 927 are also intended to cover certain measures which are essential either for the coordination and implementation of food-aid operations in difficult circumstances (emergencies, distress, awkward distribution conditions, etc.) and for which other programmes make no provision (storage, disinfection, appointment of authorized representatives in the field, exceptional transport) or to prevent the destruction or an increase in its cost. Occasional air transport of food aid - while not explicitly provided for by Community food aid legislation - is paid for by Article 927 appropriations. It will be clear that the appropriations available for distribution are likely to be very small indeed.

It should be noted that in the few cases in which the Community does not finance the transport of its food aid beyond the fob stage and the recipient therefore has to organize the transport beyond fob, the supply agreement requires of the latter that:

[it] shall arrange for maritime transport:

- in vessels which are listed in the higher category of the classification societies in use in the Member States and which meet all the health requirements for the transport of foodstuffs,

and

- in conformity with the rules on the prevention of the distortion of free and fare competition on a commercial basis as laid down in Regulations (EEC) No 954/79, No 4055/86, No 4057/86 and 4058/86 concerning the maritime transport policy of the Community. Shipping may not be carried out by shipping companies whose practices have caused injury to Community shipowners, or whose country has restricted free access to cargos by shipping companies of Member States or by ships registered in a Member State in accordance with its legislation, particularly during the validity of a published decision taken by the Council under Article 11 of Regulation (EEC) No 4057.
or Article 4 (1)(b) of Regulation (EEC) 4058/86.49

The Community in fact imposes on the recipients the same requirements as are to be met when it organizes and finances the sea transport of the food aid itself.50 It will be recalled that during the seventies and early eighties the Community merely required to organize genuine tendering procedures for the sea transport contracts, thus allowing for fair and open competition.51 The present terms are therefore significantly harder but it remains to be established how interested and/or successful the Community is in enforcing compliance with these terms.

3.4.3 The terms concerning the use of food aid

It will be recalled that during the seventies and the early eighties, Community law laid down no general provisions regarding the terms concerning the use on which the Community supplied food aid to developing countries and organizations. For the terms concerning the use one had to look at the supply agreements concluded between the Community and the food aid recipients.52 During the period 1983-89, the terms concerning the use of Community food aid were of course still laid down in the supply agreements but Community legislation now stipulated - first in the first food aid framework regulation of December 1982 and later in the currently applicable second framework regulation of December 1986 - a number of general provisions regarding the terms concerning use.53

As will be recalled, the first framework regulation stipulated in its Article 1:


50 See: Sections 3.1.3 and 3.6.4 of this Chapter.

51 COURT OF AUDITORS, Special Report 1/80, 103.

52 See: Section 3.4.3 of Chapters 1 and 2.

Under its cooperation policy with developing countries, the Community shall carry out food aid operations.\textsuperscript{34}

which was elaborated in Article 2 (1), which stated:

The food-aid operations referred to in Article 1 shall have the following objectives in particular:
- to raise the standard of nutrition of the recipient people,
- to help in emergencies,
- to contribute towards the balanced economic and social development of the recipient countries.\textsuperscript{35}

Mainly with regard to the last indent of Article 2 (1), Article 2 (3) specified:

The granting of food aid shall, if necessary, be conditional on the implementation of annual or multi-annual development projects, priority being given to projects which promote the production of food in the recipient countries. Where appropriate, the aid may contribute directly to the implementation of such projects. This complementarity may be ensured through the use of counterpart funds where the products supplied by the Community as aid are intended for sale.\textsuperscript{36}

Finally, Article 2 (4) should not go unnoticed in this context for it stipulated:

The objective of food aid shall be to meet immediate food needs. Nevertheless, in order to improve food security in the developing countries and to ensure that their needs are met, food aid may be granted, on a case-by-case basis, to enable the recipients to build up stocks of cereals, provided that such aid does not represent more than a residual percentage of the Community plan and that needs for immediate consumption are given priority.\textsuperscript{37}

It would be a mistake to consider the above provisions on the use of Community food aid as self-evident. As I pointed out in the introduction of this study and


illustrated with references to the American PL 480, food aid legislation may explicitly stipulate uses other than developmental or humanitarian. Community food aid legislation, however, did not. If the Community had laid down for the first time general terms concerning the use of food aid in the early seventies rather than in the early eighties, this might have been different.

As I noted above, the first framework regulation - and this was certainly true for its provisions on the use of Community food aid - was, however, already outdated during its first year of application. Based on a proposal of January 1979, it did not reflect the new thinking on the use of food aid which had developed in particular in the early eighties. Food aid donors (and also, albeit often somewhat reluctantly, food aid recipients, fearing (increased) donor meddling in their domestic affairs) had come to realize that food aid could only contribute successfully to the solution of the recipient's food problems if it was - in close association with their other development policy instruments such as financial and technical aid - used in support of and integrated in an overall food and agricultural policy or food strategy that provided incentives to domestic agricultural production and aimed at a reduction of poverty and malnutrition. Too often food aid was, either directly or indirectly, used in support of isolated development projects, 'cathedrals in the desert', which because they did not fit it a overall government policy providing incentives to domestic agricultural production and aiming at a reduction of poverty and malnutrition, were doomed to fail or, at its best, have a limited impact.

Both the Commission's communication on 'Food aid for development' of April 1983 and the Council's Resolution of November 1983 adopted in reaction to the latter communication pleaded for the integration of food aid into the development policies, and in particular the agricultural and agri-foodstuffs development policies

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54 Which of course did not mean it was never employed to those other uses.

55 See: Sections 2 and 3 of Chapter 1

56 IDS/ABC, 1982, VII.
of the recipient countries. The currently applicable, second food aid framework regulation of December 1986 clearly takes up this new approach to the use of food aid.

As the first framework regulation, the second framework regulation stipulates in its Article 1:

Under its cooperation policy with developing countries, the Community shall carry out food-aid operations.

which is elaborated in an amended Article 2 (1), which states:

The food aid operations referred to in Article 1 shall have the following objectives in particular:

- to promote food security in the recipient countries and regions,
- to raise the standard of nutrition of the recipient population,
- to help in emergencies,
- to contribute towards the balanced economic and social development of recipient countries,
- to support efforts by recipient countries to improve their own food production.

Explicitly introducing the new approach to the use of food aid (which is already hinted at in the two 'additions' to Article 2 (1) quoted above in italics), Article 2 (2), first sentence, of the second framework regulation stipulates:

\[\text{Note, however, that unlike the Commission, however, the Council thought that such an integration was possible within the context of the first framework regulation and thus without major changes to the latter. It would take a few years for it to change its mind. See for more details Section 2 of this Chapter.}\]

\[\text{Council Regulation (EEC) No 3972/86, Article 2 (1), O.J. 1986, L 370/1. Italics added to indicate the difference with Article 2 (1) of the first framework regulation. As I already noted in Section 2.2 of this Chapter, these two additional objectives were not in the Commission's proposal. Surprising as it may be, the Commission had in fact proposed no changes to Article 2 (1) of the first framework regulation. It was Parliament which suggested a number of changes to Article 2 (1). The objectives suggested by Parliament were:}\]

- to provide emergency assistance to countries suffering from drought, famine or other natural disasters;
- to contribute to policies in recipient countries which will reinforce their food security;
- to raise the standards of nutrition of the recipient population;
- to contribute towards the balanced economic and social development of the recipient countries. (PE Texts 9/86/II, p. 65).

The Community's food aid shall be integrated as thoroughly as possible into the development policies, and in particular the agricultural and agri-foodstuffs policies, and food strategies of the countries concerned.\(^a\)

Furthermore, the second framework regulation contains three other noteworthy provisions relating to the use of Community food aid. First, Article 2 (2), last sentence - a provision not yet found in the first framework regulation - stipulates:

Where the products supplied by the Community as aid are sold, the price thereof must not be liable to disrupt the domestic market.\(^a\)

Secondly, Article 2 (5) - a provision similar to Article 2 (3) of the first framework regulation but amended in the light of the new approach to the use of food aid - stipulates:

The granting of food aid shall if necessary, be conditional on the implementation of annual or multi-annual development projects, sectoral actions or development programmes, priority being given to projects, actions and programmes which promote the production of food in recipient countries. Where appropriate, the aid may contribute directly to the implementation of such projects, actions and programmes. This complementarity shall be ensured through the use, laid down by common agreement, of counterpart funds where the products supplied by the Community as aid are intended for sale. [...]\(^a\)

Finally, Article 2 (6) - a provision similar to Article 2 (4) of the first framework regulation but without the restrictions of the latter - stipulates:

\(^a\)Council Regulation (EEC) No 3972/86, Article 2 (2), first sentence, O.J. 1986, L 370/2. As I noted in Section 2.2 of this Chapter, this Article 2 (2) was neither in the Commission's original proposal nor was it one of the amendment suggested by Parliament. Note that already in its recitals, the second framework regulation explicitly links food aid to policies aimed at promoting food security and in particular food strategies. The current framework regulation states that: "Whereas food aid must be integrated into developing countries' policies aimed at improving their food security, in particular by food strategies:" (Regulation (EEC) No 3972/86, recital 2, O.J. 1986, L 370/1). This recital was not yet in the Commission's proposal but was for the first time suggested by Parliament and taken up by the Council. The Commission agreed, however, to this amendment (See: Debates of the European Parliament, 1986-1987 Session, Report of Proceedings from 20 to 24 October 1986, O.J. Annex No 2-344, p. 271).

\(^b\)Council Regulation (EEC) No 3972/86, Article 2 (2), second sentence. O.J. 1986, L 370/2. It should be noted that Article 2 (2) was neither in the Commission's original proposal nor was it one of the amendments suggested by Parliament.

\(^c\)Council Regulation (EEC) No 3972/86, Article 2 (5), O.J. 1986, L 370/2. Italics added to indicate the difference with Article 2 (3) of the first framework regulation.
In granting food aid, priority shall be given to needs for immediate consumption. Nevertheless, in order to improve food security in the developing countries and to ensure that their needs are met, food aid may be granted in justified cases to enable reserve stocks to be build up by the recipients.6

These general provisions on the use of Community food aid constituted and constitute a regulatory framework within which the Commission, pursuant to Article 6, first paragraph, (c), of the first framework regulation, and now, pursuant to Article 6, first paragraph, (c), first indent, of the second framework regulation, defined and defines the terms concerning use laid down in the supply agreements.6

While these supply agreements were since 1975 no longer published in the Official Journal and are not readily available for consultation, the framework regulation provisions on the use of Community food aid referred to above, an (incomplete?) set of standardized annexes to the supply agreements, and the secondary materials referred to in footnote below nevertheless allow to establish that during the period 1983-89 the Community supplied its food aid for basically five different sorts of use.

**Supply for sale to the population**

First, the Community supplied food aid to developing countries for sale to the population of the recipient country. When supplying food aid for such use, the

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7 While it was obvious that the recipients were to comply with those terms, the successive implementing regulations nevertheless stipulated in their Article 5 (2): "Food aid shall be granted to the recipients only where they undertake to comply with the supply terms notified to them by the Commission." (E.g. Article 5 of Council Regulation (EEC) No 457/84 of 19 February 1985 laying down implementing rules for 1985 for Regulation (EEC) No 3331/82 on food aid policy and food aid management, O.J. 1985, L 54/2.)
Community has basically two objectives: first, the traditional and long predominant objective of giving balance of payments support to recipient countries facing a structural food deficit\(^6\), and, second, the increasingly more important objective of contributing to agricultural development projects or programmes through the use of the counterpart funds generated by the sale of food aid\(^6\).

As had been the case during the seventies and early eighties, the greater part of Community food aid, and in particular of Community food aid in cereals, was also during the period 1983-89 supplied for sale to the recipient population.\(^7\) All food aid supplied to the Community's largest direct food aid recipients in 1986 (Egypt and Bangladesh) for example, was supplied for sale.\(^7\) In 1987, 82% of the Community's normal direct food aid in cereals was supplied for sale. It may be noted that most vegetable oil and sugar supplied directly to developing countries as non-emergency aid was also supplied for sale. In 1987, 72.4% of the normal direct aid in vegetable oil and 100% of the normal direct aid in sugar were supplied for sale.

\(^6\)See: Section 3.4.3 of Chapters 1 and 2. It is clear that to the extent that the food aid supplied replaced commercial food imports, food aid constituted a precious balance of payments support. While meeting the recipient's balance of payments needs, food aid supplied in this manner could well have counterproductive effects on agricultural development. To avoid the latter the second objective was introduced.

70% of the Community's food aid is used in situations where a structural deficit is the norm (HUBY, 1989, 58.). It is obvious that in the light of the Third World's debt crisis, the use of food aid to alleviate the food import bill is very welcome.

\(^6\)Note with regard to the increasing importance of the second objective, Council Resolution of 15 November 1983, point 7: "[...] With a view to development, support of the balance of payments cannot in any eventuality be the objective of such aid, but it can in certain circumstances usefully contribute to relieving the financial burden of the country concerned." (Presse Release 10543/83 (Presse 189), 9.).

\(^7\)See: COM(83) 141 final, 7; WFP/CFA, 1987, 12 and 22; and European Parliament Working Documents, Report on the management of counterpart funds in respect of food aid (Rapporteur: Mrs Y. FULLLET), PE Doc A 2-213/88, 7. Note that most of the cereal food aid given by other donors was in fact supplied for sale. Of the 10 million tonnes of cereals supplied in 1983/84, 5.7 million tonnes was supplied for sale (FAO, Food aid in figures, 1987, 100.).

\(^7\)WFP/CFA, 1987, 12.
The two crucial and often problematic elements of this use of food aid are, first, the sale itself and, secondly, the establishment and use of the generated counterpart funds. With regard to the sale of the food aid supplied, the Commission - reflecting a well-known and justified concern regarding the impact of this food aid\(^2\) - observed in its communication on 'Food aid for development' of April 1983, that it is of course very important that food aid sold on the market of the recipient country should not depress market prices. Selling food aid at low prices would evidently discourage local producers and might instill new eating habits which can perhaps only be satisfied by imports.\(^3\) The first framework regulation did not explicitly reflect this concern. In the second framework regulation, however, this concern regarding the potentially negative impact of food aid sales is reflected in the latter's Article 2 (2), last sentence, which stipulates:

Where the products supplied by the Community as aid are sold, the price thereof must not be one liable to disrupt the domestic market.

With regard to the establishment and use of the counterpart funds generated by the sales, it will be recalled that in the seventies and early eighties the Community and in particular the Commission showed in fact little interest in these counterpart funds and that, to the extent that it was known what happened, it seemed that these funds - while provided for in the supply agreements - did often not exist or were seriously mismanaged.\(^4\) During the period 1983-89, however, the Community started to give much more attention to these counterpart funds and their use. In its Communication on 'Food aid for development' of April 1983, the Commission identified the counterpart fund system as the primary way of using food aid in support of the agricultural development of the recipient countries, and this either

\(^2\)See: Section 1.1 of the Introduction.

\(^3\)COM(83) 141 final, 14. Hence, Commission suggested that there should be a clear definition of the nature and volume of products likely to be sold on the local market, the marketing channels to be used and the prices to be charged.

\(^4\)See: Section 3.4.3 of Chapters 1 and 2.
by using it to finance individual projects and operations\(^7\) or by using it as budgetary aid towards the cost of implementing a food aid policy or strategy\(^6\). In its Resolution of 15 November 1983 in reaction to the Commission’s communication, the Council stated:

Counterpart funds ought not to be the primary justification for food aid. They must in principle be used for financing the implementation and/or the operation of agricultural development projects and programmes in recipient countries in order to support a policy of food self-sufficiency.

Greater consistency between Community and national measures should also be considered here.

Checks on the use of counterpart funds should be improved wherever possible, in particular under multi-annual programmes, in the interests of the recipient country’s development. The Commission will provide the necessary information on the use of counterpart funds.\(^7\)

While the first framework regulation was still somewhat ambiguous, and seemed to suggest that the opening of counterpart funds was optional\(^8\), the second framework regulation clearly requires that when food aid is supplied for sale

\(^7\)The use of counterpart funds as a contribution towards the costs of specific investment projects, such as storage facilities, water engineering, etc., was already common practice but the Commission argued to extend the use of counterpart funds to operations such as:

1. the formation of working capital for an intervention agency to stabilize domestic market prices;
2. the formation of an equalization fund to enable the impact on consumer prices of higher producer prices aimed at reviving the activities of local peasant farmers to be spread over a period of time for social and political reasons;
3. the purchase of local products with a view to building up the initial reserve stocks required for implementing the market organization policy;
4. promotion and improvement of the processing and packaging of local products so as to facilitate consumption by people living in towns (COM(83) 141 final, 15.).

\(^8\)As the Commission noted, one of the main difficulties in implementing schemes for developing food production is that many countries are unable, in view of their budget deficit, to cope with the expenditure incurred by the maintenance or operation of investments already made or the administration, management and study costs of a comprehensive policy such as this (COM(83) 141 final, 15.).

Note, however, that MATZKE, 1984, 96, remarked: “One of the weak points [of the communication] is the priority the Commission intends to give to the establishment of counterpart funds for food aid supplied”.

\(^7\)Council Resolution of 15 November 1983, point 8, Press Release 10543/83 (Presse 189), 9.).

\(^8\)The relevant sentence of Article 2 (3) read: “This complementarity may be ensured through the use of counterpart funds [...]” (Italics added).
counterpart funds are to be established and these counterpart funds are to be used to support commonly agreed development projects, sectoral actions or development programmes, priority being given to projects, actions and programmes which promote the production of food in the recipient country.\(^7\)

In spite of the ambiguity of the relevant provision in the first framework regulation, the supply agreements concerning Community food aid supplied for sale concluded in the period leading up to the second framework regulation stipulated as a rule:

(a) the beneficiary shall open a special account with his central bank, in order to credit to it the proceeds of the sale of the food aid received;

(b) the price at which the product supplied was sold on the market must serve as a reference for the purpose of crediting the account;

(c) the funds credited in this way must be allocated to the financing of one or more development projects according to procedures which should be worked out between the recipient country and the Community which should, in any event, according to Regulation No 3331/82 aim, as a matter of priority, to promote food production in the recipient countries.

In 1985 and 1986, the Court of Auditors carried out a general survey to find out to what extent these terms of the supply agreement concerning the opening, the financing and use of the counterpart accounts had been complied with and to assess the seriousness of the infringements.\(^8\) Its findings, published February 1988 in the Special Report 7/87 on the management of counterpart funds in respect of food aid, were all but encouraging.\(^9\) The Court reported serious infringements of

\(^7\)Other projects, actions and programmes pursuing the other objectives mentioned in Article 2(1) should, however, not be excluded (See: COURT OF AUDITORS, Special Report 7/87, Replies of the Commission, 28.) See contra: COURT OF AUDITORS, Special Report 7/87, 22.

\(^8\)The Court inter alia sent out a questionnaire sent to the 45 Commission delegations which were responsible, for 50 developing countries and visited a selected number of food aid recipients.

the terms relating to the opening**, the financing** and the use** of the counterpart fund accounts as well as the disconcerting but hardly surprising fact that the Commission did not really know how much revenue had been generated in the recipient countries by the sale of food aid, how much of this revenue had been used and how much was still available. All that was available in the Commission’s files was piecemeal information, which was not always up-to-date.** In conclusion, the Court observed:

From an examination of the counterpart funds, it is clear that there are extreme discrepancies between the facts observed and what the Court, on the assumption of a correct application of the delivery agreements, is entitled to expect:
(a) the volume of resources recorded is, generally speaking, less, and, in many cases, much less, than the amount laid down in the supply agreements;
(b) amounts recognized as due have by the recipient states not been paid;
(c) the low rate of use of some of the resources credited to the counterpart funds raises doubts as to the actual possibility of implementing development projects or programmes in the rural

**The Court established that due to losses occurring during marketing and transport within the country, the quantity acknowledged as having been sold was often less than the initial consignment; that some food aid supplies did not generate any counterpart funds because their bad quality did not allow for sale; that in some countries, as a result of inadequacy of the purchasing power of the population, the food aid supplied for sale had not been distributed for free or sold at very low prices; that the amounts credited to the counterpart fund accounts did not always correspond to the market price (prices fixed by the government); that costs of maritime transport and distribution were deducted from the gross sale revenue; that the recipient countries levied taxes and duties on the food aid; and finally that sums which were acknowledged to be payable to the counterpart account were sometimes in fact not paid into it. (COURT OF AUDITORS, Special Report 7/87, 21.).

The Court observed that while in 75% of the recipient countries covered by the inquiry the counterpart funds were correctly used for projects in the agricultural foods, some funds had been used to provide emergency aid, to defray the costs of transporting aid and, in some cases, to finance technical assistance with a view of creating and running a food strategy coordination unit. Furthermore, counterpart funds were also increasingly used by agricultural intervention agencies. (COURT OF AUDITORS, Special Report 7/87, 22.).

According to the Court this situation was due to a considerable extent to the fact that the relevant provisions of the supply agreements were not suited to the circumstances. The Commission was advised to re-examine certain provisions, and especially the definition of the amounts to be credited and the possibility of deducting certain expenses. The Court noted that as soon as the aid is granted, it should be possible to agree on the amount to be paid by the recipient into the counterpart fund account. The Court also stressed, however, that the local situations often require special arrangements and it suggested that in order to allow for such special arrangements, the Commission would define the role of its Delegations more precisely and encourage them to extend the supply agreements by rules of execution which are negotiated locally and suited to local circumstances. 

It should, however, not go unnoticed that the Court of Auditors expressed serious doubts as to the counterpart funds system itself. The Court noted that, by the nature of things, it is extremely difficult to manage such a system efficiently. In many food aid recipient countries the situation develops in such a way that it becomes impossible to prevent foodstuffs which were initially intended for sale at market prices from being disposed of free of charge or at very low prices. 

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8See also for example, MATZKE, 1984, 93 who noted that experience with the use of counterpart funds in bilateral and multilateral aid over the past three decades had almost always been negative and that numerous case studies had shown that the counterpart funds did not work in practice.

While the Commission did not agree with the latter observation\textsuperscript{80} and also stressed that considerable improvements had already been made in recent years\textsuperscript{81}, it admitted in its reply to the Special Report 7/87 that it shared 'some of the concerns' of the Court as regards the management and operation of counterpart funds and indicated that it was actually in the process of revising the relevant provisions of the supply agreement in order to better define the guidelines for the creation and use of the counterpart funds. It agreed with regard to the opening of the counterpart fund accounts that the ability to accumulate interest on deposits and to remain separate from the general budget of the recipient country makes the opening of an account with a financial institution other than the central bank quite attractive in many cases. Furthermore, it agreed with regard to the financing of the counterpart fund accounts that the basis for the calculation of counterpart funds was inadequately defined\textsuperscript{82}; the general principle should be to credit the counterpart funds with the economic value of the gift made, i.e. the actual fob, cif or fad price, which represent the saving made to the recipient's balance of payments.\textsuperscript{83} With regard to the use of the counterpart fund accounts, the

\textsuperscript{80}The Commission noted that where circumstances in a recipient country change, notably in cases where emergency needs arise, it is only prudent that the possibility should exist to permit by common agreement, the free distribution of aid originally intended for sale. The Commission mentioned two countries (Mauritania and Angola) in which food aid intended for sale was, partly without the Community's agreement, used for free distribution but it was clear that it considered these instances insufficient to warrant the Court's conclusion (COURT OF AUDITORS, Special Report 7/87, Replies of the Commission, 28.).

\textsuperscript{81}Mrs Y Fuillet noted in her report on the management of counterpart funds: "It is [...] true that since 1986 the Commission has been making sustained efforts to formalize the rules governing the use of counterpart funds, and these efforts are now beginning to bear fruit." (European Parliament Working Documents, Report on the management of the counterpart funds in respect of food aid (Rapporteur: Mrs Yvette FUJILLET), PE Doc A 2-213/88, 13.). See also: WFP/CFA, 1987, 13.

\textsuperscript{82}The Commission admitted that the supply agreements lacked provisions regarding the deduction of transport and distribution costs and also noted that the sale price itself is sometimes hard to specify precisely and is frequently an administered/subsidized price set by the recipient government (COURT OF AUDITORS, Special Report 7/87, Replies of the Commission, 28.).

\textsuperscript{83}Note that the price retained for the purposes of calculating the sum to be credited to the counterpart fund account may be different from the actual sale price. If the actual sale price is - in the context of a food subsidy policy - lower than the world market price than the recipient country should be required to transfer the sum corresponding to the difference to the counterpart funds. If the actual sale price is - as a result of duties or taxes levied on the food aid to prevent it from disturbing local prices - higher than the world market price, the recipient countries should be allowed to retain taxes and duties.
Commission did not agree with the Court's observation that using the accounts for financing the distribution costs of emergency aid allocations, co-financing food policy units and local intervention agencies was not in compliance with Community law and argued that the use of counterpart funds for these purposes was fully justified. It acknowledged, however, that the dual signature for counterpart funds indeed has its strengths as well as its weaknesses although it seems that it considered the former to outweighed the latter.

Since 1987, the Commission uses thoroughly revised supply agreements which in the provisions regarding the establishment and use of counterpart funds stipulate: (1) shorter deadlines for the establishment of counterpart funds (three to six months after the arrival); (2) stricter conditions governing sale (local prices) and the level at which funds can be established (world prices); (3) special accounts requiring two signatures and bearing interest (where this is compatible with the beneficiary country's religious practices); and (4) stricter and more systematic monitoring of the use of resources.

It should be noted that it can of course be agreed that duties should not be levied on the suppliers of Community food aid since this leads to allowance for import duties simply being included in the tenders and so passed on to the Community. (COURT OF AUDITORS, Special Report 7/87, Replies of the Commission, 28-29.).

*I would argue that the Commission was right. As I already indicated above the framework regulation stipulated that priority was to be given projects, actions and programmes which promote the production of food in the recipient country but that this does not exclude projects, actions and programmes pursuing other objectives listed in Article 2 (1).

Note that Parliament in its Resolution of 19 January 1989 on the management of counterpart funds in respect of food aid stated in points 10 and 11: "10. Takes the view that counterpart funds must be used as a matter of priority to finance projects which directly or indirectly promote food production; calls, in this context, for financing to be extended to cover all forms of basic infrastructure relevant to the above projects and maintenance;

11. Draws attention to the risk of a loss of control where funds have been used by agricultural intervention agencies and calls on the Commission to attach particular importance to the monitoring of this procedure for fund use;".

See also: European Parliament Working Documents, Report on the management of counterpart funds of food aid (Rapporteur: Mrs Y. FUILLET), PE Doc A 2-213/88, 12.).

As I already noted above but deserves to be repeated, Council Regulation (EEC) No 1420/87 of 21 May 1987, the implementing regulation of the second framework regulation, stipulates with regard to the costs which may be deducted from the amount to be credited to the counterpart fund accounts:

If the food aid is sold in the recipient country, the Community should meet inland transport costs only in exceptional cases.94

This implies that inland transport costs are as a rule deducted from the amount to be credited to the counterpart fund accounts. This evidently reduces the money available for developmental purposes proper.

The Court of Auditors reported in its 1988 Report that checks carried out in Senegal, Mauritania, Mali, Zambia, Mozambique, Tunesia, Pakistan and Bangladesh confirmed the findings of the Special Report 7/87 regarding the financing and use of the counterpart fund accounts and in fact revealed some new problems. According to the Court, the volume of the counterpart funds used for specific operations contributing to the agricultural development of the above mentioned countries between 1982 and 1987 was ultimately very limited compared with the initial value of the produce supplied by the Community. In Tunisia, for example, merely 4 million ECU of the 18 million ECU actually generated from aid of approximately 30 million ECU was invested in artificial insemination and milk-collection programmes. Often counterpart funds remained unused or were used for the type of financing the Court of Auditors had already warned the Commission against in its previous reports, in particular the financing of the operation of local intervention agencies, or more generally, the management of agricultural markets.7 The Commission, however, ferociously defended the use of counterpart funds to this end as an excellent use in developmental terms.8 It may

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be noted that in spite of the Court’s reservations this use of the counterpart funds is clearly on the increase. It would be wrong to conclude from the Court of Auditors’ 1988 Report that the revision of the supply agreements did not change anything; the Court’s observations were mainly related to operations not yet affected by the revised supply agreements.

In its Resolution of 19 January 1989 on the management of counterpart funds in respect of food aid, Parliament stated:

1. [Parliament] reaffirms its support for the formula of development aid via the use of counterpart funds generated by the sale of foodstuffs, and stressed that when applied under suitable conditions, it can enable Community aid to be integrated into the development process in the recipient countries; [...]  

5. Welcomes the fact that the Commission has just redefined more precisely the principles relating to the establishment and the use of counterpart funds and that this redefinition incorporates the bulk of the suggestions made by the Court of Auditors.99

According to the Commission, a clear improvement in the way counterpart funds are established and managed as a result of the reforms introduced is now discernible.100

The Court of Auditors referred in its 1988 Report also to a new development which deserves to be mentioned here. Most countries which receive food aid from the Community also receive, often also for sale, food aid from other donors. Recently, the donors have in a number of recipient countries (Senegal, Mali and Mauritania) started with the agreement of the local authorities to pool the counterpart funds.101 It is clear that this has advantages for the donors as well as for the recipients. Often, the counterpart funds generated by the sale of the food

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100COURT OF AUDITORS, Annual Report 1988, Replies of the Commission, 316.

aid supplied by a single food aid donor do not amount to much which of course makes efficient management, use and monitoring difficult.

Supply for sale to the dairy industry

Second, during the period 1983-89, the Community supplied considerable quantities of dairy products for sale to the local dairy industry in support of dairy development schemes. This use of food aid is very similar to the use discussed above but is often (and deserves to be) mentioned separately because of the direct link between the sort of product supplied and the local production one intends to develop. The development of a dairy industry usually requires both considerable imports of dairy products (at least during the initial stage) and major investments and a developing country may well lack the financial resources for the imports as well as the investments. By supplying food aid in dairy products, a donor will allow the developing country, on the one hand, to import sufficient dairy products, and, on the other hand, to make, through the use of the counterpart funds generated by the sale of the dairy products, the necessary investments. Most of the normal, direct food aid in dairy products was supplied for sale to the local dairy industry. In 1987, for example 80% of the normal, direct food aid in both skimmed milk powder and butteroil were supplied for this use.

During the period 1977-82, the Community already used a fair part of its dairy food aid in this way, but during the period 1983-89 this use was more common. Under the 1986 programme, for example, nine countries (including e.g. Tunisia, Tanzania, Uganda and Guyana) received dairy aid for sale in support of dairy development schemes. As will be recalled, the most notorious and by far the biggest of the Community’s dairy food aid supplies for sale to the dairy industry were the supplies - from 1978 to 1985 - to India under the Operation Flood II. In an evaluation report submitted in March 1986 to the Council and Parliament on the implementation of Operation Flood II, the Commission concluded that

102 WFP/CFA, 1987, 12-16.
while the (over-ambitious) initial objectives had only been achieved for 50%:

[the project] has been positive and proof has been given that food aid can be, under appropriated circumstances and with a comprehensive and well-structured scheme, a very useful development tool, avoiding the occasionally deceiving results of traditional utilization of food aid in terms of dependency, or modification of food habits in favour of products that cannot be grown locally and of the depressive influence on prices and therefore on local production.

In its Special Report 6/87 on food aid supplied to India between 1978 and 1985 (Flood II operation), the Court of Auditors - while acknowledging that the objectives of the operation had only been met on a very piecemeal basis - came to a similar positive conclusion:

[... ] the Community's participation in the Flood operation merits a positive assessment, on the whole, particularly if it is compared with certain food aid operations carried out by the Community to assist other recipient countries. It has in fact been possible to add large quantities of dried milk and butteroil, amounting to a substantial total over a number of years, to the food resources of the recipient State by making up part of its food deficit without at the same time disrupting too greatly the normal market conditions in the Indian Union for the products concerned. It has been possible to generate considerable financial resources, which have enabled substantial investments to be financed in the sector of the production, processing and marketing of milk and milk products.

In a Resolution of 22 January 1988, Parliament also evaluated the Community's food aid supplies in support of the Flood II Operation positively.

While the Court of Auditors had some reservation with regard to Community support in the form of food aid to the next phase of the Operation Flood, the

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103 Report from the Commission on the implementation of India's Operation Flood II by the European Communities through the supply of food aid, COM(86) 138 final, 13.

104 Report from the Commission on the implementation of India's Operation Flood II by the European Communities through the supply of food aid, COM(86) 138 final, 19.


Community nevertheless decided in 1987 to contribute to the Operation Flood III (1987-94) 75,000 tonnes skimmed milk powder and 25,000 tonnes of butteroil over seven years.108

The success of Operation Flood II did not go unnoticed. Commissioner Claude Cheysson observed during the Parliamentary debate of 22 January 1988 on Operation Flood:

The project and the techniques used have generated considerable interest in every part of the world. Egypt, Morocco and the ACP countries would like to avail themselves to these techniques. However, the greatest progress has been made in discussions in China where the Peking Government takes the view that this type of project could be vital to the country’s development.109

In its Resolution adopted at the end of this debate, Parliament encouraged the Commission to draw upon the positive experience of Operation Flood and put this example to good use when so requested by other countries.110 Soon after, the negotiations with China were concluded and the latter country joined the ranks of those countries to which the Community supplies dairy products in support of their local dairy sector development.

Supply for free distribution in kind

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, refugees111, etc.) or to

108 It was underlined, however, that the Community would not supply dairy food aid at times when local production of milk would be able to satisfy the demand. This had been the case in 1986 and it was in that context that the Court of Auditors had advised against support in the form of food aid for Operation Flood III.


111 In its Resolution of 15 November 1983, the Council stressed that food aid to refugees had to enable refugees to meet their real needs in swift, planned manner, while not making their subsequent economic and social reintegration more difficult.
workers engaged in a particular project (food for work projects). As I already explained above, 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 employing poor people and financing a specific labour intensive development project (often public infrastructure works or soil and water conservation works).112

Neither in the first nor in the second food aid framework regulation, free distribution of Community food aid is explicitly provided for.113 Both framework regulations stipulate, however, that ‘to raise the standard of nutrition of the recipient population’ is one of the objectives of the Community’s food aid operations and this implies almost necessarily the supply of food aid for free distribution. Furthermore, it should be noted that Article 35 (1) (c) of the Lomé III Convention stipulated with regard to food aid to ACP countries that:

where the products supplied are distributed free of charge, they must form part of nutrition programmes aimed in particular at vulnerable sections of the population or be delivered as remuneration for work;

The Community supplied food aid for free distribution to only a small number of recipient countries. Under the 1986 programme, for example, only 10 countries

112See i.a.: Commission communication on ‘Food aid for development’ of April 1983, COM(83) 141 final. 11-13.

113The only reference in this direction is to be found in Article 2 (3), first and second sentence, of the first framework regulation and the very similar Article 2 (5), first and second sentence, of the second framework regulation. The latter stipulates: ‘The granting of food aid shall, if necessary, be conditional on the implementation of annual or multiannual development projects, sectoral actions or development programmes, priority being given to projects, actions or programmes which promote the production of food in the recipient countries. Where appropriate, the aid may contribute directly to the implementation of such projects, actions and programmes.’ (Article 2 (5), first and second sentence, of Council Regulation (EEC) No 3972/86 of 22 December 1986 on food aid policy and food aid management, OJ. 1986, L 370/2.) Since this Article continues by stating that another way in which food aid can contribute to development projects, actions and programmes is by the use of counterpart funds generated by the sale of food aid, one can interpret the words ‘contribute directly’ as referring to the free distribution of food aid. If this interpretation is correct, it should immediately be observed that Community food aid supplied for free distribution is usually not directly linked to projects and programmes aimed at promoting the production of food in the recipient countries, exception made for food aid used in the context of food-for work-projects. Food aid supplied for free distribution is usually part of projects and programmes aimed at raising the standard of nutrition of the recipient population, which, it will be recalled, was one of the other food aid objectives listed in Article 2 (1).
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(including Ethiopia, Lebanon, Jamaica, Bolivia, Ecuador and Pakistan) received food aid from the Community for free distribution. In 1987, merely 5.2% of direct food aid in cereals and about 20% of direct food aid in both skimmed milk powder and butteroil was supplied for free distribution. Most food aid supplied for free distribution was supplied indirectly through international and non-governmental organizations. The main challenge when supplying food aid for free distribution is to ensure that this food aid is not misappropriated, i.e., goes to those for whom it is intended. Often international and non-governmental organizations with extensive networks in the recipient countries are the best guarantee against abuse of food aid supplied for free distribution. The administrative and financial burden of a correct free distribution of food aid is such that it is often impossible to entrust the recipient countries themselves with this task. The costs involved also limit, however, the quantities which can be channelled through international and non-governmental organizations. The largest free distribution programme was in Ethiopia where food aid was used in a food-for-work project for soil and water conservation.

Supply for local stock building

Fourth, it should be noted that during the period 1983-89, Community food aid could for the first time be used for local food security stock building. As I already pointed out before, food aid can evidently make a very useful contribution to food security programmes by allowing for the building up of reserve stocks which governments can use in times of extreme shortness or for price stabilization projects. Article 2 (4) of the first food aid framework regulation stipulated:

The objective of food aid shall be to meet immediate food needs. Nevertheless, in order to improve food security in the developing countries and to ensure that their needs are met, food aid by be granted, on a case-by-case basis, to enable the recipients to build

\[11^4\]WFP/CFA. 1987, 12.

\[11^3\]Note in this context that the food aid supplied by organizations but co-financed by the Community under Council Regulation (EEC) No 2508/88 of 4 August 1988, is, it seems from the wording of Article 1 (2) of the latter regulation, also to be supplied for free distribution. Article 1 (2) states: "The co-financing operations may be implemented [...] to help cover [...] the requirements of sections of the population which are unable to make up food shortages from their own means or resources" (O.J. 1988, L 220/4.).
stocks of cereals, provided that such aid does not represent more than a residual percentage of the Community plan and that needs for immediate consumption are given priority.

In the light of the experience of the African crisis, the Commission called in its communication on the Rehabilitation and Revival Plan for the African countries for an expansion of the possibility of using food aid (preferably mobilized by triangular operations) for the building of (decentralized) food security stocks to deal with food emergencies in the very first instances before international aid can arrive.

Parliament repeatedly expressed strong support for the use of food aid for the establishment of buffer food stocks so that faster, more effective aid can be deployed in emergencies.\textsuperscript{116}

Consequently, the possibility to use Community food aid for stock building is significantly enlarged in the second framework regulation. Article 2 (6) of the latter regulation dropped both the quantitative ('not more than a residual percentage...') and the qualitative (only cereals) restrictions the first framework regulation had imposed on the use of food aid for stock building. It stipulates:

In granting food aid priority shall be given to needs for immediate consumption. Nevertheless, in order to improve food security in the developing countries and to ensure that their needs are met, food aid may be granted in justified cases to enable reserve stocks to be build up by the recipients.

In spite of requests to this end, the Community reportedly supplies, however, very little food aid to enable recipient countries to build up reserves stocks.

It deserves to be noted at this point that the Community also granted in the context of the food aid policy, since 1987 on an experimental basis and since 1988 on the basis of Council Regulation (EEC) No 2507/88 of 4 August 1988, financial aid for the improvement of storage facilities.\textsuperscript{117}


\textsuperscript{117}See: Sections 2.2.5 and 3.1.3 of this Chapter.
Supply for emergency relief

Fifth, 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. Usually only a small part of Community food aid was supplied for free distribution to the victims of disasters. In 1987, for example, emergency allocations amounted to 157,753 tonnes of cereals, 2,320 tonnes of vegetable oil, 405 tonnes of skimmed milk powder and other food items for a value of 2.4 mECU. During the African crisis, however, this use of food aid became evidently very important but this was not only true for Community food aid but also for food aid from other donors. Of the 10 million tonnes of cereals supplied as food aid in 1983/84, 1.5 million was supplied for free distribution to disaster victims; of the 12.6 million tonnes supplied in 1984/85 and the 11.1 million tonnes supplied in 1985/86 respectively 3.2 and 3.3 million tonnes was supplied for free distribution to disaster victims.118

Both the first and the second framework regulation explicitly provide for the use of food aid in emergencies.119 The currently applicable second framework regulation lists in its Article 2 (1) among the objectives of Community food aid operations: 'to help in emergencies'; and in its Article 6, already quoted above, it states:

[...] the Commission shall decide on:

(a) emergency action to help countries, groups or refugees or other vulnerable sections of the population having to face serious unforeseen difficulties as a result of natural disasters; [...]

(b) emergency action to help countries, groups or refugees or other vulnerable sections of the population having to face serious unforeseen difficulties as a result of exceptional circumstances comparable to natural disasters, [...]

118FAO, Food aid in figures, 1987, 100.

119For the first food aid framework regulation, see: Article 2 (1) and Article 6 and Section 3.3.2 of this Chapter.
For the purpose of points (a) and (b), 'emergency' shall mean an exceptional unforeseen situation in which famine, or an imminent danger thereof poses a serious threat to the lives or health of the population in a country which is unable with the food shortfall using its own means and resources.\textsuperscript{120}

Noteworthy is also that Article 6 stipulates that the volume of food aid used in each particular emergency is limited to quantities that the people affected require in order to cope with the situation for a period not exceeding four months.\textsuperscript{121}

As was painfully illustrated by the African crisis, the effective use of food aid in emergencies requires among many other things early knowledge of impending food shortfalls.\textsuperscript{122} In this context, I merely want to remind the reader that, as I already noted above, the Community disposes since 1987 of the financial means and since 1988, with the adoption of Council Regulation (EEC) No 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems, of the legal basis to contribute to the setting up of new or the amelioration of existing early warning systems.\textsuperscript{123}

Another observation I would like to make here is that the second framework regulation in its Article 6 gives the Commission the competence to take, after consultation of the Food Aid Committee, any action to speed up the provision of emergency aid.\textsuperscript{124} Thus, the Commission can, for example, decide to deliver emergency food aid by air or ask Member States to keep certain quantities of food products in stock for emergency aid purposes. Furthermore, the same Article 6 of the second framework regulation requires the Commission to ensure that

\textsuperscript{120}Article 6 of Council Regulation (EEC) No 3972/86 of 22 December 1986 on food aid policy and food aid management, O.J. 1986, L 370/3. On the differences with the corresponding provision in the first framework regulation, see: Section 3.3.2 of this Chapter.

\textsuperscript{121}See also: Section 3.3.2 of this Chapter.

\textsuperscript{122}Commission communication to the European Council (Milan, June 1985) on 'Famine in Africa', COM(85) 333 final, 2; Commission communication to the Council on 'Famine in Africa', COM(85) 308 final, 2 and 4-5; ... COM(85) 599 final, 8.

\textsuperscript{123}See: Sections 2.2.5 and 3.3.2 of this Chapter.

\textsuperscript{124}It may be argued that the need to consult the Food Aid Committee may often cause valuable time to be lost. See: Section 3.5 of this Chapter.
priority is given at all stages to the mobilization of food aid for emergencies. Even if food aid supplied for emergency relief represents usually (and fortunately) only a small part of Community food aid, there can be no doubt about the importance the Community gives to it.125

Alternative operations (substitution)

In addition to the above mentioned five uses for which the Community currently supplies food aid to developing countries, it will be recalled that - as I already noted in Section 2.1.2 of this Chapter - Community law, and in particular, Council Regulation (EEC) No 1755/84 of 14 June on the implementation in relation to food of alternative operations in place of food-aid deliveries126, provides for the possibility not to use food aid but to replace it with financial assistance. There are situations in which the supply of food aid to countries normally eligible for such aid would definitely be counterproductive. Situations of this sort occur quite regularly in countries with marked fluctuations in food production, countries which normally have a food deficit but occasionally have very good harvests, such as the countries of the Sahel region. The supply of food aid after a bumper harvest is likely to disrupt the market in local foodstuffs and overstretch even more the limited storage facilities. Situations of this sort may also occur when a country is successful in becoming self-sufficient in food; also in the latter case, continued food aid supplies may well put at risk the progress made.127 At first sight, it seems obvious that in both situations, food aid supplies would be halted immediately to avoid the negative effects continued supplies are likely to have. Unfortunately, however, such a cutting off may have itself negative effects in particular when the counterpart funds generated by the sale of the food aid contribute to the financing of (multi-annual) development projects and

125Cynics would argue that the Council and Commission are well aware the 'disproportionate' media attention emergency food aid operations tend to get, especially when something goes wrong.


127The latter happened in Mali, for example, which as the result of a successful cereals market reorganization was able to become self-sufficient in millet and sorghum (HUBY, 1989, 65.).
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programmes.\footnote{Furthermore, it should be noted that by cutting off food aid, the donor in fact penalizes those countries which have made a genuine effort to become self-sufficient and may have a negative influence on the developing countries determination to become self-sufficient.} For these reasons, the Community has since 1983 on an experimental basis with the introduction in the 1983 Budget of a new budget line, Article 929 'Food projects in place of food aid'\footnote{On this new budget line 500,000 ECU was entered which was used to replace food aid to Niger.COM(83) 695 final, 1.}, and since 1984, on the basis of Council Regulation (EEC) No 1755/84 of 14 June 1984 referred to above, undertaken so-called alternative operations under which food aid is replaced by financial aid to allow the continuation of projects and programmes financed by counterpart funds in the year(s) of a bumper harvest or in the first few years after becoming self-sufficient.

Although Parliament had explicitly asked for this\footnote{Parliament criticized that the Commission’s proposal for not mentioning, let alone integrating, the possibility of alternative operations in place of food aid deliveries provided for by Council Regulation (EEC) No 1755/84 and suggested to insert an Article 2a which would do exactly that (European Parliament Report on the proposal for a Regulation on food aid policy and food aid management (Rapporteur: Mr Jorge CAMPINOS), PE Doc A 2-140/86, p. 20; PE Texts 9/86/II, p. 65 for the text of the proposal as amended by the European Parliament.). It should also be noted that Parliament repeatedly expressed strong support for alternative projects in place of food aid in order to encourage local food production. (See: European Parliament Resolution of 13 April 1984, point 3, O.J. 1984, C 127/249; European Parliament Resolution of 15 February 1985, point 8-9, O.J. 1985, C 72/137; European Parliament Resolution of 17 January 1986, point 5, O.J. 1986, C 36/210; European Parliament Resolution of 24 October 1986, point 5, O.J. 1986, C 297.) Most recently, Parliament, having underlined the importance the Community food aid policy will continue to have in the foreseeable future in the context of fight against hunger, reiterated its demands: [...] for better coordination of food aid operations with other development aid instruments and greater use of triangular operations and alternative operations in place of food aid. (European Parliament Resolution of 19 February 1987, point 15, O.J. 1987, C 67/119.).} Council Regulation (EEC) No 1755/84 was not integrated into the second food aid framework and 'alternative operations' are not referred to in any the provisions of the latter regulation. The framework regulation merely refers in its recitals to the possibility under Regulation (EEC) No 1755/84 to replace food aid 'by other action'. Article 35 of the Lomé III Convention, on the contrary, explicitly refers to 'alternative actions':

\[(f)\text{ where in a recipient ACP State, the trend of the food situation is such as to make it desirable for food aid to be replaced in whole or in part by operations designed to consolidate the current trend, alternative operations may be implemented in the form of financial}\]
and technical assistance, in accordance with the relevant Community rules. These operations shall be decided upon at the request of the ACP State concerned.\textsuperscript{131}

The number and importance of alternative operations has evidently varied from year to year depending on the harvests in the countries normally receiving Community food aid. So far 1986, with alternative operations in favour of Mali, Niger, Chad, Burkina Faso, Zambia Sudan and Haiti, was the year with the biggest number of alternative operations. About 94,000 tonnes of cereals or 8\% of the Community’s food aid in cereals was replaced with financial aid.\textsuperscript{132} In other years, alternative operations have been more modest in size and number but the importance of this instrument in the context of a policy which seeks to use food aid in support of and integrated in multi-annual development projects and programmes cannot be underestimated.\textsuperscript{133} Note that with the exception of alternative operations undertaken in favour of Honduras (1985) and Tanzania (1989), all alternative operations concerned the substitution of cereal food aid.\textsuperscript{134} Most of the financial aid given in replacement of food aid has been used in the context of market stabilization programmes and actions to reinforce food security. The financial aid has for example been used by local government agencies to buy-in surplus cereals to prevent prices from plummeting and discouraging local production, or has been used to contribute to the financing of the construction and/or improvement of storage facilities for which there is obviously a big demand in a surplus year.

As I already noted earlier in this Section, the main innovation in the use of food

\textsuperscript{131}Third ACP-EEC Convention, O.J. 1986, L 86/23.

\textsuperscript{132}Internal Commission document of October 1989, Annex II.

\textsuperscript{133}In 1987, for example, alternative operations were approved for Chad, Mali and Senegal, which received in total 5.1 million ECU (or the equivalent of 45,000 tonnes of cereals they would normally have received). (See: Twenty-first General Report on the Activities of the EC (1987), 322.).

\textsuperscript{134}Reportedly, the size of the harvest of cereals is more likely to be subject to striking fluctuations than other products.
aid in the eighties was the insistence on the fact that Community food aid, in close alliance with other development policy instruments, was to be used in support of and integrated in the recipient's overall food and agricultural policy or food strategy providing incentives to domestic agricultural production and aiming at a reduction of poverty and malnutrition. Only then, food aid was likely contribute successfully to the solution of the recipient's food problems and the enhancement of food security.

As pointed out above, the first framework regulation, based on a proposal of January 1979, did not yet reflect this food strategy approach to the use of food aid but in its communication of April 1983 on 'Food aid for development', the Commission's main concern was undoubtedly to adjust the Community's food aid system so it would be possible to fit food aid into a programme of support for the recipients' overall food and agricultural policies or food strategies. The Council's Resolution of 15 November 1983, adopted in reaction to the latter Commission communication, explicitly stated:

The Community's food aid must be integrated as thoroughly as possible into the development policies, and particularly the agricultural and agri-foodstuffs development policies, of the countries concerned.

Unlike the Commission, however, the Council thought that such an integration was possible within the context of the first framework regulation and thus without major changes to the latter.

It will be recalled that already in the early eighties the Community used food aid in its experimental support of the food strategies of Mali, Zambia, Rwanda and Kenya. During the first years of the period 1983-89, the Community continued to use food aid - directly, through counterpart funds, through alternative operations or through triangular operations - in support of the latter countries' food strategies. In Mali, for example, food aid was used to support the cereals market

\[\text{COM(83) 141 final.}\]

\[\text{Council Resolution of 15 November 1983, point 1, Press Release 10543/83 (Presse 189), 4.}\]

\[\text{Commission staff paper, 'Food strategies: review and prospects', SEC(84) 1692, 17-18.}\]
restructuring policy. The main focus of this policy was on increasing the producer prices. Food aid was provided to the cereals marketing board to improve its financial position and to allow it to increase prices paid to the farmers without at the same time increasing consumer prices. Also in Kenya and Rwanda food aid was channelled to the main marketing board to strengthen its position. Triangular Community food aid operations have benefitted Kenya, as a supplier, and Mali and Zambia as receivers. It will be recalled that when the Commission evaluated in 1986 these experiments, it established that its support of food strategies was, however, in none of the four pilot countries an unqualified success and that in order to guarantee the success of this approach a number of changes - also to the Community’s food aid policy - were clearly needed.

The question whether the Community’s support of the food strategies in the four above mentioned African countries had been a success and whether the Community’s aid system needed to be changed to obtain better results had become highly relevant since the Lomé Convention ‘generalized’ the food strategy approach and made it a guiding factor in the cooperation between the Community and the ACP countries. Article 12 of the Convention stipulated with regard to agricultural cooperation aimed at food security:

Operations in this field shall be designed and executed to support the agricultural food policies and strategies adopted by the ACP States.

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\(^{139}\)See: Section 2.1.5 of this Chapter.

\(^{140}\)Communication from the Commission to the Council on Implementation of food strategies and prospects for the future, COM(86) 198 final, 26-34.

\(^{141}\)Communication from the Commission to the Council on the Implementation of food strategies and prospects for the future, COM(86) 198 final, 1. On 6 November 1984, the Council had held - on the basis of the Commission document ‘Food Strategies: review and prospectives’ - a thorough discussion of experience so far in the support given by the Community to the food strategies being implemented by four African countries. The Council judged the results generally encouraging, and agreed that such strategies should be pursued in the next Lomé Convention and that the approach should, as far as possible, become generalized (Bull. EC 11-1984/59.). The European Parliament called for the expansion of the food strategy approach under the Lomé III Convention in its Resolution of 11 October 1984 on ‘World Hunger’, point 8 (O.J. 1984, C 300/42.).

It was quite clear that food aid was to be one of the 'operations' supporting food strategies. Article 35 of the Convention, the Convention's food aid article, stipulated:

(a) except in urgent cases, Community food aid, which shall be a transitional measure, must be integrated with the ACP States' development policies. This calls for consistency between food aid and other cooperation measures.\(^{142}\)

As I pointed out above, the second food aid framework regulation of December 1986, resolutely opts for the food strategy approach to the use of food aid. Article 2 (2) first sentence of the latter regulation, already quoted above, explicitly states:

The Community's food aid shall be \textit{integrated} as thoroughly as possible \textit{into} the development policies, and particularly the \textit{agricultural and agri-foodstuffs policies, and food strategies} of the countries concerned.\(^{143}\)

As I already noted above, the latter regulation also makes a number of changes to allow better for the integration of food aid in the recipient's food and agricultural policy or food strategy.\(^{144}\)

It is important to observe, however, that Article 2 (2), first sentence, stipulates that the Community is to integrate its food aid 'as thoroughly as possible' in the recipient's food strategy, thereby indicating that this may not always be possible nor desirable. Clearly when food aid is supplied in emergencies or as nutritional aid to refugees, it will, by the nature of things, probably not be integrated in the proper sense of the word in the recipient's food strategy.\(^{145}\) More generally, however, it should be noted that many recipient countries do not have detailed,


\(^{144}\)See: Section 2.2.1 and throughout Section 3 of this Chapter. To mention just two of the changes: the expansion of the possibilities to undertake triangular operations and the explicit provision for multi-annual commitments.

\(^{145}\)It should be noted, however, that especially in the case of large scale and 'long term' emergencies such as droughts, efforts are made to link emergency food aid with development efforts.
carefully worked-out, consistent food and agricultural policies or food strategies, or, to the extent that they have, are not being given particularly high priority. Only too often, it is clear that the food strategy documents are nothing more than good intentions, drawn up to placate donors, but destined for a fate similar to that of many national development plans: to lie on the shelves unimplemented. Another important observation to be made is that, as I noted above, the support of food strategies requires a dialogue between the donor and the developing country about the food strategy policy the latter intends to pursue and the former agrees to support. It will be recalled that the 1982 Pisani Memorandum put particular emphasis on the importance of such dialogues. There are, however, a number of problems with these policy dialogues. First, it should be noted that among developing countries, the idea of having policy dialogues has not met much enthusiasm; development countries obviously do not like to be told what sort of policies to pursue. Secondly, a policy dialogue requires that all major donors first agree upon the sort of strategy they think a given developing country should pursue and then sit all around the table with the latter country. If not, a developing country risks to have a different national food strategy for each major donor. With few exceptions, cooperation among major donors is in most developing countries by no means sufficiently advanced to allow for this sort of agreement and joint dialogue. Thirdly, genuine policy dialogue requires a large staff and it is doubtful whether the Commission has sufficient staff to enter into serious policy dialogues with more than a handful of developing countries at the time.

Consequently, while the Community's aim is to integrate its food aid in the recipient's food and agricultural policies and food strategies, in practice much Community food aid is still used in the context of more or less isolated development projects.

It should be noted that in the last few years, Community food aid, supplied on the terms discussed above (supply for sale or supply for free distribution), has been used in the context of structural adjustment programmes. To overcome their

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external debt crisis and revive their economy, many developing countries have been and are forced to take radical measures to reduce their budget deficit and to improve their balance of payments and the efficiency of resource allocations. Some typical measures undertaken in the context of structural adjustment programmes are: cutting government expenditure on public health care and education; reducing food and other subsidies; reducing employment in the public sector; privatising or closing down state owned enterprises; liberalising trade in basic commodities; and increasing interest rates and devaluing the currency. Few question the necessity of such adjustment measures to overcome the external debt crisis and revive the economy. The need for structural adjustment - and the Community's readiness to help with such adjustment - is for example central to the new Lomé IV Convention (1990). It is, however, equally uncontested that the adjustment measures often have particularly negative and harsh consequences for the poorest and most vulnerable population groups because of the food price increases and government spending cuts they entail. In its Resolution of May 1988, the Council stressed the need to consider carefully the effects of adjustment measures on the poorest. According to the Council, the 'sustainability' of an adjustment package should not be examined exclusively in economic and financial terms but should take into account social factors, food security and the environment. Against the background of these concerns, the Council explicitly mentioned the use of food aid. It is clear that both food aid supplied for sale and food aid supplied for free distribution can - in alliance with other development policy instruments and carefully integrated in the recipient country's structural adjustment effort - contribute to the alleviation of the food insecurity problems resulting from the implementation of adjustment measures. It can do so in basically three ways. First, food aid can dampen the upward movement of (consumer) food prices caused by the elimination of food subsidies or an exchange rate devaluation. Second, food aid can help to alleviate the balance of payments


KENNES, 1989, 72. See also the special Dossier in The Courier, No 111.
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constraints of food deficit countries. Countries carrying out a structural adjustment programme usually have to restrict commercial food imports and food aid will help them to bridge at least part of the gap between commercial imports and import needs. Third, the counterpart funds generated by the sale of food aid can be used to continue or phase out more gradually government policies and programmes particularly affected by the budget cuts (health care, education, food subsidies for the poor). The Community has used its food aid in all three ways to ease the hardship caused by structural adjustment to the poorest population groups.

As I already noted above but as I would like to stress with special emphasis, the use of food aid in support of a food strategy or in the context of a structural adjustment programme requires, first, the integration (close alliance) of food aid with the other instruments of the Community's development policy, and, second, the coordination of the Community's efforts with the efforts of the other major donors. Only if the Community uses all its development instruments in an integrated manner and coordinates its efforts with other donors, it can hope that its aid reaches a 'masse critique' necessary to engage in a policy dialogue with the recipient and has a significant impact on the situation of the recipient country.149

In Section 3.5 below, I will discuss in some detail how the Commission tries to achieve the necessary integration and coordination.

It will be recalled that during the seventies, the Community did not have a clear picture of what really happened with its food aid and resulting counterpart funds. 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 to be desired. Although explicitly required to do so in the supply agreements, the recipients did often not properly inform the Commission about the arrival or the subsequent use of the food aid and counterpart funds.150 During the period 1983-

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149 See also: Internal Commission document on 'Programmation de l'aide alimentaire: problèmes et orientations', October 1989, 16.

150 See: Section 3.4.3 of Chapters 1 and 2.
89, this situation did not significantly improve. In its Special Report 7/87 on the management of counterpart funds, the Court of Auditors noted that, with very rare exceptions, these reports were never filed by the recipient countries. Unlike in the seventies and early eighties, the information which the Commission had at its disposal on the quantities sold and the counterpart accounts generated was nevertheless quite considerable. However, it was obtained by the delegations, in a patchy and incomplete manner, after repeated requests, and too long after the deliveries had been made. As it had already done before, the Court of Auditors suggested again that the provisions of the supply agreements relating to the filing of quarterly and annual reports should be relaxed, so as to bring them more realistically into line with the administrative capabilities of many of the recipient countries. Especially with regard to counterpart funds, the Court stressed that the main thing was not to get the recipients to write reports, but to insist that they keep accurate up-to-date accounts, showing on the revenue side, the value in local currency of each delivery and, on the expenditure side, the cost of each development project. These accounts should then be accessible to an official of the Commission's Delegation, who would be responsible for monitoring them constantly.

While the information on the use of food aid received from the recipients still left much to be desired and did not give a good picture of the use made of Community food aid, the Community had definitely understood the importance of monitoring the use and evaluating the impact of Community food aid. This is clearly reflected in Article 11 of the second framework regulation which stipulated:

The Commission shall undertake regular evaluations of significant food-aid operations to establish whether the objectives defined in the appraisal of those operations have been met and to provide

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131COURT OF AUDITORS, Special Report 7/87, 23. See also: COURT OF AUDITORS, Special Report 1/87, 13. In its 1984 Report the Court of Auditors observed that the Indonesian authorities had not provided the annual reports on the use of the counterpart funds at all, while Guinea Conakry, which should have been operating counterpart funds since before 1980, sent its first report in 1985 and this report covered only a third of the funds (COURT OF AUDITORS, Annual Report 1984, 82).

132COURT OF AUDITORS, Special Report 7/87, 23.

133COURT OF AUDITORS, Special Report 7/87, 23.
guidelines for improving the effectiveness of future operations. […]

I deal in more detail with the latter in Section 6.5 of this Chapter.

### 3.4.4 The terms relating to the protection of commercial trade

Neither the first nor the second framework regulation stipulate any rule regarding to the protection of commercial trade. The 1986 Food Aid Convention, under which the Community supplies most of its cereal food aid, stipulates, however, in its Article VII (1):

> All aid transactions under this Convention shall be carried out in a way consistent with the concerns expressed in the current FAO principles of surplus disposal and guiding lines. Members undertake to conduct all aid transactions under this Convention in such a way as to avoid harmful interference with normal patterns of productions and international commercial trade.  

The supply agreements continued to stipulate prohibitions on re-exportation of the products supplied as food aid and on the exportation of similar products as well as the requirement of additionality (UMR-clause). The critical observations made in Chapters 1 and 2 regarding these terms relating to the protection of commercial trade have lost none of their relevance.

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3.5 The procedural and institutional aspects of Community food aid policy decision-making

It will be recalled that during the seventies and early eighties, the food aid policy formulation was probably the most problematic and most criticized element of the Community's food aid policy. The excessive concentration of decision-making power in the hands of the Council made the decision-making process very time-consuming and of unpredictable length. Already in March 1977, the Council recognized that it seemed indeed desirable to seek ways of speeding up the procedures but before this recognition was translated in concrete procedural changes almost six years would pass. It will be recalled that in June 1978 the Commission submitted to the Council a first proposal for a regulation on the management of food aid and that this proposal was replaced in January 1979 by a more ambitious proposal which, apart from the procedures already provided for in the first proposal, provided also for basic provisions regarding the objectives and substantive elements of the Community food aid policy. In order to establish food aid decision-making procedures which, on the one hand, were more efficient and therefore in greater conformity with the interests and requirements of the recipient countries, and, on the other hand, more in keeping with the spirit and the letter of the Treaty of Rome, the Commission proposed in January 1979 that the general political decisions should remain with the Council which would adopt these decisions by qualified majority, while all management powers should be transferred to the Commission who would in the exercise of some of these powers be assisted

1 See: Section 3.5 of Chapters 1 and 2.


3 There were only a few minor changes which do not deserve any further attention. The Commission stated at the time of its 1979 proposal that it considered that with regard to the procedural provisions, its initial (i.e. 1978) proposal represented the best way of meeting the basic requirements of increasing the effectiveness and improving the implementation (COM(79) 1 final, 2).
by a management committee. The latter management committee would also allow for closer cooperation and coordination between the Community and the Member States in the field of food aid. In Section 3.5 of Chapter 2, I already delineated in broad lines this procedural reform proposed by the Commission but for the present purposes and in particular to come to a better understanding and evaluation of the procedural provisions of the first framework regulation and the ensuing inter-institutional conflict, a more in-depth look at the Commission's proposal is called for.

Article 4 of the Commission's 1979 proposal for the first food aid framework regulation stipulated with regard to the Council's competences:

In the field of food aid, the Council, acting by a qualified majority on a proposal from the Commission, and after obtaining the opinion of the European Parliament, shall:

- define the basic products to be supplied as aid,
- determine by 31 October each year, within the framework laid down by Article 2, the general guidelines which will govern the aid for the following year,
- decide on the total quantities of each product on an annual and multiannual basis and fix the percentage of the total that can be channelled through international organizations,
- apportion the cereals aid provided for under the Food Aid Convention as between Community and national operations and fix the total amount of Community cereals aid not covered by the Convention.

Articles 5 and 6 of the Commission's 1979 proposal stipulated with regard to the Commission's competences:

Article 5

The Commission, following consultations with the committee provided for in Article 7, shall take decisions in accordance with the procedure laid down in Article 8 on:

- the annual and multiannual distribution of quantities available among countries and organizations, and the volume of the reserve,
- the derived products to be supplied as food aid;
- the application of Article 2 (3), (4) and (5);
- transportation of the products.

4COM(79) 1 final. 1.
Article 6

The Commission, in accordance with the Council decisions referred to in Article 4 and of the decisions taken under Article 5, shall decide on:

a) emergency actions for countries facing serious difficulties as a result of natural disasters or comparable abnormal circumstances;

b) the conditions governing the supply of aid and, in particular, on the general conditions applicable to recipients.

For the purposes of (a) 'emergency' shall mean an unforeseeable situation in which famine or a danger of famine poses a serious threat to the lives and health of the population. The volume of aid which it shall be decided to supply in each particular case shall be limited to the quantities that the people affected require in order to cope with the situation for a period not exceeding three months.

Articles 7 and 8 of the Commission's 1979 proposal concerned the Food Aid Committee, the management committee already referred to in Article 5, and in particular its principal role and powers:

Article 7

1. There is hereby established a Committee on Food Aid, chaired by a representative of the Commission and composed of representatives of the Member States. The secretariat of the Committee shall be provided by the Commission.

2. Where recourse is had to the procedure defined in Article 8, the votes of the Member States shall be weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Committee shall draw up its rules of procedure.

Article 8

1. Where recourse is had to the procedure defined in this Article, the Committee shall be duly informed by its chairman, either on the latter's own initiative or at the request of a representative of a Member State.

2. The Commission representative shall submit drafts of decisions
to be taken. The Committee shall deliver its opinion on these drafts within a time limit which may be fixed by the chairman according to the urgency of the matters under examination. It shall act by a majority of 41 votes.

3. The Commission shall take decisions, which are immediately applicable. If, however, such decisions are not in accordance with the opinion delivered by the Committee, they shall be communicated to the Council by the Commission forthwith. In that event, the Commission shall postpone, for not more than two months following the date of the said communication, the application of the decisions taken by it. The Council, acting by a qualified majority, may take a different decision within two months.

Furthermore the Food Aid Committee was, pursuant to Articles 9 and 10 of the Commission’s 1979 proposal, also entrusted with the following tasks making the Food Aid Committee into a forum for food aid policy coordination and debate between the Community and the Member States:

**Article 9**

Following a request by the chairman or a representative of a Member State, the coordination of Community and national food aid schemes shall be examined by the Committee. To this end, the Member States shall provide the Commission with information about national schemes.

**Article 10**

The Committee may examine any other matter concerning food aid raised by its chairman, either on the latter’s own initiative or at the request of a representative of a Member State.

Finally, the Commission’s 1979 proposal stipulated in its Article 11 an information obligation on the part of the Commission:

The European Parliament shall be informed of the management of food aid by the communication of the decisions referred to in Articles 4 to 6 immediately upon their adoption and by an annual presentation of progress reports on the implementation of the various operations for the relevant financial years.

The decisions referred to in Articles 5 and 6 and the reports mentioned above shall be communicated to the Council at the same time.
These procedural provisions of the Commission's 1979 proposal for a food aid framework regulation were in many respects, however, for both the European Parliament and the Council unacceptable.

As I already pointed out in Section 3.5 of Chapter 2, the European Parliament stated in its Resolution of 16 March 1979 on the 1979 proposal 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.5

Having said this, however, it sharply criticized two of the main elements of the new system proposed by the Commission. First, Parliament was fiercely opposed the proposed Article 4, third indent, quoted above, which left with the Council the competence to decide on the total quantities of food aid. According to Parliament, the decision on the total quantities was to be taken by the budgetary authority. It will be recalled that Parliament argued since 1978 that an important part of the food aid expenditure was non-compulsory6 and therefore Parliament was of course very keen on affirming the budgetary authority's power to decide on the total quantities. Parliament proposed the replacement of Article 4, third indent with a new Article 5 stipulating:

The budget shall lay down the total annual and multiannual quantities of the products defined by the Council pursuant to Article 4, first indent.7

Parliament also considered that a number of other decisions, such as the decision on the apportion of cereals aid provided for under the Food Aid Convention and the decision on the amount of Community cereals aid not covered by the Convention, were to be taken by the Council 'in the light of budgetary decisions'. Secondly, Parliament objected to the role and powers of the Food Aid Committee. While the Commission's proposal provided for a management committee,

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6See: Section 3.5 of Chapter 2.

Parliament insisted that the Committee would only have an advisory task, i.e. would only be a consultative committee.

The opposition among the Member States against the procedural provisions proposed by the Commission was even more fundamental than Parliament's opposition and - as one might have expected - went totally in the other direction: a number of Member States considered that the Commission wanted to give itself far too much decision-making powers. The Council was in fact split between, on the one hand, those Member States which in essence did not want to give up the Council's absolute control over the Community's food aid policy and wanted the division of decision-making powers to remain more or less unchanged, and, on the other hand, those Member States which to some extent shared the Commission's (and Parliament's) concern for more efficient procedures. Only on 14 September 1981, the Council was able to reach a common position on the Commission's proposal, changing the latter almost beyond recognition and totally ignoring the suggestions made by Parliament. It refused to transfer certain competences to the Commission, it insisted that several Council decisions would be taken by unanimity rather than by qualified majority and it made the control exercised over the Commission's decisions by the Food Aid Committee even stricter. Pursuant to the common position, the Council would decide by unanimity: (1) on the total quantities; (2) on the partition of the cereals aid provided for under the Food Aid Convention; and (3) determine the countries and organizations to which food aid may be supplied. Furthermore, the Council would decide by qualified majority: (1) on the basic commodities to be supplied as aid; (2) on the derived products likely to be supplied as aid, and (3) on the general criteria for the transport of food aid beyond the fob stage. The Commission would be competent, following

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*This is obviously the case of the decision on the derived products. For the decisions on the eligible countries and organizations and on the general criteria for transport of food aid beyond the fob stage the situation is less clear. The Commission's proposal stipulated that the Council would determine the general guidelines which would govern the aid. The Council may just have made this very vague competence more concrete.

*See below.

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consultations with the Food Aid Committee: (1) to allocate the available food aid among the eligible countries and organizations as well as to decide on the volume of the reserve; (2) to amend if necessary the allocations; and (3) to define the quantities and nature of the cereal products which the Member States were to make available for emergency action and international reserves. Furthermore, but without consultation of the Food Aid Committee, the Commission would be competent to decide on emergency actions and on the conditions governing the supply of aid. It should be noted, however, that with regard to emergency food aid actions, the Council’s common position again made the ‘old’ distinction between natural and man-made disasters and while in the case of natural disasters the Commission had merely to inform the Member States of action undertaken, in the case of man-made disasters, it had to consult the Member States by telex of any action it wanted to undertake and give them 48 hours to make any objections.11 With regard to the role and powers of the Food Aid Committee, the Council’s common position stipulated that the Commission would have to postpone the application of its decision and communicate it to the Council not only when the opinion of the Food Aid Committee was unfavourable but also when the Committee was unable to reach agreement. A minority of Member States could thus by merely blocking a favourable opinion obtain the examination of a Commission decision by the Council. Finally, one could observe that while the Council’s common position recognized the need for food aid policy coordination between the Community and the Member States, agreed to the obligation of the latter to inform the Commission of their food aid programmes, and also considered the Food Aid Committee as the appropriate forum for such a coordination effort, it stressed explicitly the Member States’ right to determine their own food aid policy. The provisions relating to the Food Aid Committee as a forum for debate and the Commission’s information obligation were not modified by the Council’s common position.

11The Council’s common position also made the definition of ‘emergency’ stricter by requiring that the country hit by a disaster was unable to meet the food deficit through its own means or resources.
It is clear that the Council's common position was for both the Commission and Parliament unacceptable. At the request of Parliament, a conciliation procedure, as provided for in the Joint Declaration of 4 March 1975\(^\text{12}\) was opened but at the first (and last) formal meeting in the context of this procedure on 22 February 1982, the three institutions were unable to bring their respective positions on the key issues closer together.\(^\text{13}\) While the Commission was willing to accept a number of the Council's changes to its original proposal, it insisted that the decisions on the total quantities and the eligible countries and organizations would be taken by qualified majority and not by unanimity. The Commission pointed out that during the seventies these decisions were (in theory at least) already taken by qualified majority and that it would be an unacceptable step backwards if the Council would now require unanimity for these decisions.\(^\text{14}\) Parliament also insisted that the decision on the eligible countries and organizations was taken by qualified majority, forcefully objecting to the power of veto decision-making by unanimity would give to one single Member State. With regard to the decision on the total quantities and the role and powers of the Food Aid Committee, Parliament stuck to its position delineated above. The Council, on the contrary, insisted that fixing the total quantities, a key policy decision, had to be a decision of the legislative, not budgetary authority. With regard to the role and powers of the Food Aid Committee, the Council pointed out that it had in essence followed the Commission's proposal.\(^\text{15}\) It should be noted that some Member States had insisted on a Food Aid Committee similar in role and powers to the committee provided for in Articles 11 to 14 of Council Regulation (EEC) No 442/81 of 17 February 1981 on financial and technical aid to non-associated developing


\(^{13}\)Bull. EC 2-1982, 43.

\(^{14}\)See: Section 3.5 of Chapter 1. Note, however, that in practice, this decision was often, if not always, taken by consensus.

\(^{15}\)The Council claimed that it had not made the control of the Food Aid Committee over the Commission any stricter but had merely clarified the situation by stipulating that also in case of the absence of an Committee opinion, the Commission's decision had to be referred to the Council.
countries. Under the procedure stipulated in these articles, the Commission can only take a decision after a favourable opinion of the Committee; in case of an unfavourable opinion or in the absence of an opinion, only the Council can take a decision. The Food Aid Committee as proposed in the common position was therefore already a considerable concession for some Member States. To Parliament's anger, the Commission refused to make common cause with it on the issue of the Food Aid Committee and declared itself quite satisfied with the relevant provisions of the common position. Also the Council's position on the voting requirements had been the outcome of a difficult compromise between on the one hand Member States which demanded that the Council would take all its decisions by unanimity and, on the other hand, Member States which wanted decisions to be taken by qualified majority. Concessions to Parliament and the Commission on this point were therefore not feasible either (yet). It was in fact hardly surprising that the meeting of 22 February 1982 was a failure. Further informal contacts between the Presidents of the institutions also led to nothing.

While the conciliation procedure on the Commission's proposal for a food aid framework regulation was getting nowhere, the three Institutions reached on 30 June 1982 agreement on the Joint Declaration on various measures to improve the budgetary procedure, which had immediate and important repercussions on the food aid procedures debate. As I already explained in Section 3.5 of Chapter 2, the Council finally agreed in the Joint Declaration of 30 June 1982 to classify most food aid expenditure as non-compulsory expenditure (See annex the Joint Declaration). Furthermore, the Council also agreed that in order to preserve the full importance to the budgetary procedure, the fixing of maximum amounts by regulation should be avoided (See point IV 3 b of the Joint Declaration). It will be clear, however, that instead of facilitating a compromise on the proposed framework regulation and in particular on the power to decide on the total


quantities, the Joint Declaration of 30 June 1982 considerably increased the stakes.

In the fall of 1982, the Commission made it clearly understood that it would withdraw its proposal if the Council did not change its common position so that the latter would be closer to Parliament's and its own position. This firm attitude of the Commission seemed to have led to the collapse of the consensus among the Member States reached in September 1981 when they agreed on the common position. Some Member States, which had never been very happy with this common position in the first place, considered that the Council should be more flexible in order to avoid a major conflict with Parliament and/or the risk that the Commission would indeed withdraw its proposal and leave the Community, after four years of negotiations, still without the much needed food aid framework regulation. Eventually, the Ministers of Foreign Affairs decided at the Council meeting of 22 and 23 November 1982 to make two major concessions in comparison with the common position: the decision on the total quantities as well as the decision on the eligible countries and organizations would not be taken by unanimity but by qualified majority.18

The Commission, which basically got what it had asked for during the conciliation procedure and considered further concessions of the Council to meet Parliament's revindications unrealistic, decided not to withdraw its proposal although Parliament had explicitly asked it to do so. At the next Council meeting of 3 December 1982, Council Regulation (EEC) No 3331/82 on food aid policy and food aid management, the first food aid framework regulation, was formally adopted. Article 4 of the first framework regulation stipulated with regard to the Council's competences:

1. In the field of food aid, the Council shall:

- decide on the total quantities of each product on an annual or multiannual basis,
- apportion the cereals aid provided for under the Food Aid Convention between Community and national actions,
- apportion among the Member States the national cereals actions

under the Food Aid Convention,
- determine the countries and organizations to which food aid may be supplied on an annual or multiannual basis,
- define the basic products to be supplied as aid, taking into account the available stocks of the products in question,
- determine the derived products to be supplied as food aid,
- lay down general criteria for the transport of food aid beyond the fob stage.

2. To this end, on a proposal from the Commission and after obtaining the opinion of the European Parliament, the Council shall act by a qualified majority when exercising the powers referred to in the first, fourth, fifth, sixth and seventh indents of paragraph 1, and unanimously when exercising the powers mentioned in the second and third indents of paragraph 1.

Articles 5 and 6 of the first framework regulation stipulated with regard to the Commission's competences:

Article 5

The Commission, following consultations with the Committee as provided for in Article 7 and in accordance with the procedure laid down in Article 8, shall:

- fix the apportionment among recipient countries and organizations, determined in accordance with the fourth indent of Article 4 (1, of the quantities available under the annual and multiannual programmes and, in the same context, the volume of the reserve,
- in so far as necessary, amend allocations during the implementation of the annual and multiannual programmes in the light of the capacity of recipients to absorb aid,
- define the quantities and nature of the cereals products which the Member States still make available for emergency actions and international reserves.

Article 6

In accordance with the Council decisions referred to in Article 4 and of the decisions taken under Article 5, the Commission shall decide on:

a) emergency action for countries facing serious difficulties as a result of sudden and unforeseeable natural disasters and shall inform the Member States thereof;
b) emergency action for countries facing serious difficulties as a result of exceptional circumstances comparable to natural disasters, after consulting the Member States by telex, giving them 48 hours to make any objections;

c) the conditions governing the supply of aid and, in particular, on the general conditions applicable to recipients.

For the purpose of (a) and (b) 'emergency' shall mean an unforeseeable situation in which famine or a danger of famine poses a serious threat to the lives and health of the population in a country which is unable to meet the food deficit through its own means and resources.

The volume of aid which it shall be decided to supply in each particular case shall be limited to the quantities that the people affected require in order to cope with the situation for a period not exceeding three months.

Articles 7 and 8 of the first food aid framework regulation concerned the *Food Aid Committee*, the management committee already referred to in Article 5, and in particular its principal role and powers:

**Article 7**

1. A Food Aid Committee, hereinafter referred to as the Committee, chaired by a representative of the Commission and composed of representatives of the Member States, is hereby established. The secretariat of the Committee shall be provided by the Commission.

2. The Committee shall draw up its own rules of procedure.

**Article 8**

1. Where recourse is had to the procedure defined in this Article, the Committee shall be duly informed by its chairman, either on the latter's own initiative or at the request of a representative of a Member State.

2. The Commission representative shall submit drafts of decisions to be taken. The Committee shall deliver its opinion on these drafts within a time limit which may be fixed by the chairman according to the urgency of the matters under examination. It shall act by a majority of 45 votes. The votes of the Member
States shall be weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall take decisions which are immediately applicable. If, however, such decisions are not in accordance with the opinion delivered by the Committee or if the Committee delivers no opinion, they shall be forthwith communicated to the Council by the Commission. In that event, the Commission shall postpone, for not more than two months following the date of the said communication, the application of the decisions taken by it. The Council, acting by a qualified majority, may take a different decision within two months.

Furthermore, the Food Aid Committee was, pursuant to Articles 9 and 10 of the first framework regulation, also entrusted with the following tasks making the latter into a forum for food aid policy coordination and debate between the Community and the Member States:

**Article 9**

The Member States shall decide on their national food aid programmes and shall inform the Commission thereof, following a request by the chairman of the Committee or a representative of a Member State, the coordination of Community and national food aid schemes shall be examined by the Committee.

**Article 10**

The Committee may examine any other matter concerning food aid raised by its chairman, either on the latter's own initiative or at the request of a representative of a Member State.

Article 9 should also be noted as providing for an obligation for the Member States to inform the Community of their food aid activities.

Finally, the first framework regulation stipulated in its Article 11 an information obligation on the part of the Commission:

The European Parliament shall be informed of the management of food aid by the communication of the decisions referred to in Articles 4, 5 and 6 immediately upon their adoption and by an annual presentation of progress reports on the implementation of the various operations for the relevant financial years.

The decisions referred to in Articles 5 and 6 and the reports
The Council pointed out in the recitals of the first framework regulation that, the aim of these new decision-making procedures was to ensure that food aid was managed more efficiently and in greater conformity with the interests and requirements of the recipient countries. It is fair to say that the new procedures did indeed have this potential. Since the Council did no longer have to decide on the details of food aid allocations, the food aid procedures were definitely less cumbersome. The new division of competences allowed (in principle at least) for a considerable improvement in the Community food aid policy decision-making process. One could expect that it would take the Community less time to agree upon a food aid operation, that the time taken by this procedure would be more predictable and that the mobilization and shipment could take place at the time the food aid was most needed. As I already pointed out in Section 2.1 of this Chapter, the new procedural provisions reflected in this respect the emergence of development cooperation and humanitarian relief as important food aid policy objectives. The Council's reluctance to transfer more competence to the Commission as well as the provision of the management committee procedure demonstrated, however, the continued relevance of other objectives, such as the promotion of domestic agricultural interests and foreign policy interests.  

In spite of the apparent improvements to the decision-making procedures, however, the adoption of the first framework regulation merely marked the end of the first and the beginning of the second round in the inter-institutional conflict on the division of competence in the field of food aid. Parliament was genuinely outraged by the adoption of the first food aid framework regulation and it would never accept the legality of this regulation. As it pointed out time and again during the period leading up to the second framework regulation, Parliament considered the first framework regulation to be illegal for reasons of substance as well as for reasons of form. Unlike the Council, which in the recitals of the

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19See for more detail: Section 2.1 of this Chapter.
framework regulation noted (provocatively):

Whereas these procedures and subsequent decisions take account of the division of responsibilities between the institutions as laid down in the Treaty.

Parliament, as it had already advanced its 1979 Opinion on the proposed framework regulation and later in February 1982 in the context of the conciliation procedure, considered several elements of the framework regulation's procedures in breach of the Treaty. First of all, Parliament argued that to leave the competence to decide on the total quantities of food aid with the Council (Article 4 (1) of the first framework regulation) was in violation of Article 203 EEC; it totally undermined Parliament's budgetary competence to have the final word on the non-compulsory expenditure and violated the Joint Declaration of 30 June 1982, and in particular point IV 3 b thereof, which stipulates that to preserve the full importance of the budget procedure the fixing of maximum amounts by regulation must be avoided. Secondly, Parliament argued that the role and powers of the Food Aid Committee (Article 8 (2) of the first framework regulation) were in violation of Article 205 EEC. The Court of Justice had held in its decision of 17 December 1970 in the Köster case that the Council was free to attach restrictions to the delegation of its powers pursuant Article 155 EEC. Parliament argued, however, that the powers which the Council had transferred to the Commission in Article 5 of the first framework regulation were in fact not the Council's to transfer. Since they concerned the mere implementation of the budget, these powers were pursuant to Article 205 EEC the Commission's powers and the Council could not submit the exercise of the Commission's proper powers to a management committee procedure. At first view, it may be somewhat surprising that Parliament was an even keener advocate of the Commission's powers than the Commission itself but one should inter alia consider that, first, Parliament could afford to display less political realism without endangering the whole legislative effort, and, second, that it was in the immediate interest of Parliament that the Commission had full competence to take certain decisions since Parliament had concrete legal means to review Commission's decisions while such means were lacking in case of Council decisions.
Parliament also claimed that the first framework regulation was illegal for reasons of form. The Council, by breaking off unilaterally the conciliation procedure on the framework regulation, violated, according to Parliament, the Joint Declaration of 4 March 1975. After having made the concessions on the voting requirements mentioned above, the Council had considered the positions of the Institutions sufficiently close to terminate to conciliation procedure. On reading point 7 of the Joint Declaration of 4 March 1975, it seems indeed that the Council did violate the Declaration when it unilaterally closed the concertation procedure and adopted the first framework regulation. In this point 7, the institutions had agreed that:

> When the positions of the two institutions are sufficiently close, the European Parliament may give a new Opinion, after which the Council shall take definitive action.\(^3\)

While the Joint Declaration does not tell us who is to establish whether 'the positions of the two institutions are sufficiently close', it is clear that it is excluded that it is for Parliament or for Parliament together with the Council to establish this. The Joint Declaration does certainly not intend to give Parliament a right to hold up indefinitely every legislative act for which a conciliation procedure is introduced by refusing to establish that the positions of the two institutions are sufficiently close. The Council was therefore entitled to establish that the positions were sufficiently close but point 7 explicitly stipulates that before it could then take definitive action, Parliament may give a new opinion. In the present case, Parliament had not been given an opportunity to give such an opinion and in this respect the Joint Declaration was violated. Such a violation, however, did not have any effect on the validity of the first framework regulation itself; an Article 173 action for annulment on the basis of the violation of the Joint Declaration would not be possible. An in-depth analysis of the legal nature of the Joint Declaration would lead us too far but I would like to note that it is doubtful whether this and other Joint Declarations and Statements are more than mere political declarations of intent. While the violation of the Joint Declaration may thus not have affected the validity of the first framework regulation, the Council

\(^3\) Joint Declaration of 4 March 1975, OJ. 1975, C 89/2.
did, however, indeed violate the Joint Declaration of 4 March 1975 by concluding the conciliation procedure in the manner it did.

To mark its rejection of the first framework regulation, Parliament refused to deliver an opinion on the 1983 implementing regulation, and the Council, having repeatedly asked Parliament for its opinion, eventually adopted the 1983 implementing regulation without having received an opinion. Pursuant to the Court’s decision in the Isoglucose case, the Council could - certain conditions being fulfilled - indeed adopt a act without the opinion of Parliament. Frustrated by the limited impact of its refusal to deliver an opinion and, possibly, afraid of giving the impression of holding up the adoption of the annual food aid programme over a matter the importance of which was perhaps not appreciated by the electorate, Parliament changed strategy in 1984. While giving a favourable opinion on the proposal for a regulation laying down for 1984 implementing rules for the framework regulation, it strongly deplored in its opinion the reference to the latter regulation, insisted on its deletion and demanded that the Commission would propose a new framework regulation. In point 5 of its Opinion of 13 April 1984 on the 1984 implementing regulation, it stated:

[Parliament] reiterates its view that it would be intolerable for food-aid measures to be delayed because of the Commission’s reference to Council Regulation (EEC) No 3331/82 but at the same time stresses yet again that its approval of the Commission’s proposal in no way implies acceptance of Regulation (EEC) No 3331/82 and renews its appeal to the Commission to draw up a proposal for a new basic Regulation on food aid as quickly as possible.

Parliament was quite aware of the fact that the Council could adopt the 1983 implementing regulation also without its opinion. As a matter of fact, it was explicitly pointed out by Mr Cohen in reply to a question of another MEP regarding to possible impact of Parliament’s refusal to give an opinion on the Community’s food aid efforts. Nevertheless, Mr. P. Dankert, then President of the Parliament sent in October 1983 a letter to Mr. Y. Charalambopoulos, then President of the Council, in which the former spoke of ‘un règlement qui se trouve, [...], entaché d’un vice de forme’ and ‘une grave violation des dispositions du Traité’.


In its Opinions on the implementing regulations of 1985 and 1986, it made similar, be it gradually more 'impatient' statements.*

The Commission was, however, at least initially not very keen on submitting a proposal for a new framework regulation. While recognizing the shortcomings, the Commission considered that the procedural provisions of the framework regulation were the best compromise possible and was hesitant to 'reopen' a discussion which had already devoured so much time and energy since 1978. The Commission was actually quite satisfied with the new procedures. As already pointed out above, the new procedures were definitely less cumbersome and should, at least in theory, allow the time taken by food aid decision-making to be shorter and more predictable. Furthermore, the new procedures and in particular the fact that the Commission decided on the allocation meant that the allocation decisions did not all have to be taken at the same time but could be taken throughout the year23, thus allowing the Community to make food aid allocation decisions only when the needs of the recipient had become clear (i.e. after the harvest) and to make its food aid supplies to coincide better with the periods of biggest needs.

The Commission's optimism about the potential of the new procedural provisions was apparently not diminished by the fact that in the context of the negotiations on the 1983 implementing regulation the Council tried (and partially succeeded) to give a narrow interpretation to the powers entrusted to the Commission by the first framework regulation*, and by the fact that the Council insisted on adopting

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**The Council decision-making process was too complicated and inflexible to allow for this.

***Note that the Commission was successful in the context of the negotiations on the 1983 implementing regulation to ward off several attempts to limit to competence delegated to it under the framework regulation. It was proposed, for example, to limit the use of 'non-traditional food aid products' to emergency operations only, to limit to size of these operations to 1000 tonnes of sugar or vegetable oil and 500,000 ECU other products. Furthermore, it was proposed to establish a list of eligible countries and organizations for each product, thus interfering in the Commission's allocation decisions more than necessary in the light of the Member States' foreign policy concerns. The latter suggestion was dropped completely but the use of 'non-traditional' food aid products was limited to emergencies and specific projects. Note, however, that given the rather small quantities of non-traditional products available which made it difficult to use them for other purposes but emergencies and specific projects, the practical relevance of this restriction may well have been limited.
annual implementing regulations rather than - as the Commission proposed in order to introduce a certain degree of stability and avoid annual discussions - adopting an implementing regulation of undetermined validity setting out general rules of which only the annexes setting out the total quantities, the eligible countries and organizations, and the products to be supplied as food aid would be subject to annual change.27

Somewhat embarrassingly, the 1983 and 1984 implementing regulations were still adopted quite late in the year they related to in spite of the fact that the Council did no longer have to decide on the many details that where supposedly to blame for the delays in the adoption of the annual programmes before the first food aid framework regulation. The 1983 implementing regulation was adopted on 11 July 1983 and the 1984 implementing regulation on 7 May 1984.28 The 1985 and 1986 implementing regulations were, however, adopted far earlier, namely on respectively on 19 February 1985 and 27 January 1986 and, in that respect, seemed to justify the Commission's confidence in the new procedures.

It should also be noted at this point that the 'Food Aid Committee' procedure - so much contested by Parliament - did in practice not lead to long delays in the allocation decisions. It was feared that the Food Aid Committee would refer many allocation decisions to the Council and that this would often add another two months to the time taken for a Community food aid operation. In fact, in the period 1983-86, it happened only twice that a Commission allocation decision failed to get a favourable opinion of the Food Aid Committee and was therefore submitted to the Council. In both cases (the 1984 and 1985 food aid allocations to Malta) the Council failed to adopt an diverging decision within two months and the Commission's decisions were carried out without alterations.29 One can,

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27While the Council adopted a implementing regulation every year, it should be noted that in practice the stability the Commission sought was realized since these implementing regulations (of 1983, 1984, 1985 and 1986) were virtually identical and that from 1984 onwards the variable elements (total quantities of food aid, the products to be supplied as food aid, and the list of eligible countries and organizations) were set out in the annexes.


29See also: Section 3.3.2 of this Chapter.
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however, not conclude from this that the 'Food Aid Committee' procedure did not or almost not affect the Commission's power of decision. The mere fact that the Commission would have to present its draft allocation decisions to the Food Aid Committee and that a qualified majority was needed to prevent its decision from being reviewed by the Council, made the Commission of course more careful and to exercise some self-restraint.

Apart from the Commission's satisfaction with the improvements the new procedural provisions allowed, it should be underlined that the Commission did not really share Parliament's legal objections against Article 4 (1) on the total quantities and Article 8 (2) on the Food Aid Committee. The Commission reportedly considered that it was indeed up to the Council, as the legislative authority, to decide on the total quantities, and that - although it would of course have preferred a purely consultative committee if such would have been politically feasible - the Council had the right to establish a regulatory committee to supervise the use made of the delegated powers of Article 5. That these powers would be no more than the execution of the budget pursuant to Article 205 and were therefore not for the Council to delegate and submit to a regulatory committee procedure, seemed to the Commission at the time still somewhat far-fetched.30

The Commission did recognize, however, that the present division of competence could indeed lead to a grave inter-institutional conflict if the Council decided to ignore the budgetary decision and decide on quantities below the quantities provided for in the budget. In order to preserve Parliament's budgetary powers, the Commission committed itself that it would always propose to the Council total quantities corresponding to the appropriations entered in the budget and stated repeatedly that any change in these amounts by the Council would run counter to the Joint Declaration of 30 June 1982 and would not be acceptable to the Commission since it would make it impossible for the latter to implement the...

30Note that the Commission has definitively changed its position on this point since. See below.
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Budget pursuant to Article 205 EEC.\textsuperscript{31}

Already in the context of the 1983 implementing regulation, this problem arose when the total quantities reflecting the budget appropriations proposed by the Commission were not accepted by all Member States. Reportedly, some Member States merely wanted to show that they were not going to follow Parliament. The Commission, however, insisted and threatened to withdraw its proposal (and leave the Community without food aid programme) if the Council would decide on total quantities which did not correspond to the available budget. In the end, a dubious compromise was reached under which the Council adopted the total quantities Parliament had provided appropriations for but it was agreed that part of the cereals aid would not be allocated and the corresponding appropriations would in fact be transferred to Article 929, 'Alternative Operations', and Article 959, 'Aid to the UNRWA', of the Budget.

In the context of the 1984 implementing regulation, the Council insisted that the Commission would submit its proposal for the 1984 implementing regulation before the adoption of the budget so that it would be able in the interest of the efficient management of the food aid policy to adopt the latter regulation before the end of 1983, i.e. before the adoption of the budget. It was clear that this would trigger a major conflict with Parliament and was obviously in violation of point IV 3 b of the Joint Declaration of 30 June 1982 which stipulates that to preserve the full importance of the budget procedure the fixing of maximum amounts by regulation must be avoided. The Commission therefore initially took the position that in respect of Parliament's budgetary powers the Council's decision on the total quantities (as part of the implementing regulation) could not but follow the budgetary decision. This was, however, unacceptable to some Member States and eventually the Council and the Commission agreed on 19 December 1983 on a Joint Statement on the application of Article 4 of Council Regulation No 3331/82 on food aid policy and food aid management. Pursuant

\textsuperscript{31}It will be recalled that the Joint Declaration of 30 June 1982 stipulated implicitly that only for minor, ad hoc operations the budget could be considered to be a sufficient legal basis; although some MEP insisted that it should and could do so on the basis of Article 205 EEC, the Commission could therefore not use the appropriations the Council would leave unused.
to this Joint Statement, the Council would adopt the implementing regulation only after the budget authority had fixed the amount of appropriations of food aid (point 3 of the Joint Statement) but the Commission would - in order to enable simultaneous examination to be carried out - submit each year to the Council within a reasonable period of time and if possible, together with the preliminary draft budget for the following year, the proposal for the implementing regulation of the year in question (point 1 of the Joint Statement). Furthermore, the Commission reserved the right to amend or supplement at any time its proposals, in particular on the basis of the outcome of the budget procedure (point 2 of the Joint Declaration), while Council retained the possibility to establish a preliminary position (as opposed to a common position) before the adoption of the budget and would adopt the implementing regulation as far as possible before the beginning of the following year (point 4 of the Joint Declaration). The Joint Statement of 19 December 1983, however, merely settled the problem of the sequence of decisions; it did not touch on the central problem whether the Council was to take its decision on the total quantities on the basis of the budget. The German delegation even insisted on making the following statement for entry in the minutes of the Council meeting of 19 December 1983:

The German delegation states that the joint statement does not change the current legal situation whereby the Council adopts substantive decisions in its own right without being materially bound by the outcome of the budget procedure.

For the 1984 implementing regulation, the Council did, however, adopt the total quantities corresponding to the budget appropriations.

In the context of the 1985 implementing regulation, however, the understanding on the sequence of decisions had to be reviewed. As a result of serious disagreement between Parliament and the Council on the Community's budget in general, the 1985 budget was not adopted until the summer of 1985; it was clear that the Community could not wait that long to adopt the 1985 implementing regulation; in this year of the African crisis, the life of millions literally depended on Community food aid. While the Commission stipulated when submitting its proposal for the 1985 implementing regulation that the Council could - pursuant
to the Joint Statement of 19 December 1983 - only adopt the implementing regulation once the 1985 budget was known, the situation in Africa did not allow such and it was generally agreed, even by Parliament, 'anxious not to hold up the food aid machinery'\(^2\), that the 1985 implementing regulation should be adopted without waiting for the 1985 budget. To get general agreement on this early adoption, the Council had, however, stated that this regulation was no more than interim in nature, and that it would be reconsidered after the adoption of the 1985 budget by Parliament. In the end such reconsideration was not necessary since the quantities decided by the Council corresponded perfectly with the food aid budget appropriations finally approved by Parliament.

The big clash between Parliament and the Council on the total quantities of food aid took place, however, in the context of the 1986 implementing regulation.\(^3\) While the 1986 budget contained appropriations allowing for an exceptional food aid commitment of 546,000 tonnes of cereal equivalent, the Council decided in its 1986 implementing regulation on an exceptional food aid commitment of merely 386,000 tonnes, a quantity corresponding to the appropriations it had approved at second reading. Parliament was furious, accusing the Council of deliberately prejudicing the binding nature of the budget and violating the institutional provisions of the Community. In its Resolution of 13 March 1986, it:

> Stresses that the Council’s failure to respect both the budgetary powers of the European Parliament and [the undertaking to respect, in establishing the annual programmes, the decisions taken by the budgetary authority] demonstrates again the need for a new basic Regulation to be adopted which respects the European Parliament’s budgetary powers; expects the Commission to submit a proposal to this effect without delay;\(^4\)


\(^3\)It should be noted that in its proposal for the 1986 implementing regulation the Commission also proposed quantities which deviated from the budgetary availabilities. See: Section 3.2.1 of this Chapter.

After years of Parliament pressure, the Commission eventually submitted on 22 July 1986 a proposal for a new framework regulation. It should be noted, however, that Parliament's dissatisfaction with the procedural provisions of the first framework regulation and the resulting inter-institutional tension was merely one of Commission's motives to take this step. Probably more important was the wish to generalize the 'food strategy support' approach to the use of food aid, i.e. the use of food aid in support of and integrated in overall food and agricultural policies or food strategies of the recipient countries and the realization that the first framework regulation did not allow for such an evolution. Another important motive was to draw the consequences of the experience gained during the African crisis. As I already noted repeatedly, the latter crisis had shown many of the shortcomings of the Community's food aid policy. While a number of ad-hoc arrangements allowed the Community to make nevertheless a very valuable contribution to the alleviation of the famine, the need for further policy reform was obvious. The wish to settle the inter-institutional conflict on the division of competences in the field of food aid was, however, without doubt also a motive of the Commission when it submitted its proposal for a new framework regulation.

In the explanatory memorandum attached to its proposal, it admitted that the system of food aid management set up by the first framework regulation did not fully allow for good management of food aid and that it therefore had become necessary to review the latter system on the basis of experience gained and with a view to the following three aims:

(i) to make food aid a more fully integrated part of development aid;

(ii) to remove certain ambiguities in the text currently in force, which regularly cause difficulties and clashes between Community institutions;

(iii) to avoid the splitting and hence dilution of management.

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39Proposal for a Council Regulation (EEC) on food aid policy and food aid management repealing Regulation (EEC) No 3331/82, COM(86) 418 final. This document was, however, cancelled and replaced by Proposal for a Council Regulation (EEC) on food aid policy and food aid management, COM(86) 418/2/rev. final of 29 September 1986. The only difference between both documents was, however, the title of the regulation, one recital which stated that Regulation (EEC) No 3331/82 should be replaced and the second paragraph of Article 13 which stipulated this regulation would be binding in its entirety and directly applicable in all Member States.
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responsibilities by strengthening the Commission’s implementing powers in accordance with the spirit of the Single Act adopted in December 1985 by the European Council.※

Consequently, the Commission proposed a radical redrafting of the procedural provisions of the first framework regulation.

Article 4 of the Commission’s proposal stipulated with regard to the Council’s competences:

1. In the field of food aid, the Council shall:
   - apportion the cereals aid provided for under the Food Aid Convention between Community and national operations,
   - apportion among the Member States the national cereals operations under the Food Aid Convention,
   - determine the countries and organizations to which food aid may be supplied on an annual or multiannual basis,
   - lay down general criteria for the transport of food aid beyond the fob stage.

2. To this end, on a proposal from the Commission and after obtaining Parliament’s opinion, the Council shall act by a qualified majority when exercising the powers referred to in the first, third and fourth indents of paragraph 1, and unanimously when exercising the powers mentioned in the second of paragraph 1.

Note that the proposed framework regulation no longer explicitly left to the Council the full competence to decide on the total quantities of food aid. It explicitly left to the Council only the competence to decide (by qualified majority) on the quantity of cereal food aid supplied by the Community under the Food Aid Convention (Article 4 (1), first indent). On reading the explanatory memorandum attached to the proposal, it becomes clear that the Commission intended to leave to the Council the competence to establish the quantities of what it called contractual food aid, i.e. food aid supplied in accordance with international commitments entered into by the Community. This made sense and should have been acceptable to Parliament to the extent that the expenditure involved in the case of contractual food aid was compulsory expenditure on which the Council had

※COM(86) 418/2/rev. final, 1-2.
the last word. The Commission seemed to presume, however, that contractual
food aid was limited to food aid supplied under the Food Aid Convention and that
was not necessarily the case.

It should also be noted that the Council would furthermore lose the competence
to decide on the (basic and derived) products to be supplied as food aid; this
competence would be transferred to the Commission.

Articles 5 and 6 of the Commission’s proposal stipulated with regard to the
Commission’s competences:

Article 5

1. In accordance with the procedure laid down in Article 8 (1), the
Commission shall:

- adopt a list of products which may be mobilized as aid;
- lay down rules for mobilization of those products;
- establish a limit for the purchases referred to in the third indent
of Article 3, having regard to the situation on Community markets.

2. In accordance with the procedure laid down in Article 8 (2), the
Commission shall:

- establish the apportionment among the various recipients of the
quantities which may be mobilized subject to budgetary provision;
- where necessary, adjust allocations during the implementation of
programmes, inter alia, in the light of the capacity of recipients to
absorb the aid.

Article 6

In accordance with the Council decisions provided for in Article 4
and of the decisions taken under Article 5, the Commission shall
decide on:

a) emergency action to help countries, groups of refugees or other
vulnerable sections of the population facing serious, unforeseen
difficulties as a result of natural disasters; it shall inform the
Member States of such action;

b) emergency action to help countries, groups of refugees or other
vulnerable sections of the population facing serious, unforeseen
difficulties as a result of exceptional circumstances comparable to
natural disasters, after consulting the Member States by telex,
giving them 48 hours to put forward any objection:

c) the conditions governing the supply of aid and, in particular,
- the general conditions applicable to recipients.
- the engagement of the mobilisation procedures and the supply of products, as well as the conclusion of the corresponding contracts.

For the purpose of (a) and (b) 'emergency' shall mean an unforeseen situation in which famine or an imminent danger of famine poses a serious threat to the lives and health of the population in a country which is unable to meet the food deficit through its own means and resources.

The volume of aid which it shall be decided to supply in each particular case shall be limited to the quantities that the people affected require in order to cope with the situation for a period not exceeding three months.

The Commission's proposal expanded the Commission's competences on the one hand by transferring some of the Council's competences under the first framework regulation (e.g.: to adopt the list of products which may be supplied as aid) and, on the other hand, by entrusting newly defined tasks explicitly to the Commission (e.g.: laying down rules for mobilization of the products supplied as aid and establishing a limit to triangular operations or local purchases). Note - in particular in the light of the corresponding provision which will eventually be adopted by the Council - that the Commission's proposal did not explicitly entrust to the Commission the competence to decide on the total quantities other than the quantity of cereal food aid supplied under the Food Aid Convention (which was still to be decided by the Council). The Commission apparently considered that it was sufficient that the framework regulation stipulated that the Commission would allocate to the recipients the quantities which may be mobilized subject to budgetary provision. In the explanatory memorandum attached to the proposal, the Commission explained that the Commission would convert the budget appropriations (for so-called non-contractual food aid) into total quantities on the basis on the current prices and taking into account the likely trend of those prices. It stressed, however, and it is mainly this which disappointed Parliament, that in the event of price changes prior to the implementation of the aid the latter
quantities would be adjusted so as to ensure that food aid operations remained within the budget limits.

Note also, with some astonishment, that the Commission did not propose to alter the procedure for emergency food aid in case of man-made disasters.17

Articles 7 and 8 of the Commission's proposal concerned the Food Aid Committee, and in particular its principal role and powers:

Article 7

1. A Food Aid Committee, hereinafter referred to as the "Committee", chaired by a representative of the Commission and composed of representatives of the Member States, is hereby established. The secretariat of the Committee shall be provided by the Commission.

2. The Committee shall draw up its own rules of procedure.

Article 8

[1.] In cases covered by the procedure laid down in this paragraph, the chairman shall place before the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which may be fixed by the chairman according to the urgency of the matters under consideration. It shall act by the majority specified in Article 148 (2) of the EEC Treaty for decisions which the Council must adopt on a proposal from the Commission. When the Committee takes a vote the votes of the Member States shall be weighted as provided for in the said Article. The chairman shall not vote.

The Commission shall take decisions which are immediately applicable. If, however, such decisions are not in accordance with the opinion delivered by the Committee, the Commission shall notify them to the Council forthwith. In that event, the Commission may postpone the application of the measure for not

Furthermore, it should be observed that in order to be able to cope with the enormous task presented by the African crisis and to act as fast as was required by the dramatic situation faced, the Commission had established within DG VIII (Development Cooperation) a special emergency unit made up of a small number of officials working on a stand-by basis and with large decision making powers, and had simplified and speeded up the emergency and ordinary food aid procedures. Furthermore the Commission decentralized many of its powers of decision to its delegates in the field. These ad hoc arrangements had allowed the Community to accelerate its food aid operations in favour of Africa considerably. This experience apparently found no reflection in second framework regulation.
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longer than two months from the date of the said notification. The Council, acting by a qualified majority, may take a different decision within two months.

2. In cases covered by the procedure laid down in this paragraph, the Committee shall consider its opinion in response to requests from the Commission. In seeking the Committee’s opinion the Commission may set a time limit by which such opinion must be given. The Committee’s deliberations shall not be followed by a vote. However, each member of the Committee may require that his view be recorded in the minutes.

The Food Aid Committee, provided for in the Commission’s proposal, would thus function for some matters as a management committee, but for others, and in particular the allocation of food aid, as a purely advisory committee. Note also that when the Food Aid Committee functioned as a management committee, the absence of an opinion would no longer have the same effect as a negative opinion; in the absence of an opinion the Commission could implement its decision as if the opinion had been favourable. The possibility of a blocking minority in the Food Aid Committee was excluded in the Commission’s proposal.

Articles 9, 10 and 11 of the Commission’s proposal provided respectively for further tasks for the Food Aid Committee making the latter into a forum for food aid policy coordination and debate, for a food aid policy information obligation on the part of the Member States vis-à-vis the Commission, and for an information obligation on the part of the Commission vis-à-vis Parliament and the Council. These articles differed, however, in so little from the corresponding articles in the first framework regulation that I do not need to mention them in more detail.

The reader will have noted that the Commission’s proposal took into account to a large extent the Parliament’s objections to the procedural provisions of the first framework regulation; as Parliament had always asked, the Council would no longer establish the total quantities of food aid and the Food Aid Committee would for the Commission’s allocation decisions at least function as a purely advisory committee. It may therefore come as a surprise that Parliament’s reaction to this proposal was in fact not that enthusiastic. During the Parliamentary debate on the proposal, Mr Jorge Campinos, the rapporteur,
declared:

[...] as compared with the 1982 regulation, the Commission's proposal shows undoubted progress both as regards the Management Committee, budgetary matters and the principle of separating food aid from the CAP. Nevertheless, as was pointed out on several occasions within the Committee on Development, there are certain omissions in the Commission's proposal, which therefore come in for some criticism from the committee.3

In its Resolution of 24 October 1986, Parliament, after making a number of general recommendations, concluded apparently somewhat dispirited:

[Parliament] approves the broad lines of the Commission's proposal provided that the Commission takes into account the amendments it has adopted;39

Parliament's dissatisfaction with the procedural provisions of the Commission's proposal focused again on its budgetary powers and the role and powers of the Food Aid Committee.

With regard to its budgetary powers, Parliament was happy that Article 4 (1) first indent of the first framework regulation which had given the Council the full competence to decide on the total quantities of food aid, had been dropped. Parliament's satisfaction at seeing its budgetary powers respected was, however, seriously damped by the Commission's insistence that Parliament, as budgetary authority, could only determine the appropriations and not the quantities of food aid themselves. The latter decision - at least to the extent that it concerned the decision on the quantities of non-contractual food aid40 - was for the Commission to take and it would do so by converting the appropriations into quantities on the basis of current prices, and taking into account, where appropriate, the likely trend


40Note that this distinction between the competence to decide on the quantities of contractual food aid (Council) and the competence to decide on the quantities of non-contractual food aid (Commission), as introduced by the Commission in its memorandum attached to the proposal for the second framework regulation, seemed to be ignored by Parliament.
of those prices. Parliament was afraid - and not without reason - that such a strict adherence to budgetary orthodoxy might in fact give the Commission the possibility to frustrate the political will with regard to the quantities of food aid it had expressed via the budget. Rather than giving the Commission the complete discretion to increase or reduce the quantities the Parliament had in mind in line with the international price trends, the latter wanted that the framework regulation to state that the appropriations entered in the budget shall correspond to the maximum quantities shown in the 'Remarks' of the food aid budget lines. If changes in world prices meant that these maximum quantities could not be met with the appropriations available, there would have to be transfers of appropriations or possibly a supplementary budget. In order to maximise the influence its budgetary powers allowed it to have over the food aid policy, Parliament insisted that the new framework regulation should provide for an Article 4a stipulating:

The budget shall determine the appropriations and the corresponding overall maximum annual or multiannual quantities available by product.

Parliament shall be consulted prior to any subsequent transfer of funds within Chapter 92 of the budget.41

With regard to the role and powers of the Food Aid Committee, Parliament welcomed that pursuant to Article 8 (2) of the proposal, the Commission’s allocation decisions would be submitted to the Food Aid Committee for advice only. Parliament criticized, however, Article 8 (1) of the Commission’s proposal which provided for a classical management committee procedure for the Commission’s decisions on the products to be supplied, on the rules for mobilization and on the limit for triangular operations. Parliament considered it unacceptable that in case of an unfavourable opinion of the Food Aid Committee on the latter decisions, the Council could overrule the Commission. Parliament insisted that the Food Aid Committee would have no more than an advisory role

for all decisions to be taken by the Commission.  

As might have been expected, also the Council was not too happy with the procedural provisions of the Commission's proposal for a new framework regulation and rejected in its common position the two main innovations introduced, namely the Council's abdication of the full competence to decide on the total quantities of food aid and the purely advisory powers of the Food Aid Committee when examining the Commission's allocation decisions.

Pursuant to Parliament's request to open a conciliation procedure should the Council depart from the former's Resolution, a conciliation meeting was held on 15 December 1986. During this meeting, the Council made somewhat unexpectedly and without there being an obvious explanation for it, a very important concession going even further than the Commission's proposal; it agreed to change its common position on the question of the decision on the total food aid quantities and to assign this task explicitly to the Commission. The Council refused, however, to amend its common position on the role and powers of the Food Aid Committee. The only concession it was willing to make in this respect was that the new framework regulation would only be valid for a limited period of time and would be amended in the light of the results of the on-going, general discussion on the conditions for the exercise of implementing powers delegated to the Commission and thus on role and powers of management committees sensu lato, the so-called 'comitology' discussion. In agreement with Parliament, the conciliation procedure was closed and on 22 December 1986, the Council formally adopted the currently still applicable, second food aid framework regulation, Regulation (EEC) No 3972/86 on food aid policy and food aid management.

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43 COM(87) 492 final, 7.

Article 4 of the second framework regulation stipulated with regard to the Council’s competences:

1. In the field of food aid, the Council shall:

- apportion the cereals aid provided for under the Food Aid Convention between Community and national operations,
- apportion among the Member States the national cereals operations under the Food Aid Convention,
- determine the countries and organizations to which food aid may be supplied on an annual or multiannual basis,
- lay down general criteria for covering the cost of transporting food aid beyond the fob stage.

2. To this end, on a proposal from the Commission and after obtaining the opinion of the European Parliament, the Council shall act by a qualified majority when exercising the powers referred to in the third and fourth indents of paragraph 1, and unanimously when exercising the powers referred to in the first and second indents of paragraph 1.

In comparison with the first framework regulation, the Council has - as the Commission had proposed - forsaken the competence to decide on the total quantities of food aid with the exception of the decision on the total quantity of cereal food aid supplied by the Community under the Food Aid Convention. With regard to the latter, the Council insisted, contrary to what the Commission had proposed, on taking the decision on the apportionment by unanimity. Furthermore, it should be noted that the Council has also forsaken the competence to decide on the products which may be supplied as food aid.

Articles 5 and 6 of the second framework regulation stipulates with regard to the Commission’s competences:

Article 5

The Commission, after consulting the Committee provided for in Article 7, in accordance with the procedure laid down in Article 8 and taking account of the general policy guidelines for food aid, shall:

- adopt a list of products which may be mobilized as aid,
- establish the total quantities for each product on an annual or multiannual basis,
- lay down rules for mobilization of those products,
- establish the apportionment, expressed in terms of quantities and of costs, among the various recipients of the products which may be mobilized subject to the budgetary limit for each product,
- where necessary, adjust allocations during the implementation of programmes.

Article 6

1. In accordance with the Council decisions referred to in Article 4 and of the decisions taken under Article 5, the Commission shall decide on:

a) emergency action to help countries, groups of refugees or other vulnerable sections of the population having to face serious unforeseen difficulties as a result of natural disasters; it shall inform the Member States of such action;

b) emergency action to help countries, groups of refugees or other vulnerable sections of the population having to face serious unforeseen difficulties as a result of exceptional circumstances comparable to natural disasters, after consulting the Member States by telex and giving them 48 hours to put forward any objections;

c) the conditions governing the supply of aid and, in particular:
   - the general conditions applicable to recipients;
   - the engagement of the mobilization procedure and the supply of products, as well as the conclusion of the corresponding contracts.

2. For the purpose of (a) and (b) 'emergency' shall mean an exceptional unforeseen situation in which famine or an imminent danger thereof, poses a serious threat to the lives or health of the population in a country which is unable to meet the food shortfall using its own means and resources.

The Commission, after consulting the Committee referred to in Article 7, in accordance with the procedure laid down in Article 8, shall be entitled to make any action to speed up the provision of emergency aid.

The volume of aid which it shall be decided to supply in each particular case shall be limited to quantities that the people affected require in order to cope with the situation for a period not exceeding four months. [...]
are considerably extended. The Commission, rather than the Council, now decides on the products which may be supplied as aid, on the total quantities for each product, on the rules for mobilization and on action to speed up the provision of emergency aid. As I already noted, the biggest change (and a major concession on the part of the Council) was the transfer of the competence to decide on the total quantities to the Commission. With regard to this transfer, however, one cannot but make two critical observations. First, it is surprising that the Commission is given the competence to decide on the total quantities without mentioning the fact that the Council retains the competence to decide on the quantity of cereal food aid supplied under the Food Aid Convention. Secondly, it is equally surprising that the Commission is given the competence to decide on the total quantities without mentioning that it would have to take the decisions on the total quantities on the basis of the appropriations entered in the budget. The only reference to the budget in Article 5 is to be found in its fourth indent which gives the Commission the competence to allocate food aid to countries and organizations subject to the budgetary limit for each food aid product. May it be that the Council decided not to refer to the budget in Article 5, second indent, because, if it did, it might have found it (more) difficult to argue that Parliament was incorrect to contend that the decision on the quantities is merely the execution of budget pursuant Article 205 EEC and could therefore not be subjected to the control of the Food Aid Committee? Another possibility is that the Council thought it to be superfluous to state explicitly that the Commission is to decide on the total quantities on the basis of the appropriations entered in the budget. Does not Article 205 EEC stipulate that the Commission shall implement the budget within the limits of the appropriations? It seems, however, that the words "within the limits of the appropriations" only require the Commission not to overspend but do not require it to use all budget appropriations entered in the budget. If this is correct, it is (certainly for Parliament) all but superfluous to stipulate that the Commission is to decide on the total quantities on the basis of the budget.

While the Commission’s proposal also entrusted to the Commission the competence to set limits to triangular operations, this competence is not found back in the second framework regulation because the idea of setting such limits was dropped.
appropriations. On the other hand, interpreting Article 205 EEC as giving the Commission the right not to use (all) appropriations entered in the budget is in fact giving the Commission a policy-making (or better re-making) competence which Article 205 EEC does definitely not provide for.

It should also be noted that the second framework regulation fails to indicate that the Commission, when deciding on the terms and conditions governing the supply of Community food aid, it should seek to integrate food aid as much as possible with the other instruments of the Community’s development policy. Especially to the extent that food aid is to be used in support of food strategies and structural adjustment programmes such integration is imperative. At present, the Commission attempts to ensure such integration by involving the country desk officers of DG VIII (for ACP countries) and DG I (for other developing countries) in the allocation decisions. These country specialists have an overall view of the development cooperation effort of the Community in a "their" country and are therefore best placed to attempt the integration of the various Community instruments.

Articles 7 and 8 of the second framework regulation concern the Food Aid Committee, and in particular its principal role and powers:

**Article 7**

1. A Food [Aid] Committee, hereinafter referred to as 'the Committee', chaired by a representative of the Commission and composed of representatives of the Member States, is hereby established. The secretariat of the Committee shall be provided by the Commission.

2. The Committee shall draw up its own rules of procedure.

**Article 8**

1. Where recourse is had to the procedure defined in this Article, the Committee shall be duly informed by its chairman, either on the latter's own initiative or at the request of a representative of a Member State.

2. The Commission representative shall submit drafts of decisions to be taken. The Committee shall deliver its opinion on these
drafts within a time limit which may be fixed by the chairman according to the urgency of the matters under examination. It shall act by a majority of 54 votes, the votes of the Member States being weighted as provided for in Article 148 (2) of the Treaty. The chairman shall not vote.

3. The Commission shall take decisions which are immediately applicable. If, however, such decisions are not in accordance with the opinion delivered by the Committee or if the Committee delivers no opinion, they shall be forthwith communicated to the Council by the Commission. In that event, the Commission shall postpone, for no more than two months following the date of the said communication, the application of the decisions taken by it. The Council, acting by a qualified majority, may take a different decision within two months.

Apart from some minor linguistic changes, Articles 7 and 8 of the second framework regulation differed in nothing from Article 7 and 8 of the first framework regulation. The amendments proposed by the Commission, let alone the more radical suggestions of Parliament, were totally ignored although - as I already noted - it was agreed that this issue would be examined again once the ongoing 'comitology' discussion had been concluded. It will be recalled that this was the reason why the second framework regulation had been adopted for one year only. One cannot but note at this point that in 1987 and 1988 the Council never overruled a Commission decision. In fact, not one single Commission decision was debated upon by the Council; the Food Aid Committee always rendered a positive opinion. In 1987, for example, the Food Aid Committee accepted 55 of the 61 draft decisions unanimously while the other 6 were accepted with the required majority. It would be wrong, however, to conclude from this that the Food Aid Committee procedure does not curb the Commission's powers. As I already noted above, it is beyond discussion that the fact that its decisions will be scrutinised by the Member States made the Commission very careful. No draft decision was submitted without first having made sure that no strong Member State opposition was to be expected. It is against this background that the "positive" attitude of the Food Aid Committee should be seen.

Furthermore the Food Aid Committee was, pursuant to Articles 9 and 10 of the
first framework regulation, also entrusted with the following tasks making the latter into a forum for food aid policy coordination and debate between the Community and the Member States:

Article 9

The Member States shall decide on their national food aid programmes and shall inform the Commission thereof. The coordination of Community and national food aid operations, as regards both programming and implementation, shall be subject to a regular exchange of information by the Committee. In this exchange of information, which shall be carried out at the request of the chairman of the Committee or a representative of a Member State, account shall be taken of known operations by other donors.

Article 10

The Committee may examine any other matter concerning food aid raised by its chairman, either on the latter's own initiative or at the request of a representative of a Member State.

As Article 9 of the first framework regulation, Article 9 of the second framework regulation should also be noted as providing for an obligation for the Member States to inform the Community of its food aid activities. In addition, the latter Article 9 also provides for an obligation on the part of the Community as well as the Member States to talk about coordination of the programming as well as the implementation of their food aid operations. This obligation to talk about coordination does not include other donors but their operations are to be taken into consideration. The second framework regulation is, however, still very far from imposing an obligation to coordinate food aid policies. The need for coordination is obvious, however, and, to the extent that food aid will be increasingly used in support of food strategies and structural adjustment programmes, also the need for genuine coordination will become ever bigger.44 Yet, emergency food aid operations apart, the Community's coordination record

44Parliament repeatedly encouraged the moves towards more effective coordination of food aid between the Member States and the Community, and the Community and other donors. See e.g.: European Parliament Resolution of 17 January 1986, point 12, O.J. 1986, C 36/210.
Community food aid policy decision-making

seems dismal. Under the Food Aid Convention, the Community is to file regular reports on the amount, content, channelling and terms of its food aid contributions; it also obliged to communicate to inform the CDS in Washington on its food aid transactions; and it takes part in the meetings of the WFP’s Committee on Food Aid Policies and Programmes in the context of which food aid donors (and recipients) exchange information and discuss food aid policy issues. None of these arrangements amounts to institutionalized coordination mechanisms and in the absence of such mechanisms, one cannot be surprised that coordination in practice - at least for normal food aid - was limited to a few efforts in specific recipient countries. While the Food Aid Committee provides for an ideal forum, even the coordination between the Community’s and the Member States’ food aid policies seldom takes a concrete form. While it undoubtedly takes time to develop coordination structures, the main reason for the absence of coordination is that food aid is still granted also to promote the own commercial and political interests. It seems that donors are usually only willing to set aside these interests in the case of large scale emergencies. In the context of the African crisis, the Commission organized and chaired five coordination meetings with the Member States from November 1984 to July 1985, bringing together the persons actually involved in operations. This coordination made possible joint planning of aid offers and dispatch and receipt operations, in order to relieve the congestion of transport. More recently, in 1988, the emergency food aid operations in favour of Sudan were said to be to be a model for coordination and collaborations between donors. In order to improve the coordination, the Commission suggested in its communications on 'Famine in Africa', the setting up of "an autonomous and decentralized European emergency aid capability" based principally on: (1) a crisis staff, supported by a permanent unit within the Commission, and (2) a proper

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47See in Section 3.4.3 the comments on the pooling of counterpart funds.

44Or consider that these interests and in particular their political interests are better served by coordinating efforts.

4See for more details: TISON, E, 'Sudan: Responding to an Emergency Situation', The Courier, November-December 1989, 74-75.
system of coordination, set up in advance and taking in the whole range of resources deployed by the Member States.\textsuperscript{50} No concrete action towards the setting up of such a "European emergency aid capability" has, however, been taken yet. Furthermore, one should not forget that emergency operations are only the top of the food aid mountain and coordinations efforts should also cover normal food aid. In a Resolution of 19 February 1987, Parliament noted with regard to development aid in general, but its observations were definitely also valid for food aid, that the level of coordination achieved was grossly inadequate and that improved coordination of aid activities, starting with improved coordination between the Community and the Member States but extending also to improved coordination other donor countries and organizations, should be a priority objective.\textsuperscript{51} In its Resolution of 21 November 1989, also the Council stressed the need for the Community and its Member States to coordinate their action more closely in the framework of the existing bodies and in the field. Also the need for more coordination with other donors was emphasized.

Article 10 of the second framework regulation is identical to its predecessor in the first framework regulation.

Finally, the second framework regulation stipulated in its Articles 11 and 12, two additional tasks for the \textit{Commission}, namely \textit{to evaluate} significant food aid operations and \textit{to inform} the Council and Parliament:

\textbf{Article 11}

The Commission shall undertake regular evaluations of significant food aid operations to establish whether the objectives defined in the appraisal of those operations have been met and to provide guidelines for improving the effectiveness of future operations. These evaluation reports shall be made available to the Committee.

\textsuperscript{50}Commission communication to the European Council (Milan, June 1985), COM(85) 335 final, 3; Commission communication to the Council, COM(85) 308 final, 7.

Article 12

The European Parliament shall be informed of the management of food aid by being notified of the decisions provided for in Articles 4, 5 and 6 immediately upon their adoption and by the annual presentation of progress reports of the various operations for the relevant financial years.

The decisions provided for in Articles 5 and 6 and the reports referred to in the preceding paragraph shall be communicated to the Council at the same time.

As during the seventies and early eighties, Parliament continued to follow the Community’s food aid policy with particular interest; it adopted (at its own initiative) numerous resolutions requesting Community food aid action in favour of countries hit by disasters or resolutions commenting on other aspects of the food aid policy, such as its resolutions on food aid counterpart funds and Operation Flood II. In the past, Members of Parliament repeatedly and with reason complained that the Commission did not keep them well informed about Community food aid and as such frustrated of course Parliament’s involvement. Since the first framework regulation, however, the flow of information has been 'institutionalized' and seems to satisfy Parliament.

While Article 12 of the second framework regulation is - save a few linguistic changes - identical to Article 11 of the first framework regulation, Article 11 of the second framework regulation, on the contrary, represents - as already mentioned above - an important and long overdue innovation. I will discuss Article 11 in more detail in Section 3.6.5 of this Chapter.

The procedural provisions of the second framework regulation are to different degrees unacceptable to the Commission, Parliament and even to some Member States but the provisional character of the regulation allowed for a brief truce. The second framework regulation, and in particular the provisions relating to the role and powers of the Food Aid Committee, would - so it had been agreed - be amended in the light of the outcome of the 'comitology' discussion. It will be
recalled that Article 10 of the Single European Act added to Article 145 EEC a third indent which stipulates:

- confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.\(^2\)

To allow the Council to lay down the principles and rules referred to in the amended Article 145 EEC, third indent, the Commission submitted in May 1986 a proposal for a Regulation laying down the procedures for the exercise of implementing powers conferred on the Commission.\(^3\) In the latter proposal, the Commission provided for three different procedures: (1) the 'advisory committee' procedure\(^4\); (2) the 'management committee' procedure\(^5\); and (3) the 'regulatory committee' procedure\(^6\). After long and difficult negotiations, the Council finally adopted on 13 July 1987 Decision 87/373/EEC laying down the procedures for the exercise of implementing powers conferred on the Commission.\(^7\) The least one


\(^3\)COM(86) 35 final.

\(^4\)The committee discusses matters on which the Commission has requested an opinion; no vote is taken but any member of the committee may demand that his views be set down in the minutes.

\(^5\)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 be communicated by the Commission to the Council forthwith. In that event the Commission may defer application of the measures it has adopted for not more than \(x\) from the date of such communication. The Council, acting by a qualified majority, may take a different decision within \(x\).

\(^6\)The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall without delay submit to the Council a proposal with regard to the measures to be adopted. The Council shall act by qualified majority. If within \(x\) of the proposal being submitted to it, the Council has not acted, the proposed measures shall be adopted by the Commission.

can say of the latter Decision is that it leaves little of the simple and straightforward set-up proposed by the Commission. Instead of three procedures, the Council Decision provides in fact for seven procedures, adding not surprisingly four procedures which were less 'generous' for the Commission. Even more problematic, however, is that the Council Decision lists and describes the possible procedures but - with the exception of the procedures provided for in Article 3 - does not provide for any principles or guidelines on which procedure can be establish when. The choice among the procedures of the Council Decision is left to the discretion of the Council. It would lead us too far astray to discuss in detail here the different procedures stipulated in Council Decision 87/373/EEC. It should be noted, however, that the 'Food Aid Committee' procedure stipulated in Article 8 of the second framework regulation does not really correspond to any of the procedures provided for in the Council Decision of 13 July 1987. While it is probably closest to the variant (a) of Procedure III, there is a substantial difference. Article 8 of the second framework regulation stipulates that the Commission shall adopt the measures envisaged even if the opinion of the Food Aid Committee is unfavourable or lacking; in the latter cases, the Commission defers application to allow the Council to take an other decision within two months. Pursuant to variant (a) of Procedure III, on the contrary, the Commission shall only adopt the measures envisaged if they are in accordance with the opinion of the committee; if they are not or if no opinion is delivered, the Commission submits to the Council a proposal relating to the measures envisaged; only when the Council fails to adopt this proposal, the Commission can adopt the proposed measure. In order to make the 'Food Aid Committee' procedure provided for in Article 8 of the second framework regulation to correspond with any of the procedures provided for by the Council Decision of 13 July 1987, the Commission submitted to the Council in October 1987 a proposal for a regulation amending

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36Note that the Commission's proposal did not contain any such principles or guidelines either.

the second framework regulation. In this proposal, the Commission took up its initial proposal for the second framework regulation again. It will be recalled that the Commission proposed in this proposal for the second framework regulation 'a dual purpose committee'; the Food Aid Committee would, on the one hand, function as an advisory committee on matters concerning budgetary implementation and more concretely, the allocation decisions, and, on the other hand, function as a management committee on matters such as the decision on the products which may be mobilized as aid, etc. In its proposal for amendment, the Commission thus suggested that Article 5 of the second framework regulation would be replaced by:

The Commission, in accordance with the procedure laid down in Article 8 (1), shall:

- adopt a list of products which may be mobilized as aid,
- establish the total quantities for each product on an annual or multiannual basis,
- lay down rules for mobilization of those products.

The Commission, in accordance with the procedure laid down in Article 8 (2), shall:

- establish the apportionment, expressed in terms of quantities and costs, among the various recipients of the products which may be mobilized, subject to the budgetary limit for each product;
- where necessary, adjust allocations during the implementation of programmes.

and that Articles 7 and 8 would be replaced by:

Article 7

The Commission shall be assisted by a Food Aid Committee, hereinafter referred to as "the Committee", composed of representatives of the Member States and chaired by a representative of the Commission.

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61 See above in this Section.

62 COM(87) 492 final, 5.
Article 8

1. Where recourse is had to the procedure defined in this paragraph, the following provisions shall apply.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

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 be communicated by the Commission to the Council forthwith. In that event the Commission may defer application of the measures which it has decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the period referred to in the previous subparagraph.

2. Where recourse is had to the procedure defined in this paragraph, the following provisions shall apply:

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member States shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.\(^{63}\)

\(^{63}\)COM(87) 492 final. 5-6.

During the debate in Parliament on the Commission’s proposal on 20 November 1987, Parliament was, however, able to convince the Commission that also the decision on the total quantities should be subject to a Procedure I and not to a Procedure II (a). The Commission had justified the advisory committee procedure for the allocation decisions on the basis that these decisions concerned budgetary implementation. The latter was, however, even more true for the decision on the total quantities. Amending its proposal was therefore for the Commission not only a political advantageous but also a logical thing to do.

Parliament also insisted that it would be made very explicit that the Commission decision on the total quantities was to reflect the budgetary appropriations. On this point, however, the Commission did not follow Parliament and the latter therefore suggested in its Resolution of 21 December 1987 as its only modification to the Commission’s proposal that the second indent of the first paragraph of Article 5 of the Commission’s proposal, quoted above, would read:

- establish, in accordance with budgetary appropriations, the total quantities for each product on an annual or multiannual basis.

It will immediately be noted that Parliament was far less radical in its Resolution of 21 December 1987 than it had been in its 1986 resolution on the proposal for the second framework regulation and its 1979 resolution on the proposal for the first framework regulation. It will be recalled that in both these regulations, Parliament had insisted that the Food Aid Committee would be of an advisory nature only. While there is no obvious explanation for this moderation, it may be that Parliament chose to refrain from making any radical proposals regarding the Food Aid Committee in order to focus on the provision which was most critical for

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its competences, namely the provision relating to the total quantities of food aid. If Parliament and the Commission had hoped - a hope expressed by Commissioner Narjes during the debate of 20 November 19877 - that their common front would strengthen their position vis-à-vis the Council and would persuade the latter to adopt the proposed amendment to the framework regulation, they were to be disappointed. The Council, unable to come to an agreement, did not give any effect to the Commission’s proposal but, on the contrary, has prolonged up to the present day the validity of the second framework regulation.8 It last did so by Regulation (EEC) No 1750/89 of 19 June 1989; this regulation extends the validity of the second framework regulation to 30 June 1990.

It should be noted that the Council never committed itself to amend all existing ‘committee procedures’ in the light of its Decision of 13 July 1987 but on the contrary explicitly stipulated in Article 4 of this Decision that:

This Decision shall not affect the procedures for the exercise of the powers conferred on the Commission in acts which predate its entry into force.

Where such acts are amended or extended the Council may adapt the procedures laid down by these acts to conform with those set out in Articles 2 and 3 or retain the existing procedures.

In the case of the second framework regulation, it had, however, undertaken an explicit political commitment (as a concession in the context of the conciliation procedure) to amend the procedural provisions of this regulation in the light of its Decision of 13 July 1987. Its failure to do so caused a lot of bad feelings and eventually led the Commission to bring on 14 September 1988 an Article 173
action against the Council asking the Court of Justice for the annulment of Council Regulation (EEC) No 1870/30 of 30 June 1988 in as far as it extended the terms of validity of the second, fourth and fifth indents of Article 5 of the second framework regulation.49 The Commission contended, first, that the regulation referred to above constituted an infringement of Article 205 EEC together with the third indent of Article 155 EEC, and second, that the latter regulation was vitiated for mistake of law through the misapplication of the third indent of Article 145 EEC. Central to its argumentation was the view - already advanced by Parliament for many years - that the decision on the total quantities as well as the allocation decisions fall within the Commission’s proper power of decision pursuant Article 155, third indent since Article 205 EEC explicitly states:

The Commission shall implement the budget in accordance with provisions of the regulations made pursuant to Article 209 on its own responsibility and within the limits of the appropriations.

and the decision on the total quantities as well as allocation decisions are in fact no more than the execution of the budget. Subjecting these decisions to a procedure other than that of the advisory committee, would - actually or potentially - deprive the Commission of its power of decision in favour of the Council and such is of course inadmissible. According to the Commission, the second framework regulation violates Articles 205/155 EEC to the extent that it does indeed provide for a procedure under which Commission decisions on total quantities or allocations can - in case of a unfavourable opinion of the Food Aid Committee or when the Committee does not deliver an opinion - be overruled by the Council.70 To the extent that the second framework thus erroneously considered the decision on the total quantities and the allocation decisions as

49Case 250/88, O.J. 1988, C 277/11. Note that on 21 September 1988 the Commission also brought an Article 173 action against the Council asking on the same grounds the annulment of the provisions relating to the Food Aid Committee in Council Regulation (EEC) No 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems (Article 8 (2) second subparagraph and Article 8 (3)) and Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations (Case 308/88, O.J. 1988, C 320/10.).

70It was also pointed out that depriving the Commission from its proper power to decide in favour of the Council ipso facto deprives Parliament of any legal means of review of the implementation of the corresponding part of the appropriations, a power provided for in Article 206 bis EEC.
powers that could be delegated by the Council to the Commission. Article 145, third indent, EEC was misapplied.

In the light of the Court of Justice's ruling of 24 October 1989 in case 16/88, the Commission decided in November 1989, however, to drop its action for annulment regarding the committee procedure provided for in the second framework regulation. In case 16/88, the Commission had on exactly the same grounds (violation of Articles 155/205 EEC and misapplication of Article 145 EEC) asked for the annulment a provision of the 'Fisheries' regulation which provided for a procedure under which decisions taken by the Commission in implementation of certain Community programmes (research contracts, seminars, exchange of researchers, etc.) can - in case of an unfavourable opinion of the competent management committee - can be overruled by the Council. The Court, however, rejected the Commission's argumentation and the latter consequently dropped its action for annulment of the procedural provisions of the second framework regulation.\(^7\) In Case 16/88, the Court ruled that the Commission's power to implement the budget is not such as to modify the division of powers resulting from the various provisions of the Treaty which authorize the Council and the Commission to adopt generally applicable or individual measures within specific areas and from the institutional provisions of the third indent of Article 145 and Article 155 EEC. Even though an individual measure may almost inevitably entail the commitment of expenditure, the Court stressed that the two must be distinguished, particularly since the power to adopt the administrative decision and the power to commit the expenditure may be entrusted, within the internal organization of each institution, to different officials. It follows that the Commission is wrong in maintaining that the Council cannot confer upon it under the third indent of Article 145 the power to adopt individual measures when such

\(^7\)At the same time, the Commission also dropped its action for annulment of the provisions relating to the Food Aid Committee in Council Regulation (EEC) No 2507/88 of 4 August 1988 on the implementation of storage programmes and early warning systems (Article 8 (2) second subparagraph and Article 8 (3)) and Council Regulation (EEC) No 2508/88 of 4 August 1988 on the implementation of co-financing operations for the purchase of food products or seeds by international bodies or non-governmental organizations (Case 308/88, O.J. 1988, C 320/10.).
measures have financial implications. After the latter ruling, the discussion on the Community's food aid policy decision-making procedures is - at least for the time being - again predominantly political in nature. It should be stressed at this point, however, that unlike in the early eighties, at present further changes to the procedures are far less motivated by the desire to make the management of food aid more efficient and in greater conformity with the interests and requirements of the recipients. While there is certainly still room for improving the management of Community food aid by amending the current decision-making procedures\(^72\), the debate on procedural changes is now and will be in the future less preoccupied with improving the efficiency of food aid management and more focused on each institution's efforts to optimize its control over the food aid policy.

\(^{72}\text{E.g. more coordination with other donors and better integration of food aid with other development policy instruments.}\)
3.6 The implementation of Community food aid operations

While the studies and evaluations of Community food aid undertaken in the early eighties had already recognized that not only the decision-making procedures but also the implementation system needed to be improved, the first food aid framework regulation of 3 December 1982 left the implementation system virtually unchanged. The 'old', inadequate and defective system, which (a) made use of the CAP procedures and institutions, (b) left the implementation of most food aid operations to the national intervention agencies, and (c) differed from product to product and did not cover all products supplied as food aid, was maintained during the first years of the period 1983-89. It is true that on 17 May 1983, the Commission adopted Regulation (EEC) No 1354/83 laying down general rules for the mobilization and supply of skimmed milk powder, butter and butteroil as food aid, which replaced Commission Regulation (EEC) 303/77 of 14 February 1977 discussed in Section 3.6 of Chapter 2, but it should be noted that this Regulation, while providing for a number of welcome improvements, did in no way alter the implementation system itself. Consequently, it will not come as a surprise that the implementation record in the mid-eighties still left much to be desired. The delays in implementation remained as significant and unpredictable as before. At the end of each year, significant quantities remained to be delivered and the Community's performance varied considerably from year to year. Taking the example of food aid in cereals, the Community mobilized and delivered in 1983 a very modest 759,000 tonnes which was only 54.9% of the quantity to be supplied under the 1983 programme augmented with the balance of 1982. In 1984, however, the Community mobilized and delivered an impressive 1,384,000 tonnes or 81.1% of the quantity to be supplied but the year after, in 1985, the Community's performance fell back again; it mobilized and delivered 1,016,000 tonnes which was

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1 See: Section 3.6 of Chapter 2.

68.5% of the quantity to be supplied.\(^3\)

Quantities still to be implemented at 31 December\(^*\)
(in '000 t)

<table>
<thead>
<tr>
<th>Year</th>
<th>Cereals</th>
<th>Skmp</th>
<th>Butteroil**</th>
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<td>216</td>
<td>623</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1984</td>
<td>1.708</td>
<td>222</td>
<td>68</td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>1985</td>
<td>1.484</td>
<td>165</td>
<td>47</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1986</td>
<td>1.628</td>
<td>149</td>
<td>49</td>
</tr>
</tbody>
</table>

\(^*\)Calculated on the basis of data found in COURT OF AUDITORS, Annual Report 1984, p. 81 and Annual Report 1985, p. 103. For 1986, the Court's Annual Report did not contain the necessary data. I therefore used data found in COMMISSION, 16th EAGGF Financial Report, 1986, p. 56.

\(^*\)The total quantities to be implemented = the maximum quantities committed under the current annual programme + the quantities still be implemented under the previous programmes. Quantities still to be implemented at 31/12 = quantities still to be delivered at 31/12 = quantities still to be mobilized at 31/12 = quantities which have not been mobilized or the mobilization of which is not in progress at 31/12. (In its successive annual reports the Court of Auditors has used different terms to describe the state of implementation. Up to the 1982 report, it spoke of deliveries, in the 1983 and 1984 reports it spoke of implementation and in the 1985 report it spoke of mobilization; it used these terms, however, as synonyms.).

\(^*\)For 1983 it was taken into consideration that 3.238 t of butteroil of the 1982 balance was cancelled in the course of 1983. (COURT OF AUDITORS, Annual Report 1983, p. 93).

For 1984 it was taken into consideration that 42,000 tonnes of cereals, 5147 tonnes of skimmed milk powder and 626 tonnes of butteroil of the 1983 balance was cancelled in the course of 1984 and that 3.311 tonnes of other products was added to the 1983 balance in the course of 1984. (COURT OF AUDITORS, Annual Report 1985, p. 103).

For 1985 it was taken into consideration that 12.053 tonnes of other products were added to the 1984 balance on the course of 1985. (COURT OF AUDITORS, Annual Report 1985, p. 103).
Implementation of Community food aid operations

Furthermore, the Court of Auditors observed in its 1984 Report that from the time of initiating mobilization until the arrival of the ship in the port of unloading, allowance had to be made for a total of 14 weeks for cereals, 23 weeks for skimmed milk powder and 19 weeks for butteroil. In 1985, the average delivery time taken for the implementation of dairy products operations improved considerably; it reportedly took on average 16 weeks from the start of the mobilization to arrival in the port of unloading for both food aid in skimmed milk powder and food aid in butteroil. In that same year, however, the quantities mobilized were considerably lower than in 1984. Very disconcerting was the fact that an analysis of a sample of emergency consignments showed that the delivery of emergency food aid took only slightly less time than delivery of normal food aid. On average, only about 5% less time was taken for cereals and 20% less time for other products. In addition, the time taken for a specific operation, be it normal or emergency operations, varied considerably and was quite unpredictable. Consequently, Community food aid frequently arrived late or at the wrong time. In its 1986 Report, the Court of Auditors concluded on the basis of findings of three thorough audits carried out in Egypt, Niger and Burkina Faso that:

[...] above all, an improvement in the speed and flexibility with which food aid reaches the recipients, at the precise time when their need is real, would be an extremely favourable development.

The disastrous implementation record of the 1983 programme led the Court of Auditors to request the Commission in its 1983 Report:

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4COURT OF AUDITORS, Annual Report 1985, 102-103. The time taken for the delivery of cereals remained the same.

5COURT OF AUDITORS, Annual Report 1985, 102.

6COURT OF AUDITORS, Annual Report 1984, 82.

[...] to review the entire management system for food aid and then propose both rules and administrative procedures for at last rectifying the defects, which keep recurring and even worsening, at the expense of the poorest countries of all.\textsuperscript{10}

The Commission defended itself by pointing out that in 1983 the implementing regulating was adopted very late (July 1983) and that therefore the implementation of the 1983 programme was evidently much delayed. In subsequent years, however, the implementing regulation was adopted (much) earlier but - as noted above - the implementation record remained dismal. While initially the Commission showed in fact little interest in rethinking the food aid implementation system, it gradually started to accept the need for drastic changes. Its experience during the African crisis was definitely not unrelated to that growing acceptance. Although the Commission did an admirable job in implementing the emergency food aid operations in favour of starving Africa\textsuperscript{11}, this was really only possible because it established specific, ad-hoc procedures and set up a special crisis unit.\textsuperscript{12} It was therefore not surprising that in the second food aid framework regulation of 22 December 1986\textsuperscript{13}, the Council - following the Commission's proposal - laid the foundations for a fundamentally different implementation system which was consequently worked out in the so-called mobilization regulation, Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid.\textsuperscript{14} In comparison with the old implementation system, the new system provides for three main innovations, which cannot but significantly improve the implementation of Community food aid operations. First of all, no

\textsuperscript{10} COURT OF AUDITORS, Annual Report 1983, p. 92.

\textsuperscript{11}The European Council applauded in March 1985 the swift implementation of the measures decided on in Dublin in December 1984 (Bull. EC 3-1985, 65.).

\textsuperscript{12}Bull. EC 2-1985, 62.


\textsuperscript{14}Commission Regulation (EEC) No 2200/87 of 8 July 1987 laying down general rules for the mobilization in the Community of products to be supplied as Community food aid, OJ. 1987, L 204/1.
use is made any more of the unadapted CAP procedures and institutions to
implement food aid operations; neither the CAP management committees nor the
national intervention agencies play an active role any more in the context of the
Community food aid policy.\textsuperscript{15} Secondly, the Commission has entrusted to
specialized private undertakings, the so-called monitoring agencies, the task of
checking whether the successful tenderers comply with the terms of the food aid
supply contracts as well as the task of coordinating all the stages of the supply
operation.\textsuperscript{16} Thirdly, the new implementation procedures apply on all food aid
products mobilized in the Community, and are worked out in considerable detail,
reflecting years of experience and unfortunate mishaps.\textsuperscript{17} While the experience
with the new implementation rules and procedures has only been a short one, it
may already be noted that the new rules and procedures have allowed for a
significant improvement in the speed as well as the quality of implementation.
With regard to the latter, it has been reported that for example that the number
of supplies of sub-standard quality has gone down sharply.\textsuperscript{18} With regard to the
former, one can note that on 31 December 1988 the Community had mobilized
81\% of the 1988 cereals programmes, 95\% of the 1988 skimmed milk powder
programme and 86\% of the 1988 butteroil programme.
As I already noted, the procedures applicable during the first years of the period
1983-87 were essentially the same as the procedures applicable during the period
1977-82. Since I already described and commented on the latter procedures in
Section 3.6 of Chapter 2, I therefore can and will mainly focus in this Section on
the current implementation procedures in force since July 1987.

\textsuperscript{15}See: Sections 3.6.2, 3.6.3 and 3.6.4 of this Chapter.

\textsuperscript{16}See: Section 3.6.4 of this Chapter.

\textsuperscript{17}See: Sections 3.6.3 and 3.6.4 of this Chapter.

\textsuperscript{18}See in this sense: CHOLLET, J., 'The mobilization of food aid', The Courier, November-December 1989, 67. See also: Section 3.6.4 of this Chapter.
3.6.1 The conclusion of the food aid supply agreements

It will be recalled that since 1975, the Council no longer concluded the food aid supply agreements but that - pursuant an informal Council decision - the Commission was entrusted with the task to conclude by way of exchange of letters the supply agreements between the Community and the food aid recipient. As I noted in Chapters 1 and 2, the conclusion of these agreements did not entail any genuine negotiations. In view of the particulars of the request for food aid submitted and the Council's food aid allocation decision, the Commission in fact merely communicated a set of standard terms and conditions agreed upon by the Council to the would-be recipient which the latter had little choice but to accept. It will be recalled that Nicora noted in his 1982 study with regard to the exchange of letters concluding the supply agreements:

Cet échange est une simple formalité [...]. Il ne correspond pas à aucune véritable discussion, encore moins à une négotiation.

The first food aid framework regulation of 3 December 1982 explicitly delegated the power to decide on the terms and conditions of the supply agreements from the Council to the Commission. Article 6, first paragraph, (c) of the latter regulations stipulated that:

[...] the Commission shall decide on:
[...]
(c) the conditions governing the supply of aid and, in particular, the general conditions applicable to recipients.

The currently applicable second framework regulation of 22 December 1986 contains in its Article 6 (1)(c) a quasi-identical provision. Consequently, the

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19See: Section 3.6 of Chapters 1 and 2.

20NICORA, 1982, 8.


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Commission decides since 1983 on its own sets of standard terms and conditions but otherwise little changed in comparison with the situation in the late seventies. The Commission continues to conclude by way of exchange of letters and without much negotiation food aid supply agreements. In view of the particulars of the food aid request and the food aid allocation decision, the supply agreements are prepared by Directorate General VIII and signed for the Community by a Member of the Commission.

The supply agreements always include an 'official letter' informing the recipient of the Community's decision to supply food aid and requesting the recipient to indicate (in a return letter) his willingness to abide by the terms and conditions on which the aid was supplied. These terms and conditions are set out in the annexes to the letter. There are usually at least three annexes: an annex setting out the general conditions such as for example the use to be made of the food aid supplied by the Community and the terms regarding transport and distribution; an annex setting out in detail the delivery procedure which differs of course considerably depending on the terms regarding transport; and an annex setting out special conditions concerning for example the packaging of the product supplied. In the case of direct food aid, it is usually the ambassador of the recipient country to the Community who signs the return letter of acceptance and thus the supply agreement; in the case of indirect food aid, the return letter is signed by a qualified representative of the recipient organization. It must be noted that the undertaking by the recipient to comply with the supply terms notified to it by the Commission was in the successive implementing regulations of the first framework regulation and is in the currently applicable implementing regulation put forward as a absolute condition for the granting of Community food aid. Article 4 of the latter regulation stipulates:

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2See: Section 3.4.3 of this Chapter.

3See: Section 3.4.2 of this Chapter.

4See below in Section 3.6.4 of this Chapter

Food aid shall be granted to the recipients only where they undertake to comply with the supply terms notified to them by the Commission.\[^{27}\]

This may seem only natural but in fact it reflects a break with the seventies when the Community showed itself extremely flexible with regard to or hardly interested in the compliance with the supply terms.\[^{28}\]

It should be observed, however, that while the terms and conditions of the supply agreements are - as noted above - usually decided upon unilaterally by the Commission and then communicated to the recipient which cannot but accept, there are gradually more cases in which the conclusion of the supply agreement is preceded by genuine negotiations. In its communication of April 1983 on ‘Food aid for development’, the Commission insisted on the need of negotiations with the food aid recipients in order to establish how Community food aid could be used in support of and integrated in the recipients’ overall food and agricultural policies and food strategies. The Commission proposed that it would enter into a dialogue with the recipient country to work out besides the overall aid requirement, the conditions that are to govern aid use over a period of several years and that the result of such a dialogue would be put down in writing in a ‘food aid contract’ setting out the respective rights and obligations of the two partners.\[^{29}\] It is clear that proper negotiations are indeed indispensable if Community food aid is to be used in support of and integrated in the recipients’ food strategies.\[^{30}\] While at first this approach to the use of food aid was only tried out on an experimental basis in four African countries, this approach has been ‘generalized’ in recent years and consequently the number of genuine negotiations has also increased. As the


\[^{28}\] See: Section 3.4.3 of Chapter 1 and 2.

\[^{29}\] COM(83) 141 final, 18.

\[^{30}\] And more recently, when used in support of structural adjustment programmes.
Commission already observed in its 1983 communication referred to above\textsuperscript{31}, such negotiations mean, however, a considerable, additional workload and this - in view of the Commission's relatively small staff - is a formidable constraint on genuine negotiations.

Finally, it deserves to be noted that while the presently applicable Article 6 (1) (c), first indent of the second framework regulation - as did Article 6, first paragraph, (c) of the first framework regulation - explicitly empowers the Commission to decide on the terms and conditions governing the supply of Community food aid, the second framework regulation - as did the first framework regulation - fails to indicate that the Commission is competent to conclude the food aid supply agreements with the food aid recipients.\textsuperscript{32} Under the Treaty, the competence to conclude international agreements undisputedly lays with the Council; the Commission can only conclude international agreements and commit the Community vis-à-vis other subjects of international law (countries and international organizations) in those specific cases in which this competence is delegated to it by the Council. In the case of food aid supply agreements, the Council has not explicitly done so\textsuperscript{33} although there is not the slightest doubt that the Council intends this to be a Commission competence and one could certainly interpret Article 6 (1) (c) - and its predecessor - as implicitly delegating this competence to the Commission. The question remains, however, why the framework regulations did/do not make this competence explicit. One explanation may perhaps be found in the confusion created by the highly informal manner in which the supply agreements are concluded. In spite of the informal manner in which they are concluded, the supply agreements are, however, in all respects international agreements binding upon the Community as well as the food aid recipient.

\textsuperscript{31}COM (83) 141 final, 20, footnote 1.

\textsuperscript{32}Also the first framework regulation failed to indicate that the Commission was competent to conclude the food aid supply agreements with the food aid recipients.

\textsuperscript{33}To the extent that the recipients are non-governmental organizations, which are not subjects of international law a supply agreements concluded are not international agreements but private law contracts.
3.6.2 The Commission’s decision on the conditions governing the mobilization of the products to be supplied as food aid

Article 3 (1), first paragraph, of the first framework regulation stipulated:

The products shall be mobilized in accordance with the rules and procedures laid down under the common organization of the markets.3 4

Therefore, the Commission decided - as it had done since the first food aid operations - on the conditions governing the mobilization within the Community of the products to be supplied as food aid following the relevant common agricultural policy management committee procedures.3 5

Not all Community food aid products were, however, mobilized within the Community and when the mobilization was to take place outside the Community, Article 3 (1), first paragraph of the framework regulation was evidently of little help. The Council remedied this gap in its successive implementing regulations of the first framework regulation, in which it stipulated with regard to the decision on the conditions governing the mobilization of food aid products on the market of a developing country:

1. The Commission shall lay down rules for the mobilization of products which must be purchased in a developing country because they are unavailable on the Community market. [...] 5

3. The Commission shall lay down the rules referred to in paragraph 1 in accordance with the procedure for provided for in Article 8 of Regulation (EEC) 3331/82.6

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4 See for details: Section 3.6.2 of Chapter 2.

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It will be recalled that pursuant to the first framework regulation the Community could also mobilize food aid products in a developing country rather than in the Community in the case of emergencies. The above quoted article, however, did not refer to emergencies. Was this merely an oversight (repeated four times) or was the Commission not competent to lay down rules for the mobilization of products which had to be purchased in a developing country because the urgency of the food aid operation required so?

With the second framework regulation, however, the procedure for the decision on the conditions governing the mobilization of products to be supplied as food aid changed drastically. The currently applicable Article 6 (c), second indent, of the second framework regulation stipulates:

 [...] the Commission shall decide on: [...] 
 c) the conditions governing the supply of aid, in particular: [...] 
 - the engagement of the mobilization procedures, and the supply of products, [...]  

The Commission therefore now decides on the conditions governing the mobilization without being scrutinized by the CAP management committees, as was the case for mobilizations within the Community, or by the Food Aid Committee, as was the case for mobilization in developing countries. As I already noted above, the elimination of the involvement of the CAP management committees constituted one of the most dramatic breaks of the Community food aid policy with the common agricultural policy. It should be noted, however, that the Commission's decisions on the conditions governing the mobilization within the Community are still prepared by DG VI (Agriculture) and that the latter will certainly not fail to take account of common agricultural policy considerations. Nevertheless, the elimination of the involvement of the CAP management committees evidently shortens the procedure considerably and thus allows for a

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swifter implementation of Community food aid operations.

By way of example of Commission decisions on the conditions governing the mobilization, one could refer to Commission Regulation (EEC) No 3708/88 of 25 November 1988 on the supply of common wheat to Madagascar as food aid, which stipulated in its Article 1:

Cereals shall be mobilized in the Community, as Community food aid for supply to the recipients listed in the Annex, in accordance with Regulation (EEC) No 2200/87 and under the conditions set out in the Annex. Supplies shall be awarded by tendering procedure.3

In the annex, the Commission laid down in detail the specific mobilization conditions for the food aid to be supplied in the context of this operation in favour of Madagascar. This annex makes in fact interesting reading and clearly highlights the complexity of a food aid operation:

1. Operation Nos: 1135 and 1136/88
2. Programme: 1988
3. Recipient: Madagascar (Régie malgache des monopoles fiscaux pour compte Etat Malgache, Ministère des Finances, boîte postale 23 Antananarivo)
4. Representative of the recipient: Ambassade de la république démocratique de Madagascar, avenue de Tervuren 276, B-1150 Bruxelles tel. 770 17 26, telex 61197 REPERMAD Bruxelles
5. Place or country of destination: Madagascar
6. Product to be mobilized: common wheat
7. Characteristics and quality of the goods: see list published in O.J. No C 216, 14.8.1987, p. 3 (under II.A.1); specific characteristics: protein content 11% maximum
8. Total quantity: 20 000 tonnes
9. Number of lots: two (I: 10 000 tonnes, II: 10 000 tonnes)
10. Packaging: in bulk, plus
   - 210 000 new woven-polypropylene bags for food use, weighing not less than 120 grams, which have been specially treated against the effects of ultraviolet light and for each lot 75 needles and sufficient twine
   - marking on the bags, in letters at least 5 cm high:
   - Lot I: 'ACTION No 1135/88 / FROMENT / DON DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE A LA REPUBLIQUE DEMOCRATIQUE DE MADAGASCAR'

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- Lot II: 'ACTION No 1136/88 / FROMENT / DON DE LA COMMUNAUTE ECONOMIQUE EUROPEENNE A LA REPUBLIQUE DEMOCRATIQUE DE MADAGASCAR'

11. Method of mobilization: the Community market
12. Stage of supply: free at port of landing - landed
13. Port of shipment: -
14. Port of landing specified by the recipient: Toamasina
15. Port of landing: -
16. Address of the warehouse and, if appropriate, port of landing: -
17. Period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage:
   I.1. to 15.1.1989
   II.15. to 28.2.1989
18. Deadline for the supply: Lot I: 31.1.1989; Lot II: 15.03.1989
19. Procedure of determining the costs of the supply: tendering
20. Date of expiry of the period allowed for submission of tenderers: 12 noon on 13.12.1989
21. In the case of a second invitation to tender:
   (a) deadline for the submission of tenders: 12 noon 3.1.1989
   (b) period for making the goods available at the port of shipment where the supply is awarded at the port of shipment stage: I. 22.1. to 5.2.1989; II: 10.3. to 25.03.1989
   (c) deadline of the supply: Lot I: 28.2.1989; Lot II: 15.4.1989
22. Amount of the tendering security: 5 ECU/tonne
23. Amount of the delivery security: 10% of the amount of the tender in ECU
24. Address for submission of tenders: Bureau de l'aide alimentaire, à l'attention de Monsieur N. Arend, bâtiment Loi 120, bureau 7/58, 200 rue de la Loi, B-1049 Bruxelles, telex: AGREC 22037 B

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(1) to point 1: The operation number must be quoted in all correspondence.
(2) to point 4: Commission delegate to be contacted by the successful tenderer: M. le Délégué de la Commission des Communautés européennes, Immeuble Nyhavana, 67 Ha, BP 746, Antananarivo (RDM) telex 22327 DELFED MGI.
(3) to point 7: The successful tenderer shall deliver to the beneficiary a certificate from an official entity certifying that for the product to be delivered the standards applicable, relative to nuclear radiation, in the Member State concerned, have not been exceeded.
(4) to point 24: In order not to overload the telex, tenderers are requested to provide, before the date and time laid down in point 20 of this Annex, evidence that the tendering security referred to in Article 7 (4) (a) of Regulation (EEC) No 2200/87 has been lodged, preferable:
   - either by porter at the office referred to in point 24 of this Annex,
   - or by telecopier on one of the following numbers in Brussels: [...] 
(5) to point 25: Commission Regulation (EEC) No 2330/87 (OJ. No L 210, 1.8.1987, p.56) is applicable as regards the export refund and where appropriate, the monetary and accession compensatory amounts, the representative rate and the monetary coefficient. The date referred to in
Whether the Community's food aid operation concerns cereals, milk powder, butteroil, sugar, vegetable oil or any other product mobilized within the Community, the Commission lays down in detail the specific conditions governing their mobilization in an annex identical in structure to the above. This annex, once published in the Official Journal, will serve as a notice of invitation to tender to all interested undertakings. It is not without interest to note that the Regulations referred to above in footnote were all signed for the Commission by the Commissioner responsible for Agriculture and not by the Commissioner responsible for Development Cooperation. Note that when the products to be supplied as food aid are mobilized outside the Community, the Commission's decision on the conditions governing this mobilization is prepared by DG VIII.

The fact that the Commission's decision on the conditions governing the mobilization within the Community is prepared by DG VI and signed for the Commission by the Commissioner responsible for Agriculture shows clearly the continued relevance of food aid operations for the common agricultural policy. As I already noted briefly in Chapters 1 and 2, the food aid operations of the Member States have evidently also quite often a certain impact on the agricultural markets for which the Community has set up a common organization. It will be

Article 2 of the above mentioned Regulation is that referred to in point 25 of this Annex.


recalled that for this reason, the Member States were since 1975, pursuant Article 5 of Council Regulation (EEC) No 2750/75, obliged to inform the Commission of their draft decisions on the mobilization of cereals to be supplied as food aid and the Commission could then suggest to Member States to bring their method of mobilization in line with the rules applying on Community food aid mobilization.\(^4\) Since Council Regulation (EEC) 2750/75 has never been repealed, Article 5 thereof should theoretically still be applicable. On the other hand, it would be odd that now that Community law does not provide any more for any rules or guidelines for the intra-Community mobilization of food aid products\(^4\) and the CAP management committees no longer scrutinize the Commission’s decisions on the conditions governing the mobilization, the mobilization decisions of the Member States would - because of their potential impact on the management of the relevant agricultural market - still be subject to Commission control. It may well be that the only obligation on the Member States is the information obligation first stipulated in Article 9 of the first framework regulation and now - explicitly including information on the implementation of food aid operations - stipulated in Article 9 of the second framework regulation.\(^4\)

\(^4\)Council Regulation (EEC) No 2750/75 of 29 October 1975 fixing the criteria for the mobilization of cereals intended as food aid, OJ. 1975, L 281/90. Article 5 thereof stipulates: "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."

\(^4\)See: Section 3.1.2 of this Chapter on the origin of Community food aid products.

\(^4\)See Section 3.5 of this Chapter.
3.6.3 The award of the food aid supply contract

It will be recalled that already during the period 1977-82, Community law provided, at least for cereals and dairy products, for fairly detailed procedures for the award of the food aid supply contracts. During the first years of the period 1983-89, the successive implementing regulations of the first framework regulation stipulated in their Article 6:

1. Except in the case of emergency operations or where products have to be purchased in a developing country because they are unavailable on the Community market, tenders shall be called for within the Community:
   - for the mobilization of the products on the Community market and, where appropriate, for its purchase and manufacture on that market,
   - for the transportation and delivery of the products after mobilization.

   Where, however, a food aid operations relates only to relatively small amounts, paragraph 2 may also apply.

2. For emergency operations or where products must be purchased in a developing country because they are unavailable on the Community market, the Commission may conclude the necessary private contracts or instruct the Member States and, where appropriate, an authorized agent to conclude such contracts on terms laid down by the Commission.

The Community food aid supply contracts were therefore to be awarded by tendering procedure or, as private contracts, by direct award procedure. As far as the mobilization of the food aid products was to take place within the Community, detailed rules for these award procedures were laid down in the above mentioned Commission Regulation (EEC) No 1974/80 (for the award of cereal

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food aid supply contracts\textsuperscript{50} and Commission Regulation (EEC) No 1354/83 which in May 1983 replaced the above mentioned Commission Regulation (EEC) No 303/77 (for the award of dairy food aid supply contracts). It may be noted, however, that although this new regulation definitely provided for better worked-out procedures\textsuperscript{51}, it did not fundamentally alter the award procedures stipulated in Regulation (EEC) 303/77.\textsuperscript{52}

For products other than cereals and dairy products, as well as for food aid products mobilized outside the Community, Community law did not lay down generally applicable, detailed procedures for the award of the supply contracts. For vegetable oil, Article 3 of Council Regulation (EEC) No 3067/85 of 29 October 1985 setting criteria for mobilization on the Community market of vegetable oils for supply as food aid, stipulated:

1. If olive oil held by intervention agencies is to be used, an invitation to tender shall be opened for loading, unloading, packaging and transport to a place to be specified.

2. Purchasing under Article 2 (2) and (3) shall be carried out by means of an invitation to tender for supply of the product at a

\textsuperscript{50}On the interpretation of the provisions relating to the direct award procedure, see: Judgment of the Court of Justice of 23 February 1988 in Case 79/87, Office Belge de l’Economie et de l’Agriculture (OBEA) v. Etablissements Soulès & Cie S.A. In answer to the questions referred to it by the Tribunal de Commerce, Brussels, the Court ruled that Article 9 of Commission Regulation No 1974 of 22 July 1980 must be interpreted as meaning that an agency responsible for the mobilization of food aid by a direct award procedure is not thereby prohibited from only ensuring competition between two undertakings which have already unsuccessfully taken part in a tendering procedure relating to the same operation. The Court also ruled that Commission Regulation No 1974/80, read in conjunction with Regulation (EEC) No 2750/75 of the Council, must be interpreted as precluding the body responsible for mobilizing products intended for a food aid operation from inviting and receiving tenders from undertakings interested in supplying those products before the entry into force of the Commission regulation authorizing recourse to a direct award procedure for the mobilization of those products.

\textsuperscript{51}It may be noted for example that Commission Regulation (EEC) No 1354/83 defined more precisely the contents of the notice of invitation to tender. It also required that undertakings taking part in the tender procedure were approved by the competent body in the Member State where the registered office of the undertaking was established and it provided for the possibility of withdrawing such approval temporarily or permanently where it was established that an undertaking had not complied with its obligations. It also required that in the context of a direct award procedure, the intervention agency had to invite tenders from several tenderers.

\textsuperscript{52}I will therefore not discuss these procedures in any detail but merely refer to Section 3.6.3 of Chapter 2. It will be recalled that the chief characteristic of the award procedures provided for in Regulation 303/77 and 1974/80 was the delegation of the competence to award the supply contracts to the CAP’s national intervention agencies.
stage to be specified.

3. The terms of invitation to tender shall guarantee equality of access and treatment to all interested parties whatever the location of their establishment in the Community.

4. However, if the quantities to be mobilized are relatively small, it may be decided to use a direct-agreement procedure."

For generally applicable, detailed rules on the award of the supply contracts, Community law did not provide. The same was true for UNRWA sugar. Detailed rules for the award of the supply contracts of food aid in these products were usually laid down in each Commission regulation on the conditions governing the mobilization. For other products and for products mobilized outside the Community, the procedure followed to award the supply contracts remained often obscure; the Commission decided, when the need arose, on ad hoc procedures and I refer in this context to the comments made in Section 3.6.3 of Chapter 2.

The Community's procedures for awarding the food aid supply contracts were radically altered with the adoption of the second framework regulation in December 1986 and the mobilization regulation in July 1987. Pursuant to Article 6 (c), second indent, of the second framework regulation:

[...] the Commission shall decide on:

[...]

c) the conditions governing the supply of aid, in particular:

[...]

- the engagement of the mobilization procedures and the supply of products, as well as the conclusion of the corresponding contracts."

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54See e.g.: 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, OJ. 1982, L 55/34.

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As I noted above, the participation of the intervention agencies - while for a very long time defended by the Commission by pointing out that it made sense to use existing (CAP) bodies and procedures rather than to set up or establish new ones - had on several accounts been far from satisfactory. In line with the food aid policy's shift in objectives and as perhaps one of this shift's most dramatic manifestations, the Council decided to entrust the task of awarding food aid supply contracts no longer to the national intervention agencies, CAP bodies par excellence, but to leave this competence with the Commission. It should be noted, however, that within the Commission the award procedure is organized by DG VI and that before a contract is concluded all offers received are considered by the Food Aid Management Inter-service Group (FAMIG, but better known as GIGA) presided by DG VI. More important is that this change simplifies the award procedures significantly and guarantees better their fairness. Above all, however, the existence of a contractual link allows as well as obliges the Commission to monitor the execution of the supply contract and past experience had shown that there was a great need for this.

Pursuant to competence delegated to it in Article 5 of the second framework regulation, the Commission worked out in detail new contract award procedures in Articles 2, 3, 6, 7, 8, 9 and 11 of Regulation (EEC) No 2200/87. These procedures are applicable for the award of supply contracts for all food aid products mobilized within the Community, thus ending the hopelessly complex and confusing situation in which the award procedures differed from product to product and Community law did for some products (mobilized within the Community) not even provide for any worked-out award procedure.

Whereas the most appropriate procedure for ensuring that the costs of supplying food aid are set at the optimum level is undoubtedly the tendering procedure, Article 3 of the mobilization regulation stipulates in its first paragraph that:

The supply of the products shall be determined by a tendering procedure.

See: Section 3.6.3 (award of the supply contracts) and 4 (monitoring the compliance of the successful tenderer with the terms of the supply contract) of Chapter 2 and also Section 3.1.3 (quality control) of Chapter 2 and this Chapter.

See: Section 3.6.3 of Chapter 2.
Participation in a tendering procedure shall pursuant to Article 2, first paragraph of the mobilization regulation:

[...] be open on equal terms to any natural persons who is a national of a Member State and established in the Community, or any company established under the legislation of a Member State:
- the registered office, or central administration or main establishment of which is in a Member State,
- which is engaged in the manufacturing, processing, trading, forwarding or transport of products supplied as food aid.

Article 2, second paragraph, of the mobilization regulation stipulates, however, that the Commission may restrict, on a temporary or permanent basis, participation in the tendering procedures by undertakings which are proved to have committed a serious infringement of any of their obligations in the implementation of a food aid operation. It will be recalled that Community law had not always provided for this possibility and that as a result there had been situations in which it had been impossible to prevent that a supply contract was awarded to undertakings which were known to be all but trustworthy.58

Articles 6 to 9 of the mobilization regulation lay down in considerable detail the rules governing a tendering procedure for the award of a food aid supply contract. A tendering procedure is initiated with the publication in the Official Journal of a notice of invitation to tender drawn up in accordance with the model provided for in Annex I of the mobilization regulation.59 This notice - which, it will be recalled, is in fact the annex to the Commission's regulation laying down the conditions governing the mobilization50 - is to be published no later than fifteen days before the expiry of the period for the submission of tenders indicated in the

58See: Section 3.6.3 of Chapters 1 and 2.


60See: Section 3.6.2 of this Chapter. Article 6 speaks of "an Annex to the Regulation opening the invitation to tender".
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Interested undertakings can submit their tenders in two ways: they can send a tender in writing by registered letter to the office at the Commission indicated in the notice of invitation to tender, or, they can lodge a tender in writing, against acknowledgement of receipt, with the latter office. Note that while Article 7 of the mobilization regulation, on the one hand, requires that the tender must be placed in an envelope bearing the words 'Food Aid' and the reference number of the relevant invitation to tender and that this envelope must be sealed and placed inside a second envelope bearing the address given in the notice of invitation to tender, the same Article 7, on the other hand, stipulates that tenders may be sent by telecommunications in written form. These two provisions seem hard to reconcile and some clarification would be welcome. Whatever the way in which they are submitted, tenders must reach the above mentioned office in their entirety or be lodged at that office before the time stated in the notice of invitation to tender on the day of the expiry of the period for submission of tenders. Once submitted, tenders can neither be changed nor withdrawn.

In order to be valid a tender must relate to a complete lot and where goods are to be delivered in more than one lot, a separate tender shall be submitted for each lot. Furthermore, to be valid a tender has to indicate, apart from the reference number of the invitation to tender, the name of the tenderer and the address of his registered office, the number and net weight of the lot to which the tender relates, and the Member States in which the tenderer undertakes to complete the customs export formalities:

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64 Article 7 (2) and (3) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/3.
65 Note that Annex II (II) to the mobilization regulation provides for a model for tenders.
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- a single community port of shipment, suitable for carrying out the supply operations under the conditions laid down;
- the amount expressed in ECU at which the tenderer undertakes to deliver the supplies in accordance with the conditions laid down.

With regard to the former, it should be noted that in the case of supply free-at-port-of-shipment, the mobilization regulation specifies that the criteria for selecting the port shall be: (1) the possibility of a connection with the country of destination in the form of a vessel meeting the conditions laid down in Community law during the shipment period specified in the notice of invitation to tender; and (2) the possibility of loading on the vessel in a single operation, in accordance with the loading rate of the port. These requirements with regard to the selection of the port-of-shipment are all but superfluous; there had been a number of instances in which the successful tenderer delivered the food aid to the recipient at a port from where the latter could only ship the aid to its destination with great difficulty and at considerable extra cost. One could of course also have avoided this sort of mishaps by specifying in the notice of invitation to tender the port of shipment. It is clear, however, that this would seriously restrict competition for it is unlikely that if the chosen port of shipment would be Marseille, an undertaking from Hamburg would be able to submit the lowest tender; the supply contract would in that case almost inevitably go to a French, Italian or perhaps Spanish undertaking. Therefore, Article 7 of the mobilization regulation stipulates that only 'in special circumstances [...] for which reasons must be given', the port of shipment may be specified in the notice of invitation to tender.

The above mentioned requirement of choosing a port of shipment with a

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66It may be observed, however, that the tenderer can specify two ports in the same area if the whole cargo cannot be loaded in the first port because of the port’s characteristics and loading of the ship must be completed in a second port.


68Or the first port of loading in the case of a port area.


70If loading is to be carried out partly in a second port in the same area, the splitting of operations shall of course be permissible.
connection with the country of destination is, however, not absolute; in the case of supplies of no more than 150 tonnes of dairy products and other products put up in quantities of less than 50 kg net weight, the connection may include one transhipment in another Community port, which must also be indicated in the tender. The recipient has to bear the costs and risks of the transhipment from the 'port of shipment' to the port which has a connection with the country of destination. It is true that for small quantities, one cannot charter a ship or part of a ship but one will have to use shipping lines which of course do not leave from every European port to every possible overseas destination. The number of European ports with shipping lines to for example Guayaquil, Ecuador, is limited. Consequently, the Community has to allow for a transhipment if it does not want to exclude for all practical purposes from the tendering procedure all undertakings which are geographically distant from the ports with the required shipping line. Note that to be valid, tenders need to be accompanied by a declaration that confirmation has been obtained from a shipping company or its agent that from the proposed port of shipment (or in certain cases: this port plus one transhipment) a connection with the country of destination exists.\(^7\)

With regard to the amount proposed in the tender at which the tenderer undertakes to deliver the supplies, it should first of all be observed that the amounts have to be expressed in ECU and no longer in any of the national currencies.\(^2\) Annex II to the mobilization regulation stipulates in considerable detail the costs to be included in the tender.\(^3\) In the case of supply free-at-port-of-shipment, the costs to be included are:

- The price of the product and packaging
- Loading and transport costs up to the place of supply

\(^7\)Article 7 (4) (b) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/4.

\(^2\)Note in this context that the Commission has introduced an automatic telex answering service which will provide, upon receipt of a request sent by ordinary telex, a list of the conversion rates into the main currencies.

\(^3\)Annex II (1) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/13. Note that this list is given for information only.
* Unloading costs at the place of supply and, where appropriate, the costs relating to all operations and activities, in particular by the forwarding agent, which immediately precede the making available or shipment of the goods, except the port liner terms charges and the loading costs proper (see Article 7 (3) (f), first indent)

In the case of the supply of cereals in bulk, the costs include, where necessary, the cost of placing in silos, ensilage, and the release from silos

* Costs related to customs export formalities

* Costs of any weighting, checks or analyses carried out on the initiative of the successful tenderer (other than those carried out pursuant to Article 16).

N.B. Since they may have to be paid by the successful tenderer and refunded, pursuant to Article 13 (2), the loading costs must be indicated separately.74

In the case of supply free-at-port-of-landing, the costs to be included are in addition to the costs to be included in the case of supply free-at-port-of-shipment:

* Port liner terms charges, including the cost of the services of the forwarding agent, and, if relevant, loading and stowage costs

* Sea freight

* Insurance

* Unloading costs as indicated in point 5 (a) of Article 14, in the case of supply to the landed stage.75

In the case of supply free-at-destination, the costs to be included are in addition to the costs to be included in the case of supply free-at-port-of-landing:

* Customs transit costs

* Cost of transfer on to means of transport for forwarding to the final destination

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* Overland transport costs to final destination
* Insurance costs for overland transport
* Costs of unloading from the means of overland transport and costs of placing in store at destination
* Customs import formalities, except payment of duties, taxes and other charges levied for the benefit of the recipient country.76

Furthermore, it should be noted that pursuant Article 1 of the mobilization regulation, all deliveries now entail purchase of the product; also when the products come out of the stocks of an intervention agency, they are to be purchased from the intervention agency; pursuant to Article 4 (b), the latter purchase shall be effected on the basis of a fixed-price sale in accordance with the CAP rules in force.77 The amount proposed in the tender is to include the cost of this purchase. Finally, the amount proposed in the tender should also take account of the refund or levy applicable on export and the other compensatory amounts (monetary and accession) laid down in the rules on trade in agricultural products.78 In other words, the amount proposed in the tender should relate to the cost of the products at world market price, not at Community price.

While the Commission usually asks to submit tenders for the supply of a given quantity of food aid and the tenderers indicate in their tenders the amount at which it can deliver this quantity, the Commission can - pursuant Article 7 (h) of the mobilization regulation - also call for tenders indicating the quantity the tenderers can deliver for a given monetary amount indicated in the notice of invitation to tender.79


77Articles 1 and 4 (b) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/2.

78Article 7 (e), last sentence, of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/3.

In the case of supply free-at-port-of-shipment and supply free-at-destination, the tenderers are to submit respectively two and three tenders.*0 In the former case, tenderers submit a first tender corresponding to supply free-at-port-of-landing (which shows clearly and separately the costs relating to sea transport proper), and a second tender corresponding to supply free-at-port-of-shipment. In the latter case, tenderers submit a first tender corresponding to supply free-at-destination (which shall clearly and separately show the costs relating to overseas inland transport proper), a second tender corresponding to supply free-at-port-of-landing, and a third tender corresponding to supply free-at-port-of-shipment. Such a breakdown is very welcome because, unlike the all-inclusive tender which was the norm in the past, it allows the Commission better to conclude the most favourable contract or contracts.*1 In the past, tenderers not seldom proposed as part of their all-inclusive tender excessive costs for sea transport and overseas inland transport. Pursuant to Article 9 (4) of the mobilization regulation it is now possible - for example - for the Commission to award in the case of a supply of food aid free-at-destination a contract for the purchase and transport to the free-at-port-of-shipment stage to the undertaking which submitted the lowest tender relating to supply up to this stage, and award a contract or contracts for sea transport and overseas inland transport to other undertakings**2, if the costs for sea transport and overseas inland transport indicated in the first tender appreciably exceed the costs which can be obtained on the market.*3

To ensure that a tenderer will comply with the rules of the tendering procedure**, Article 8 of the mobilization regulation requires the tenderers to lodge in favour


*1 See also: Section 3.6.3 of Chapter 2.

*2 In practice, the Commission asks a specialized WFP service to conclude the necessary additional contracts on its behalf.

*3 Article 9 (4) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/4.). See also below.

**And above all, will accept to execute the supply contract if awarded to him.
of the Commission a tendering security in the form of a guarantee given by a credit establishment approved by a Member State. The security, the amount of which is laid down in the notice of invitation to tender, must be lodged for a minimum period of two weeks but its period of validity shall be extended automatically on request by the Commission.\(^5\) Note that a tender is only valid when accompanied by evidence that the tendering procedure has been lodged before the final date for submission of tenders.\(^6\) The security may be released only on the initiative of the Commission where the tender is not valid or has not been accepted, where no supply contract has been awarded, or when the successful tenderer has lodged the delivery security discussed below.\(^7\)

The Commission will award the food aid supply contract to the tenderer who submitted the lowest tender in ECU for the lot in question. It will do so no later than three working days from the last day of the period for the submission of tenderers.\(^8\) Where the lowest tender is presented simultaneously by a number of tenderers, the contract shall be awarded by the drawing of lots.\(^9\) In particular where the tenders submitted exceed the prices normally obtained on the market, the Commission may decide not to award the supply contract.\(^10\) Where the

\(^5\) Article 8 (1) and (2) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/4.


\(^7\) Article 22 (1) (a) and (b) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/10.

\(^8\) Article 9 (1) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/4. Note that no correction is made on the basis of the refund of levy applicable on export and monetary and accession compensatory amounts.


\(^10\) Article 9 (3) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/4. Where, in the case of an invitation to tender issued for a supply free-at-port-of-landing or free-at-destination, the cost of sea transport and/or overseas inland transport exceed appreciable the costs which can normally be obtained on the market, the Commission can - as I already pointed out above - decide to award a contract for the supply up to an 'inferior' stage (Article 9 (4) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/4.). Community law fails to indicate, however, how the supplementary contracts for sea transport and/or overseas inland transport are to be awarded. The question arises whether the contract or contracts will be awarded to the participants.
Commission decides not to award the supply contract a new tendering period shall commence, the expiry date of which is already indicated in the notice invitation to tender. All tenderers shall be informed thereof.\(^9\)

The successful tenderer shall (immediately) be informed of the award by telecommunications, in written form, which means, I presume, either by telex or by fax.\(^9\) The Commission shall also inform the successful tenderer of the name of the monitoring agency\(^9\) or monitoring agencies\(^9\). Unsuccessful tenderers shall be informed of the outcome of their participation in the tendering procedure by telex no later than the first working day following the award of the contract, or

in the tendering procedures which submitted tenders which showed the lowest costs for sea transport and/or overseas inland transport?

\(^9\) Article 9 (6) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/4. If after this second tendering period all tenders submitted still exceed the prices normally obtained on the market, a new tendering procedure will have to be initiated.


\(^9\) Article 10 of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/4. Recall that this agency - a private undertaking selected in advance by invitation to tender - is responsible for checking whether the successful tenderer complies with the terms of the supply agreement and in particular with regard to the quality, quantity and packaging of the food aid products, issuing the taking-over certificate discussed below, and, on a general level, coordinating all the stages of the supply operation.

In Case C-226/89, Haniel Spedition GmbH, Duisburg, v. Commission, Haniel argued that the delay in the supply of 1,459 tonnes of butter to India (a delay for which the Commission withheld 55,451 ECU from the sum due to Haniel) was attributable to the Commission since the latter informed Haniel too late of the award of the supply contract and of the identity of the monitoring agency (the Commission informed Haniel of the award on 23 October 1987 and of the designated monitoring agency on 30 October 1987 while the delivery deadline had been set on 10 December 1987). Haniel argued that by the time it had been informed of the identity of the monitoring agency, the ships it had initially intended to use were no longer available; other ships had to be used and these ships were not able to deliver the goods within the delivery period. While the Commission argued that the late delivery was attributable to Haniel, it apparently agreed - without stating so - that the delay may at least partially also have been the result of the late information on the monitoring agency. This may be deduced from the fact that the Commission in calculating the penalty added an extra 15 days to the original deadline for delivery. The Commission argued that Haniel had not done everything possible to supply the goods in time and that Haniel could have started the preparation of the delivery of the butter before knowing the identity of the monitoring agency.

\(^9\) In the case of supply free-at-port-of-landing or supply free-at-destination, the Commission may, in certain circumstances, designate two different undertakings, one to be responsible for checks and for coordinating operations before shipment and the other to be responsible for delivery.
where appropriate, the decision to make no award. The results of invitations to tender shall be published periodically in the Official Journal, C-series.

While pursuant to the above quoted Article 3, first paragraph, of the mobilization regulation, the food aid supply contracts shall normally be awarded by tendering procedure, Community law provides for a number of situations in which food aid supply contracts may be awarded by direct award procedure. Pursuant to Article 3, second paragraph, a direct award procedure may be used in the case of:

- emergency supply operations within the meaning of Article 6 of Regulation (EEC) No 3972/86;
- the supply of small quantities;
- supplies of an experimental nature, involving new types of products, or the application of new packaging or market preparation procedures or new methods of transport;
- a supply operation decided on following the cancellation of a previous supply contract pursuant to Article 20;
- a supply operation falling within the emergency criteria following the allocation decision.

In short, the Commission may award the supply contract by direct award procedure in the case of urgent operations, small operations and operations of an experimental character. Where a direct award procedure is used, the Commission invites pursuant to Article 11 of the mobilization regulation tenders from no fewer than three tenderers; it does so by addressing itself directly to undertakings it knows to be able carry out the supply operation in question successfully. The tenders submitted by these undertakings have to meet the same requirements as

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9See e.g.: Outcome of the invitation to tender (Community food aid) (87/C 346/02), O.J. 1987, C 346/2.


the tenders submitted in the context of a normal tendering procedure. The supply contract is awarded to the tenderer offering the most favourable terms in relation to the prices normally prevailing on the market. Also the provisions on the award of contracts delineated in Articles 9 and 10 apply mutatis mutandis to the direct award procedure. Note also that with regard to the consequences of the supply contracts and the ensuing obligations for the contracting parties, there is no difference between contracts awarded by direct award procedure and contracts awarded by tendering procedure.

Whereas the direct award procedure does of course not offer the same guarantees with regard to the equal treatment of all interested undertakings in the Community or the conclusion of a contract at the most favourable terms, it should be noted that genuine need for flexibility and/or speed in the cases summed up in Article 3, second paragraph, of the mobilization regulation, justifies the recourse to the direct award procedure. As noted, Community law anyway requires some degree of competition. There is only one situation in which the Commission can award a contract without any competition. Pursuant of Article 11 (3), a contract may be concluded with an individual supplier without even a restricted invitation to tender in the event of supplies of an experimental nature, i.e. supplies involving

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9 I.e. the requirements stipulated in Articles 7 and 8 of the mobilization regulation, discussed above (Article 11 (2) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/5.).


101 Article 11 (2) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/5. Note in this context the Court of Justice’s judgment of 23 February 1988 in Case 79/87, Office Belge de l’Economie et de l’Agriculture (OBEA) v. Etablissements Soulès & Cie S.A., in which the Court ruled in answer to a preliminary question by the Tribunal de Commerce of Brussels that Article 9 of Commission Regulation (EEC) No 1974/80 of 22 July 1980 must be interpreted as meaning that an intervention agency responsible for the mobilization of food aid by a direct award procedure is not thereby prohibited from only ensuring competition between two undertakings which have already unsuccessfully taken part in a tendering procedure relating to the same operation but that the same regulation must be interpreted as precluding the responsible intervention agency from inviting and receiving tenders before the entry into force of the Commission regulation authorizing recourse to a direct award procedure. Commission Regulation (EEC) No 1974/80 is no longer applicable and the award system was fundamentally changed, but it may perhaps be pointed out that also under the present regulation, nothing prevents the Commission to invite in the context of a direct award procedure tenders from undertakings which have unsuccessfully participated in a preceding tendering procedure.

new types of products, or the application of new packaging or market preparation procedures or new methods of transport.\textsuperscript{103}

While the procedures for the award of supply contracts for food aid to be mobilized within the Community are defined in detail, the procedure for the award of supply contracts for food aid to be mobilized on the market of a developing country has not yet been laid down in Community law and remains quite obscure. Reportedly, the Commission follows in practice usually a procedure which is mutatis mutandis not too different from the direct award procedure provided for in Regulation (EEC) No 2200/87 inviting undertaking (included in an open list) to submit tenders. Unlike under Regulation (EEC) No 2200/87, it does, however, not necessarily award the contract to the undertaking submitting the lowest tender but awards the contract to the undertaking which offers the best guarantee that the food aid delivery will be made correctly. Given the nature of the purchase and transport operations in developing countries, this may be quite reasonable. It is obvious, however, that the Community should as soon as possible lay down explicit rules and procedures.

3.6.4 The execution of the food aid supply contract

During the first years of the period 1983-89 and in particular until the entry into force of the mobilization regulation, Commission Regulation (EEC) No 2200/87 of 8 July 1987, the (standard) obligations of the successful tenderer and the conditions relating to the execution of the supply contracts (including the conditions relating to payment and the release of securities) were - as far as the food aid was mobilized within the Community\textsuperscript{104} - laid down in Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/5. Note that in this case, none of the provisions of Articles 7, 8, 9 and 10 are applicable.

\textsuperscript{104}In the case the food aid was mobilized in a developing country, Community law did not lay down any (standard) obligations of the successful tenderer or the conditions relating to the execution of the supply contracts.

Since the entry into force of the mobilization regulation of July 1987, the (standard) obligations of the successful tenderer and the conditions relating to the execution of the supply contracts including the conditions relating to payment and the release of securities are - as far as the food aid is mobilized within the Community - laid down in considerable detail in Articles 4 and 12 to 22 of the latter regulation. It is fair to say that these articles are the culmination of long years of experience with the execution of food aid supply contracts. Article 12 (1) of the mobilization regulation stipulates:

The successful tenderer shall meet his obligations in accordance with the conditions laid down in the Regulation opening the invitation to tender [i.e. the Commission regulation laying down the conditions governing the mobilization] and shall comply with the undertakings referred to in this Regulation, including those arising from his tender.

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105See end of this Section.

106Note that pursuant to Article 23 of Commission Regulation (EEC) No 2200/87, the Court of Justice is competent to judge any dispute resulting from the carrying-out, or the failure to carry out, supply operations in accordance with this Regulation, or from the interpretation of provisions concerning such operations (OJ. 1987, L 204/11.).
He shall ensure that the said undertakings are properly implemented and shall grant all possible assistance to this end.\textsuperscript{107}

As a guarantee that he will indeed meet all his obligations, the successful tenderer will, within five days following the award of the contract, furnish the Commission’s food aid division with evidence that a delivery security has been lodged, the amount of which is already indicated in the notice of invitation to tender.\textsuperscript{108} As the tendering security, the delivery security shall be provided in favour of the Commission by a credit establishment approved by a Member State. The minimum period of validity is three months in the case of supply free-at-port-of-shipment, five months in the case of supply free-at-port-of-landing, and six months in the case of supply free-at-destination but this period of validity is automatically extended by simple request of the Commission and this for a duration specified by the Commission. The security may only be released on the initiative of the Commission but I will deal with the conditions for the release and, of course, forfeiture later in this Section.\textsuperscript{109} Note that if the successful tenderer does not supply evidence that the delivery security has been lodged, this is regarded as failure to carry out the supply operations and gives raise to the sanctions discussed below.\textsuperscript{110}

Apart from providing for a delivery security, Community law also stipulates, with the aim of ensuring that the tenderer to whom the supply contract is awarded will actually execute the contract, that the rights and obligations arising from the award are not transferable.\textsuperscript{111}

\textsuperscript{107}Article 12(1) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/5. Text in square brackets added by author.


\textsuperscript{110}Article 12 (2), third paragraph, of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/5.

\textsuperscript{111}Article 12 (3) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/5.
Among the obligations of the successful tenderer, one may broadly distinguish between, on the one hand, the purchasing, and, where relevant, the processing and packaging of the food aid products and, on the other hand, the transport of the food aid to the delivery stage agreed upon.

With regard to the former, it will be recalled that before the entry into force of the mobilization regulation, the successful tenderer - when food aid was to be mobilized within the Community - either purchased the products on the Community market or took them out of the stocks of the intervention agencies. As I already pointed out above, this is no longer the case. Under the present rules, all deliveries entail purchase of the product.\textsuperscript{112} Article 4 of the mobilization regulation stipulates in this respect:

Depending on the mobilization procedure determined for each supply operation, the product shall:

(a) be purchased or have been purchased on the Community market;

(b) be purchased from an intervention agency designated in the notice of invitation to tender, or be manufactured from goods purchased from such a body. [...]\textsuperscript{113}

The successful tenderer has always to purchase the products to be supplied, also when the products come out of the stocks of the intervention agencies. The reader will understand that this is a normal and logical consequence of the suspension of the direct involvement of the intervention agencies in the implementation of food aid operations and in fact allows for a considerable simplification of the financial management.

With regard to the successful tenderer's obligations relating to the transport of the food aid to the delivery stage agreed upon, it is important to note that Article 13 to 15 of the mobilization regulation finally define for all food aid (mobilized


within the Community) delivery arrangements which are adapted to the specific nature of food aid supply operations. Most important in this respect was the elimination of the cif delivery arrangement which had proved particularly unsuited in the context of food aid. Article 13 to 15 of the mobilization regulation stipulate in great detail 3 delivery arrangements especially worked out for food aid supply operations: a delivery free-at-port-of-shipment, delivery free-at-port-of-landing, and delivery free-at-destination. It also deserves to be mentioned that in order to make the delivery proceed more smoothly the specialized private undertakings, the so-called monitoring agencies, which as I already mentioned above check quality and quantity of the products supplied, will also coordinate all the stages of the supply operation.

In the case of delivery free-at-port-of-shipment, the successful tenderer will, first of all, agree with the recipient or his representative on: (1) the date on which the goods are to be made available at the port of shipment; and (2) the ship's berth. The date has to fall within the period specified in the notice of invitation to tender for this purpose. In any event, the supply operations must be carried out before the end of the latter period. Normally and unless the recipient agrees otherwise, the supplies must be made available in a single operation. The successful

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114 The fact that these delivery arrangements were especially worked out for and adapted to food aid supply operations does not mean, however, that they do not resemble any of the delivery arrangements included in the INCOTERMS.


117 The name and address of the representative of the recipient are indicated in the notice of invitation to tender. See point 4 of the notice of invitation to tender.

118 I.e. the port chosen by the successful tenderer and indicated in the tender. See point 7 of the tender.

119 A period for making the goods available at the port of shipment is specified in point 17 of the notice of invitation to tender.

120 Note that Article 13 (1), last sentence, actually reads: "Unless the recipient agrees otherwise, the supplies must be loaded in a single operation".
tenderer has to inform, as soon as possible, both the Commission and the monitoring agency of the agreement on the date and place for making the supplies available or of the lack of agreement with the recipient. If necessary the monitoring agency shall provide any assistance which may be needed to reach agreement.

Whether the successful tenderer is responsible for the loading of the goods on board of the ship depends the marine transport contract concluded by the recipient.\footnote{The sort of contract concluded depends on the sort of product and above all the quantities involved. For large quantities normally a charter contract is concluded and such a contract does not cover the loading.} Where the latter contract includes the loading, it is not the responsibility of the successful tenderer; the supply operation shall be complete when all goods have been made available to the recipient\footnote{Or to the forwarding agent in his capacity as representative of the recipient.} in accordance with the terms agreed upon. Where the marine transport contract concluded by the recipient does not include loading, however, it is the responsibility of the successful tenderer to load the goods on board of the ship designated by the recipient and this in accordance with a loading schedule adopted in agreement with the latter, having regard to the customary practice at the port. The corresponding costs - which are not included in the amount proposed in the tender but indicated separately\footnote{See above in this Section.} - shall be refunded to the tenderer by the Commission when the supply is paid for, on presentation of the supporting documents.\footnote{Note, however, that any stowage costs are not payable by the tenderer}

It happens of course that the goods cannot be made available or loaded as agreed; the ship designated by the recipient may, for example, not arrive on time. In such cases, the Commission shall, at the request of either the tenderer or the recipient, backed up by appropriate supporting documents, extend the period laid down in the notice of invitation to tender by a maximum of 60 days, in order to enable the supplies to be delivered. The successful tenderer and the recipient have then to agree again on a date (within the new period) on which the goods must be made available and also on the ship's berth. While such an extension may prove to be
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exacting for the successful tenderer, he has to accept the extension but note that all resulting extra costs are reimbursed. If the goods cannot be delivered within the 60 days extension, however, the successful tenderer may request to be released from his obligations.

The monitoring agency records the actual date on which the goods are made available or on which loading is completed by means of a special indication on the certificate of conformity I will discuss below.

It is important to note that the successful tenderer shall, having regard to the customary practices at the port, bear all risks, and in particular those of loss and deterioration to which the goods are subject until they are made available to the recipient if the loading is not the tenderer's responsibility, or, until the goods have effectively passed the ship's rail when the loading is the tenderer's responsibility.

In the case of delivery free-at-port-of-landing, the successful tenderer shall arrange, at his own expense and on the customary terms, sea transport by the route most appropriate for completing the operation within the period specified in the notice of invitation to tender from the port of shipment to the port of destination. As I already pointed out in Section 3.1.3 of this Chapter, the successful tenderer has to arrange for maritime transport in vessels which are listed in the higher category of the classification societies in use in the Member States and which meet all the health requirements for the transport of foodstuffs. Furthermore, the successful tender has to arrange for maritime transport in conformity with the rules on the prevention of the distortion of free and fair

123 Or to the forwarding agent, acting as the recipient's representative.


127 Point 18 of the notice of invitation to tender 'Deadline for the supply'.

128 The port of shipment is indicated in point 7 in the tender. Note that at the tenderer's request, backed up by appropriate supporting documents, the Commission may, however, authorize a change of port of shipment.

129 The port of landing is indicated in point 15 of the notice of invitation to tender.
competition on a commercial basis as laid down in Community law. Note that the tenderer has to certify to the monitoring agency that the ships on which the food aid is transported do indeed meet the above mentioned health classification and conformity requirements.

The successful tenderer shall of course bear the cost of loading and the marine freight costs but whether he shall also bear the costs of unloading at the port of landing depends on whether the supply contract provides for supply to the landed stage or for supply ex-ship. In the former case, the tenderer shall bear the costs of unloading, including wharfage at ship's rail and, where necessary, lighterage charges, including hiring, towing and unloading of the lighter, and any demurrage. In the case of supply ex-ship, the successful tenderer, shall not have to bear the costs of unloading or of any demurrage at the port of landing, at least as long as he has not delayed unloading. In neither case, the tenderer shall bear the costs and charges relating to customs formalities on importation.

The successful tenderer shall bear all risks until the landed stage or the ex-ship stage. Consequently, Community law requires him to take out a marine insurance policy, covering all the risks associated with carriage and, where appropriated, transhipment and unloading, including all cases of non-delivery, loss and risks regarded as exceptional without exclusion of particular average. It will be

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\[130\] Council Regulations (EEC) No 954/79, 4055/86, 4056/86, 4057/86 and 4058/86 concerning the maritime transport policy of the Community. Consequently, the successful tenderer cannot use shipping companies whose practices have caused injury to Community shipowners or whose countries have restricted access to cargos by shipping companies of Member States or by ships registered in a Member State and this in particular during the validity of a published decision taken by the Council under Article 11 of Regulation (EEC) No 4057/86 or Article 4 (1) of Regulation (EEC) No 4058/86.

\[131\] Where the goods are supplied in containers, the supplies shall be free at terminal and the cost of unloading the goods from the containers shall not be charged to the successful tenderer. In special circumstances for which the successful tenderer is not responsible, these demurrage costs shall be met by the Commission.

\[132\] Or claim cover under a general policy.

\[133\] The policy shall be for at least the amount of the tender. It shall take effect as soon as the goods insured leave the tenderer's stores, and shall cease:
- when the goods enter the recipient's stores, in other words any place in the port area, whether or not belonging to him, where the recipient stores them;
- or when they are placed, on the initiative of the recipient, on a vehicle for reconsignment from the port area;
- or, if neither of the above has taken place, at the end of a period of 30 days from the last day of landing at the stage of supply referred to at point 5 of Article 14 of Commission Regulation (EEC)
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recalled that under the old cif delivery arrangement, the successful tenderer bore all risks only until the goods effectively passed the ship’s rail at the port of shipment: he had to take out and bear the costs of a marine insurance policy but this policy was endorsed to the order of the recipient. If something went wrong during shipment, the recipient bore the risk and had to claim against the insurance. In order to claim successfully, however, the recipient had to prove that an accident had occurred during transport and this often proved very difficult, if not impossible: the shipper was of course uninclined to mention hitches and accidents which occurred whilst the goods were in his hands. Furthermore, the insurance taken out by the successful tenderer reportedly tended to be 'flimsy or partial'. Worse, however, if something happened during shipment which was normally not covered by a marine insurance policy, such as for example the bankruptcy of the shipping company, it was the recipient (and eventually the Community) which carried the full loss, even though the successful tenderer could in those cases often be blamed for having contracted with an unreliable (but cheap) shipping company. In normal commercial transactions in which the seller supplies goods cif to the buyer, the seller is usually quite keen on establishing or preserving a longer term business relation with the buyer and therefore careful to provide for sufficient insurance coverage and to contract with reliable shipping companies. In food aid transactions, however, the recipient does not have any such power over the successful tenderer; it does not even have any direct contractual link with the latter. A recipient cannot threaten a successful tenderer never to do business with it again. Furthermore, for the administration of many developing countries it is quite an ordeal to claim from an insurance company. The new, currently used arrangement free-at-port-of-landing (be it at the landed stage or at ex-ship stage), making the successful tenderer responsible from start to

No 2200/87 of 8 July 1987.

134COURT OF AUDITORS, Special Report 1/87, 14 and 17. Note, for example that the Court of Auditors established in its 1984 Report that insurance claims had not been lodged by Ghana, Guinea Conakry and Cape Verde for losses from cif shipments to them (COURT OF AUDITORS, Annual Report 1984, 83.). See also: COURT OF AUDITORS, Annual Report 1984, Reply of the Commission, 197.

finish and obliging him to cover all risks, is therefore a welcome improvement. Because tenderers are careful now to cover the risks sufficiently and avoid contracting with unreliable shipping companies, there has been an increase in tendering costs but what better proof is there of the need for the new delivery arrangement. It may be noted that there was initially strong opposition from the side of the professional organizations of the undertakings carrying out food aid supply operations for the Community against this new delivery arrangement, especially because the successful tenderer now also bears the risks which cannot be insured.

In order to allow the recipient to prepare for the arrival for the food aid, the successful tenderer shall communicate as soon as possible the name of the ship and the description of its flag, the loading date, the expected date of arrival at the port of landing and any incident occurring while the supplies are in transit. The tenderer shall at the same time also communicate these particulars to the designated monitoring agency. At least 72 hours in advance, the successful tenderer (or, for him, the captain of the ship or the correspondent of the shipping company) shall inform the recipient of the ship's expected date of arrival at the port of landing. Note that there is, however, no obligation to inform the Commission or the latter's Delegate in the recipient country of the transport arrangements or to inform the monitoring agency of the imminent arrival. In particular the latter is hard to justify and seems to be an 'oversight'.

The goods must arrive at the port of landing before the end of the period specified in the notice of invitation to tender. While Community law does not say so, one presumes that, in the case of supply at the landed stage, the goods have also to be unloaded before the end of the latter period.

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136Note that the successful tenderer is obliged to inform the monitoring agency of the imminent arrival in case of supply free-at-destination. See below in this Section.

137Registration of the ship by the authorities of the port of landing shall be taken as proof of date of arrival in that port. If it is not possible to obtain such proof by registration the date of arrival shall be that declared by the captain and confirmed by the designated monitoring agency.
In the case of supply ex-ship, the successful tenderer shall immediately upon arrival furnish the recipient with: (1) the bill of lading for the port of destination indicated; (2) where appropriate the charter party or any equivalent document stating in particular the demurrage period; (3) the certificate of conformity discussed below; and (4) the certificate attesting that the vessel complies with the requirements delineated above. In the case of supply at the landed stage, the successful tenderer shall immediately after finishing the unloading furnish the recipient with: (1) a delivery note; (2) a copy of the certificate of conformity; and (3) a marine insurance certificate.

In the case of delivery free-at-destination, the successful tenderer shall arrange transport by the means most appropriate to ensure arrival within the period indicated in the notice of invitation to tender. He shall conclude the necessary contracts for transporting the goods from the port of shipment indicated in his tender to the final destination specified in the notice of invitation to tender and shall bear all the relevant costs, including the costs of placing the goods in the warehouse at their destination. Note that the provisions relating to sea transport in the case of supply free-at-port-of-landing also apply here.

The successful tenderer shall bear all risks relating to the goods, notably those of loss or deterioration, up to the time when the goods are actually unloaded and

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13*Where necessary, i.e. presumably if no representative of the recipient government is present at the time of the arrival of the ship at the port of landing, the successful tenderer can also furnish the recipient with the documents in question through the designated monitoring agency.

139Idem.

140Article 15 (1) to (4) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, OJ. 204/7.

141If the successful tenderer so requests and puts forward appropriate supporting arguments, he may obtain from the Commission agreement to a change of port of shipment.

142The final destination as well as the port of landing or of transit prior to overland transport are indicated in point 16 of the notice of invitation to tender.

143Note, however, that the successful tenderer shall not have to bear the costs and charges relating to customs formalities on importation. Note also that the provisions relating to demurrage costs in case of supply free-at-port-of-shipment (at the landed stage) shall mutatis mutandis also apply in the case of supply free-at-destination.
placed in the warehouse at their destination. Consequently, Community law requires the successful tenderer to take out an appropriate insurance policy.\textsuperscript{144} The successful tenderer shall inform as soon as possible the recipient and the designated monitoring agency of the means of transport to be used for the supply, the dates of loading and shipment and the presumed date of arrival of the goods at the place specified for delivery. Furthermore, he shall send to the monitoring agency copies of the documents concerning overland transport from the port of landing.\textsuperscript{145} No later than three days prior to the arrival of the goods, he shall advise the recipient and the monitoring agency by the most rapid means available of the probable date of arrival.\textsuperscript{146}

If, after the award has been made, the Commission designates a port of shipment or a port of landing or a final destination other than those originally scheduled, the successful tenderer shall deliver the goods to the new port or the new final destination but the Commission will reach agreement with the tenderer on any decrease or increase of the costs initially determined. By submitting a duly reasoned request, the latter may, however, also be released from his obligations.\textsuperscript{147}

It will be recalled from Chapters 1 and 2 and this remained valid until 1987 that the food aid supply contracts were usually concluded between the designated intervention agency and the successful tenderer. The Commission had no contractual link with the successful tenderer. Once the contract was executed, it was in most cases the intervention agency which paid the successful tenderer and released the security. While in practice the Commission (which was responsible

\textsuperscript{144}See: Article 15 (2) of Commission Regulation (EEC) No 2200/87. The latter provision specifies in its second paragraph that this insurance policy should be of the type laid down in Article 14 (3) (a) discussed above.

\textsuperscript{145}Pursuant Article 14 (2) of Commission Regulation (EEC) No 2200/87, which according to Article 15 (1) of the same regulation is also applicable in case of supply free-at-destination, the successful tenderer shall also send the documents relating to the sea transport to the monitoring agency.


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vis-à-vis the recipient for the delivery of the food aid and eventually carried all expenses) did not seldom give the intervention agencies precise instructions on the payments to be made, the Court of Justice ruled in case 109/83, Eurico v. Commission, that the intervention agencies did not operate as agents of the Commission and had the exclusive responsibility for the payments of the successful tenderers. The logical consequence of this was of course that it was also for the intervention agencies to check whether the successful tenderer complied with the terms of the supply contract in order to decide whether payment was justified. Unfortunately, and in spite of the fact that Community law explicitly required them to do so, the intervention agencies did reportedly not always seriously check whether the undertaking executing the food aid supply contract did so in keeping with the terms of that contract. As noted in the previous section, all food aid supply contracts are since 1987, however, concluded between the successful tenderer and the Commission; the latter is now responsible for payment and thus for checking the proper execution of the supply contract. Instead of sending out its own officials to check the execution of the contracts\textsuperscript{14}, the Commission has, however, entrusted this task to specialized, private undertakings, the so-called monitoring agencies to which I already referred to above repeatedly. Regardless whether the food aid is to be supplied free-at-port-of-shipment, free-at-port-of-landing or free-at-destination, Article 16 of the Commission’s mobilization regulation of July 1987 stipulates that the designated monitoring agency shall check prior to the commencement of loading operations at the port of shipment whether the successful tenderer complies with the provisions relating to products (quality and quantity) and their packaging.\textsuperscript{149} If the mobilization

\textsuperscript{14} This would undoubtedly have been more expensive and would probably have required extra staff. Reportedly the “services” of the monitoring agencies cost the Community about 4 to 5 m ECU a year.

\textsuperscript{149} See: Article 16 (1) of Commission Regulation (EEC) No 2200/87. Note that these checks have to be carried out at a time and under conditions which make it possible to obtain all the results of analyses required, and where appropriate, the results of a second opinion, before the goods are made available in the case of delivery free-at-port-of-shipment when loading is the responsibility of the successful tenderer, or before the commencement of the loading in all other cases. Note in this respect the Court of Justice’s judgment of 18 March 1987 in Case 56/86, SA Société pour l’exportation des sucres v Office belge de l’économie et de l’agriculture (OBEA). In the latter case, the results of the quality tests carried out on a consignment of food aid in sugar for UNRWA, revealing that the sugar supplied was actually of an inferior quality, were only available after the sugar had already been shipped, the UNRWA had accepted the sugar and had even already disposed of the
concerns a processed or a packaged product, the successful tenderer shall inform (in writing or by telex) the monitoring agency at least three days in advance of the date on which the manufacturing or the packaging process is to start in order to allow the agency to carry out checks during the manufacturing or packaging process. In special circumstances, particularly where there is a danger of product substitution taking place after the checks and analyses referred to above, the monitoring agency may - having received authorisation thereto from the Commission - make additional checks during the loading operations.

Where the checks and analyses carried out before shipment show that the food aid products meet all requirements, the monitoring agency shall issue a certificate of conformity. Note, however, that in the case of supply free-at-port-of-landing and supply free-at-destination, this certificate shall be only a provisional guarantee of conformity. The final assessment of conformity takes place respectively at the port of landing and the final destination.

Where the checks and analyses carried out before shipment reveal deficiencies, the certificate of conformity is withheld. In the case of supply free-at-port-of-shipment the successful tenderer will have to replace or supplement the goods immediately. In the case of supply free-at-port-of-landing or free-at-destination, sugar. The Court ruled in this case that while the quality control must normally be carried out at the time of loading, account may be taken of the results of that control even if they are known only at a later date: that the intervention agency was in the light of the delivery of sugar of an inferior quality not required to pay the tenderer the price initially agreed on (even if all documents required for such payment had been drawn up by UNRWA); and that the forfeit of the tendering security in the present case was allowed and not in violation of the principle of proportionality.

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however, the tenderer may in principle ship the products which are either in quality or in quantity found to be deficient, but it is obvious that it is in the tenderer’s interest to replace or supplement before shipment. At the port of landing or at the final destination, the designated monitoring agency shall in any case repeat the checks already carried out before shipment. If these checks prove that the supply is satisfactory, the agency shall issue a definitive certificate of conformity; if not, a duty-substantiated written refusal to issue a certificate shall entail an obligation to replace all or part of the supplies on the part of the successful tenderer.\textsuperscript{155}

The recipient’s representative shall be invited by the monitoring undertaking to participate in the taking of samples to be used for the checks and analyses; the taking of samples shall be carried out in accordance with professional practice. The monitoring agency shall always take two extra samples which it shall keep sealed at the disposal of the Commission with a view to a possible second check and to cover the possibility of an objection being raised by the recipient and/or the successful tenderer.\textsuperscript{156} If either the successful tenderer or the recipient object to the results of the checks carried out by the monitoring agency, a second check is carried out by a service or laboratory appointed by mutual agreement of the monitoring agency, the recipient’s representative and the successful tenderer. In order to avoid delays in the making available of the goods or the loading operations, this second check shall be carried out immediately; the results of this second check shall definitively decide the matter.\textsuperscript{157} The costs of the first check shall be borne by the Community while the costs of the second check shall be borne by the losing party.\textsuperscript{158} The losing party shall also bear all expenses resulting

\textsuperscript{155}Note that Article 16 (1), fourth paragraph, of Commission Regulation (EEC) No 2200/87 requires that the final assessment of conformity shall take place in the port of landing or at the final destination in accordance with the methods of analysis in force in the Community. One wonders whether the latter will always be possible?

\textsuperscript{156}Article 16 (2) of Commission Regulation (EEC) No 2200/87 of 8 July 1989, OJ. 1987, L 204/8.


\textsuperscript{158}Note that the costs of the samples shall be borne by the successful tenderer.
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from any failure to comply with the deadline indicated in the notice of invitation to tender, including storage costs and any demurrage. Once the checks are complete and immediately following the issue of the certificate of conformity, the goods to be supplied shall be subject to customs control until such time as they have left Community territory. Although it may still be too early for a definitive evaluation of the monitoring system set up by Article 16 of the mobilization regulation, one cannot but note that the results so far have been quite impressive. Reportedly, there has been a significant drop in supplies which do not comply with the terms of the supply contract.

The Commission's mobilization regulation has also organized better the taking-over procedures. Immediately after the goods have been made available free-at-port-of-shipment, free-at-port-of-landing or free-at-destination, the successful tenderer shall present to the recipient or his representative: (1) the (definitive) certificate of conformity referred to above; (2) a certificate of origin; and (3) a pro-forma invoice establishing the value of the goods and their transfer to the recipient free of charge, and shall ask the recipient or his representative to issue a taking-over certificate containing the particulars set out in Annex III of the mobilization regulation. In the case of supply free-at-port-of-landing, the successful tenderer shall also furnish the recipient with the documents listed in Article 14 (6) discussed above. When the recipient or his representative issue a taking-over certificate, this shall be deemed to constitute acceptance of the goods. It may happen, however, that the recipient or his representative fail to issue the taking-over certificate and in that case the monitoring agency shall, at the

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160 Or to administrative control providing equivalent security.


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request of the successful tenderer and on receipt of: (1) the certificate of origin; and (2) the above mentioned pro-forma invoice, issue a certificate of acknowledgement of supply. The monitoring agency shall of course only issue such a certificate when the checks carried out at the stage laid down for the supply have been such as to permit the issue of the (definitive) certificate of conformity discussed above.\footnote{165} It needs no explanation that the possibility of the taking over and acceptance of the goods by the monitoring agency is a very useful feature; it happens not seldom, for example, that in the case of supply free-at-port-of-shipment neither the recipient nor his representative show up at the European port of shipment to issue the taking-over certificate and thus to accept the goods. The taking over and acceptance by the monitoring agency frees the successful tenderer from his responsibilities and allows the operation to go ahead as scheduled.

The taking-over certificate and the certificate of acknowledgement of supply may be issued for partial quantities but Community law does require that these partial quantities make up a substantial proportion of the quantities to be supplied.\footnote{166} At the time of taking over, the monitoring agency shall verify precisely the net quantity supplied to the recipient.\footnote{167} Note that under Community law, the quantity delivered shall be considered to be satisfactory where the net weight is, in case of bulk supplies, not more than 3\%, and, in case of packaged supplies, not more than 1\% lower than the quantities requested.\footnote{168}

Where highly perishable goods are being supplied free-at-port-of-landing or free-at-destination and the unloading is seriously effected by 'disturbances', the
Commission may decide that the monitoring agency shall issue - before the stage laid down in the notice of invitation to tender and after an appropriate check, a certificate deemed to constitute acknowledgement of the supply as regards quality and packaging. While the Community supplies as food aid little 'highly perishable' goods, this provision is nevertheless useful to the extent that it is likely to limit recourse to a 'force majeure' argumentation to justify non-compliance with the terms of the supply contract. In the case of 'disturbances' which effect the unloading, the quality and packaging of the goods will be checked before these disturbances could have had an effect on quality and packaging; if this check shows satisfactory quality and packaging, consequent deterioration in quality and packaging will not be held against the successful tenderer. One wonders, however, why Community law only provides for the situation in which 'disturbances' seriously effect the unloading; in the case of supply free-at-destination, similar 'disturbances' may also seriously effect inland transport.

It will be recalled that before 1987, it was - once the supply contract executed - in most cases the task of the intervention agency to pay the successful tenderers and to release the securities furnished by the latter. This made sense since the supply contracts were usually concluded between the intervention agencies and successful tenderers. Since 1987, the latter is no longer true. All food aid supply contracts are now between the Commission and the successful tenderers and the Commission is consequently responsible for the payment of the tenderers and the release of their securities. The Commission's mobilization regulation stipulates in its Articles 19 to 22 the conditions relating to the payment and the release of securities. One cannot but note that the latter regulation stipulates these conditions with more care and in more detail that had even been done in Community law before.


170 While Community law does not specify this concept, one could think of anything from strikes to armed conflicts and natural disasters making unloading difficult if not impossible.
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A request for payment has to be backed up by two documents which constitute 'proof' of the fact that the supply contract has been correctly executed, namely: (1) the original of the taking-over certificate, or the certificate of acknowledgement of supply; and (2) a copy of the certificate of conformity issued in respect of the stage for delivery agreed upon.\footnote{171}{Article 18 of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/9. One wonders why the Commission wants a copy of the certificate of conformity. The taking-over certificate or the certificate of acknowledgement of supply cannot be issued respectively unless there is a certificate of conformity or unless the conditions for the issue of the certificate of conformity are fulfilled.} The request for payment has to be presented within 12 months of the end of the period specified in the notice of invitation to tender\footnote{172}{I.e. the deadline for the supply indicated in point 18 of the notice of invitation to tender.}, requests presented after this deadline shall result in 10% of the payment being withheld.\footnote{173}{Article 18 (6), first paragraph, of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/9. Note, however, that in case of 'force majeure' the 10% penalty will not be applied.}

The amount to be paid to the successful tenderer shall not exceed the amount of the tender plus, where appropriate, additional costs which are not attributable to the successful tenderer.\footnote{174}{Note that the payment to the successful tenderer shall be made without prejudice to refunds or levies on export, or to the other amounts laid down by the regulations on trade in agricultural products (Article 18 (1), third paragraph, of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/9.). Note also that where the award concerns a contract of the supply of maximum quantities of a given products (See above and Article 7 (3) (h) of Commission Regulation (EEC) No 2200/87), the amount to be paid shall be that indicated in the notice of invitation to tender, plus, where appropriated additional costs which are not attributable to the tenderer (Article 18 (1), second paragraph, of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/9.).} Payment shall be made in respect of the net quantities given in the taking-over certificate or in the certificate of acknowledgement of the supply. Where the quality of the goods or the packaging is found at the supply stage not to correspond exactly to the requirements laid down, though without being such as to have prevented acceptance of the goods or acknowledgement of the supply, drawback may be applied when the amount to be paid is calculated.\footnote{175}{Article 18 (2) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, O.J. 1987, L 204/9.} At the request of the successful tenderer, partial payment may be made namely in proportion to the quantities of products in respect of which the supporting
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documents (original of the taking-over certificate or certificate of acknowledgement of the supply, and copy of the certificate of conformity) have been provided.\textsuperscript{176} Note that in the case of supply free-at-port-of-landing or free-at-destination, the successful tenderer may request an advance payment of maximum 90%. Such a payment shall, however, only be made upon presentation of: (1) the certificate of conformity issued prior to shipment; (2) a copy of the bill of lading for the port of destination; (3) a copy of the marine insurance certificate; and (4) evidence of the lodging of a security, in favour of the Commission, for an amount equal to the amount of the advance plus 10%.\textsuperscript{177}

As a rule the successful tenderer shall bear all the costs incurred in respect of the supply of goods to the stage specified in the notice of invitation to tender. As I already mentioned above, he shall, however, not have to bear additional costs not attributable to him. The latter costs shall be refunded by the Commission, which shall assess them on the basis of appropriate supporting documents.\textsuperscript{178} On the


\textsuperscript{177}Article 18(5) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/9. The security shall be lodged in accordance with the same rules as applicable to the delivery security (See: Article 12 (2), second paragraph.). Pursuant to Article 22 (3), this security shall be released: (a) where definitive entitlement to the amount advanced has been established; and (b) where the advance has been refunded by the successful tenderer. While Community legislation remains silent on this point, it seems obvious that the security can also be withheld or forfeit in the same circumstances described below for the delivery security. See on this point, comments made below with regard to Case 172/89, Vandemoortele N.V. c. Commission.

\textsuperscript{178}Article 19(1) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/9-10. Such additional costs shall be:

(a) in the case of supply free-at-port-of-shipment, costs arising as a result of the vessel being made available at a date which makes it impossible to comply with the period specified in the notice of invitation to tender, or as a result of an extension of the shipment period in accordance with Article 13 (5), or else from the fact that the vessel is unsuitable for the cargo. Excluding any administrative costs, the additional costs shall be: (1) storage and insurance costs; and (2) financing costs, on the basis of the rate obtaining in the Member State of which the currency has been adopted for payment. Such costs shall be calculated for the period beginning on the day following the last day of the period specified in the notice of invitation to tender and ending either on the date on which the goods are made available or loading is effectively commenced, as appropriate, or at the end of the period referred to in Article 13 (5) in the event that the successful tenderer is released from his obligations. (b) in the case of supply free-at-port-of-landing or free-at-destination, the storage, insurance and financing costs entailed by delays exceeding 15 days between the goods being made available or the completion of unloading or delivery in warehouse at their destination, whichever is appropriate, and the issue of the taking-over certificate shall be reimbursed to the successful tenderer, on production of supporting documents. The financing costs shall be assessed on the basis of the rates obtaining in the Member States in which the customs formalities are carried out. (c) for all types of supply, unforeseen expenses which have not been covered in advance by an
contrary, if for reasons which are attributable to the successful tenderer, the goods have not been supplied within 60 days following the date of expiry of the period specified for supply free-at-port-of-shipment or the date of expiry of the period for landing or delivery to the destination in cases other than supply free-at-port-of-shipment, the successful tenderer shall bear all the financial consequences resulting from total or partial failure to supply the goods on the terms stipulated. One may wonder whether a sixty days 'grace' period is not somewhat excessive? Community law stipulates that the financial consequences to be borne by the contractor may include the costs incurred by the recipient as a direct result of the failure to carry out the supply, such as the cost of dead freight by sea or overland, the rent of warehouses or storage areas and related insurance charges. The question arises whether these financial consequences may also include the difference in price between the contract which was not executed and the new contract which was consequently concluded. It should be noted, however, that if the successful tenderer's failure to supply the goods in time or, more generally, to comply with any other condition of the supply contract is a genuine case of 'force majeure', the additional costs shall not be borne by the successful tenderer but by the Commission.

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180 'Grace' period is not really the proper term since as I will note below other sanctions may apply during this period.
182 See the facts in Case 79/87, Office Belge de l'Économie et de l'Agriculture (OBEA) v. Etablissements Soulès & Cie S.A. The Court was, however, not called to rule on this question.
183 Article 21 of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/10. It is up to the Commission to assess claimed cases of 'force majeure'. Before the entry into force of the mobilization regulation it was up to the intervention agency to accept or reject the existence of 'force majeure' in the case of non-compliance with the supply contract.
When the successful tenderer has carried out the supply in accordance with all his obligations\(^1\), the tendering security mentioned above shall be released in full.\(^2\)

Note, however, that the Court of Justice in its decision of 27 November 1986 in Case 21/85, *A. Maas & Co. N.V. v. Bundesanstalt für landwirtschaftliche Marktordnung*, ruled that:

> [...] a successful tenderer does not infringe his obligations where he very slightly exceeds the shipment period or uses ships engaged in liner trading which are more than 15 years old but which are substantially as reliable as ships less than 15 years old.\(^3\)

The Court interpreted in this decision Commission Regulation (EEC) No 1974/80. This Regulation is no longer applicable but it could be argued that the principle which the Court advances in its decision in the case 21/85, namely that marginal deviations from the terms of the supply contract do not constitute an infringement of the obligations and does therefore not result in the forfeit of the security, is still valid.

Note, however, that the presently applicable mobilization regulation stipulates, without making an exception for marginal deviations, that the delivery security shall be withheld on a cumulative basis as a sanction:

- in proportion to the percentage of the quantities not delivered;
- 20% of the cost of sea transport as specified in the tender where the vessel chartered by the successful tenderer for the purposes of the supply does not meet the conditions stipulated in Article 14 (2);
- 0.1% of the total value of the tender for each day's delay in making the goods available or in shipment in the case of supply free-at-port-of-shipment, or in arrival at the port of landing in the case of supply free-at-port-of-landing or in the arrival at the

\(^1\) Or if he has been released from his obligations pursuant Article 13 (5), third paragraph or Article 19 (2) second paragraph: or if he has not carried out the supply for reasons of 'force majeure' recognized by the Commission; or if he lodged the security on the advance provided for in Article 18 (5).


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destination in the case of supply free-at-destination.187

The security will, however, not be withheld, if the failure which has taken place is not attributable to the successful tenderer and does not lead to a payment under insurance cover.188

In order to avoid charges of disproportionality which were at the basis of the Court's decision in Case 21/85, A. Maas & Co. N.V. v. Bundesanstalt für landwirtschaftliche Marktordnung, the mobilization regulation now reserves the full forfeiture of the security to these cases in which the Commission establishes that the supply has not been carried out.189

The new rules on the release of the securities have, however, not prevented further disputes. It is obvious that the provision that the security will not be withheld if the failure which has taken place is not attributable to the successful tenderer and does not lead to payment under insurance cover will inevitably continue to give rise to disputes.190 On the other hand the new rules have some obvious lacuna which have indirectly already given rise to disputes. One should in this context in particular note the fact that Article 22 (3) of the mobilization regulation stipulates with regard to the security on the advance when the latter shall be released but fails to indicate when it shall be withheld or

187Article 22 (2) (b) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/10. Note that the security shall not be withheld if the failure which has taken place (non-delivery/late delivery) is not attributable to the successful tenderer and does not lead to a payment under insurance cover. Note also that this provision on the withholding of a part of the delivery security reflects the Court of Justice's judgment of 27 November 1986 in Case 21/85, A. Maas & Co. N.V. v. Bundesanstalt für landwirtschaftliche Marktordnung, in which the Court ruled that Article 20 (1), second indent of Regulation (EEC) No 1974/80 infringed the principle of proportionality in so far as its effect is the total forfeiture of the security even in the case of a relatively minor breach of the supply conditions.

188See above the argumentation of Haniel in Case C-226/89, Haniel Spedition GmbH, Duisburg v. Commission, not yet decided.

189Article 22 (2) (c) of Commission Regulation (EEC) No 2200/87 of 8 July 1987, OJ. 1987, L 204/11. See also Article 20, second paragraph, of the same regulation.

190See e.g.: Case C-226/89, Haniel Spedition GmbH, Duisburg v. Commission, not yet decided.
It seems obvious that Article 22 (3) should stipulate that the security on the advance can be partially withheld or totally forfeited for the same reasons and in the same manner as stipulated in Article 22 (2) for the delivery security. This is only logical since the security on the advance actually replaces the delivery security and while it has a broader function, its function includes the function of the delivery security.

The Commission shall pay the successful tenderer within three months of the date on which the latter submitted his request for payment accompanied by all supporting documents. Payment later than three months of that date - when not justified by additional inspections and investigations for the purpose of checking the implementation in question, shall attract post-maturity interest at the Commission's normal rate. Note, however, that pursuant Article 18 (1), third paragraph, of the mobilization regulation already referred to above, this payment by the Commission

191See e.g.: Case C- 172/89, Vandemoortele N.V. v. Commission, not yet decided. In April 1988, Vandemoortele N.V. had been awarded by the Commission a contract for the supply of 2000 tonnes of colza oil to Bangladesh, free-at-port-of-landing at the landed stage. The delivery deadline was fixed on 31 July 1988. By letter of 22 June 1988, Vandemoortele N.V. informed the Commission that the ship carrying the colza oil had motor problems and that, since it was impossible to find another ship, the vegetable oil would not arrive at the port of landing before the end of July. On 26 July 1988, the Commission replied that the delay in question was a normal commercial risk to be borne by the successful tenderer and that this was not a case of 'force majeure'. According to the definitive certificate of conformity, the ship arrived in the port of landing on 28 September 1988 and as unloaded between 9 and 26 October 1988. On 30 September 1988, the Commission released the delivery security because it was replaced by a security to guarantee the advance Vandemoortele received. On 30 January 1989, the Commission released the security to guarantee the advance Vandemoortele N.V. had received and paid the latter the amount still due, minus 56,463 ECU for the late delivery (59 days). Vandemoortele argued, however, that the Commission could not withhold part of the amount agreed upon for the supply because of late delivery but that the Commission could only have withheld part of the delivery security as is stipulated in Article 22 (2) of the mobilization regulation. The latter article allows the Commission to withhold 1/1000 of the tender for each day's delay. The sum withheld corresponded indeed to 1/1000 of the tender of 56 days delay. The Commission argued, however, that Article 22 (2) of the mobilization regulation does not require that the withholding should be done at the time of the release of the delivery guarantee. The Commission pointed out that if Vandemoortele's argumentation is accepted, the withholding of part of the delivery security would no longer be possible in the case of supply free-at-port-of-landing or free-at-destination and as is usually the case - the successful tenderer requested an advance. Furthermore, the Commission argued that the withholding of 1/1000 of the tender for each day's delay is in fact the only sanction possible during the first 60 days after the delivery deadline. Finally, the Commission pointed out that the withholding on the amount due rather than on the security had also for the successful tenderer advantages; its bank would not know that it had to pay a penalty for late delivery.

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does not include export refunds. The latter are still paid by the national intervention agencies according to the CAP rules on exports.

It should be recalled at this point that as, I noted at the start of this Section, all the above, i.e. the (standard) obligations for the successful tenderer and the conditions relating to the supply of products (including the conditions relating to payment and the release of securities), does not apply when the food aid products are purchased on the market of a developing country. The mobilization regulation explicitly stipulates that it only concerns 'general rules for the mobilization in the Community of products to be supplied as Community food aid'. When the food aid products are purchased on the market of a developing country, the obligations of the contractor\(^3\) as well as the conditions relating to the supply of products are presumably determined for each and every contract. This situation would be justifiable if the number of such purchases on the market of developing countries would be negligible but the latter is not the case. Already about 10% of the Community's food aid is mobilized on the market of a developing country and this percentage could well increase in the future.

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 was awarded handed over the food aid to the recipient, and this could be in the port of shipment, in the port of landing or at the place of final destination, the food aid supply agreement between the Community and the food aid recipient stipulates what the recipient is to do with the aid received. The terms and conditions of the food aid supply agreements were already discussed above.\(^4\) While monitoring the compliance with these

\(^3\) In Section 3.6.3 of this Chapter, I already noted that it is not clear how the contract is awarded

\(^4\) See: Section 3.4.3 of this Chapter.
terms and conditions of the supply agreements and the evaluation of the effectiveness gradually became more important for the Community, it was during the seventies and the early eighties on the whole badly informed about the use the recipients really made of its food aid and did not regularly evaluate the effectiveness of its food aid. During the period 1983-89, the Commission made additional efforts to monitor the use of its food aid and to evaluate its impact; it carried out an increasing number of on-the-spot checks and its Delegations got ever more involved in food aid operations. In April and May 1985, Commissioner Natali - asked by the European Council of March 1985 to report on the implementation of the Dublin Plan - went himself on a number of 'inspection' trips to African countries, including Ethiopia, Somalia, Niger, Mali, Mauritania and Sudan. Since the entry into force of the second framework regulation, Community law explicitly requires the Commission to monitor and evaluate the use of Community food aid on a regular basis. Article 11 of the second framework regulation stipulates:

The Commission shall undertake regular evaluations of significant food aid operations to establish whether the objectives defined in the appraisal of those operations have been met and to provide guidelines for improving the effectiveness of future operations. The evaluation reports shall be made available to the Committee.

Consequently, the Commission has undertaken a number of evaluations of the significant Community food aid operations; it evaluated, for example the food aid operations in favour of Nicaragua, Senegal and Tunisia. Note, however, that in its Resolution of 21 November 1989 the Council called also for an annual assessment of the Community's food aid programme as a whole.

Also the Court of Auditors undertook several audits to check whether the recipients used Community food aid and resulting counterpart funds in compliance

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195 In its Special Report 1/87, the Court of Auditors noted, however, that the Commission delegates in the recipient countries are insufficiently involved in the in situ implementation of Community food aid (COURT OF AUDITORS, Special Report 1/87, 13.).

196 Bull. EC 4-1985/49 and Bull. EC 5-1985/73.

with the terms and conditions of the supply agreements. In Section 3.4.3 of this
Chapter, I noted already the Court's investigations into the use of counterpart
funds (resulting in Special Report 7/87) and Operation Flood II (resulting in
Special Report 6/87) but the Court also carried out audits in 1985 and 1986, in
Niger, Burkina Faso and Egypt\textsuperscript{18}, and in 1988 in Senegal, Mauritania, Magi,
Zambia, Mozambique, Tunisia, Pakistan, and Bangladesh.\textsuperscript{19}
It is beyond doubt that the Community has in recent years significantly improved
its monitoring and evaluation record and that this cannot but help the Community
to increase the effectiveness of its food aid as a developmental and relief
instrument. The biggest constraint on further progress in this respect is
undoubtedly lack of staff to carry out the monitoring and evaluation operations but
the Commission could probably entrust at least the evaluations to independent
consultants.

\textsuperscript{18}\textsc{COURT OF AUDITORS,} Annual Report 1986, 98.
\textsuperscript{19}\textsc{COURT OF AUDITORS,} Annual Report 1988, 145.
Summary and conclusions:

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

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. In its basic food aid legislation, 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, which extent Community food aid law may still be subject to changes that which would make of Community food aid an (even more) effective instrument for development and relief?

The economic and social development of Third World countries and humanitarian relief to disaster victims have definitely not always been the primary objectives, let alone the sole objectives, of the Community’s food aid policy. Originally the disposal of unplanned agricultural surpluses was indisputably the main objective and Community law on food aid - and to some extent the absence of such law - both reflected and was instrumental in achieving this surplus disposal objective. Other objectives were not totally absent but the balance of compromise between the objectives was clearly in favour of surplus disposal. Since all then Member States had an interest in using food aid as a surplus disposal instrument, there was a consensus among them on the primary objective of the food aid policy.

In the mid-seventies - both as a result of the world food crisis and the accession of the United Kingdom - this consensus among the Member States on the primary food aid policy objective was lost. With the Commission’s 1974 Memorandum, a long internal debate on the objectives of the Community’s food aid policy was
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initiated. This debate would lead in March 1977 to an informal agreement in principle among the Member States in which they identified the economic and social development of the recipient countries and humanitarian relief in emergencies as the objectives of the Community food aid policy. It will be noted with some surprise that surplus disposal, the main raison d'être of Community food aid so far was not explicitly identified as an objective of the Community's food aid policy. The reason for this absence was 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 explicitly stated developmental and humanitarian objectives. These Member States agreed to the latter policy objectives because they realized that a blunt refusal of any change to the Community's food aid policy might well jeopardized 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 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 among developing countries) was best and most effectively pursued in a low key, implicit manner.

During the following years, this agreement in principle was painstakingly translated into concrete policy changes. Already in the late seventies, there was a gradual shift in the balance of compromise between the food aid policy objectives in favour of the developmental and humanitarian objectives. A real breakthrough was, however, only realized in the early eighties and this not in the least as a result of the European Parliament's campaign against hunger in the world. In December 1982, the Council adopted the first food aid framework regulation which explicitly stated the economic and social development of Third World countries and humanitarian relief to disaster victims to be the objectives of the food aid policy. Although not explicitly stated, the Community unquestionably also continued to pursue other objectives and in particular the promotion of domestic agricultural interests mainly through the disposal of unplanned surpluses. Community food aid law reflected and was instrumental in achieving both the stated and unstated food
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...aid policy objectives.

By the time the first food aid framework regulation was adopted, however, the compromise between policy objectives it reflected had already been overtaken by events and there was a growing consensus that further changes to both substantive and procedural elements of the food aid policy were called for. The 1984-85 African crisis and Parliament’s strong opposition to the procedural elements of the framework regulation working as catalysts, this eventually led to the adoption of the second food aid framework regulation of 22 December 1986 and the food aid mobilization regulation of 8 July 1987. The present food aid policy, as laid down in these two regulations, is undoubtedly in the very first place a policy aimed at contributing to the economic and social development of Third World countries and giving humanitarian relief to disaster victims. As in the seventies when the balance of compromise was strikingly in favour of the promotion of domestic agricultural interests and in particular surplus disposal, the present Community food aid policy and legislation remain, however, the outcome of a compromise between various objectives pursued and interests involved. Besides the economic and social development and humanitarian relief, other objectives, and in the very first place the promotion of domestic agricultural interests remain relevant and still constitute a constraint on realizing fully the role food aid could play in the development of Third World countries and humanitarian relief. Unlike United States food aid law, for example, where the competing interests and objectives are clearly spelled out and reflected in substantive and procedural provisions, Community food aid law rather conceals than reveals. The policy objectives stated in currently applicable framework regulation only refer to developmental and humanitarian objectives while it is obvious from a detailed study of the substantive provisions that other objectives are still relevant. Some key substantive provisions cannot be understood but as the reflection of a compromise between the stated and unstated objectives. This is in particular true for the provision stipulating that Community food aid should as a rule be mobilized on the Community market, or what I called, the requirement of Community origin. Furthermore, it is very important to note that the existence of unstated policy objectives is not always reflected in
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Community food aid legislation but emerges only from the manner in which this legislation is implemented. A good illustration of the latter is the limited number of multi-annual food aid commitments in particular of food aid in cereals in spite of the explicit mandate in the second framework regulation to undertake such commitments and the need for such commitments from a developmental point of view. The latter comments should, however, not obscure the fact that Community food aid is now without any doubt predominantly an instrument for economic and social development and humanitarian relief. The current Community food aid policy largely meets the requirements, discussed in the Introduction of this study, a food aid policy has to meet in order to be a useful instrument for development and relief. The question which remains is whether the balance of compromise between stated and unstated objectives can shift even more in favour of the developmental and humanitarian objectives. What are the prospects for and constraints on further changes in Community food aid law which would make of Community food aid an even more effective instrument for development and relief?

Let us examine this question for the various aspects of Community food aid policy and law against the background of the evolution so far.

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

The Community now supplies a wide range of products. The list of products the Community can supply as food aid covers basically all nutritional needs of the recipients and there is certainly no pressing need to expand this list any further. The exclusive focus on a few surplus commodities, such as wheat, skimmed milk powder and butteroil, characterising Community food aid throughout most of the seventies has been gradually but successfully remedied. After the need for diversification had been recognized repeatedly by the Council, the Community
hesitantly started to diversify its food aid basket at the end of the seventies; in spite of the absence of a legal basis (except for food aid in cereals) and the disputes this gave rise to, the diversification became notably stronger in the early eighties. The first framework regulation of December 1982, finally, gave a firm legal basis to food aid in non-traditional products. Under this regulation, the Council decided in the context of the annual implementing regulation on a list of products the Community could supply as food aid. While already quite diversified and enabling the Community to cover most nutritional needs when first established in 1983, this list was supplemented with new products annually. Whether this further diversification was always motivated by the wish to supply to the recipient populations products adapted to the local needs and dietary habits, was, however, not that clear. In some instances, the promotion of domestic agricultural interests seemed to have played a role too. With regard to the products which could be included on this list the first framework regulation in fact stipulated that the Council should consider the situation of the Community’s stocks. The first framework regulation did not require that the Community’s food aid products met the specific needs of the recipient population. Shifting the policy’s balance of compromise further in favour of development and humanitarian relief, the second framework regulation, on the one hand, drops the explicit reference to the Community’s agricultural situation and, on the other hand, requires in its Article 2 (3) that: “Products supplied as food aid shall as far as possible fit the dietary habits of the recipient population and have no adverse effects on the recipient countries.” Under the second framework regulation, it is also no longer the Council but the Commission which, under the supervision of the Food Aid Committee, decides on the list of food aid products. It should be noted, however, that in spite of these substantive and procedural innovations, in practice very little changed: no product on the list was dropped and the some of the new products which were added raised in fact the question whether their inclusion was not at least partially motivated by the promotion of domestic agricultural interests. In 1989, for example, the Commission added inter alia groundnuts (peanuts), cheese and pigmeat to the list and it is no secret that the latter two products were included only on the militant insistence of respectively Greece and Denmark and
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their agricultural lobbies. It is clear that the Commission may find it difficult to resist Member States' pressure to include certain products on the products' list. It is often hard to argue that a product can under no circumstance suit the needs of a food aid recipient. It should be stressed, however, that the inclusion on the products' list does not mean that a product will also actually be supplied. For each specific food aid operation, the Commission will have to assess whether a particular product shall as far as possible fit the dietary habits of the recipient population and have no adverse effects on the recipient countries. Consequently, the Commission may never supply food aid in pigmeat.

It should be observed, however, that among the products the Community actually supplies as food aid, the dominant products, wheat, skimmed milk powder, butteroil, vegetable oil, sugar and rice were at least until recently all products of which the Community had important surpluses and the use of which in the context of food aid operations definitely contributed to the alleviation of the CAP's surplus problems. As for most food aid donors, the commodity composition of the food aid basket is also for the Community still one of the areas of greatest friction between, on the one hand, developmental and humanitarian concerns and, on the other hand, domestic surplus disposal pressures or more general domestic agricultural interests even if this conflict is no longer explicitly reflected in Community food aid law. In the context of the present food aid policy, the needs of the recipients may well be the main consideration for the choice of the Community's food aid products but although the second framework regulation does no longer explicitly require that the decision on the Community's food aid products takes into account the Community's stock situation or more generally the Community's agricultural interests, it would be naive to argue and difficult to reconcile with the basic facts that the latter is no longer a factor of some importance. It is true that the considerable reduction or even quasi-disappearance of surplus stocks of certain food aid products, and in particular dairy products, over the last two years has not led to the elimination of these products from the Community's food aid basket, and that this would point to the contrary. It should be noted, however, that (while in view of the existence of multi-annual food aid
commitments, such an immediate elimination was not possible anyway) the low stock situation has been with us for only a very short time and that it remains to be seen what the impact of a prolonged absence or quasi-absence of surpluses will be on the composition of the Community's food aid basket. Any how, I do not argue that the stock situation would still be the main consideration when deciding on the Community's food aid products; I merely argue that it is still a factor of some importance. In this context, it deserves to be stressed, that the use of surplus products is not necessarily incompatible with the needs of recipients. Some food aid experts argue that surplus commodities of temperate climatic zones should be excluded from food aid baskets because they contribute towards irreversible shifts in consumer tastes for food products which cannot be produced locally (or of which the local production cannot but be very limited) and therefore increase the import needs. Wheat, the Community's main food aid product, is undoubtedly a prime example of such a product but it should be observed that the recipient countries themselves request wheat rather than cereals which can be produced locally such as sorghum, white maize or millet. For whatever reason and by whosoever (historical) fault, there is in many recipient countries a genuine need for wheat, which those countries can only partially cover by commercial imports. Should the Community ignore this need and supply only products which can be grown locally? In addition, one should consider that donors would never be able to supply products such as sorghum, white maize and millet in similar quantities as they now supply of wheat. At present, these quantities are just not available. Surplus products can in many cases meet the needs of the recipients but one should always be careful that when a surplus product is supplied it is done so in the very first place because this meets the needs of the recipient and not because this meets the needs of European farmers. Therefore, it may be useful to sharpen the wording of Article 2 (3) of the second framework regulation, quoted above, by dropping the words 'as far as possible'. Another useful addition to the present legislation may be a requirement to consider the cost-effectiveness of products when deciding on the products to be supplied as food aid. Certain Community surplus products are in comparison to substitute products very costly for the impact achieved. Agricultural lobbies may nevertheless push for their use but it is clear
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that a genuinely development and relief oriented food aid policy should avoid the use of such products.

During the seventies, Community legislation on the origin of the products supplied as food aid was either based on or formed part of the regulations on the common organization of the markets in the relevant products. Clearly part of the CAP legislation, it is all but surprising that these regulations required that common agricultural considerations to be at the basis of each food aid mobilization decision. For cereals, the Commission was to consider the situation on the market before taking a mobilization decision. Depending on the market situation, the cereals were taken from an intervention stock, bought on a (regional) market with a surplus production, or bought on the Community market as a whole. Community law did not rank these possible origins but the procedural mechanism put into place, namely the involvement of the CAP Management Committee for Cereals as well as the fact that the Commission decision on the mobilization conditions was prepared by DG VI made sure that food aid did function as a market intervention instrument whenever necessary. For dairy products, Community law required that these products were as a rule taken from the intervention stocks and only when that was impossible purchased on the Community market. For cereals and sugar, Community law provided for the possibility to mobilize products on the world market in respectively 'exceptional circumstances' and 'in the case of shortages of the Community market'. Until the late seventies, however, the Community bought only once a food aid product on the world market. As from 1978 onwards, however, purchases of food aid products outside the Community, and in particular on the market of a developing country (triangular operations) became gradually more common also for products other than cereals and sugar in spite of the absence of a legal basis for such triangular operations although it should be stressed that the total quantities involved always remained marginal.

The first framework regulation stipulated as a general rule that: "The products shall be mobilized in accordance with the rules and procedures laid down under the common organizations of the markets" and thus confirmed the legislation which
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had been applied so far. The regulation explicitly allowed, however, for the mobilization of food aid products outside the Community and in particular in a (neighbouring) developing country in case of emergency or when the product was not available on the Community market. The first framework regulation stipulated implicitly but unmistakenly a requirement of Community origin of the products supplied as Community food aid.

Marking a dramatic shift in the balance of compromise between the food aid policy objectives in favour of development and humanitarian relief, the second framework regulation drops all reference to the CAP rules and procedures. This break with the common agricultural policy is, however, all but complete. The continued relevance of the promotion of domestic agricultural interests is clearly indicated by the introduction of an explicit requirement of Community origin. Article 3 of the present framework regulation stipulates that: "Products shall normally be mobilized on the Community market." It should immediately be noted that, as under the first framework regulation, this requirement is not absolute and in fact the possibility of mobilizing food aid outside the Community has been considerably extended. Food aid can now be mobilized not only in an other developing country but also in the recipient country itself and this not only in case of emergency or when the product is not available on the Community market but also - a number of conditions being fulfilled - when stocks or surpluses are in fact available in a developing country. It should be noted, however, that in spite of the considerable extension of the possibilities to undertake triangular operations and local purchases, such operations still represent at present not yet 10 % of all food aid operations. It should be observed that while Article 3 expands the possibilities for triangular operations and local purchases, it also explicitly stipulates, however, that such operations and purchases should remain in the aggregate at a level compatible with the principle that aid should be mobilized on the Community market, which the facts seem to indicate a very low level. This limitation and more generally the fact that food aid products cannot be purchased on the world market as such, i.e. including the market of other developed countries such as the United States and Canada, clearly illustrates the continued relevance of domestic agricultural interests in the context of today's food aid policy. An
exclusively development and relief oriented food aid policy would quite obviously
endeavour to optimize within the given budgetary constraints both the quality and
quantity of the food aid supplied. The requirement of Community origin excludes
such an optimization of the quality and the quantity. Buying on the world market
would normally allow the Community to supply far more food aid (in view of the
lower prices) and would also allow it better to supply products fitting the dietary
habits of the recipients. One should, however, have no illusions in this respect.
The requirement of Community origin is one of the pillars of the present food aid
policy and an essential element of the present compromise: it guarantees that
Community food aid also promotes Community agricultural interests; without this
requirement, this would be far less the case and the political support for the food
aid policy would crumble. It is obvious that, for example, France, which now
supplies most of the wheat, Italy, which supplies all the rice, and the Benelux and
Germany which supply most of the dairy products would never accept the
requirement of Community origin to be dropped. If the Community food aid
policy is to survive in its present form and size, the requirement of Community
origin is to stay. This does not mean, however, that the requirement cannot be
softened in the future, in particular by expanding the practical possibilities for
triangular operations. Recent studies have confirmed the advantages of triangular
operations: in comparison with 'normal' food aid operations, triangular operations
are at least on paper often more cost-effective, their delivery delays are shorter
and they allow for products better adapted to the local dietary habits. In practice,
however, triangular operations prove not seldom to be problematic; the local prices
are sometimes quite high, it is often difficult to find experienced operators in the
developing countries, the rural infrastructures are often inadequate and the
products which are available are not necessarily those demanded by the recipient
countries. Some have argued therefore that it is not really feasible to increase
triangular operations beyond the present level. One could also argue, however,
that the Community, as an integral part of its food aid policy, should make an
effort to overcome some of the limitations on triangular operations, such as the
lack of experienced operators and (more ambitiously) the inadequate rural
infrastructures. This will, however, come neither cheap nor easy. To encourage
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such a policy development, Community food aid law could, however, include a provision stipulating that the Commission, within the limits of the requirement of Community origin, would endeavour to maximize the number of triangular operations and local purchases. Furthermore, it may well be acceptable to the Member States that Community food aid legislation would stipulate, as it did for cereals and sugar until the second framework regulation, that in exceptional circumstances or when the product is not available on the Community market but always within the limits of the requirement of Community origin, the Community food aid products may be purchased on the world market adding perhaps that in these cases preference should always be given to purchases on the market of a developing country. The Community's food aid policy would benefit from this additional flexibility.

The quality of the products supplied as food aid has always been a sore point. Although the total quantity of food aid of disputed quality was 'relatively' small in comparison to the total quantity supplied, such supplies were evidently 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 recipients who found long awaited food unfit for consumption. Furthermore, it is unfortunately quite likely that there were more mishaps than were ever reported by the recipients; it is said that recipients were sometimes hesitant to complain about the quality of a 'gift' and certainly did not always have the organizational and technical means to establish the quality of supplies in due time and pursue complaints when warranted. It is important to underline that Community law did certainly not allow for such supplies; it usually required food aid products to be of the same quality as customary in Community trade and/or required for sales to the intervention agencies. Since 1987, the standard quality requirements for food aid products are laid down in a Commission Notice of 14 August to which specific mobilization decisions usually refer. These standard requirements differ, however, in little from the requirements usually stipulated before 1987.

The problems with the quality of Community food aid in the past had basically three causes: (1) the insufficient quality control; (2) the inappropriate packaging;
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and (3) the improper transportation.

(1) Quality control of most food aid deliveries was until recently entrusted to the national intervention agencies and while their obligations in this respect were defined more precisely over the years, numerous mishaps seem to indicate that these national agencies did - for various reasons - not do a proper job. It is said that in a number of countries the intervention agencies were "too close" to the food aid contractors to entrust them with the quality control. Certain is that for intervention agencies food aid operations constituted merely an activity of secondary importance to which they dedicated little attention and resources. It should be noted, however, that also the Commission reportedly did for many years little to verify whether the intervention agencies fulfilled their obligations in this respect. As from 1980, the Budget provided for modest appropriations for quality control of the products supplied as food aid but these appropriations were hardly used. In view of the fact that the intervention agencies could often not be relied upon to ensure the quality of the products supplied, it is hardly surprising, however, that the Commission gradually started to carry out more and more quality controls itself and an ever larger percentage of the appropriations provided to this end was used. Arguing that there was no legal basis for the Commission to do so, some intervention agencies, however, systematically hindered the execution of such checks. Furthermore, it should be noted that the Community legislation on quality control was very incomplete and full of gaps. It was obvious that if the Community wanted to guarantee the quality of all its food aid, a different and all enclosing system of quality control would have to be set up. The currently applicable Article 16 of Commission Regulation (EEC) No 2200/87 seems to allow the Community to take a giant step in this direction. Excluding the CAP's national intervention agencies from the process, the Commission has entrusted the quality control of all food aid products mobilized within the Community to so-called monitoring agencies, specialized private undertakings, which according to a well worked-out procedure carry out all necessary checks. Reportedly, this new quality control system has been a remarkable success, virtually eliminating food aid supplies of sub-standard quality. The new system has
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been operational for too short a time, however, to draw any definitive conclusions. Furthermore, it should be noted that this new system is not applicable to the 10% of food aid mobilized in developing countries.

(2) As many incidents of torn milk powder bags and leaking butteroil cans demonstrated, the Community's packaging requirements (often the requirements applicable for public storage in the Community) were, it seems, not strict enough, or more precisely, did insufficiently take into account the particular and often very harsh unloading, storage, inland transport and distribution conditions in the recipient countries. A strong bag in Europe is often a flimsy bag in Africa. Community legislation allowed that in exceptional cases specific packaging requirements were laid down for skimmed milk powder but virtually no use was made of this possibility. The extra cost of more sturdy and/or appropriate packaging may well explain the reluctance in this respect. Furthermore, the Community's requirements regarding the markings on the bags of cereals and skimmed milk powder and the cans of butteroil not seldom gave rise to critical comments. For skimmed milk powder, for example, the Court of Auditors repeatedly criticized the absence of instructions for the use, an expiry date and an uncoded date of manufacture. Since 1987, standard packaging and marking requirements are laid down in the Commission's Notice of 14 August 1987 to which individual mobilization decisions almost always refer. It should be noted, however, that in particular the standard packaging requirements differ in little from the requirements commonly stipulated before 1987. While Community food aid legislation does not exclude the use of better, sturdier packaging, it does also not explicitly require it. One could therefore argue that the Community still fails to ensure that its food aid is packed properly and the risk of quality loss minimized. One could, however, also argue that packaging can - at reasonable cost - not possibly be sturdy enough to withstand the truly extreme conditions to which it is sometimes exposed in developing countries. Rather than spending fortunes on all-proof packaging, it undoubtedly makes more sense to grant food aid recipients financial and technical support to upgrade their unloading, storage and inland transport facilities. In this respect, it deserves to be noted that the Community
pursuant to Council Regulation (EEC) No 2507/88 and as an integral part of its food aid policy has recently started to grant financial aid for the improvement of storage facilities in food aid recipient countries with the aim to preserve the quality of Community food aid after arrival. I would like to underline, however, that Community food aid packaging requirements should at least be as strict as the requirements customary in commercial transactions. At the moment this is reportedly not always the case yet and it may be useful for Community food aid legislation to include such a norm. With regard to the markings on the bags and cans of food aid, it may be noted on the one hand that some improvements have been made (e.g. uncoded date of manufacture on milk powder bags) and, on the other hand, that some criticism is now obsolete (e.g. instructions for use on milk powder bags make little sense when milk powder is no longer directly supplied to the consumer) or has always been ill-informed (e.g. the expiry date of a product depends too much on the specific storage conditions to mention on the packaging). It should finally be observed that the monitoring agencies referred to above will check the conformity of the packaging and markings with the relevant requirements and that one therefore now has a solid guarantee that the packaging and markings will in fact also meet the latter requirements.

3) With regard to the shipment of the food aid, it was only in 1980 for food aid in cereals and in 1983 for food aid in dairy products that Community law laid down minimum requirements regarding the vessels to be used for food aid shipments financed by the Community. It cannot come as a surprise that in the absence of any restrictions on the contractors as to the choice of the vessels, the latter often turned to shipping companies offering the cheapest rates without taking into account seaworthiness or technical suitability for carrying the food aid products of the vessels used. This was in particular the case because much of the food aid was supplied cif which meant that the contractor only carried the risks of loss of and damage to the goods up to the port of shipment. The 1980 and 1983 legislation improved the situation considerably; the number of reported mishaps went down significantly. The currently applicable requirements are laid down in Article 14 (2) of Commission Regulation (EEC) No 2200/87. This article provides
for similar requirements concerning the sea-worthiness and suitability of the vessels as the 1980 and 1983 legislation. In addition, however, this article, reflecting a desperate lobbying effort from the part of Community ship-owners, gives - in the Commission's interpretation of this provision (!) - the possibility to exclude from Community food aid shipping during the validity of a Council decision taken in the context of the Community's maritime transport policy non-Community shipping companies whose practices caused injury to Community ship-owners. Community ship-owners really wanted (and still want) exclusivity over food aid shipping but this the Commission was unwilling to accept on political, financial and practical grounds. Furthermore, it should be noted that the interpretation given by the Commission to the above provision has resulted in a situation in which it has been of no practical relevance until now. This is to be welcomed because the exclusion of non-Community shippers for reasons not linked to the quality of their services will only increase the price of transport and thus reduce the number of operations the Community will be able to undertake. Finally, it is important to note that since 1987 no Community food aid is supplied on cif terms any more but that this delivery arrangement was replaced with an arrangement which leaves the risks of loss of and damage to the food aid products with the contractors up to the port of unloading.

It is fair to say that the Community has been largely successful in correcting the weaknesses in Community food aid policy and law which resulted in the past in supplies of sub-standard quality food products. The quality of the products supplied has become less of a problem but continued vigilance is obviously needed. In this respect the Commission would be well advised to be very strict with the food aid contractors and impose the penalties and drawbacks provided for in the mobilization regulation of July 1987 whenever it is established that the supply is in some way defective.
II. The size and nature of the Community food aid commitments

The Community's food aid effort is all but negligible. The 1989 budget provided for 829.4 m ECU of commitment appropriations (including the export refunds) and allowed for the supply of 1.36 m tonnes of cereals, 94,000 tonnes of skimmed milk powder, 25,000 tonnes of butteroil, 14,200 tonnes of sugar, 40,000 tonnes of vegetable oil and 200,000 tonnes of cereals equivalent of other products. While perhaps impressive in size, the question which arises, however, is how these commitments relate to the Third World's needs for food aid? On which basis have these commitments been decided? Is the decision on the commitments a purely political/budgetary decision or does Community food aid law lay down criteria and/or guidelines limiting discretion?

It is safe to say that during the seventies, the size of the Community's food aid commitments were determined neither by developmental nor by humanitarian considerations. As far as food aid in cereals was concerned, the Community's commitments were determined, in the first place, by the minimum commitments undertaken by the Community and the Member States under the 1967 and 1971 Food Aid Conventions (in essence international agreements on the sharing of the burden of cereals surplus disposal) and, in the second place, the outcome of a political compromise annually reached between Member States and the Community on the partition of the commitments under the Food Aid Conventions. As far as food aid in dairy products was concerned, the Community's commitments were especially in the early seventies unquestionably linked to the size of the dairy intervention stocks. Dairy food aid commitments went up and down in function of the stock situation. In the second half of the seventies, the dairy food aid commitments were characterised by their stability at high levels. The latter, however, reflected in the first place the fact that during this period the dairy surpluses remained constantly high. Commitments of food aid in products other than cereals and dairy products were marginal but in some cases, such as the food aid in egg products there was a direct and obvious link with the surplus stock
situation. It should be stressed, however, that at no point and for no product, Community law explicitly stipulated that the size of the Community's food aid commitments should be determined in function of the size of the CAP surpluses. While this may come as a surprise, it will surprise nobody that Community food aid law in this period did also not stipulate the opposite, namely that the Community should determine its food aid commitments in function of the needs of the recipient countries. In fact, its commitments were always insufficient to respond to the requests although it must be observed that for dairy products the Community usually came much closer to covering what it then considered justified requests than for cereals.

From the early eighties onwards, however, it seems that developmental and humanitarian considerations had a more important impact on the decisions on the size of the food aid commitments. After years of stagnation criticized at home as well as abroad, the Community finally increased its cereals food aid commitments, first as a result of the new 1980 Food Aid Convention (which was far more development oriented than its predecessors) and then as a result of autonomous decisions to supply cereals food aid over and above its minimum commitments under the Food Aid Convention.

While the overall trend in the size of the Community's cereals food aid commitments is one of increase and this trend itself suggests concern for the growing cereals deficits of the Third World, the level of the Community's cereals food aid commitments is definitely still in contrast, on the one hand, with the needs of developing countries (which unfortunately are still increasingly rapidly), and, on the other hand, the potential for the Community to increase its cereal food aid programme to level commensurate with its economic status, its share of world trade and the size of its food stocks. The same goes for food aid in vegetable oil, sugar and 'other products'. While the levels of food aid in these products have become all but marginal, they are definitely still insufficient to meet the requests although it must be noted that in 1989 some quantities of the former two products were not allocated. Both for cereals and the last mentioned products, the general trend of increase reveals, however, a genuine concern on the part of the
Community for the needs of the developing countries. For dairy products, it is on
the contrary the remarkable decrease in commitments which reveals the same
concern. In the early eighties, the Community acknowledged that the possibilities
for good use of dairy products were limited and, in spite of the existence of
crushing dairy surpluses, diminished its dairy food aid accordingly. This reduction
of the dairy food aid programmes in obvious defiance of CAP considerations was
an important turning point for the Community food aid policy. In contrast with
size of the commitments in other commodities, it seems that the present size of the
commitment of skimmed milk powder is quite in line with what the Community
now considers justified requests for this product and an increase would not be
desirable. A further decrease (triggered by the stock situation) would, however,
not be desirable either, although some skimmed milk powder used in emergencies
and nutritional programmes can probably be usefully replaced by products of high
protein value based on milk (their cost-effectiveness permitting). The size of the
commitment of butteroil, however, may in spite of the drastic cuts already made
still be too big (in 1989, more than half of the quantity available remained unused)
and could be usefully reduced in favour of vegetable oil, often a more suitable and
cost-effective product.

Also reflecting the Community’s increased concern for the needs of the developing
countries, were a number of exceptional food aid commitments over and above the
normal commitments to allow the Community to cover more of the requests for
food aid addressed to it: the exceptional food aid in favour of the least developed
countries in 1981-82, the exceptional food aid for Africa in 1984-85 and the
exceptional food aid reserves in 1986, 1987 and 1988. Finally, it also deserves to
be mentioned that the dramatic drop of the surplus stocks in recent years did not
affect the size of the food aid commitments. It remains to be seen, however, what
the impact of permanently low surplus stocks would be on the size of the
Community’s food aid commitments.

This positive evolution in the size of the Community’s food aid commitments was
certainly partly due to the increasing influence Parliament had - through the
budget - over the overall food aid commitments but also Community food aid law
may have played a role. While the first food aid framework regulation did not yet
stipulate any explicit criteria or guidelines to be taken into account when deciding on the size of the food aid commitments, the second framework regulation, at least to some extent, does. As I already noted above, the second framework regulation required that the products supplied as Community food aid fit as far as possible the dietary habits of the recipient population and have no adverse effects on the recipient countries. It is obvious that this requirement cannot but have repercussions on the size of the commitments. Some products will only in relatively few cases fit the dietary habits and have no adverse effects. The size of the commitments of the latter products should be small. It should be noted, however, that also in the second framework regulation, there is still no provision explicitly linking the size of the commitments to the size of the needs of developing countries. Such a provision would be welcome if only to underline the Community’s stand in favour of the Third World and it seems that, when formulated as a fairly vague guideline, it would even be possible to get such a provision accepted. But there is more. At present, the Commission decides annually in the light of the budget, on the maxima quantities of cereals, skimmed milk powder, butteroil, sugar, vegetable oil and 'other products' the Community may supply. It would be very useful if and to the extent that during a given year there is little (justified) demand for any of those products and the corresponding commitment is therefore too high, the Commission would have the possibility to supply more food aid in the products for which the demand surpasses the availabilities. Parliament may object to this since it would obviously reduce its influence over the food aid policy. It would, however, be ill-advised to do so.

With regard to the Community food aid commitments in budgetary terms, it may be noted that there has been over the last twenty years a steady overall increase in appropriations reflecting the Community’s increased food aid efforts. As noted above, in 1989, food aid appropriations amounted to 829.4 m ECU (export refunds included); food aid appropriations peaked in 1986 at a level of 1,088.4 m (i.a. because of the very large exceptional food aid reserve created in the wake of the African crisis). It should be noted, however, that after steadily growing in importance during the seventies and representing 4.5% of the Community’s total...
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budget in 1980, the food aid budget became relatively less important within the total budget in the following years. At present, the food aid budget 1.8% of the total Community budget.

The management of the food aid appropriations has always been and still is somewhat of a nightmare. Before 1975, food aid appropriations were dispersed over the budget and not always identified separately; it will not come as a surprise that this situation made it virtually impossible to get an idea of the Community’s food aid effort in budgetary terms, let alone manage the food aid budget. The introduction in the 1975 budget of the system of split-financing pursuant to Council Regulation (EEC) No 2681/74 brought some improvement. Under this system, the export refund element of the cost of all food aid products was charged to the EAGGF-Guarantee Section of the budget, while the world price element of the cost of the food aid products and other costs were charged to Chapter 92 of the budget. For various reasons and not in the least because of the system of split-financing itself and because of the absence of a differentiation between commitment and payment appropriations, the management of the food aid budget required since 1975, however, what was called and severely criticised as 'budgetary juggling'; each year again, there were important carry-overs, considerable cancellations and massive transfers of food aid appropriations. Consequently, the appropriations initially entered in the food aid budget by the budgetary authority were often substantially altered and did not give an accurate picture of the food aid commitments in budgetary terms. In January 1979 already, the Commission proposed to abandon the system of split-financing but it found little support for its proposal. At the time one could still argue with reason that in spite of the budgetary management problems the system of split-financing caused, the latter system reflected well the dual objective of the policy. From 1985 onwards, the Community distinguished between commitment and payment appropriations and this definitely helped to reduce the degree of 'budgetary juggling'. In 1987, after another unsuccessful attempt to abandon the system of split-financing, the food aid budget lines spread out over the EAGGF-Guarantee Section were all brought together in a new Article 292. Since the system of split-financing was left
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untouched, these innovations did, however, not solve the budgetary problem. This became only too clear in 1989 when as a result of a sharp raise in the world market price of food aid products, Chapter 92 ran out of money and transfers of the necessary appropriations from Article 292 (where there was a corresponding surplus of appropriations) proved very difficult and time consuming. As a result the Commission had to slow down the implementation of the 1989 programme. The easiest and most logical solution to this budgetary problem would be to abandon the system of split-financing and regroup all food aid budget lines in Chapter 92 of the budget. In view of the present primacy of the developmental and humanitarian objectives of the food aid policy, one could well defend such a regroupment. There is, however, strong opposition against such change, not in the least from DG VI. The least what the Community should do, however, is to establish "a pipeline" between Chapter 92 and Article 292 of the budget, i.e. a set of simplified rules and procedures for the transfer between these two parts of the budget. It is unacceptable that implementation of Community food aid gets delayed because of technical rules of budgetary management.

Apart from the size of the food aid commitments, the other important issue regarding the commitments is their annual or multi-annual nature. In the seventies the overall food aid commitments in cereals, sugar and most other products were due to the international agreements under which this food aid was given, multi-annual commitments. On the contrary, the overall food aid commitments in dairy products were annual commitments. The Commission's proposals (in 1974 and 1976) for three-year indicative programmes which would indicate for each product a range of minimum and maximum commitments and would thus give the recipients some guarantee as to the overall food aid effort of the Community in the years to come as well as allow the Community to plan the production of the quantities needed for food aid operations, were never given effect. In the eighties, only part of the overall commitments of food aid in cereals, namely the part corresponding to the Community's commitments under the 1980 and 1986 Food Aid Conventions, were multi-annual commitments. All other overall commitments were annual commitments.
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The Community's specific food aid commitments, i.e. commitments to individual countries and organizations, were in the seventies virtually all annual commitments. The only exception was the food aid in various products to the UNRWA under the successive conventions with the latter organization. The dairy food aid supplied to India in the context of Operation Flood II has often been referred to as an example of a multi-annual food aid commitment; in reality, however, it was at least in legal terms not a genuine multi-annual commitment. In the early eighties there was growing awareness and acceptance that specific multi-annual food aid commitments were a conditio sine qua non if one wanted to use food aid efficiently in support of and integrated in the development effort of the recipient countries. While one could argue (with some difficulty) that the first food aid framework regulation did already provide for the possibility to undertake multi-annual food aid commitments, the Council gave in its 1983 Resolution a very restrictive interpretation to the relevant provisions and allowed only for indicative multi-annual commitments and even those only for limited quantities. The second food aid framework regulation, on the contrary, very explicitly provides for the possibility to undertake genuine multi-annual food aid commitments and does not impose a quantitative limit. Its Article 2 (5), last sentence, stipulates: "Where food aid is provided as backing for a development programme spread over a number of years, it may be supplied on a multi-annual basis linked to the programme in question." In spite of this explicit authorization and the obvious need for multi-annual commitments in the context of a development oriented food aid policy, the number of multi-annual food aid commitments has, however, remained very small and only in the case of dairy food aid they represent a fair part of the total quantity of food aid supplied. It seems that the limited use made of the possibility to commit food aid on a multi-annual basis reflects the continued relevance of interests other than those of development cooperation.
III. The allocation of Community food aid

In 1989, Community food aid was supplied to 28 developing countries, 6 international bodies and a host of non-governmental organizations. Impressive as this may be, it should be noted that the Community now supplies food aid to less countries than in the early eighties. While very modest in 1969-70, the number of recipients increased tremendously during the seventies and it cannot but be noted that this increase was in no relation to the increase in the quantities of food aid available or the Community's capacity to manage food aid operations. Too many got too little too late. 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 recipients. This dispersal of Community food aid was, however, not accidental but reflected the Community's aspiration, firstly, to use its food aid to create goodwill in as many developing countries as possible, and, secondly, to avoid awkward discussions on the allocation between the Member States which all had of course their favourites among the developing countries. As from 1982 onwards, the number of food aid recipients started to fall. The Community had come to realize that for maximum developmental impact it would have to concentrate its resources more on the most needy countries. While in the seventies, food aid was badly focused on the most needy, during the eighties the Community made a definite effort in this sense. Although the situation somewhat differs from product to product (for reasons related to the characteristics of these products and the use made of them), little Community food aid now goes to countries other than low-income food-deficit countries and a considerable part goes to the least developed countries. Furthermore, one should not forget that some food aid is supplied to less poor developing countries to help the poorest sections of their population. In view of the quantities of food aid available, the ambitious developmental aims pursued and the Commission's managerial capacity, Community food aid may still be too dispersed. A further reduction in the number of recipients seems, however, difficult to realize since it would undoubtedly exclude countries which now make
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good use of the food aid received as well as trigger bitter discussions between Member States on who should and should not receive Community food aid.

While the advantages of supplying food aid through international and non-governmental organizations (often disposing of a network in the field which could guarantees better the correct use of food aid) were generally recognized, the percentage of Community food aid in cereals supplied indirectly was during the seventies all but impressive. The situation was somewhat different for dairy food aid which initially to a considerable but then rapidly declining degree was supplied through international organizations. Very little food aid in whatever product was supplied through non-governmental organizations until the late seventies. Indirect food aid was not favoured because a direct food aid transfer was correctly considered to give the Community more visibility and create more goodwill. In the eighties, however, the percentage of food aid supplied indirectly was increased significantly and non-governmental organizations became important food aid recipients. During the period 1983-89, indirect food aid represented 31.2% of the food aid in cereals (up from 19.0%), 54.2% of the food aid in skimmed milk powder (up from 45.7%), 41.4% of the food aid in butteroil (up from 29.3%), 84.6% of the food aid in sugar, 43.2% of the food aid in vegetable oil and 69.8% of food aid in other products. Even more impressive is that especially in the case of cereals, sugar, vegetable oil and other products and with few exceptions indirect aid became each year more important. While non-governmental organizations may have reached the limits of their absorption capacity and would need considerable financial aid to be able to handle more food aid, it would probably make good sense to supply more food aid through international organizations.

In the light of the reduction of the excessive number of recipients and the increase in indirect aid, one cannot but observe that the foreign policy reasons which in the seventies and early eighties led the Community to supply food aid to as many countries as possible and limit the quantities supplied through international organizations have become definitely less prominent in shaping the Community's food aid policy. Also in the allocation one can clearly see the shift in the balance
of compromise between the various food aid policy objectives.

In the early seventies, most direct food aid in cereals and butteroil went to Asia; direct food aid in skimmed milk powder went mainly to Africa but Asia was a very close second. In the allocation there was certainly no bias in favour of associated development countries. On the contrary, food aid was seen as an opportunity to extend the Community's efforts in favour of developing countries also to non-associated countries. In the late seventies and the early eighties, Africa became the main recipient of direct food aid in cereals while Asia was the main recipient of direct food aid in skimmed milk powder and butteroil although in 1981 and 1982 it received only marginally more than Africa. The relative shift in focus from Asia to Africa was exactly what one would hope to see at a time when Africa's agricultural disaster became ever more apparent and some of Asia's traditional food aid recipients were becoming quite successful in covering their food needs. The quantities of food aid allocated to Latin America and the Middle East were throughout the seventies and early eighties marginal. In recent years the focus of Community food aid has in particular for food aid in cereals continued to shift in favour of hard-pressed Africa. Community food aid to Latin America has on the whole remained rather modest while the Middle East has received less. Over the last 6 years, the main recipients of Community food aid in cereals have been Bangladesh (1,132,000 tonnes; also the biggest recipient during the periods 1969-76 and 1977-82) closely followed by Egypt (1,085,000 tonnes; also second in the period 1977-82), the WFP (999,720 tonnes; also third in the period 1977-82), Mozambique (616,000 tonnes), the NGOs (646,100 tonnes; a noteworthy newcomer in the list of top recipients), Ethiopia (520,000 tonnes), the UNHCR (494,560 tonnes) and Sri Lanka (290,000 tonnes). The main recipients of food aid in skimmed milk powder were the WFP which received in total 184,280 tonnes (also the biggest recipient during the periods 1969-76 and 1977-82), the NGO's (166,600 tonnes), India (129,000 tonnes), Egypt (34,450 tonnes), China (29,200 tonnes) and Tunisia (22,500 tonnes). The main recipients of food aid in butteroil were the WFP with 38,710 tonnes (second in the period 1977-82), followed by India (35,700 tonnes; first in the period 1977-82), Egypt (11,900 tonnes), China (11,430 tonnes)
and UNRWA (6,690 tonnes). The main recipients of food aid in vegetable oil, finally, were the NGOs (15,660 tonnes), Egypt (12,000 tonnes), the WFP (10,820 tonnes), Bangladesh and India (both 9,000 tonnes) and Mozambique (7,200 tonnes). It should be noted, however, that the lists of biggest recipients of quantities per capita were quite different and allowed after exclusion of the mini­
states for some interesting observation on the Community’s real favourites in the Third World. The Community has been quite generous to Nicaragua and Tunisia.

In marked contrast with US food aid, it should also be noted that the data on the allocation of Community food aid clearly suggest that Community food aid has only in a few cases openly and directly been used as a foreign policy weapon to put diplomatic pressure on recipient governments or to help "friendly" regimes. By way of example, one could mention that the Community cut all direct food aid to Vietnam after the latter’s invasion of Cambodia while it supplied as already noted and this in spite of strong American objections relatively important quantities of food aid to Nicaragua under the Sandinistas.

Surprising as it may be, Community law did not stipulate any formal allocation criteria until the adoption of the first framework regulation in December 1982. Throughout most of the seventies, it was in fact all but clear on the basis of which criteria the Council allocated food aid. The latter changed, however, in March 1977 when the Member States for the first time agreed in principle on the developmental and humanitarian objectives of the Community food aid policy and noted accordingly that the allocation of non-emergency Community food aid to developing countries should be based as far as possible on an objective assessment of the real needs justifying such aid, without, however, excluding other pertinent considerations. To assess the real needs, it was suggested to consider: (1) the basic food requirements; (2) the per capita GNP below $ 300 per year (revisable); and (3) the balance of payments position. This agreement on allocation criteria was, however, not translated in a formal decision but merely registered in the minutes of the Council meeting. For an incorporation of these criteria into Community food aid law, one would have to wait until December 1982. Furthermore, the
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agreement said nothing on the allocation criteria for emergency aid or indirect aid. It is interesting to speculate on the reasons for the absence of formal allocation criteria during the first fourteen years of the Community's food aid policy. It was certainly not an accidental oversight. It is clear that during most of the seventies, the lack of a consensus among the Member States on the objectives of the food aid policy was an important factor but, more generally, the absence of formal criteria is probably explained by Member States' wish to retain the largest degree of discretion possible in taking food aid allocation decisions. In the absence of formal allocation criteria, the use of food aid for surplus disposal or for the creation of political goodwill among Third World countries was evidently easier.

With the adoption of the first framework regulation, however, the Community finally introduced formal allocation criteria. For direct food aid, Article 2 (2) of the first framework regulation, reflecting the 1977 agreement, stipulated: "Food aid shall be allocated primarily on the basis of an objective evaluation of the real needs justifying the aid. To that end particular consideration shall be given to the following three criteria, without excluding any other pertinent considerations: - basic food needs; - per capita income; - the balance of payments situation." While the introduction of these formal allocation criteria was undoubtedly an important step towards a development and relief oriented food aid policy, it should immediately be noted that the above provision provided for two obvious escape clauses ('primarily' and 'without excluding other pertinent considerations') and that the criteria were quite vague and lacked qualifying thresholds. In fact, these allocation criteria were little more than general guidelines and their prime importance rested mainly the fact that they emphasized the needs of the would-be recipients and did not explicitly include foreign policy or commercial policy considerations.

In principle in the light of the above mentioned allocation criteria but in practice with the single concern of avoiding that food aid would be supplied to countries which a qualified minority of Member States thought should not receive food aid (in particular for foreign policy reasons), the Council decided each year on a list of eligible countries. Whether an eligible country would in fact receive food aid,
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and, if so, how much was, however, for the Commission to decide on the basis of the vague allocation criteria mentioned above. In deciding on the allocation of direct food aid the Commission evidently had a wide margin of discretion but it is fair to say that the Food Aid Committee made certain that the Commission would be careful in using this discretionary power. It should be noted, however, that in the case of an emergency as defined in Article 6, second paragraph of the first framework regulation, neither Council's list of eligible countries nor the allocation criteria stipulated in Article 2 (2) were of any relevance. The Commission could in fact decide to allocate food aid to any country faced with an emergency. Emergency food aid allocations were not subject to any control by the Food Aid Committee although it should be observed that in case of man-made emergencies the Commission did have to inform the Member States in advance and give them 48 hours to make any objections. Emergency food aid allocations were limited to the quantities needed to cover the needs of the people affected by the emergency for a period of maximum three months.

For indirect food aid, the Commission's discretion in deciding on the allocation was even larger than in case of direct food aid. Each year, the Council laid down a list of international organizations eligible for Community food aid as well as a set of eligibility criteria for non-governmental organizations. Whether and, if so, how much food aid to supply to the eligible organizations was, however, left to the full discretion of the Commission; Community law did not stipulate any criteria. The Commission's allocation decisions were, however, scrutinized by the Food Aid Committee.

The second framework regulation amended the allocation criteria of its predecessor in several respects. With regard to direct food aid allocations, Article 2 (4) of the second framework regulation now stipulates: "Food aid shall be allocated primarily on the basis of an objective evaluation of the real needs justifying the aid, with economic considerations also being taken into account. To that end, particular consideration shall be given to the following criteria, without excluding other pertinent considerations: - basic food needs, - per capita income and the existence of particularly impoverished population groups, - the balance of
The scope for and constraints on further changes in EC food aid law payments situation, - the economic and social impact and financial cost of the proposed action." These changes clearly reflect and stress the Community's concern, on the one hand, to use its food aid as effectively as possible to contribute to development, and, on the other hand, not to exclude from Community food aid pockets of deep poverty in more advanced countries. In this respect, these changes were very useful additions to the existing criteria. However, the allocation criteria remain vague and do not provide for qualifying thresholds. As for emergency food aid allocations, the second framework regulation stipulates in its Article 6 (1) a slightly different definition of the concept of emergency which was at the same time stricter and more liberal and resulted in no changes in practice. More importantly, however, is that emergency food aid can now be giving to help not only countries faced with an emergency but also to groups of refugees and other vulnerable sections of the population. Furthermore, the Commission can now allocate as emergency food aid a quantity corresponding to four, instead of three, months of food needs. These changes clearly expand the Commission's scope of action to bring humanitarian relief.

In general, however, the allocation criteria as stipulated by the second framework regulation, are certainly still open for improvement. One obvious, remaining shortcoming is the lack of any guideline on the partition of Community food aid between direct and indirect aid; laying down a specific percentage of food aid to be supplied through international organizations and non-governmental organizations may not be acceptable and perhaps also not wise but a truly development and relief oriented food aid policy should at least require in its basic legislation that in allocating food aid one should consider carefully the advantages of supplying food aid through organizations. Furthermore, the Community would benefit from the provision of more specific allocation criteria for direct, non-emergency food aid. Why does Community law not require that food aid is primarily (80%?) allocated to low-income, food deficit countries and in particular least developed countries? In practice, this focus already exists. Stipulating it in Community law makes certain that it will also remain and highlight the Community's concern for the poorest and most needy.
IV. The terms and conditions of Community food aid supplies

Since the beginning of its food aid programme, the Community has supplied food aid as a rule on a 100% grant basis. While this is obviously in the interest of the recipient countries, it may be argued that at least initially the Community's generosity was also motivated by its desire to keep the management of its food aid (read surplus disposal) as simple as possible. In the case of 100% grants, the Community did not have to worry about the use of sales proceeds or about the repayments of loans. This rule of 100% grants had and has, however, its exceptions. It may be noted, for example, that from January 1975 to April 1976, Community law provided for the possibility to sell at sharply reduced prices skimmed milk powder held in the intervention stocks to developing countries and international and non-governmental organizations. More recently and still relevant, Community law provides since August 1988 for the possibility to co-finance up to 75% of food aid (or seeds) supplied by an international or non-governmental organizations. In this context, one should of course also note the Commission's proposal (tabled in July 1988) to establish a financing facility to allow - by providing for a period of repayment of more than 3 years and a grant element of not less than 35% of the total cost - developing countries to import Community agricultural products. Although the Commission argued for obvious reasons that sales under the facility were not food aid, it is clear that such concessional sales should clearly be classified as food aid operations. The quantities the Commission planned to sell under this facility would have more than doubled the size of the present food aid programme in cereals and very significantly increased its food aid in dairy products. Probably more due to decreasing surpluses than to the outcry of those with the interests of the developing countries at heart, the Commission was, however, (so far) unsuccessful in getting its proposal adopted.

The presently applicable framework regulation does not require that Community food aid is as a rule supplied on a 100% grant basis and it would evidently be useful to include such a provision leaving some room for co-financing operations but excluding concessional sales. While this would not require the Community to
change current practice, it is uncertain whether the Commission would be willing
to propose and the Council willing to accept such a provision. If and when the
surpluses are on the rise again and the Community continues to lose Third World
export markets to the US, the agricultural lobby's call for an instrument such as
the financing facility may well be impossible to ignore.

The Community initially financed the transport of its food aid in principle only up
to the fob stage. In practice, and especially in the case of indirect food aid or food
aid supplied in emergencies, the Community quite often also financed at least
part of the transport beyond fob. The Community's efforts in this respect
increased steadily and even during the seventies already the Community financed
transport beyond fob for more than half of the food aid supplied. It should be
noted that often the Community had not much of a choice but to finance the
transport beyond fob since the recipient countries not seldom lacked the means to
do so. The smaller the Community's contribution to the financing of the transport
(and distribution) costs, the bigger the risk that food aid rotted away in ports and
warehouses or was misappropriated. Very occasionally and of course only for
small quantities, the Community even financed the transport of food aid by air.
Community law laid down, however, no specific criteria for the decision on the
financing of transport beyond fob. For dairy food aid, Community law stipulated
that "in exceptional circumstances" the transport of food aid would be financed
beyond fob but this did not correspond with reality; in fact, the Community was
more generous. Community financing of the distribution costs was explicitly
restricted to food aid supplied to international organizations.

From 1983 onwards, Council stipulated, first, in the successive implementing
regulations of the first framework regulation, and, now, in the implementing
regulation of the second framework regulation, general criteria for the financing
of transport of food aid beyond the fob stage. The successive implementing
regulations of the first framework regulation stipulated that the Commission, when
deciding on the financing of transport beyond fob, should take account of: the fact
whether the recipient was an international or non-governmental organization; the
fact whether the recipient country is a least developed or a land-locked country;
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the financial situation of the recipient country; the need to procure the product on
the market of a developing country; the need to provide the food aid on an
emergency basis; and finally, the need to make a given food aid operation more
effective. It is clear that these criteria were really very flexible and left the
Commission with a large margin of discretion. In practice, the application of these
criteria led to a situation in which the transport of about 80% (and more) of
Community food aid was financed beyond the fob stage. In view of the large
margin of discretion, the above mentioned criteria left to the Commission, it is not
surprising that the latter did not suggest any changes to these criteria after the
adoption of the second framework regulation. The Council, however, apparently
considered that the time had come to lay down somewhat less permissive rules.
Since 1987, the implementing regulation of the second framework regulation
stipulates with regard to the general criteria for covering the cost of transporting
food aid, that the Community shall meet the costs of transport beyond fob in
emergency situations and in the case of supply to low-income, food-deficit
countries. In other cases, the Community can also meet the costs of transport
beyond fob taking into account whether the recipient is an international or non-
governmental organization; whether the recipient country is a land-locked country;
the financial situation of the recipient country; and, finally the need to ensure that
the food aid operation concerned is more effective. In comparison to the pre-
1987 rules, Community law now clearly indicates priorities and reduces the
Commission’s discretion. What is surprising is that Community law does not
stipulate that the transport of food aid supplied to international organizations and
non-governmental is always (at least partially) financed by the Community.
The new rules also explicitly state that inland transport costs shall only be financed
by the Community in “duly substantiated exceptional circumstances”. Although this
inland transport is often very expensive, it was clearly shown during the African
crisis that in many circumstances the success of a food aid operation depended on
its financing; in this respect, it is surprising to find that the Community would only
finance inland transport in exceptional circumstances. It is important to underline,
however, that the new, stricter rules on the financing of transport have not had a
negative impact on the Community’s efforts; on the contrary, in practice, it has
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become exceptional that the Community finances transport costs only up to the fob stage. In view of the focus of Community food aid on the low-income food deficit countries this is not really surprising.

Neither the first nor the second framework regulation explicitly provided for the possibility to supply food aid by air but it must be noted that the Community continued to do so in exceptional cases and for small quantities.

With regard to the financing of the costs of distribution, the successive implementing regulations of the first framework regulation allowed the Community to cover these costs when this would be necessary to ensure the proper execution of the food aid operations concerned. In the implementing regulation of the second framework regulation, the Council showed itself less generous and added that only in exceptional circumstances the Community would meet the distribution costs. The Community’s efforts in this respect have always been small.

Until December 1982, Community law laid down no general provisions regarding the terms concerning the use on which the Community supplied food aid to developing countries and international organizations. The supply agreements concluded between the Community and the recipients reveal, however, that before 1983 Community food aid was supplied for sale to the local population, for sale to the dairy industry, for free distribution to vulnerable groups of the population and workers in the context of food for work projects, and for emergency relief. Community food aid in cereals was mainly supplied 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; furthermore, the sales generated counterpart funds which were to be used in the context of specific development projects but in practice the latter was often problematic. It should be noted that sales to the recipient population, unlike free distribution, represented a fairly simple and inexpensive way of handling food aid, both for the donor and the recipient. From the late seventies onwards, the Community supplied a considerable part of its dairy food aid for sale to the dairy industry in the context of dairy development programmes. The best known and by far largest of these
programmes was the Operation Flood II in India. The Community also supplied food aid for free distribution to specific, vulnerable sections of the population, such as children, pregnant women, young mothers and refugees, to raise the standard of nutrition of the focus group, and to workers engaged in a particular project (food for work) as a means of financing labour intensive infrastructure works and employing the poor. Most of the Community's dairy food aid and also significant quantities of cereals food aid were supplied for free distribution. It should be stressed, however, that generally speaking the Community all but focused its food aid on the vulnerable and needy population groups in the recipient countries. As in overall terms most food aid was supplied for sale, it did therefore usually not directly benefit the most needy.

The Community finally also supplied food aid for free in emergencies to alleviate food shortages caused by natural or man-made disasters. It should be underlined, however, that contrary to what is often believed, seldom more (and often less) than 10% of all food aid was used as emergency aid.

In the early eighties, thinking on the use of food aid for development changed radically and also within the Community, it was increasingly understood that food aid could only contribute successfully to the solution of the recipient's food problems if it was (together with other forms of aid) closely associated with an overall food strategy pursued by the recipient which provided for incentives to domestic agricultural production and aimed at a reduction of poverty and malnutrition. Reflecting this growing understanding, the Community made in the aftermath of Parliament's 1980 debate on hunger in the world the first hesitant attempts to use food aid in support of the food strategies of recipient countries. 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. As during the seventies, most food aid was, however, 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.

In the first framework regulation, Community law laid down for the first time a number of general provisions regarding the use of Community food aid. In Article 2 (1), it was stipulated that food aid was to be used in particular to raise the standard of nutrition of the recipient people, to help in emergencies and to contribute to the balanced economic and social development of the recipient countries. Mainly with regard to the latter it was specified in Article 2 (3) that the granting of food aid could be conditional on the implementation of annual or multi-annual development projects, priority being given to projects which promote the production of food in the recipient countries. Where appropriate, food aid could contribute directly to the implementation of such projects. The framework regulation also stipulated that where food aid was supplied for sale, the counterpart funds could be used to support the above mentioned development projects. Finally it should also be noted, that while Article 2 (4) of the framework regulation stressed food aid should in the first place be used to cover immediate food needs, a residual percentage of Community food aid in cereals could be supplied to allow the recipients to build up food stocks.

Based on a proposal of January 1979, the provisions of the first framework regulation regarding the use of Community food aid did, however, not reflect the new thinking on the use of food aid which had developed in particular in the early eighties. The first framework regulation did not require that Community food aid should be used in support of and integrated in the food strategies of the recipient countries. The second framework regulation, however, clearly takes up this food strategy approach to the use of food aid. In its Article 2 (1) it stipulates, as did the first framework regulation, that food aid is to be used in particular to raise the standard of nutrition of the recipient people, to help in emergencies and to contribute to the balanced economic and social development of the recipient countries, but it adds that Community food aid is also to be used to promote food security in the recipient countries and to support efforts by the recipient countries to improve their own food production. Article 2 (2), fully embracing the food
strategy approach, stipulates that Community food aid shall be integrated as thoroughly as possible into the development policies, and in particular the agricultural and agri-foodstuffs policies, and food strategies of the countries concerned. Furthermore, the second framework regulation contains a number of other provisions (new or amended) on the use of Community food aid: together these general provisions on the use constitute a regulatory framework within which the Commission defines the terms concerning the use laid down in the supply agreements.

At present, the Community supplies food aid for basically five different sorts of use: for sale to the population, for sale to the dairy industry, for free distribution to vulnerable groups of the population or workers in the context of food for work projects, for stock building and for emergency relief. As was the case since the seventies, a significant part of Community food aid, and in particular food aid in cereals, is supplied for sale to the population. It should be noted that with regard to this use, the second framework regulation now requires, in its Article 2 (2), that the food aid is sold at a price which will not disrupt the domestic market, and, stipulates, in its Article 2 (3), an unambiguous obligation to establish a counterpart fund the use of which is laid down by common agreement. Partly in response to the Court of Auditors’ very negative Special Report 7/87 on food aid counterpart funds, the Commission has in recent years thoroughly revised the provisions of the supply agreements regarding the establishment and use of counterpart funds. While it is still too early for a evaluation of these new provisions, there is justified hope that they will significantly improve the establishment and use of food aid counterpart funds.

Secondly, most direct Community food aid in dairy products is supplied for sale to the local dairy industry in support of dairy development schemes. This use of dairy food aid has become increasingly important not in the least because of the positive experience with Operation Flood II.

Third, Community food aid is supplied for free distribution in kind to specific, vulnerable groups of the population such as children, pregnant women, young mothers and refugees, to raise the standard of nutrition of the target group, and to workers engaged in a particular project (food for work) as a means of financing
labour intensive infrastructure works and employing the poor. The main challenge when supplying for free distribution is to ensure that this food aid really goes to those for whom it is intended. Therefore, most food aid supplied for free distribution is supplied through international and non-governmental organizations, which often have extensive distribution networks in the recipient countries and can as such guarantee the correct use. The high costs in administrative and financial terms entailed by supplies for free distribution evidently limit the quantity of food aid which can be supplied in this manner.

Fourth, Community food aid is supplied for local stock building. While Article 2 (6) of the second framework regulation still gives priority to needs for immediate consumption, the restrictions imposed in the first framework regulation on the use of food aid for stock building have been dropped. Not only cereals but also other products can now be used for stock building and it is no longer stipulated that only a residual percentage of the Community's food aid may be used for this purpose. Reportedly, however, the Community supplies very little food aid for this use.

Fifth, Community food aid is supplied for emergency relief. Both the first and the second framework regulation explicitly provide for the use of food aid in emergencies but it may be noted that the second framework regulation allows for the use of slightly larger quantities in a specific emergency.

In addition, one should finally also note that Community law provides for the possibility of replacing food aid by financial assistance in cases where due to a bumper harvest or a successful agricultural policy, the continuation of food aid supplies would be counterproductive but where the recipient country is dependent on counterpart funds generated by food aid for the financing of on-going development programmes. The provision of this possibility and the use made of it is undoubtedly one of the best illustrations of the focus of the food aid policy on the real needs of developing countries.

As I noted above, central to the Community's thinking on the use of food aid and explicitly stipulated in Article 2 (2) of the second framework regulation is the idea that food aid is used in support of and integrated in the recipient countries' food strategies. As the inclusion in Article 2 (2) of the words 'as far as possible' already
indicates, this is, however, not always possible nor desirable. Clearly, when food aid is supplied in emergencies or as nutritional aid to refugees is will probably not be integrated in the recipient's food strategy. More generally, however, it should be noted, first, that many recipient countries do not have a detailed, carefully worked-out, consistent food strategy, and, second, that the policy dialogues which necessarily precede the use of food aid (and other aid) in support of a food strategy have encountered many political and practical obstacles. Consequently, and this deserves to be stressed, the use of Community food aid in support of and integrated in the recipient countries' food strategies is rather an objective than a reality. Most Community food aid is still used in the context of more or less isolated development projects. In order to be more successful in the achievement of this objective, it seems that in the future the Community will, on the one hand, conscience of the political problems involved and without ignoring the efforts already made in this respect, have to give far more technical support for the definition and implementation of food strategies and have to remove the obstacles to genuine policy dialogue (such as lack of staff and donor coordination). On the other hand, the Community should consider whether it would not be advisable in some cases to make food aid supplies strictly conditional on the implementation of a food strategy. At present, Community law does not exclude such strict conditionality but does not it require it either.

Regardless the use for which food aid is supplied, the supply agreements always require the recipient to inform the Commission on the use made of the food aid or, if relevant, the resulting counterpart funds. This information would normally allow the Commission to monitor at least to some extent the use of the food aid supplied and evaluate its impact and effectiveness. In practice, however, the food aid recipients often do not properly inform the Commission. In the seventies and early eighties, the Commission consequently had often no idea at all of what had become of the food aid supplied and it was certainly not able on the basis of the information received to evaluate the use made of the food aid and the counterpart funds. Although in the context of a surplus disposal policy perhaps not that surprising, it was nevertheless remarkable that at the time the Commission did not
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seem too preoccupied with this situation. It was all but committed to monitoring the recipient's compliance with the terms concerning the use of its food aid. The latter was also reflected in the fact that the supply agreements during most of the seventies did not allow the Community to carry out checks in the recipient country on the observance of the terms regarding the use of the food aid and counterpart funds. Towards the end of the seventies, one could, however, detect a gradual change in Community's attitude towards monitoring the use made of its food aid. From 1977 onwards, most supply agreements contained an audit clause (although initially as a rule still excluding checks on the use of the counterpart funds) and in 1978 a special unit was created within the Food Aid Division to monitor food aid operations; this small unit carried out an increasing number of on-the-spot checks. In addition, the Commission Delegations in ACP countries were instructed to audit food aid projects although lack of staff and disdain for food aid limited their contribution. One should also mention that the Court of Auditors undertook audits upon record and on the spot which unfortunately often revealed embarrassing facts. While in 1980, the Court of Auditors still noted that the reports on the use of the food aid and resulting counterpart funds either did not exist or were merely token and, in 1982 the IDS-ABC study remarked that very little monitoring and evaluation was carried out either by the Commission or by its Delegations, the Commission became nevertheless gradually better - albeit still insufficiently - informed about the use made of its food aid. Throughout the eighties, further progress was made in this respect. The recipients' observance of their information obligations (reportedly often too demanding in the light of their administrative capabilities) did not significantly improve but the Commission as well as its Delegations became more active in monitoring the use and evaluating the impact of food aid. The second framework regulation even explicitly instructs the Commission to undertake regular evaluations of significant food aid operations and the Council recently called upon the Commission to present annually an overall assessment of the Community's food aid programme.

Taking sanctions against recipients which do not comply with the terms concerning the use of Community food aid has always been an extremely difficult and delicate
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matter. The Community can of course cut food aid supplies to those recipients but who will suffer most from these cuts? Furthermore, much of the Community's food aid goes to the world's poorest countries which often lack even the most basic infrastructure and the human resources to manage food aid satisfactorily. One may wonder whether the Community's expectations are not often too high or whether it does not carry part of the blame for misuse by failing to give the recipients the financial and technical aid necessary to guarantee satisfactory management of food aid. Nevertheless, if too much of the aid or resulting counterpart funds is obviously misappropriated, it makes from a developmental and humanitarian point of view no sense to continue food aid supplies. It should be noted, however, that very few recipients have seen their Community food aid supplies cut because they did not respect the terms concerning the use. In case of misuse, the Commission usually limits itself to putting pressure on the recipient to make a bigger effort to use its food aid more in accordance with the relevant terms of supply. A more radical response to misuse is often thought unlikely to achieve anything and, even more importantly, create foes rather than friends in the Third World. It is in the developing country's own interest, however, to have a strong incentive to comply their international commitments, including the terms and conditions of the food aid supply agreements. The danger of aid being cut if not used as agreed may help a government to overcome internal obstacles and muster the necessary resources. The non-compliance should of course not automatically lead to drastic cuts; in many cases, some degree of non-compliance is probably inevitable. In general, there should, however, be less reluctance to cut aid for not complying with realistic, commonly agreed upon terms and conditions, especially where this reluctance stems from foreign policy interests.

Pursuant to the obligations set out in the FAO Principles of Surplus Disposal to guarantee that food aid operations are made without harmful interference with normal patterns of international trade and production, all supply agreements between the Community and recipient countries provide for clauses stipulating the additionality principle (Usual Market Requirement clause) and prohibiting re-exportation of the products supplied as food aid or the exportation of similar
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products. It is interesting to note, however, that unlike the 1980 and 1986 Food Aid Convention, for example, neither the first nor the second framework regulation referred to the additionality principle or the export prohibitions. This is not an oversight but reflects well the fact that in particular the additionality principle (food aid should not replace but be additional to commercial imports) was and is not taken too seriously; this principle and the UMR clause in which it finds its expression are in fact impossible to reconcile with the 'balance of payment support' aim of most direct food aid operations. 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. As for other major food aid donors, its inclusion in the supply agreements was and is merely lip-service, albeit 'mandatory' lip-service, to the idea of fair trade in agricultural products. In fact, most food aid does replace commercial imports and a revision of the 1954 FAO Principles of Surplus Disposal to the modern reality of food aid and its use for development is long overdue.
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V. The procedural and institutional aspects of Community food aid policy decision-making

Throughout the seventies the formulation of Community food aid policy was characterized by an impairing concentration of decision-making competence in the hands of the Council. In the early seventies, the Council decided on even the most trivial of issues and this evidently led to long delays in food aid policy decision-making. This was of course particularly problematic for emergency operations. In its 1974 Memorandum, the Commission proposed for the first time a reallocation of decision-making competence between the Commission and the Council and in 1975 the latter did agree to some informal, makeshift procedural reforms. Since 1975, the Council no longer decided on the specific terms and conditions of each food aid supply agreement (with the exception of the terms concerning the financing of transport) but approved a set of standard terms and conditions from which the Commission could (after consultation of the Council's Ad Hoc Working Party on Food Aid) choose when drafting the supply agreements. Also since 1975, the Commission was authorized to allocate limited quantities of emergency food aid to countries hit by natural disasters. These procedural reforms (as did the Commission 1974 proposal) fell, however, far short from what was needed and the overall situation did not improve. The Member States were not ready yet to give up their tight control over the food aid policy. There may have been a number of reasons for this but it is obvious that any formal delegation of decision-making power to the Commission required a clear definition of the Community food aid policy's objectives and main elements. The Member States were, however, unable to reach agreement on the latter. Informal agreement on the objectives was reached in March 1977 but for a formal agreement one would have to wait until the adoption of the first framework regulation in December 1982. In the meantime, the decision-making process remained cumbersome, time-consuming and of unpredictable length. The only further change to the procedures was made in 1977 and entailed an authorization for the Commission to allocate with COREPER's approval also limited quantities of emergency food aid to
countries struck by man-made disasters. As the 1975 procedural changes the
latter change was also never the object of a formal Council decision.
The need for drastic procedural reforms was, however, felt more and more; even
the Council acknowledged in March 1977 the necessity to take steps to speed up
the food aid procedures. Consequently, the Commission tabled in 1978 a proposal
for a complete overhaul of the decision-making procedures putting an end to the
excessive concentration of decision-making competence in the hands of the Council
by providing for a substantial delegation of competence to the Commission. 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 governing the supply of the aid.
These proposals were taken up again in the 1979 proposal for the first framework
regulation, which also provided for the regulatory framework within which the
Commission was to exercise the competences delegated to it. The Commission’s
proposals for procedural reform were in many but different respects neither for
Parliament nor for most Member States acceptable.
While Parliament welcomed the Commission’s proposal, it had very serious
misgivings about two key provisions. It objected to the role and powers of the
Food Aid Committee and to the Council’s competence to decide on the total
quantities of food aid. With regard to the former, Parliament insisted that the
Food Aid Committee would not function as a management committee (as
proposed by the Commission) but as a purely advisory committee. With regard to
the latter, it should be noted that Parliament challenged from 1978 onwards the
classification of food aid expenditure as compulsory expenditure and argued that
to the extent that food aid expenditure was non-compulsory expenditure, to give
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the Council the competence to decide on the total quantities amounted to undermining Parliament’s explicit budgetary competence. To give real meaning and bite to its budgetary competence and, through the latter competence, a firm grip on the Community’s food aid policy, Parliament insisted that the budgetary authority and not the Council were to decide on the total quantities of food aid. The opposition among the Member States against the Commission’s 1979 proposal for procedural reform ran, however, even deeper than Parliament’s opposition; for a number of Member States the proposed delegation of competence to the Commission was very hard to swallow. It would take four years of difficult negotiations to reach an uneasy compromise. Before turning to the procedural provisions of the first framework regulation in which this compromise was laid down, it deserves to be pointed out, however, that to improve food aid policy decision-making 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. There was also definitely a need for improving coordination between the Community’s food aid policy and the food aid policies of the Member States as well as of other donors. On none of these accounts, however, much progress was made in the seventies and early eighties.

Under the first framework regulation, the Council retained the competence to decide by qualified majority on the total quantities of Community food aid, on the basic and derived products to be supplied as Community food aid, on the countries and organizations eligible for Community food aid, and the general criteria for Community financing of transport beyond the fob stage. Furthermore, the Council retained the competence to decide by unanimity on the apportionment of cereals food aid provided for under the Food Aid Convention between Community and the Member States as well as on the apportionment of the Member States’ part among the Member States. The Council, however, delegated to the Commission the competence to decide on the allocation of Community food aid among eligible countries and organizations, on the changes in allocations and on the cereals to be made available by the Member States for emergencies. These decisions were, however, subject to the Food Aid Committee procedure and pursuant to this
procedure, the Council had, in case the Committee delivered a negative opinion or was unable to deliver an opinion (blocking minority!), two months to overrule the Commission's decision. The Council also delegated to the Commission the competence to decide on emergency food aid operations as well as the terms and conditions of the food aid supply agreements. It should be noted, however, that in case of emergency operations in reaction to man-made disasters, it had to consult the Member States by telex, giving them 48 hours to make any objections. In the recitals of the first framework regulation the Council pointed out that the aim of these new decision-making procedures was to ensure that food aid was managed more efficiently and in greater conformity with the interests and requirements of the recipient countries. It is fair to say that the new procedures did indeed have this potential and that their introduction clearly reflected the Community’s wish to make its food aid more into an instrument for development and relief. It may also be argued, however, that the lack of further delegation of competence and the Food Aid Committee procedure reflected to continue relevance of other objectives. As mentioned above, the procedural provisions of the first framework regulation would prove to be an uneasy compromise. It was all but a surprise that Parliament vigorously rejected the new procedures as being in violation of the Treaty. As it had argued since 1978, it considered, on the one hand, that the Council’s competence to decide on the total quantities was in violation of Article 203 EEC since this competence completely undermined Parliament’s budgetary powers (especially after the Joint Declaration of 30 June 1982 had classified most food aid expenditure as non-compulsory expenditure) and, on the other hand, that Food Aid Committee procedure was in violation with Article 205 EEC since allocating food aid was no more than the implementation of the budget and the latter was a Commission prerogative which the Council could not delegate and therefore also not subject to a management or regulatory committee procedure. Parliament’s repeated requests to the Commission to table a proposal for a new framework regulation correcting the procedural provisions remained, however, without response since the Commission was convinced that the procedures laid down in the first framework regulation were the best compromise possible and allowed for a significant improvement in food aid management. Furthermore, the
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Commission did not share Parliament’s legal objections to the procedures. It did, however, recognize that the present procedures could well lead to serious inter-institutional conflict if the Council would decide to lay down total quantities which did not correspond with the budget appropriations. Not in the least because of the Commission’s determination to avoid such situations, such an open inter-institutional conflict only occurred in 1986 when the Council decided on a much smaller exceptional food aid reserve than the budgetary appropriations provided for by Parliament allowed for. While Parliament’s dissatisfaction with the procedural provisions of the first framework regulation and the resulting inter-institutional tension was perhaps not the Commission’s main motive for tabling in July 1986 a proposal for new framework regulation, it was undoubtedly an important motive and one cannot but observe that the Commission’s proposal certainly took account of Parliament’s objections to the existing procedures. The proposed framework regulation no longer left to the Council the full competence to decide on the total quantities of food aid; it explicitly left the latter only the competence to decide on the quantity of cereals food aid supplied by the Community under the Food Aid Convention. Surprisingly, however, the proposed framework regulation did not explicitly entrust to the Commission the competence to decide on the other quantities. The Commission apparently considered that it was sufficient that the framework regulation stipulated that the Commission would allocate to the recipients the quantities which may be mobilized subject to budgetary provision. With regard to the Food Aid Committee, the Commission proposed that the latter Committee would function as a purely advisory committee for the allocation decisions while for other matters it would continue to function as a management committee be it that the absence of an opinion would no longer have the same effect as a negative opinion. In addition, it should be noted that the Commission proposed to delegate also the competence to decide on the products which may be supplied as food aid. In its reaction to the Commission’s proposal, Parliament insisted, however, that the Food Aid Committee would only function as a purely advisory committee and that the framework regulation would explicitly stipulate that the budget would determine the appropriations and the corresponding total quantities of food aid; in case changes in the world market
price would make it impossible to supply the total quantities indicated in the
remarks of the budget, transfers would have to be made or an supplementary
budget adopted. Also the Council was all but happy with the Commission’s
procedural proposals and as a matter of fact rejected in its common position the
Commission’s two main procedural innovations. During the following conciliation
procedure, however, the Council made somewhat unexpectedly and without there
being an obvious explanation for it, a very important concession by delegating
explicitly to the Commission the competence to decide on the total quantities.
One cannot but express a certain surprise that the second framework regulation
explicitly delegated to the Commission the competence to decide on the total
quantities without qualifying this competence (1) by mentioning that the Council
would remain competent to decide on the total quantity of cereals food aid
supplied under the Food Aid Convention and (2) by mentioning that this decision
on the total quantities was to be taken on the basis of the appropriations entered
in the budget although it may be argued that the latter was superfluous. With
regard to the role and powers of the Food Aid Committee, on the contrary, the
Council refused to compromise but it was agreed that the matter would be re-
considered in the light of the results of the on-going comitology discussion.
Therefore, the validity of the framework regulation was limited in time. Pursuant
to the second framework regulation, the Council retains the competence to decide
by qualified majority on the countries and organizations eligible for Community
food aid and on the general criteria for Community financing of transport beyond
the fob stage, and to decide by unanimity on the apportionment of cereals food aid
provided for under the Food Aid Convention between Community and the
Member States as well as on the apportionment of the Member States’ part among
the Member States. The Council, however, delegates to the Commission the
competence to decide on the total quantities of food aid, on the allocation of
Community food aid among eligible countries and organizations, on the changes
in allocations, on the products which may be supplied as Community food aid and
on the rules of mobilization of the products supplied as food aid. These decisions
are, however, subject to the Food Aid Committee procedure which is identical to
the one provided for in the first framework regulation. The Council also delegates
to the Commission the competence to decide on emergency food aid operations as well as on all conditions governing the supply of aid. This competence is not subject to the Food Aid Committee procedure although it must be observed that, as under the first framework regulation, the Commission is in case of emergency food aid in response of man-made disasters required to consult the Member States in advance.

The procedural provisions of the second framework regulation are to different degrees unacceptable to the Commission, Parliament and even to some Member States but the provisional character allowed for a brief truce. This truce came to an end, however, after the adoption of Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission. In the light of the latter Decision, the Commission tabled in October 1987 a proposal for a regulation amending the Food Aid Committee procedure stipulated in the second framework regulation. As it had done in its proposal for the second framework regulation, the Commission proposed that the Food Aid Committee would function as a purely advisory committee as far as the allocation decisions are concerned (Procedure I of the Council Decision of 13 July 1987) and as a management committee (Procedure II (a) of the Council Decision of 13 July 1987) for all other decisions subject to the committee procedure. During the debate in Parliament, the Commission could be convinced, however, to change its proposal and to submit also the decision on the total quantities to a Procedure I rather than a Procedure II (a). While Parliament in the past had always insisted that the Food Aid Committee would have an advisory role only, it now approved the Commission’s proposal for a 'dual purpose committee'. It only insisted that also the provision delegating to the Commission the competence to decide on the total quantities would be amended and would read: "[The Commission will] establish, in accordance with budgetary appropriations, the total quantities ...".

So far the Council has not yet adopted the Commission’s proposal but has, on the contrary, repeatedly prolonged the validity of the second framework regulation. Frustrated by the Council failure to modify the Food Aid Committee procedure, the Commission decided in September 1988 to change strategy and bring an
Article 173 action against the Council asking the Court of Justice for the annulment of Council Regulation (EEC) No 1870/30 in as far as it extended the terms of validity of the provisions of the second framework regulation subjecting the Commission's allocation decisions and its decision on the total quantities to the Food Aid Committee procedure stipulated in the latter regulation. The Commission's main argument - an argument Parliament had already advanced for years - was that the decision on the total quantities as well as the allocation decisions are in fact no more than the implementation of the budget and therefore, pursuant to Article 205 EEC, the Commission's own competence. This Commission competence could of course not be delegated by the Council and subjected to a committee procedure (strictly speaking not even a Procedure I committee procedure). In November 1989, the Commission decided, however, to drop this action for annulment after the Court of Justice rejected in its judgment of 24 October 1989 in case 16/88 (related to research programmes in the context of the Community's fishery policy) this argumentation giving a restrictive interpretation to Article 205 EEC. At the core of the Court's reasoning was the idea that Article 205 EEC gives the Commission the power to commit expenditure and that this power must be distinguished from the power to take individual measures even though such individual measures may almost inevitably entail the commitment of expenditure.

The discussion on the Community's food aid policy decision-making procedures is - at least for the time being - again predominantly political in nature. It should be stressed, however, that unlike in the early eighties, further changes to the procedures are far less motivated by the desire to make the management of food aid more efficient and in greater conformity with the interests of the recipient countries. While there is certainly still room for improving the management of Community food aid - in particular with regard to the coordination of the Community's food aid policy with the policies of other donors and with regard to the integration of food aid with other development policy instruments - the debate on procedural changes is now more focused on each institution's efforts to optimize its control over the food aid policy. For the Community's food aid policy in the nineties, the outcome of this struggle for power is, however, not without
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importance in view of the past and present policy positions of the institutions involved in the struggle. Parliament has always been the champion of a development and relief oriented food aid policy and has used all its powers and especially its budgetary powers to promote reform in this sense. On the whole, also the Commission has been a firm supporter of a development and relief oriented food aid policy although it has often taken more "realistic" policy positions taking the Community’s agricultural interests more into consideration. It is obvious that DG VIII cannot rival DG VI in influence. Finally, the Council, internally divided, has always had to look for a compromise which satisfied also those Member States which had considerable domestic agricultural interests at stake. It is clear, however, that within the context of the present institutional provisions of the Treaty the scope for a further shift in policy making power, especially in favour of Parliament, is limited.
VI. The implementation of Community food aid operations

During the seventies and early eighties the implementation of Community food aid operations left much to be desired. The procedures in place were complex, cumbersome, sometimes makeshift and above all time-consuming. Added to the slowness of the decision-making, the latter led to a situation in which much of the food aid under the programme of the year N was delivered in the year N+1 or even N+2. Worse, however, was the fact that the implementation procedures were of unpredictable length and did thus not allow to tell with any precision when the food aid could actually be supplied while correct timing of the supply is of great importance. In spite of the obvious need to overhaul the implementation procedures, the first framework regulation left the implementation system virtually unchanged. This inadequate and defective system which (a) made use of CAP procedures and bodies, (b) left much of the implementation of most food aid operations to the national intervention agencies, and (c) differed from product to product, remained in place until 1987. Hardly surprising, the delays in implementation also remained as significant and unpredictable as before. The new and currently applicable procedures introduced in 1987 by Commission Regulation (EEC) No 2200/87 (the so-called mobilization regulation) pursuant to the second framework regulation, have, however, led to a considerable improvement in the speed as well as the quality of the implementation.

The implementation of a food aid operation involves five consecutive acts: 1) the conclusion of the food aid supply agreement; 2) the decision on the conditions governing the mobilization of the food aid products, 3) the award of the food aid supply contract, 4) the execution of the food aid supply contract and 5) the monitoring of the recipient's compliance with the terms of the food aid supply agreements and evaluation of the impact and effectiveness of food aid operations.

1) Until 1975 the Council concluded the food aid supply agreements itself; as from 1975, however, this competence was delegated to the Commission, who after
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having informed the Member States and having examined objections of the latter in the Council's Ad Hoc Working Party on food aid, concluded, by way of exchange of letter, with the recipient a food aid supply contract the terms and conditions of which were chosen from a set of standard terms and conditions adopted by the Council. As the other procedural reforms of the seventies, also this delegation of competence was informal, makeshift and limited in scope; in practice it did little to speed up the implementation. Neither the first nor the second framework regulation did/does explicitly entrust the competence to conclude the food aid supply agreements to the Commission. It is clear, however, that Article 6 of both regulations which authorizes the Commission to decide on the terms and conditions of the food aid supply agreements cannot but be understood as an implicit delegation of competence to conclude these agreements. This delegation is not subject to any committee procedure but it must be noted that the most important terms and conditions of the supply will have been part of the Commission's allocation decision which is scrutinized by the Food Aid Committee. Supply agreements are still concluded by exchange of letters and usually without much negotiation, although with regard to the latter it should be observed that there are gradually more cases in which the conclusion of the supply agreement is preceded by genuine negotiations. It is clear that if the Community is serious about using its food aid in support of and integrated in the recipient's food strategy, some sort of dialogue is indispensable.

2) Once the food aid supply agreement concluded (and in practice even before), the Commission will lay down the conditions governing the mobilization of the food aid products. Until 1987, these decisions were usually prepared by DG VI and adopted by the Commission following the relevant CAP Management Committee procedures. In fact, these decisions were taken following exactly the same procedure involving the same organs, as any agricultural market intervention measure. The specificity of food aid operations was not taken into account. Since 1987, however, the Commission, pursuant to Article 6 (c) second indent of the second framework regulation, decides on the conditions governing the mobilization of the food aid products without this decision being scrutinized by the CAP
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Management Committees or for that matter any other committee. This elimination of the involvement of the CAP Management Committees constituted one of the most dramatic breaks of the Community food aid policy with the common agricultural policy. It should be noted, however, that the Commission's decisions on the conditions governing the mobilization within the Community are still prepared by DG VI (and signed by the Commissioner responsible for Agriculture) and that the latter will certainly not fail to take account of common agricultural policy considerations.

3) Once the Commission has laid down the conditions governing the mobilization of the products to be supplied as food aid, a food aid supply contract can be concluded in line with these conditions. As a rule, food aid supply contracts are awarded by tendering procedure to the private undertaking submitting the lowest tender. Community law allowed, however, already early onwards that 'exceptionally' the supply contract was awarded by a more flexible and faster procedure. Until 1987, for most products, at least when mobilized within the Community, the CAP intervention agencies played a central role in the award of the supply contract although this role as well as all other procedural requirements differed from product to product. Generally speaking, and especially for food aid in cereals, Community law did initially not lay down the award procedures in great detail. It was left up to the intervention agencies to decide how to guarantee supply contracts on the most favourable terms and equal access for and treatment of all Community undertakings interested in participating in the tendering procedure. There were, however, strong indications that this confidence in the intervention agencies was unwarranted. In 1977 (for dairy products) and in 1980 (for cereals) the Commission laid down more detailed rules on the award procedures but there were still many instances in which there was evidence that these 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. This was certainly true for food aid in other products or food aid mobilized outside the Community because for the award of contracts for the supply of these products no, vague, or merely ad
hoc rules were laid down. In practice, it was often the Commission itself which
directly concluded a supply contract with a supplier.
Starting in 1983, the successive implementing regulations of the first framework
regulation brought a bit more clarity by stipulating that all food aid supply
contracts regardless the product involved were to be awarded by tendering
procedure except (a) in emergencies, (b) when small amounts were involved and
(c) when the products were to be bought in a developing country (because they
were not available on the Community market). In the latter situations, a direct
award procedure could be used and the Commission could either conclude the
necessary contracts itself or instruct the Member States (i.e. intervention agencies)
or an authorized agent to do so. Community law did, however, not work out these
award procedures any more than it had done before 1983.
The Community’s procedures for awarding food aid supply contracts were radically
altered with the adoption of the second framework regulation in December 1986
and so-called mobilization regulation of July 1987 (Commission Regulation (EEC)
No 2200/87). Pursuant to Article 6 (c), second indent of the second framework,
the Commission now concludes itself all the contracts with the private undertakings
supplying the food aid. As noted above, before 1987, the food aid supply contracts
were in most cases concluded by the national intervention agencies, CAP bodies
par excellence. This was undoubtedly another dramatic manifestation of the shift
in the Community’s food aid policy objectives although it should immediately be
noted that within the Commission, it is DG VI which organizes the award
procedure. More important is that this change simplifies the award procedures
significantly and guarantees better their fairness. Above all, however, the existence
of a contractual link now allows as well as obliges the Commission to monitor the
execution of the supply contracts and past experience had shown that there was a
great need for this.
Pursuant to competence delegated to it in Article 5 of the second framework
regulation, the Commission worked out in detail new rules governing the award
Instead of having a different procedure for each product (and no worked-out
procedure at all for some products), the Commission lays down in this regulation
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a set of rules applicable to the award of all supply contracts with the exception of contracts for the supply of products to be purchased outside the Community. For the latter contracts, Community law does not yet provide for any worked-out rules on the contract award but reportedly such rules are in preparation. With regard to Commission Regulation (EEC) No 2200/87, one cannot but note that the tendering procedure as well as the direct award procedure it provides for are worked out in great detail and certainly reflect the experience gained in almost twenty years of Community food aid. In this respect, one can for example refer to the possibility of excluding unreliable undertakings from the tendering procedure, the conditions under which a direct award procedure may be organized, the information to be contained in the tender, the criteria for the choice of the port of shipment in case of supply free-at-port-of-shipment, a detailed listing of the costs to be included in the amount proposed in the tender, the "multiplication" of tenders in case of supply free-at-port-of-landing and supply free-at-destination, and the periodical publication of the outcome of tendering procedures in the O.J.. Some of these provisions already existed for the award of cereals and/or dairy supply contracts; now they are applicable to the awards of all contracts (for the supply of products mobilized within the Community).

4) Once the contract is awarded, it needs of course to be executed. With regard to this execution two main points deserve to be raised. The first point concerns the delivery arrangements. Initially, Community law failed completely to define the food aid delivery arrangements in detail, let alone provide for arrangements adapted to the specific nature of food aid supply operations; it was left to the intervention agencies to 'adapt' the INCOTERMS fob, cif and free-at-destination to food aid supply operations. In 1977, the Community remedied this situation for dairy food aid by stipulating in Regulation (EEC) No 303/77 four delivery arrangements especially worked out for dairy food aid supply operations. For cereals food aid, however, no such specific delivery arrangements were laid down; on the contrary, Commission (EEC) 1974/80 provided for the fob and cif delivery arrangements for cereals food aid. It would only be in 1987, that Regulation (EEC) No 2200/87 laid down for all food aid transport, delivery arrangements
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adapted to the specific nature of food aid supply operations. Most important in this respect was the elimination of the CIF delivery arrangement, which is perfectly suitable in the context of commercial transactions, but which had proved problematic in the context of food aid. Under the latter arrangement, the successful tenderer organized the transport of the goods to the port of destination. The risk of loss of or to damage to the goods was, however, already transferred to the food aid recipient in the port of loading. The successful tenderer had to purchase a marine insurance against the risk of loss or of damage to the goods during carriage but this policy was endorsed to the order of the recipient. If something went wrong during the shipment, the recipient had to claim against the insurance. In order to claim successfully, however, the recipient had to prove that an accident had occurred during transport and this often proved very difficult. In addition, to keep the cost low, the insurance policies bought by the successful tenderers were often 'flimsy or partial'. Worse, however, if something happened during shipment which was normally not covered by a marine insurance policy, such as for example the bankruptcy of the shipping company, it was the recipient (and eventually the Community) which carried the full loss, even though the successful tenderer could in those cases often be blamed for having contracted with an unreliable (but cheap) shipping company. Under the new, currently used delivery arrangement free-at-port-of-landing the successful tenderer bears all risks up to the stage of delivery. Because tenderers are careful now to cover the risks sufficiently and avoid contracting with unreliable shipping companies, there has been an increase in tendering costs but - as the responsible Commission official recently pointed out - what better proof is there of the need for this new delivery arrangement.

The second point concerns the monitoring of the execution of the supply contract. As noted above, before 1987 the food aid supply contracts were usually concluded between the designated intervention agency and the successful tenderer. The Commission had no contractual link with the successful tenderer. Once the contract was executed, it was in most cases the intervention agency, and not the Commission, which paid the successful tenderer and released the security. While
in practice the Commission did not seldom give the intervention agencies precise instructions on the payments to be made, the Court of Justice ruled in case 109/83, Eurico v. Commission, that the intervention agencies were not agents of the Commission and had the exclusive responsibility for the payments. The logical consequence of this was of course that it was also for the intervention agency to check whether the successful tenderer complied with the terms of the supply contract in order to decide whether payment was justified. Unfortunately, and in spite of the fact that Community law explicitly required them to do so, national intervention agencies did reportedly not always seriously check whether the undertaking executing the food aid supply contract did so in keeping with the terms of that contract. Attempts of the Commission to carry out its own checks met strong (and legally well founded) opposition from some intervention agencies. Since 1987, however, the supply contracts are concluded between the successful tenderer and the Commission; the latter is now responsible for the payment and thus for checking the proper execution of the supply contract. Instead of sending out its own officials to check the execution of the contracts, the Commission has, however, entrusted this task to specialized private undertakings, the so-called monitoring agencies, to which I already referred in the context of the quality of the products supplied as food aid. The Commission’s mobilization regulation stipulates in some detail a procedure providing for quality and quantity checks at the port of shipment as well as at the final stage of delivery. While it may still be too early for a definitive evaluation of this monitoring system, one cannot but note that the results so far have been quite impressive.

With regard to the execution of the supply contract it probably also deserves to be mentioned that the Commission’s mobilization regulation of 8 July 1987 organizes carefully the taking-over and provides for detailed rules on the payment and the release of securities. This compares favourable with the pre-1987 situation. It should be noted, however, that while the Commission’s mobilization regulation of July 1987 has allowed for a significant improvement in the execution of supply contracts, the regulation can certainly still be ameliorated. At times it is vague and badly drafted and it also has a few obvious lacuna. It is therefore not surprising
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that the Commission is reportedly considering to replace the 1987 mobilization regulation.

5) Finally, after the food aid has been delivered to the stage agreed, it is up to the recipient to use the latter as stipulated in the supply agreement. Until the late seventies, the Commission made no serious effort to monitor the recipients' compliance with the terms and conditions of the supply agreements. Virtually unaware of what really happened with the food aid it supplied, the Commission was of course also unable to evaluate the effectiveness in developmental and humanitarian terms of its food aid operations; surplus disposal being the Community's primary objective, the impact of food aid in the recipient country was undoubtedly only a secondary concern. As I already noted above, by the end of the seventies, most food aid supply agreements stipulated an audit clause and the Commission started carrying out some on-the-spot checks, the Delegations were instructed to audit food aid projects and the Court of Auditors undertook also a number of visits to recipient countries to check on the use made of Community food aid. As a result the Community was increasingly aware of cases of misuse but remained overall badly informed about the use of its food aid. During the eighties, this situation was gradually remedied not in the least because of the Commission and the Court of Auditors carried out more on-the-spot checks and the Commission Delegations got more involved. The second framework regulation explicitly requires the Commission to undertake regular evaluations of significant food aid operations to establish whether the objectives of the operations have been met and to provide guidelines to improve the effectiveness of future operations. Recently the Council has also called upon the Commission to undertake annually an assessment of the food aid programme as a whole.

It is beyond doubt that the Community has in recent years significantly improved its monitoring and evaluation record. The biggest constraint on further progress in this respect is lack of staff.
The above analysis of the main features of past and present food aid policy and law reveal clearly the impressive changes in the Community's food aid policy since its inception as well as the scope for further change. While initially in the first place an instrument for surplus disposal, Community food aid is now primarily an instrument for development cooperation and humanitarian relief. As I already pointed out, the present Community food aid policy meets to a large degree the "policy requirements" spelled out in the introduction of this study. This does not mean, however, that Community food aid law is no longer subject to improvement in this sense; a number of general as well as more specific suggestions were made to this end throughout the last part of this study. In view of particularly the (much reduced but) continuing relevance of the promotion of domestic agricultural interests in the context of the Community's food aid policy, the scope for change seems, however, fairly limited. The Community's food aid policy cannot but remain a compromise between its explicitly stated developmental and humanitarian objectives and its unstated CAP (and foreign policy) objectives. If Community food aid would stop promoting the interests of Europe's farmers, political support for this policy would crumble and it would cease to exist in its present size. The only question is whether the balance of compromise between the objectives is likely to shift further in favour of development and relief. It is virtually impossible to give a definitive answer to this question; ten years ago, most experts would have ruled out as unrealistic many of the changes to the Community's food aid policy which have intervened in the meantime. The Council's Resolution of 21 November 1989 may be seen as an indication that the balance of compromise may still shift further in favour of development and relief. It should be noted, however, that it seems that the balance of compromise can in a number of respects hardly shift any further in favour of development and relief without making Community food aid of very little use to European farmers. On the contrary, one cannot exclude that in the nineties the balance of compromise of the Community's food aid may shift in the opposite direction, i.e. in favour of the promotion of domestic agricultural interests and foreign policy interests (other than development cooperation and humanitarian relief). With regard to the former, the Commission's proposal for a financing facility was a clear sign on the wall. With
regard to the latter, one should note that if and when that Community succeeds in developing a full fledged foreign policy, it may be very hard to resist the temptation to use food aid as one of the instruments of that policy.