

Statutory Instrument 2001 No. 430

The Organic Products Regulations 2001

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STATUTORY INSTRUMENTS

2001 No. 430

AGRICULTURE, ENGLAND

The Organic Products Regulations 2001

<i>Made</i>	<i>14th February 2001</i>
<i>Laid before Parliament</i>	<i>22nd February 2001</i>
<i>Coming into force</i>	<i>19th March 2001</i>

The Minister of Agriculture, Fisheries and Food, being a Minister designated[1] for the purposes of section 2(2) of the European Communities Act 1972[2] in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on him by the said section 2(2)[3], and of all other powers enabling him in that behalf, hereby makes the following Regulations:

Title, commencement and extent

1. - (1) These Regulations may be cited as the Organic Products Regulations 2001, shall come into force on 19th March 2001 and, subject to paragraph (2) below, shall apply to England.

(2) The provisions of regulation 3(3) below shall also apply to Scotland.

Interpretation

2. - (1) In these Regulations, except where the context requires otherwise -

"authorised officer" means any person (whether or not an officer of a local authority) who is authorised by a local authority in writing, either generally or specially, to act in matters arising under these Regulations;

"business" includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a public or local authority;

"the Commission Regulations" means the Commission Regulations listed in Schedule 1 to these Regulations;

"the Council Regulation" means Council Regulation (EEC) No. 2092/91[4] on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, as read in accordance with Schedule 2 to these Regulations;

"inspection" means a precautionary or inspection measure described in Annex III to the Council Regulation;

"inspection body", otherwise than in the expression "private inspection body", means a private inspection body holding a current approval from the Minister under Article 9 of the Council Regulation;

"local authority" means -

(a) for each non-metropolitan county, metropolitan district and London borough, the council of that county, district or borough, and

(b) for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London;

"the Minister" means the Minister of Agriculture, Fisheries and Food;

"notification" means a notification of the information specified in Annex IV to the Council Regulation made by an operator under Article 8(1)(a) of that Regulation;

"organic products" means the products referred to in Article 1(1) of the Council Regulation;

"public analyst" has the same meaning as in the Food Safety Act 1990[5];

"specified Community provisions" means those provisions of the Council Regulation which are specified in column 1 of Schedule 3 to these Regulations, as read with -

(a) any supplementary provisions specified in column 2 thereof;

(b) Article 3 of Council Regulation (EEC) No. 1804/1999[6] supplementing Regulation (EEC) No. 2092/91 to include livestock production, and

(c) any additional provisions thereto contained in the UKROFS Livestock Standards;

"UKROFS" means the United Kingdom Register of Organic Food Standards;

"UKROFS Livestock Standards" means the standards for organic livestock and

livestock products contained in the UKROFS Standards for Organic Food Production, February 2001 Edition, published by the Ministry of Agriculture, Fisheries and Food.

(2) Other expressions used in these Regulations, where they also appear in the Council Regulation and the Commission Regulations, have the same meanings as in those Regulations.

Designation of authority for the reception of notifications and operation of inspection system, and information to local authorities

3. - (1) The Minister is designated as -

(a) the authority responsible for the receipt of notifications under Article 8(1) of the Council Regulation and making available to interested parties the updated list referred to in Article 8(3) of that Regulation;

(b) the inspection authority responsible for the operation of the inspection system referred to in Article 9(1) of the Council Regulation;

(c) the authority responsible for the approval and supervision of private inspection bodies, in accordance with Articles 9(4) to (9), (11) and (12) and 10(3) of the Council Regulation, and

(d) the competent authority for the purposes of Articles 9(9)(b), 10(3)(b) and 11(6) of the Council Regulation.

(2) Where, following the attempted exercise of a function under Article 9(9) or 10(3) of the Council Regulation by the Minister or an inspection body, the Minister or body, as the case may be, has reason to believe that any person is using in any local authority area any indication which the Minister and the inspection body are required by that Article to prevent him from using -

(a) the Minister or the inspection body, as appropriate, shall notify in writing that use to the local authority of that area;

(b) where the notification referred to in sub-paragraph (a) above is given by an inspection body, it shall also notify in writing that use to the Minister, and

(c) the Minister or the inspection body, as the case may be, giving such notification shall give the local authority any information which the local authority may reasonably require for the purpose of enforcement under regulation 6 below in relation to the use of that indication.

(3) The Minister may, with the agreement of the Scottish Ministers, act on their behalf in respect of any functions exercisable by them in or as regards Scotland as an authority of a kind mentioned in paragraph (1)(a), (b), (c) or (d) above.

Additional requirement relating to the labelling of organic products

4. For the purposes of Article 5(1)(d), (3)(g), (5)(e) and (5a)(h) of the Council Regulation, the operator in question shall include on the labelling a reference to the code number of the inspection authority or body to which he is subject.

Inspection system

5. - (1) The Minister and each inspection body may make a charge for any inspection which he or it carries out, of an amount not exceeding the expenses reasonably

incurred by him or it in connection with the inspection, and any such charge shall be recoverable by the Minister or the inspection body, as the case may be.

(2) Where an operator has been unable to reach agreement with an inspection body for the carrying out of an inspection, the Minister shall, if so requested by the operator, take such steps as are necessary to procure that an inspection is carried out by such other inspection body as may agree to do so.

(3) For the purposes of this regulation "operator" shall have the same meaning as it bears in Article 9(2) of the Council Regulation.

Enforcement, offences and penalties

6. - (1) Each local authority shall enforce and execute within its area the specified Community provisions and regulation 4 above.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions or regulation 4 above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) For the purposes of the enforcement and execution of the specified Community provisions and regulation 4 above, the supply in the course of a business of organic products, otherwise than on sale, shall be deemed to be a sale of such products and for those purposes sale shall include possession for sale, or offer or exposure for sale.

(4) For the purposes of the enforcement and execution of the specified Community provisions and regulation 4 above in respect of products intended for human consumption within the meaning of Article 1(1)(b) of the Council Regulation, any such product commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption.

Procurement of samples

7. An authorised officer may, for the purposes of ascertaining whether any offence under these Regulations has been committed, purchase or take samples of any organic product.

Analysis, testing and examination

8. - (1) If an authorised officer who has procured a sample of any organic product considers that it should be analysed, examined or tested, he shall submit such sample to be analysed, examined or tested, as the case may be, by the public analyst for the area in which it was procured or, if the office of the public analyst for the area is vacant, to the public analyst for some other area.

(2) The public analyst shall analyse, examine or test or have analysed, examined or tested, as soon as practicable, any sample submitted to him in pursuance of this regulation.

(3) A public analyst who has analysed, examined or tested a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis, examination or test.

(4) Any certificate of the results of an analysis, examination or test given by a public analyst in pursuance of this regulation shall be signed by the public analyst, but the analysis, examination or test may be made by any person acting under the direction of the analyst.

(5) In any proceedings under these Regulations, the production by one of the parties

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- (a) of a document purporting to be a certificate under paragraph (3) above, or**
- (b) of a document supplied to him by the other party as being a copy of such a certificate,**

shall be sufficient evidence of the facts stated in it unless, in a case falling within subparagraph (a) above, the other party requires that the analyst shall be called as a witness.

(6) In any such proceedings if a person charged intends to produce a certificate of a public analyst, or under paragraph (5) above to require that the analyst shall be called as a witness, notice of his intention, together, in the first-mentioned case, with a copy of the certificate, shall be given to the other party at least three clear days before the hearing or trial, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing or trial on such terms as it thinks proper.

Analysis by Government Chemist

9. - (1) The court before which any proceedings are taken under these Regulations, may, if it thinks fit for the purposes of the proceedings, cause any product which -

- (a) is the subject of the proceedings, and**
- (b) if it has already been analysed, examined or tested, is capable of being further analysed, examined or tested,**

to be sent to the Government Chemist, who shall make such analysis, examination or test as is appropriate and transmit to the court a certificate of the result thereof; and the costs of the analysis, examination or test shall be paid by the prosecutor or the person charged as the court may order.

(2) If, in a case where an appeal is brought, no action has been taken under paragraph (1) above, the provisions thereof shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis, examination or test transmitted by the Government Chemist under this regulation shall be signed by or on behalf of the Government Chemist, but the analysis, examination or test may be made by any person under the direction of the person by whom the certificate is signed; and any certificate so transmitted by the Government Chemist shall be evidence of the facts stated therein unless any party to the proceedings requires that the person by whom it is signed shall be called as a witness.

Powers of entry

10. - (1) An authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purposes of ascertaining whether there is or has been any contravention of, or failure to comply with, the specified Community provisions or regulation 4 above.

(2) If a justice of the peace, on sworn information in writing, is satisfied that there is a reasonable ground for entry into any premises for any such purpose as is mentioned in paragraph (1) above and either -

- (a) that admission to the premises has been refused, or a refusal is apprehended,**

and that notice of the intention to apply for a warrant has been given to the occupier, or

(b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice may by warrant signed by him authorise the authorised officer to enter the premises, if need be by reasonable force.

(3) Every warrant granted under this regulation shall continue in force for a period of one month.

(4) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may take with him such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.

(5) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a business dealing with any organic product and, where any such records are kept by means of a computer -

(a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and

(b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford to him such assistance as he may reasonably require.

(6) Any officer exercising any power conferred by paragraph (5) above may -

(a) seize and detain any records which he has reason to believe may be required as evidence in any proceedings under these Regulations; and

(b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(7) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained by him in the premises with regard to any trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(8) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981[7], to enter any premises -

(a) in which an animal or bird affected with any disease to which that Act applies is kept; and

(b) which is situated in a place declared under that Act to be infected with such a disease.

(9) In this regulation "premises" includes any vehicle, stall or moveable structure, but does not include any premises used only as a dwelling.

Offences due to fault of another person and defence of due diligence

11. - (1) Where the commission by any person of an offence under regulation 6(2) above is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(2) In any proceedings for an offence under regulation 6(2) above, it shall, subject to paragraph (3) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(3) If in any case the defence provided by paragraph (2) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless -

(a) at least seven clear days before the hearing, and

(b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Obstruction etc. of officers

12. - (1) Any person who -

(a) intentionally obstructs any person acting in the enforcement or execution of the Council Regulation or these Regulations, or

(b) without reasonable cause, fails to give to any person acting in the enforcement or execution of the Council Regulation or these Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under that Regulation or these Regulations,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b) above -

(a) furnishes information which he knows to be false or misleading in a material particular, or

(b) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(3) Nothing in paragraph (1)(b) above shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

(4) A person guilty of an offence under this regulation shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offences by bodies corporate

13. - (1) Where a body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) any director, manager, secretary or other similar officer of the body corporate, or

(b) any person who was purporting to act in any such capacity,

he, as well as the body corporate, shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(2) For the purposes of paragraph (1) above, "director" in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

Protection of officers acting in good faith

14. - (1) An officer or agent of the Minister, of any inspection body or of any local authority is not personally liable in respect of any act done by him in the execution or purported execution of these Regulations or the Council Regulation within the scope of his employment, if he did that act in the honest belief that his duty under these Regulations or the Council Regulation required or entitled him to do it.

(2) Nothing in paragraph (1) above shall be construed as relieving the Minister or any inspection body or any local authority from any liability in respect of acts of their officers.

Revocations and amendments

15. - (1) The Regulations specified in Schedule 4 to these Regulations are hereby revoked in so far as they apply to England.

(2) In the Organic Farming (Aid) Regulations 1994[8], in so far as they apply to England, in regulation 2(1), in the definition of "inspection authority" there shall be substituted for the words "Organic Products Regulations 1992" the words "Organic Products Regulations 2001".

(3) In the Arable Area Payments Regulations 1996[9], in so far as they apply to England, in regulation 2(1), in sub-paragraph (b) of the definition of "accepted organic farmer" there shall be substituted for the words "notified the appropriate Minister (as defined by regulation 2(1) of the Organic Products Regulations 1992)" the words "and regulation 3(1) of the Organic Products Regulations 2001 notified the Minister".

(4) In the Organic Farming Regulations 1999[10], in regulation 2(1), in sub-paragraph (a) of the definition of "inspection authority" there shall be substituted for the words "Organic Products Regulations 1992" the words "Organic Products Regulations 2001".

Elliot Morley

Parliamentary Secretary Ministry of Agriculture, Fisheries and Food

14th February 2001

SCHEDULE 1

Regulation 2(1)

THE COMMISSION REGULATIONS

1. Commission Regulation (EEC) No. 94/92[11] laying down detailed rules for implementing the arrangements for imports from third countries provided for in Regulation (EEC) No. 2092/91, as amended by Commission Regulation (EC) No. 522/96[12], Commission Regulation (EC) No. 314/97[13], Commission Regulation (EC) No. 1367/98[14], Commission Regulation (EC) No. 548/2000[15], Commission Regulation (EC) No. 1566/2000[16], and Commission Regulation (EC) No. 1616/2000[17].

2. Commission Regulation (EEC) No. 3457/92[18] laying down detailed rules concerning the inspection certificate for imports from third countries into the Community provided for in Council Regulation (EEC) No. 2092/91, as read with Commission Regulation (EC) No. 529/95[19].

SCHEDULE 2

Regulation 2(1)

THE COUNCIL REGULATION

Council Regulation (EEC) No. 2092/91 has been amended by and must be read subject to:

Commission Regulation (EEC) No. 1535/92[20];

Council Regulation (EEC) No. 2083/92[21];

Commission Regulation (EEC) No. 207/93[22];

Commission Regulation (EEC) No. 2608/93[23];

Commission Regulation (EC) No. 468/94[24];

Council Regulation (EC) No. 1468/94[25];

Commission Regulation (EC) No. 2381/94[26];

Commission Regulation (EC) No. 1201/95[27];

Commission Regulation (EC) No. 1202/95[28];

Council Regulation (EC) No. 1935/95[29];

Commission Regulation (EC) No. 418/96[30];

Commission Regulation (EC) No. 1488/97[31];

Commission Regulation (EC) No. 1900/98[32];

Commission Regulation (EC) No. 330/1999[33];

Council Regulation (EC) No. 1804/1999[34];

Commission Regulation (EC) No. 331/2000[35];

Commission Regulation (EC) No. 1073/2000[36];

Commission Regulation (EC) No. 1437/2000[37];

Commission Regulation (EC) No. 2020/2000[38].

SCHEDULE 3

Regulation 2(1)

SPECIFIED COMMUNITY PROVISIONS

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Provision of the Council Regulation</i>	<i>Supplementary provisions</i>	<i>Subject matter</i>
1. Article 5	Article 6a of the Council Regulation	Requirements relating to the labelling and advertising of products which bear or are intended to bear indications referring to organic production methods
2. Article 10(1)		Requirements for indication that products are covered by the specific inspection system
3. Article 10(2)		Prohibition on claims that the indication "Organic Farming - EC Control System" constitutes a guarantee of superior quality
4. Article 11(1) and (3)	the Commission Regulations	Restrictions on marketing organic products imported from a third country

SCHEDULE 4

Regulation 15

REVOCATIONS

<i>Regulations revoked</i>	<i>References</i>
The Organic Products Regulations 1992	S.I. 1992/2111.
The Organic Products (Amendment) Regulations 1993	S.I. 1993/405.
The Organic Products (Amendment) Regulations 1994	S.I. 1994/2286.
The Organic Products (Amendment) Regulations 1997	S.I. 1997/166.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to England and come into force on 19th March 2001, provide for the continued administration, execution and enforcement of Council Regulation (EEC) No. 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, and of Commission Regulations supplementing that Regulation. A full list of amendments to Regulation 2092/91 is in Schedule 2 and a full list of the relevant Commission Regulations is in Schedule 1. Regulation 2092/91 has now been amended in particular by Council Regulation (EC) No. 1804/1999, which brings livestock production within the scope of Regulation 2092/91. Although Regulation 1804/1999 entered into force on 24th August 1999, only the prohibitions on the use of genetically modified organisms and their derivatives set out in that Regulation apply from that date. The rest of that Regulation applies from 24th August 2000 (Article 3 of that Regulation refers).

Regulation 3 designates the Minister of Agriculture, Fisheries and Food as the inspection authority responsible for the inspection system under Regulation 2092/91, as amended ("the Council Regulation"), and the approval of private inspection bodies. Producers, importers and processors of organic products covered by the Council Regulation are subject to this inspection system. For the purposes of enforcing Articles 9(9) and 10(3) of the Council Regulation (irregularities and infringements of the rules on labelling and production of organic products) the Minister, or the private inspection body as appropriate, must give the relevant local authority the information which the local authority needs to enforce the organic labelling provisions (regulation 3(2)). The Minister is also authorised to act on behalf of the Scottish Ministers in respect of any functions exercisable by them as the authority responsible for the operation of the inspection system, the approval and supervision of inspection bodies and certain other purposes (regulation 3(3)). (Power to enter into corresponding arrangements for such functions to be exercised by him on behalf of the National Assembly for Wales and the Department of Agriculture and Rural Development for Northern Ireland is conferred by, respectively, section 41 of the Government of Wales Act 1998 (c. 38) and section 28 of the Northern Ireland Act 1998 (c. 47).)

The Regulations impose an additional labelling requirement in respect of organic products in pursuance of Article 5 of the Council Regulation (regulation 4). The code numbers referred to in regulation 4 are contained in the UKROFS Standards for Organic Food Production, published by the Ministry of Agriculture, Fisheries and Food. Details of the code numbers are available, free of charge, from Rural and Marine Environment Division, Branch D, Ministry of Agriculture, Fisheries and Food, Nobel House, 17 Smith Square, London SW1P 3JR (telephone 020 7238 5605; fax number 020 7238 6148).

Each local authority within its area will enforce regulation 4 and the provisions of the

Council Regulation specified in column 1 of Schedule 3 to the Regulations, as read with any supplementary provisions listed in column 2 of that Schedule and, in the case of livestock and livestock products and as permitted by Article 12 of the Council Regulation as amended by Council Regulation (EC) No. 1804/1999, any additional standards for organic livestock and livestock products amongst those set out (which largely duplicate the EC standards) in the UKROFS Standards for Organic Food Production, February 2001 Edition, published by the Ministry of Agriculture, Fisheries and Food, (a copy of which can be inspected, during normal office hours, at the address given above) (regulation 6(1)).

The Regulations also -

- (a) provide for the payment of contributions to inspection expenses and access to the inspection system (regulation 5);**
- (b) make provision for offences and penalties (regulation 6(2)) and apply presumptions relating to sale and human consumption (regulation 6(3) and (4));**
- (c) contain powers of entry for authorised officers of local authorities (regulation 10) and supplementary provisions on enforcement (regulations 7 to 9, and 11 to 13) and protect officers acting in good faith (regulation 14);**
- (d) revoke the Regulations listed in Schedule 4, in so far as they apply to England, and make consequential amendments (regulation 15).**

No regulatory impact assessment has been prepared in respect of these Regulations.

Notes:

[1] S.I. 1972/1811.back

[2] 1972 c. 68.back

[3] The Minister's power to make regulations as regards Scotland is preserved by section 57(1) of the Scotland Act 1998 (c. 46).back

[4] OJ No. L198, 22.7.91, p.1.back

[5] 1990 c. 16.back

[6] OJ No. L222, 24.8.1999, p.1.back

[7] 1981 c. 22.back

[8] S.I. 1994/1721, to which there are amendments not relevant to these Regulations.back

[9] S.I. 1996/3142, to which there are amendments not relevant to these Regulations.back

[10] S.I. 1999/590, to which there are amendments not relevant to these Regulations.back

[11] OJ No. L11, 17.1.92, p.14.back

[12] OJ No. L77, 27.3.96, p.10.back

[13] OJ No. L51, 21.2.97, p.34.back

[14] OJ No. L185, 30.6.98, p.11.back

[15] OJ No. L67, 15.3.2000, p.12.back

[16] OJ No. L180, 19.7.2000, p.17.back

[17] OJ No. L185, 25.7.2000, p.62.back

[18] OJ No. L350, 1.12.92, p.56.back

[19] OJ No. L54, 10.3.95, p.10.back

[20] OJ No. L162, 16.6.92, p.15.back

[21] OJ No. L208, 24.7.92, p.15.back

[22] OJ No. L25, 2.2.93, p.5.back

[23] OJ No. L239, 24.9.93, p.10.back

[24] OJ No. L59, 3.3.94, p.1.back

[25] OJ No. L159, 28.6.94, p.11.back

[26] OJ No. L255, 1.10.94, p.84.back

[27] OJ No. L119, 30.5.95, p.9.back

[28] OJ No. L119, 30.5.95, p.11.back

[29] OJ No. L186, 5.8.95, p.1.back

[30] OJ No. L59, 8.3.96, p.10.back

[31] OJ No. L202, 30.7.97, p.12.back

[32] OJ No. L247, 5.9.98, p.6.back

[33] OJ No. L40, 13.2.1999, p.23.back

[34] OJ No. L222, 24.8.1999, p.1. This Regulation applies from 24th August 2000, except that the prohibitions on the use of genetically modified organisms and their derivatives set out in that Regulation apply from 24th August 1999 (Article 3 refers).back

[35] OJ No. L48, 19.2.2000, p.1.back

[36] OJ No. L119, 20.5.2000, p.27.back

[37] OJ No. L161, 1.7.2000, p.62.back

[38] OJ No. L241, 26.9.2000, p.39.back

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