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Legislation

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[1] Text with EEA relevance

(Acts adopted pursuant to Title V of the Treaty on European Union)

COUNCIL DECISION

of 9 April 2001

concerning the conclusion of the Agreement between the European Union and the Federal Republic of Yugoslavia (FRY) on the activities of the European Union Monitoring Mission (EUMM) in the FRY

(2001/352/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 24 thereof,

Having regard to the recommendation from the Presidency,

Whereas:

(1) On 22 December 2000, the Council adopted Joint Action 2000/811/CFSP on the European Union Monitoring Mission [1].

(2) Article 6 of that Joint Action provides that the detailed rules governing the EUMM operations in the areas of its responsibilities are to be laid down in arrangements to be concluded in accordance with the procedure laid down in Article 24 of the Treaty.

(3) Following the Council Decision of 12 March 2001 authorising the Presidency to open negotiations, the Presidency negotiated an agreement with the FRY on the activities of the EUMM.

(4) That agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Union and the Federal Republic of Yugoslavia on the activities of the European Union Monitoring Mission (EUMM) in the Federal Republic of Yugoslavia is hereby approved on behalf of the European Union.

The text of the Agreement is attached to this Decision.

Article 2

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

Article 3

This Decision shall be published in the Official Journal.

It shall take effect on the day of its publication.

Done at Luxembourg, 9 April 2001.

For the Council

The President

A. LINDH

[1] OJ L 328, 31.12.2000, p. 53.

AGREEMENT

between the European Union and the Federal Republic of Yugoslavia on the activities of the European Union Monitoring Mission (EUMM) in the Federal Republic of Yugoslavia

THE EUROPEAN UNION,

on the one hand

and

THE FEDERAL REPUBLIC OF YUGOSLAVIA,

hereinafter called the

Host Party, on the other hand,

Together hereinafter called the Participating Parties,

Taking into account

— the presence of the European Community Monitor Mission (ECMM) in the western Balkans since 1991,

— the offer of the European Union and its Member States to organise a European Union Monitoring Mission (EUMM) in the Federal Republic of Yugoslavia and the acceptance by the Government of the Federal Republic of Yugoslavia of that offer,

— the adoption by the Council of the European Union on the 22 December 2000 of Joint Action 2000/811/CFSP on the European Union Monitoring Mission, transforming ECMM into EUMM, as an instrument of the European Union's Common Foreign and Security Policy (CFSP), building on previous initiatives, to contribute to the effective formulation of European Union policy towards the western Balkans,

HAVE REACHED THE FOLLOWING UNDERSTANDINGS:

Article I

Mandate

1. The European Union Monitoring Mission, hereinafter referred to as 'EUMM', formerly established in the region as the European Community Monitor Mission (ECMM), with its headquarters at present in Sarajevo, shall establish a mission office in Belgrade and such other offices in the Federal Republic of Yugoslavia as may be decided by the Head of Mission, in consultation and agreement with the Host Party, in order to contribute to the effective formulation of the European Union's policy towards the western Balkans.

The EUMM shall in particular:

(a) monitor political and security developments in the area of responsibility;

(b) give particular attention to border monitoring, inter-ethnic issues and refugee return;

(c) provide analytical reports on the basis of tasking received;

(d) contribute to the early warning of the Council and to confidence building, in the context of the policy of stabilisation conducted by the European Union in the region.

2. The Host Party shall provide the EUMM with all information and shall extend full cooperation as necessary for the accomplishment of the EUMM's objectives. The Host Party may appoint a liaison officer to the EUMM.

Article II

Status

1. The Host Party shall take all necessary measures for the protection, safety and security of the EUMM and its members. Any specific provisions, proposed by the Host Party, shall be agreed with the Head of Mission before implementation.

2. For the purpose of conducting its activities, the EUMM and its personnel shall enjoy, together with its means of transport and equipment, freedom of movement, necessary for carrying out the mandate of the Mission.

3. When conducting its activities, the personnel of the EUMM may be accompanied by an interpreter and, at the request of the EUMM, by an escort officer appointed by the Host Party.

4. The EUMM may display the flag of the European Union on its Mission Office in Belgrade, and otherwise as decided by the Head of Mission.

5. Vehicles, and other means of transport of the EUMM shall carry a distinctive Mission identification, which shall be notified to the relevant authorities.

Article III

Composition

1. The Head of Mission of the EUMM shall be appointed by the Council of the European Union.

2. Other EUMM personnel shall be seconded by the Member States of the European Union. They shall be assigned to specific appointments by the Head of Mission under the authority of the Secretary General/High Representative. Norway and Slovakia, which participate in EUMM at the time of this Agreement, may also appoint personnel to the EUMM, and thereby be, together with the European Union and its Member States, Sending Parties.

3. Personnel of the EUMM shall be called monitors.

4. The Governments of the Sending Parties shall appoint monitors to the EUMM.

5. The Head of Mission shall determine the number of monitors under this Agreement, in consultation and agreement with the Host Party.

6. Monitors shall not undertake any action or activity incompatible with the impartial nature of their duties.

7. The EUMM may avail itself of the assistance of administrative and technical staff from the Sending Parties. The members of the EUMM's administrative and technical staff shall enjoy a status equivalent to that enjoyed, in accordance with the Vienna Convention on Diplomatic Relations, by administrative and technical staff from Sending Parties employed in embassies.

8. The EUMM may recruit locally such auxiliary personnel, as it requires. Upon request of the Head of Mission, the Host Party shall facilitate the recruitment of qualified local staff by the EUMM. The EUMM's auxiliary personnel shall enjoy a status equivalent to that enjoyed, in accordance with the Vienna Convention on Diplomatic Relations, by locally employed staff in embassies.

Article IV

Arms and dress

1. Monitors may not carry arms.

2. Monitors shall wear civilian dress, with distinctive EUMM identification.

Article V

Chain of responsibilities

1. The EUMM in the Federal Republic of Yugoslavia shall operate under the responsibility of the Head of Mission.

2. The Head of Mission shall report regularly through the Secretary General/High Representative to the Council of the European Union on the activities and findings of the EUMM.

3. The tasks of the EUMM shall be defined by the Secretary General/High Representative in close cooperation with the Presidency, in accordance with the policy adopted by the Council regarding the Western Balkans.

4. The Head of Mission shall inform the Host Party regularly on the activities of the EUMM.

Article VI

Travel and transport

1. Vehicles and other means of transport of the EUMM shall not be subject to compulsory registration or licensing, and all vehicles shall carry third party insurance.

2. The EUMM may use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or other charges.

3. The Host Party shall facilitate the EUMM in operating its own vehicles and other means of transport.

Article VII

Communications

1. The personnel of the EUMM shall have access, at the lowest cost, to appropriate telecommunications equipment of the Host Party for the purpose of its activities, including for communicating with diplomatic and consular representatives of the Sending Parties.

2. The EUMM shall enjoy the right to unrestricted communication by its own radios (including satellite, mobile and hand-held radios), telephones, telegraphs, facsimiles or any other means. The Host Party shall provide, after signature of this Agreement, the frequencies on which radios can operate.

Article VIII

Privileges and immunities

1. The EUMM shall be granted the status of a diplomatic mission.

2. Monitors shall be granted, during their mission, the privileges and immunities of diplomatic agents, in accordance with the Vienna Convention on Diplomatic Relations.

3. The Mission Office in Belgrade, other offices, and all means of transport of the EUMM shall be inviolable.

4. The privileges and immunities provided for in this Article shall be granted to Monitors during their mission, and thereafter, with respect to acts previously performed during their mission.

5. The Host Party shall facilitate all movements of the Head of Mission and personnel of the EUMM. The EUMM shall provide the Host Party with a list of members of the EUMM and inform the Host Party in advance of the arrival and departure of personnel belonging to the EUMM. Personnel belonging to the EUMM shall carry their national passport, as well as an EUMM identity card.

6. The Host Party recognises the right of the Sending Parties and of the EUMM to import, free of duty or other restrictions, equipment, provisions, supplies and other goods required for the exclusive and official use of the EUMM. The Host Party also recognises their right to purchase such items on the territory of the Host Party as well as to export or otherwise dispose of such equipment, provisions, supplies and other goods so purchased or imported. The Host Party also recognises the right of the Monitors to purchase and/or import free of duty or other restrictions items required for their own personal use, and to export such items.

Article IX

Accommodation and practical arrangements

The Government of the Federal Republic of Yugoslavia agrees, if requested, to assist the EUMM in finding suitable offices and accommodation. The Participating Parties will decide on other provisions concerning privileges and immunities as well as on practical arrangements, including urgent medical assistance and emergency evacuation, as well as travel documentation requirements.

Article X

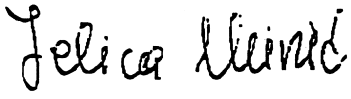
Entry into force

This Agreement shall enter into force upon signature. Its provisions shall be applied by the Host Party to the EUMM provisionally from the date of its initialling until it enters into force upon signature. It shall remain in force until such time as one of the Participating Parties notifies the other, two months in advance, that it intends to request an end to the activities mentioned herein. This Agreement shall replace the Memorandum of Understanding of 13 July 1991.

Done at Belgrade, on 25 April 2001, in the English language in four copies.

For the European Union

For the Federal Republic of Yugoslavia



I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 886/2001

of 4 May 2001

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables [1], as last amended by Regulation (EC) No 1498/98 [2], and in particular Article 4(1) thereof,

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 337, 24.12.1994, p. 66.
[2] OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 4 May 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	052	83,7
	204	77,5
	212	110,1
	999	90,4
0707 00 05	052	104,1
	628	135,4
	999	119,8
0709 90 70	052	86,6
	999	86,6
0805 10 10, 0805 10 30, 0805 10 50	052	69,1
	204	49,5
	212	63,0
	220	61,9
	600	61,0
	624	58,2
	999	60,4
0808 10 20, 0808 10 50, 0808 10 90	388	88,5
	400	106,8
	404	89,5
	508	79,3
	512	93,7
	528	88,0
	720	131,5
	804	138,2
	999	101,9

(1) Country nomenclature as fixed by Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 887/2001

of 4 May 2001

fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2281/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1667/2000 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2281/2000 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled round grain rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2281/2000 is hereby fixed on the basis of the tenders submitted from 27 April to 3 May 2001 at 230,00 EUR/t.

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 193, 29.7.2000, p. 3.
[3] OJ L 260, 14.10.2000, p. 7.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 888/2001

of 4 May 2001

fixing the maximum export refund on wholly milled medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2282/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organization of the market in rice [1], as last amended by Regulation (EC) No 1667/2000 [2], and in particular Article 13 (3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2282/2000 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries pursuant to the invitation to tender issued in Regulation (EC) No 2282/2000 is hereby fixed on the basis of the tenders submitted from 27 April to 3 May 2001 at 234,00 EUR/t.

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 193, 29.7.2000, p. 3.
[3] OJ L 260, 14.10.2000, p. 10.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 889/2001

of 4 May 2001

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice in connection with the invitation to tender issued in Regulation (EC) No 2283/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1667/2000 [2], and in particular Article 13(3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2283/2000 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled grain, medium grain and long grain A rice to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2283/2000 is hereby fixed on the basis of the tenders submitted from 27 April to 3 May 2001 at 252,00 EUR/t.

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 193, 29.7.2000, p. 3.
[3] OJ L 260, 14.10.2000, p. 13.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 890/2001

of 4 May 2001

fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2284/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1667/2000 [2], and in particular Article 13 (3) thereof,

Whereas:

(1) An invitation to tender for the export refund on rice was issued pursuant to Commission Regulation (EC) No 2284/2000 [3].

(2) Article 5 of Commission Regulation (EEC) No 584/75 [4], as last amended by Regulation (EC) No 299/95 [5], allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum export refund. In fixing this maximum, the criteria provided for in Article 13 of Regulation (EC) No 3072/95 must be taken into account. A contract is awarded to any tenderer whose tender is equal to or less than the maximum export refund.

(3) The application of the abovementioned criteria to the current market situation for the rice in question results in the maximum export refund being fixed at the amount specified in Article 1.

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

HAS ADOPTED THIS REGULATION:

Article 1

The maximum export refund on wholly milled long grain rice falling within CN code 1006 30 67 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2284/2000 is hereby fixed on the basis of the tenders submitted from 27 April to 3 May 2001 at 330,00 EUR/t.

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 193, 29.7.2000, p. 3.
[3] OJ L 260, 14.10.2000, p. 16.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 891/2001

of 4 May 2001

fixing the maximum subsidy on exports of husked long grain rice to Réunion pursuant to the invitation to tender referred to in Regulation (EC) No 2285/2000

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3072/95 of 22 December 1995 on the common organisation of the market in rice [1], as last amended by Regulation (EC) No 1667/2000 [2], and in particular Article 10(1) thereof,

Having regard to Commission Regulation (EEC) No 2692/89 of 6 September 1989 laying down detailed rules for exports of rice to Réunion [3] as amended by Regulation (EC) No 1453/1999 [4], and in particular Article 9(1) thereof,

Whereas:

(1) Commission Regulation (EC) No 2285/2000 [5] opens an invitation to tender for the subsidy on rice exported to Réunion.

(2) Article 9 of Regulation (EEC) No 2692/89 allows the Commission to fix, in accordance with the procedure laid down in Article 22 of Regulation (EC) No 3072/95 and on the basis of the tenders submitted, a maximum subsidy.

(3) The criteria laid down in Articles 2 and 3 of Regulation (EEC) No 2692/89 should be taken into account when fixing this maximum subsidy. Successful tenderers shall be those whose bids are at or below the level of the maximum subsidy.

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

HAS ADOPTED THIS REGULATION:

Article 1

A maximum subsidy on exports to Réunion of husked long grain rice falling within CN code 1006 20 98 is hereby set on the basis of the tenders lodged from 30 April to 3 May 2001 at 330,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 2285/2000.

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

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[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 193, 29.7.2000, p. 3.
[3] OJ L 261, 7.9.1989, p. 8.
[4] OJ L 167, 2.7.1999, p. 19.
[5] OJ L 260, 14.10.2000, p. 19.

COMMISSION REGULATION (EC) No 892/2001

of 4 May 2001

fixing the maximum buying-in price and the quantities of beef to be bought in under the 266th partial invitation to tender as a general intervention measure pursuant to Regulation (EEC) No 1627/89

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1], and in particular Article 17(8) thereof,

Whereas:

(1) Commission Regulation (EC) No 562/2000 of 15 March 2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards the buying-in of beef [2], as amended by Regulation (EC) No 590/2001 [3], lays down buying standards. Pursuant to the above Regulation, an invitation to tender was opened under Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender [4], as last amended by Regulation (EC) No 840/2001 [5].

(2) Article 13(1) of Regulation (EC) No 562/2000 lays down that a maximum buying-in price is to be fixed for quality R3, where appropriate, under each partial invitation to tender in the light of tenders received. In accordance with Article 36 of that Regulation, only tenders quoting prices not exceeding the maximum buying-in price and not exceeding the average national or regional market price, plus the amount referred to in Article 6(2) of Regulation (EC) No 590/2001 are to be accepted.

(3) Once tenders submitted in respect of the 266th partial invitation to tender have been considered pursuant to Article 47(8) of Regulation (EC) No 1254/1999, and taking account of the requirements for reasonable support of the market and the seasonal trend in slaughterings and prices, the maximum buying-in price and the quantities which may be bought in should be fixed for category A and no award made for category C.

(4) Article 7 of Regulation (EC) No 590/2001 also opens buying-in of carcasses and half-carcasses of store cattle and lays down special rules in addition to those laid down for the buying-in of other products.

(5) Veterinary measures to combat foot-and-mouth disease in certain regions, adopted in accordance with Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [6], as last amended by Directive 92/118/EEC [7], and/or Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market [8], as last amended by Directive 92/118/EEC, currently restrict the movement of animal products. In accordance with Article 4(2)(b) of Regulation (EC) No 562/2000, the products concerned from those regions should be excluded from this tendering procedure.

(6) In the light of developments, this Regulation should enter into force immediately.

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

HAS ADOPTED THIS REGULATION:

Article 1

Under the 266th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89:

(a) for category A:

— the maximum buying-in price shall be EUR 226,00/100 kg of carcasses or half-carcasses of quality R3,

— the maximum quantity of carcasses, half-carcasses, and forequarters accepted shall be 11 922,0 t,

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 68, 16.3.2000, p. 22.
[3] OJ L 86, 27.3.2001, p. 30, Regulation as last amended by Regulation (EC) No 826/2001 (OJ L 120, 28.4.2001, p. 7).
[4] OJ L 159, 10.6.1989, p. 36.
[5] OJ L 120, 28.4.2001, p. 28.
[6] OJ L 224, 18.8.1990, p. 29.
[7] OJ L 62, 15.3.1993, p. 49.
[8] OJ L 395, 30.12.1989, p. 13.

(b) for category C no award shall be made;

(c) for carcasses and half-carcasses of store cattle as referred to in Article 7 of Regulation (EC) No 590/2001:

— the maximum buying-in price shall be EUR 376,00/100 kg of carcasses or half-carcasses,

— the maximum quantity of carcasses and half-carcasses shall be 110 t.

Article 2

In accordance with Article 4(2)(b) of Regulation (EC) No 562/2000, carcasses or half-carcasses, the movement of which is restricted under the measures against foot-and-mouth disease adopted in accordance with Directives 90/425/EEC and/or 89/662/EEC, may not be bought into intervention under the tendering procedure provided for by this Regulation.

Article 3

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 893/2001

of 4 May 2001

fixing the maximum purchase price for beef under the second partial invitation to tender pursuant to Regulation (EC) No 690/2001

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal [1],

Having regard to Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector [2], and in particular Article 3(1) thereof,

Whereas:

(1) In application of Article 2(2) of Regulation (EC) No 690/2001, Commission Regulation (EC) No 713/2001 [3] on the purchase of beef under Regulation (EC) No 690/2001 establishes the list of Member States in which the tendering is open for the second partial invitation to tender on 30 April 2001.

(2) In accordance with Article 3(1) of Regulation (EC) No 690/2001, where appropriate, a maximum purchase price for the reference class shall be fixed in the light of the tenders received, taking into account the provisions of Article 3(2) of that Regulation.

(3) Because of the need to support in a reasonable way the market for beef a maximum purchase price should be fixed in the Member States concerned. In the light of the different level of market prices in those Member States, different maximum purchase prices should be fixed.

(4) Due to the urgency of the support measures, this Regulation should enter into force immediately.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Beef and Veal,

HAS ADOPTED THIS REGULATION:

Article 1

Under the second partial invitation to tender on 30 April 2001 opened under Regulation (EC) No 690/2001 the following maximum purchase prices shall be fixed:

— Austria: EUR 164,45/100 kg,
— The Netherlands: EUR 165,00/100 kg.

Article 2

This Regulation shall enter into force on 5 May 2001.

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

Done at Brussels, 4 May 2001.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 95, 5.4.2001, p. 8.
[3] OJ L 100, 11.4.2001, p. 3.

DIRECTIVE 2001/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 4 April 2001
on the reorganisation and winding up of credit institutions

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the Economic and Social Committee [2],

Having regard to the opinion of the European Monetary Institute [3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [4],

Whereas:

(1) In accordance with the objectives of the Treaty, the harmonious and balanced development of economic activities throughout the Community should be promoted through the elimination of any obstacles to the freedom of establishment and the freedom to provide services within the Community.

(2) At the same time as those obstacles are eliminated, consideration should be given to the situation which might arise if a credit institution runs into difficulties, particularly where that institution has branches in other Member States.

(3) This Directive forms part of the Community legislative framework set up by Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions [5]. It follows therefrom that, while they are in operation, a credit institution and its branches form a single entity subject to the supervision of the competent authorities of the State where authorisation valid throughout the Community was granted.

(4) It would be particularly undesirable to relinquish such unity between an institution and its branches where it is necessary to adopt reorganisation measures or open winding-up proceedings.

(5) The adoption of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes [6], which introduced the principle of compulsory membership by credit institutions of a guarantee scheme in their home Member State, brings out even more clearly the need for mutual recognition of reorganisation measures and winding-up proceedings.

(6) The administrative or judicial authorities of the home Member State must have sole power to decide upon and to implement the reorganisation measures provided for in the law and practices in force in that Member State. Owing to the difficulty of harmonising Member States' laws and practices, it is necessary to establish mutual recognition by the Member States of the measures taken by each of them to restore to viability the credit institutions which it has authorised.

(7) It is essential to guarantee that the reorganisation measures adopted by the administrative or judicial authorities of the home Member State and the measures adopted by persons or bodies appointed by those authorities to administer those reorganisation measures, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims and any other measure which could affect third parties' existing rights, are effective in all Member States.

(8) Certain measures, in particular those affecting the functioning of the internal structure of credit institutions or managers' or shareholders' rights, need not be covered by this Directive to be effective in Member States insofar as, pursuant to the rules of private international law, the applicable law is that of the home State.

(9) Certain measures, in particular those connected with the continued fulfilment of conditions of authorisation, are already the subject of mutual recognition pursuant to Directive 2000/12/EC insofar as they do not affect the rights of third parties existing before their adoption.

(10) Persons participating in the operation of the internal structures of credit institutions as well as managers and shareholders of such institutions, considered in those capacities, are not to be regarded as third parties for the purposes of this Directive.

[1] OJ C 356, 31.12.1985, p. 55 and OJ C 36, 8.2.1988, p. 1.
[2] OJ C 263, 20.10.1986, p. 13.
[3] OJ C 332, 30.10.1998, p. 13.
[4] Opinion of the European Parliament of 13 March 1987 (OJ C 99, 13.4.1987, p. 211), confirmed on 2 December 1993 (OJ C 342, 20.12.1993, p. 30), Council Common Position of 17 July 2000 (OJ C 300, 20.10.2000, p. 13) and Decision of the European Parliament of 16 January 2001 (not yet published in the Official Journal). Council Decision of 12 March 2001.
[5] OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).
[6] OJ L 135, 31.5.1994, p. 5.

(11) It is necessary to notify third parties of the implementation of reorganisation measures in Member States where branches are situated when such measures could hinder the exercise of some of their rights.

(12) The principle of equal treatment between creditors, as regards the opportunities open to them to take action, requires the administrative or judicial authorities of the home Member State to adopt such measures as are necessary for the creditors in the host Member State to be able to exercise their rights to take action within the time limit laid down.

(13) There must be some coordination of the role of the administrative or judicial authorities in reorganisation measures and winding-up proceedings for branches of credit institutions having head offices outside the Community and situated in different Member States.

(14) In the absence of reorganisation measures, or in the event of such measures failing, the credit institutions in difficulty must be wound up. Provision should be made in such cases for mutual recognition of winding-up proceedings and of their effects in the Community.

(15) The important role played by the competent authorities of the home Member State before winding-up proceedings are opened may continue during the process of winding up so that these proceedings can be properly carried out.

(16) Equal treatment of creditors requires that the credit institution is wound up according to the principles of unity and universality, which require the administrative or judicial authorities of the home Member State to have sole jurisdiction and their decisions to be recognised and to be capable of producing in all the other Member States, without any formality, the effects ascribed to them by the law of the home Member State, except where this Directive provides otherwise.

(17) The exemption concerning the effects of reorganisation measures and winding-up proceedings on certain contracts and rights is limited to those effects and does not cover other questions concerning reorganisation measures and winding-up proceedings such as the lodging, verification, admission and ranking of claims concerning those contracts and rights and the rules governing the distribution of the proceeds of the realisation of the assets, which are governed by the law of the home Member State.

(18) Voluntary winding up is possible when a credit institution is solvent. The administrative or judicial authorities of the home Member State may nevertheless, where appropriate, decide on a reorganisation measure or winding-up proceedings, even after voluntary winding up has commenced.

(19) Withdrawal of authorisation to pursue the business of banking is one of the consequences which winding up a credit institution necessarily entails. Withdrawal should not, however, prevent certain activities of the institution from continuing insofar as is necessary or appropriate for the purposes of winding up. Such a continuation of activity may nonetheless be made subject by the home Member State to the consent of, and supervision by, its competent authorities.

(20) Provision of information to known creditors on an individual basis is as essential as publication to enable them, where necessary, to lodge their claims or submit observations relating to their claims within the prescribed time limits. This should take place without discrimination against creditors domiciled in a Member State other than the home Member State, based on their place of residence or the nature of their claims. Creditors must be kept regularly informed in an appropriate manner throughout winding-up proceedings.

(21) For the sole purpose of applying the provisions of this Directive to reorganisation measures and winding-up proceedings involving branches located in the Community of a credit institution of which the head office is situated in a third country, the definitions of 'home Member State', 'competent authorities' and 'administrative or judicial authorities' should be those of the Member State in which the branch is located.

(22) Where a credit institution which has its head office outside the Community possesses branches in more than one Member State, each branch should receive individual treatment in regard to the application of this Directive. In such a case, the administrative or judicial authorities and the competent authorities as well as the administrators and liquidators should endeavour to coordinate their activities.

(23) Although it is important to follow the principle that the law of the home Member State determines all the effects of reorganisation measures or winding-up proceedings, both procedural and substantive, it is also necessary to bear in mind that those effects may conflict with the rules normally applicable in the context of the economic and financial activity of the credit institution in question and its branches in other Member States. In some cases reference to the law of another Member State represents an unavoidable qualification of the principle that the law of the home Member State is to apply.

(24) That qualification is especially necessary to protect employees having a contract of employment with a credit institution, ensure the security of transactions in respect of certain types of property and protect the integrity of regulated markets functioning in accordance with the law of a Member State on which financial instruments are traded.

(25) Transactions carried out in the framework of a payment and settlement system are covered by Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems [1].

(26) The adoption of this Directive does not call into question the provisions of Directive 98/26/EC according to which insolvency proceedings must not have any effect on the enforceability of orders validly entered into a system, or on collateral provided for a system.

(27) Some reorganisation measures or winding-up proceedings involve the appointment of a person to administer them. The recognition of his appointment and his powers in all other Member States is therefore an essential factor in the implementation of decisions taken in the home Member State. However, the limits within which he may exercise his powers when he acts outside the home Member State should be specified.

(28) Creditors who have entered into contracts with a credit institution before a reorganisation measure is adopted or winding-up proceedings are opened should be protected against provisions relating to voidness, voidability or unenforceability laid down in the law of the home Member State, where the beneficiary of the transaction produces evidence that in the law applicable to that transaction there is no available means of contesting the act concerned in the case in point.

(29) The confidence of third-party purchasers in the content of the registers or accounts regarding certain assets entered in those registers or accounts and by extension of the purchasers of immovable property should be safeguarded, even after winding-up proceedings have been opened or a reorganisation measure adopted. The only means of safeguarding that confidence is to make the validity of the purchase subject to the law of the place where the immovable asset is situated or of the State under whose authority the register or account is kept.

(30) The effects of reorganisation measures or winding-up proceedings on a lawsuit pending are governed by the law of the Member State in which the lawsuit is pending, by way of exception to the application of the *lex concursus*. The effects of those measures and procedures on individual enforcement actions arising from such lawsuits are governed by the legislation of the home Member State, in accordance with the general rule established by this Directive.

(31) Provision should be made for the administrative or judicial authorities in the home Member State to notify immediately the competent authorities of the host Member State of the adoption of any reorganisation measure or the opening of any winding-up proceedings, if possible before the adoption of the measure or the opening of the proceedings, or, if not, immediately afterwards.

(32) Professional secrecy as defined in Article 30 of Directive 2000/12/EC is an essential factor in all information or consultation procedures. For that reason it should be respected by all the administrative authorities taking part in such procedures, whereas the judicial authorities remain, in this respect, subject to the national provisions relating to them,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Directive shall apply to credit institutions and their branches set up in Member States other than those in which they have their head offices, as defined in points (1) and (3) of Article 1 of Directive 2000/12/EC, subject to the conditions and exemptions laid down in Article 2(3) of that Directive.

2. The provisions of this Directive concerning the branches of a credit institution having a head office outside the Community shall apply only where that institution has branches in at least two Member States of the Community.

Article 2

Definitions

For the purposes of this Directive:

— 'home Member State' shall mean the Member State of origin within the meaning of Article 1, point (6) of Directive 2000/12/EC;

— 'host Member State' shall mean the host Member State within the meaning of Article 1, point (7) of Directive 2000/12/EC;

— 'branch' shall mean a branch within the meaning of Article 1, point (3) of Directive 2000/12/EC;

— 'competent authorities' shall mean the competent authorities within the meaning of Article 1, point (4) of Directive 2000/12/EC;

— 'administrator' shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer reorganisation measures;

— 'administrative or judicial authorities' shall mean such administrative or judicial authorities of the Member States as are competent for the purposes of reorganisation measures or winding-up proceedings;

— 'reorganisation measures' shall mean measures which are intended to preserve or restore the financial situation of a credit institution and which could affect third parties' pre-existing rights, including measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

[1] OJ L 166, 11.6.1998, p. 45.

— 'liquidator' shall mean any person or body appointed by the administrative or judicial authorities whose task is to administer winding-up proceedings;

— 'winding-up proceedings' shall mean collective proceedings opened and monitored by the administrative or judicial authorities of a Member State with the aim of realising assets under the supervision of those authorities, including where the proceedings are terminated by a composition or other, similar measure;

— 'regulated market' shall mean a regulated market within the meaning of Article 1, point (13) of Directive 93/22/EEC;

— 'instruments' shall mean all the instruments referred to in Section B of the Annex to Directive 93/22/EEC.

TITLE II

REORGANISATION MEASURES

A. *Credit institutions having their head offices within the Community*

Article 3

Adoption of reorganisation measures — applicable law

1. The administrative or judicial authorities of the home Member State shall alone be empowered to decide on the implementation of one or more reorganisation measures in a credit institution, including branches established in other Member States.

2. The reorganisation measures shall be applied in accordance with the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in this Directive.

They shall be fully effective in accordance with the legislation of that Member State throughout the Community without any further formalities, including as against third parties in other Member States, even where the rules of the host Member State applicable to them do not provide for such measures or make their implementation subject to conditions which are not fulfilled.

The reorganisation measures shall be effective throughout the Community once they become effective in the Member State where they have been taken.

Article 4

Information for the competent authorities of the host Member State

The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to adopt any reorganisation measure, including the practical effects which such a measure may have, if possible before it is adopted or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the home Member State.

Article 5

Information for the supervisory authorities of the home Member State

Where the administrative or judicial authorities of the host Member State deem it necessary to implement within their territory one or more reorganisation measures, they shall inform the competent authorities of the home Member State accordingly. Information shall be communicated by the host Member State's competent authorities.

Article 6

Publication

1. Where implementation of the reorganisation measures decided on pursuant to Article 3(1) and (2) is likely to affect the rights of third parties in a host Member State and where an appeal may be brought in the home Member State against the decision ordering the measure, the administrative or judicial authorities of the home Member State, the administrator or any person empowered to do so in the home Member State shall publish an extract from the decision in the *Official Journal of the European Communities* and in two national newspapers in each host Member State, in order in particular to facilitate the exercise of the right of appeal in good time.

2. The extract from the decision provided for in paragraph 1 shall be forwarded at the earliest opportunity, by the most appropriate route, to the Office for Official Publications of the European Communities and to the two national newspapers in each host Member State.

3. The Office for Official Publications of the European Communities shall publish the extract at the latest within twelve days of its dispatch.

4. The extract from the decision to be published shall specify, in the official language or languages of the Member States concerned, in particular the purpose and legal basis of the decision taken, the time limits for lodging appeals, specifically a clearly understandable indication of the date of expiry of the time limits, and the full address of the authorities or court competent to hear an appeal.

5. The reorganisation measures shall apply irrespective of the measures prescribed in paragraphs 1 to 3 and shall be fully effective as against creditors, unless the administrative or judicial authorities of the home Member State or the law of that State governing such measures provide otherwise.

Article 7

Duty to inform known creditors and right to lodge claims

1. Where the legislation of the home Member State requires lodgement of a claim with a view to its recognition or provides for compulsory notification of the measure to creditors who have their domiciles, normal places of residence or head offices in that State, the administrative or judicial authorities of the

home Member State or the administrator shall also inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, in accordance with the procedures laid down in Articles 14 and 17(1).

2. Where the legislation of the home Member State provides for the right of creditors who have their domiciles, normal places of residence or head offices in that State to lodge claims or to submit observations concerning their claims, creditors who have their domiciles, normal places of residence or head offices in other Member States shall also have that right in accordance with the procedures laid down in Article 16 and Article 17(2).

B. *Credit institutions having their head offices outside the Community*

Article 8

Branches of third-country credit institutions

1. The administrative or judicial authorities of the host Member State of a branch of a credit institution having its head office outside the Community shall without delay inform, by any available means, the competent authorities of the other host Member States in which the institution has set up branches which are included on the list referred to in Article 11 of Directive 2000/12/EC and published each year in the *Official Journal of the European Communities*, of their decision to adopt any reorganisation measure, including the practical effects which that measure may have, if possible before it is adopted or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the host Member State whose administrative or judicial authorities decide to apply the measure.

2. The administrative or judicial authorities referred to in paragraph 1 shall endeavour to coordinate their actions.

TITLE III

WINDING-UP PROCEEDINGS

A. *Credit institutions having their head offices within the Community*

Article 9

Opening of winding-up proceedings — Information to be communicated to other competent authorities

1. The administrative or judicial authorities of the home Member State which are responsible for winding up shall alone be empowered to decide on the opening of winding-up proceedings concerning a credit institution, including branches established in other Member States.

A decision to open winding-up proceedings taken by the administrative or judicial authority of the home Member State shall be recognised, without further formality, within the territory of all other Member States and shall be effective there when the decision is effective in the Member State in which the proceedings are opened.

2. The administrative or judicial authorities of the home Member State shall without delay inform, by any available means, the competent authorities of the host Member State of their decision to open winding-up proceedings, including the practical effects which such proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the home Member State.

Article 10

Law applicable

1. A credit institution shall be wound up in accordance with the laws, regulations and procedures applicable in its home Member State insofar as this Directive does not provide otherwise.

2. The law of the home Member State shall determine in particular:

(a) the goods subject to administration and the treatment of goods acquired by the credit institution after the opening of winding-up proceedings;

(b) the respective powers of the credit institution and the liquidator;

(c) the conditions under which set-offs may be invoked;

(d) the effects of winding-up proceedings on current contracts to which the credit institution is party;

(e) the effects of winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending, as provided for in Article 32;

(f) the claims which are to be lodged against the credit institution and the treatment of claims arising after the opening of winding-up proceedings;

(g) the rules governing the lodging, verification and admission of claims;

(h) the rules governing the distribution of the proceeds of the realisation of assets, the ranking of claims and the rights of creditors who have obtained partial satisfaction after the opening of insolvency proceedings by virtue of a right *in re* or through a set-off;

(i) the conditions for, and the effects of, the closure of insolvency proceedings, in particular by composition;

(j) creditors' rights after the closure of winding-up proceedings;

(k) who is to bear the costs and expenses incurred in the winding-up proceedings;

(l) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 11

Consultation of competent authorities before voluntary winding up

1. The competent authorities of the home Member State shall be consulted in the most appropriate form before any voluntary winding-up decision is taken by the governing bodies of a credit institution.

2. The voluntary winding up of a credit institution shall not preclude the adoption of a reorganisation measure or the opening of winding-up proceedings.

Article 12

Withdrawal of a credit institution's authorisation

1. Where the opening of winding-up proceedings is decided on in respect of a credit institution in the absence, or following the failure, of reorganisation measures, the authorisation of the institution shall be withdrawn in accordance with, in particular, the procedure laid down in Article 22(9) of Directive 2000/12/EC.

2. The withdrawal of authorisation provided for in paragraph 1 shall not prevent the person or persons entrusted with the winding up from carrying on some of the credit institution's activities insofar as that is necessary or appropriate for the purposes of winding up.

The home Member State may provide that such activities shall be carried on with the consent, and under the supervision, of the competent authorities of that Member State.

Article 13

Publication

The liquidators or any administrative or judicial authority shall announce the decision to open winding-up proceedings through publication of an extract from the winding-up decision in the *Official Journal of the European Communities* and at least two national newspapers in each of the host Member States.

Article 14

Provision of information to known creditors

1. When winding-up proceedings are opened, the administrative or judicial authority of the home Member State or the liquidator shall without delay individually inform known creditors who have their domiciles, normal places of residence or head offices in other Member States, except in cases where the legislation of the home State does not require lodgement of the claim with a view to its recognition.

2. That information, provided by the dispatch of a notice, shall in particular deal with time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims or observations relating to claims and the other measures laid down. Such a notice shall also indicate whether creditors whose claims are preferential or secured *in re* need lodge their claims.

Article 15

Honouring of obligations

Where an obligation has been honoured for the benefit of a credit institution which is not a legal person and which is the subject of winding-up proceedings opened in another Member State, when it should have been honoured for the benefit of the liquidator in those proceedings, the person honouring the obligation shall be deemed to have discharged it if he was unaware of the opening of proceedings. Where such an obligation is honoured before the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been unaware of the opening of winding-up proceedings; where the obligation is honoured after the publication provided for in Article 13 has been effected, the person honouring the obligation shall be presumed, in the absence of proof to the contrary, to have been aware of the opening of proceedings.

Article 16

Right to lodge claims

1. Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State, including Member States' public authorities, shall have the right to lodge claims or to submit written observations relating to claims.

2. The claims of all creditors whose domiciles, normal places of residence or head offices are in Member States other than the home Member State shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors having their domiciles, normal places of residence, or head offices in the home Member State

3. Except in cases where the law of the home Member State provides for the submission of observations relating to claims, a creditor shall send copies of supporting documents, if any, and shall indicate the nature of the claim, the date on which it arose and its amount, as well as whether he alleges preference, security *in re* or reservation of title in respect of the claim and what assets are covered by his security.

Article 17

Languages

1. The information provided for in Articles 13 and 14 shall be provided in the official language or one of the official languages of the home Member State. For that purpose a form shall be used bearing, in all the official languages of the European Union, the heading 'Invitation to lodge a claim. Time limits to be observed' or, where the law of the home Member State provides for the submission of observations relating to claims, the heading 'Invitation to submit observations relating to a claim. Time limits to be observed'.

2. Any creditor who has his domicile, normal place of residence or head office in a Member State other than the home Member State may lodge his claim or submit observations relating to his claim in the official language or one of the official languages of that other Member State. In that event, however, the lodgement of his claim or the submission of observations on his claim shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims' in the official language or one of the official languages of the home Member State. In addition, he may be required to provide a translation into that language of the lodgement of claim or submission of observations relating to claims.

Article 18

Regular provision of information to creditors

Liquidators shall keep creditors regularly informed, in an appropriate manner, particularly with regard to progress in the winding up.

B. ***Credit institutions the head offices of which are outside the Community***

Article 19

Branches of third-country credit institutions

1. The administrative or judicial authorities of the host Member State of the branch of a credit institution the head office of which is outside the Community shall without delay inform, by any available means, the competent authorities of the other host Member States in which the credit institution has set up branches on the list referred to in Article 11 of Directive 2000/12/EC and published each year in the *Official Journal of the European Communities*, of their decision to open winding-up proceedings, including the practical effects which these proceedings may have, if possible before they open or otherwise immediately thereafter. Information shall be communicated by the competent authorities of the first abovementioned host Member State.

2. Administrative or judicial authorities which decide to open proceedings to wind up a branch of a credit institution the head office of which is outside the Community shall inform the competent authorities of the other host Member States that winding-up proceedings have been opened and authorisation withdrawn.

Information shall be communicated by the competent authorities in the host Member State which has decided to open the proceedings.

3. The administrative or judicial authorities referred to in paragraph 1 shall endeavour to coordinate their actions.

Any liquidators shall likewise endeavour to coordinate their actions.

TITLE IV

PROVISIONS COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS

Article 20

Effects on certain contracts and rights

The effects of a reorganisation measure or the opening of winding-up proceedings on:

(a) employment contracts and relationships shall be governed solely by the law of the Member State applicable to the employment contract;

(b) a contract conferring the right to make use of or acquire immovable property shall be governed solely by the law of the Member State within the territory of which the immovable property is situated. That law shall determine whether property is movable or immovable;

(c) rights in respect of immovable property, a ship or an aircraft subject to registration in a public register shall be governed solely by the law of the Member State under the authority of which the register is kept.

Article 21

Third parties' rights *in re*

1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the rights *in re* of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time — belonging to the credit institution which are situated within the territory of another Member State at the time of the adoption of such measures or the opening of such proceedings.

2. The rights referred to in paragraph 1 shall in particular mean:

(a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, and/or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right *in re* to the beneficial use of assets.

3. The right, recorded in a public register and enforceable against third parties, under which a right *in re* within the meaning of paragraph 1 may be obtained, shall be considered a right *in re*.

4. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 22

Reservation of title

1. The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of the adoption of such measures or opening of such proceedings the asset is situated within the territory of a Member State other than the State in which the said measures were adopted or the said proceedings were opened.

2. The adoption of reorganisation measures or the opening of winding-up proceedings concerning a credit institution selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the adoption of such measures or the opening of such proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures were adopted or such proceedings were opened.

3. Paragraphs 1 and 2 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 23

Set-off

1. The adoption of reorganisation measures or the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the law applicable to the credit institution's claim.

2. Paragraph 1 shall not preclude the actions for voidness, voidability or unenforceability laid down in Article 10(2)(l).

Article 24

Lex rei sitae

The enforcement of proprietary rights in instruments or other rights in such instruments the existence or transfer of which presupposes their recording in a register, an account or a centralised deposit system held or located in a Member State shall be governed by the law of the Member State where the register, account, or centralised deposit system in which those rights are recorded is held or located.

Article 25

Netting agreements

Netting agreements shall be governed solely by the law of the contract which governs such agreements.

Article 26

Repurchase agreements

Without prejudice to Article 24, repurchase agreements shall be governed solely by the law of the contract which governs such agreements.

Article 27

Regulated markets

Without prejudice to Article 24, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract which governs such transactions.

Article 28

Proof of liquidators' appointment

1. The administrator or liquidator's appointment shall be evidenced by a certified copy of the original decision appointing him or by any other certificate issued by the administrative or judicial authority of the home Member State.

A translation into the official language or one of the official languages of the Member State within the territory of which the administrator or liquidator wishes to act may be required. No legalisation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State. They may also appoint persons to assist or, where appropriate, represent them in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in the host Member State.

3. In exercising his powers, an administrator or liquidator shall comply with the law of the Member States within the territory of which he wishes to take action, in particular with regard to procedures for the realisation of assets and the provision of information to employees. Those powers may not include the use of force or the right to rule on legal proceedings or disputes.

Article 29

Registration in a public register

1. The administrator, liquidator or any administrative or judicial authority of the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the trade register and any other public register kept in the other Member States.

A Member State may, however, prescribe mandatory registration. In that event, the person or authority referred to in the preceding subparagraph shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 30

Detrimental acts

1. Article 10 shall not apply as regards the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole, where the beneficiary of these acts provides proof that:

— the act detrimental to the creditors as a whole is subject to the law of a Member State other than the home Member State, and

— that law does not allow any means of challenging that act in the case in point.

2. Where a reorganisation measure decided on by a judicial authority provides for rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the creditors as a whole performed before adoption of the measure, Article 3(2) shall not apply in the cases provided for in paragraph 1 of this Article.

Article 31

Protection of third parties

Where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, a credit institution disposes, for consideration, of:

— an immovable asset,

— a ship or an aircraft subject to registration in a public register, or

— instruments or rights in such instruments the existence or transfer of which presupposes their being recorded in a register, an account or a centralised deposit system held or located in a Member State,

the validity of that act shall be governed by the law of the Member State within the territory of which the immovable asset is situated or under the authority of which that register, account or deposit system is kept.

Article 32

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the credit institution has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 33

Professional secrecy

All persons required to receive or divulge information in connection with the information or consultation procedures laid down in Articles 4, 5, 8, 9, 11 and 19 shall be bound by professional secrecy, in accordance with the rules and conditions laid down in Article 30 of Directive 2000/12/EC, with the exception of any judicial authorities to which existing national provisions apply.

TITLE V

FINAL PROVISIONS

Article 34

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive on 5 May 2004. They shall forthwith inform the Commission thereof.

National provisions adopted in application of this Directive shall apply only to reorganisation measures or winding-up proceedings adopted or opened after the date referred to in the first subparagraph. Measures adopted or proceedings opened before that date shall continue to be governed by the law that was applicable to them at the time of adoption or opening.

2. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 35

Entry into force

This Directive shall enter into force on the date of its publication.

Article 36

Addressees

This Directive is addressed to the Member States.

Done at Luxembourg, 4 April 2001.

For the European Parliament	*For the Council*
The President	*The President*
N. FONTAINE	B. ROSENGREN

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 9 April 2001

laying down the new guidelines applicable to actions and measures to be taken under the multiannual programme to promote international cooperation in the energy sector (1998 to 2002) under the multiannual framework programme for actions in the energy sector and connected measures

(2001/353/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Council Decision 1999/21/EC, Euratom of 14 December 1998 adopting a multiannual framework programme for actions in the energy sector (1998 to 2002) and connected measures [1], and in particular Article 4 thereof,

Having regard to Council Decision 1999/23/EC of 14 December 1998 adopting a multiannual programme to promote international cooperation in the energy sector (1998 to 2002) [2], (hereinafter referred to as the 'Synergy programme'),

Having regard to the proposal from the Commission,

Whereas:

(1) In order to enhance efficiency, the implementation of the Synergy programme needs to be adjusted, especially with regard to tasks relating to programme and project management.

(2) The Synergy programme has resulted in a substantial number of small contracts spread over a large geographical area, as stated in the last evaluation report.

(3) The Synergy programme is one of the programmes which have limited financial resources for a very broad field of activities. There is therefore a need to focus it more on certain priorities, to reduce the number of contracts dealt with under the programme and to increase their average amount so as to enable the targets for Commission reform to be met as regards programme management.

(4) The Commission presented new guidelines for actions and measures to be undertaken in the framework of the Synergy programme, but they were not accepted by the Framework Programme Committee.

(5) This Decision does not prejudge decisions on other programmes under the current framework programme on energy (1998 to 2002) nor on the forthcoming proposal for a multiannual framework programme.

(6) The guidelines should not affect the action programme referred to in Article 5 of Decision 1999/23/EC or the indicative programme set out in the Annex thereto,

HAS DECIDED AS FOLLOWS:

Sole Article

The Council hereby approves the new guidelines for the Synergy programme annexed to this Decision, which shall prevail without prejudice to the action programme referred to in Article 5 of Decision 1999/23/EC and the indicative programme set out in the Annex thereto.

Done at Luxembourg, 9 April 2001.

For the Council

The President

A. LINDH

[1] OJ L 7, 13.1.1999, p. 16.
[2] OJ L 7, 13.1.1999, p. 23.

ANNEX

NEW GUIDELINES FOR THE SYNERGY PROGRAMME

An adjustment of the implementation of the Synergy programme is envisaged [1], which more especially concerns the implementing tasks relating to programme and project management to bring activities and resources into line with priorities.

This programme has very limited funding for a very broad range of activities. The possibility of focusing activities more on some of the priorities has been raised several times in the past, in particular at meetings of the Energy Framework Programme Committee. For a better visibility of the Synergy programme as compared with the international energy cooperation activities in other external relations programmes managed by the Commission it is important to underline its specific features and thus to emphasise the functioning of the Synergy programme as the external part of the energy framework programme.

The Council therefore lays down measures to

— focus the Synergy programme on certain actions;

— modify its management.

While staying within the framework of Decision 1999/23/EC including the action programme referred to in Article 5 thereof and the indicative action programme set out in the Annex thereto, the implementation of this programme will refocus on activities in the following two areas:

— security of supply;

— contributing to the implementation of the Kyoto Protocol.

Furthermore, the task will be to focus the activities to allow for sound management based on the human and financial resources available.

I. **Focusing activities**

Security of supply is one of the priority objectives of the energy sector in the EU. Sustainable development and the EU's commitments in the framework of the Kyoto Protocol address environmental concerns of importance for security of supply. The aspects relating to international cooperation, as set out in the communication from the Commission to the European Parliament and the Council on EU policies and measures to reduce greenhouse gas emissions: towards a European climate change programme (ECCP) (COM(2000) 88) must be included in the strategy followed by the Synergy programme.

The Synergy programme will focus on strengthening the EU's security of supply and on applying the Kyoto flexibility mechanisms. These will be the core activities of the Synergy programme and will enable it to be clearly distinguished from other Community programmes which may involve international cooperation in energy.

A. The aim of security of supply

The importance of the security of supply issue is underlined in the Commission Green Paper: Towards a European strategy for the security of energy supply.

The Synergy programme is not going in a new direction, but is being focused more on one of the objectives set out in Decision 1999/23/EC. More specifically, the programme will in this framework provide funding for activities which contribute to one or more of the following objectives:

— the analysis of energy supply conditions for the EU and of prospects, in particular by studying the prospects for production and exports to Europe from producer countries,

— the promotion of dialogue between the EU, the producer countries in general, the main exporters to Europe and the international organisations; the setting up of working parties and the funding of meetings or training activities,

— support for the development of energy policies in production and transit countries to optimise their production or to integrate them into the international distribution networks and the adoption of a policy of free access to the production and transport of energy, in particular by adopting legal frameworks which promote liberalisation,

— the analysis of investment in production and transit in regions which are important for EU supply: technical feasibility, economic, environmental and financial studies, seminars and conferences on such types of investment, etc.

[1] To that effect, the Commission has proposed a threshold of EUR 400 000.

In view of the ongoing process of enlargement, the Synergy programme will also be used for projects to strengthen the security of supply in the candidate countries, in addition to the SAVE and Altener activities in those countries. Examples include:

— analysis of the contribution of the various energy sources to a candidate country's energy balance, including energy imports,

— activities to promote regional exchanges between non-member countries and candidate countries.

B. Contribution to the implementation of the Kyoto Protocol

This is a new field of activities which fits in with Communication COM(2000) 88 and with the ongoing work of the Sixth Conference of the Parties.

In this framework the programme will provide funding for activities which contribute to the development of the flexibility mechanisms, where non-member countries may take action in the following areas:

— capacity building and development of common understanding of the implementation of the Kyoto mechanisms in the energy sector,

— energy efficiency, for example the promotion of combined heat and power production and the auditing of existing facilities,

— the development of mechanisms for funding investments in clean technologies,

— the promotion of renewable sources of energy, in particular those which have a substantial potential to contribute to the achievement of the objectives established under the Kyoto Protocol,

— optimisation of the use of energy by households in rural and urban areas (technology transfer, capacity creation),

— the promotion of clean coal technologies.

II. **Improving the programme management**

Defining the evaluation criteria and eligibility

1. (a) From the viewpoint of more efficient use of resources, the activities under the Synergy programme will focus on a limited number of projects, which may cover several countries or regions at the same time, or lay down a biennial framework.

   (b) Emphasis shall be given to monitoring progress and results achieved, as well as quality of management of resources and the effectiveness of the projects funded.

2. Proposals should involve a minimum of two participants in at least two Community Member States ('EC participants') and one participant in a non-member country, in order to ensure maximum benefit. In this context, international organisations (such as the IEA and Energy Charter Secretariat) are to be considered as EC participants if the Member States or the Commission participate in them.

3. The main criterion is that projects contribute to the security of supply or the flexibility mechanisms under the Kyoto Protocol.

4. Other general criteria are: the cost/benefit ratio, the standard of the work programme put forward, the ability of the participants to carry it out, and the quality of co-funding provided.

5. In general, the amount of financing provided by the Synergy programme per project should not be less than EUR 250 000.

6. Funding under the Synergy programme may, however, also be provided for projects of a lesser amount meeting the requirements in points 3 and 4, which present the characteristics of high quality as well as obvious benefit to the programme, such as projects which contribute to the development of appropriate energy policies and measures in order to achieve the objectives of the programme.

7. Possible combining of projects (clustering) should take place under the aegis of a coordinator. Such clustering should normally be an initiative of a project applicant. In such case, when assessing the amount of financing, it is the total amount of the combined projects which is to be considered.

8. Co-financing by the Community under the Synergy programme may, in general, not exceed 50 %.

The evaluation will be carried out by the Commission, in accordance with Article 3 of Decision 1999/23/EC, on the basis of the criteria set out in the call for proposals and defined with the assistance of the Committee referred to in Article 4 of Decision 1999/21/EC, Euratom.

COMMISSION

COMMISSION DECISION
of 20 March 2001
relating to a proceeding under Article 82 of the EC Treaty
(Case COMP/35.141 — Deutsche Post AG)

(notified under document number C(2001) 728)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/354/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation No 17 of 6 February 1962, the first, Regulation implementing Articles 81 and 82 of the Treaty [1], as last amended by Regulation (EC) No 1216/1999 of 10 June 1999 [2], and in particular Articles 3 and 15(2) thereof,

Having regard to the complaint lodged by United Parcel Service on 7 July 1994, alleging infrigements of Article 82 of the EC Treaty by Deutsche Post AG, and requesting the Commission to put an end to those infringements,

Having regard to the Commission Decision of 7 August 2000 to initiate proceedings in the case,

Having regard to the Commission Decision of 4 October 2000 to extend the proceedings initiated on 7 August 2000,

Having given the undertakings concerned the opportunity to make known their views on the objections raised by the Commission in accordance with Article 19(1) of Regulation No 17 and with Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles 81 and 82 of the EC Treaty [3],

After consulting the Advisory Committee on Restrictive Practices and Dominant positions,

Whereas:

I. THE FACTS

A. THE COMPLAINT

(1) United Parcel Service ('UPS') is a privately owned American corporation with its head office in Atlanta, Georgia. It is one of Deutsche Post AG's main competitors in respect of 'business-to-business' or 'B-to-B' parcel services. UPS states that it also provides some mail-order parcel services, the 'business-to-consumer' or 'B-to-C' parcel services.

[1] OJ 13, 21.2.1962, p. 204/62.
[2] OJ L 148, 15.6.1999, p. 5.
[3] OJ L 354, 30.12.1998, p. 18.

B. THE UNDERTAKING

(2) Deutsche Post AG (DPAG) is a public limited company that in 1995, succeeded to Deutsche Bundespost Postdienst, which legally was a section of a special Federal fund. Deutsche Bundespost Postdienst was set up by the Organisation of Postal Services Act (*Postverfassungsgesetz, PostVerfG*) on 1 July 1989 to take over the postal services branch of the old Deutsche Bundespost. Before 1 July 1989 postal services were provided by the Deutsche Bundespost itself. In what follows, the term 'DPAG' is used to designate DPAG, Deutsche Bundespost Postdienst, or the Deutsche Bundespost as the case may be. DPAG's main activity is the delivery of letter post. DPAG has a statutory exclusive right to the 'reserved area', that is to say the conveyance of letters weighing less than 200 g [4]. In 1998 DPAG's turnover in the reserved area was DEM [...] (*) billion; this was almost [...] % of its total turnover, which amounted to DEM 28,6 billion. The table showing annual costs and revenues supplied by DPAG shows that the reserved area has been in profit since at least [...] [5].

Table 1

DPAG's costs and revenues in the reserved area 1990 to 1999

(in million DEM)

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998
Revenue	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Profit	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

C. THE COMPLAINT

(3) In the application it lodged under Article 3 of Regulation No 17 in July 1994, UPS alleged that DPAG was using revenue from its profitable letter-post monopoly to finance a strategy of below-cost selling in parcel services, which are open to competition. Without the cross-subsidies from the reserved area, DPAG would not have been able to finance below-cost selling there for any length of time. The applicant therefore calls for a prohibition of sales below cost and the structural separation of the reserved area and the parcel services open to competition. Otherwise, UPS contends, an efficient firm would not be able to compete and at the same time cover the cost of providing parcel services, which are open to competition.

D. MAIL-ORDER PARCEL SERVICES

(4) This Decision is concerned with DPAG's rebates and prices for mail-order parcel services in Germany. Parcel services, including mail-order parcel services, are not the subject of exclusive rights in Germany. Since about 1976 there have been competitors in Germany who have been supplying parcel services, mainly B-to-B services. Within commercial parcel services as a whole, easily the most important segment from DPAG's point of view is that of mail-order parcel services [6].

E. THE ECONOMIC CONCEPT OF CROSS SUBSIDIES

(5) The applicant's main allegation is that DPAG offers its commercial parcel service at below-cost prices with the aim of ousting competitors from the market. DPAG covers the resultant losses with the aid of the profits made in the reserved area. This means that DPAG hinders competition by cross-subsidising commercial parcel services through the reserved letter-post services.

[4] Section 51 of the Postal Services Act (*Postgesetz*) states that until 31 December 2002 Deutsche Post AG is to enjoy the exclusive right to carry by way of trade letters and addressed catalogues weighing less than 200 g per item at a price per item anything up to five times the price applying on 31 December 1997 for similar items in the lowest class of weight (statutory exclusive licence).
(*) Business secret.
[5] DPAG letter of 23.12.1999. Annex 1.
[6] Annex 2 to the DPAG letter of 6 December 1999.

The relevant cost concepts

(6) From an economic point of view cross-subsidisation occurs where the earnings from a given service do not suffice to cover the incremental costs of providing that service and where there is another service or bundle of services the earnings from which exceed the stand-alone costs ([7]). The service for which revenue exceeds stand-alone cost is the source of the cross subsidy and the service in which revenue does not cover the incremental costs is its destination. The reserved area is a likely and permanent source of funding as the figures presented by DPAG in Table 1 show that overall revenues in the reserved area exceed its stand-alone costs ([8]).

(7) This means that, when establishing whether the incremental costs incurred in providing mail-order parcel services are covered, the additional costs of producing that service, incurred solely as a result of providing the service, must be distinguished from the common fixed costs, which are not incurred solely as a result of this service.

The impact of DPAG's public service obligation

(8) When calculating the share of the common fixed costs it must be borne in mind that DPAG is required by law to maintain a capacity reserve large enough to cover any peak demands that may arise in over-the-counter parcel services while meeting statutory service-quality standards for those services ([9]). Even if DPAG were no longer to offer mail-order parcel services, it would still be obliged vis-a-vis every mail-order customer to provide catalogues and parcels over the counter within a specified delivery target. This follows from the universal service obligation whereby every potential postal user is entitled to receive from DPAG over-the-counter parcel services of the prescribed quality at uniform prices. If DPAG were to stop offering a specific parcel service, it could not, unlike a private firm such as UPS, cut back on staff and equipment in perfect proportion to the reduction in volume. Even if the specific parcel service were stopped, staff and equipment could not be reduced to the full extent of the cut in service, as some staff and equipment are also needed to provide over-the-counter services that meet statutory quality standards (D + 2 for 80 % of the consignments). This obligation to maintain a reserve capacity is known in economic terms as the carrier of last resort ([10]).

(9) Where DPAG maintains an infrastructure to fulfil its public service mission, a distinction must be made between the cost of maintaining capacity and the specific incremental costs of producing individual services:

— The costs of maintaining capacity arise independently of the services provided and the volume of parcels processed only as a consequence of maintaining capacity to allow everyone the standard option of having their parcels sent over-the-counter in the normal way. The legal obligation to remain ready to offer a standard parcel delivery service at a uniform tariff increases the

([7]) The incremental costs solely comprise costs incurred in providing a specific parcel service. They do not include the fixed costs not incurred only as a result of providing a specific service (the common fixed costs). Common fixed costs are not related solely to a specific parcel service and are eliminated only when the company ceases to perform all its services.

([8]) This means that the revenue from the reserved area as a whole is greater than all costs generated there. Therefore the revenue exceeds not only the product-related incremental costs but also the common costs that cannot be attributed solely to the area.

([9]) Pursuant to point 2 of Section 1(1) of the Postal Universal Service Ordinance, DPAG must by reason of its universal service obligation to deliver parcels within a certain time limit (Section 3(2) of the Ordinance: at least 80 % must be delivered within two working days). Before the Ordinance entered into force retroactively as of 1 January 1988, the universal service obligation flowed from Section 8 of the Postal Services Act of 28 June 1969. Under that Act, every person had the right to use the Post Office's facilities. The conditions governing the use of the Post Office's facilities were laid down by regulation. Before the Postal Universal Service Ordinance entered into force, the time-limit was set by Section 20(3) of the Customer Protection Regulations (BGBl. 1995 I, p. 2016 (80 % on the second working day after the working day of posting).

([10]) See in particular William J. Baumol and J. Gregory Sidak, *Toward competition in local telephony* (MIT Press 1994), pp. 108 to 109.

proportion of common fixed costs that a carrier of last resort bears in comparison with companies who do not have this obligation. Costs arising from the legal obligation to maintain an option for everyone to have parcels carried at a geographically averaged tariff also arise even if commercial parcels not dealt with at the postal counter are discontinued. This means that these capacity costs are not attributable to a specific service and must be treated as DPAG's common fixed costs ([11]). Common fixed costs cease to exist only where the statutory obligation no longer applies,

— On the other hand costs that are attributable to a specific service arise only where services other than over-the-counter parcel services are provided. These costs, which are dependent on the volume posted and arise solely as a function of the specific service, cease to exist if the service at issue is stopped.

(10) To avoid subsidising mail-order parcel services by using revenue from the reserved area, DPAG must earn revenue on this parcel service which at least covers the costs attributable to or incremental to producing the specific service. Emphasising the coverage of costs attributable to a particular service also makes it possible to take account of the additional burden incurred by DPAG as a result of fulfilling its statutory obligation of maintaining network reserve capacity ([12]). As this emphasis is expressly intended to take account of network capacity costs as an additional burden. DPAG is required only to cover the costs attributable to the provision of mail-order parcel services. This means that these operations are not burdened with the common fixed cost of providing network capacity that DPAG incurs as a result of its statutory universal service obligation ([13]).

The calculation of service-specific costs for mail-order parcel services

(11) DPAG currently provides mail-order parcel services via its 33 outward and inward freight centres and 476 delivery points ([14]). DPAG refers to this infrastructure as its 'freight branch' (*Sparte Frachtpost*). DPAG uses the same infrastructure for its other commercial parcel services, including the B-to-B service. It also uses that infrastructure for parcels sent from one private person to another — 'P-to-P' services, parcels handed in at post office counters and for mail-order returns — 'P-to-B' services ([15]). Mail-order parcel services, however, account for 71 % of the total volume of commercial parcel services every year ([16]). Its reserved letter-post services, on the other hand, operate largely through a separate infrastructure. The only exception is the joint delivery service ([17]). Mail-order parcels are processed in the following stages ([18]).

([11]) See, in particular, William J. Baumol and J. Gregory Sidak, *Toward competition in local telephony* (MIT Press 1994), pp. 108 to 109: 'These obligations are appropriately treated as sources of common fixed costs for the firm …'

([12]) DPAG repeatedly stresses this additional burden, the 'cost of providing the universal service', see. e.g., letter of 15 May 1997, pp. 4 and 5 and DPAG letter of 6 October 2000, pp. 8 to 10.

([13]) The costs of providing a universal service (a comprehensive network of branches, nationwide deliveries at a standard rate) would only be attributed to mail order parcels in full proportion to their volume, if a 'fully distributed cost' analysis were undertaken. See to DPAG letter of 6 October 2000, pp 4 and 5 to 8 and 11. The aim of covering at least the service-specific incremental costs, however, prevents this apportioning of costs arising as a result of the statutory obligation for non-over-the-counter parcel services.

([14]) Mail-order parcels consist primarily of postal packages and mail order catalogues.

([15]) DPAG letter of 7 April 2000, p. 3; DPAG letter of 6 December 1999, p.11; DPAG letter of 22 December 1999, p.2.

([16]) *Source* Ctcon GmbH, *Segmentserfolgsrechnung 1990-1999 Frachtpost ohne Katalogue yon 200g bis 1000g, ohne Postgut Klein und -leicht sowie ohne Post Express, Stand 23. Juni 2000*.

([17]) By way of exception, in rural areas parcels and letters are delivered jointly by the same person. See DPAG letter of 9 March 2000, p. 10. According to information provided by DPAG in 1999 this applied to approximately [...] % of the mail-order parcels delivered. For previous years, the situation was as follows: from 1990 through 1995 mail-order parcels were delivered jointly with letter post, from 1995 through 1998 there were almost no more joint deliveries. Joint deliveries create economies of scope that exist between the reserved product and the competitive product. Due to the reserved area these economies of scope are not available to competitors. As joint deliveries played no role from 1995 through 1998, the result, coverage of incremental costs in this time period, would remain unchanged. As of 1998 the coverage in mail-order deliveries significantly exceeds incremental costs, thus, even a separate calculation for the joint deliveries would not have an impact on the final result.

([18]) DPAG letter of 9 March 2000. pp. 9 and 10.

(12) *Collection*: in the case of large mail-order customers, parcels are not processed at the post-office branches or agencies to be taken to the outward freight centre. Instead, they are collected by DPAG from the customer's premises and transported direct to the centre ([19]). If the mail-order parcel service is discontinued, all the costs of collection are fully attributable to the mail order service and would be saved ([20]).

(13) *Sorting*: at the outward freight centre the sorting stage comprises the coding and sorting of parcels for transport to the inward freight centre. At the inward freight centre it comprises the sorting of incoming items for onward transport to the delivery points. Large mail-order customers carry out several of the steps involved in the sorting process themselves, such as, for example calculating the appropriate charge or attaching the barcode label. The capital costs of setting up the 33 freight centres and 476 delivery points cannot be attributed to a particular service. These costs will be incurred as long as the statutory obligation to meet demand to legally required service-quality standards applies. The staffing and equipment costs of sorting, on the other hand, are entirely dependent on the actual volume of parcels to be conveyed. Thus the staffing and equipment costs of activities dependent on the volume processed can be attributed in direct proportion to the mail order parcel service.

(14) *Long-distance transport* consists of transport between the 33 inward and outward freight centres. Even if the volume is small, a certain amount of long-distance transport between the centres must continue in order to maintain the service-quality standards for counter parcels as laid down by law ([21]). Thus the costs of long-distance transport, in terms of staffing, equipment and capital, are not attributable to a particular service and can be eliminated only if the statutory obligation to serve no longer applies.

(15) *Regional and local transport* between the 33 freight centres and the 476 delivery points ([22]). As regards regional and local transport between freight centres and delivery points, a fall in volume would allow some delivery points to be amalgamated. If mail order parcel services were discontinued, regional and local transport costs would be reduced by approximately half, because this percentage is attributable to mail order parcel services.

(16) *Delivery*: after distribution to DPAG's 476 delivery points, mail-order parcels are delivered. Delivery consists essentially of driving and delivery proper. Half of the operation is taken up with driving, and half with delivery itself. Driving is not attributable to a specific service to the same extent as the delivery proper ([23]). The costs of handing over a parcel, on the other hand, are mostly attributable to a specific service. If a large-volume service where as a rule only one parcel is delivered when the delivery vehicle stops (as in the case of mail-order services) is discontinued, the cost of delivery can be attributed to the specific service and saved in its entirety if the particular stop is no longer necessary ([24]).

(17) On the basis of the above analysis of the distribution between common fixed costs and costs that are attributable to a particular service, the average incremental costs per item for mail-order parcel services (AIC-MO) have been covered by revenue as of the year 1996.

([19]) One large customer delivers parcels direct to the inward freight centre.
([20]) DPAG letter of 25 January 2001.
([21]) Section 3(2) of the Postal Universal Service Ordinance (*Post-Universaldienstverordnung*, PUDLV) states that on average over the year at least 80 % of parcels handed in on a working day must be delivered by the second following working day. Every freight centre functions both as an inbound and as an outbound centre. To provide a country-wide service at least one trip per day between each centre is necessary, that is to say 32 trips from each outbound centre to the other inbound centres, or at least (32 × 33 =) 1 056 trips.
([22]) All 33 freight centres are built and equipped to the same design. They all have a dual function, serving as inbound and outbound freight centres concurrently.
([23]) Even if mail-order parcels were to be discontinued and the volume of parcels were to fall accordingly, individual delivery rounds could be reduced to a significant extent only if substantially fewer addresses had to be called at on the round. Only if there were substantial reduction in the number on addressees on a round could that round be amalgamated with another (DPAG letter of 25 January 2001). Investigations revealed that a route attributable to a particular service only exists for courier services, which seek out individual addresses for delivery.
([24]) If several deliveries are made on the same stop, the stop will still have to be made, even when fewer parcels have to be delivered.

Table 3

AIC-MO 1990 to 1999

Year	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Revenue/item	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
AIC-MO	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

DPAG's measures to ensure financial transparency between the reserved area and commercial parcel services

(18) As the Commission explained in the Statement of Objections of 7 August 2000, only complete transparency of the financial relations between the reserved area on the one hand, and the parcel services which are open to competition on the other, can guarantee that individual competitive parcel services cover the additional costs of producing that service. Only if the DPAG activities which are open to competition are provided separate from those covered by the reserved area, is there a guarantee that competitors are not eliminated by offers which are not based on efficiency or superior performance, but solely on the basis of a price below the additional costs of providing the competitive service ([25]). A structural separation of the reserved area from areas which are open to competition can rigorously prove and hence prevent a situation in which the additional costs of providing a competitive service are not covered.

(19) In the present proceedings, the Commission further maintained that another requirement for the transparency of financial relations was a transparent system of 'transfer prices' for goods and services, which are provided by the company operating in the reserved area to the company active in competitive services ([26]). The transparency and visibility of transfer prices is effectively guaranteed only, by a system of 'unbundled' prices charged for the main processing steps in the value-added chain, which are procured by the company, operating in competition, from the company operating in the reserved area. Only with a system of 'unbundled' prices charged for individual processing steps can it be ensured that the price charged for using the entire chain of value added also covers the sum of the costs for the individual elements and that discounts given to customers which carry out individual processing steps themselves adequately reflect the economic costs thus saved.

(20) DPAG takes account of the Commission's above requirements by a commitment to structurally separate its commercial parcel services ([27]). The commitment intends to make it clear, transparently and rigorously, that revenues from the reserved area are not being used to finance mail-order parcel services. In this connection, DP undertook to transfer all its commercial parcel activities, including the delivery of catalogues, to a legally separate company, Newco, by 31 December 2001. The hive-off would include all B-to-B and B-to-C services provided outside the post-office counter system, on the basis of individual contracts at special prices. Once the structural separation becomes effective, DPAG itself will no longer offer any commercial parcel services.

(21) Newco may itself produce or provide the goods or services required to run its business, or it may procure them from third parties or from DPAG. If Newco does procure goods or services from DPAG, they must be paid for at market prices. If a market price cannot be determined for a particular step in the process, the price charged will be based on the cost attributable to, or incremental to producing the particular service. The attributable costs are to be demonstrated by means of process cost calculation. In the event of dispute DPAG has committed to prove and submit evidence as to the existence of particular market prices or of actual incremental costs to the Commission if it so requests.

([25]) See Sidak/Spulber *Protecting Competition from the Postal Monopoly*, pages 109 to 124.
([26]) In the present case the structural separation of the reserved area from the areas which are open to competition requires appropriate account to be taken of the public utility mission. The infrastructure necessary to fulfil this mission must remain with the company which is under an obligation to fulfil it.
([27]) DPAG letter of 1 February 2001.

(22) DPAG also undertakes to produce separate statements of its transfer prices charged to Newco for each of the main processing stages, collection, sorting (inward and outward), transport (long-distance regional and local) and final delivery, no later than the end of Newco's first financial year. If Newco does procure one or more of these services from DPAG, DPAG will provide the same service at the same prices and on the same terms within the framework of its available capacity to competitors of Newco. DPAG will provide the Commission with a comprehensive report on transfer prices and Newco's costs and revenue. This obligation is to apply for the first three years of Newco's operation. DPAG guarantees that separate accounting for Newco will ensure the full transparency of the financial relations between Newco and DPAG.

G. DPAG'S REBATE AGREEMENTS FOR MAIL-ORDER PARCEL AND CATALOGUE SERVICES

(23) Mail-order firms that did not hand in parcels or consignments of catalogues at post-office counters qualified for discounts, as 'self labellers'. The product offered by DPAG at special prices to mail-order parcel customers is the self-labelled parcel (until 1995 there was another self labelled service for small parcels, known as *Postgut parcel* ([28])) and the distribution of catalogues weighing more than 1 kg, known as heavy Infopost (*Infopost Schwer* ([29]), Mail-order 'cooperation partners' were entitled to special prices going beyond those granted for self labelling ([30]). However, the special prices for cooperation partners were conditional on the customer's declared readiness 'to entrust all mail-order items suitable for package and parcel post to Deutsche Bundespost Postdienst' ([31]). Apart from the general terms of sale (AGB FrD Inl), applicable to all cooperation agreements, the following individual cooperation agreements granted the special price only in return for the customer's undertaking to send all or a significant part of his parcels or catalogues via DPAG:

— in an economic cooperation contract that DPAG concluded with one of its biggest mail-order customers on 19 December 1974, the customer [...] undertook to send via DPAG 'at least all non-bulky items up to 10 kg' ([32]) dispatched from its main depot 'and suitable for parcel and packet mail'. On 13 February 1987 this obligation was extended to include 'all non-bulky parcels up to 20 kg'. That clause remained in force until 1 July 1995 ([33]),

([28]) Access to the self labelling of parcels is conditional on the customer carrying out certain postal preparations itself (weighing, pricing, labelling, drawing up lists) and every year submitting to DPAG at least 10 000 self-labelled non-bulky items, or until 1995 10 000 *Postgut* parcels. In consideration of the preparaton work done, which otherwise has to be performed at the counter. DPAG reduces the price. The method of calculating the reduced price for self labelled items is described in point 3.3.2 of the General terms of business for inland freight services (*Allgemeine Geschäftsbedingungen fur den Frachtdienst Inland* — AGB FrD Inl, 'the General Terms' 1992, at section 3.3 'Special services'. The AGB FrD Inl was submitted by DPAG as Annex 4 to its letter of 24 November 1994.

([29]) The method of cooperation in respect of heavy Infopost is described in the new point 3.3.4.2 of the General terms which was announced in August 1995 by measure (*Verfügung*) P 777/1993: Senders of large volumes of heavy Infopost may in respect of such consignments by contract agree to take over from the postal service certain sorting functions going beyond the requirements of section 4.2, or the loading of dedicated transport units, or both. In return the postal service will reduce the basic charge for heavy Infopost.

([30]) The basis for cooperation in connection with parcel dispatch is laid down in point 3.3.4 of the General terms: '3.3.4 Cooperation with senders: parcel cooperation is cooperation between the sender and Deutsche Bundespost Postdienst extending beyond self labelling. Deutsche Bundespost Postdienst concludes a contract transferring sorting, loading and transport functions for packets and parcels to the sender, and stipulating a financial benefit to compensate the sender for carrying out this work'. Under point 3.3.4 of the General terms, cooperation was tied to two requirements: '1. Participation in the self-labelling arrangements and 2. The customer must be prepared to entrust all mail-order items suitable for package and parcel post to Deutsche Bundespost Postdienst.' See *Allgemeine (Geschäftsbedingungen der Deutschen Bundespost Postdienst für den Frachtdienst Inland, Stand 30. März 1992, Abschnitt 3.3 Besondere Leistungsangebote*, submitted by DPAG as Annex 4 to its letter of 24 November 1994. According to DPAG's submission, point 3.3.4 was in force until 28 December 1994, see DPAG letter of 6 October 2000, p. 16.

([31]) See the second requirement in point 3.3.4 of the General terms.

([32]) 'Bulky' parcels are defined in section 25(3) of the Postal Services Regulations. see footnote 35.

([33]) Since 1994 this customer has sent [...] 1 of its parcels via DPAG, see [...] letter of 4 October 2000 and DPAG letter of 14 July 2000.

— in another cooperation contract concluded on 3 August 1984, a second large customer [...] undertook to send via DPAG ([34]) at least all items up to 10 kg, with the exception of bulky parcels within the meaning of Section 25(3) of the Postal Services Regulations ([35]) which were dispatched from its main depot and which were suitable for parcel and packet mail. On 13 February 1987 this obligation was extended to include all parcels up to 20 kg, with the exception of bulky parcels within the meaning of Section 25(3) of the Postal Services Regulation. In exchange for undertaking in future to send via DPAG not only all non-bulky parcels up to 10 kg, but those up to 20 kg, the customer receives with retroactive effect to 1 October 1986, a DEM 0,20 higher price discount per item ([36]). That clause remained in force until 1 July 1995,

— in a cooperation contract concluded on 16 April 1987, a third large customer [...] undertook to send via DPAG all non-bulky items up to 20 kg which were dispatched from its main depot ([37]). This arrangement remained in force until 1 July 1995,

— in an additional agreement concluded on 25 June 1995 the special price charged to a cooperation partner [...] for the conveyance of parcels is made dependent on the achievement of an annual volume of some [...] million consignments, in which the volume distributed by the competitor [...] has been included. In the succeeding year, then, the special price will be allowed only if the customer transfers to DPAG the volume it sent via a named competitor the year before. In the succeeding year the customer actually sent [...] million parcels via DPAG ([38]). The agreement entered into force on 1 July 1995, and remained in force until the customer in question was taken over by another of DPAG's large customers [...] in 1996,

— since November 1997 DPAG has concluded new cooperation agreements with the four largest mail-order customers [...], 1 November 1997, [...] 4 March 1998, [...] 22 July 1998 and [...], 28 September 1998); these agreements cover the entire volume of these customers and of their subsidiaries. Subsidiaries are sometimes included in the agreement itself (in the contract of 22 July 1998, for example), and sometimes in a separate agreement (such as the supplementary agreement of 23 August 1998 to the contract of 1 November 1997). As a result of the consolidation that has taken place in mail order, these four large customers are the main buyers of mail-order parcel services. The standard-form agreements all include the following clauses: 1. clause 1 states that the contract is to apply to all of the customer's freight parcels ([39]), 2. in clause 2.2 DPAG undertakes to convey the freight parcels within the scope of the contract for payment subject to the discounts laid down in the set of agreements; 3. in clause 2.3, the customer undertakes 'in return', for the duration of the contract, 'to have its own and its subsidiaries' freight parcels conveyed to its customers exclusively by DPAG'; and 4. in clause 6.3, DP undertakes to allow the customer what is called a 'volume bonus'. This bonus is graduated according to the outgoing volume. The volume that qualifies is the volume of outgoing postal parcels sent by the customer, provided it reaches and exceeds an individually agreed annual target,

— on 28 September 1998 DPAG concluded an agreement with a large mail-order customer [...] in respect of the conveyance of heavy Infopost ([40]). The customer undertook to send all of its heavy Infopost (catalogues), and at least [...] million items a year, via DPAG. 'In return' DPAG was to charge a reduced price (DEM [...] net) per item of heavy Infopost sent on or after 1 December 1998,

([34]) Section 25(3) of the Postal Services Regulations (*Postordnung*) of 16 May 1963, as last amended by the 11th amendment of the Postal Services Regulations; 10 August 1988 (published in BGBl.I.S. 1573, Amtsbl. S. 1613), states that a parcel is a 'bulky' parcel if it is 1. longer than 120 cm, broader than 60 cm, or deeper than 60 cm; and 2. requires special handling (that is to say that it cannot be stacked or placed on a conveyor belt, or contains live animals).

([35]) Some [...] of [...] parcels are sent via the [...] main depot, see [...] letter of 26 september 2000. Altogether all parcels dispatched by [...] from [...] are sent via DPAG, see DPAG letter of 14 July 2000.

([36]) DPAG (Nuremberg Regional Postal Directorate) letter of 17 February 1987 to [...].

([37]) This customer sent [...] of its parcels via DPAG: see [...] letter of 4. October 2000 and DPAG letter of 14 July 2000.

([38]) Annex to DPAG letters of 7 July 2000 and 14 July 2000.

([39]) In general the contracts applied to all parcels suitable for handling by machine, within the maximum dimensions laid down in the Postal Services Regulations: 120 cm long, 60 cm deep and maximum weight 315 kg; see clause 3.1.2 of each of the cooperation agreements.

([40]) *Infopost Schwer* is DPAG's description for catalogues weighing more than 1 000 g. Since 1993 *Infopost Schwer* has formed part of the infrastructure of *Sparte Frachtpost*.

— on 2 November 1998 DPAG concluded an agreement on the conveyance of Infopost (commercial consignments weighing more than 50 g) with a second large customer [...]. The customer undertook to send at least [...] million Infopost items via DPAG every year. Provided the firm met this obligation, DPAG would allow it a discount of [...] %. It emerges from Annex 4 to the agreement that the minimum annual volume of [...] million items is exactly [...] % of the total volume sent by the customer and its associated companies. If the customer exceeds the minimum volume of [...] million, a graduated rebate is granted, which rises to [...] % if a volume of [...] million (= 100 % of requirements) is reached. On the other hand, Annex 4 to the agreement states that the customer is to receive the [...] discount even if its volume falls, provided that the volume sent via DPAG continues to amount to [...] % of the total volume sent by the customer and its associated companies. This clause was in force until June 1999,

— on 26 March 1999 and 3 January 2000 DPAG concluded agreements with two large customers [...] and [...] on cooperation in respect of heavy Infopost. The customers undertook to send at least [...] % of all their heavy Infopost via DP. As proof of volume the customers would allow DPAG access to their internal records. In return DPAG would allow the customers a rebate on all of the items sent via DP within the scope of the contract: this was to be a linear rebate varying from [...] % (at [...] % of requirements) to [...] % (at 100 % of requirements). One large customer [...] received an advance payment of DEM [...] million: against the rebate payments which were expected to fall due later. In June 2000 DPAG terminated the contracts of 26 March 1999 and 3 January 2000; it did so by means of a termination contract under which the parties agreed to put an end to the cooperation between them in respect of heavy Infopost with immediate effect.

(24) Immediately after receiving the supplementary Statement of Objections of 4 October 2000 DPAG announced in a press release of 19 October that by way of precaution it was terminating all the agreements on rebates referred to by the Commission in the supplementary Statement of Objections. DPAG also announced that in future it would operate a system of prior vetting of contracts for mail-order parcel services, to ensure that they did not include any clauses that conflicted with the requirements of competition law. DPAG confirmed this at the hearing or, 9 November 2000.

II. **LEGAL ASSESSMENT**

A. APPLICABILITY OF ARTICLE 82 OF THE EC TREATY

(25) DPAG is an enterprise which offers services for remuneration on markets in a number of postal services. It is therefore an 'undertaking' within the meaning of Article 82 of the EC Treaty. This is so irrespective of the way in which it is organised, and regardless of whether it is governed by public or private law ([41]).

B. RELEVANT PRODUCT AND GEOGRAPHIC MARKET

(26) By reason of their characteristics, costs and uses, mail-order parcel services form one relevant product market. As mentioned previously, mail-order parcels are not processed through the postal counter system but are collected by DPAG directly at the customers' premises. Furthermore, DPAG offers special prices to mail-order customers, who do not use the postal counter system for their parcel and catalogue deliveries. This distinguishes mail-order parcel services from over-the-counter parcels, which are processed against payment of a standard tariff through the postal counters.

(27) A distinction has to be drawn between mail-order parcels for domestic delivery and similar parcels for delivery abroad. Domestic parcels are carried entirely by DPAG's own infrastructure. There is no cooperation with providers of the same service are other Member States, so there are no interfaces. The present case concerns only parcels for domestic delivery by DPAG.

([41]) Case C-41/90 *Höfner* and *Elser* v. *Macoton*, [1991] ECR I-1979. at paragraph 21.

(28) Mail-order firms expect nationwide delivery of parcels up to 31,5 kg and catalogues over 1 kg (heavy Infopost) or over 50 g (Infopost) to a large number of private addressees scattered throughout the country ([42]). As a rule mail-order parcels weigh on average up to 2 kg; the maximum weight is 31,5 kg. Mail-order parcels are almost always in the category of so-called 'non-bulky' parcels ([43]). These are parcels which, because of their maximum dimensions of 120 cm × 60 cm × 60 cm and 31 kg maximum weight, are 'machine-handleable', i.e. they can be stacked and lend themselves during sorting to being processed on a conveyor belt.

(29) Although they share the infrastructure at the sorting and transport stages, final delivery to private addressees makes much greater use of vehicles and postal delivery staff than do B-to-B services. In the case of mail-order services the dispersed addressee structure produces a very low 'stop factor' (i.e. number of parcels delivered per delivery vehicle stop), one parcel per stop being the rule. In the case of parcel services between business customers, i.e. B-to-B services, the stop factor is much higher, as here several parcels are normally delivered whenever the delivery vehicle stops ([44]). In addition, in this particular case the German market in mail-order parcel services is characterised by a price structure determined solely by the pricing policy of DPAG. The price level is not determined by the offer by different competitors who bid against one another, but solely by DPAG's pricing policy. This becomes clear as soon as one compares the prices and costs of mail-order parcel services at agreed special rates with those for B-to-B delivery. Throughout the period from 1990 to 1999, the costs per item for the collection, transport and delivery of a mail-order parcel were substantially higher than the costs per item for collection, transport and delivery of a B-to-B parcel. But DPAG's revenue per item was substantially higher on B-to-B services than it was on the mail-order parcel services for which special rates were agreed. DPAG's price structure distinguishes mail order parcel services from all other commercial parcel services.

(30) The relevant geographic market in mail-order parcel services is Germany. All the services provided by DPAG on the relevant product market are provided in Germany, using the nation-wide parcel infrastructure. The Court of Justice has consistently held that the territory of a Member State may constitute a 'substantial part' of the common market within the meaning of Article 82 of the EC Treaty ([45]).

C. DOMINANT POSITION

(31) DPAG is the only significant provider in Germany of nation-wide parcel and catalogue delivery services which meet the specific requirements of the mail-order trade ([46]). Neither UPS nor the other competitors providing B-to-B services, that is to say Deutscher Paket Dienst and German Parcel, provide mail-order parcel services to any appreciable extent. Until 1999 inclusive, Hermes Versand Service (Hermes) delivered parcels only for Otto Versand ([47]). Apart from Hermes, there is no alternative nation-wide infrastructure for the mail-order trade ([48]).

([42]) In a survey conducted by *Verbraucher Analyse 92 West & Ost*, in the old *Länder* 29 % of people over 14 said that they had placed an order with a mail-order company in the last 12 months, while in the new *Länder*, it was more than 66 %. The *Versandhauskäufer* study four years later (1996) showed that in the old *Länder* 30,8 % of the total population (aged over 14) had placed mail orders in the previous year, while the proportion in the new *Länder* was 51,9 %. See page 33 of the Federal Association of German mail-order companies' information brochure *Versandhandel in Deutschland*.

([43]) In 1999 bulky parcels accounted for less than 1 % of all mail-order parcels. *Source*: Ctcon. *Segmentserfolgsrechnung Sparte Frachtpost, Übersicht Mengen, Stand 13.4.2000*, submitted by DPAG by letter dated 20 April 2000.

([44]) DPAG estimates its own stop factor, including mail-order parcel services, statistically at approximately [...], while that of competitors who concentrate mainly on 'company deliveries' in the B-to-B services field is put at somewhere between 1,8 and 2,1. See the Ctcon report. *Ergebnisbelastungen Frachtpost 1995*, p. 7, published on 13 May 1997, submitted by DPAG by letter of 15 May 1997.

([45]) See most recently the judgment in Case T-228/97 *Irish Sugar* [1999] ECR II-2969. at paragraph 99.

([46]) See *Sparte Frachtpost der Deutschen Post AG* (1996), op. cit., Annex 1, p. 10.

([47]) This own delivery (some 140 million parcels in 1999) does not form part of the relevant market.

([48]) DPAG does not deny being the only operator of a nationwide infrastructure in Germany.

(32) Between 1995 and 1999 DPAG carried the following volumes for the mail-order trade: [...] million parcels in 1995, [...] million in 1996, [...] million in 1997, [...] million in 1998 and [...] million in 1999. Out of a total volume of somewhat more than [...] million parcels a year, these figures correspond to a volume share of the market for DPAG of more than 85 %. DPAG's dominant position is also apparent from the following:

— DPAG's volume share of the German mail-order parcel services market was stable throughout the period for which figures are available (1990 to 1999), at over 85 % ([49]). (The remaining 10 to 15 % of the volume was accounted for by regional operators: apart from DPAG no firm is active at national level),

— the creation of an alternative infrastructure for the mail-order trade would require the setting-up of a system of interconnected inward and outward freight centres and associated delivery points. This represents, including in the opinion of the DPAG expert, considerable sunk costs ([50]). Investment in setting up a countrywide infrastructure allowing daily deliveries becomes profitable only when the 'critical mass' of some 100 million parcels a year is exceeded ([51]) (see the example of Hermes Versand, mentioned above),

— DPAG has the possibility of cross-subsidising activities subject to competition which are not available to competitors. Since at least [...] its earnings from the reserved letter-post area consistently exceed the stand-alone costs of the reserved services as a whole (see Table 1 ([52])). The reserved area is therefore a likely source of cross-subsidisation ([53]). This situation is a lasting one in view of the exclusivity granted by statute for letter mail conveyance. At least until the end of 2002, the legal monopoly will result in competitors being excluded from most of the conveyance of letters up to 200 g.

D. ABUSE OF DOMINANT POSITION

Fidelity rebates

(33) As was held in *Hoffmann-La Roche* ([54]), an undertaking which is in a dominant position on a market may not conclude an agreement with a customer whereby that customer promises to obtain all or most of its requirements of a product exclusively from the dominant undertaking ([55]). In *Hoffmann-La Roche*, the Court of Justice drew the following distinction between 'fidelity rebates' and 'quantity rebates':

— the quantity rebate is linked exclusively to the volume of purchases from the producer concerned. It is calculated on the basis of quantities fixed objectively and applicable to all possible purchasers,

— the fidelity rebate is linked, not to a specific quantity, but to the customer's requirements or a large proportion thereof. The reduction is granted 'in return' for the exclusivity in satisfying the demand ([56]),

([49]) See *Sparte Frachtpost der Deutschen Post AG* (1996), op. cit.. Annex 1, p. 10, and p. 17 of the Federal Association of German mail-order companies' information brochure *Versandhandel in* Deutschland, according to which DPAG carries 92 % of mail-order parcels in Germany.
([50]) See the report *Eigenzustellung im Versandhandel als Alternative zur Zusammenarbeit mit der Post*, 15 September 2000, submitted as Annex 8 to DPAG's letter of 6 October 2000, p. 7.
([51]) See the report *Eigenzustellung im Versandhandel als Alternative zur Zusammenarbeit mit der Post*, 15 September 2000, submitted as Annex 8 to DPAG's letter of 6 October 2000. p. 5: 'Countrywide, daily delivey is scarcely feasible in Germany under 100 million parcels a year'.
([52]) The stand-alone test is used by economists to determine the source of cross-subsidisation. In the present case the reserved area is a guaranteed source of income exceeding stand-alone costs.
([53]) The occurrence of cross-subsidies requires that there is a product or group of products whose revenue exceeds their stand-alone costs. On a medium-term basis, cross-subsidy rests on the basis that this product or group of products is of stable nature. In order to be stable, this source of revenues must be protected either by economic or institutional barriers to entry. The reserved area for letter mail conveyance is an institutional barrier to entry.
([54]) Case 85/76 [1979] ECR 461.
([55]) *Hoffmann-La Roche*, at paragraph 89.
([56]) *Hoffmann-La Roche*, at paragraphs 95 and 96.

— even where the fidelity rebate is linked to a specific quantity, it is given on the basis, not of that quantity, but of the assumption that the quantity represents an estimate of each customer's presumed capacity of absorption, the rebate being linked, not to the largest possible quantity, but to the largest possible percentage of the requirements ([57]).

(34) The arrangements agreed by DPAG since 1974 in the parcel delivery field and contained in the standard-form contracts described above are fidelity rebates within the meaning of the judgment in *Hoffmann-La Roche*:

— the cooperation contracts of 19 December 1974, 3 August 1984, 13 February 1987 and 16 April 1987 contained provisions whereby a firm is obliged to entrust all non-bulky parcels weighing up to 10 or 20 kg to DPAG. As stated above, the expression 'non-bulky' parcel basically corresponds to a mail-order parcel ([58]). The contracts thus contained a clause which obliges the customer to purchase all parcel services up to 10 or 20 kg exclusively from DPAG. This calculation method, based as it is solely on the customer's requirements, corresponds to the calculation method described by the Court of Justice in paragraphs 94 to 96 of its judgment in *Hoffmannn-La Roche*,

— the cooperation contract of 25 June 1995 contained a provision whereby the special price stipulated therein is dependent on the customer transferring the following year to DPAG the quantity it dispatched the previous year via a competitor in addition to the quantity already dispatched via DPAG. The contract's wording referred, not to the quantity posted, which was estimated only roughly at [...] million, but to an increase in the percentage of the customer's requirements to be dispatched in future via DPAG. This calculation method, based as it is, solely on the customer's requirements, corresponds to the calculation method described by the Court of Justice in paragraphs 94 to 97 of its judgment in *Hoffmann-La Roche*,

— the four new cooperation contracts concluded since November 1997 contain a provision which is linked, not to a specific quantity, but exclusively to the requirements of the customer concerned, and which grants the discount 'in return' for the exclusive purchase of services from DPAG. This calculation method, linked exclusively to overall requirements, corresponds to the contracts with 'uniform' rebates described by the Court of Justice in paragraphs 94 to 96 of its judgment in *Hoffmann-La Roche* ([59]),

— the contract of 28 September 1998 made the reduced price per item dependent on the transfer of the entire volume of heavy Infopost parcels. The rebate thus depends on a calculation method which is linked within the meaning of paragraphs 94 to 96 of the Hoffmann-la-Roche judgment to the customer's requirements,

— the contract of 2 November 1998 made the price reduction of [...] % dependent on the customer entrusting at least [...] % of its Infopost parcels to DPAG. Although the contract's reference to a volume of [...] million parcels at first sight is an element which appears to be of quantitative nature, an examination of Annex 4 to this contract reveals that this quantity corresponds to exactly [...] % of this customers annual requirements in the reference year 1997. In addition, the fact that the customer received the rebate of [...] %, even if his yearly parcel volume fell short of the [...] million pieces as long as [...] % of its annual demand was delivered through DPAG, further militates in favour of a system where the percentage of demand and not its absolute volume is relevant. Finally, the amount of the rebate increased in accordance with the percentage of requirements which are shipped through DPAG. This method of calculating rebates corresponds to the method which the Court of Justice described in *Hoffmann-La Roche* (paragraphs 97 to 100) as contracts which provide for rebates at progressive rates. The price reduction increases according to the percentage of the customer's estimated requirements that is covered in the course of a year,

([57]) *Hoffmann-La-Roche*, at paragraph 98, in which the Court describes the linkage to an estimated annual requirement and the giving of a rebate which increases in line with the extent to which that requirement is met as a 'specially worked-out form of fidelity rebate'.

([58]) Bulky parcels (see the above commentary on Section 25(3) of the Postal Services Regulations) arc used for items of clothing or such things as furniture and kitchen fittings. As a rule they weigh over 20 kg and quantity-wise they play a negligible role. (In 1999 bulky parcels accounted for 0,06 % of the total volume of mail-order parcels. *Source*: Ctcon, *Segmentserfolgsrechnung Sparte Frachtpost, Übersicht Mengen, Stand 13.4.2000*, submitted by DPAG by letter of 20 April 2000).

([59]) The 'volume bonus' agreed in addition to the fidelity obligation has no other binding effect beyond the existing obligation to send all requirements by DPAG.

— the cooperation contracts of 26 March 1999 and 3 January 2000 made the rebate dependent on the customer entrusting at least [...] % of all heavy Infopost items to DPAG. The higher the proportion that the customer sends via DPAG, the greater the price reduction. This corresponds to the method which the Court of Justice described in Hoffmann-la Roche (paragraphs 97 to 100) as contracts which provide for rebates at progressive rates. In addition, the cooperation contract of 26 March 1999 contains a provision concerning advance payment of DEM [...] million rebate against payments which were expected to fall due only later. This advance payment was made on 30 March 1999, only three days after the contract was concluded and before the remainder of the contract took effect on 1 June 1999, without DPAG having provided any service or the beneficiary having to provide DPAG with any economically valuable service in return.

Predatory pricing

(35) Predatory pricing occurs where a dominant firm sells a service below cost with the intention of eliminating competitors or deterring entry, enabling it to further increase its market power. Such unjustifiably low prices infringe Article 82 of the EC Treaty According to the case-law of the European Court of Justice, pricing below average variable costs must be regarded as abusive ([60]). This principle was established in *AKZO*, where the Court defined average variable costs as 'costs which vary depending on the quantities produced' ([61]). In determining which costs vary depending on the quantities produced, the division between common fixed costs and costs attributable to a specific service set forth earlier must be borne in mind in DPAG' s favour. Given the public universal service obligation, only the additional costs of providing a particular service vary with volume produced.

(36) On the basis of relationship between the costs of maintaining capacity and the incremental costs of providing a particular service, the following may be said about DPAG's activities other than its over-the-counter business: In the period 1990 to 1995 DPAG's revenue from mail-order parcels was below the incremental costs of providing this specific service (see table 3). This means that in the period 1990 to 1995 every sale by DPAG in the mail-order parcel services business represented a loss which comprises all the capacity-maintenance costs and at least part of the additional costs of providing the service. In such circumstances, every additional sale not only entailed the loss of at least part of these additional costs, but made no contribution towards covering the carrier's capacity-maintenance costs. In the medium term, such a pricing policy is not in the carrier's own economic interest. This being so, DPAG had no economic interest in offering such a service in the medium term. DPAG could increase its overall result by either raising prices to cover the additional costs of providing the service or — where there is no demand for this service at a higher price — to discontinue providing the service, because revenue gained from its provision is below the additional costs incurred in providing it. However, DPAG, by remaining in this market without any foreseeable improvement in revenue restricted the activities of competitors which are in a position to offer this service at a price that covers their costs.

Effects on competition

(37) Contrary to what DPAG maintains, all of the disputed fidelity rebates are likely to have an effect on the opportunities that other suppliers of mail-order parcel services have to compete. Successful entry into the mail-order parcel services market requires a certain critical mass of activity (some 100

([60]) Case C-62/86 *AKZO* v *Commission* [1991] ECR I-3359 and Case T-65/89 *BPB Industries and British Cypsum* [1993] ECR II-389.
([61]) Paragraph 71 of the judgment.

million parcels or catalogues) and hence the parcel volumes of at least two cooperation partners in this field. By granting fidelity rebates to its biggest partners, DPAG has deliberately prevented competitors from reaching the 'critical mass' of some 100 million in annual turnover. This fidelity rebating policy was, in precisely the period in which DPAG failed to cover its service-specific additional costs (1990 to 1995), a decisive factor in ensuring that the 'tying effect' of the fidelity rebates for mail-order parcel services maintained an inefficient supply structure:

— in that economic resources were wasted in such a way that the dominant supplier does not cover the incremental costs of providing a specific service and thus created a permanent need for 'cross-subsidisation' from the reserved area,

— in that economically efficient alternatives that would cover costs without such: 'subsidisation' were hindered,

— in that, as a result, scarce resources beyond what is strictly necessary were uses to provide mail-order parcel services ([62]) and

— in that customers in the reserved area were forced to finance unnecessary wastage of scarce resources.

(38) The fidelity rebates agreed between DPAG and four of its partners since November 1997 demonstrably had the same effect as the exclusive purchase obligations. The parcel volumes actually delivered by DPAG as part of the cooperation arrangement made up almost [...] % of each customer's requirements in all the years for which the Commission has figures ([63]). The fidelity rebate policy has also hindered competition from the mail-order trade itself. Alternative delivery services, even if they initially serve to cover their own parcel or catalogue delivery requirements, might subsequently develop into competing infrastructures ([64]). Once an infrastructure reaches the critical mass, it can become a comprehensive, complete alternative to DPAC ([65]). The agreements on fidelity rebates deterred mail-order traders from setting up alternative delivery structures as long as this might conflict with their duty of fidelity and thus jeopardise the special price. This prevented the development of potential competition from alternative infrastructures.

(39) The systematic agreeing of fidelity rebates with cooperation partners leads, according to the case-law of the European courts, inevitably to the conclusion that DPAG is seeking to tie customers to it and hence is preventing or eliminating competition ([66]). It is settled European case-law that rebate arrangements which are linked to meeting a percentage of customer requirements have, solely by reason of the method by which they are calculated, an anti-competitive tying effect. Customers who

([62]) Sec William J. Baumol and J. Gregory Sidak, *Toward competition in Local telephony, page 66*: '… the result will be that more resources than the minimum necessary will be expended in bringing [product] X to consumers, which clearly violates economic efficiency.'

([63]) See the overiew of turnover, sales and net revenue per item achieved between 1996 and 1999 with the eight biggest mail-order customers, submitted by DPAG on 14 July 2000.

([64]) This may be illustrated by the example, cited by DPAG, of Otto-Versand. Hermes Versand Service, a subsidiary of Otto-Versand active in the parcel delivery sector, is now, with 141,6 million parcels delivered in 2000 (the firm's own data), the sixth largest courier, express mail and parcels operator in Germany (turnover in 1999: EUR 337 million). This example shows that alternative facilities created originally for the mail-order trade's own use may, once they have started to deliver a certain volume of items, develop into a competitor of DPAG which, the better to exploit its capacity, will also convey parcels for third parties.

([65]) In 2000 Hermes Versand Service opened, according to its own data, its 3 000th 'PaketShop'. These parcel acceptance points have been installed as 'shops within a shop' in other commercial premises such as newsagents, tobacconists. copy shops, off licences and dry-cleaners. Hermes Versand thus provides a comprehensive service to the mail-order trade, including the carriage of items returned by customers.

([66]) See the judgment of the Court of First Instance in Case T-228/97 *Irish Sugar* [1999] ECR II-2969, at paragraph 213; Hoffmann-La Roche, at paragraph 90; and the judgment of the Court of Justice in Case 322/81 *Michelin*, [1983] ECR, 3461, at paragraph 85.

have entered into such a rebate agreement will generally be inclined to have their parcels distributed exclusively by the company giving that rebate. Rebate arrangements linked to a percentage of customer requirements, moreover, owing to the method by which they are calculated, have an obstructive effect that is not linked to anything actually performed. This can be seen by the fact that competitors are compelled to offer discounts to offset the loss which customers suffer if they have a smaller percentage of their parcels distributed by DPAG and hence fall into a lower rebate bracket.

(40) Again according to the case-law of the European courts, the concept of abuse is 'an objective one' and, accordingly, the conduct of an undertaking in a dominant position. may be regarded as abusive within the meaning of Article 82 of the EC Treaty even in the absence of any fault ([67]). DPAG cannot therefore argue that during its conversion from a State-run administrative body to a private enterprise, its officials misjudged in excusable ignorance the particular responsibility of a dominant firm.

(41) Nor can DPAG argue in this case that the agreements on fidelity rebates were forced on it by the large customers themselves because of their volume of business. As was held in Hoffmann-La Roche, an undertaking which is in a dominant position on a market must not tie purchasers by an obligation or promise on their part to obtain all or most of their requirements exclusively from the said undertaking, even if it does so at their request ([68]). Lastly, DPAG cannot argue that neither the customer nor DP itself regarded the fidelity rebate agreements at issue as having any binding effect. The facts show that, in keeping with their contractual obligations, large mail-order customer satisfied all, or a large percentage, of their parcel requirements via DPAG.

E. EFFECT ON TRADE BETWEEN MEMBER STATES

(42) The policy of giving fidelity rebates, between 1990 through 1995 reinforced by prices below the additional costs of providing specific mail-order parcel services, affected trade between Member States because the tying effect of fidelity rebates prevented the German mail order companies from seeking suppliers in other Member States. In the case at issue, it has proved impossible for parcel service providers from other Member States to gain a significant foothold on the mail-order parcel services market in Germany. The German market for such parcel services was thereby sealed off from competitors from the other Member States. DPAG's rebating and pricing policies have thus had a negative impact on trade between Member States to an extent which is both considerable and contrary to the common interest in a functioning single market.

F. ARTICLE 86(2) OF THE EC TREATY

(43) DPAG does not rely on the restriction in Article 86(2) in order to justify its rebate policy in the area of mail-order parcel services at agreed special rates. Nor has it been able to explain how terminating the fidelity rebates agreed with its cooperation partners and increasing its price to at least cover the incremental cost of providing mail-order parcel services would prevent it from complying with its duty to perform a service of general economic interest. On the contrary, revenue above incremental costs is, on DPAG's own admission, the best means of contributing to cover the costs of the infrastructure which must be made available as reserve capacity owing to the public service obligation ([69]). Sales below this threshold make no such contribution, however, and therefore detract from fulfilment of the public service obligation.

([67]) Judgment of the Court of First Instance in Case T-65/89 *BPB Industries and British Gypsum* [1993] ECR II 389, at paragraph 70.
([68]) *Hoffmann-La Roche*, at paragraph 89.
([69]) DPAG letter of 9 March 2000, pp. 5 to 7.

(44) Furthermore, no state measure seems to be involved such as might require DPAG to offer to conclude contracts for non-over-the-counter parcel services at agreed special prices which do not as much as cover the incremental costs generated by those services. DPAG's submission and the Commission's investigation do not identify a single state measure obliging DPAG to offer such prices when agreeing special rates for the mail-order trade. The instruments cited by DPAG, such as the Telecommunications and Postal Services Regulation Act (*Gesetz zur Reglementierung der Telekommunikation und des Postwesens*), contain general prescriptions only, and are silent about the specific price level to be applied in individual cases ([70]). Indirect indications on the level of prices could only be derived from Section 37 of the 1989 Act establishing the Post Office (*Postverfassungsgesetz*). Under this Act, DPAG must normally cover the full costs of its individual services and make a reasonable profit ([71]). This target goes beyond the covering of service-specific costs required here ([72]).

(45) At all events the Commission finds that fidelity rebates, sometimes combined with below service-specific-cost prices, affect the development of trade to an extent contrary to the interests of the Community. As stated above, this conduct completely seals off the German mail-order parcel services market. This walling-off of a national market affects the development of trade to an extent highly inimical to the Community's interests.

G. ARTICLE 3 OF REGULATION No 17

(46) Even if there are no grounds for believing that DPAG still applies fidelity rebates in the mail order business, the Commission must ensure with certainty that DPAG has genuinely and permanently terminated its fidelity rebate policy and that it will also refrain from agreeing such rebates in future ([73]).

(47) With respect to prices below the additional costs of providing mail order services in the period from 1990 through 1995 the Commission will not seek to impose a fine, because the relevant measure of cost that a 'multi-product' or 'multi-service' postal operator benefiting from a reserved area has to meet in competitive activities has not been clarified previously. In addition, a fine is not appropriate in view of the fact that, as soon as it was confronted in the Statement of Objections of 7 August 2000 and in the ensuing proceedings with the economic principles on the relevant measure of cost to be covered, DPAG undertook to provide full transparency on the financial relationship between the reserved area and the parcel services subject to competition.

(48) Although there is no evidence that DPAG's mail-order parcel services are currently priced below the incremental cost of providing them, the Commission still considers it necessary — for the reasons set out below — to adopt a decision in this respect ([74]):

— this Commission Decision establishes that prices below the incremental costs of providing specific services outside the statutory over-the-counter services constitute a breach of Article 82 of the EC Treaty. Contrary to its position with respect to fidelity rebates, DPAG has not acknowledged that prices below the additional costs of providing a service infringes Article 82 of the Treaty,

([70]) Pursuant to Section 2 of the Act, the Act's purpose is to 'ensure equality of opportunity between rural areas and built-up areas in postal services having regard to tariff unity in respect of monopoly and public service tasks.'

([71]) In the official explanatory memorandum the Federal Government explains the purpose of this provision as follows: 'Paragraph 2 contains the important principle, applicable, *inter alia*, to the level of charges, that the individual services should as a rule earn enough to cover the full costs and generate a reasonable profit. This is not always possible. In the case of universal services, for example, market conditions may, owing to infrastructure constraints, exceptionally allow only part of the costs to be covered. In that event, at least the variable costs should be covered'. (German Parliament, lower house, 11th legislative period, circular 11/2854).

([72]) Section 6(4) of the Order on the protection of postal customers (*Post- Kundenschutzverordnung*), cited by DPAG in its letters of 6 June 2000 (pp. 4 to 6) and of 6 October 2000 (pp. 7 and 16) refers only to payments for monopoly services and does not apply to non-reserved parcel services. This provision also requires prices to be set in proper accordance with cost levels and structure.

([73]) See Case T-62/98 *Volkswagen AG*, judgment of 6 July 2000, paragraph 199, not yet reported.

([74]) See Case 7/82 *Gesellschaft zur Verwertung von Leistungsschutzrechten mbH* (GVL) [1983] ECR 483.

— the Commission takes the view that a formal decision on this matter clarifies its position, and thus deters from such conduct not only DPAG but also any other undertakings that might be implementing or contemplating similar practices. Likewise, it is in the interest of other potential competitors to provide the legal certainty that follows from a Commission Decision of this kind.

H. ARTICLE 15 OF REGULATION No 17

(49) Under Article 15 of Regulation No 17, infringements of Article 82 of the EC Treaty may be punishable by a fine of up to EUR 1 million or up to 10 % of turnover in the preceeding business year, whichever is the higher. The duration, permanence and considerable extent of the fidelity rebates agreed by DPAG for mail-order parcel services lead to the conclusion that the infringement was committed intentionally in fixing the amount of the fine, the Commission must have regard to the gravity and duration of the infringement.

Gravity of the infringements

(50) A fidelity rebate policy pursued by a dominant undertaking in the market in which it is dominant constitutes a serious infringement ([75]). Fidelity rebates given by an undertaking in a dominant position have already been condemned by the Community courts on a number of occasions. In the present case these abuses were committed with the object and effect of excluding private competitors of DPAG from the German parcel services market and of preventing the emergence of alternative delivery structures within the mail-order trade ('own-account distribution') ([76]). DPAG's rebate and pricing policy has had a powerful negative impact on competition in mail-order parcel services. Despite the economic advantages that would have arisen from the operation of cost-efficient and cost-covering alternative delivery structures, DPAG has managed to maintain a stable market share of more than [...] % on the German market for mail-order parcel services and to prevent the development of any more cost-efficient alternative infrastructure. Given these circumstances, the amount for the gravity of the infringement is set at EUR 12 million, reflecting the serious nature, the scale and the impact of the infringement.

Duration of the infringements

(51) The infringements were repeated and committed systematically. Altogether they lasted from 1974 until 2000, the infringement was intensified (as described at recital 23) in the period directly after November 1997 through October 2000. In accordance with the guidelines on the methods of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and of Article 65(5) of the ECSC Treaty, the amount fixed for the gravity of an infringement can be increased by a percentage of up to 10 % per year of the infringement. For the period between November 1997 and October 2000, the Commission considers that an increase of 30 % is appropriate. For the period from 1974 through 1997 the Commission considers than an increase of the amount arrived at for gravity by 70 % is appropriate. This gives a basic fine of EUR 24 million.

Aggravating and mitigating circumstances

(52) There are no aggravating or attenuating circumstances. As a general rule the Commission can consider the fact that an undertaking, after having received a statement of objections, informs the Commission that it does not substantially contest the facts on which the Commission bases its allegations as a mitigating circumstance. However, it does not appear appropriate to apply this rule in the present case. This is because in the present case the relevant contracts, which contain the agreement or fidelity rebates, are the factual basis upon which the Commission concludes that DPAG granted such rebates. Under these circumstances, the fact that DPAG did not challenge the very existence of these contracts in the hearing of 9 November 2000 cannot be considered as a mitigating circumstance,

([75]) See the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17, (OJ C 9, 14. 1.1998, point A).

([76]) On the part played by cost-efficient alternative delivery infrastructures as a source of competition desirable for the economy as a whole, see above at recitals 37 and 38.

HAS ADOPTED THIS DECISION:

Article 1

1. From 1974 to 2000, Deutsche Post AG (DPAG) infringed Article 82 of the EC Treaty by granting a special price to customers for mail-order parcel services only in exchange for requiring the customer to send via Deutsche Post AG its entire requirements or a high percentage of those requirements of non-bulky parcels weighing up to 20 kg or 31,5 kg as the case might be or of catalogues weighing over 1 kg (heavy Infopost).

2. From 1990 to 1995, DPAG infringed Article 82 of the EC Treaty by supplying mail-order parcel services at prices below the additional costs of providing those services.

Article 2

1. DPAG AG shall immediately bring to an end the infringements referred to in Article 1(1) and shall refrain in future from repeating any act or conduct described in Article 1(a).

2. At the end of each accounting year of its new commercial parcel services subsidiary (Newco), DPAG shall submit to the Commission a statement of the costs and revenue of Newco. In addition DPAG shall each year submit an itemised statement of the transfer prices paid by Newco for all goods or services procured from DPAG. This obligation shall begin with Newco's first accounting year, and shall end with Newco's third accounting year.

DPAG shall submit to the Commission any agreements providing for rebates which Newco concludes with its six largest mail-order customers. This obligation shall begin with Newco's first accounting year, and shall end with Newco's third accounting year.

Article 3

1. For the infringement referred to in Article 1(1), a fine of EUR 24 million is hereby imposed on Deutsche Post AG.

2. The fine shall be paid in euro, within three months of the date of notification of this Decision, into bank account No 642-0029000-95 (IBAN BE 76 6420 0290 0095, code SWIFT: BBVABEBB) of the European Commission with Banco Bilbao Vizcaya Argentaria BBVA Avenue des Arts 43, B-1040 Brussels.

After the expiry of that period interest shall be automatically payable at the interest rate applied by the European Central Bank to its main refinancing operations on the first working day of the month in which this Decision is adopted, plus 3,5 percentage points, resulting in an overall interest rate of 8.28 %.

Article 4

This Decision is addressed to:

Deutsche Post AG
Heinrich-von-Stephan-Straße 1
D-53175 Bonn.

Article 5

This Decision shall be enforceable pursuant to Article 256 of the EC Treaty.

Done at Brussels, 20 March 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION

of 19 April 2001

concerning the extension of an exemption granted to Germany pursuant to Article 8(2)(c) of Council Directive 70/156/EEC on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers

(notified under document number C(2001) 1095)

(Only the German text is authentic)

(2001/355/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 70/156/EEC of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and their trailers [1], as last amended by Directive 98/91/EC of the European Parliament and of the Council [2], and in particular Article 8(2)(c) thereof,

Whereas:

(1) By Decision 97/848/EC of 3 December 1997 the Commission approved the request for an exemption submitted by the Federal Republic of Germany pursuant to Article 8(2)(c) of Directive 70/156/EEC concerning the production of glazing from a hard material (polycarbonate) and installation of the same in a type of vehicle.

(2) The request for an extension of the exemption submitted by Germany on 14 June 2000 is justified by the fact that the measures needed to adapt the Directives which were the subject of that exemption have not yet come into force and the exemption should therefore be extended until the entry into force of the adaptations to those Directives and, in any case, for a maximum period of 24 months.

(3) The measures provided for by this Decision are in accordance with the opinion of the Committee on Adaptation to Technical Progress set up by Directive 70/156/EEC,

HAS ADOPTED THIS DECISION:

Article 1

The exemption granted to Germany by Decision 97/848/EC is extended until the entry into force of the adaptations to the Directives concerned and, in any case, for a period not exceeding 24 months.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 19 April 2001.

For the Commission

Erkki LIIKANEN

Member of the Commission

[1] OJ L 42, 23.2.1970, p. 1.
[2] OJ L 11, 16.1.1999, p. 25.

COMMISSION DECISION

of 4 May 2001

concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom and repealing Decision 2001/172/EC

(notified under document number C(2001) 1406)

(Text with EEA relevance)

(2001/356/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market [1], as last amended by Directive 92/118/EEC [2], and in particular Article 10 thereof,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market [3], as last amended by Directive 92/118/EEC, and in particular Article 9 thereof,

Whereas:

(1) Outbreaks of foot-and-mouth disease have been declared in the United Kingdom.

(2) The foot-and-mouth disease situation in the United Kingdom is liable to endanger the herds of other Member States in view of the placing on the market and trade in live biungulate animals and certain of their products.

(3) The United Kingdom has taken measures in the framework of Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease [4], as last amended by the Act of Accession of Austria, Finland and Sweden, and furthermore has introduced further measures within the affected areas.

(4) The disease situation in the United Kingdom requires reinforcing the control measures for foot-and-mouth disease taken by the United Kingdom by adopting additional Community protective measures.

(5) In collaboration with the Member State concerned the Commission adopted Decision 2001/172/EC concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom [5], as last amended by Decision 2001/318/EC [6].

(6) Council Directive 64/432/EEC [7], as last amended by Directive 2000/20/EC [8], concerns health problems affecting intra-Community trade in bovine animals and swine.

(7) Council Directive 91/68/EEC [9], as last amended by Commission Decision 94/953/EC [10], concerns animal health conditions governing intra-Community trade in ovine and caprine animals.

(8) Council Directive 64/433/EEC [11], as last amended by Directive 95/23/EC [12], concerns health conditions for the production and marketing of fresh meat.

(9) Council Directive 94/65/EC [13] lays down the requirements for the production and placing on the market of minced meat and meat preparations.

(10) Council Directive 91/495/EEC [14], as last amended by Directive 94/65/EC, concerns public health and animal health problems affecting the production and placing on the market of rabbit meat and farmed game meat.

(11) Council Directive 80/215/EEC [15], as last amended by the Act of Accession of Austria, Finland and Sweden, concerns animal health problems affecting intra-Community trade in meat products.

(12) Council Directive 77/99/EEC [16], as last amended by Council Directive 97/76/EC [17], concerns health problems affecting the production and marketing of meat products and certain other products of animal origin.

[1] OJ L 224, 18.8.1990, p. 29.
[2] OJ L 62, 15.3.1993, p. 49.
[3] OJ L 395, 30.12.1989, p. 13.
[4] OJ L 315, 26.11.1985, p. 11.
[5] OJ L 62, 2.3.2001, p. 22.
[6] OJ L 109, 19.4.2001, p. 75.
[7] OJ 121, 29.7.1964, p. 1977/64.
[8] OJ L 163, 4.7.2000, p. 35.
[9] OJ L 46, 19.2.1991, p. 19.
[10] OJ L 371, 31.12.1994, p. 14.
[11] OJ 121, 29.7.1964, p. 2012/64.
[12] OJ L 243, 11.10.1995, p. 7.
[13] OJ L 368, 31.12.1994, p. 10.
[14] OJ L 268, 24.9.1991, p. 41.
[15] OJ L 47, 21.2.1980, p. 4.
[16] OJ L 26, 31.1.1977, p. 85.
[17] OJ L 10, 16.1.1998, p. 25.

(13) Council Directive 92/118/EEC [1], as last amended by Directive 2001/7/EC [2], lays down animal health and public health requirements governing trade in and imports into the Community of products not subject to the said requirements laid down in specific Community rules referred to in Annex A(I) to Directive 89/662/EEC and, as regards pathogens, to Directive 90/425/EEC.

(14) Council Directive 88/407/EEC [3], as last amended by the Act of Accession of Austria, Finland and Sweden, lays down the animal health requirements applicable to intra-Community trade in and imports of deep-frozen semen of domestic animals of the bovine species.

(15) Council Directive 89/556/EEC [4], as last amended by the Act of Accession of Austria, Finland and Sweden, concerns the animal health conditions governing intra-Community trade in and imports from third countries of embryos of domestic animals of the bovine species.

(16) Council Decision 90/424/EEC [5], as last amended by Decision 2001/12/EC [6], concerns expenditure in the veterinary field.

(17) Council Decision 90/426/EEC [7], as last amended by Commission Decision 2001/298/EC [8], concerns animal health conditions governing the movement and import from third countries of equidae.

(18) Commission Decision 2001/304/EC [9], as last amended by Decision 2001/345/EC [10], concerns marking and use of certain animal products in relation to Decision 2001/172/EC concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom.

(19) Decision 2001/172/EC has been amended seven times and therefore it appears appropriate to consolidate the provisions of this Decision. It is therefore necessary to repeal Decision 2001/172/EC but for practical reasons to construe any reference to Decision 2001/172/EC as reference to the present Decision.

(20) The measures provided for in this Decision are in accordance with the opinion of the Standing Veterinary Committee,

HAS ADOPTED THIS DECISION:

Article 1

Without prejudice to the measures taken by the United Kingdom within the framework of Directive 85/511/EEC, the United Kingdom shall ensure that:

1. no live animals of the bovine, ovine, caprine and porcine species and other biungulates move between those parts of its territory listed in Annex I and Annex II;

2. no live animals of the bovine, ovine, caprine and porcine species and other biungulates are dispatched from or moved through those parts of its territory listed in Annex I and Annex II;

   Without prejudice to the restrictions on movement of susceptible animals within and through Great Britain applied by the competent authorities of the United Kingdom, and derogating from the provisions in the first paragraph, the competent authorities may authorise the direct and uninterrupted transit of biungulate animals through the areas listed in Annex I and Annex II on main roads and railway lines;

3. the health certificates provided for in Council Directive 64/432/EEC accompanying live bovine and porcine animals and in Council Directive 91/68/EEC accompanying live ovine and caprine animals consigned from parts of the territory of the United Kingdom not listed in Annex I and Annex II to other Member States shall bear the following words:

   'Animals conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom';

4. the health certificates accompanying biungulates, other than those covered by the certificates mentioned in paragraph 3, consigned from parts of the territory of the United Kingdom not listed in Annex I and Annex II to other Member States shall bear the following words:

   'Live biungulates conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom';

5. the movement to other Member States of animals accompanied by an animal health certificate referred to in paragraphs 3 or 4 shall only be allowed following three days advance notification dispatched by the local veterinary authority to the central and local veterinary authorities in the Member State of destination.

Article 2

1. The United Kingdom shall not dispatch fresh meat of the bovine, ovine, caprine and porcine species and other biungulates coming from those parts of its territory listed in Annex I or obtained from animals originating in those parts of the United Kingdom.

Fresh meat referred to in the first subparagraph shall include minced meat and meat preparations in accordance with Directive 94/65/EC.

[1] OJ L 62, 15.3.1993, p. 49.
[2] OJ L 2, 5.1.2001, p. 27.
[3] OJ L 194, 22.7.1988, p. 10.
[4] OJ L 302, 19.10.1989, p. 1.
[5] OJ L 224, 18.8.1990, p. 19.
[6] OJ L 3, 6.1.2001, p. 27.
[7] OJ L 224, 18.8.1990, p. 42.
[8] OJ L 102, 12.4.2001, p. 63.
[9] OJ L 104, 13.4.2001, p. 6.
[10] OJ L 122, 3.5.2001, p. 31.

2. The prohibitions provided for in paragraph 1 shall not apply to:

(a) fresh meat obtained before 1 February 2001 provided that the meat is clearly identified, and since this date has been transported and stored separately from meat which is not destined for dispatch outside the areas mentioned in Annex I;

(b) fresh meat obtained from animals reared outside the areas listed in Annex I and Annex II and transported in derogation to Article 1(1) directly and under official control in sealed means of transport to a slaughterhouse situated in the area listed in Annex I outside the protection zone for immediate slaughter. Such meat shall only be placed on the market in the United Kingdom and conform to the following conditions:

— all such fresh meat must bear the health mark in accordance with Decision 2001/304/EC,

— the plant will be operated under strict veterinary control,

— the fresh meat must be clearly identified, and transported and stored separately from meat which is destined for dispatch outside the United Kingdom,

— the control of the compliance with the above listed conditions shall be carried out by the competent veterinary authority under the supervision of the central veterinary authorities who will communicate to the other Member States and the Commission a list of those establishments which they have approved in application of these provisions;

(c) fresh meat obtained from cutting plants situated in the area listed in Annex I under the following conditions:

— only fresh meat as described in subparagraph (a) or fresh meat obtained from animals reared and slaughtered outside the area listed in Annex I will be processed in this establishment,

— all such fresh meat must bear the health mark in accordance with Chapter XI of Annex I to Directive 64/433/EEC or in the case of meat from other biungulates the health mark provided for in Chapter III of Annex I to Directive 91/495/EEC,

— the plant will be operated under strict veterinary control,

— the fresh meat must be clearly identified, and transported and stored separately from meat which is not destined for dispatch outside the areas mentioned in Annex I,

— the control of the compliance with the above listed conditions shall be carried out by the competent veterinary authority under the supervision of the central veterinary authorities who will communicate to the other Member States and the Commission a list of those establishments which they have approved in application of these provisions.

3. Meat consigned from the United Kingdom to other Member States shall be accompanied by a certificate from an official veterinarian. The certificate shall bear the following words:

'Meat conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

Article 3

1. The United Kingdom shall not dispatch meat products of animals of the bovine, ovine, caprine and porcine species and other biungulates coming from those parts of the United Kingdom listed in Annex I or prepared using meat obtained from animals originating in those parts of the United Kingdom.

2. The restrictions described in paragraph 1 shall not apply to meat products which have undergone one of the treatments laid down in Article 4(1) of Directive 80/215/EEC, or to meat products as defined in Directive 77/99/EEC which have been subjected during preparation uniformly throughout the substance to a pH value of less than 6.

3. The prohibitions described in paragraph 1 shall not apply to:

(a) meat products prepared from meat derived from biungulate animals slaughtered before 1 February 2001 provided that the meat products are clearly identified, and since this date have been transported and stored separately from meat products which are not destined for dispatch outside the areas mentioned in Annex I;

(b) meat products prepared in establishments under the following conditions:

— all fresh meat used in the establishment must conform to the conditions of Article 2(2)(a) or (c),

— all meat products used in the final product will conform to the conditions of paragraph (a) or be made from fresh meat obtained from animals reared and slaughtered outside the area listed in Annex I,

— all meat products must bear the health mark in accordance with Chapter VI of Annex B to Directive 77/99/EEC,

— the establishment will be operated under strict veterinary control,

— the meat products must be clearly identified and transported and stored separately from meat and meat products which are not destined for dispatch outside the areas mentioned in Annex I,

— the control of the compliance with the above listed conditions shall be carried out by the competent authority under the responsibility of the central veterinary authorities who will communicate to other Member States and the Commission a list of those establishments which they have approved in application of these provisions;

(c) meat products prepared in the parts of the territory which are not included in Annex I using meat obtained before 1 February 2001 from parts of the territory included in Annex I provided that the meat and meat products are clearly identified and transported and stored separately from meat and meat products which are not destined for dispatch outside the areas mentioned in Annex I.

4. Meat products consigned from the United Kingdom to other Member States shall be accompanied by an official certificate. The certificate shall bear the following words:

'Meat products conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

5. Derogating from the provisions in paragraph 4 it shall be sufficient in the case of meat products which conform to the requirements of paragraph 2 and have been processed in an establishment operating HACCP [1] and an auditable standard operating procedure which ensures that standards for treatment are met and recorded that compliance with the conditions required for the treatment laid down in paragraph 2 is stated in the commercial document accompanying the consignment, endorsed in accordance with Article 9.

6. Derogating from the provisions in paragraph 4 it shall be sufficient in the case of meat products heat treated in hermetically sealed containers so as to ensure that they are shelf stable to be accompanied by a commercial document stating the heat treatment applied.

Article 4

1. The United Kingdom shall not dispatch milk intended or not intended for human consumption from those parts of its territory listed in Annex I.

2. The prohibitions described in paragraph 1 shall not apply to milk intended or not intended for human consumption which has been subjected to at least:

(a) an initial pasteurization in accordance with the norms defined in paragraph 3(b) of Chapter 1 in Annex I to Directive 92/118/EEC, followed by a second heat treatment by high temperature pasteurization, UHT, sterilization so as to produce a negative reaction to the peroxidase test or by a drying process which includes a heat treatment with an equivalent effect to one of the above; or

(b) an initial pasteurization in accordance with the norms defined in paragraph 3(b) of Chapter 1 in Annex I to Directive 92/118/EEC, combined with the treatment by which the pH is lowered below 6 and held there for at least one hour.

3. The prohibitions described in paragraph 1 shall not apply to milk prepared in establishments situated in the areas listed in Annex I under the following conditions:

(a) all milk used in the establishment must either conform to the conditions of paragraph 2 or be obtained from animals outside the area listed in Annex I,

(b) the establishment will be operated under strict veterinary control,

(c) the milk must be clearly identified and transported and stored separately from milk and milk products which are not destined for dispatch outside the areas mentioned in Annex I,

(d) transport of raw milk from holdings situated outside the areas mentioned in Annex I to the establishments referred to above is carried out in vehicles which were cleaned and disinfected prior to operation and had no subsequent contact with holdings in the areas mentioned in Annex I keeping animals of species susceptible to foot-and-mouth disease,

(e) the control of the compliance with the above listed conditions shall be carried out by the competent veterinary authority under the supervision of the central veterinary authorities who will communicate to other Member States and the Commission a list of those establishments which they have approved in application of these provisions.

4. Milk consigned from the United Kingdom to other Member States shall be accompanied by an official certificate. The certificate shall bear the following words:

'Milk conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

5. Derogating from the provisions in paragraph 4 it shall be sufficient in the case of milk which conforms to the requirements of paragraph 2(a) or (b) and has been processed in an establishment operating HACCP and an auditable standard operating procedure which ensures that standards for treatment are met and recorded that compliance with the conditions required for the treatment laid down in paragraph 2(a) or (b) is stated in the commercial document accompanying the consignment, endorsed in accordance with Article 9.

6. Derogating from the provisions in paragraph 4 it shall be sufficient in the case of milk which conforms to the requirements in paragraph 2(a) or (b) and which has been treated in hermetically sealed containers so as to ensure that it is shelf stable to be accompanied by a commercial document stating the heat treatment applied.

Article 5

1. The United Kingdom shall not dispatch milk products intended or not intended for human consumption from those parts of its territory listed in Annex I.

2. The prohibitions described in paragraph 1 shall not apply to milk products intended or not intended for human consumption:

(a) produced before 1 February 2001;

(b) prepared from milk complying with the provisions in Article 4(2) or (3);

(c) subject to a heat treatment at a temperature of at least 72 °C for at least 15 seconds, on the understanding that such treatment was not necessary for finished products the ingredients of which comply with the respective animal health conditions laid down in this Decision;

(d) for export to a third country where import conditions permit such products to be subject to treatment other than laid down in this Decision.

[1] HACCP = Hazard Analysis and Critical Control Points.

3. The prohibitions described in paragraph 1 shall not apply to:

(a) milk products prepared in establishments situated in the areas listed in Annex I under the following conditions:

— all milk used in the establishment will either conform to the conditions of Article 4(2) or be obtained from animals outside the area listed in Annex I,

— all milk products used in the final product will either conform to the conditions of paragraph 2 or be made from milk obtained from animals outside the area listed in Annex I,

— the establishment will be operated under strict veterinary control,

— the milk products must be clearly identified and transported and stored separately from milk and milk products which are not destined for dispatch outside the areas mentioned in Annex I,

— the control of the compliance with the above listed conditions shall be carried out by the competent authority under the responsibility of the central veterinary authorities who will communicate to other Member States and the Commission a list of those establishments which they have approved in application of these provisions;

(b) milk products prepared in the parts of the territory outside the areas mentioned in Annex I using milk obtained before 1 February 2001 from parts of the territory mentioned in Annex I provided that the milk products are clearly identified and transported and stored separately from milk products which are not destined for dispatch outside the areas mentioned in Annex I.

4. Milk products consigned from the United Kingdom to other Member States shall be accompanied by an official certificate. The certificate shall bear the following words:

'Milk products conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

5. Derogating from the provisions in paragraph 4 it shall be sufficient in the case of milk products which conform to the requirements of paragraph 2 and have been processed in an establishment operating HACCP and an auditable standard operating procedure which ensures that standards for treatment are met and recorded that compliance with the conditions laid down in paragraph 2 is stated in the commercial document accompanying the consignment, endorsed in accordance with Article 9.

6. Derogating from the provisions in paragraph 4 it shall be sufficient in the case of milk products which conform to the requirements of paragraph 2 and which have been treated in hermetically sealed containers so as to ensure that they are shelf stable to be accompanied by a commercial document stating the heat treatment applied.

Article 6

1. The United Kingdom shall not send semen, ova and embryos of the bovine, ovine, caprine and porcine species and other biungulates from those parts of its territory listed in Annex I to other parts of the United Kingdom.

2. The United Kingdom shall not dispatch semen, ova and embryos of the bovine, ovine, caprine and porcine species and other biungulates from those parts of its territory listed in Annex I and Annex II.

3. This prohibition shall not apply to frozen bovine semen and embryos produced before 1 February 2001.

4. The health certificate provided for in Directive 88/407/EEC and accompanying frozen bovine semen consigned from the United Kingdom to other Member States shall bear the following words:

'Frozen bovine semen conforming to Commission Decision 2001/172/EC of 1 March 2001 on certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

5. The health certificate provided for in Directive 89/556/EEC and accompanying bovine embryos consigned from the United Kingdom to other Member States shall bear the following words:

'Bovine embryos conforming to Commission Decision 2001/172/EC of 1 March 2001 on certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

Article 7

1. The United Kingdom shall not dispatch hides and skins of bovine, ovine, caprine and porcine species and other biungulates from those parts of its territory listed in Annex I.

2. This prohibition shall not apply to hides and skins which were produced before 1 February 2001 or which conform to the requirements of paragraph 1(A) indents 2 to 5 or paragraph 1(B), indents 3 and 4 of Chapter 3 of Annex I to Directive 92/118/EEC. Care must be taken to separate effectively treated hides and skins from untreated hides and skins.

3. The United Kingdom shall ensure that hides and skins of bovine, ovine, caprine and porcine species and other biungulates to be sent to other Member States shall be accompanied by a certificate which bears the following words:

'Hides and skins conforming to Commission Decision 2001/172/EC of 1 March 2001 on certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

4. Derogating from the provisions in paragraph 3 it shall be sufficient in the case of hides and skins which conform to the requirements of paragraph 1(A) indents 2 to 5 of Chapter 3 of Annex I to Directive 92/118/EEC to be accompanied by a commercial document stating compliance with the conditions required for the treatment laid down in paragraph 1(A) indents 2 to 5 of Chapter 3 of Annex I to Directive 92/118/EEC.

5. Derogating from the provisions in paragraph 3 it shall be sufficient in the case of hides and skins which conform to the requirements of paragraph 1(B) indents 2 and 3 of Chapter 3 of Annex I to Directive 92/118/EEC that compliance with the conditions required for the treatment laid down in paragraph 1(B) indents 2 and 3 of Chapter 3 of Annex I to Directive 92/118/EEC is stated in the commercial document accompanying the consignment, endorsed in accordance with Article 9.

Article 8

1. The United Kingdom shall not dispatch animal products of the bovine, ovine, caprine and porcine species and other biungulates not mentioned in Articles 2, 3, 4, 5, 6 and 7 produced after 1 February 2001 from those parts of its territory listed in Annex I.

The United Kingdom shall not dispatch dung and manure from those parts of its territory listed in Annex I.

2. The prohibitions mentioned in paragraph 1 first subparagraph shall not apply to:

(a) animal products referred to in paragraph 1 first subparagraph which have been subjected to:

— heat treatment in a hermetically sealed container with a Fo value of 3,00 or more, or

— heat treatment in which the centre temperature is raised to at least 70 °C;

(b) blood and blood products as defined in Chapter 7 of Annex I to Directive 92/118/EEC which have been subject to at least one of the following treatments:

— heat treatment at a temperature of 65 °C for at least three hours, followed by an effectiveness check,

— irradiation at 2,5 megarads or gamma rays followed by an effectiveness check,

— change of pH to pH 5 or lower for at least two hours, followed by an effectiveness check;

— a treatment as provided for in Chapter 4 of Annex I to Directive 92/118/EEC;

(c) lard and rendered fats which have been subject to the heat treatment prescribed in paragraph 2(A) of Chapter 9 of Annex I to Directive 92/118/EEC;

(d) animal casings to which the provisions in paragraph B Chapter 2 of Annex I to Directive 92/118/EEC apply *mutatis mutandis*;

(e) sheep wool, ruminant hair and pigs bristles which have undergone factory washing or have been obtained from tanning and unprocessed sheep wool, ruminant hair and pigs bristles which are securely enclosed in packaging and dry;

(f) semi-moist and dried petfood conforming to the requirements of paragraphs 2 and 3 respectively of Chapter 4 of Annex I to Directive 92/118/EEC;

(g) composite products which are not subject to further treatment containing products of animal origin on the understanding that the treatment was not necessary for finished products the ingredients of which comply with the respective animal health conditions laid down in this Decision,

(h) game trophies in accordance with paragraph 2(b) of part B in Chapter 13 of Annex I to Directive 92/118/EEC,

(i) packed products intended for use as *in vitro* diagnostic or laboratory reagents.

3. The United Kingdom shall ensure that the animal products mentioned in paragraph 2 to be sent to other Member States shall be accompanied by an official certificate which bears the following words:

'Animal products conforming to Commission Decision 2001/172/EC of 1 March 2001 concerning certain protection measures with regard to foot-and-mouth disease in the United Kingdom'.

4. Derogating from the provisions in paragraph 3 it shall be sufficient in the case of products mentioned in paragraph 2(b), (c) and (d) that compliance with the conditions for the treatment stated in the commercial document required in accordance with the respective Community legislation is endorsed in accordance with Article 9.

5. Derogating from the provisions in paragraph 3 it shall be sufficient in the case of products mentioned in paragraph 2(e) to be accompanied by a commercial document stating either the factory washing or origin from tanning or compliance with the conditions laid down in paragraphs 2 and 4 of Chapter 15 of Annex I to Directive 92/118/EEC.

6. Derogating from the provisions in paragraph 3 it shall be sufficient in the case of products mentioned in paragraph 2(g) which have been produced in an establishment operating HACCP and an auditable standard operating procedure which ensures that pre-processed ingredients comply with the respective animal health conditions laid down in this Decision and that this is stated on the commercial document accompanying the consignment, endorsed in accordance with Article 9.

7. Derogating from the provisions in paragraph 3 it shall be sufficient in the case of products mentioned in paragraph 2(i) to be accompanied by a commercial document stating that the products are for use as *in vitro* diagnostic or laboratory reagents, provided that the products are clearly labelled 'for *in vitro* diagnostic use only' or 'for laboratory use only'.

Article 9

Where reference is made to this Article, the competent authorities of the United Kingdom shall ensure that the commercial document required by Community legislation for intra-Community trade be endorsed by the attachment of a copy of an official certificate stating that the production process has been audited and found in compliance with the appropriate requirements in Community legislation and suitable to destroy the foot-and-mouth disease virus or that the products concerned have been produced from pre-processed materials which had been certified accordingly, and provisions are in place to avoid possible re-contamination with the foot-and-mouth disease virus after treatment.

Such verifying certification of the production process shall bear a reference to this Decision, shall be valid for 30 days, shall state the expiry date and shall be renewable after inspection of the establishment.

Article 10

1. The United Kingdom shall ensure that vehicles which have been used for the transport of live animals are cleaned and disinfected after each operation, and shall furnish proof of such disinfection.

2. The United Kingdom shall ensure that operators of ports of exit in the United Kingdom ensure that the tyres of road vehicles departing from the United Kingdom are exposed to disinfectant.

Article 11

The restrictions laid down in Articles 3, 4, 5 and 8 shall not apply to the dispatch from the parts of the territory of the United Kingdom listed in Annex I of the products referred to in Articles 3, 4, 5 and 8, if such products were:

— either not produced in the United Kingdom and remained in their original packaging indicating the country of origin of the products, or

— produced in an approved establishment situated in the parts of the territory of the United Kingdom listed in Annex I from pre-processed products not originating from these areas, which have been since introduction onto the territory of the United Kingdom transported, stored and processed separately from products which are not destined for dispatch outside the areas mentioned in Annex I and are accompanied by a commercial document or official certificate as required by this Decision.

Article 12

1. Member States other than the United Kingdom shall not send live animals of susceptible species to the part of the territory of the United Kingdom listed in Annex I.

2. Without prejudice to the measures already taken by Member States, Member States other than the United Kingdom shall take any precautionary measure, including the isolation of susceptible animals and preventive killing of sheep, goats, farmed game of cloven-hoofed species and camelides dispatched from the United Kingdom between 1 and 21 February 2001.

The precautionary measures referred to in the first subparagraph shall be taken without prejudice to the provisions of Article 6 of Decision 90/424/EEC.

3. Member States shall cooperate in monitoring personal luggage of passengers travelling from the United Kingdom and in information campaigns carried out to prevent introduction of products of animal origin onto the territory of Member States other than the United Kingdom.

4. The United Kingdom shall ensure that equidae dispatched from its territory to another Member State are accompanied by an animal health certificate in accordance with the model in Annex C of Directive 90/426/EEC, which shall only be issued for equidae that for the past 15 days prior to certification have not been in a protection and surveillance zone established in accordance with Article 9 of Directive 85/511/EEC.

Article 13

1. Any reference to Decision 2001/172/EC shall be construed as reference to the present Decision.

2. Commission Decision 2001/172/EC is hereby repealed.

Article 14

Member States shall amend the measures which they apply to trade so as to bring them into compliance with this Decision. They shall immediately inform the Commission thereof.

Article 15

This Decision shall apply until midnight on 18 May 2001.

Article 16

This Decision is addressed to the Member States.

Done at Brussels, 4 May 2001.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

Great Britain, Northern Ireland.

ANNEX II

Great Britain, Northern Ireland.