ISSN 0378-6978

Official Journal

of the European Communities

L 331

Volume 44

15 December 2001

English edition

Legislation

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[1] Text with EEA relevance

Price: EUR 24,50

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[1] Text with EEA relevance

I

(Acts whose publication is obligatory)

DECISION No 2455/2001/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 November 2001 establishing the list of priority substances in the field of water policy and amending Directive 2000/60/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,

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

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

Following consultation of the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community [4] and the Directives adopted within its framework currently represent the major Community instrument for the control of point and diffuse discharges of dangerous substances.

(2) The Community controls under Council Directive 76/464/EEC have been replaced, harmonised and further developed by Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy [5].

(3) Under Directive 2000/60/EC specific measures must be adopted at Community level against pollution of water by individual pollutants or groups of pollutants presenting a significant risk to or via the aquatic environment, including such risks to waters used for the abstraction of drinking water. Such measures are aimed at the progressive reduction and, for priority hazardous substances, as defined in the second sentence of point 30 of Article 2 of Directive 2000/60/EC, at the cessation or phasing out of discharges, emissions and losses within 20 years after their adoption at Community level, with the ultimate aim, as recognised in the context of achieving the objectives of relevant international agreements, of achieving concentrations in the marine environment approaching background values for naturally occurring substances and close to zero for man-made synthetic substances. With a view to the adoption of these measures, it is necessary to establish, as Annex X to Directive 2000/60/EC, the list of priority substances, including the priority hazardous substances. The list has been prepared taking into account the recommendations referred to in Article 16(5) of Directive 2000/60/EC.

(4) For substances occurring naturally, or produced through natural processes, such as cadmium, mercury and polyaromatic hydrocarbons (PAHs), complete phase-out of emissions, discharges and losses from all potential sources is impossible. When the relevant individual directives are drawn up, this situation must be properly taken into account and measures should aim at the cessation of emissions, discharges and losses into water of those priority hazardous substances which derive from human activities.

(5) Directive 2000/60/EC introduces in Article 16(2) a scientifically based methodology for selecting priority substances on the basis of their significant risk to or via the aquatic environment.

(6) The methodology set out in Directive 2000/60/EC enables, as a most practical option, the application of a simplified risk-based assessment procedure based on scientific principles taking particular account of:

— evidence regarding the intrinsic hazard of the substance concerned, and, in particular, its aquatic ecotoxicity and human toxicity via aquatic exposure routes,

— evidence from monitoring of widespread environmental contamination, and

— other proven factors which may indicate the possibility of widespread environmental contamination, such as production, use volume and use pattern of the substance concerned.

[1] OJ C 177 E, 27.6.2000, p. 74 and OJ C 154 E, 29.5.2001, p. 117.
[2] OJ C 268, 19.9.2000, p. 11.
[3] Opinion of the European Parliament of 15 May 2001 (not yet published in the Official Journal) and Council Decision of 8 October 2001.
[4] OJ L 129, 18.5.1976, p. 23. Directive as last amended by Directive 2000/60/EC (OJ L 327, 22.12.2000, p. 1).
[5] OJ L 327, 22.12.2000, p. 1.

(7) The Commission has, on this basis, developed a combined monitoring-based and modelling-based priority setting (COMMPS) scheme, in collaboration with experts of interested parties, involving the Scientific Committee for Toxicity, Ecotoxicity and the Environment, Member States, EFTA countries, the European Environment Agency, European business associations including those representing small and medium-sized enterprises and European environmental organisations.

(8) The Commission should involve in the COMMPS procedure the countries which are candidates for membership of the European Union, assigning priority to those through whose territory watercourses pass which also pass through, or flow into, the territory of a Member State.

(9) A first list of 33 priority substances or groups of substances has been selected on the basis of the COMMPS procedure, following a publicly open and transparent discussion with the interested parties.

(10) The expeditious adoption of this list is desirable in order to enable the timely and continuing implementation of Community controls of dangerous and hazardous substances pursuant to the strategy set out in Article 16 of Directive 2000/60/EC, in particular the proposals for controls as set out in Article 16(6) and the proposals for quality standards as set out in Article 16(7) in order to achieve the objectives of the Directive.

(11) The list of priority substances adopted under this Decision is to replace the list of substances in the Commission Communication to the Council of 22 June 1982 on dangerous substances which might be included in List I of Council Directive 76/464/EEC [1].

(12) Pursuant to Article 16(3) of Directive 2000/60/EC, the identification of the priority hazardous substances requires consideration of the selection of substances of concern in relevant Community legislation regarding hazardous substances or relevant international agreements. Hazardous substances are defined in that Directive as 'substances or groups of substances that are toxic, persistent and liable to bio-accumulate, and other substances or groups of substances which give rise to an equivalent level of concern'.

(13) International agreements of relevance include inter alia the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic, the HELCOM Convention on the Protection of the Marine Environment of the Baltic Sea, the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, the Conventions adopted within the International Maritime Organisation, the UNEP Convention on Persistent Organic Pollutants and the Protocol on Persistent Organic Pollutants of the UN-ECE Convention on Long-Range Transboundary Air Pollution.

(14) The selection of priority substances and the identification of priority hazardous substances targeted to the establishment of controls of emissions, discharges and losses will contribute to the objectives and the Community commitments under international conventions for the protection of marine waters, in particular to the implementation of the Strategy with regard to hazardous substances adopted at the 1998 OSPAR Ministerial Meeting under the Convention for the protection of the marine environment of the North-East Atlantic pursuant to Council Decision 98/249/EC [2].

(15) The identification of the priority hazardous substances on the list of priority substances should be made with regard, *inter alia*, to hazardous substances agreed for phase-out or for cessation of discharges, emissions and losses in international agreements, such as hazardous substances which are agreed for phase-out in international fora including IMO, UNEP or UN-ECE; hazardous substances which are agreed for cessation of discharges, emissions and losses as a priority in the OSPAR Convention, including hazardous substances identified by the OSPAR DYNAMEC Selection I [3] or III [4]; hazardous substances which give rise to 'an equivalent level of concern' as substances that are persistent, toxic and liable to bioaccumulate (PTBs), such as endocrine disrupters identified under the OSPAR Strategy; and heavy metals included in the Protocol on Heavy Metals of the UN-ECE Convention on Long-Range Transboundary Air Pollution and selected for priority action under OSPAR 1998 and 2000, which give rise to 'an equivalent level of concern' as PTBs.

(16) In order to render measures to combat water pollution effective, the Commission must promote the synchronisation of research and of the conclusions effected in the framework of the OSPAR Convention and the COMMPS procedure.

(17) The COMMPS procedure is designed as a dynamic instrument for the prioritisation of dangerous and hazardous substances open to continuous improvement and development with a view to review and adaptation of the first list of priority substances at the latest four years after the entry into force of Directive 2000/60/EC and at least every four years thereafter. In order to ensure that all potential priority substances are taken into account by the next selection process, it is essential that no substances are systematically excluded, that best available knowledge is taken into account, and that all chemicals and all pesticides on the EU market and all substances identified as 'hazardous' by OSPAR are included in the selection process.

[1] OJ C 176, 14.7.1982, p. 3.

[2] OJ L 104, 3.4.1998, p. 1.

[3] Not inherently biodegradable and log Kow (octanol-water coefficient ≥ 5 or BCF (bioconcentration factor) ≥ 5 000 and acute aquatic toxicity ≤ 0,1 mg/l or mammalian CMR (cancerogenicity, mutagenicity and toxic for reproduction).

[4] Not inherently biodegradable and log Kow ≥ 4 or BCF ≥ 500 and acute aquatic toxicity ≤ 1 mg/l or mammalian CMR.

(18) The effectiveness of COMMPS is largely determined by the availability of relevant data. Current Community legislation on chemical substances has been found to suffer from a major lack of data. The purpose of Directive 2000/60/EC can only be fully achieved if full data availability is ensured by revising the Community legislation on chemical substances.

(19) The reference to the COMMPS procedure does not preclude the possibility that the Commission may use methods of assessing the harmfulness of certain substances which have already been developed or used in other anti-pollution measures.

(20) In accordance with Article 1(c) of Directive 2000/60/EC, the future reviews of the list of priority substances under Article 16(4) of that Directive will contribute to the cessation of emissions, discharges and losses of all hazardous substances by 2020 by progressively adding further substances to the list.

(21) During review and adaptation of the list of priority substances, in addition to the further developed COMMPS procedure, account should be taken as appropriate of the results of the reviews under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market [1], Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances [2], European Parliament and Council Directive 98/8/EC of 16 February 1998 concerning the placing of biocidal products on the market [3] and possibly other scientific information from the review of existing or new directives, in particular within the framework of legislation on chemicals. Duplicate reviews of substances must be avoided in view of the costs involved. In adapting the lists it must be possible both to set a lower priority ranking and also to place a substance in a higher category,

HAVE ADOPTED THIS DECISION:

Article 1

The list of priority substances including substances identified as priority hazardous substances, provided for in Article 16(2) and (3) of Directive 2000/60/EC, is hereby adopted. This list, as it appears in the Annex to this Decision, shall be added to Directive 2000/60/EC as Annex X.

Article 2

The list of priority substances established by this Decision shall replace the list of substances in the Commission Communication of 22 June 1982.

Article 3

In order to ensure consideration of all potential priority substances, the Commission and the Member States shall ensure that the substance and exposure-related data needed for the implementation of the COMMPS procedure are made available.

Article 4

This Decision shall enter into force on the day after its publication in the *Official Journal of the European Communities*.

Article 5

This Decision is addressed to the Member States.

Done at Brussels, 20 November 2001.

For the European Parliament	*For the Council*
The President	*The President*
N. FONTAINE	A. NEYTS-UYTTEBROECK

[1] OJ L 230, 19.8.1991, p. 1. Directive as last amended by Directive 2001/49/EC (OJ L 176, 29.6.2001, p. 61).
[2] OJ L 84, 5.4.1993, p. 1.
[3] OJ L 123, 24.4.1998, p. 1.

ANNEX

'ANNEX X

LIST OF PRIORITY SUBSTANCES IN THE FIELD OF WATER POLICY (*)

	CAS number (1)	EU number (2)	Name of priority substance	Identified as priority hazardous substance
(1)	15972-60-8	240-110-8	Alachlor	
(2)	120-12-7	204-371-1	Anthracene	(X) (***)
(3)	1912-24-9	217-617-8	Atrazine	(X) (***)
(4)	71-43-2	200-753-7	Benzene	
(5)	not applicable	not applicable	Brominated diphenylethers (**)	X (****)
(6)	7440-43-9	231-152-8	Cadmium and its compounds	X
(7)	85535-84-8	287-476-5	C_{10-13}-chloroalkanes (**)	X
(8)	470-90-6	207-432-0	Chlorfenvinphos	
(9)	2921-88-2	220-864-4	Chlorpyrifos	(X) (***)
(10)	107-06-2	203-458-1	1,2-Dichloroethane	
(11)	75-09-2	200-838-9	Dichloromethane	
(12)	117-81-7	204-211-0	Di(2-ethylhexyl)phthalate (DEHP)	(X) (***)
(13)	330-54-1	206-354-4	Diuron	(X) (***)
(14)	115-29-7	204-079-4	Endosulfan	(X) (***)
	959-98-8	not applicable	(alpha-endosulfan)	
(15)	206-44-0	205-912-4	Fluoranthene (*****)	
(16)	118-74-1	204-273-9	Hexachlorobenzene	X
(17)	87-68-3	201-765-5	Hexachlorobutadiene	X
(18)	608-73-1	210-158-9	Hexachlorocyclohexane	X
	58-89-9	200-401-2	(gamma-isomer, Lindane)	
(19)	34123-59-6	251-835-4	Isoproturon	(X) (***)
(20)	7439-92-1	231-100-4	Lead and its compounds	(X) (***)
(21)	7439-97-6	231-106-7	Mercury and itrs compounds	X
(22)	91-20-3	202-049-5	Naphthalene	(X) (***)
(23)	7440-02-0	231-111-4	Nickel and its compounds	

	CAS number (1)	EU number (2)	Name of priority substance	Identified as priority hazardous substance
(24)	25154-52-3	246-672-0	Nonylphenols	X
	104-40-5	203-199-4	(4-(para)-nonylphenol)	
(25)	1806-26-4	217-302-5	Octylphenols	(X) (***)
	140-66-9	not applicable	(para-tert-octylphenol)	
(26)	608-93-5	210-172-5	Pentachlorobenzene	X
(27)	87-86-5	201-778-6	Pentachlorophenol	(X) (***)
(28)	not applicable	not applicable	Polyaromatic hydrocarbons	X
	50-32-8	200-028-5	(Benzo(a)pyrene),	
	205-99-2	205-911-9	(Benzo(b)fluoranthene),	
	191-24-2	205-883-8	(Benzo(g,h,i)perylene),	
	207-08-9	205-916-6	(Benzo(k)fluoranthene),	
	193-39-5	205-893-2	(Indeno(1,2,3-cd)pyrene)	
(29)	122-34-9	204-535-2	Simazine	(X) (***)
(30)	688-73-3	211-704-4	Tributyltin compounds	X
	36643-28-4	not applicable	(Tributyltin-cation)	
(31)	12002-48-1	234-413-4	Trichlorobenzenes	(X) (***)
	120-82-1	204-428-0	(1,2,4-Trichlorobenzene)	
(32)	67-66-3	200-663-8	Trichloromethane (Chloroform)	
(33)	1582-09-8	216-428-8	Trifluralin	(X) (***)

(*) Where groups of substances have been selected, typical individual representatives are listed as indicative parameters (in brackets and without number). The establishment of controls will be targeted to these individual substances, without prejudicing the inclusion of other individual representatives, where appropriate.

(**) These groups of substances normally include a considerable number of individual compounds. At present, appropriate indicative parameters cannot be given.

(***) This priority substance is subject to a review for identification as possible "priority hazardous substance". The Commission will make a proposal to the European Parliament and Council for its final classification not later than 12 months after adoption of this list. The timetable laid down in Article 16 of Directive 2000/60/EC for the Commission's proposals of controls is not affected by this review.

(****) Only Pentabromobiphenylether (CAS-number 32534-81-9).

(*****) Fluoranthene is on the list as an indicator of other, more dangerous Polyaromatic Hydrocarbons.

(1) CAS: Chemical Abstract Services.

(2) EU-nummer: European Inventory of Existing Commercial Chemical Substances (EINECS) or European List of Notified Chemical Substances (ELINCS).'

COMMISSION REGULATION (EC) No 2456/2001

of 14 December 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 15 December 2001.

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

Done at Brussels, 14 December 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 14 December 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	77,1
	204	82,8
	212	110,1
	999	90,0
0707 00 05	052	140,3
	628	207,8
	999	174,1
0709 90 70	052	152,4
	204	163,1
	999	157,8
0805 10 10, 0805 10 30, 0805 10 50	052	52,9
	204	60,4
	388	15,5
	508	30,4
	528	31,0
	999	38,0
0805 20 10	052	52,5
	204	61,0
	999	56,8
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	052	59,9
	204	33,2
	464	141,8
	999	78,3
0805 30 10	052	56,9
	388	58,7
	600	58,7
	999	58,1
0808 10 20, 0808 10 50, 0808 10 90	060	38,5
	400	93,4
	404	89,9
	720	125,4
	999	86,8
0808 20 50	052	99,6
	064	69,0
	400	102,7
	720	131,1
	999	100,6

(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 2457/2001

of 14 December 2001

setting the amount of the reduction applicable under the special scheme for imports of sorghum into Spain

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2], and in particular Article 12(1) thereof,

Whereas:

(1) Under the Agreement on Agriculture concluded during the Uruguay Round of multilateral trade negotiations, the Community has undertaken to import a quantity of sorghum into Spain.

(2) Commission Regulation (EC) No 1839/95 of 26 July 1995 laying down detailed rules for the application of tariff quotas for imports of maize and sorghum into Spain and imports of maize into Portugal [3], as last amended by Regulation (EC) No 2235/2000 [4], lays down provisions on the administration of the imports concerned.

(3) Council Regulation (EC) No 1706/98 of 20 July 1998 on the arrangements applicable to agricultural products and goods resulting from the processing of agricultural products originating in the African, Caribbean and Pacific States (ACP States) and repealing Regulation (EEC) No 715/90 [5], provides *inter alia* for a 60 % reduction in the customs duty applicable to imports of sorghum up to a ceiling of 100 000 tonnes per calendar year and 50 % over and above that ceiling. A cumulation of reductions under the different regimes should be avoided.

(4) The amount of the reduction in the duty applicable to imports of sorghum into Spain must be set at a level that enables the quantities provided for in the Agreement on Agriculture to be imported whilst avoiding disturbance of the Spanish cereals market. In view of the present situation as regards international prices for sorghum and cereals prices on the Spanish market, the amount of the reduction should be set so as to cancel out the import duty currently in force, up to the end of the import period laid down in the Agreement on Agriculture and covering a total maximum quantity of 250 000 tonnes.

(5) 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 reduction in the duty on imports of sorghum into Spain provided for in Article 5 of Regulation (EC) No 1839/95 shall be equal to the amount of the import duty in force when the declaration of release for free circulation is made, up to a total volume of 250 000 tonnes of sorghum, provided that the declaration is made before 31 December 2001.

Article 2

Applications for import licences under this Regulation shall be accepted until the quantity referred to in Article 1 has been reached and, in any event, up to 20 December 2001.

Where the total of the quantities for which import licences have been applied for on a particular day exceeds the quantity available on that day, when issuing licences the competent Spanish authority shall apply a reduction coefficient to the quantities covered by applications.

The competent Spanish authority shall inform the Commission of the import licence applications submitted each day under this Regulation and of licences issued each day under this Regulation.

Article 3

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 177, 28.7.1995, p. 4.
[4] OJ L 256, 10.10.2000, p. 13.
[5] OJ L 215, 1.8.1998, p. 12.

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

Done at Brussels, 14 December 2001.

For the Commission
Franz FISCHLER
Member of the Commission

COMMISSION REGULATION (EC) No 2458/2001

of 14 December 2001

amending Regulation (EC) No 327/98 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotations [1], and in particular Article 1 thereof,

Having regard to Council Decision 96/317/EC of 13 May 1996 concerning the conclusion of the results of the consultations with Thailand under GATT Article XXIII [2], and in particular Article 3 thereof,

Whereas:

(1) Commission Regulation (EC) No 327/98 of 10 February 1998 opening and providing for the administration of certain tariff quotas for imports of rice and broken rice [3], as amended by Regulation (EC) No 648/98 [4], contains, in Annex I, the export certificate for exports from Thailand and, in Annex III, a model for Member States' notifications to the Commission.

(2) Thailand has amended its export certificates and Annex I to Regulation (EC) No 327/98 should therefore be replaced.

(3) Experience of the management of the quotas has shown the advantage of including the export certificate number in Member States' notifications to the Commission. Regulation (EC) No 327/98 should therefore be amended and Annex III thereto should be replaced.

(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

Regulation (EC) No 327/98 is hereby amended as follows:

1. The first indent of Article 8 is replaced by the following:

   '— within two working days of their issue, of the quantities, broken down by eight-figure CN code and country of origin, covered by the import licences issued, with details of the date of issue, the export certificate number, the licence number and the name and address of the holder,'

2. Annexes I and III are replaced by Annexes I and II hereto.

Article 2

This Regulation shall enter into force on 1 January 2002.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 146, 20.6.1996, p. 1.
[2] OJ L 122, 22.5.1996, p. 15.
[3] OJ L 37, 11.2.1998, p. 5.
[4] OJ L 88, 24.3.1998, p. 3.

Export Certificate No .....

DEPARTMENT OF FOREIGN TRADE

MINISTRY OF COMMERCE

GOVERNMENT OF THAILAND

Export certificate subject to Regulation (EC) No

Special form either for semi-milled or milled rice (code No 1006 30), husked rice (code No 1006 20), or broken rice (code No 1006 40 00)

1. Exporter (name, address and country)	**2. Importer** (name, address and country)
Name: Address: Country:	Name: Address: Country:

3. Shipped per	**4. Country/Countries of destination in EC**
☐ Conventional ☐ Container	

5. Type of Thai rice/HS. Code No	**6. Weight metric tonnes**	**7. Packing**
	Gross weight: Net weight:	5 kg. or less Other

8. No and date of Invoice	**9. No and date of B/L**

We hereby certify that abovementioned products are produced in and are exported from Thailand

Department of Foreign Trade

.....

Name and Signature of authorized official and stamp

Date of issue .....

THIS CERTIFICATE IS VALID FOR 120 DAYS FROM THE DATE OF ISSUE AND IN ANY CASE ONLY UNTIL 31 DECEMBER OF THE YEAR OF ISSUE

For use of EC authorities

No 0001

ANNEX II

'ANNEX III

Rice — Regulation (EC) No 327/98

Import licence application (1)

Issue of import licence (1)

Release for free circulation (1)

To: DG Agri-C2 Fax (32-2) 296 60 21
From:

Date	Export certificate number	Import licence number	CN code	Quantity (tonnes)	Country of origin	Name and address of applicant/holder	Packaging ≤ 5 kg

(1) Delete as appropriate.'

COMMISSION REGULATION (EC) No 2459/2001

of 14 December 2001

amending Regulation (EC) No 28/97 and assessing requirements for the supply of certain vegetable oils (other than olive oil) for the processing industry in the French departments

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments, amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom) [1], and in particular Article 3(6) thereof,

Whereas:

(1) Commission Regulation (EC) No 28/97 of 9 January 1997 laying down detailed rules for implementation of specific measures for the supply of certain vegetable oils for the processing industry in the French overseas departments and assessing supply requirements [2], as last amended by Regulation (EC) No 127/2001 [3], establishes the supply requirements for those products for 2001.

(2) For 2001 the supply requirements for vegetable oils (other than olive oil) are assessed at 8 908 tonnes in the case of the Department of Réunion. The information supplied by the French authorities indicates that this quantity will be insufficient to cover the requirements of Réunion's processing industry. It should therefore be increased to 10 522 tonnes. The Annex to Regulation (EC) No 28/97 should therefore be amended.

(3) This Regulation will enter into force after the expiry of the time limit for submitting licence applications in December 2001. To avoid a break in supplies to the French overseas departments, provision should be made to derogate from Article 4(1) and (2) of Regulation (EC) No 28/97 and to allow, for this month alone, the submission of licence applications in the five working days following the entry into force of this Regulation and to set the time limit for the issue of such licences at 10 working days following the entry into force of this Regulation.

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 28/97 is replaced by the Annex to this Regulation.

Article 2

By way of derogation from Article 4(1) of Regulation (EC) No 28/97, December 2001 applications for licences shall be submitted to the competent authority no later than the fifth working day following the entry into force of this Regulation.

By way of derogation from Article 4(2) of Regulation (EC) No 28/97, in December 2001 licences shall be issued no later than 10 working days after the entry into force of this Regulation.

Article 3

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 198, 21.7.2001, p. 11.
[2] OJ L 6, 10.1.1997, p. 15.
[3] OJ L 22, 24.1.2001, p. 7.

ANNEX

'*ANNEX*

Assessment of supply requirements for vegetable oils (other than olive oil) for the processing industry falling within CN codes 1507 to 1516 (except 1509 and 1510 for the French overseas departments for 2001

Department	Quantity (in tonnes)
French Guiana	311
Martinique	1 549
Réunion	10 522
Guadaloupe	232
Total	12 614'

COMMISSION REGULATION (EC) No 2460/2001

of 14 December 2001

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Council Regulation (EC) No 1666/2000 [2], and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [3], as last amended by Regulation (EC) No 1630/2000 [4], lays down the procedure and conditions for the disposal of cereals held by intervention agencies.

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

(3) Special procedures must be laid down to ensure that the operations and their monitoring are properly effected. To that end, provision should be made for a security lodgement scheme which ensures that aims are met while avoiding excessive costs for the operators. Derogations should accordingly be made to certain rules, in particular those laid down in Regulation (EEC) No 2131/93.

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

1. The invitation to tender shall cover a maximum of 300 000 tonnes of barley for export to third countries, with the exception of the United States, Canada and Mexico.

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

Article 3

1. Notwithstanding the third paragraph of Article 16 of Regulation (EEC) No 2131/93, the price to be paid for the export shall be that quoted in the tender.

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

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

Article 4

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

2. Tenders submitted in response to this invitation to tender may not be accompanied by export licence applications submitted pursuant to Article 49 of Commission Regulation (EC) No 1291/2000 [5].

Article 5

1. Notwithstanding Article 7(1) of Regulation (EEC) No 2131/93, the time limit for submission of tenders in respect of the first partial invitation to tender shall be 9 a.m. (Brussels time) on 20 December 2001.

2. The time limit for submission of tenders in respect of subsequent partial invitations to tender shall be 9 a.m. (Brussels time) each Thursday thereafter.

3. The last partial invitation to tender shall be 9 a.m. (Brussels time) on 30 May 2002.

4. Tenders shall be lodged with the French intervention agency.

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 191, 31.7.1993, p. 76.
[4] OJ L 187, 26.7.2000, p. 24.
[5] OJ L 152, 24.6.2000, p. 1.

Article 6

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

The analysis results shall be forwarded to the Commission in the event of a dispute.

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

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

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

— two kilograms per hectolitre as regards specific weight, which must not, however, be less than 60 kg/hl,

— one percentage point as regards moisture content,

— half a percentage point as regards impurities as specified in points B.2 and B.4 of the Annex to Commission Regulation (EC) No 824/2000 ([1]), and

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

the successful tenderer must accept the lot as established;

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

— accept the lot as established, or

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

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

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

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

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

Article 7

By derogation from Article 12 of Commission Regulation (EEC) No 3002/92 ([2]), the documents relating to the sale of barley in accordance with this Regulation, and in particular the export licence, the removal order referred to in Article 3(1)(b), the export declaration and, where necessary, the T5 copy shall carry the entry:

— Cebada de intervención sin aplicación de restitución ni gravamen, Reglamento (CE) nº 2460/2001

— Byg fra intervention uden restitutionsydelse eller -afgift, forordning (EF) nr. 2460/2001

— Interventionsgerste ohne Anwendung von Ausfuhrerstattungen oder Ausfuhrabgaben, Verordnung (EG) Nr. 2460/2001

— Κριθή παρέμβασης χωρίς εφαρμογή επιστροφής ή φόρου, κανονισμός (ΕΚ) αριθ. 2460/2001

([1]) OJ L 100, 20.4.2000, p. 31.

([2]) OJ L 301, 17.10.1992, p. 17.

— Intervention barley without application of refund or tax, Regulation (EC) No 2460/2001

— Orge d'intervention ne donnant pas lieu à restitution ni taxe, règlement (CE) nº 2460/2001

— Orzo d'intervento senza applicazione di restituzione né di tassa, regolamento (CE) n. 2460/2001

— Gerst uit interventie, zonder toepassing van restitutie of belasting, Verordening (EG) nr. 2460/2001

— Cevada de intervenção sem aplicação de uma restituição ou imposição, Regulamento (CE) n.º 2460/2001

— Interventio-ohraa, johon ei sovelleta vientitukea eikä vientimaksua, asetus (EY) N:o 2460/2001

— Interventionskorn, utan tillämpning av bidrag eller avgift, förordning (EG) nr 2460/2001.

Article 8

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

2. Notwithstanding Article 17 of Regulation (EEC) No 2131/93, the obligation to export shall be covered by a security equal to the difference between the intervention price applying on the day of the award and the price awarded but not less than EUR 10 per tonne. Half of the security shall be lodged when the licence is issued and the balance shall be lodged before the cereals are removed.

Notwithstanding Article 15(2) of Regulation (EEC) No 3002/92:

— the part of the security lodged when the licence is issued must be released within 20 working days of the date on which the successful tenderer provides proof that the cereals removed have left the customs territory of the Community.

Notwithstanding Article 17(3) of Regulation (EEC) No 2131/93:

— the remainder must be released within 15 working days of the date on which the successful tenderer provides the proof referred to in Article 16 of Commission Regulation (EC) No 800/1999 [1].

3. Except in duly substantiated exceptional cases, in particular the opening of an administrative enquiry, any release of the securities provided for in this Article after the time limits specified in this same Article shall confer an entitlement to compensation from the Member State amounting to EUR 0,015 per 10 tonnes for each day's delay.

This compensation shall not be charged to the EAGGF.

Article 9

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

Article 10

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 102, 17.4.1999, p. 11.

ANNEX I

(tonnes)

Place of storage	Quantity
Amiens	41 000
Châlons	52 000
Lille	12 000
Nancy	37 000
Nantes	10 000
Orléans	70 000
Paris	30 000
Poitiers	8 000
Rouen	40 000

ANNEX II

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

[Article 6(1) of Regulation (EC) No 2460/2001]

— Name of successful tenderer:

— Date of award of contract:

— Date of refusal of lot by successful tenderer:

Lot No	Quantity in tonnes	Address of silo	Reason for refusal to take over
			— Specific weight (kg/hl) — % sprouted grains — % miscellaneous impurities (Schwarzbesatz) — % of matter which is not basic cereal of unimpaired quality — Other

ANNEX III

Standing invitation to tender for the export of barley held by the French intervention agency

(Regulation (EC) No 2460/2001)

1	2	3	4	5	6	7
Tender No	Consignment No	Quantity (tonnes)	Offer price (EUR/tonne) [1]	Price increases (+) reductions (–) (EUR/tonne) p.m.	Commercial costs (EUR/tonne)	Destination
1						
2						
3						
etc.						

[1] This price includes the increases or reductions relating to the lot to which the tender refers.

ANNEX IV

The only numbers to use to call Brussels are (DG AGRI C-1):

— fax: (32-2) 296 49 56
(32-2) 295 25 15.

COMMISSION REGULATION (EC) No 2461/2001

of 14 December 2001

fixing the maximum aid for concentrated butter for the 260th special invitation to tender opened under the standing invitation to tender provided for in Regulation (EEC) No 429/90

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1670/2000 [2], and in particular Article 10 thereof,

Whereas:

(1) In accordance with Commission Regulation (EEC) No 429/90 of 20 February 1990 on the granting by invitation to tender of an aid for concentrated butter intended for direct consumption in the Community [3], as last amended by Regulation (EC) No 124/1999 [4], the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter; Article 6 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 % or a decision is to be taken to make no award; the end-use security must be fixed accordingly.

(2) In the light of the tenders received, the maximum aid should be fixed at the level specified below and the end-use security determined accordingly.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 260th special invitation to tender under the standing invitation to tender opened by Regulation (EEC) No 429/90, the maximum aid and the amount of the end-use security shall be as follows:

— maximum aid: EUR 105/100 kg,

— end-use security: EUR 116/100 kg.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 193, 29.7.2000, p. 10.
[3] OJ L 45, 21.2.1990, p. 8.
[4] OJ L 16, 21.1.1999, p. 19.

COMMISSION REGULATION (EC) No 2462/2001

of 14 December 2001

fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 88th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Regulation (EC) No 1670/2000 [2], and in particular Article 10 thereof,

Whereas:

(1) The intervention agencies are, pursuant to Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs [3], as last amended by Regulation (EC) No 635/2000 [4], to sell by invitation to tender certain quantities of butter that they hold and to grant aid for cream, butter and concentrated butter. Article 18 of that Regulation stipulates that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further stipulated that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure, and that a decision may also be taken to make no award in response to the tenders submitted. The amount(s) of the processing securities must be fixed accordingly.

(2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

The minimum selling prices and the maximum aid and processing securities applying for the 88th individual invitation to tender, under the standing invitation to tender provided for in Regulation (EC) No 2571/97, shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 193, 29.7.2000, p. 10.
[3] OJ L 350, 20.12.1997, p. 3.
[4] OJ L 76, 25.3.2000, p. 9.

ANNEX

to the Commission Regulation of 14 December 2001 fixing the minimum selling prices for butter and the maximum aid for cream, butter and concentrated butter for the 88th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 2571/97

(EUR/100 kg)

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	—	—	—
		Concentrated	—	—	—	—
Maximum aid	Butter ≥ 82 %		85	81	—	81
	Butter < 82 %		83	79	—	79
	Concentrated butter		105	101	105	101
	Cream		—	—	36	34
Processing security	Butter		94	—	—	—
	Concentrated butter		116	—	116	—
	Cream		—	—	40	—

COMMISSION REGULATION (EC) No 2463/2001

of 14 December 2001

authorising transfers between the quantitative limits of textiles and clothing products originating in Taiwan

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 47/1999 of 22 December 1998 on the arrangements for imports of certain textile products originating in Taiwan [1], as last amended by Regulation (EC) No 2279/2001 [2], and in particular Article 4 thereof,

Whereas:

(1) Article 4 of Regulation (EC) No 47/1999 provides that transfers may be agreed between categories.

(2) Taiwan submitted a request for transfers between categories on 9 May 001.

(3) The transfers requested by Taiwan fall within the limits of the flexibility provisions referred to in Article 4 of Regulation (EC) No 47/1999, as amended.

(4) It is therefore appropriate to grant the request.

(5) It is desirable for this Regulation to enter into force on the day after its publication in order to allow operators to benefit from it as soon as possible.

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

HAS ADOPTED THIS REGULATION:

Article 1

Transfers between the quantitative limits for textile goods originating in Taiwan fixed by Regulation (EC) No 47/1999 are authorised for the quota year 2001 in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 14 December 2001.

For the Commission

Pascal LAMY

Member of the Commission

[1] OJ L 12, 16.1.1999, p. 1.
[2] OJ L 307, 24.11.2001, p. 1.

ANNEX

736 Taiwan				Adjustment 1				Adjustment 2			
Group	Category	Unit	Limit 2001	Quantity	% based on limit 2001	Flexibility	Adjusted working level	Quantity	% based on limit 2001	Flexibility	Adjusted working level
IB	5	pieces	21 510 000	247 833	1,2	Carry-over	21 757 833	860 400	4,0	Transfer from category 8	22 618 233
IB	6	pieces	5 799 000	405 930	7,0	Carry-over	6 204 930	231 960	4,0	Transfer from category 8	6 436 890
IB	8	pieces	9 332 000					– 1 479 953	– 15,9	Transfer into categories 5 and 6	7 527 917

COMMISSION REGULATION (EC) No 2464/2001

of 14 December 2001

amending Regulation (EC) No 1623/2000 laying down detailed rules for implementing Council Regulation (EC) No 1493/1999 on the common organisation of the market in wine with regard to market mechanisms

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine [1], as last amended by Regulation (EC) No 2826/2000 [2], and in particular Articles 26, 33, 36 and 37 thereof,

Whereas:

(1) Articles 52 to 57 of Commission Regulation (EC) No 1623/2000 [3], as last amended by Regulation (EC) No 2047/2001 [4], lay down rules on wine obtained from grapes of varieties classified as both wine-grape varieties and varieties for other uses. Those rules must be adjusted to the real situation currently applying on the market and must be brought up to date.

(2) Regulation (EC) No 1493/1999 provides that the part of such wine not regarded as normally produced should be distilled. To avoid any doubt in application, the definition of that quantity should also be laid down explicitly.

(3) As regards wine obtained from grapes of varieties classified as both wine-grape varieties and varieties for the production of spirits distilled from wine with a designation of origin, the quantity of such wine regarded as normally produced is to be adjusted in some regions to take account of the significant fall in production of spirits distilled from wine in those regions. However, that adjustment is limited to two wine years because it is planned to conduct an in-depth study of the operation of this system in the regions concerned.

(4) As regards regions that are major producers of these wines and, as a result, are likely to distil large quantities of wine, in order to facilitate the operation of the system and control at Community level, the quantity of wine to be distilled should be determined at regional level and details of proper application of the obligation to distil by individual producers left to the Member States. In that case, firstly, distillation should therefore not be triggered until the total production intended for wine-making of the region exceeds the total quantity normally produced in the region, and secondly, to ensure that this different system can be applied by the Member States, to allow a difference between the aggregate of individual obligations and the total regional quantity to be distilled.

(5) Lastly, some articles need to be reworded.

(6) Since the measures provided for do not affect the rights of the operators concerned and must cover the entire wine year, they must be implemented from the beginning of the current wine year.

(7) The Management Committee for Wine has not delivered an opinion within the time limit set by its chairman,

HAS ADOPTED THIS REGULATION:

Article 1

Articles 52 to 57 of Regulation (EC) No 1623/2000 are replaced by the following:

'Article 52

Determination of quantity normally produced

1. In the case of wine obtained from grapes of varieties classified as both wine-grape varieties and varieties for other uses as referred to in Article 28 of Regulation (EC) No 1493/1999, the total quantity normally produced shall be determined for each region concerned.

The total quantity normally produced shall comprise:

— wine products intended for the production of table wine and wine suitable for yielding table wine,

— must intended for the production of concentrated must and rectified concentrated must for the purposes of enrichment,

— must intended for the production of liqueur wines with a designation of origin,

— wine products for the production of spirits distilled from wine with a designation of origin.

[1] OJ L 179, 14.7.1999, p. 1.
[2] OJ L 328, 23.12.2000, p. 2.
[3] OJ L 194, 31.7.2000, p. 45.
[4] OJ L 276, 19.10.2001, p. 15.

The reference period shall cover the following wine years:

— 1974/75 to 1979/80 in the Community of Ten,

— 1978/79 to 1983/84 in Spain and Portugal,

— 1988/89 to 1993/94 in Austria.

However, in the case of wine obtained from grapes of varieties classified as both wine-grape varieties and varieties for the production of spirits distilled from wine with a designation of origin, the total quantity normally produced in the region during that reference period shall be reduced by the quantities that have been the subject of distillation other than that to produce spirits distilled from wine with a designation of origin in that period. Moreover, where the quantity normally produced in the region is over 5 million hl, this total quantity normally produced shall be reduced by 1,4 million hl for the 2001/02 and 2002/03 wine years.

2. In the regions referred to in paragraph 1, the quantity normally produced per hectare shall be set by the Member States concerned by determining for the same reference period referred to in that paragraph the portion of wine obtained from grapes of varieties classified in the same administrative unit as both wine-grape varieties and varieties for other uses.

From the 1998/1999 wine year, as regards wine obtained from grapes of varieties classified in the same administrative unit as both wine-grape varieties and varieties for the production of spirits from wine with a designation of origin, the Member States shall be authorised to allow producers who have received premiums from the 1997/98 wine year for the permanent abandonment of part of their vine-growing areas as provided for in Article 8 of Regulation (EC) No 1493/1999 to maintain, for the five wine years following grubbing, the quantity normally produced at the level it stood at before grubbing.

Article 53

Determination of the quantity of wine to be distilled

1. All producers subject to the distillation obligation under Article 28 of Regulation (EC) No 1493/1999 shall have distilled the total quantity of their production intended for wine-making less their quantity normally produced as defined in Article 52(2) and their quantity of exports out of the Community during the wine year in question.

In addition, producers may deduct from the quantity to be distilled resulting from that calculation a maximum quantity of 10 hl.

2. Where the quantity normally produced is greater than 5 million hl, the total quantity of wine to be distilled under Article 28 of Regulation (EC) No 1493/1999 shall be determined by the Member State for each region concerned. It shall comprise the total quantity intended for wine-making less the total quantity normally produced as defined in Article 52 and the quantity of wine exported from the Community in the wine year in question.

In those regions:

— the Member State shall apportion the total quantity of wine to be distilled in the region concerned among the individual wine producers in that region in accordance with objective criteria and without discrimination and shall inform the Commission thereof,

— distillation shall be authorised only if the total quantity intended for wine-making in the region in the wine year concerned exceeds the total quantity normally produced in the region concerned,

— for each wine year a difference of 200 000 hectolitres shall be allowed between the regional quantity to be distilled and the aggregate individual quantities.

Article 54

Dates of delivery of wine for distillation

The wine shall be delivered to an approved distiller not later than 15 July of the wine year concerned.

In cases covered by Article 68 of this Regulation, the wine shall be delivered to an approved maker of wine fortified for distillation not later than 15 June of the wine year concerned.

To deduct wine from the quantity to be distilled, the wine shall be exported from the Community not later than 15 July of the wine year concerned.

Article 55

Buying-in price

1. Within three months of delivery to the distillery distillers shall pay the producers the buying-in price referred to in Article 28(3) of Regulation (EC) No 1493/1999 for the quantity delivered. That price shall apply to bulk merchandise ex producer's premises.

2. In the case of wine obtained from grapes of varieties classified as both wine-grape varieties and varieties for the production of spirits distilled from wine, in accordance with Article 28(3) of Regulation (EC) No 1493/1999, the Member States may vary the buying-in price paid to the producers subject to the distillation obligation as a function of yield per hectare. The provisions adopted by the Member States shall ensure that the average price actually paid for all wine distilled is EUR 1,34/% vol/hl.

Article 56

Aid to be paid to distillers

The aid provided for in Article 28(5)(a) of Regulation (EC) No 1493/1999 shall be fixed, in terms of alcoholic strength by volume per hectolitre of product obtained from distillation, as follows:

(a) neutral alcohol: EUR 0,7728

(b) spirits distilled from wine, raw alcohol and wine distillate: EUR 0,6401

Where use is made of the possibility of varying the buying-in price in accordance with Article 55(2), the aid referred to in the first paragraph shall vary by an equivalent amount.

No aid shall be payable on alcohol obtained from quantities of wine delivered for distillation that exceed by more than 2 % the amount which the producer must have distilled under Article 53 of this Regulation.

Article 57

Exceptions to the prohibition on movement of wine

Where a derogation is granted under Article 28(1) of Regulation (EC) No 1493/1999, wine covered by that Article may be moved to:

(a) a customs office for completion of customs export formalities followed by departure from the customs territory of the Community, or

(b) the premises of an approved maker of wine fortified for distillation with a view to fortification.'

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 August 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION REGULATION (EC) No 2465/2001

of 14 December 2001

fixing the maximum export refund on wholly milled round grain rice in connection with the invitation to tender issued in Regulation (EC) No 2007/2001

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 1987/2001 [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 2007/2001 [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 2007/2001 is hereby fixed on the basis of the tenders submitted from 7 to 13 December 2001 at 194,00 EUR/t.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 13.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 2466/2001

of 14 December 2001

fixing the maximum export refund on wholly milled medium grain and long grain A rice to be exported to certain European third countries, in connection with the invitation to tender issued in Regulation (EC) No 2008/2001

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 1987/2001 ([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 2008/2001 ([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 2008/2001 is hereby fixed on the basis of the tenders submitted from 7 to 13 December 2001 at 214,00 EUR/t.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

([1]) OJ L 329, 30.12.1995, p. 18.
([2]) OJ L 271, 12.10.2001, p. 5.
([3]) OJ L 272, 13.10.2001, p. 15.
([4]) OJ L 61, 7.3.1975, p. 25.
([5]) OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 2467/2001

of 14 December 2001

fixing the maximum export refund on wholly milled round grain, medium grain and long grain A rice to be exported to certain third countries in connection with the invitation to tender issued in Regulation (EC) No 2009/2001

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 1987/2001 [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 2009/2001 [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 2009/2001 is hereby fixed on the basis of the tenders submitted from 7 to 13 December 2001 at 194,00 EUR/t.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 17.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 2468/2001

of 14 December 2001

fixing the maximum export refund on wholly milled long grain rice in connection with the invitation to tender issued in Regulation (EC) No 2010/2001

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 1987/2001 [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 2010/2001 [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 to be exported to certain third countries pursuant to the invitation to tender issued in Regulation (EC) No 2010/2001 is hereby fixed on the basis of the tenders submitted from 7 to 13 December 2001 at 290,00 EUR/t.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 329, 30.12.1995, p. 18.
[2] OJ L 271, 12.10.2001, p. 5.
[3] OJ L 272, 13.10.2001, p. 19.
[4] OJ L 61, 7.3.1975, p. 25.
[5] OJ L 35, 15.2.1995, p. 8.

COMMISSION REGULATION (EC) No 2469/2001

of 14 December 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 2011/2001

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 1987/2001 [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 2011/2001 [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 10 to 13 December 2001 at 298,00 EUR/t pursuant to the invitation to tender referred to in Regulation (EC) No 2011/2001.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 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 271, 12.10.2001, p. 5.
[3] OJ L 261, 7.9.1989, p. 8.
[4] OJ L 167, 2.7.1999, p. 19.
[5] OJ L 272, 13.10.2001, p. 21.

COMMISSION REGULATION (EC) No 2470/2001

of 14 December 2001

fixing the maximum purchasing price for butter for the 41st invitation to tender carried out under the standing invitation to tender governed by Regulation (EC) No 2771/1999

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products [1], as last amended by Commission Regulation (EC) No 1670/2000 [2], and in particular Article 10 thereof,

Whereas:

(1) Article 13 of Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream [3], as last amended by Regulation (EC) No 1614/2001 [4], provides that, in the light of the tenders received for each invitation to tender, a maximum buying-in price is to be fixed in relation to the intervention price applicable and that it may also be decided not to proceed with the invitation to tender.

(2) As a result of the tenders received, the maximum buying-in price should be fixed as set out below.

(3) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 41st invitation to tender issued under Regulation (EC) No 2771/1999, for which tenders had to be submitted not later than 11 December 2001, the maximum buying-in price is fixed at 295,38 EUR/100 kg.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 48.
[2] OJ L 193, 29.7.2000, p. 10.
[3] OJ L 333, 24.12.1999, p. 11.
[4] OJ L 214, 8.8.2001, p. 20.

COMMISSION REGULATION (EC) No 2471/2001

of 14 December 2001

amending Regulation (EC) No 668/2001 opening a standing invitation to tender for the export of barley held by the German intervention agency

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Commission Regulation (EC) No 1666/2000 [2], and in particular Article 5 thereof,

Whereas:

(1) Commission Regulation (EEC) No 2131/93 [3], as last amended by Regulation (EC) No 1630/2000 [4], lays down the procedures and conditions for the sale of cereals held by the intervention agencies.

(2) A later date must be set for the last partial invitation to tender for the tender opened by Commission Regulation (EC) No 668/2001 [5].

(3) 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

Article 5(3) of Regulation (EC) No 668/2001 is replaced by the following:

'3. The last partial invitation to tender shall expire on 23 May 2002, at 9 a.m. (Brussels time).'

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 27.7.2000, p. 1.
[3] OJ L 191, 31.7.1993, p. 76.
[4] OJ L 187, 26.7.2000, p. 24.
[5] OJ L 93, 3.4.2001, p. 20.

COMMISSION REGULATION (EC) No 2472/2001

of 14 December 2001

fixing the maximum purchase price for beef under the 16th 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], as last amended by Commission Regulation (EC) No 2345/2001 [2], and in particular Article 38(2) thereof,

Having regard to Commission Regulation (EC) No 690/2001 of 3 April 2001 on special market support measures in the beef sector [3], as last amended by Regulation (EC) No 2155/2001 [4], 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 of 10 April 2001 on the purchase of beef under Regulation (EC) No 690/2001 [5], as last amended by Regulation (EC) No 2288/2001 [6], establishes the list of Member States in which the tendering is open for the 16th partial invitation to tender on 10 December 2001.

(2) In accordance with Article 3(1) of Regulation (EC) No 690/2001, where appropriate, a maximum purchase price for the reference class is to 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 the market for beef in a reasonable way a maximum purchase price should be fixed in the Member States concerned at an appropriate level. 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 16th partial invitation to tender on 10 December 2001 opened under Regulation (EC) No 690/2001 the following maximum purchase prices shall be fixed:

— Germany: EUR 152,98/100 kg,
— Ireland: EUR 186,50/100 kg,
— Spain: EUR 156,25/100 kg,
— France: EUR 204,50/100 kg,
— Luxembourg: EUR 170,00/100 kg,
— Belgium: EUR 160,70/100 kg,
— Portugal: EUR 159,12/100 kg.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission
Franz FISCHLER
Member of the Commission

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 315, 1.12.2001, p. 29.
[3] OJ L 95, 5.4.2001, p. 8.
[4] OJ L 289, 6.11.2001, p. 4.
[5] OJ L 100, 11.4.2001, p. 3.
[6] OJ L 307, 24.11.2001, p. 12.

COMMISSION REGULATION (EC) No 2473/2001

of 14 December 2001

deciding not to accept tenders submitted in response to the 280th 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], as last amended by Commission Regulation (EC) No 2345/2001 [2], and in particular Article 47(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 [3], as last amended by Regulation (EC) No 1564/2001 [4], lays down buying standards. Pursuant to the abovementioned Regulation, an invitation to tender was opened pursuant to Article 1(1) of Commission Regulation (EEC) No 1627/89 of 9 June 1989 on the buying-in of beef by invitation to tender [5], as last amended by Regulation (EC) No 2395/2001 [6].

(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 13(2) of that Regulation, a decision may be taken not to proceed with the tendering procedure.

(3) Once tenders submitted in respect of the 280th partial invitation to tender have been considered and taking account, pursuant to Article 47(8) of Regulation (EC) No 1254/1999, of the requirements for reasonable support of the market and the seasonal trend in slaughterings and prices, it has been decided not to proceed with the tendering procedure.

(4) Article 1(7) of Regulation (EC) No 1209/2001 of 20 June 2001 derogating from Regulation (EC) No 562/2000 laying down detailed rules for the application of Council Regulation (EC) No 1254/1999 as regards as buying-in of beef [7], as last amended by Regulation (EC) No 1922/2001 [8], 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. After consideration of the tenders it has been decided not to proceed with the tendering procedure.

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

(6) 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

No award shall be made against the 280th partial invitation to tender opened pursuant to Regulation (EEC) No 1627/89.

Article 2

This Regulation shall enter into force on 15 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 160, 26.6.1999, p. 21.
[2] OJ L 315, 1.12.2001, p. 29.
[3] OJ L 68, 16.3.2000, p. 22.
[4] OJ L 208, 1.8.2001, p. 14.
[5] OJ L 159, 10.6.1989, p. 36.
[6] OJ L 325, 8.12.2001, p. 9.
[7] OJ L 165, 21.6.2001, p. 15.
[8] OJ L 261, 29.9.2001, p. 52.

COMMISSION REGULATION (EC) No 2474/2001
of 14 December 2001
fixing the import duties in the cereals sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 1766/92 of 30 June 1992 on the common organisation of the market in cereals [1], as last amended by Regulation (EC) No 1666/2000 [2],

Having regard to Commission Regulation (EC) No 1249/96 of 28 June 1996 laying down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector [3], as last amended by Regulation (EC) No 2104/2001 [4], and in particular Article 2(1) thereof,

Whereas:

(1) Article 10 of Regulation (EEC) No 1766/92 provides that the rates of duty in the Common Customs Tariff are to be charged on import of the products referred to in Article 1 of that Regulation. However, in the case of the products referred to in paragraph 2 of that Article, the import duty is to be equal to the intervention price valid for such products on importation and increased by 55 %, minus the cif import price applicable to the consignment in question. However, that duty may not exceed the rate of duty in the Common Customs Tariff.

(2) Pursuant to Article 10(3) of Regulation (EEC) No 1766/92, the cif import prices are calculated on the basis of the representative prices for the product in question on the world market.

(3) Regulation (EC) No 1249/96 lays down detailed rules for the application of Council Regulation (EEC) No 1766/92 as regards import duties in the cereals sector.

(4) The import duties are applicable until new duties are fixed and enter into force. They also remain in force in cases where no quotation is available for the reference exchange referred to in Annex II to Regulation (EC) No 1249/96 during the two weeks preceding the next periodical fixing.

(5) In order to allow the import duty system to function normally, the representative market rates recorded during a reference period should be used for calculating the duties.

(6) Application of Regulation (EC) No 1249/96 results in import duties being fixed as set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The import duties in the cereals sector referred to in Article 10(2) of Regulation (EEC) No 1766/92 shall be those fixed in Annex I to this Regulation on the basis of the information given in Annex II.

Article 2

This Regulation shall enter into force on 16 December 2001.

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

Done at Brussels, 14 December 2001.

For the Commission

Franz FISCHLER

Member of the Commission

[1] OJ L 181, 1.7.1992, p. 21.
[2] OJ L 193, 29.7.2000, p. 1.
[3] OJ L 161, 29.6.1996, p. 125.
[4] OJ L 283, 27.10.2001, p. 8.

ANNEX I

Import duties for the products covered by Article 10(2) of Regulation (EEC) No 1766/92

CN code	Description	Import duty [2] (EUR/tonne)
1001 10 00	Durum wheat high quality	0,00
	medium quality [1]	0,00
1001 90 91	Common wheat seed	0,00
1001 90 99	Common high quality wheat other than for sowing [3]	0,00
	medium quality	0,00
	low quality	6,08
1002 00 00	Rye	0,00
1003 00 10	Barley, seed	0,00
1003 00 90	Barley, other [4]	0,00
1005 10 90	Maize seed other than hybrid	32,66
1005 90 00	Maize other than seed [5]	32,66
1007 00 90	Grain sorghum other than hybrids for sowing	0,00

[1] In the case of durum wheat not meeting the minimum quality requirements for durum wheat of medium quality, referred to in Annex I to Regulation (EC) No 1249/96, the duty applicable is that fixed for low-quality common wheat.

[2] For goods arriving in the Community via the Atlantic Ocean or via the Suez Canal (Article 2(4) of Regulation (EC) No 1249/96), the importer may benefit from a reduction in the duty of:

— EUR 3 per tonne, where the port of unloading is on the Mediterranean Sea, or

— EUR 2 per tonne, where the port of unloading is in Ireland, the United Kingdom, Denmark, Sweden, Finland or the Atlantic coasts of the Iberian peninsula.

[3] The importer may benefit from a flat-rate reduction of EUR 14 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

[4] The importer may benefit from a flat-rate reduction of EUR 8 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

[5] The importer may benefit from a flat-rate reduction of EUR 24 per tonne, where the conditions laid down in Article 2(5) of Regulation (EC) No 1249/96 are met.

ANNEX II

Factors for calculating duties

(period from 30 November to 13 December 2001)

1. Averages over the two-week period preceding the day of fixing:

Exchange quotations	Minneapolis	Kansas City	Chicago	Chicago	Minneapolis	Minneapolis	Minneapolis
Product (% proteins at 12 % humidity)	HRS2. 14 %	HRW2. 11,5 %	SRW2	YC3	HAD2	Medium quality (*)	US barley 2
Quotation (EUR/t)	126,03	118,54	116,88	95,68	206,86 (**)	196,86 (**)	148,84 (***)
Gulf premium (EUR/t)	32,14	23,86	17,81	12,43	—	—	—
Great Lakes premium (EUR/t)	32,14	—	—	—	—	—	—

(*) A discount of 10 EUR/t (Article 4(1) of Regulation (EC) No 1249/96).
(**) Fob Gulf.
(***) Fob USA.

2. Freight/cost: Gulf of Mexico–Rotterdam: 19,13 EUR/t; Great Lakes–Rotterdam: 30,35 EUR/t.

3. Subsidy within the meaning of the third paragraph of Article 4(2) of Regulation (EC) No 1249/96: 0,00 EUR/t (HRW2)
0,00 EUR/t (SRW2).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 25 July 2001
relating to a proceeding under Article 82 of the EC Treaty
(COMP/C-1/36.915 — Deutsche Post AG — Interception of cross-border mail)

(notified under document number C(2001) 1934)

(Only the German text is authentic)

(Text with EEA relevance)

(2001/892/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 No 1216/1999 [2], and in particular Article 3 and Article 15(2) thereof,

Having regard to the complaint lodged by the British Post Office on 4 February 1998, alleging infringement of Article 82 of the Treaty by Deutsche Post and requesting the Commission to put an end to this infringement,

Having regard to the Commission decision of 25 May 2000 to initiate proceedings in this case,

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 85 and 86 of the EC Treaty [3],

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

Whereas:

I. FACTS

A. The complainant

(1) The British Post Office (BPO) is the public postal operator (PPO) in the UK [4]. The BPO is primarily active in domestic and international letter and parcel delivery.

[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.
[4] On 26 March 2001 the BPO changed its name to Consignia plc, which is a public limited company wholly owned by the UK Government. For the purposes of this Decision, however, the name 'British Post Office (BPO)' is retained.

B. **The respondent**

(2) Deutsche Post AG (DPAG) is the PPO of Germany ([5]). In 1995 the former Deutsche Bundespost Postdienst was transformed into a state-owned limited company — DPAG. In the autumn of 2000 the German State sold 33 % of its DPAG shares through an initial public offering (IPO). In 2000 the total turnover of the DPAG group of companies amounted to EUR 32,7 billion (EUR 22,4 billion in 1999) ([6]). The mail division of DPAG is highly profitable ([7]). In 2000 the operating profit of the mail division amounted to approximately EUR 2 billion (compared with EUR 1 billion in 1999) ([8]). The total turnover of the mail division remained stable: EUR 11,73 billion in 2000, as against EUR 11,67 billion in 1999 ([9]). The operating profit of the entire DPAG group of companies was approximately EUR 2,38 billion in 2000 ([10]).

C. **The complaint**

(3) On 4 February 1998 the BPO filed a complaint against DPAG pursuant to Article 3 of Regulation No 17. In the complaint it was alleged that, since 1996, the BPO had faced an increasing number of refusals from DPAG to distribute cross-border bulk mailings coming from the UK, unless the BPO paid a surcharge corresponding to the German domestic tariff minus terminal dues. The BPO maintains that the contested mailings constitute ordinary cross-border mail, whereas DPAG states that these mailings are so-called A-B-A remail (see section D below).

(4) The BPO alleged that DPAG had repeatedly delayed the release of contested mailings even though the BPO had — in order to get the mail released — agreed to pay the difference between the terminal dues (see section D below) payable for delivering cross-border mail and the full domestic tariff. Since mailings of the contested type are often time-sensitive, additional delays harm the BPO and its customers commercially as well as financially. The BPO stated that DPAG's repeated refusal to deliver cross-border mailings unless a surcharge is paid, on the incorrect basis that these mailings are A-B-A remail, constitutes an abuse of a dominant position contrary to Article 82 of the EC Treaty. Moreover, the delayed release of intercepted mailings — despite the agreement of the BPO to meet DPAG's claims — allegedly constitutes another abuse of a dominant position.

D. **Factual and regulatory background**

The postal monopoly in Germany

(5) The core activity of DPAG is the domestic collection, sorting and delivery of letter mail. DPAG is obliged by law to provide basic, uniform postal services at affordable prices all over Germany, the so-called universal service obligation (USO) ([11]). Certain postal services in Germany are subject to a statutory monopoly which has been granted to DPAG, whereas other services are performed by DPAG in competition with private operators ([12]). In addition, DPAG provides international mail services through bilateral or multilateral arrangements with other PPOs. The domestic tariffs in Germany are the highest in the Community ([13]).

([5]) The Deutsche Post group of companies now markets itself under the name Deutsche Post World Net. For the purposes of this Decision, the name Deutsche Post AG (DPAG) is used.
([6]) DPAG Annual Report 2000, published on 2 May 2001. For the purposes of this Decision, the Commission consistently uses the irrevocable conversion rate adopted by the Council on 31 December 1998 when converting German marks into euro even in cases where the particular amount concerned a period of time prior to that date.
([7]) The Mail Division of DPAG comprises the business divisions Mail Communication (letters, packages and parcels except express), Direct Marketing and Press Distribution. DPAG Annual Report 2000.
([8]) Profit from operative activities before amortisation and goodwill (EBITA). DPAG Annual Report 2000.
([9]) DPAG Annual Report 2000.
([10]) Profit from operative activities before amortisation and goodwill (EBITA). DPAG Annual Report 2000.
([11]) Postal Act *(Postgesetz)* of 22 December 1997, *Bundesgesetzblatt* 1997, Part I, No 88, 30 December 1997.
([12]) Section 51 of the Postal Act.
([13]) See *Tarifvergleich Briefpost — Inlandstarife bis 20 g*, June 1999, Referat 212, Regulierungsbehörde für Telekommunikation und Post (RegTP — the national regulatory authority in Germany). The present domestic tariff for a first class letter in the first weight step is EUR 0,56 (DEM 1,10).

(6) The postal monopoly granted to DPAG comprises the collection, forwarding and delivery of domestic mail, the forwarding and delivery of incoming cross-border mail and the collection and forwarding of outgoing cross-border mail. All letters and addressed catalogues weighing less than 200 grams whose postage does not exceed five times the corresponding tariff in the lowest weight step are subject to the monopoly. However, the monopoly does not cover bulk mailings (comprising at least 50 items with identical content where each item weighs more than 50 grams) or certain value-added services ([14]). DPAG's exclusive licence expires on 31 December 2002 ([15]).

(7) The total turnover of the overall German market for letter mail (including domestic mail and cross-border mail) has been estimated at EUR 9,7 billion in 1998, of which some EUR 2,6 billion was formally open to competition (i.e. fell outside the reserved area). However, the approximately 250 licensees which, in addition to DPAG, were active on the German letter market in that year accounted for only a fraction of that amount — EUR 55 million, i.e. 2 % of the market segment theoretically open to competition ([16]). This figure is confirmed by the national regulatory authority (NRA) in Germany, which has estimated the market shares of DPAG on this market at 99,2 % in 1998 and 98,7 % in 1999 ([17]).

Cross-border letter mail

(8) The system by which postal administrations compensate each other for the delivery of cross-border mail on each others behalf is known as the terminal dues system. Under this arrangement, the receiving PPO is remunerated for the delivery of cross-border mail by the sending PPO. These delivery charges are called terminal dues ([18]).

(9) The collection and forwarding of outgoing cross-border letter mail has been *de jure* or de facto liberalised in most EU Member States. Although competitors have entered this market in a number of Member States, the PPOs still dominate their home markets ([19]). The liberalisation of outgoing cross-border letter mail has facilitated the provision of remail services. DPAG has — in contrast to most other Community PPOs — taken a tough stance against postal operators providing outgoing cross-border letter mail services in Germany. DPAG has taken these operators to court and has obtained German court rulings stating that companies offering outward cross-border letter mail services infringe the German postal monopoly. Competing operators have been ordered by the courts to cease offering these services ([20]).

(10) As regards the market for the forwarding and delivery of incoming cross-border letter mail, the situation is quite different. In all Member States practically all incoming letter mail is handled by the incumbent PPOs ([21]). Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (the Postal Directive) — which entered into force in 1998 — opened only a fraction of this market to competition ([22]).

([14]) DPAG's monopoly was reduced as of 1 January 1998 when the monopoly threshold for identical bulk mailings was reduced from 100 grams to 50 grams. Section 51(4) of the Postal Act exempts certain value-added services from the postal monopoly.

([15]) Section 47 of the Postal Act provides that RegTP shall, every two years, present a report to the legislative bodies of Germany. *Inter alia*, the report shall include RegTPs observations on the possible necessity of maintaining the exclusive licence under Section 51 beyond the date set forth therein (i.e. 31 December 2002).

([16]) *KEP Nachrichten*, No 51/17, December 1999 (document 1146 in the Commission file).

([17]) Mid-2000 Report of RegTP, p. 62, as published on its website (www.regtp.de).

([18]) See Commission Decision 1999/695/EC *REIMS II*, Case COMP/36.748 (OJ L 275, 26.10.1999, p. 17). The REIMS II agreement entered into force on 1 April 1999. The Commission has adopted a decision pursuant to Article 81(3) of the Treaty which exempts the agreement until 31 December 2001. The PPOs of all Member States except TPG of the Netherlands are signatories to this agreement, in which terminal dues are expressed as a percentage of domestic tariffs in the receiving country. Terminal dues were increased annually, provided that the receiving PPO met certain quality of service standards. As of 1 January 2001, the terminal dues were increased to the level of 70 %.

([19]) *Liberalisation of Incoming and Outgoing Intra-Community Cross-border Mail*, p. 25. In this study, seven Community PPOs were asked to estimate their own market shares in 1996. The estimated shares for outgoing cross-border mail varied between 80 and 100 %.

([20]) See, for instance, *Deutsche Post AG gegen TNT Mailfast GmbH*, ref. 31 O 796/93, Cologne Regional Court, 14 April 1994; *TNT Mailfast GmbH gegen Deutsche Post AG*, ref. U (Kart) 31/94, Düsseldorf Higher Regional Court, 23 April 1996; *DHL Worldwide Express GmbH gegen Deutsche Post AG*, judgment of the Düsseldorf Higher Regional Court, 23 April 1996.

([21]) *Liberalisation of Incoming and Outgoing Intra-Community Cross-border Mail*, pp. 22 and 38. Seven Community PPOs estimated that their market shares for incoming cross-border letter mail in 1996 varied between 95 and 100 %.

([22]) OJ L 15, 21.1.1998, p. 14. The Directive opened some 3 % of PPOs total mail turnover to competition. In practice, PPOs have retained everything but a very small share of the business theoretically open to competition.

Remail

(11) Remailing can be described as the practice of re-routing mail between countries utilising a combination of conventional transport services, express services and other postal services. Specialist remailing firms tender international bulk mailings to postal operators on behalf of clients in other countries (commercial remailing). Although remail services were initially provided by private firms, PPOs themselves have become increasingly involved in remailing activities.

(12) Remailing becomes economically viable when postal tariffs vary significantly between different countries, as is the case within the Community. The greater the difference between a given country's high domestic tariffs and the low terminal dues which its PPO receives for delivering incoming cross-border mail, the greater becomes the possibility for profitable remailing. In other words, if terminal dues in the receiving country are low compared to the domestic tariffs in that country, the sending PPO is able to charge a cross-border tariff which is significantly lower than the normal domestic tariff in the receiving country. It thus becomes profitable to transport mail emanating from country A to country B and have it posted back to country A or to a third country (country C).

(13) If German firms re-route their domestic mail via the UK, the turnover of UK postal operators will increase at the cost of DPAG's. It is in the commercial interest of PPOs of countries with high postal tariffs (such as Germany) to impede remailing, whereas PPOs of countries with low cross-border tariffs — thus likely transition countries for remail — have a commercial interest in encouraging remail.

(14) Two types of remailing are relevant for the assessment of the present case, namely so-called A-B-A and A-B-C remailing. In its judgment in Joined Cases C-147/97 and C-148/97 *Deutsche Post AG* v *Gesellschaft für Zahlungssysteme mbH and Citicorp Kartenservice GmbH* [23] the Court of Justice of the European Communities described these practices in the following manner.

A-B-A remail:

letters come from State A but are posted in State B for delivery in State A,

A-B-C remail:

letters come from State A but are posted in State B for delivery in State C.

Centralised mail distribution

(15) As a consequence of the ongoing integration of Community markets, many transnational companies now demand postal services tailor-made for their own requirements as regards cost, delivery speed and other service elements. In order to minimise production and distribution costs and maximise economies of scale and scope, these companies demand 'one-stop-shop' service solutions to all their mail distribution needs. To an increasing extent, transnational companies are thus centralising their mailing activities to a limited number of mailing centres from which mailings are distributed to customers in a number of countries.

(16) Most customers still prefer dealing with sellers in their own country and in their own language. Experience shows that the response rate to a commercial mailing is much higher if customers can respond to someone in their country of residence. Transnational firms solve this problem by offering a contact point in each country (e.g. by indicating a local subsidiary or agent as response address).

International mailing services provided by DPAG

(17) DPAG provides centralised mailing services for transnational customers who wish to purchase tailor-made distribution services. DPAG itself has recognised that:

'Customers operating internationally demand high quality and a broad range of service [*sic*] from a single source (one stop shopping) [24]'

[23] [2000] ECR I-825, at paragraph 12. Preliminary ruling in response to questions referred to the Court of Justice by the Frankfurt am Main Higher Regional Court pursuant to Article 234 of the EC Treaty.

[24] Common position paper concerning the revision of Directive 97/67/EC published by DPAG, TNT Post Group NV and Sweden Post Ltd of 14 February 2000 (document 1146 in the Commission file).

(18) Deutsche Post Global Mail — a subsidiary of DPAG — provides customised service solutions for international letter mail business customers, including international addressed bulk mail services. An example of a Community-wide mailing service carried out by DPAG is the distribution of mailings on behalf of Oracle Corporation, a company which distributes bulk mail to addressees in 16 European countries via DPAG in Germany. Recipients are given the possibility of replying by telephone or fax using national, free-of-charge telephone numbers ([25]).

(19) DPAG markets its centralised, international mailing service in the following way:

'International Mail Service advises you on how to optimize international mail activities. (...)

Suppose for example a software company based in Germany is planning to send a mail shot with reply option to 30 000 recipients in 16 different countries simultaneously. Each mail piece consists of three elements: envelope, letter and brochure. International Mail Service will not only check and update the address file, but also personalize the mail shot in accordance with the conventions of each country — a significant factor for mail shot success ([26]).'

(20) DPAG estimates its market share in the German market for outgoing cross-border mail at approximately 75 % ([27]). The main target groups are international business customers sending large volumes of business mail, direct mail, publications and added-value items ([28]). DPAG competes directly with the BPO and other operators in the UK market for outgoing cross-border mail. One example of such competition is DPAG's tender for the pan-European contract of American Express, a company which — at the time — distributed its mailings to all European customers from its distribution centre in the UK ([29]).

The Convention of the Universal Postal Union

(21) The Universal Postal Union (UPU), a specialised agency of the United Nations, is the international body responsible for postal matters. In general, members of the United Nations are also members of the UPU. The UPU Convention provides a regulatory framework for the international exchange of mail. The UPU holds a congress every five years at which the Convention is reviewed and, if necessary, revised. The UPU Convention has the status of a treaty which the governments of each UPU member state enter into. The last UPU Congress was held in Beijing in August-September 1999. The revised UPU Convention (UPU 1999) entered into force on 1 January 2001 ([30]). The 1989, 1994 and 1999 versions of the UPU Convention (hereinafter called UPU 1989, UPU 1994 and UPU 1999) are relevant to the present case.

([25]) Deutsche Post Global Mail was previously called International Mail Services GmbH. DPAG brochure '*Zum Beispiel — Oracle8 ConText Cartridge*', annexed to DPAG's response to a Commission request for information of 23 April 1999 (document 1122 in the Commission file).
([26]) Underlining by the Commission. DPAG promotional brochure *"We Deliver"*, published on 1 January 1999, p. 48 (document 1140 in the Commission file).
([27]) DPAG '*Unvollständiger Verkaufsprospekt*' of 20 October 2000, p. 140.
([28]) DPAG '*Unvollständiger Verkaufsprospekt*' of 20 October 2000, p. 146.
([29]) Letter from American Express to the Commission of 15 April 1999 (document 975 in the Commission file).
([30]) Article 65 UPU 1999.

(22) Article 25 of the UPU Convention provides the administrative powers which PPOs may use in respect of remail ([31]). Article 25 UPU 1994 prescribes the following.

'Posting abroad of letter-post items:

1. A member country shall not be bound to forward or deliver to the addressee letter-post items which senders residing in its territory post or cause to be posted in a foreign country with the object of profiting by the more favourable rate conditions there.

2. The provisions set out under 1 shall be applied without distinction both to letter-post items made up in the senders country of residence and then carried across the frontier and to letter items made up in a foreign country.

3. The administration of destination may claim from the sender and, failing this, from the administration of posting, payment of the internal rates. If neither the sender, nor the administration, nor the administration of posting agrees to pay these rates, within a time limit set by the administration of destination, the latter may return the items to the administration of posting and shall be entitled to claim reimbursement of the redirection costs, or handle them in accordance with its own legislation.

4. A member country shall not be bound to forward or deliver to the addressees letter-post items which senders post or cause to be posted in large quantities in a country other than the country where they reside, without receiving appropriate remuneration. The administration of destination may claim from the administration of posting payment commensurate with the costs incurred and which may not exceed the higher of the following two amounts: either 80 % of the domestic tariff for equivalent items, or 0,14 SDR per item plus one SDR per kilogramme. If the administration of posting does not agree to pay the amount claimed, within a time limit set by the administration of destination, the administration of destination may either return the items to the administration of posting, and shall be entitled to claim reimbursement of the re-direction cost, or handle them in accordance with its own legislation.'

(23) DPAG argues that the majority of disputed mailings in the case at hand were sent at a time when — according to DPAG — UPU 1989 was still in force in Germany. Article 25 UPU 1989 was similar to Article 25 UPU 1994. The main material difference was the fact that, in the 1989 version, Article 25(1) contained an additional sentence subsequently deleted in the 1994 version. Article 25(1) UPU 1989 thus read as follows.

'1. A member country shall not be bound to forward or deliver to the addressee letter-post items which senders resident in its territory post or cause to be posted in a foreign country with the object of profiting by the lower charges in force there. The same applies to such items posted in large quantities, whether or not such postings are made with a view to benefiting from lower charges ([32]).'

(24) DPAG maintains that the transposition of UPU 1994 into German law entered into force on 9 December 1998 and argued that this position is supported by German case law. However, the BPO has contested DPAG's view and alleges that UPU 1994 entered into force at an earlier date ([33]). Under UPU 1989, receiving PPOs could invoke Article 25 for bulk mailings posted abroad by domestic senders regardless of the objective for doing so, whereas under UPU 1994 PPOs have to prove that the mailings were posted abroad in order to benefit from lower tariffs in the foreign country in order to invoke this provision.

([31]) In UPU 1999, Article 25 has become Article 43.
([32]) Sentence underlined by the Commission.
([33]) Referring to a judgment of the German Federal Constitutional Court (BverfGE 63, 343, 354 ff.), the BPO maintains that UPU 1994 entered into force retroactively as of 1 January 1996.

Definition of sender

(25) The dispute between the parties in the present case stems from a fundamental disagreement on what constitutes a sender of a postal item. None of the versions of the UPU Convention mentioned above includes a definition of the term sender. For the purposes of Article 25, PPOs interpret the term sender differently. Consequently, both the BPO and DPAG maintain that their respective interpretations of 'the sender' concur with Article 25 UPU.

Definition of sender in the Postal Directive

(26) The Postal Directive stipulates the following definition of the term sender.

'sender: a natural or legal person responsible for originating postal items; ([34])'

(27) The definition of the sender in the Postal Directive may be interpreted in widely diverging ways. The BPO as well as DPAG are of the opinion that their respective interpretations are consistent with the definition of sender in the Postal Directive.

The material definition of sender

(28) DPAG has repeatedly stated that its actions concerning incoming cross-border mail are fully in line with German case law. A definition which DPAG terms the material definition of sender ('der materielle Absenderbegriff') has been defined in the case law of German courts ([35]). Under this definition, a prima facie assumption is made about the identity of the sender. The person who appears to address himself to the addressee — based on the overall appearance of the postal item including its contents — is assumed to be the sender. The relevance of the material definition of sender and DPAG's interpretation of it have recently been questioned by German courts ([36]). DPAG interprets the material definition of sender very broadly. In practice, the inclusion in the contents of any cross-border mailing of any reference to an entity residing in Germany (e.g. in the form of a German reply address), is interpreted as the mailing having a German sender, irrespective of the physical origin of the mailing.

(29) In its reply to the Commission's Statement of Objections, DPAG argued that the Commission had misrepresented DPAG's application of the material definition of sender. According to DPAG, the following set of criteria are taken into account when a mailing is examined by DPAG:

(i) the reference to a domestic (i.e. German) sender;

(ii) the use of stationery belonging to a domestic firm;

(iii) the indication of a domestic reply address;

(iv) the possibility for customers to contact a domestic entity to order goods or to obtain information;

(v) the possibility for the customer to pay for goods domestically;

(vi) the signature of a representative of a domestic company;

(vii) the fact that a domestic company addresses the customer ([37]).

([34]) See footnote 22.

([35]) DPAG refers to the following definition of the 'materielle Absenderbegriff': the sender is 'the person who, according to the overall impression, is to be perceived by a reasonable recipient as he who addresses himself with a direct, personal interest in communication to the addressee.', Frankfurt am Main Higher Regional Court, decision of 25 March 1999, NJW-RR 1997, pp. 162, 165.

([36]) See judgment of the Berlin Regional Court ref. 97 O 252/98, *DPAG/Franklin Mint GmbH* of 27 November 2000; in its judgment the court concluded that a strict application of the material definition of sender, which does not take into account the actual origin of the mailing in question, was incorrect. Judgment of the Bonn Regional Court ref. 1 O 487/1999, *Center Parcs NV/DPAG* of 22 September 2000; the court concluded that DPAG's interpretation of the material sender was incorrect and concluded that Center Parcs NV of the Netherlands was the sender and not the German subsidiary Center Parcs GmbH & Co. KG. Judgment of the Düsseldorf Higher Regional Court ref. U (Kart) 17/1999, *DPAG/Comfort Card* of 20 September 2000; the court concluded that DPAG's interpretation of the material sender was incorrect and rejected DPAG's claims.

([37]) DPAG reply to the Statement of Objections, p. 32.

E. **The measures complained of**

(30) In order to substantiate its complaint, the BPO has provided information concerning a large number of cross-border mailings which DPAG has intercepted and claimed surcharges for in order to deliver the mailings to its German addressees. To serve as examples, the BPO provided detailed information on mailings from several companies which were intercepted, delayed and surcharged by DPAG. Three of these examples — Ideas Direct, Fidelity Investments and Gant will be dealt with in detail below. In addition to demanding payments from the BPO, DPAG has — in some cases — claimed surcharges not from the UK senders but from the senders representatives in Germany.

(31) After the original complaint was filed with the Commission in February 1998, DPAG has made a large number of additional claims for previously uncontested mailings. The BPO has subsequently submitted further evidence of cases where DPAG has delayed the release of intercepted cross-border mailings for lengthy periods of time. The case of Multiple Zones will be addressed below.

Ideas Direct Ltd

(32) The UK company Ideas Direct Ltd (Ideas Direct) is a subsidiary of Direct Group International Ltd which is also registered in the UK. The main business of Ideas Direct is selling consumer goods to customers in the UK, France, Belgium, the Netherlands and Germany. In most cases identical mailings, containing promotional material such as catalogues, are sent simultaneously from the UK to these countries ([38]).

The November 1996 mailing

(33) According to the complainant, a mailing posted by Ideas Direct in the UK, containing 173 338 postal items, was intercepted by DPAG at the latest on 4 November 1996 ([39]). The BPO claims to have agreed on 8 November 1996 to pay the amount claimed by DPAG ([40]). According to the BPO, the mailing was not released by DPAG until 14 November 1996, i.e. a total delay of at least ten days ([41]).

(34) The mailing of November 1996 contained catalogues and covering letters in German which were produced and printed in the UK. The addressees were requested to respond to the letter by sending a coupon to Ideas Directs agent in Germany ([42]). The mailing was produced and posted in the UK. The German agent was not at any stage involved in the production or the preparation of the mailing. The main activities of the agent include placing advertisements in magazines and operating a computerised order data system on behalf of its principals. The agents task in the mailing campaign in question was to receive orders from German customers and forward them to the principal in the UK. The ordered products were then despatched by Ideas Direct in the UK to customers in Germany. The agent performs similar tasks on behalf of a number of other clients.

(35) DPAG has not disclosed the exact date of interception of the November 1996 mailing but does not refute the fact that the mailing was intercepted on 4 November 1996 at the latest. It maintains that the communication from the BPO to DPAG of 8 November 1996 did not include any undertaking on the BPO's part to pay the surcharge. According to DPAG, the BPO only agreed to pay the claimed amount on 12 November and DPAG released the mailings the same day ([43]). The communication to the BPO of 14 November 1996 was merely a confirmation of the release that had taken place two days earlier ([44]). DPAG concludes that the mailing was held back for eight and not ten days.

([38]) Identical apart from language and contact addresses on covering letters.
([39]) DPAG notified the BPO of the interception by fax on 4 November 1996 but it did not state when the mailing was actually stopped (documents 38-41 in the Commission file).
([40]) Fax from the BPO to DPAG of 8 November 1996, in which the BPO requests DPAG to 'release the mail' and to 'let [the BPO] know what the costs are' (document 47 in the Commission file).
([41]) Fax from DPAG to the BPO of 14 November 1996 which states that the mail has been released, without saying when the release took place (document 52 in the Commission file).
([42]) The agent trades under the name Framar International. However, the registered name of the company is Werbung und Dienstleistungen für Versandhandel GmbH.
([43]) Fax from the BPO to DPAG of 12 November 1996 including the statement 'Royal Mail International agrees to pay the cost for the release of Ideas Direct, from the Terminal Dues account' (document 49 in the Commission file). In its reply to the Statement of Objections, DPAG submitted a copy of a fax sent to the BPO on 12 December which seems to indicate that the mailings were forwarded that day.
([44]) It should be noted that DPAG changed its view on this point during the course of the proceedings. In its initial response to the complaint, DPAG confirmed that the mailing was released on 14 November 1996 (DPAG response to the complaint of 20 July 1998, p. 10 — document 176 in the Commission file).

National court proceedings against Ideas Direct

(36) On 30 December 1998 Ideas Direct was issued with a summons from DPAG before the Hamburg Regional Court ([45]). DPAG claimed surcharges amounting to EUR 866 394 for 680 543 items sent by Ideas Direct in 1997. The amount claimed was substantially larger than previous claims addressed to the BPO regarding mailings emanating from Ideas Direct in the UK. On 29 October 1999 the Hamburg Regional Court ordered Ideas Direct of the UK to pay to DPAG the claimed sum (plus interest and DPAG's litigation costs) ([46]). Ideas Direct has filed an appeal against the judgment of the Hamburg Regional Court. The BPO has indicated its strong concern about the outcome of these proceedings to the Commission and stressed the fact that Ideas Direct is a small company which cannot support a legal battle with DPAG.

Retroactive claims for mailings sent in 1998

(37) DPAG has continued to surcharge mailings from Ideas Direct. In a letter sent on 27 November 1998 DPAG requested the BPO to pay surcharges for 19 Ideas Direct mailings (258 067 items in total), which DPAG had received between 1 January and 30 September 1998. The claimed surcharge amounted to EUR 323 900. In the fax DPAG maintained the following.

'To avoid any disturbance of intra community mail services we recorded the circumstances and delivered the letters to the addressees.

After receiving reliable information about the sender and the contents of the mailing,, we are now able to prove a case of Article 25 par. 1-3 UPU convention ([47]).'

(38) On 3 February 1999 DPAG sent a fax to the BPO stating that it had received in total 156 435 mail items from Ideas Direct in the UK between 1 October and 31 December 1998 and requested the BPO to pay a total surcharge of EUR 197 272. In this fax the following statement was made by DPAG.

'To avoid any disturbance of intra community mail services we recorded the circumstances and delivered the letters to the addressees.

After receiving reliable information about the contents of the mailing, we are now able to prove a case of Article 25 par. 1-3.[...] In all cases the domestic address of [Ideas Direct] is printed on the covering letter as well as on the reply postcard which is added to the mailing ([48]).'

(39) In March 1999 the Commission requested DPAG to provide detailed information about all mailings from *inter alia* Ideas Direct that had been intercepted in 1997 and 1998, including interception dates ([49]). In its response, DPAG claimed that none of these mailings had been intercepted or delayed at all ([50]). In its submission to the Commission of 2 May 2001, DPAG reiterated its statement that no mailings from Ideas Direct sent in 1997 and 1998 had been intercepted or delayed by DPAG ([51]). However, DPAG now gave the following reason for not doing so.

'… Deutsche Post AG had in its possession sample mailings, so there was no longer any need to hold back the mailings in order to establish its claims ([52]).'

([45]) The summons was incorrectly directed to Ideas Direct Ltd, Osterbekstrasse 90a, Hamburg, which is the address of Framar International. The summons was received by the Court on 5 January 1999. Despite the fact that no company trading under the name Ideas Direct is domiciled at that address, the summons was accepted by the German Court (documents 611-914 in the Commission file).
([46]) *Deutsche Post AG gegen Ideas Direct Ltd*, ref. 416 O 2/1999, judgment of Hamburg Regional Court of 29 October 1999.
([47]) Underlining by the Commission. Letter from DPAG to the BPO of 27 November 1998, including attached records of 19 mailings from Ideas Direct (documents 524-526 in the Commission file).
([48]) Underlining by the Commission. Fax from DPAG to the BPO of 3 February 1999 (documents 927-928 in the Commission file).
([49]) Commission request for information of 3 March 1999 (document 606 in the Commission file).
([50]) DPAG response to request for information of 23 April 1999 (document 991 in the Commission file).
([51]) DPAG submission to the Commission of 2 May 2001, p 2.
([52]) DPAG letter to the Commission of 2 May 2001, p. 2 (… verfügte die Deutsche Post AG über Mustersendungen, so dass es keines Anhaltens zur Prüfung mehr bedurfte.)

(40) At the Commission's request, the BPO has confirmed the fact that no mailings from Ideas Direct sent to Germany via the BPO in 1998 contained any sample mail items ([53]). On 18 May 2001 DPAG confirmed — as requested by the Commission — that the Ideas Direct mailings in question were held back while the addressees were contacted. As soon as DPAG had received a sample mailing from one of the addressees, the mailings were forwarded to their recipients without further delay ([54]).

Fidelity Investments Ltd

(41) Fidelity Investments Services Ltd (Fidelity Investments) is a transnational company active in the financial services sector with its registered office in the Bahamas. The UK holding company is Fidelity Investment Management Ltd. The Fidelity Investments group has offices in Paris, Frankfurt, Amsterdam, Madrid, Stockholm, Luxembourg and Zürich. These offices, which essentially provide customer support, serve customers in all Member States. The Frankfurt office is operated by the groups German subsidiary Fidelity Investments Services GmbH. Although all offices regularly post mail on a smaller scale, the handling of all bulk mailings has been centralised at the groups European Service Centre in the UK. In 1997, Fidelity Investments used the BPO to distribute a number of mailings to addressees in the Community. The mailings contained a prospectus and a covering letter in German. The covering letter stated that German customers should send their replies to Fidelity Investment GmbH in Frankfurt.

(42) Several mailings sent in March and April 1997 were intercepted by DPAG on entering Germany. On 7 April 1997 DPAG notified the BPO about the interception of one such mailing ([55]). A copy of a sample letter dated 25 March 1997 was attached to the notification form sent to the BPO ([56]). The BPO raised the issue again with DPAG on 16 April 1997 after the interception of another mailing from Fidelity Investments ([57]). DPAG responded the day after, stating that the latest mailing would be released and reiterated its claim for surcharge payments ([58]). Several mailings from Fidelity Investments were held back by DPAG for several weeks ([59]). The BPO maintains that these mailings should not have been delayed any further, since the BPO had agreed to pay the surcharges.

(43) In the second half of 1997 DPAG received 118 mailings — containing in total 275 027 items — from Fidelity Investments in the UK ([60]). DPAG presented its claims for these mailings for the first time a year later in a fax to the BPO on 11 December 1998 in which DPAG requested the BPO to pay a surcharge of EUR 340 774. In the fax, DPAG stated the following.

'To avoid any disturbance of intra community mail services we recorded the circumstances and delivered the letters to the addressees.

After receiving reliable information about the contents of the mailing, we are now able to prove a case of Article 25 par. 1-3 UPU convention.[...] In all cases it is the address of this firm which is printed on the covering letter of the mailing ([61]).'

([53]) Communication from the BPO to the Commission of 10 May 2001.
([54]) DPAG letter to the Commission of 18 May 2001, p. 1.
([55]) DPAG Remail Case Control Form, fax from DPAG to the BPO of 7 April 1997 (document 60 in the Commission file).
([56]) Documents 61-62 in the Commission file.
([57]) Fax from the BPO to DPAG of 16 April 1997 (document 55 in the Commission file).
([58]) Fax from DPAG to the BPO of 17 April 1997 (document 56 in the Commission file).
([59]) Letter from the BPO to DPAG of 17 April 1997 in which the BPO maintains the following: 'I understand from Fidelity UK that you are having a meeting today to decide whether to release the mailings or not. Why? I personally gave authorisation for the release of the mail several weeks ago under the normal process which was agreed by both our administrations' (document 58 in the Commission file).
([60]) DPAG records of received mailings from Fidelity Investments in the UK as sent to the BPO on 11 December 1998 (documents 506-507 in the Commission file).
([61]) Underlining by the Commission. Fax from DPAG to the BPO of 11 December 1998 (documents 493-494 in the Commission file). Sample mail items — including contents dated 9 October 1997 — were attached to the letter (documents 495-505 in the Commission file).

(44) Shortly thereafter, on 28 December 1998, DPAG requested Fidelity Investments German subsidiary to pay the surcharge for the 275 027 mail items mentioned above. The reason for DPAG's decision to contact what it considered to be the sender was the failure of the BPO to reply within the time limit given by DPAG ([62]).

(45) DPAG sent a second letter to the BPO on 1 February 1999, in which it stated that it had received 1 035 837 mail items from Fidelity Investments in the UK between 4 January and 30 September 1998. The total sum claimed amounted to EUR 1 325 522 ([63]). On 3 February 1999 DPAG sent a third letter to the BPO claiming that — between 1 October and 31 December 1998 — DPAG had received in total 224 301 mail items from Fidelity Investments in the UK. DPAG claimed surcharges amounting to EUR 285 704 from the BPO ([64]). Both letters contained sentences very similar to those quoted above. DPAG itself has submitted to the Commission several samples (including contents) of mailings from Fidelity Investments of the UK ([65]).

(46) The BPO has supplied the Commission with a copy of a letter which DPAG sent to addressees of a Fidelity Investments mailing. In this letter, DPAG requested the addressee to waive his rights of secrecy as regards the enclosed communication from Fidelity Investments. The reason given by DPAG for this request was 'the presumption that the sender of these letters applies international rules in an abusive manner.' ([66]) Fidelity Investments reacted strongly to the fact that DPAG had addressed itself directly to customers of Fidelity Investments, implying that Fidelity Investments had abused certain, non-defined international rules. The company subsequently indicated its strong concern to the BPO as well as to DPAG. In a letter to the BPO, Fidelity Investments stated the following:

'We are extremely anxious that our reputation be maintained at the highest level in every jurisdiction in which we operate and consider that communications of this nature have an extremely adverse impact on our reputation and image in the marketplace ([67]).'

(47) Fidelity Investments has recently decided to stop sending its mail bound for Germany from the UK and is currently in the process of building a new print and production site in Germany from which the company's German customers will be served ([68]).

(48) DPAG did confirm — in its original response to the complaint of July 1998 — that DPAG had received several mailings sent by Fidelity Investments via the BPO in March and April 1997 ([69]). On the basis of the material definition of sender, DPAG argued that the German subsidiary of Fidelity Investment was the sender of the mailings ([70]).

(49) In March 1999, the Commission requested DPAG to provide detailed information about all mailings from *inter alia* Fidelity Investment that had been intercepted in 1997 and 1998, including interception dates ([71]). At the time, DPAG claimed that no such mailings had been intercepted or delayed at all ([72]).

([62]) Letter from DPAG to Fidelity Investments Services GmbH of 28 December 1998. Annex 9 of the BPO memorandum of 17 November 2000.
([63]) Letter from DPAG to the BPO of 1 February 1999 (documents 931 and 932 in the Commission file).
([64]) Letter from DPAG to the BPO of 3 February 1999 (documents 929 and 930 in the Commission file).
([65]) Letters from Fidelity Investments to German customers dated 20 March 1997 and 15 June 1998 (documents 203-209 in the Commission file).
([66]) Letter from DPAG dated 17 August 1998 to an addressee of a Fidelity Investments mailing (document 313 in the Commission file). ('… die Vermutung, dass der Absender dieser Sendungen internationale Regelungen missbräuchlich verwendet.')
([67]) Letter from Fidelity Investments to the BPO of 12 October 1998 (documents 311-312 in the Commission file).
([68]) Hearing held on 23 November 2000; BPO memorandum of 17 November 2000, p. 31.
([69]) DPAG response to the complaint of 20 July 1998, p. 11 (document 177 in the Commission file).
([70]) DPAG response to the complaint of 20 July 1998, p. 13 (document 179 in the Commission file).
([71]) Commission request for information of 3 March 1999 (document 606 in the Commission file).
([72]) DPAG response to request for information of 23 April 1999, p. 8 (document 991 in the Commission file).

(50) In its reply to the Commission's Statement of Objections, DPAG claimed it could no longer identify which mailings the BPO had referred to. DPAG added that in 1997 it had received 158 mailings from Fidelity Investments which — according to DPAG — fell under Article 25 UPU. In April 1997 alone, DPAG 'recorded' 24 such cases ([73]). It is evident from documents submitted to the Commission that DPAG keeps detailed records of all mailings coming from Fidelity Investments in the UK ([74]). Moreover, DPAG pointed out that the correspondence of 16 and 17 April 1997 referred to another Fidelity Investments mailing than the one notified to the BPO on 7 April that year ([75]). DPAG submitted that the second mailing was intercepted on 16 April 1997 and released the day after ([76]).

(51) In its submission to the Commission of 2 May 2001, DPAG stated again that since the second half of 1997 DPAG had not intercepted or delayed any mailings from Fidelity Investments. However, the explanation given by DPAG was the following.

'Since Deutsche Post AG had in its possession the information that was necessary to establish payment claims before German courts, there was no longer any need, from Deutsche Post AG's point of view, to collect further information in order to prove that the criteria of the material definition of sender were met. [...] The mailings were forwarded within a limited period of time, since there was still a need to establish the payment claims ([77]).'

(52) At the Commission's request, the BPO has confirmed the fact that no mailings from Fidelity Investments sent to Germany via the BPO during the second half of 1997 or later contained any sample mail items ([78]). On 18 May 2001 DPAG confirmed — at the Commission's request — that the Fidelity Investments mailings in question were held back while the addressees were contacted. As soon as DPAG had received a sample mailing from one of the addressees, the mailings were forwarded to their recipients without further delay ([79]).

Gant

(53) Gant is an American clothes brand. Gant clothing is marketed in more than 30 countries. A company registered in Sweden, Pyramid Sportswear AB, is the franchisee of the brand for markets outside the USA. In the Community Gant clothes are sold through selected retailers and outlets called 'Gant Stores'. There are Gant Stores in several European countries including Germany. The Düsseldorf-based German store is operated by the company Pyramid Sportswear GmbH, which is a fully owned subsidiary of Pyramid Sportswear AB.

(54) Gant regularly distributes catalogues to registered customers all over Europe. Catalogues can also be requested by returning a reply card to the local Gant Store. These replies are then forwarded to Sweden. Bulk mailings containing advertising material such as catalogues are posted from the UK to European customers, the main reason being the fact that 60-70 % of all requests for catalogues emanate from the UK. These bulk mailings are produced by Pyramid Sportswear AB in Sweden, whereupon they are transported to the UK for posting through the BPO. The only exception is mailings to Swedish customers which are not routed via the UK.

([73]) DPAG reply to Statement of Objections, 22 September 2000, p. 21.
([74]) Documents 506 and 507 in the Commission file — submitted by the BPO — contain copies from a DPAG database which provides detailed information about each intercepted mailing from Fidelity Investments (e.g. case number, date of interception and number of items).
([75]) Documents 55, 56 and 60 in the Commission file.
([76]) DPAG reply to the Statement of Objections, 22 September 2000, p. 22. In the fax from DPAG to the BPO of 17 April 1997, DPAG states that the mail 'will be released' (document 56 in the Commission file).
([77]) DPAG submission to the Commission of 2 May 2001, p. 2. (Da die Informationen, die zur Durchsetzung des Zahlungsanspruches vor deutschen Gerichten benötigt wurden, vorhanden waren, bestand aus Sicht der Deutschen Post AG keine Notwendigkeit, weitere Ermittlungen darüber anzustellen, ob die Voraussetzungen des materiellen Absenderbegriffes erfüllt waren. […] Die Sendungen waren zeitnah weitergeleitet worden. Es ging lediglich noch darum, die Zahlungsansprüche geltend zu machen.)
([78]) Communication from the BPO to the Commission of 10 May 2001.
([79]) DPAG letter to the Commission of 18 May 2001, p. 2.

The 1996 autumn catalogue

(55) The BPO has referred to a mailing containing autumn catalogues which formed part of a Gant Store advertising campaign. The mail items were distributed to European customers in September 1996. On 16 September 1996 DPAG informed the BPO that the mailing had been intercepted ([80]). On 25 September 1996 the BPO requested that DPAG should release the mailing immediately ([81]). In its reply of the same day DPAG reiterated that it considered the mailing to be A-B-A remail and concluded that '...the letters will stay for the present in Köln West.' ([82]) Yet another fax from DPAG to the BPO of 26 September 1996 confirms that the mailing was still being held by DPAG ([83]). In order to secure the release of this time-sensitive mailing, the BPO agreed to pay the claimed amount. Neither the exact date of interception, nor the exact date of the release of the mailing is known to the BPO.

(56) In a letter to DPAG dated 31 October 1996, the German subsidiary of Pyramid Sportswear AB complained about the fact that the Gant autumn catalogue mailing was held back for six weeks and that the BPO was not notified until 20 days after the mailing had been stopped. In the letter Pyramid Sportswear GmbH maintained that the marketing campaign was a failure due to the excessive delay. Many articles advertised in the catalogue were no longer available in the Düsseldorf store. Pyramid Sportswear GmbH therefore claimed reimbursement amounting to EUR 20 500 from DPAG for the costs of the 'lost' advertising campaign and the loss of goodwill ([84]). DPAG refused to reimburse Pyramid Sportswear GmbH.

(57) DPAG maintained — in its response to the complaint of 20 July 1998 — its position that the material sender of the 1996 mailing was the German subsidiary Pyramid Sportswear GmbH. This assessment was based *inter alia* on the fact that reply coupons carrying the address of the Gant Store in Düsseldorf were attached to the catalogues. DPAG has confirmed that the BPO was notified of the interception on 16 September 1996 but has not disclosed when the mailing was intercepted. Moreover, DPAG maintained that the delays were entirely caused by the BPO's unwillingness to meet DPAG's claims ([85]). In its reply to the Statement of Objections, DPAG stated that the Commission did not have any evidence when the mailing was intercepted by DPAG and claimed that it did not know when the BPO agreed to pay the surcharge ([86]). However, the date on which DPAG claims to have forwarded the mailing — 4 October 1996 — was finally disclosed by DPAG ([87]).

The 1998 autumn catalogue

(58) The BPO has submitted to the Commission copies of a letter and a remail case control form from DPAG — both dated 17 September 1998 — with which the BPO was notified of the interception of two Gant mailings. The letter and the form both indicate that the mailings — consisting of 2 571 items in total — had been intercepted on 27 and 28 August 1998. In the letter of 17 September 1998 DPAG stated the following:

'In the absence of sufficient information about the contents and the real sender we recorded the circumstances and delivered the letters to the addressees ([88]).'

([80]) Fax from DPAG to the BPO of 16 September 1996 (documents 66-68 in the Commission file). In the fax DPAG claimed to have discovered an A-B-A remailing from Pyramid Sportswear GmbH containing 6 076 items. DPAG did not indicate any case control number for this mailing. A copy of a sample envelope but not the catalogue itself was attached to the fax.
([81]) Fax from the BPO to DPAG of 25 September 1996 (document 69 in the Commission file).
([82]) Fax from DPAG to the BPO of 25 September 1996 (document 71 in the Commission file).
([83]) Fax from DPAG to the BPO of 26 September 1996 (document 77 in the Commission file).
([84]) Letter from Pyramid Sportswear GmbH to DPAG of 31 October 1996 (documents 64-65 in the Commission file). In the letter Pyramid Sportswear GmbH makes it clear that the distribution of Gant catalogues for all Gant Stores in Europe is done centrally from the UK.
([85]) DPAG response to the complaint of 20 July 1998 pp. 15-16 (documents 181-182 in the Commission file).
([86]) DPAG reply to the Statement of Objections of 22 September 2000.
([87]) Copy of an internal DPAG record which was faxed within DPAG on 4 October 1996. In the fax, the forwarding of the mailing is approved following the BPO's agreement to pay the surcharge. The record does not indicate whether the mailing was actually released on that day. DPAG reply to the Statement of Objections of 22 September 2000, annex 12.
([88]) DPAG letter and remail case control form of 17 September 1998 (documents 317-319 in the Commission file).

(59) In the same letter DPAG — 'after receiving reliable information about the contents' — claimed a surcharge amounting to EUR 2 827 from the BPO ([89]). The mailings in question contained the autumn 1998 Gant Store catalogue which was distributed to Gant's German customers. This catalogue was produced and distributed in the same manner as the 1996 catalogue. When the remail case control form was returned to DPAG, the BPO had added the following message:

'It is incredible that it has taken DPAG nearly one month to notify us of this stopping to which we do not agree at all! ([90])'

(60) At a very late stage in the proceedings — in its submission to the Commission of 2 May 2001 — DPAG stated that the mail was released before the remail case control form and the letter were sent to the BPO on 17 September 1998. DPAG's submission did not contain any information about the actual date of release of the mailing. Instead DPAG argued that since the mailing had already been forwarded to the addressees, there was no longer an urgent need for DPAG to notify the BPO ([91]). Requested by the Commission to clarify the issue, DPAG stated — on 18 May 2001 — that the mailing had been forwarded on 8 September 1998 ([92]).

Multiple Zones

(61) The BPO submitted, in February 1999, further evidence regarding mailings from the UK which had been intercepted, delayed and surcharged by DPAG. One of the examples referred to was a mailing sent by the company Multiple Zones, which is a firm belonging to the American Extensis Corporation group of companies. The mailing in question — containing in total 14 166 items — emanated from the European head office of the group, Plantijn Groep BV, situated in the Netherlands. On the letters the following return information was given.

'If undeliverable please return to:/HOL000119E/FS P.O Box 456/London/EC1A 1QR/United Kingdom ([93])'

(62) By means of a fax, the BPO was informed on 11 February 1999 that the mailing from Multiple Zones had been stopped by DPAG on 4 February, i.e. seven days earlier. DPAG claimed a surcharge amounting to EUR 18 547 ([94]). Returning the remail case control form, the BPO replied on the same day agreeing to pay the claimed surcharge. On the form, the BPO had added the statement below:

'As with all previous cases it is without prejudice to our contention that you do not have the right to stop and surcharge this mail that the British Post Office is prepared to undertake to settle the surcharge levied by Deutsche Post AG in order to secure the immediate release of the mail. We do however reserve the right to recover from you any payments which you have wrongfully demanded ([95]).'

(63) Despite the BPO's agreement to pay, the mailing was not released until 18 February, i.e. seven days after the BPO had agreed to reimburse DPAG and 14 days after the initial interception of the mailing. The customer has since informed the BPO that the response rate of the mailing was very low in Germany.

(64) DPAG has argued — in its reply to the Commission's Statement of Objections — that the envelopes of the mailing in question did not contain any information about the sender of the mailing ([96]). In DPAG's view, the UK return address indicated on the back of the envelope should not be regarded as such a piece of information. On the basis of the contents of the letter, DPAG argued that the material sender was the German company Multiple Zones GmbH. While acknowledging the fact that the name of the Dutch company Extensis Europe actually appeared in the contents of the mailing, DPAG claimed that the fact that the name of Multiple Zones GmbH was written in a larger typeface was one of the determining factors for identifying a German sender ([97]).

([89]) DPAG letter and remail case control form of 17 September 1998 (documents 317-319 in the Commission file).
([90]) Remail case control form of 17 September 1998 (document 317 in the Commission file).
([91]) DPAG letter to the Commission of 2 May 2001, p. 3.
([92]) DPAG letter to the Commission of 18 May 2001, p.3. DPAG did not, however, submit any supporting evidence confirming the date of release.
([93]) DPAG reply to the Statement of Objections of 22 September 2000, annex 13.
([94]) Remail case control form sent by DPAG to the BPO on 11 February 1999 (document 991, annex 2-1 in the Commission file).
([95]) Underlining by the Commission. Remail case control form returned to DPAG by the BPO on 11 February 1999 (document 992 in the Commission file).
([96]) DPAG reply to the Statement of Objections of 22 September 2000, pp. 25-26.
([97]) DPAG reply to the Statement of Objections of 22 September 2000, pp. 25-26.

(65) Furthermore, DPAG claimed that the BPO's failure to submit an agreement to pay without conditions and the fact that the BPO failed to react for another seven days, was the reason for DPAG holding back the mailing until 18 February 1999. If the BPO had not been so slow to react, DPAG would have released the mailing earlier, DPAG claimed ([98]). DPAG confirmed the release of the Multiple Zones mailing in a fax dated 18 February 1999. DPAG added the remark below.

'Since Royal Mail refuses payment or links payment to certain conditions, which are tantamount to a refusal, we reserve the right to claim payment direct [*sic*] from the sender ([99]).'

(66) In another fax to the BPO, dated 20 February 1999, DPAG made the following statement:

'We take note of the fact that your priority is not to safeguard the interests of Deutsche Post's customers.

[...]

The items of the company Multiple Zones Germany GmbH [...] were released on 18.02.99. This regrettable delay was due to the surprising statement of Royal Mails reservations. We had to change our response procedures in order to safeguard our claims vis-à-vis the senders. We thus tried to contact the senders with a view to clarifying whether the items had been produced in Great Britain or whether they had been transferred there simply for posting ([100]).'

(67) In its submission to the Commission of 2 May 2001, DPAG stated that the BPO's refusal to pay without conditions obliged DPAG to substantiate its claim vis-à-vis the sender by contacting the addressees and requesting samples of the contents of the letters. Once DPAG had acquired the evidence it deemed to be necessary, the mailings were forwarded to the addressees on 18 February 1999 ([101]).

DPAG's procedures concerning incoming cross-border letter mail from the UK

(68) The volumes of cross-border mail coming into Germany which — according to DPAG — fall under Article 25 UPU are very large. DPAG estimated that 18 % of all incoming cross-border mail in 1999 qualified as remail falling under Article 25 UPU ([102]). Each year, DPAG claims to handle approximately [> 5 000] (*) cases of bulk mailings falling under this article. The total number of mail items which DPAG classified as remail amounted to [10-20] (*) million in 1998 and [10-20] (*) million in 1999 ([103]). In 1996-97 alone, DPAG handled [> 500] (*) cases in which DPAG invoked Article 25 UPU 1989 against the BPO ([104]).

(69) The procedure whereby DPAG examines incoming cross-border letter mail from the UK can be summarised as follows ([105]).

(70) Incoming mailings are screened by the responsible sorting office in order to determine, from the outer appearance of the postal items, whether the mailings could have a domestic sender. Mailings for which it is evident to DPAG that the sender resides in the UK are always forwarded to addressees without delay. The same applies to mailings which DPAG considers to be time-sensitive.

([98]) DPAG submission of 23 April 1999 (document 991, p. 7, in the Commission file) and DPAG reply to the Statement of Objections of 22 September 2000.
([99]) In this context the ender referred to by DPAG is the entity in Germany which DPAG considers to be the material sender. Fax from DPAG to the BPO of 18 February 1999 with the title Remailingfallbearbeitung (document 992, annex 2-3 in the Commission file).
([100]) Underlining by the Commission. Fax from DPAG to the BPO of 20 February 1999 (document 992, annex 2-3, in the Commission file).
([101]) DPAG submission to the Commission of 2 May 2001, p. 3.
([102]) DPAG Magazine Post Forum Spezial, November 1999, p. 6 (document 1199 in the Commission file).
(*) Passages between brackets [...] indicate business secrets deleted.
([103]) DPAG reply to the Statement of Objections of 22 September 2000, p. 31.
([104]) DPAG reply to the Statement of Objections of 22 September 2000, p. 24.
([105]) DPAG response to Commission Article 11 request for information of 24 April 1999 (document No 991 in the Commission file). In addition, DPAG has addressed the same issue in its reply to the Commission's Statement of Objections of 22 September 2000 and at the hearing held on 23 November 2000.

(71) If DPAG suspects that mailing has a domestic sender (according to its own definition of the material sender), the mailing is intercepted, whereupon approximately ten addressees are contacted by post and asked to provide DPAG with a sample of the mailing ([106]). DPAG has confirmed that the process of contacting addressees by mail and receiving their written consent to open their mail takes 5 to 6 working days on average ([107]). The fact that this procedure often takes a week is confirmed further by a statement made by DPAG in a fax sent to the BPO in 1996. In the fax, DPAG stated the following:

'The abovementioned mail was stopped on December 10th. We checked it by asking some addresses [*sic*] about the contents. This checking lasted one week and we informed you on December 17th ([108]).'

(72) Once DPAG has established the existence of what it considers to be a domestic sender, a remail case control form is sent by fax to the BPO ([109]). This form includes *inter alia* a DPAG case number, the day of interception of the mailing, the name of the presumed domestic sender and the amount of the claimed surcharge. The BPO is then requested to return the form indicating its view on the origin of the mailing. Only after the BPO has agreed to pay the claimed amount does DPAG release the intercepted mailings.

(73) The Commission has requested DPAG to estimate the average delay caused by the procedures applied by DPAG (i.e. the time needed for interception, examination of the contents, notification of the BPO, receipt of agreement to 'add costs' from the BPO and the release of the mailing). In its response to the Commission of 24 April 1999, DPAG stated that, due to the inability of the BPO to respond quickly to DPAG's demands, the average response time for the BPO amounted to one week, something which prolonged the total delays of intercepted mailings ([110]). Mailings for which no evidence of a UK sender has been presented to DPAG are not forwarded until the sending postal operator — or the entity residing in Germany which DPAG considers to be the sender — has made a binding commitment to pay the claimed amount. In such cases the mailings may be delayed for another week ([111]).

(74) In the second half of 1997 DPAG adopted an alternative method for dealing with alleged cases of A-B-A remail. Instead of using the remail case control form, DPAG 'recorded the circumstances' of the mailing, whereupon the mailing was forwarded to addressees. According to DPAG, this recording process entails the registration of the date of arrival, the number of mail items in the mailing and the weight and size of these items ([112]). In its reply to the Commission's request for information of 23 April 1999, DPAG claimed that all mailings which had been handled in this manner were cases of so-called non-physical remail which were forwarded and delivered to the addressees without delay ([113]). However, the correspondence which DPAG sent to the BPO in this regard indicates that sample items from these mailings were opened and examined before the mailings were forwarded. DPAG appears to have used both procedures in parallel for some time ([114]).

([106]) At the hearing on 23 November 2000, DPAG disclosed the approximate number of token addressees which is contacted after a mailing has been intercepted, something which DPAG had not done previously.
([107]) Statement by DPAG at the hearing held on 23 November 2000 in response to a direct question. DPAG had not hitherto communicated this information to the Commission.
([108]) Fax from DPAG to the BPO of 18 December 1996 concerning the company Super Foto (BPO memorandum of 17 November 2000, annex 1).
([109]) The remail case control form was introduced in October 1996. BPO memorandum of 22 February 1999, p. 2 (document 548 in the Commission file).
([110]) DPAG response to Commission request for information of 26 April 1999 (document 991 in the Commission file).
([111]) DPAG response to Commission request for information of 26 April 1999 (document 991 in the Commission file). NB: by applying this procedure DPAG in fact puts the burden of proof on the sending PPO and the entity residing in Germany which DPAG considers to be the sender. DPAG will only deliver the mail at the international rate if they can prove the existence of a foreign sender.
([112]) DPAG submission to the Commission of 2 May 2001, p. 2. NB: the remail case control forms used by DPAG do not mention the date of arrival but always 'the date of interception'.
([113]) DPAG reply to the Commission's request for information of 23 April 1999, p. 8 (document 991 in the Commission file).
([114]) BPO memorandum of 22 February 1999, p. 2.

(75) In 1997 alone, DPAG intercepted and examined […] mail items coming from the UK. The following year, this number had risen to [> 1 000 000] (*) items, i.e. a percentage increase of approximately […]. The steep increase in the number of intercepted mailings is explained by the fact, DPAG claims, that the BPO initiated a major marketing campaign in 1999 which targeted companies situated in Germany and encouraged them to re-route their domestic mail via the UK. In DPAG's view, the alleged marketing efforts made by the BPO in Germany obliged DPAG to intensify its examination of incoming cross-border mail from the UK ([115]).

F. **Financial settlement**

(76) On 17 October 2000 the BPO and DPAG announced that they had reached a settlement as regards the financial aspects of their dispute by concluding a Memorandum of Understanding ([116]). At the time of the settlement, the BPO had paid to DPAG a sum of EUR […] ([117]). According to the BPO, the total sum which DPAG considered itself entitled to had increased to EUR […] at that point in time ([118]). In the Memorandum the parties agreed *inter alia* the following:

(i) [...]

(ii) [...]

(iii) [...]

(77) The parties recognised that they continue to differ in their understanding of the application of Article 25 UPU and its application within the EU and that the BPO would pursue its complaint with the Commission ([119]).

G. **Undertaking**

(78) On 1 June 2001 DPAG made the following undertaking in relation to the Commission.

'(i) Deutsche Post AG will not invoke the rights set out in Article 25 UPU 1994 or Article 43 UPU 1999 respectively, regarding any letter mailings that correspond to the type described in the Commission's Decision (paragraphs 32, 34, 41, 53, 54, 61, 110 and 114-117) that were produced outside Germany and that are delivered to Deutsche Post AG from countries whose postal operators pay terminal dues that are at least equal to what is determined as the standard amount — at the time of delivery of each mailing — in current and future versions of the REIMS II agreement.

(ii) As regards the handling of letter mailings of the type described in paragraph (i), Deutsche Post AG consequently declares that no claims for payment of the domestic tariff pursuant to Article 25 UPU 1994 or Article 43 UPU 1999 will be made and that these mailings will not be returned. Should any doubts arise as regards the applicability of this undertaking in a specific case, Deutsche Post will attach — on the outside of maximum 50 letter items — an accompanying letter to the addressee, in which the addressee is asked — for evidence purposes — to provide Deutsche Post AG with the opened mail item. Deutsche Post will forward these mail items without delay.

(iii) As an alternative to the procedure described in paragraph (ii), Deutsche Post will immediately forward and deliver to domestic addressees all letter mailings of the type described in paragraph (i), if the sending foreign postal operator at the time of delivery provides Deutsche Post AG with at least one opened sample item whose contents correspond to the contents of the letter items in the mailing.

(iv) This undertaking enters into force 3 months after the notification of the Commission's decision in case no COMP/36.915 — Deutsche Post AG — Interception of Cross-border Mail ([120]).'

(*) Passages between brackets [...] indicate business secrets deleted.

([115]) DPAG response to Commission request for information of 26 April 1999 (document 991 in the Commission file). When asked by the Commission, the BPO stated the following: The BPO has eight sales staff operating in Germany marketing services to German based customers. The BPO only offers services permitted under German law. It does not knowingly allow German customers — whose mail is produced in Germany — to send mail via the UK back to Germany. It is company policy to refuse the provision of such mailings. The BPO refutes the allegation that it has encouraged German customers to engage in A-B-A remail activities.

([116]) Undated Memorandum of Understanding between the BPO and DPAG. The provisions of this agreement took effect as of 1 October 2000. The parties have agreed to review after 12 months the terms and conditions of the agreement, which will cease to apply if the review does not lead to mutual consent.

([117]) GBP […]. Average exchange rate in 2000 as published by the European Central Bank. BPO letter to the Commission of 7 March 2001.

([118]) DEM […]. BPO letter to the Commission of 7 March 2001.

([119]) Undated Memorandum of Understanding; letter from the BPO to the Commission of 17 October 2000.

([120]) Communication from DPAG to the Commission of 1 June 2001.

H. **Procedural issues**

Chronology of the procedure

(79) The main steps of the Commission's examination and the formal procedure may be summarised as follows (for correspondence which is particularly relevant for the procedural aspects of this case, a brief description is given in a footnote).

— 4 February 1998: Filing of the complaint.

— 20 July 1998: DPAG response to the complaint.

— 21 October 1998: Submission from the BPO.

— 8 December 1998: Request for information to the BPO

— 21 January 1999: BPO reply to request for information.

— 22 February 1999: Submission from the BPO.

— 1 March 1999: Request for information to DPAG.

— 2 March 1999: Request for information to American Express Services Europe Ltd.

— 23 April 1999: DPAG reply to request for information.

— 16 April 1999: Submission from DPAG.

— 27 April 1999: American Express Services Europe Ltd. reply to request for information.

— 2 June 1999: Complementary American Express Services Europe Ltd. reply to request for information.

— 25 May 2000: Issue of Statement of Objections.

— 30 May 2000: Letter from DPAG to the Member of the Commission responsible for competition.

— 9 June 2000: Letter from DPAG to the Commission. ([121])

— 14 June 2000: Letter from DPAG to the Commission.

— 21 June 2000: Letter from the Commission to DPAG. ([122])

— 26 June 2000: DPAG was granted access to case files.

— 13 July 2000: Letter from DPAG to the Commission. ([123])

— 20 July 2000: Letter from the BPO to the Commission.

— 24 July 2000: Letter from the BPO to the Commission.

— 27 July 2000: Letter from the Commissioner to DPAG.

— 27 July 2000: Letter from the Commission to DPAG. ([124])

— 4 August 2000: Letter from DPAG to the Commission. ([125])

— 8 August 2000: Letter from the Commission to DPAG. ([126])

— 16 August 2000: Letter from the Commission to DPAG. ([127])

— 22 September 2000: DPAG reply to Statement of Objections.

— 17 October 2000: Letter from the BPO to the Commission. ([128])

— 17 November 2000: Submission from the BPO.

— 23 November 2000: Hearing.

— 11 December 2000: Submission from DPAG.

— 11 December 2000: Submission from PTT Post BV. ([129])

— 11 December 2000: Submission from Center Parcs NV. ([130])

([121]) In the letter DPAG requested four months to provide its reply to the Statement of Objections.
([122]) The Commission denied DPAG additional respite in addition to the 13 weeks already granted (i.e. the normal period of eight weeks plus the holiday month of August).
([123]) In a letter addressed to the Director-General for Competition, DPAG requested the Commission to close the proceedings against DPAG owing to alleged procedural errors.
([124]) The Commission responded to DPAG's allegations that procedural errors had been committed.
([125]) In its letter, DPAG made further allegations of procedural errors, reiterated its request for closure of the proceedings and its request to be granted an additional respite to submit its reply to the Statement of Objections.
([126]) In his response to DPAG the Hearing Officer granted DPAG an additional respite of three weeks (i.e. 16 weeks in total).
([127]) The Commission responded to DPAG's allegations that procedural errors had been committed.
([128]) The letter informed the Commission of the fact that DPAG and the BPO had reached a financial settlement.
([129]) PTT Post BV participated in the hearing as an interested third party pursuant to the first sentence of Article 19(2) of Regulation No 17 and Article 9(3) of Regulation (EC) No 2842/98.
([130]) Center Parcs NV participated in the hearing as an interested third party pursuant to the first sentence of Article 19(2) of Regulation No 17 and Article 9(3) of Regulation (EC) No 2842/98.

— 19 January 2001: Letter to the BPO from the Commission. ([131])

— 29 January 2001: Letter to DPAG from the Commission.

— 5 February 2001: Letter to DPAG from the Commission. ([132])

— 6 February 2001: Letter from DPAG to the Commission.

— 13 February 2001: Letter from DPAG to the Commission.

— 14 February 2001: Letter from DPAG to the Commission.

— 27 February 2001: Letter from the Commission to DPAG.

— 2 March 2001: Letter from the Commission to DPAG. ([133])

— 12 March 2001: Letter from the BPO to the Commission.

— 14 March 2001: Letter from DPAG to the Commission.

— 16 March 2001: Letter from DPAG to the Commission. ([134])

— 27 March 2001: Letter from the Commission to DPAG. ([135])

— 9 April 2001: Letter from the Commission to DPAG. ([136])

— 26 April 2001: Letter from DPAG to the Commission.

— 2 May 2001: Submission from DPAG. ([137])

— 18 May 2001: Letter from DPAG to the Commission. ([138])

— 1 June 2001: Undertaking from DPAG submitted to the Commission.

Rights of defence

(80) During the course of the procedure, DPAG alleged that it rights of defence had been infringed. These allegations — made in a series of letters to the Commission, in DPAG's reply to the Statement of Objections and at the hearing — included the following elements.

(i) Numerous documents were allegedly missing from the file to which DPAG was granted access on 26 June 2000.

(ii) The memorandum from the BPO to the Commission of 21 October 1998 was not immediately forwarded to DPAG.

(iii) Exculpatory documents had deliberately been removed from the file to which DPAG was granted access ([139]).

(iv) DPAG was not given sufficient time to prepare its defence against the objections raised by the Commission.

(81) As regards the allegations above the Commission makes the following assessment.

(i) The Commission has ascertained that in all cases but one, the allegedly missing documents were in fact present in the file at the time when DPAG was granted access to it. The allegedly missing documents thus resulted from copying errors made by DPAG's representatives. Furthermore, several of the allegedly missing documents emanated from DPAG itself or had previously been received by DPAG. Only one document was inadvertently removed from the file at the time of access, namely a six-page fax sent by DPAG to the Commission on 16 April 1999. Not only must DPAG had been fully aware of the contents of its own communication but all the arguments raised by DPAG in this fax were addressed by the Commission in the Statement of Objections, which means that it formed an integral part of the file on which the Commission based these objections.

([131]) A non-confidential version of DPAG's submission of 11 December 2000 was annexed to this letter.
([132]) A non-confidential version of the BPO's submission of 17 November 2000 was annexed to this letter.
([133]) Excerpts from the draft Commission decision — containing additional facts — were annexed to this letter.
([134]) DPAG requested a total period of two months to submit its comments on the excerpts from the draft decision sent to DPAG on 2 March 2001.
([135]) The Commission granted DPAG an additional period of two weeks (i.e. five weeks in total) to submit its comments on the excerpts from the draft decision.
([136]) At DPAG's request, the Commission granted DPAG a second period of two weeks (i.e. seven weeks in total) to submit its comments on the excerpts from the draft decision.
([137]) The submission contained DPAG's comments on the excerpts from the draft Commission decision sent to DPAG on 2 March 2001.
([138]) The letter contained clarifications — requested by the Commission — to some issues mentioned in the submission of 2 May 2001.
([139]) DPAG reply to Statement of Objections, p. 4.

(ii) The BPO memorandum of 21 October 1998 was made available to DPAG at the time of access to the file. The Commission is under no obligation to submit documents to the respondent before formal proceedings have been initiated ([140]).

(iii) Despite being specifically requested to so, DPAG has failed to substantiate its serious allegation that exculpatory documents had been removed from the file.

(iv) DPAG was granted 16 weeks to prepare its reply to the Commission's Statement of Objections, as opposed to the normal period of eight weeks. At DPAG's request, the date of the hearing was postponed for four weeks. DPAG was given an additional period of four weeks (in addition to the three weeks given at the outset) to prepare its comments on the excerpts from the draft decision.

(82) Bearing the above considerations in mind, the Commission considers that DPAG's rights of defence have not been infringed during the course of the present proceedings.

II. **LEGAL ASSESSMENT**

A. **Applicability of Article 82 of the Treaty**

(83) PPOs such as DPAG are subject to the provisions of Article 82 of the Treaty, since they are undertakings carrying out an economic activity against payment, namely the provision of postal services.

B. **Relevant market**

Relevant product market

(84) The present case concerns the conveyance of normal — as opposed to express — cross-border letter mail sent from the UK to addressees residing in Germany ([141]). This process can be divided into two separate product markets:

(i) the market for outgoing cross-border letter mail on which postal operators collect mail from senders residing in one Member State for delivery to addressees in another Member State, and

(ii) the market for incoming cross-border letter mail in one Member State on which the receiving PPO and other postal operators offer delivery services.

(85) The present case concerns behaviour in the latter market. Considering the fact that there is only very limited competition for the delivery of incoming cross-border mail that falls outside the scope of the postal monopoly, there is no need to delineate a narrower relevant product market. Consequently, the relevant product market is the market for the forwarding and delivery of incoming cross-border letter mail.

Relevant geographic market

(86) Postal markets are predominantly national. This applies in particular to the delivery stages of the conveyance process, owing to the existence in most Member States of wide-ranging monopolies reserved for the incumbent operator. As regards incoming cross-border mail, the lack of alternative delivery solutions makes the competitive situation similar also above the monopoly threshold. The present case concerns DPAG's behaviour in the German market. The relevant geographic market must therefore be considered to be national.

Conclusion

(87) The Commission finds that the market for the forwarding and delivery of incoming cross-border letter mail in Germany is the relevant market in the present case ([142]).

([140]) Commission notice on the internal rules of procedure for processing requests for access to the file in cases pursuant to Articles 85 and 86 of the EC Treaty, Articles 65 and 66 of the ECSC Treaty and Council Regulation (EEC) No 4064/89, OJ C 23, 23.1.1997, p. 3.

([141]) As described above, some mailings concerned were sent from another Member State to the UK where they were forwarded by the BPO to its German addressees (i.e. A-B-C remail). However, the second leg of this routing (from country B to country C) is no different from normal A-B cross-border mail.

([142]) This market definition concurs with previous decisions by the Commission, e.g. *REIMS II*. See footnote 18.

C. **Dominant position**

(88) The Court of Justice of the European Communities has repeatedly held that a company which holds a statutory monopoly in a substantial part of the Community may be regarded as having a dominant position within the meaning of Article 82 of the Treaty ([143]). DPAG has been awarded a wide-ranging and exclusive licence for the forwarding and delivery of incoming cross-border letter mail in Germany. By virtue of the exclusive rights granted to it, DPAG is the only operator controlling the public postal network covering the whole territory of Germany.

(89) In its reply to the Commission's Statement of Objections, DPAG claimed that the Commission's assessment of DPAG's market position was insufficient and that the Commission had failed to demonstrate the existence of a dominant position of DPAG. The German postal monopoly is only partial, DPAG argued ([144]). Since DPAG's monopoly does not cover bulk mailings where each mail item weighs more than 50 grams, the mailings in the present case belong to a market segment in which the monopoly is of 'no or a very limited significance', DPAG stated. Moreover, the Commission failed to take into account the position of DPAG's competitors, the possibilities for circumventing the monopoly of DPAG and the countervailing market power of the BPO ([145]).

(90) DPAG has not submitted to the Commission any information about its position on the German market for incoming cross-border letter mail. Approximately 27 % (expressed in value terms) of the total letter market in Germany — of which the relevant market forms a part — is theoretically open to competition ([146]). However, in 1998 competitors to DPAG accounted for only 2 % of the 'competitive' market segment. DPAG's share of the total letter market (i.e. including monopoly services) thus exceeded 99 % that year ([147]). This figure is confirmed by the national regulatory authority in Germany, which estimated DPAG's market share in this market at 99,2 % in 1998 and 98,7 % in 1999 ([148]).

(91) DPAG's statement that the types of mailings concerned by the present case belong to a market segment in which DPAG's monopoly is of 'no or a very limited significance' is incorrect.

(92) First, a large portion of the disputed mailings was sent before 1 January 1998 (i.e. the date when the bulk mail monopoly threshold in Germany was reduced from 100 to 50 grams). The overwhelming part of the revenues in the postal sector is generated from items in the lower weight bands. On average, a monopoly threshold of 100 grams leaves approximately 88 % of revenues derived from letters within the monopoly, whereas a 50-gram threshold leaves approximately 77 % ([149]). Expressed in terms of volume, an even larger portion of the letter market remains exclusive for the incumbent ([150]). Consequently, only a fraction of all incoming bulk letter mail exceeds the monopoly threshold.

(93) Second, only bulk mailings with identical contents fall outside the scope of DPAG's monopoly. Under the German Postal Act, only a very limited number of features may differ in the contents in order to qualify as identical ([151]). This provision prevents a large portion of mail items weighing more than 50 grams (or before 1998 — 100 grams) from falling outside the monopoly. Therefore, a substantial part of the mailings concerned by the case at hand fall within the scope of DPAG's monopoly.

([143]) See e.g. Case C-179/90 *Merci Convenzionali Porto di Genoa SpA* v *Siderurgica Gabrielli SpA* [1991] ECR I-5889, at paragraph 14; Case C-41/90 *Klaus Höfner and Fritz Elser* v *Macrotron GmbH* [1991] ECR I-1979, at paragraph 14; Case C-320/91 Paul Corbeau [1993] ECR I-2533, at paragraph 9.

([144]) The following market segments fall outside the scope of DPAG's exclusive licence: postal items weighing more than 200 grams, postal items whose postage exceeds five times the basic tariff, identical bulk mail items weighing more than 50 grams and value-added services. Section 51 of the Postal Act.

([145]) DPAG reply to the Statement of Objections, pp. 27-28.

([146]) KEP Nachrichten, No. 51/17, December 1999 (document 1146 in the Commission file).

([147]) KEP Nachrichten.

([148]) Mid-2000 Report of RegTP, p. 62, as published on its website (www.regtp.de).

([149]) '*Study on the Weight and Price Limits of the Reserved Area in the Postal Sector*', study by CT Con, published by the Commission in November 1998, pp. 33-34.

([150]) The relative portion of revenues derived from the heavier weight bands is greater than the corresponding portion of volume.

([151]) Section 51(2) of the Postal Act.

(94) Third, the majority of bulk mail items that weigh more than 50 grams (or before 1998 — 100 grams) with identical contents are in reality forwarded and delivered by DPAG, since DPAG is the only postal operator in Germany offering a nation-wide delivery service at a low price. This circumstance is one explanation why DPAG has managed to keep approximately 99 % of total letter market turnover, despite the partial opening of this market. In practice, most senders of bulk mail have no alternative but to use the delivery services of DPAG. The Commission thus concludes that virtually all incoming cross border letter mail in Germany is forwarded and delivered by the incumbent ([152]).

(95) Due to the existence of the extensive monopoly and the non-availability of alternative, nationwide delivery networks, the BPO is in practice obliged to use the services of DPAG in order to get its bulk mailings bound for Germany delivered to the addressees. The facts of the case illustrate very clearly the lack of alternative delivery solutions available to the BPO and DPAG's ability to act in a manner which is independent not only of the BPO but of DPAG's competitors in the relevant market.

(96) The Commission finds that DPAG holds a dominant position in the German market for the forwarding and delivery of incoming cross-border letter mail.

(97) Germany constitutes a substantial part of the European Community ([153]).

D. **Alleged inapplicability of Article 82 of the EC Treaty**

(98) In its original response to the complaint of 20 July 1998, DPAG did not contest the applicability of Article 82 in the present case ([154]). In a later submission, however, DPAG argued that Article 82 does not apply in the present case since the company is not the instigator of the measures taken against the BPO ([155]). Since the terminal dues received from the BPO for this mail did not cover DPAG's delivery costs and because of BPO's alleged marketing campaign directed at German senders, DPAG claimed that it was obliged to take these measures. DPAG refers to the case law of the Court of Justice, which stipulates that Article 82 is only applicable to anticompetitive measures which undertakings initiate themselves. Article 82 does not apply if international regulation deprives an undertaking of every possibility to behave in a competitive manner.

(99) DPAG referred to the following statement by the Court of Justice:

'Articles 85 and 86 of the Treaty apply only to anti-competitive conduct engaged in by undertakings on their own initiative. [...] If anti-competitive conduct is required of undertakings by national legislation or if the latter creates a legal framework which itself eliminates any possibility of competitive activity on their part, Articles 85 and 86 do not apply ([156]).'

(100) However, DPAG failed to mention the statement by the Court of Justice in the following paragraph of the same judgment, in which it said that:

'Articles 85 and 86 may apply, however, if it is found that the national legislation does not preclude undertakings from engaging in autonomous conduct which prevents, restricts or distorts competition … ([157]).'

([152]) This conclusion is consistent with recent research. See *Liberalisation of Incoming and Outgoing Intra-Community Cross-border Mail*, 1998, p. 38.
([153]) Case 322/81 *Michelin* [1983] ECR 3461, at paragraphs 102-104.
([154]) DPAG reply to complaint of 20 July 1998 (documents 163-249 in the Commission file).
([155]) DPAG reply to Commission request for information of 26 April 1999, pp. 5-6 (document 991 in the Commission file).
([156]) Joined Cases C-359/95 and C-379/95 *Commission and France* v *Ladbroke Racing* [1997] ECR I-6225, at paragraph 33.
([157]) *Ladbroke Racing*, at paragraph 34. See also Case T-228/97 *Irish Sugar plc* v *Commission* [1999] ECR II-2969, at paragraph 130.

(101) In fact, all measures concerned were initiated by DPAG itself at its own volition. Neither the UPU Convention, nor German domestic law contains provisions which oblige DPAG to intercept, surcharge and delay incoming cross-border mail ([158]). Article 25 UPU allows its member countries to intercept such mail, provided that certain conditions are met. The UPU member countries have a wide margin of discretion as to whether or not to intercept incoming cross-border mail which fulfils the criteria set out in Article 25 UPU. The German domestic law, which contains provisions identical to those contained in Article 25 UPU, does not impose any obligation on DPAG to intercept, surcharge and delay incoming cross-border letter mail. These conclusions apply regardless of the version of the UPU invoked at the particular point in time (i.e. Article 25 UPU 1989, Article 25 UPU 1994 or Article 43 UPU 1999) ([159]).

(102) The legal framework neither eliminates the possibility of competitive behaviour on DPAG's part, nor does it preclude DPAG from engaging in autonomous conduct which is anticompetitive. It may thus be concluded that DPAG retained all its autonomy of conduct in this regard. DPAG's argument that its actions were 'triggered' by allegedly anticompetitive behaviour from the BPO is irrelevant. Even if this were the case, the behaviour of a competitor could never exclude an undertaking from the application of Article 82.

E. **Abuse of a dominant position**

Introduction

(103) An undertaking in a dominant position has a special responsibility not to allow its conduct to impair undistorted competition in the common market. The actual scope of the dominant firms special responsibility must be considered in relation to the degree of dominance held by that firm and to the special characteristics of the market which may affect the competitive situation ([160]).

(104) The Commission has analysed the measures taken by DPAG as a pattern of behaviour rather than as a set of separate measures to be assessed individually. DPAG's behaviour consists of the following principal elements:

(i) frequently intercepting incoming cross-border letter mail,

(ii) surcharging incoming cross-border letter mail, and

(iii) frequently delaying, for extensive periods of time, the release of incoming cross- border letter mail which has been intercepted.

(105) In its reply to the Statement of Objections, DPAG claimed that the Commission had failed to investigate in a general manner the behaviour of DPAG and only used evidence submitted by the BPO. According to DPAG, the complaint and the Statement of Objections only contained a very limited number of cases, a number which is inadequate to prove the existence of a company policy. In order to prove this, the Commission should have contacted a representative number of BPO's customers, DPAG argued ([161]).

([158]) Article 25 UPU 1989 was adopted as domestic German law in 1992, *Gesetz zu den Verträgen vom 14. Dezember 1989 des Weltpostvereins*, 31 August 1992, *Bundesgesetzblatt* 1992, Part II, p. 749. This law was succeeded by the transposition of the 1994 UPU convention in 1998. *Ratifizierungsgesetz*, 26 August 1998, *Bundesgesetzblatt* 1999, Part II, No 4, 10 February 1999.

([159]) See section I.D., subsection The Convention of the Universal Postal Union, above.

([160]) Judgment of the Court of First Instance in Case T-83/91 *Tetra Pak International* SA v *Commission* (Tetra Pak II) [1994] ECR II-755, at paragraphs 114, 115 and 155, as confirmed by the Court of Justice in Case C-333/94 P [1996] ECR I-5951.

([161]) DPAG reply to the Statement of Objections, pp. 30-31.

(106) In fact, the Commission's assessment of the present case is to a very large extent based on documentary evidence (letters, faxes and remail control forms) originating from DPAG itself as well as statements made by DPAG during the course of the proceedings. The documentary evidence comprises a sufficiently large number of incidents in order to identify a pattern of behaviour on DPAG's part. It should be noted that some of the 'cases' referred to by DPAG above include a large number of individual mailings, albeit from a limited number of token senders. The case file contains a number of examples of reactions from senders of mailings which have been intercepted, surcharged and delayed by DPAG ([162]). Moreover, the mere fact that DPAG has systematically initiated court proceedings in Germany against entities residing in Germany which DPAG considers to be the material senders of incoming cross-border letter mailings, is a clear indication of the existence of a company policy in this regard ([163]).

Definition of sender

Arguments put forward by DPAG

(107) DPAG has argued that the notion of the material definition of sender has been confirmed by German courts and that the behaviour resulting from the application of this definition concurs with German case law. Moreover, DPAG argued that the Court of Justice had implicitly condoned the material definition of sender in the GZS & Citicorp judgment.

Assessment

(108) DPAG seeks to justify its treatment of incoming cross-border mail by referring to national case law. It is not for the Commission to judge whether or not DPAG's behaviour in the present case is compatible with national law. Even if this were the case, the behaviour in question may infringe Community law. The Commission must therefore assess whether or to what extent the material definition of sender — as interpreted by DPAG — and the actions taken by DPAG under that pretext in the present case are compatible with Community law.

(109) In the GZS & Citicorp case the Court of Justice had to consider:

'... the grant by a Member State to its postal services of the statutory right to charge internal postage on items of mail where senders resident in that State post items, or cause them to be posted, in large quantities with the postal services of another Member State in order to send them to the first Member State ([164]).'

(110) It was thus clear here that the postal items originated from Germany and that the senders were resident in that country. In the present case the situation is different, however.

(111) In GZS & Citicorp, the Court of Justice acknowledged that PPOs could — in principle — charge the domestic tariff for A-B-A remail items by invoking Article 25 UPU 1989 ([165]). The Court established that Article 25 UPU 1989 could only be invoked on the basis of specific conditions. However, the Court did not address — either explicitly or implicitly — the question of the compatibility of the material definition of sender with Community law. The case before the Court concerned a request for a preliminary ruling pursuant to Article 234 of the EC Treaty regarding a number of legal questions referred to the Court by a national court in Germany. The German court did not ask the Court of Justice to address the question of the material definition of sender and it did not need to examine the definition of sender applied by DPAG in order to respond to the questions put before the Court.

([162]) See for instance, the factual sections on Fidelity Investments and Gant above.
([163]) See DPAG reply to the Statement of Objections, pp. 12-13. In its reply, DPAG lists a large number of national court cases where the material definition of sender has been applied.
([164]) Underlining by the Commission. *GSS & Citicorp*, at paragraph 54; see footnote 23.
([165]) The UPU Convention has subsequently been revised twice, in 1994 and 1999.

(112) The assessment criteria applied by DPAG in the present case cannot be accepted under Community law. The assessment criteria listed by DPAG all concern the appearance of the contents of a mail item. In order to identify the sender of a postal item it is necessary to find the person who has produced the item and the person that is responsible for it. This information cannot be found with any certainty by examining the contents of a postal item. In order to qualify as remail — according to DPAG's definition — there does not have to be any transfer of information at all (neither physical, nor non-physical) from country A to country B. The only link to Germany is the inclusion of a reference in the contents of the mailings to an entity residing in that country. This link is entirely virtual and leads to the erroneous classification by DPAG of normal cross-border mail as virtual A-B-A remail. The behaviour resulting from this classification impedes the free flow of mail between Member States.

(113) Following an examination of the relevant facts, the Commission has come to the following conclusion as regards the identity of the senders of the disputed mailings, given as examples of DPAG's allegedly anticompetitive behaviour.

(114) *Ideas Direct*: The mailings in question were all produced and posted by Ideas Direct in the UK and it was this company that entered into a contractual relationship with the sending postal operator. Neither the letters, nor the information contained therein came from Germany in order to be posted back to Germany via the UK. Ideas Direct of the UK must therefore be considered the sender of these mailings. The sender and the German addressees are not resident in the same Member State. There are no grounds for DP's allegation that the Ideas Direct mailings constituted cases of A-B-A remail. The Ideas Direct mailings must thus be considered ordinary cross-border mail.

(115) *Fidelity Investments*: The mailings in question did not come from Germany in order to be posted back to German addressees via the UK. The mailings were all produced and posted by Fidelity Investments in the UK. The German subsidiary of Fidelity Investments was not involved at any stage in the production or posting of these mailings. It was Fidelity Investments in the UK which concluded a contractual relationship with the sending postal operator. Consequently, Fidelity Investments in the UK must be regarded as the sender of the mailings in question. The sender and the addressees are resident in different Member States. There are no grounds for DP's allegation that the mailings from Fidelity Investments constituted cases of A-B-A remail. The mailings in question must be regarded as ordinary cross-border mail.

(116) *Gant*: The mailings concerned did not come from Germany in order to be posted back to German addressees via the UK. The mailings were all produced and made ready for posting by Pyramid Sportswear in Sweden, transported to the UK and posted to Germany (as well as to a number of other European countries) through the BPO. Pyramid Sportswear of Sweden must be regarded as the sender of the disputed mailings. The sender and the addressees are resident in different Member States. These mailings should thus be considered A-B-C remail. It cannot be argued that the postal monopoly of country C is infringed by this type of mail. Since the Swedish and British PPOs are both parties to REIMS II, terminal dues received by DPAG would be the same if the letters were sent directly from the Swedish sender or via the UK. Consequently, when A-B-C remail is transferred from country B to country C the legal situation is no different from the rules which apply to ordinary cross-border mail.

(117) *Multiple Zones*: The mailing in question did not come from Germany to be posted back to addressees in Germany via the UK. The mailing was produced by the European head office of the Extensis Corporation — Plantijn Groep BV of the Netherlands — transported to the UK where it was posted and then forwarded to Germany by the BPO. Plantijn Groep BV must therefore be regarded as the sender of the mailing, which constituted a case of A-B-C remail.

Conclusion

(118) The material definition of sender — as interpreted by DPAG in the present case — fails to take into account the contractual and economic reality behind mailings and results in the erroneous classification of normal cross-border mail as virtual A-B-A remail. The acceptance of DPAG's interpretation of the material definition of sender would allow DPAG to determine itself the identity of the sender on the basis of irrelevant criteria. It is not for DPAG — or any other postal operator — to determine how postal customers should organise their activities, how they should present themselves to the addressees or how they should prepare their mailings.

(119) The Commission finds the material definition of sender — as applied by DPAG in the present case — to be incompatible with Community law.

Abuse

(120) DPAG's behaviour in the present case — i.e. the interception, surcharging and delaying of normal incoming cross-border letter mail — can be characterised as an infringement of Article 82 of the Treaty on the basis of four separate legal arguments. These arguments are set out below.

Discrimination

(121) DPAG treats differently incoming cross-border letter mail which it considers to be 'genuine' international mail (i.e. letter mail without any references to entities residing in Germany) on the one hand and incoming cross-border letter mail which it considers to be virtual A-B-A remail on the basis of the inclusion of a reference to an entity residing in Germany, on the other. Such an entity may be a subsidiary or agent located in Germany. In the former case, DPAG charges the BPO the terminal dues which have been agreed between the respective PPOs. The BPO charges UK senders the normal cross-border tariff, which is calculated on the applicable terminal dues. In the latter case DPAG charges the BPO or the senders the full domestic tariff applicable in Germany, which is higher ([166]). In both cases DPAG performs exactly the same service, i.e. collecting bags of incoming cross-border letter mail at a reception point, transporting the mail to a sorting centre where it is sorted, then forwarded and delivered to addressees residing in Germany.

Arguments put forward by DPAG

(122) In its reply to the Statement of Objections, DPAG refuted that it had engaged in discriminatory behaviour. Based on the abovementioned set of assessment criteria, DPAG applies Article 25 UPU uniformly and objectively. DPAG maintained that its behaviour is covered by Article 25 UPU. In DPAG's view, Article 25 UPU implicitly allows PPOs to intercept and delay mailings. Since all mailings are subject to the same assessment, DPAG does not discriminate between trading parties. Moreover, mailings which — in DPAG's view — do fall under Article 25 UPU and mailings which do not, are not equivalent transactions. Mailings falling under Article 25 UPU must be identified and processed further, something which entitles DPAG to charge a higher price, DPAG claimed ([167]).

(123) Moreover, DPAG claimed that 'the persons that deliver the mailings for posting with the BPO' are not trading partners of DPAG. The only trading partner of DPAG in this case is the BPO and DPAG does not discriminate against the BPO. Finally, DPAG claimed that its behaviour does not lead to any direct negative effects for consumers, regardless of whether these consumers are considered to be the addressees or 'the persons delivering the mail for posting with the BPO.' ([168])

Assessment

(124) As an undertaking awarded with a statutory monopoly for the forwarding and delivery of incoming cross-border letter mail, the Commission considers that DPAG has a prima facie obligation to ensure that this service is provided in a non-discriminatory manner ([169]).

(125) The Court of Justice has recently held — in the GZS & Citicorp judgment — that behaviour similar to the situation in the case at hand constitutes an infringement of Article 82(c) of the EC Treaty, in particular. In its judgment the Court made the following statement:

'In order to prevent a body such as Deutsche Post from exercising its right, provided for by Article 25(3) of the UP, to return items of mail to origin, the senders of those items have no choice but to pay the full amount of the internal postage.

([166]) 70 % of the domestic tariff in 2001, 65 % in 2000, 55 % between April and December 1999. Before the entry into force of the REIMS II agreement on 1 April 1999 terminal dues were set according to a previous agreement concluded between PPOs — the CENT agreement of 1987. DPAG claims a surcharge corresponding to the full domestic tariff minus terminal dues. The total charge thus equals the domestic tariff.
([167]) DPAG reply to the Statement of Objections, pp. 33-35.
([168]) DPAG reply to the Statement of Objections, pp. 35-36.
([169]) See Commission Decision 2000/12/EC 1998 *Football World Cup*, Case IV/36.888 (OJ L 5, 8.1.2000, p. 55), at paragraph 87.

As the Court has stated in relation to a refusal to sell on the part of an undertaking holding a dominant position within the meaning of Article 86 of the Treaty, such action would be inconsistent with the objective laid down by Article 3(g) of the EC Treaty [...], as explained in Article 86, in particular in subparagraphs (b) and (c) of its second paragraph... ([170]).'

(126) The situation in the case at hand is comparable to the case put before the Court of Justice, where the Court concluded that discrimination between different categories of domestic mail — i.e. normal domestic mail and circumvented domestic mail (A-B-A remail) — may constitute an abuse under Article 82 of the Treaty. In the present case, however, DPAG discriminates between different categories of cross-border letter mail, depending on whether or not the foreign senders have indicated a reference to an entity residing in Germany.

(127) By charging different prices for equivalent transactions — i.e. the forwarding and delivery of incoming cross-border letter mail — DPAG is behaving in a discriminatory manner. The different tariffs charged by DPAG cannot be justified on the basis of objective economic factors. DPAG claims that it incurs extra costs for the 'identification and processing' of mail which it classifies as virtual A-B-A remail. DPAG has not specified or quantified in any way these additional costs. Since this classification is based on an erroneous assumption, the extra costs incurred — if they exist — should be charged to all senders of incoming cross-border mail in a non-discriminatory manner.

(128) Discriminatory behaviour is not limited to the charging of different tariffs. Customers indicating a reference in their mail to an entity residing in Germany also run a higher risk of having their mail delayed by DPAG for extensive periods of time.

(129) As quoted above, the Court of Justice — in the GZS & Citicorp judgment — concluded that discriminatory treatment of different mail categories may constitute an abuse under Article 82 of the Treaty. The Court reached this conclusion without addressing the question whether the sender was a trading partner of DPAG or not.

(130) Due to the existence of the postal monopoly in Germany, the term trading partner — which normally refers to a voluntary commercial relationship between two undertakings — must be given a slightly different interpretation. The postal monopoly imposes upon foreign senders a commercial if not directly contractual relationship with DPAG. The sender in the UK that contracts with the BPO to have his mailings sent to Germany knows beforehand that the mail will be delivered by DPAG to German addressees. The actions of DPAG in the German market for incoming cross-border letter mail directly affect the commercial activities of the UK senders. At the very least, there is an indirect relationship between the UK senders contracting with the BPO and DPAG. Under these circumstances, the Commission finds that the senders must be regarded as trading partners of DPAG within the meaning of Article 82(c).

(131) Among those UK senders being treated in a discriminatory manner by DPAG are companies that compete directly with each other. One example of such a competitive relationship would be two mail order companies operating from the UK selling the same type of goods to German consumers. These companies would be treated differently depending on whether they indicate in the contents of their mailings a reference to an entity residing in Germany or not. The behaviour of DPAG would therefore place the trading party whose mail is intercepted, delayed and surcharged at a competitive disadvantage.

(132) DPAG has conceded that the BPO is one of its trading partners but has denied having treated BPO unequally. However, DPAG is in direct competition with the BPO, not in the relevant market but in the UK market for outgoing cross-border letter mail ([171]). The additional costs incurred by the BPO as a consequence of the surcharges claimed by DPAG in combination with the frequent disruptions of the mail traffic routed by the BPO from the UK to Germany puts the BPO at a competitive disadvantage in relation to DPAG. Since DPAG is active on the UK market for outgoing cross-border letter mail, UK customers who have experienced problems when contracting with the BPO will be induced to use the services of DPAG in the UK directly for the entire distribution chain in order to ensure a speedy and uninterrupted conveyance of their mail bound for Germany.

([170]) Underlining by the Commission. GSS & Citicorp, paragraphs 59 and 60; see footnote 23.
([171]) DPAG's tender for the American Express contract is an example of this competitive relationship. See section on International Mailing Services provided by DPAG in section I.D. above.

(133) In any event, the Court of Justice has stated that the list of abuses mentioned in Article 82 itself is not exhaustive and thus only serves as examples of possible ways for a dominant firm to abuse its market power ([172]). Article 82 may be applied even in the absence of a direct effect on competition between undertakings on any given market. This provision may be also be applied in situations where a dominant undertakings behaviour causes damage directly to consumers ([173]). The senders of the disputed mailings are consumers of postal services. Due to the behaviour of DPAG, these consumers are affected negatively by having to pay prices for these services which are higher than those charged to other senders and by having their mailings delayed significantly. Likewise, the German addressees are to be regarded as consumers who are affected in a negative manner by the behaviour of DPAG. Having their incoming mail delayed may prevent the addressees from benefiting from commercial offers made by the senders ([174]).

Conclusion

(134) The Commission finds that DPAG's policy of intercepting, surcharging and delaying certain incoming cross-border letter mail is an application of dissimilar conditions to equivalent transactions. DPAG abuses its dominant position in the German market for incoming cross-border letter mail in a manner which puts other trading parties at a competitive disadvantage. In this context, the trading parties are the senders of the disputed mailings and the BPO. Even in the absence of substantial negative effects on these trading parties, the behaviour of DPAG has direct negative effects on consumers. These consumers are the senders of the disputed mailings and/or the German addressees. DPAG's behaviour thus constitutes an abuse of Article 82 of the EC Treaty and in particular subparagraph (c) of its second paragraph.

Refusal to supply

(135) For incoming cross-border mail which it has classified as 'virtual' A-B-A remail, DPAG makes the supply of its forwarding and delivery service subject to the condition that the sending postal operator, or the entity in Germany which DPAG considers to be the domestic sender, agrees to pay a surcharge corresponding to the full domestic tariff minus the applicable terminal dues. In the absence of such an agreement, DPAG has repeatedly held back mailings for extensive periods of time.

(136) DPAG's treatment of incoming cross-border letter mail does not constitute an outright and final refusal to supply its forwarding and delivery service. However, DPAG refuses to deliver the mail on conditions that are acceptable to the sender and/or the sending postal operator. Due to the lack of alternative delivery solutions, DPAG puts the sender and the sending postal operator in a situation where — in order to get the mail delivered without further delays — they have no choice but to pay the surcharge claimed by DPAG.

Arguments put forward by DPAG

(137) In its reply to the Commission's Statement of Objections, DPAG referred to the judgment of the Court of Justice in the GZS & Citicorp case and claimed that the mailings in the present case are similar to the mailings examined by the Court. The imposition of the full domestic tariff minus terminal dues under Article 25 UPU should therefore not be regarded as a contravention of Article 82 of the Treaty.

([172]) See Tetra Pak II: Joined Cases C-395/96 P and C-396/96 P *Compagnie Maritime Beige Transport and Others* v *Commission* [2000] ECR I-1365, at paragraph 112.
([173]) Decision 2000/12/EC, loc. cit.
([174]) See for instance the section on Gant (the delayed 1996 mailing) in section I.E. above.

(138) DPAG went on to claim that it had not refused to supply its delivery service since all mailings were ultimately delivered. Referring again to the case law of the Court of Justice, DPAG maintained that a refusal to supply cannot occur if delivery takes place ([175]). In DPAG's view, the two types of abuse 'refusal to supply' and imposition of unfair trading conditions exclude each other. If supply does not take place, there cannot be any imposition of unfair trading conditions. Similarly, if unfair trading conditions are imposed and supply does take place, there cannot be a refusal to supply. Consequently, the effects of a refusal to supply cannot be strengthened if there is a long delay before the supply (in this case the delivery of the mailing) takes place. In any event, 'no delays at all' took place in the cases of Ideas Direct, Fidelity Investments and Gant, DPAG claimed ([176]).

(139) In its reply to the Commission's Statement of Objections, DPAG maintained that it does not have any interest whatsoever in deliberately delaying incoming cross-border mailings and stated that the Commission had failed to demonstrate any such interest on DPAG's part. As a member of the REIMS II agreement, DPAG is subject to strict targets for delivery and the performance of the REIMS II parties is rigorously controlled ([177]).

Assessment

(140) As stated above, the disputed mailings in the present case must be regarded as ordinary cross-border letter mail. In GZS & Citicorp, the Court of Justice specifically addressed the issue of refusal to supply when mailings are intercepted, surcharged and delayed by a receiving PPO ([178]). The Court considered that:

'In order to prevent a body such as Deutsche Post from exercising its right, provided for by Article 25(3) UP, to return items of mail to origin, the senders of those items have no choice but to pay the full amount of the internal postage.

As the Court has stated in relation to refusal to sell on the part of an undertaking holding a dominant position within the meaning of Article 86 of the Treaty, such action would be inconsistent with the objective laid down by Article 3(g) of the EC Treaty […], as explained in Article 86, in particular subparagraphs (b) and (c) of its second paragraph... ([179]).'

(141) The concept of refusal to supply covers not only outright refusal but also situations where dominant firms make supply subject to objectively unreasonable conditions. Such conditions may be a refusal to supply otherwise than on terms which the supplier, for objective reasons, knows to be unacceptable — a constructive refusal — or a refusal to supply other than on the basis of unfair conditions ([180]).

(142) DPAG's treatment of incoming cross-border mail does not constitute an outright refusal to supply its forwarding and delivery service. For incoming cross-border letter mail which it has classified as virtual A-B-A remail, DPAG makes the supply of its forwarding and delivery service subject to the condition that the sending postal operator, the sender or the entity residing in Germany which DPAG considers to be the sender, agrees to pay the full domestic tariff.

(143) Virtually all incoming cross-border letter mail is forwarded and delivered by DPAG. Senders residing in the UK have — in practice — no alternative but to use the incumbent postal operator for the delivery of their mail. In accordance with the views expressed by the Court of Justice, the Commission considers that the customers of DPAG are put in a position where, in order to 'save' their mailings, they have no choice but to pay the full domestic tariff. The refusal on DPAG's part to supply its forwarding and delivery service on terms that are acceptable to the sender and/or the sending postal operator is tantamount to a constructive refusal to sell. As a consequence of these refusals by DPAG, mailings have been delayed for extensive periods of time. The anticompetitive effects of a constructive refusal to sell are reinforced substantially by such lengthy delays.

([175]) DPAG referred to the judgments in Case 311/84 *CBE* v *CLOTTED and IAB* [1985] ECR 3261, at paragraph 26, and Case 27/76 *United Brands* v *Commission* [1978] ECR 207, at paragraphs 163, 168 and 203.
([176]) DPAG reply to the Statement of Objections, pp. 37-38.
([177]) DPAG reply to the Statement of Objections, pp. 15-16.
([178]) The reasoning of the Court concerned 'non-physical' A-B-A remail and not ordinary A-B cross-border mail. The analysis regarding refusal to supply may still be applied in the case at hand, however.
([179]) Underlining by the Commission. DP/GSS & Citicorp, paragraphs 59-60.
([180]) See Commission Decision 1999/243/EC Trans-Atlantic Conference Agreement (TAC), Case COMP/35.134 (OJ L 95, 9.4.1999, p. 1), at paragraph 553.

(144) The following cases — based on documentary evidence and statements from DPAG itself — prove that DPAG has delayed the delivery of normal cross-border mailings in a number of instances ([181]).

(145) *Ideas Direct*: From documentary evidence in the case file, it is clear that DPAG kept detailed records about mailings from Ideas Direct handled in 1997 and 1998 ([182]). On the basis of the evidence available to the Commission, the following conclusions may be drawn:

(i) The November 1996 mailing was intercepted by DPAG at the latest on 4 November 1996 and released on 12 November 1996 at the earliest, i.e. a total delay of at least eight days ([183]).

(ii) On 27 November 1998 DPAG claimed surcharges from the BPO for 19 mailings (258 067 items in total) from Ideas Direct. These mailings had been intercepted by DPAG from January to September 1998. From the documentary evidence it is evident that DPAG examined the contents of sample items from all these mailings. DPAG has — at a very late stage in the proceedings — confirmed that the mailings in question were held back by DPAG while the sample addressees were contacted and the contents of the mailing were returned to DPAG by the addressee ([184]). As stated above, this process takes at least 5 to 6 days on average. Additional time for the processing and eventual release of the mail is needed as well. The Commission therefore concludes that the 19 mailings in question were held back for a period of at least seven days.

(iii) On 3 February 1999 DPAG addressed further claims for surcharges to the BPO. According to DPAG, a total of 156 435 mail items from Ideas Direct were intercepted by DPAG from October to December 1998 ([185]). The documentary evidence shows that DPAG examined the contents of all these mailings ([186]). DPAG has confirmed that these mailings were held back by it while the sample addressees were contacted and the contents of the mailing were returned to DPAG by the addressee ([187]). Since this process takes at least 5 to 6 days on average, the Commission concludes that the mailings in question was held back for a period of at least seven days.

(146) *Fidelity Investments*: From information submitted by DPAG to the BPO in 1999, it is evident that DPAG kept detailed records about all Fidelity Investments mailings it had handled in 1997 and 1998 ([188]). Based on documentary evidence and statements made by DPAG during the course of the proceedings, the following conclusions may be drawn:

(i) The Commission has not been able to establish the number of mailings and the exact dates on which the Fidelity Investments mailings sent in March and April 1997 were intercepted and released by DPAG. The claim of DPAG at a late stage in the proceedings that it can no longer identify these mailings lacks credibility considering the detailed records it has kept for other mailings from Fidelity Investments. DPAG has acknowledged the fact, however, that a total of 24 mailings from Fidelity Investments were received in April 1997, all of which DPAG considered to fall under Article 25 UPU ([189]). In one of these cases, documentary evidence on the file show that DPAG used the remail case control form to notify the BPO ([190]). The use of this form necessarily involves an examination of the contents before the entity in Germany which DPAG considers to be the sender can be indicated on the form. As stated above, this process takes at least 5 to 6 days on average. Additional time for the processing and eventual release of the mail is needed as well. The Commission therefore concludes that the mailing in question was held back for a period of at least seven days.

([181]) NB: During the course of the proceedings DPAG gave in a number of cases conflicting information in its various submissions to the Commission. As regards the factual elements of this case (e.g. release and interception dates) the Commission has established the minimum delays that can be proven on the basis of the documentary evidence and DPAG's statements in the present case.
([182]) See section on Ideas Direct in section IE above.
([183]) See section on Ideas Direct in section IE above.
([184]) DPAG letter to the Commission of 18 May 2001, p. 1.
([185]) The number of mailings is not known to the Commission. These mailings were listed in an annex to DPAG's letter. The annex has not been submitted to the Commission.
([186]) See section on Ideas Direct — Retroactive Claims in the factual part above.
([187]) DPAG letter to the Commission of 18 May 2001, p. 1.
([188]) See DPAG list of intercepted mailings from Fidelity Investments (documents 506 and 507 in the Commission file).
([189]) DPAG reply to the Statement of Objections, p. 21.
([190]) Fax from DPAG to the BPO of 7 April 1997 (document 60 in the Commission file).

(ii) On 11 December 1998 a letter was sent to the BPO by DPAG, in which it claimed surcharges for 118 mailings (containing 275 027 mail items in total) from Fidelity Investments received in the second half of 1997. The BPO was notified by DPAG eleven months after the last of these mailings was received. It is evident from documents in the case file that the contents of all these mailings were examined by DPAG ([191]). DPAG has confirmed — at a very late stage in the proceedings — that these mailings were held back by DPAG while the sample addressees were contacted and the contents of the mailing were returned to DPAG by the addressee ([192]). As stated above, the process of contacting the addressees takes at least 5 to 6 days on average. Additional time for the processing and eventual release of the mail is needed as well. The Commission therefore concludes that the mailings in question were held back for a period of at least seven days.

(iii) On 3 February 1999 DPAG addressed further surcharge claims to the BPO, this time for 224 301 mail items received from October to December 1998 ([193]). Documents in the case file show that DPAG examined the contents of sample items from all these mailings ([194]). DPAG has confirmed that these mailings were held back by it while the sample addressees were contacted and the contents of the mailing were returned to DPAG by the addressee ([195]). Since this process takes at least 5 to 6 days on average, the Commission concludes that the mailings in question were held back for a period of at least seven days.

(iv) On 1 March 1999 DPAG sent another letter to the BPO, which contained surcharge claims for 1 035 837 mail items from Fidelity Investments received by DPAG from January to September 1998. The BPO was notified six months after the last of these mailings were received by DPAG. Documentary evidence in the Commission's file shows that DPAG examined the contents of sample items from all these mailings ([196]). DPAG has confirmed that these mailings were held back by DPAG while the sample addressees were contacted and the contents of the mailing were returned to DPAG by the addressee ([197]). Since this process takes at least 5 to 6 days on average, the Commission concludes that the mailings in question was held back for a period of at least seven days.

(147) *Gant*: On the basis of documentary evidence in the case files and statements from DPAG itself during the course of the proceedings, the following conclusions may be drawn concerning the actual course of events:

(i) The interception by DPAG of the 1996 autumn catalogue mailing from Gant was notified to the BPO on 16 September 1996. DPAG has failed to disclose to the Commission the actual date of interception but claims that the mailing was released on 4 October 1996. It may be concluded that the mailing in question was delayed by DPAG for at least 18 days.

(ii) DPAG itself has indicated on the remail control form that two mailings from Gant (2 571 items in total) containing the 1998 autumn catalogue were intercepted on 27 and 28 August 1998. The BPO was only notified on 17 September 1998, i.e. after 20 days had expired ([198]). DPAG has disclosed — at a very late stage in the proceedings — that the mailings in question were forwarded on 8 September 1998 ([199]). The Commission therefore concludes that the two mailings were held back for 11 and 12 days respectively.

(148) *Multiple Zones*: On the basis of the documents in the Commission file, the following conclusion may be drawn concerning the actual course of events:

On 11 February 1999 DPAG notified the BPO of the interception of a mailing on 4 February, i.e. seven days earlier. Despite the agreement of the BPO on the same day to pay the claimed amount, DPAG did not release the mailing until 18 February. It may be concluded that the mailing was delayed for 14 days.

([191]) Fax from DPAG to the BPO of 11 December 1998 (documents 493-494 in the Commission file).
([192]) DPAG letter to the Commission of 18 May 2001, p. 2.
([193]) The number of mailings is not known to the Commission. These mailings were listed in an annex to DPAG's letter. The annex has not been submitted to the Commission.
([194]) Fax from DPAG to the BPO of 3 February 1999 (documents 929-930 in the Commission file).
([195]) DPAG letter to the Commission of 18 May 2001, p. 2.
([196]) Fax from DPAG to the BPO of 1 March 1999 (documents 931-932 in the Commission file).
([197]) DPAG letter to the Commission of 18 May 2001, p. 2.
([198]) See section on Gant — The 1998 Autumn Catalogue in the factual section above.
([199]) DPAG letter to the Commission of 18 May 2001, p. 3.

(149) As regards bulk mailings it is crucial that the senders can count on a reasonable delivery time. The senders depend on the fact that postal operators can provide a reliable service in order to 'time' the delivery of the postal items with other commercial activities. Consequently, commercial bulk mailings are 'perishable' in the sense that an extended delay may strongly diminish or even negate the commercial impact of a mailing ([200]). The 'perishable' nature of these mailings emphasises further the obligation for the monopoly operator not to delay their delivery.

(150) The originating postal operator to whom the sender has entrusted the first leg of the cross-border service (i.e. the collection, sorting and forwarding of outgoing cross-border letter mail) may suffer financially and commercially if the receiving operator delays the delivery of incoming mail for extended periods of time. The sending postal operator may have to reimburse clients and the reliability of its cross-border service may be put into question.

(151) Since DPAG and the BPO are in direct competition with each other in the UK market for outgoing cross-border mail, DPAG has a clear interest in impeding the timely delivery of mailings sent by the BPO to addressees in Germany. If the services of the BPO are perceived as unreliable and expensive due to frequent disruptions and the imposition of surcharges, UK senders are likely to turn to DPAG's representatives in the UK instead since they are able to offer a less costly and more reliable service. Moreover, transnational firms with centralised, pan-European mailing activities will be induced to relocate their European distribution centres to Germany, or alternatively to send the mail bound for German addressees domestically instead ([201]).

(152) DPAG's claim that the quality targets and the control regime under the REIMS II agreement would make it impossible for DPAG to deliberately delay the delivery of incoming cross-border mail is not credible. First, the REIMS II delivery targets only apply to priority mail and a large part of the cross-border mail flows consist of bulk mailings. Second, the quality of each REIMS II members delivery services are controlled each year by the dispatch of a number of test items containing a transponder which enables the tracking of these items. In 1999 a total number of 1 224 such test items were sent from the UK to Germany and in 2000 the number was 1 290, DPAG has stated ([202]). By comparing the limited number of test items in relation to the total volume of cross-border mail sent from the UK to Germany each year, it can be concluded that the delays described in the case at hand would have only marginal effects on the quality-of-service targets stipulated in the REIMS II agreement. Bearing the above in mind, the Commission concludes that the REIMS II regime would have a very limited restraining impact on the behaviour of DPAG in this respect.

Conclusion

(153) As regards the mailings from the four companies where it has been demonstrated that the senders of the mailings were resident outside Germany (i.e. Ideas Direct, Fidelity Investments, Gant and Multiple Zones), there were no grounds for DPAG to delay the release of these mailings beyond what is strictly necessary in order to identify the sender. DPAG's counter-argument that these delays were in part caused by the BPO's inability to respond to DPAG's claims is irrelevant since these claims were unjustified in the first place. The terms on which DPAG would supply its forwarding and delivery service for these mailings are thus tantamount to a constructive refusal to supply on DPAG's part. The negative impact of these refusals was aggravated by the ensuing delays. In some cases, these delays were long enough to weaken substantially the commercial impact of the mailings.

([200]) See sections on Gant and Multiple Zones in section IE above.
([201]) See section on Fidelity Investments in section IE above.
([202]) DPAG letter to the Commission of 11 December 2000, p. 7.

(154) The Commission concludes that DPAG abused its dominant position in the German market for the forwarding and delivery of incoming cross-border letter mail by refusing to deliver these mailings unless the sender or the sending postal operator agrees to pay the full domestic tariff. By doing so, DPAG de facto refuses to supply its forwarding and delivery service. The negative effects of this abusive behaviour were reinforced by DPAG's delaying the delivery for a period of time extensive enough to weaken substantially the commercial impact of the mailings. The Commission finds that this behaviour constitutes a contravention of Article 82 of the EC Treaty

Imposition of unfair selling prices

(155) The Court of Justice has declared that a price which is found to be excessive in comparison to the economic value may infringe Article 82 if it has the effect of curbing parallel trade or of unfairly exploiting customers ([203]).

(156) The domestic tariff in Germany for priority mail in the first weight step is currently EUR 0,56 ([204]). The present tariff was introduced on 1 September 1997. The previous tariff, amounting to EUR 0,51, had remained unchanged for eight years ([205]). As one of the parties to the REIMS II agreement, DPAG argued that the average cost for delivering to the addressee an incoming cross-border letter-mail item in the corresponding category may be estimated at 80 % of the domestic tariff. Based on the current tariff and the cost estimation submitted by DPAG as one of the REIMS II parties, the average cost may be estimated at EUR 0,45 ([206]). For incoming cross-border mail items which DPAG considers to be virtual A-B-A remail, DPAG charges the full domestic tariff (EUR 0,56) — a price which is 25 % above the estimated average cost.

Arguments put forward by DP

(157) By referring, in its reply to the Statement of Objections, to the GZS & Citicorp judgment, DPAG maintained that it is not contrary to Article 82 of the Treaty to charge the full domestic tariff minus terminal dues for the forwarding and delivery of A-B-A remail. DPAG reiterated its claim that the mailings in the present case are parallel to those examined by the Court. Since all mailings concerned have German senders in DPAG's view, DPAG cannot be infringing Article 82 ([207]).

(158) DPAG maintained that its average cost for delivering an item of incoming cross-border mail is at least 80 % of the domestic tariff. The 80 % estimate advocated by DPAG and the other REIMS II parties in their notification to the Commission is an average of the estimated costs of all the parties to REIMS II. This average cannot be used as a basis for estimating DPAG's costs, DPAG argued.

Assessment

(159) According to the case law of the Court of Justice, the fairness of a certain price may be tested by comparing this price and the economic value of the good or service provided. A price which is set at a level which bears no reasonable relation to the economic value of the service provided must be regarded as excessive in itself, since it has the effect of unfairly exploiting customers ([208]). In a market which is open to competition the normal test to be applied would be to compare the price of the dominant operator with the prices charged by competitors. Due to the existence of DPAG's wide-ranging monopoly, such a price comparison is not possible in the present case. Furthermore, DPAG has only recently introduced a transparent, internal cost accounting system and no reliable data exist for the period of time relevant to this case. Consequently, the Commission is not in a position to make a detailed cost analysis of DPAG's average costs for the services in question during the relevant time period ([209]). An alternative benchmark must therefore be used.

([203]) Case 26/75 *General Motors* v *Commission* [1975] ECR 1367.
([204]) DEM 1,10.
([205]) DEM 1,00. Source: DPAG press release of 1 August 1997 as published on DPAG's website.
([206]) DEM 0,88.
([207]) DPAG reply to the Statement of Objections, pp. 38-39.
([208]) General Motors, loc. cit.; *United Brands* v *Commission*, loc. cit.
([209]) REIMS II. The parties undertook to introduce, by the end of 1999, a transparent cost accounting system.

(160) In their notification to the Commission of the REIMS II agreement, DPAG and the other signatories argued that the average cost of forwarding and delivering incoming cross-border mail (including a reasonable profit margin) may be approximated to 80 % of the domestic tariff ([210]). In its decision on the REIMS II agreement the Commission accepted — in the absence of reliable cost data — the principle of linking terminal dues to domestic tariffs and concluded that — under the circumstances prevalent at that time — the domestic tariff represented the most appropriate yardstick for assessing the cost of delivery ([211]).

(161) DPAG has neither substantiated the claim that its estimated average cost for delivering an item of incoming cross-border mail actually exceeds the 80 % estimate that DPAG (as a party to the REIMS II agreement) previously submitted to the Commission, nor has it indicated the percentage which it considers to be accurate for Germany.

(162) For the purposes of the present Decision and in the absence of reliable cost accounting data, the Commission finds that the estimated average cost of delivery for incoming cross-border mail expressed as a percentage of the domestic tariff and as submitted by DPAG and the other REIMS II parties in their notification to the Commission may serve as a benchmark to estimate DPAG's costs in this respect. As mentioned above, DPAG charges the full domestic tariff (EUR 0,56) for items it has classified as 'virtual' A-B-A remail, i.e. a price which is 25 % above the estimated average cost and the estimated economic value for that service. It should be stressed in this connection that postal services and in particular the bulk mailings examined here involve the processing and mailing of large volumes in respect of which the profit margin per item is low. In 1997 the average profit margin per item came to 3 % ([212]).

(163) The REIMS II parties did not submit any conclusive evidence to the effect that 80 % of the domestic tariff is a reliable proxy for the average cost for delivering incoming cross-border mail. Other agreements on terminal dues indicate that the average cost is actually lower. The Nordic terminal dues agreement and the bilateral agreement on terminal dues concluded by the Dutch and Swedish PPOs both set terminal dues at 70 % of domestic tariffs ([213]). Therefore, the Commission took a cautious approach and declared that the parties had not adduced convincing evidence which would allow the conclusion to be drawn that terminal dues should be set at 80 % of domestic rates. The Commission prescribed that:

'The maximum level of terminal dues allowed pursuant to this decision will therefore not exceed 70 % of domestic tariffs, a level which does not appear to be unreasonable ([214]).'

(164) If the 70 % level is used as a benchmark for the economic value of the service in question, the price charged by DPAG (EUR 0,56) would be 43 % above the estimated economic value of the service (EUR 0,39) ([215]).

(165) Sweden Post — like DPAG — is a high-tariff operator active in a high-cost Member State. The geographical conditions in Sweden (i.e. a large but sparsely populated country) as compared to those in Germany indicate that the cost of delivery should be higher in Sweden than in Germany. Despite this, terminal dues amounting to 70 % of the domestic tariff in Sweden suffice to cover Sweden Post's delivery costs. Bearing this in mind, DPAG's unsubstantiated claim that its costs of delivery for incoming cross-border letter mail should exceed 80 % of the domestic tariff is not credible.

Conclusion

(166) In the absence of any substantive evidence that the average economic value of delivering an incoming cross-border mail item to its German addressee exceeds EUR 0,45 (80 % of the domestic tariff), the Commission concludes that the price charged by DPAG for incoming cross-border mail which it considers to be virtual A-B-A remail (EUR 0,56) exceeds the average economic value of that service by at least 25 %.

([210]) REIMS II.
([211]) REIMS II, paragraph 86.
([212]) 'Modelling and Quantifying Scenarios for Liberalisation', study carried out by FMD Ltd for the Commission, February 1999, p. 44.
([213]) The Nordic agreement was notified to the Commission on 30 March 2000 (Case COMP/37.848. The bilateral agreement on terminal dues was notified by Sweden Post and PTT Post on 8 July 1998 (Case COMP/37.142). The case was closed subsequent to the Commission's sending to the parties, on 18 September 1998, an administrative letter indicating the non-applicability of Article 81 of the EC Treaty.
([214]) REIMS II, paragraph 88.
([215]) DEM 0,77.

(167) The Commission — bearing in mind DPAG's status as monopolist and the abovementioned peculiarities of postal services — concludes that the tariff charged by DPAG has no sufficient or reasonable relationship to real costs or to the real value of the service provided. Consequently, DPAG's pricing exploits customers excessively and should therefore be regarded as an unfair selling price within the meaning of Article 82. In conclusion, the Commission finds that DPAG has abused its dominant position in the German market for the forwarding and delivery of incoming cross-border letter mail by imposing on customers an unfair selling price corresponding to the full domestic tariff. The imposition of this tariff cannot be objectively justified. DPAG therefore contravenes Article 82 of the Treaty and in particular subparagraph (a) of its second paragraph.

Limitation of production, markets and technical development

(168) The abuse of an undertakings dominant position may consist in limiting production, markets or technical development to the prejudice of consumers. It follows that a dominant firm which limits the provision of a certain service, to the prejudice of those seeking to avail themselves of it, may infringe Article 82 ([216]). This provision applies not only to situations where the dominant undertaking — in a monopolistic manner — reduces its own output in order to increase revenue from the consequent increase in price, but also to situations where the actions taken by the dominant firm limit the activities of other firms ([217]).

Arguments put forward by DP

(169) In its reply to the Statement of Objections, DPAG denied having limited the provision of its services at all and stated that the Commission had failed to submit any evidence to this effect. DPAG only demands the reimbursement to which it is entitled under Article 25 UPU 1989 and Article 25 UPU 1994. If there are any limiting effects on the UK market for outgoing cross-border mail as a consequence of DPAG's behaviour, DPAG's actions are justified by the abovementioned article and the procedures which were agreed between DPAG and the BPO ([218]).

Assessment

(170) The Court of Justice has previously concluded that certain arrangements are likely to limit markets to the prejudice of consumers within the meaning of Article 82 if they restrict competitors opportunities to compete with the dominant firm ([219]). In its decision in the British Telecommunications case — which concerned provisions restricting the retransmission of telex messages — the Commission found that these provisions constituted an abuse of Article 82 since they:

'... limited message forwarding agencies activities to the prejudice of customers located in other EEC Member States... ([220]).'

(171) The Commission went on to say that such a restriction:

'...both limits the development of a new market and the use of a new technology to the prejudice of relay operators and their customers who are thus prevented from making more efficient use of existing telecommunications systems ([221]).'

(172) The Commission has previously considered that a dominant firm which placed indirect pressure on a competitor to increase its prices could be construed as a desire of the dominant company to limit production, markets or technological development to the prejudice of consumers ([222]).

(173) As referred to above, the Court of Justice made the following conclusion in its judgment in the GZS & Citicorp case:

'As the Court has stated in relation to a refusal to sell on the part of an undertaking holding a dominant position within the meaning of Article 86 of the Treaty, such action would be inconsistent with the objective laid down by Article 3(g) of the EC Treaty [...], as explained in Article 86, in particular in subparagraphs (b) and (c) of its second paragraph... ([223]).'

([216]) *Höfner und Elser*, loc. cit., paragraph 30.
([217]) See Joined Cases 40-48, 50, 54-56, 111, 113 and 114-173 *Coöperative Vereniging (Suiker Uni) UA and Others* v *Commission* [1975] ECR 1663, at paragraphs 398, 526; Joined Cases C-241/91 P and C-242/91 P *Radio Telefis Eirann (RTE) and Independent Television Publications Ltd (ITP)* v *Commission* [1995] ECR I-743.
([218]) DPAG reply to the Statement of Objections, p. 39.
([219]) Suiker Uni, loc. cit., paragraph 526.
([220]) Commission Decision 82/861/EEC *British Telecommunications*, Case COMP/29.877 (OJ L 360, 21.12.1982. p. 36), at paragraph 30.
([221]) British Telecommunications, loc. cit., paragraph 34.
([222]) Commission Decision 88/589/EEC *London European/Sabena*, Case COMP/32.318 (OJ L 317, 24.11.1988, p. 47), at paragraphs 29-30.
([223]) Underlining by the Commission. *GZS & Citicorp*, loc. cit., paragraphs 59-60.

(174) The Court of Justice thus made it clear that restricting the delivery of mail with the effect of impeding senders commercial activities in the territory of the receiving postal operator and the activities of the sending postal operator may constitute an abuse under Article 82 of the EC Treaty.

(175) As stated previously, the disputed mailings from Ideas Direct, Fidelity Investments, Gant and Multiple Zones all emanated from senders resident outside Germany. DPAG's argument that the delays were partially a consequence of the procedures that had been agreed between DPAG and the BPO is irrelevant. First, these arrangements were a direct consequence of DPAG's insisting on claims that were unjustified. Second, these arrangements were imposed on the BPO by DPAG. Due to the fact that DPAG refused to deliver the mail unless its unreasonable conditions were fulfilled, the BPO had no alternative but to concede to DPAG's will.

(176) In accordance with the case law of the Court of Justice, the Commission considers that -— in the short run — interceptions, surcharges and delays limit directly the output on the German market for the forwarding and delivery of incoming cross-border letter mail. The surcharges imposed on sending operators and — directly or indirectly — on the senders, result in unjustifiable cost increases. Consequently, DPAG's behaviour affects negatively the senders, the sending postal operator and eventually the consumers.

(177) In the long run, dissatisfied customers will be discouraged from using postal operators in the UK for mail addressed to final destinations in Germany, due to the frequent disruptions and the ensuing quality of service decrease. DPAG places postal operators in the UK under indirect pressure to increase their tariffs. In order to offset the resulting cost increase, UK postal operators would have to increase their UK-Germany cross-border tariffs substantially. Consequently, DPAG limits the production of outgoing cross-border letter mail services from the UK.

Conclusion

(178) As regards DPAG's handling of cross-border letter mail coming from the UK, the Commission finds that DPAG: (i) limits the production of services on the German market for the forwarding and delivery of incoming cross-border letter mail to the prejudice of consumers and (ii) limits postal operators opportunities to compete on the UK market for outgoing cross-border letter mail bound for Germany to the prejudice of consumers. DPAG's behaviour in this respect therefore infringes Article 82 of the Treaty and in particular subparagraph (b) of its second paragraph.

F. **Effect on trade between Member States**

(179) Trade between Member States is affected due to the international nature of cross-border mail.

G. **Article 86(2) of the Treaty**

(180) In so far as postal operators are under a statutory duty to provide certain services they may be considered to be undertakings entrusted with the operation of a service of general economic interest within the meaning of Article 86(2) of the Treaty. If this is the case, the competition rules apply only in so far as this does not obstruct their performance of the particular tasks assigned to them. However, the Article 86(2) derogation does not apply if the development of trade is affected to such an extent as would be contrary to the interests of the Community.

Arguments put forward by DP

(181) Prior to the Commission's issue of its Statement of Objections on 25 May 2000, DPAG did not at any time invoke the Article 86(2) derogation as a justification for its behaviour in the case at hand. However, in its reply to the Commission's Statement of Objections, DPAG claimed that DPAG always invokes this provision in relevant proceedings. This provision was invoked by DPAG in the GZS/Citicorp case and in particular in respect of the mailings from Citicorp which — in DPAG's view — were no different from the mailings concerned in the present case.

(182) In its judgment in the GZS/Citicorp case the Court of Justice concluded that, as long as there is no system for terminal dues which covers the costs of the receiving PPO, the application of Article 25 UPU 1989 remains a necessary instrument which DPAG may use in order to fulfil its services of general economic interest. Therefore, the Commission may not use Article 82 in a manner which restricts DPAG's possibilities to charge the full domestic tariff by invoking Article 25 UPU 1989 ([224]).

Assessment

(183) DPAG must be considered to be an undertaking entrusted with the operation of a service of general economic interest within the meaning of Article 86(2) of the Treaty. As stated above, the senders of the disputed mailings in the present case are not resident in Germany. The considerations of the Court of Justice in the GZS/Citicorp judgment regarding Article 86(2) are therefore irrelevant to the case at hand. The present Decision does not restrict DPAG's rights to justifiably invoke Article 25 UPU 1994 or Article 43 UPU 1999.

(184) The Commission considers that DPAG could rely upon Article 86(2) only if it could be shown — on the basis of transparent, detailed and reliable internal cost accounting and objective and reliable market data — that the application of the competition rules in the present case would obstruct DPAG's activities to such an extent that the financial equilibrium of the universal service would be jeopardised. DPAG has failed to demonstrate how and to what extent its financial equilibrium would be affected.

(185) The Commission finds that DPAG's ability to fulfil its universal service obligations would not be jeopardised by the application of the competition rules in the case at hand. First, incoming cross-border mail from the UK only generates a fraction of DPAG's total revenue. Second, postal tariffs in Germany are high and the letter services division of DPAG is highly profitable ([225]). Third, DPAG's overall financial strength is considerable.

(186) In any event, the Commission considers that DPAG's abusive behaviour affects the development of trade to an extent that is contrary to the interests of the Community. For this reason alone, the Article 86(2) derogation is not applicable.

H. **Article 3 of Regulation No 17**

(187) Pursuant to Article 3 of Regulation No 17, where the Commission, upon application or upon its own initiative finds that there is an infringement of Article 82 of the Treaty, it may by decision require the undertakings concerned to bring such an infringement to an end.

(188) The 'material definition of sender' as interpreted by DPAG in the present case and the measures taken by DPAG when applying this definition, are incompatible with Community law. The abusive behaviour described above has been going on at least since September 1996, i.e. the earliest point in time for which there is evidence in the present case of normal cross-border mail having been intercepted, surcharged and delayed by DPAG ([226]). The Memorandum of Understanding between the parties of October 2000 does not contain a satisfactory solution for the future handling of incoming cross-border mail by DPAG ([227]). Although delays are likely to be less frequent in the future as a consequence of the Memorandum, DPAG continues to surcharge normal cross-border mail which it classifies as virtual A-B-A remail. The undertaking submitted by DPAG on 1 June 2001 does not bring the infringement described above to an immediate end ([228]). The abuse must therefore be considered ongoing.

([224]) DPAG reply to the Statement of Objections, p. 40.
([225]) See section I.B. above.
([226]) See section I.E., subsection 'Gant — The 1996 autumn catalogue', above.
([227]) See section I.F above.
([228]) See section I.G — 'Undertaking', above. According to point (iv) of DPAG's undertaking, the latter will enter into force three months after the Commission's decision has been notified to DPAG.

(189) The Commission must ensure with certainty that DPAG will genuinely and permanently terminate the infringement described in Section II.E above. In order to ensure that DPAG will for the future refrain from any action which may have the same or similar object or effect, the Commission finds it necessary to adopt a decision in this respect.

I. **Article 15 of Regulation No 17**

(190) Under Article 15 of Regulation No 17, an infringement of Article 82 of the EC Treaty which has been committed either intentionally or negligently may be sanctioned by the imposition of a fine of up to 1 million euro or alternatively of up to 10 % of the turnover of the undertaking in the preceding business year, whichever is the greater.

(191) DPAG must have been aware of the fact that the behaviour in question — i.e. the interception, surcharging and delaying of a large number of cross-border letter mail items from another Member State — impeded significantly the free flow of mail between the UK and Germany and that this behaviour had adverse effects on competition to the detriment of the BPO and the senders. Bearing this in mind, the Commission concludes that the infringement was committed at least by negligence by DPAG.

(192) An infringement of the competition rules like the present one should normally be penalised by fines varying in accordance with the gravity and duration of the infringement. However, in certain cases the Commission may impose a symbolic fine on the undertaking that has committed an infringement. For the following reasons, the Commission deems it appropriate to impose on DPAG only a symbolic fine of EUR 1 000.

(193) DPAG has behaved in a manner which — at least partially — is in accordance with the case law of German courts. Despite the fact that the Commission considers that DPAG's behaviour in some respects goes beyond what can be determined with certainty from German case law, it must be concluded that the said case law resulted in a situation where the legal situation was unclear. Moreover, at the time when the majority of the interceptions, surcharging and delays in the present case took place, no Community case law existed that concerned the specific context of cross-border letter mail services. Finally, the undertaking submitted by DPAG will introduce a detailed procedure for the processing of incoming cross-border letter mailings which will avoid practical difficulties and facilitate the detection of future infringements, should they occur,

HAS ADOPTED THIS DECISION:

Article 1

Deutsche Post AG has infringed Article 82 of the EC Treaty by intercepting, surcharging and delaying incoming cross-border letter mailings from the UK sent by senders outside Germany but containing a reference in its contents to an entity residing in Germany.

Article 2

Deutsche Post AG shall immediately bring to an end the infringement referred to in Article 1 in so far as it has not already done so and shall refrain in the future from repeating any act or conduct described in Article 1.

Article 3

For the infringement referred to in Article 1, a fine of EUR 1 000 is hereby imposed on Deutsche Post AG.

The fine shall be paid, 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, Banco Bilbao Vizcaya Argentaria BBVA Avenue des Arts 4, 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, namely 8,05 %.

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, 25 July 2001.

For the Commission
Mario MONTI
Member of the Commission

COMMISSION RECOMMENDATION

of 7 December 2001

on principles for using 'SOLVIT' — the Internal Market Problem Solving Network

(notified under document number C(2001) 3901)

(Text with EEA relevance)

(2001/893/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 211 thereof,

Whereas:

(1) Article 3 of the Treaty sets out the aim of abolishing all obstacles to free movement of goods, persons, services and capital between the Member States to create what is known as an Internal Market. Citizens and businesses, particularly small businesses, alike would benefit if there were a way of resolving informally the problems which arise when rules intended to achieve that aim are not applied correctly.

(2) The Single Market Action Plan of 1997 [1] called on Member States to establish 'Contact Points for citizens and for business' to which specific Internal Market problems can be channelled. Member States also established 'Coordination Centres' to work together to resolve cross-border problems, which are caused by misapplication of Internal Market rules by public administrations ('the problem solving network').

(3) The problem solving network has now been in place for three years. Member States and the Commission, through the Internal Market Advisory Committee, have looked at how effective it is. They concluded that one of its main weaknesses was that cases were not all given the same standard of treatment and that outsiders could not see how it was working.

(4) The Commission has set out its ideas on problem solving in its Communication on effective problem solving in the Internal Market ('SOLVIT' [2]). It proposed a new approach called 'SOLVIT'. It is proposed to make the network more effective by setting up a shared online database. Coordination Centres in the Member States will register and track cases which will be more efficient and make it easier for citizens to see how it works.

(5) Common principles should be laid down to make sure that SOLVIT is responsive to the needs of citizens and businesses and that efforts by one Member State will be replicated in all others. Furthermore, Member States should ensure that adequate human and financial resources are available so that Coordination Centres are able to deal with an increased number of cases, to provide a high quality service to users, and to promote awareness.

(6) The European Parliament, the Council, [3] the Economic and Social Committee [4] and the Committee of the Regions [5] have all stressed the need for more effective ways of problem solving.

(7) The White Paper on European Governance [6] is part of efforts to make the Union more tangible for its citizens and businesses. It also affirms the responsibility of national administrations and courts for enforcing and applying Community law correctly.

(8) Since SOLVIT is a network for informal problem resolution, it should only deal with cases, which are not the subject of legal proceedings at national or Community level. An applicant remains free to launch such proceedings at any time, in which case the problem will be registered as closed in the database. Where other effective cross-border problem-solving mechanisms exist and are effective, SOLVIT is not intended to replace them, but to direct appropriate cases to those mechanisms.

(9) Successful problem resolution requires the Member States' Coordination Centres to work together. The Coordination Centre in the Member State of the applicant should ensure that the case is valid and that all relevant information is made available. It is then up to the Coordination Centre in the Member State where the problem occurs to take steps to resolve it.

[1] CSE (97) 1 final of 4.6.1997.
[2] COM (2001) 702 final of 27.11.2001.
[3] Council conclusion of 31 May 2001.
[4] CES 702/2001 of 30-31 May 2001.
[5] CdR 200/2001Rev. 2 of 14/15 November 2001.
[6] COM(2001) 428 of 25.4.2001.

(10) Both Coordination Centres should confirm that a case is valid and that they will use their best endeavours to resolve it within a fixed deadline, which may be extended in exceptional circumstances.

(11) Applicants should be informed in advance how cases are handled and what deadlines apply. They should be reminded that other more formal means of redress, such as legal proceedings, might also be available to them. In order to benefit from such formal means, a case may need to be lodged within certain deadlines, which will not be suspended as a result of using SOLVIT. Applicants do not have to accept proposed solutions. As SOLVIT is an informal problem-solving mechanism, it does not provide for ways for the applicant to challenge proposed solutions.

(12) All proposed solutions should be in full conformity with Community law. The Commission reserves the right to take action against Member States whenever it considers that this may not be the case.

(13) All appropriate steps should be taken to protect confidential information.

(14) The principles set out in this Recommendation should apply from the time when the online database becomes operational,

HEREBY RECOMMENDS:

I. GENERAL

A. Subject-matter and scope

This Recommendation, sets out Principles to be followed by their Coordination Centres of the Member States when they deal with cross-border problems related to the application of Internal Market rules as part of the SOLVIT network.

It does not apply to problems which are the subject of legal proceedings at national or Community level.

B. Definitions

For the purposes of this Recommendation, the following definitions apply:

1. 'Coordination Centre': department in the administration of a Member State with responsibility for handling cross-border problems raised by individuals or businesses;

2. 'Home Coordination Centre': the Coordination Centre in the Member State in which the cross-border problem was raised;

3. 'Lead Coordination Centre': the Coordination Centre in the Member State in which the cross-border problem occurred;

4. 'cross-border problem': problem confronting an individual or business in a Member State involving the application of Internal Market rules by a public authority in another Member State; this includes situations where a citizen or business having an administrative link (e.g. nationality, qualifications, establishment) with one Member State is already in the second Member State where the problem occurs;

5. 'Internal Market rules': provisions governing the functioning of the Internal Market within the meaning of Article 14(2) of the Treaty;

6. 'legal proceedings': formal proceedings for the resolution of a dispute before a judicial or quasi-judicial body;

7. 'applicant': an individual or business which has submitted a cross-border problem to a Coordination Centre.

II. PRINCIPLES

A. Home Coordination Centre

1. The Home Coordination Centre should enter the cross-border problem in the SOLVIT database.

2. Before entering a case in the database, the Home Coordination Centre should:

   (a) check its merits;

   (b) verify whether the case could be better resolved by other means, for example, through the Euro Info Centres Network;

   (c) check whether legal proceedings would be more appropriate.

   It should not enter a case in the database if it is already the subject of legal proceedings. If an applicant decides, at any stage, to initiate legal proceedings, the case should be removed from the database.

3. When entering a case in the database, the Home Coordination Centre should make available to the Lead Coordination Centre all relevant information so that the case can be resolved quickly, subject to the confidentiality safeguards referred to in H.

4. It should maintain contact with the applicant until the case is closed.

B. **Lead Coordination Centre**

1. The Lead Coordination Centre should confirm acceptance of the case within one week and forward it to the appropriate part of its Administration for action. Any additional information required should be requested from the Home Coordination Centre as soon as possible. If the Lead Coordination Centre does not accept a case, this should be automatically indicated in the database and reasons for the rejection given. The Home Coordination Centre should inform the applicant, who may pursue the case through more formal proceedings.

2. The 'Lead' Coordination Centre should take responsibility for resolving the cross-border problem.

C. **Information of the applicant**

1. The Home Coordination Centre should inform applicants in advance about the procedure and deadlines. This should include information that more formal means of redress may be available at national and Community level. It should be pointed out that under national law certain deadlines might have to be respected in order to preserve legal rights and that SOLVIT does not affect these deadlines.

2. Applicants should also be informed that they do not have to accept proposed solutions. However, proposed solutions cannot be challenged within SOLVIT. If a problem cannot be solved through SOLVIT, or if a solution proposed is considered to be unacceptable, an applicant may still initiate formal proceedings, if so desired. If formal proceedings are launched during the problem- solving phase, this will result in the case being removed from SOLVIT.

D. **Access to SOLVIT database**

1. The Home Coordination Centre and the Lead Coordination Centre should be able to register information in the SOLVIT database and to close the case.

2. The other Coordination Centres should only have read-only access to the information on the case, which will be made anonymous. Applicants should have read-only access to their cases.

E. **Deadlines**

1. As soon as the Lead Coordination Centre confirms acceptance of a case, the database should indicate the date by when the problem should be resolved. The deadline for resolving problems should be ten weeks.

2. In exceptional cases, the Home and Lead Coordination Centres may agree to extend the deadline by up to four weeks if they consider it probable that a solution can be found within that time.

F. **Exchange of information and communication**

1. The Lead Coordination Centre should use its best endeavours to resolve the case in close cooperation with other parts of its Administration.

2. Maximum use should be made of electronic mail and other rapid means of communication.

3. The Lead Coordination Centre should keep the Home Coordination Centre informed of progress. It should update the information in the database whenever there is a change or at least once a month.

4. The Home and Lead Coordination Centres should agree between themselves what language they will use to communicate with each other, bearing in mind the aim of resolving problems through informal contacts as quickly and efficiently as possible, in the interests of the applicant.

5. The Home Coordination Centre should be responsible for providing translations of documents submitted by the applicant, whenever necessary.

G. **Outcome of a case**

1. All proposed solutions should be in full conformity with Community law. The Commission reserves the right to take action against Member States whenever it considers that this may not be the case.

2. When a solution is found to a cross-border problem within the deadline, the Lead and Home Coordination Centres should confirm their agreement that the problem has been solved and register that fact in the database. The Lead Coordination Centre should inform the Home Coordination Centre how the applicant can benefit from the solution.

3. If the Lead Coordination Centre concludes that the Member State concerned has complied with Internal Market law and that the case is unfounded, it should enter that fact in the database. The Home Coordination Centre should inform the applicant of the reasons. The applicant may, if desired, pursue the case through more formal proceedings.

H. **Confidentiality**

1. The Home Coordination Centre should normally disclose the applicant's identity to the Lead Coordination Centre to facilitate problem solving. The applicant should be informed of this at the start of the process and offered the opportunity to object, in which case the applicant's identity should not be disclosed.
2. The information provided by the applicant should be used by the Lead Coordination Centre only for resolving the case.
3. Appropriate steps should be taken to safeguard commercially sensitive or personal data at all times and especially when transferring data across the network.

III. **DATE OF APPLICATION AND ADDRESSEES**

This Recommendation applies from 1 June 2002.

This Recommendation is addressed to the Member States.

Done at Brussels, 7 December 2001.

For the Commission
Frederik BOLKESTEIN
Member of the Commission

COMMISSION DECISION

of 13 December 2001

on the Community's financial contribution to a programme for the control of organisms harmful to plants and plant products in the French overseas departments for 2001

(notified under document number C(2001) 4267)

(Only the French text is authentic)

(2001/894/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1452/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the French overseas departments [1], amending Directive 72/462/EEC and repealing Regulations (EEC) No 525/77 and (EEC) No 3763/91 (Poseidom), and in particular Article 20(3),

Having regard to the programmes submitted by France for the control of organisms harmful to plant or plant products in the French overseas departments,

Whereas:

(1) Commission Decision 93/522/EEC of 30 September 1993 on the definition of the measures eligible for Community financing in the programmes for the control of organisms harmful to plants or plant products in the French overseas departments, in the Azores and in Madeira [2], as last amended by the Commission Decision 96/633/EC [3] defines the measures eligible for Community financing under programmes for the control of organisms harmful to plants and plant products in the French overseas departments, the Azores and Madeira.

(2) Specific growing conditions in the French overseas departments call for particular attention; whereas measures concerning crop production, in particular plant health measures, must be adopted or strengthened in those regions.

(3) The plant health measures to be adopted or strengthened are particularly costly.

(4) A programme of measures has been presented to the Commission by the competent French authorities; whereas this programme specifies the objectives to be achieved, the operations to be carried out, their duration and their cost with a view to a possible Community financial contribution.

(5) The Community's financial contribution may cover up to 60 % of eligible expenditure, protective measures for bananas being excluded.

(6) The plant protection operations in the French overseas departments provided for in the Single Programme Documents for the period 2000/2006 in application of Council Regulation (EC) N° 1257/1999 [4] and 1260/1999 [5] cannot be the same as those contained in this programme.

(7) The operations provided for in the European Community Framework Programme for Research and Technological Development cannot be the same as those contained in this programme.

(8) The technical information provided by France has enabled the Standing Committee on Plant Health to analyse the situation accurately and comprehensively.

(9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

A Community financial contribution to the official programme for the control of organisms harmful to plants and plant products in the French overseas departments presented by France for 2001 is hereby approved.

Article 2

The official programme shall consist of three sub-programmes:

1. a sub-programme drawn up for the department of Guadeloupe in three parts:
   — Phytosanitary center of Guadeloupe that undertakes trials, studies and experimentation;
   — Fight against major crop harmful organisms;
   — Surveillance plan for pesticide residues in fruit and vegetables;

[1] OJ L 198, 21.7.2001, p. 11.
[2] OJ L 251, 8.10.1993, p. 35.
[3] OJ L 283, 5.11.1996, p. 58.
[4] OJ L 160, 26.6.1999, p. 80.
[5] OJ L 161, 26.6.1999, p. 1.

2. a sub-programme drawn up for the department of Guyana in two parts:
   — diagnostics of plant health risks and good agricultural practices;
   — biological control and environment;
3. a sub-programme drawn up for the department of Martinique in three parts:
   — plant health evaluation and diagnostics;
   — monitoring of phytosanitary status, in particular for *Anthurium*;
   — development of integrated pest control.

Article 3

The Community's financial contribution to the programme in 2001 presented by France shall be 60 % of expenditure related to eligible measures as defined by Commission Decision 93/522/EEC, with a maximum of EUR 200 000 (VAT excluded).

The schedule of programme costs and their financing is set out as Annex I to this Decision.

Article 4

An advance of EUR 100 000 shall be paid to France.

Article 5

The Community assistance shall relate to expenditure on eligible measures associated with the operations covered by the programme for which provisions are adopted by France and for which the necessary financial resources are committed between 1 October and 31 December 2001. The final date for payments in connection with the operations shall be 30 September 2002; unjustified delay shall entail loss of entitlement to Community financing.

Should any extension of the deadline for payment become necessary, the competent official authorities shall submit a request along with the necessary justification, before the final date laid down.

Article 6

Provisions on the financing of the programme, compliance with Community policies and the information to be supplied to the Commission by France shall be as set out in Annex II.

Article 7

Any public contracts connected with investments covered by this Decision shall be subject to Community law.

Article 8

This Decision is addressed to the French Republic.

Done at Brussels, 13 December 2001.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

FINANCIAL TABLE FOR 2001

(in EUR)

	Eligible expenditures 2001		
	EC	National	Total
Guadeloupe	68 400	45 600	114 000
Guyana	53 351	35 568	88 919
Martinique	78 249	52 165	130 414
Total	200 000	133 333	333 333

ANNEX II

I. **PROVISIONS ON THE IMPLEMENTATION OF THE PROGRAMME**

A. PROVISIONS ON FINANCIAL IMPLEMENTATION

1. The Commission's intention is to establish real cooperation with the authorities responsible for the implementation of the programme. In line with the programme these authorities are those indicated below.

Commitment and payments

2. France shall guarantee that, all public and private bodies involved in the management and implementation of all operations part-financed by the Community shall keep suitable accounting records of all transactions in order to facilitate the verification of expenditure by the Community and the national inspection authorities.

3. The initial budgetary commitment shall be based on an indicative financial plan; this commitment shall be made for one year.

4. The commitment will be made when the decision approving assistance is adopted by the Commission under the procedure provided for in Article 18 of Council Directive 2000/29/EC [1].

5. Following commitment, an initial advance of EUR 100 000 shall be paid.

6. The balance of the amount committed of EUR 100 000 is paid upon the presentation to the Commission of the final report of activity and the detailed total expenditure incurred and after it has been approved by the Commission.

Authorities responsible for the implementation of the programme:

— Central administration:

Ministère de l'Agriculture et de la Pêche
Sous Direction de la Protection des Végétaux
251, rue de Vaugirard
F-75732 PARIS CEDEX 15

— Local administration:

Guadeloupe:

Ministère de l'Agriculture et de la Pêche
Direction de l'Agriculture et de la Forêt
Jardin Botanique
F-97109 BASSE-TERRE CEDEX

Martinique:

Ministère de l'Agriculture et de la Pêche
Direction de l'Agriculture et de la Forêt
Jardin Desclieux
B.P. 642
F-97262 FORT-DE-FRANCE CEDEX

Guyana:

Ministère de l'Agriculture et de la Pêche
Direction de l'Agriculture et de la Forêt
Cité Rebard
Route de Baduel
B.P. 746
F-97305 CAYENNE CEDEX

7. The actual expenditure incurred shall be notified to the Commission broken down by type of action or sub-programme in a way demonstrating the link between the indicative financial plan and expenditure actually incurred. If France keeps suitable computerized accounts this will be acceptable.

8. All payments of aid granted by the Community under this Decision shall be made to the authority designated by France, which will also be responsible for repayment to the Community of any excess amount.

[1] OJ L 169, 10.7.2000, p. 1.

9. All commitments and payments shall be made in euro.

Financial schedules for Community support frameworks and amounts of Community aid shall be expressed in euro. Payment shall be made to the following account:

Ministère du Budget
Direction de la Comptabilité Publique
Agence Comptable Centrale du Trésor
139, rue de Bercy
F-75572 PARIS CEDEX 12
Nº E 478 98 Divers

Financial control

10. Inspections may be carried out by the Commission or the Court of Auditors should it so request. France and the Commission shall immediately exchange all relevant information in regard to the outcome of an inspection.

11. For three years following the last payment relating to the assistance the authority responsible for implementation shall keep available to the Commission all documentary evidence of expenditure incurred.

12. When it submits applications for payment France shall make available to the Commission all official reports relating to supervision of the measures in question.

Reduction, suspension and withdrawal of aid

13. France shall declare that Community funds are used for the intended purposes. If implementation of a measure appears to require only part of the financial assistance allotted the Commission shall immediately recover the amount due. In cases of dispute the Commission shall examine the case, asking France or the other authorities designated by France for implementation of the measure to submit their comments within two months.

14. The Commission may reduce or suspend aid for a measure if the examination confirms the existence of an irregularity, in particular of a substantial modification affecting the nature or conditions of implementation of the measure for which approval by the Commission has not been sought.

Recovery of undue payments

15. All sums unduly paid must be reimbursed to the Community by the designated authority indicated in point 8. Interest may be levied on sums not reimbursed. If for any reason the designated authority indicated in point 8 does not reimburse the Community, France shall pay the amount to the Commission.

Prevention and detection of irregularities

16. The partners shall observe a code of conduct drawn up by France in order to ensure that any irregularity in the provision of assistance programme is detected. France shall ensure that:

— suitable action is taken in this area,

— any amount unduly paid as a result of an irregularity is recovered,

— action is taken to prevent irregularities.

B. MONITORING AND ASSESSMENT

B.I. **Monitoring Committee**

1. Establishment

Independent of the financing of this action, a monitoring committee for the programme shall be set up, composed of representatives of France and the Commission. It shall review implementation of the programme regularly and, in appropriate cases, propose any adjustments required.

2. The Committee shall establish its own internal procedures within one month of the notification of the present decision to France.

3. Competence of Monitoring Committee

The Committee:

— shall have as its general responsibility the satisfactory progress of the programme towards attainment of the objectives set. Its competence shall embrace the programme measures within the limits of the Community aid granted. It shall keep watch with respect to the regulatory provisions, including those on eligibility of operations and projects,

— shall, on the basis of information on the selection of projects already approved and implemented, reach an opinion on application of the selection criteria set out in the programme,

— shall propose any action required to accelerate implementation of the programme should the information furnished periodically by the interim monitoring and assessment indicators reveal a delay,

— may, in agreement with the Commission representative(s), adjust the financing plans within a limit of 15 % of the Community contribution to a sub-programme or measure for the entire period, and 20 % for any financial year, provided that the total amount scheduled in the programme is not exceeded. Care must be taken to see that the main objectives of the programme are not thereby compromised,

— shall give its opinion on the adjustments proposed to the Commission,

— shall issue an opinion on technical assistance projects scheduled in the programme,

— shall give its opinion on the final draft report,

— shall report regularly, and at least twice during the relevant period, to the Standing Committee on Plant Health on the progress of the programme and expenditure incurred.

B.II. **Monitoring and assessment of the programme during the implementation period (continuous monitoring and assessment)**

1. The national agency responsible for implementation shall also be responsible for continuous monitoring and assessment of the programme.

2. By continuous monitoring is meant an information system on the state of progress of the programme. Continuous monitoring will cover the measures contained in the programme. It involves reference to the financial and physical indicators structured so as to permit assessment of the correspondence between expenditure on each measure and predefined physical indicators showing the degree of realization.

3. Continuous assessment of a programme will involve analysis of the quantitative results of implementation on the basis of operational, legal and procedural considerations. The purpose is to guarantee correspondence between measures and programme objectives.

Implementation report and scrutiny of programme

4. France shall notify to the Commission, within one month of adoption of the programme, the name of the authority responsible for compilation and presentation of the final implementation report.

The final report shall contain a concise evaluation of the entire programme (degree of achievement of physical and qualitative objectives and of progress accomplished) and an assessment of the immediate phytosanitary and economic impact.

The final report on the present programme will be presented by the competent authority to the Commission on 30 September 2002 at the latest and shall thereafter be presented to the Standing Committee on Plant Health as soon as possible after that date.

5. The Commission may jointly with France call in an independent assessor who shall, on the basis of the continuous monitoring, carry out the continuous assessment referred to in point 3. He may submit proposals for adjustment of the sub-programmes and/or measures, and amending the selection criteria for projects, etc., in the light of difficulties encountered in the course of implementation. On the basis of monitoring of management he shall give an opinion on the administrative measures to be taken.

C. INFORMATION AND PUBLICITY

In the framework of this action, the agency appointed as responsible for the programme shall ensure that it is adequately publicized.

It shall in particular take action to:

— make potential recipients and professional organisations aware of the possibilities offered under the programme measures,

— make the general public aware of the Community's role in the programme.

France and the agency responsible for implementation shall consult the Commission on initiatives envisaged in this area, possibly through the Monitoring Committee. They shall regularly notify the Commission of information and publicity measures adopted, either by a final report or through the Monitoring Committee.

The national legal provisions on confidentiality of information shall be complied with.

II. **COMPLIANCE WITH COMMUNITY POLICIES**

Community policies applying in this field must be complied with.

The programme shall be implemented in accordance with the provisions on coordination of and compliance with Community policies. The following information must be supplied by France.

1. **Award of public contracts**

The 'public contracts' [1] questionnaire must be completed for:

— public contracts above the ceilings set by the 'supplies' and 'works' Directives that are awarded by contract–awarding authorities as defined in these Directives and are not covered by the exemptions specified therein,

— public contracts below these ceilings where they constitute components of a single piece of work or of uniform supplies of a value above the ceiling. By 'a single piece of work' is meant a product of building or civil engineering works intended in itself to fulfil an economic or technical function.

The ceilings will be those in force on the date of notification of this Decision.

2. **Protection of the environment**

(a) *General information:*

— description of the main environmental features and problems of the region concerned, giving, *inter alia*, a description of the important conservation areas (sensitive zones),

— a comprehensive description of the major beneficial and harmful effects that the programme, given the investments planned, is likely to have on the environment,

— a description of the action planned to prevent, reduce or offset any serious harmful effects on the environment,

— a report on consultations with the responsible environmental authorities (opinion of the Ministry for the Environment or its equivalent) and, if there were any such consultations, with the public concerned.

(b) *Description of planned activities*

For programme measures liable to have a significantly harmful effect on the environment:

— the procedures which will be applied for assessing individual projects during implementation of the programme;

— the mechanisms planned for monitoring environmental impact during implementation, assessing results and eliminating, reducing or offsetting harmful effects.

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[1] Notice C(88) 2510 to the Member States on monitoring compliance with public procurement rules in the case of projects and programmes financed by the Structural Funds and financial instruments (OJ C 22, 28.01.1989, p. 3).

COMMISSION DECISION

of 13 December 2001

on the Community's financial contribution to a programme for the control of organisms harmful to plants and plant products in Madeira for 2001

(notified under document number C(2001) 4268)

(Only the Portuguese text is authentic)

(2001/895/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1453/2001 of 28 June 2001 introducing specific measures for certain agricultural products for the Azores and Madeira [1], and repealing Regulation (EEC) No 1600/92 (Poseima), and in particular Article 32(3),

Having regard to the programmes submitted by Portugal for the control of organisms harmful to plant or plant products in Madeira,

Whereas:

(1) Commission Decision 93/522/EEC of 30 September 1993 on the definition of the measures eligible for Community financing in the programmes for the control of organisms harmful to plants or plant products in the French overseas departments, in the Azores and in Madeira [2], as last amended by Decision 96/633/EC [3], defines what measures are eligible for Community financing as regards programmes for the control of organisms harmful to plants and plant products in the French overseas departments, the Azores and Madeira.

(2) Specific agricultural production conditions in Madeira call for particular attention, and action must be taken or reinforced as regards crop production, in particular the phytosanitary aspects for this region.

(3) The action to be taken or reinforced on the phytosanitary side is particularly costly.

(4) The programme of action has been presented to the Commission by the relevant Portuguese authorities; whereas this programme specifies the objectives to be achieved, the measures to be carried out, their duration and their cost so that the Community may contribute to financing them.

(5) The Community's financial contribution may cover up to 75 % of eligible expenditure, protective measures for bananas being excluded.

(6) The operations provided for in the European Community Framework Programme for Research and Technological Development cannot be the same as those contained in this programme.

(7) The measures foreseen in the environmental programme approved for the Region of Madeira in the framework of Regulation (EEC) No 2078/92 [4], as last amended by Regulation (EC) No 1962/96 [5], cannot be the same as those contained in this programme.

(8) The technical information provided by Portugal has enabled the Standing Committee on Plant Health to analyse the situation accurately and comprehensively.

(9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

The Community's financial contribution to the official programme for the control of organisms harmful to plants and plant products on the Island of Madeira presented for 2001 by the relevant Portuguese authorities is hereby approved.

Article 2

The official programme is made up of a programme for the autocidal control of the fruit fly (*Ceratitis capitata* Wied).

Article 3

The Community's financial contribution to the programme in 2001 presented by Portugal shall be 75 % of expenditure related to eligible measures as defined by Commission Decision 93/522/EEC with a maximum of EUR 150 000 (VAT excluded).

The schedule of programme costs and their financing is set out as Annex I to this Decision.

[1] OJ L 198, 21.7.2001, p. 26.
[2] OJ L 251, 8.10.1993, p. 35.
[3] OJ L 283, 5.11.1996, p. 58.
[4] OJ L 215, 30.7.1992, p. 85.
[5] OJ L 259, 12.10.1996, p. 7.

Article 4

A first instalment of EUR 75 000 shall be paid to Portugal immediately after the official notification of the present Decision.

Article 5

The Community assistance shall relate to the eligible measures associated with the operations covered by the programme set up in Portugal by provisions for which the necessary financial resources have been committed between 1 January 2001 and 31 December 2001. The final date for payments in connection with the operations shall be 31 March 2002, and non-compliance without justification of delay shall entail loss of entitlement to Community financing.

In the case where a request for extension of the final date for payment is necessary, the responsible official authorities have to introduce this request before the final date and present the justification concerning this request.

Article 6

Specific provisions relating to the financing of the programme, provisions on compliance with Community policies and the information to be provided to the Commission by Portugal shall be as set out in Annex II.

Article 7

Any public contracts connected with investments covered by this Decision shall be subject to Community law.

Article 8

This Decision is addressed to the Portuguese Republic.

Done at Brussels, 13 December 2001.

For the Commission

David BYRNE

Member of the Commission

ANNEX I

FINANCIAL TABLE FOR 2001

(in EUR)

	Eligible expenditures 2001		
	EC	Madeira	Total
Ceratitis Capitata	150 000	50 000	200 000
Total	150 000	50 000	200 000

ANNEX II

I. **PROVISIONS ON THE IMPLEMENTATION OF THE PROGRAMME**

A. PROVISIONS ON FINANCIAL IMPLEMENTATION

1. The Commission's intention is to establish real cooperation with the authorities responsible for the implementation of the programme. In line with the programme these authorities are those indicated below.

Commitment and payments

2. Portugal guarantees that, for all action co-financed by the Community all public and private bodies involved in its management and implementation shall keep accounts in standard form of all transactions in order to facilitate monitoring of expenditure by the Community and the national authorities responsible for surveillance.

3. The initial budgetary commitment shall be based on an indicative financial plan; this commitment shall be made for one year.

4. The commitment will be made when the decision approving assistance is adopted by the Standing Committee on Plant Health under procedure Article 18 of Council Directive 2000/29/EC [1].

5. The first instalment of EUR 75 000 shall be paid to Portugal immediately after the official notification of the present Decision.

6. The balance of the amount committed of EUR 75 000 is paid upon presentation to the Commission of the final report of activity and the detailed total expenditure incurred and after it has been approved by the Commission.

Authorities responsible for the implementation of the programme:

— Central administration:

Direcção-Geral de Protecção das Culturas
Quinta do Marqués
P-2780 OEIRAS

— Local administration:

Região Autónoma da Madeira
Secretaria Regional do Ambiente e Recursos Naturais
Direcção Regional da Agricultura
Av. Arriaga, 21 A
Edificio Golden Gate, 4e piso
P-9000 FUNCHAL

7. The actual expenditure incurred shall be notified to the Community broken down by type of action or sub-programme in a way demonstrating the link between the indicative financial plan and expenditure actually incurred. If Portugal keeps suitable computerized accounts this will be acceptable.

8. All payments of aid granted by the Community under this Decision shall be made to the authority designated by Portugal, which will also be responsible for repayment to the Community of any excess amount.

9. All commitments and payments shall be made in euro.

Financial schedules for Community support frameworks and amounts of Community aid shall be expressed in euro. Payment shall be made to the following account:

Banco BP I
Nº de conta 0010 370 03221820001
Titular: Governo da Região Autónoma da Madeira
Endereço: Av. de Zarco
P-9000 FUNCHAL

[1] OJ L 169, 10.7.2000, p. 1.

Financial control

10. Inspections may be carried out by the Commission or the Court of Auditors should it so request. Portugal and the Commission shall immediately exchange all relevant information in regard to the outcome of an inspection.

11. For three years following the last payment relating to the assistance the authority responsible for implementation shall keep available to the Commission all documentary evidence of expenditure incurred.

12. When it submits applications for payment Portugal shall make available to the Commission all official reports relating to supervision of the measures in question.

Reduction, suspension and withdrawal of aid

13. Portugal and the recipients of aid shall declare that Community funds are used for the intended purposes. If implementation of a measure appears to require only part of the financial assistance allotted the Commission shall immediately recover the amount due. In cases of dispute the Commission shall examine the case within the partnership framework, asking Portugal or the other authorities designated by Portugal for implementation of the measure to submit their comments within two months.

14. The Commission may reduce or suspend aid for a measure if the examination confirms the existence of an irregularity, in particular of a substantial modification affecting the nature or conditions of implementation of the measure for which approval by the Commission has not been sought.

Recovery of undue payments

15. All sums unduly paid must be reimbursed to the Community by the designated authority indicated in point 8. Interest may be levied on sums not reimbursed. If for any reason the designated authority indicated in point 8 does not reimburse the Community, Portugal shall pay the amount to the Commission.

Prevention and detection of irregularities

16. The partners shall observe a code of conduct drawn up by Portugal in order to ensure that any irregularity in the provision of assistance programme is detected. Portugal shall ensure that:

— suitable action is taken in this area,

— any amount unduly paid as a result of an irregularity is recovered,

— action is taken to prevent irregularities.

B. MONITORING AND ASSESSMENT

B.I. **Monitoring Committee**

1. Establishment

Independent of the financing of this action, a monitoring committee for the programme shall be set up by Portugal and the Commission. It shall regularly review implementation of the programme and, in appropriate cases, propose any adjustments required.

2. The Committee shall establish its own internal procedures within one month of the notification of the present decision to Portugal.

3. Competence of Monitoring Committee

The Committee:

— shall have as its general responsibility the satisfactory progress of the programme towards attainment of the objectives set. Its competence shall embrace the programme measures within the limits of the Community aid granted. It shall keep watch on respect for the regulatory provisions, including those on eligibility of operations and projects,

— shall, on the basis of information on the selection of projects already approved and implemented, reach an opinion on application of the selection criteria set out in the programme,

— shall propose any action required to accelerate implementation of the programme in the light of the information furnished periodically by the interim monitoring and assessment indicators,

— may, in agreement with the Commission representative(s), adjust the financing plans within a limit of 15 % of the Community contribution to a sub-programme or measure for the entire period, or 20 % for any year, provided that the total amount scheduled in the programme is not exceeded. Care must be taken to see that the main objectives of the programme are not thereby compromised,

— shall give its opinion on the adjustments proposed to the Commission,

— shall issue an opinion on technical assistance projects scheduled in the programme,

— shall give its opinion on draft final report,

— shall report regularly to the Standing Committee on Plant Health on the progress of the programme and expenditure incurred, at least twice during the relevant period.

B.II. **Monitoring and assessment of the programme during the implementation period (continuous monitoring and assessment)**

1. The national agency responsible for implementation shall also be responsible for continuous monitoring and assessment of the programme.

2. By continuous monitoring is meant an information system on the state of progress of the programme. Continuous monitoring will cover the measures contained in the programme. It involves reference to the financial and physical indicators structured so as to permit assessment of the correspondence between expenditure on each measure and predefined physical indicators showing the degree of realization.

3. Continuous assessment of the programme will involve analysis of the quantitative results of implementation on the basis of operational, legal and procedural considerations. The purpose is to guarantee correspondence between measures and programme objectives.

Implementation report and scrutiny of the programme

4. Portugal shall notify to the Commission, within one month of adoption of the programme, the name of the authority responsible for compilation and presentation of the final report.

   The final report shall contain a concise evaluation of the entire programme (degree of achievement of physical and qualitative objectives and of progress accomplished) and an assessment of the immediate phytosanitary and economic impact.

   The final report on the present programme will be presented by the competent authority to the Commission before 31 March 2002 and shall thereafter be presented to the Standing Committee of Plant Health as soon as possible after this date.

5. The Commission may jointly with Portugal call in an independent assessor who shall, on the basis of the continuous monitoring, carry out the continuous assessment defined at 3. above. He may submit proposals for adjustment of the sub-programmes and/or measures, modification of the selection criteria for projects, etc., in the light of difficulties encountered in the course of implementation. On the basis of monitoring of management he shall issue an opinion on the administrative measures to be taken. To guarantee the assessor's impartiality the Commission will not pay the entire cost of employing him.

C. INFORMATION AND PUBLICITY

In the framework of this action, the agency appointed as responsible for the programme shall ensure that it is adequately publicized.

It shall in particular take action to:

— make potential recipients and professional organizations aware of the possibilities offered under the programme measures,

— make the general public aware of the Community's role in the programme.

Portugal and the agency responsible for implementation shall consult the Commission on initiatives envisaged in this area, possibly through the Monitoring Committee. They shall regularly notify the Commission of information and publicity measures adopted, either by a final report or through the Monitoring Committee.

The national legal provisions on confidentiality of information shall be complied with.

II. COMPLIANCE WITH COMMUNITY POLICIES

Community policies applying in this field must be complied with.

The programme shall be implemented in accordance with the provisions on coordination of and compliance with Community policies. The following information must be supplied by Portugal.

1. **Award of public contracts**

The 'public contracts' ([1]) questionnaire must be completed for:

— public contracts above the ceilings set by the 'supplies' and 'works' Directives that are awarded by contract–awarding authorities as defined in these Directives and are not covered by the exemptions specified therein,

— public contracts below these ceilings where they constitute components of a single piece of work or of uniform supplies of a value above the ceiling. By 'a single piece of work' is meant a product of building or civil engineering works intended in itself to fulfil an economic or technical function.

The ceilings in force are the ones at the date of the notification of this Decision.

2. **Protection of the environment**

(a) *General information:*

— description of the main environmental features and problems of the region concerned, giving a description of the important conservation areas (sensitive zones),

— a comprehensive description of the major beneficial and harmful effects that the programme, given the investments planned, is likely to have on the environment,

— a description of the action planned to prevent, reduce or offset any serious harmful effects on the environment,

— a report on consultations with the responsible environmental authorities (opinion of the Ministry for the Environment or its equivalent) and, if there were any such consultations, with the public concerned.

(b) *Description of planned activities*

For programme measures liable to have a significantly harmful effect on the environment:

— the procedures which will be applied for assessing individual projects during implementation of the programme,

— the mechanisms planned for monitoring environmental impact during implementation, assessing results and eliminating, reducing or offsetting harmful effects.

([1]) Notice C(88) 2510 to the Member States on monitoring compliance with public procurement rules in the case of projects and programmes financed by the Structural Funds and financial instruments (OJ C 22, 28.1.1989, p. 3)

COMMISSION DECISION

of 12 December 2001

setting out the arrangements for Community comparative trials and tests on propagating and planting material of fruit plants under Council Directive 92/34/EEC

(notified under document number C(2001) 4220)

(2001/896/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 92/34/EEC on the marketing of propagating and planting material of fruit plants [1], as last amended by Directive 1999/30/EC [2], and in particular Article 20(2) thereof,

Whereas:

(1) The abovementioned Directive provides for the necessary arrangement to be made for Community comparative trials and tests of propagating and planting material to be carried out.

(2) Adequate representativity of the samples included in the trials and tests should be ensured, at least for certain selected plants.

(3) Member States should participate in the Community comparative trials and tests, in so far as propagating and planting material of *Prunus domestica* are usually reproduced or marketed in their territories, in order to ensure that proper conclusions may be drawn therefrom.

(4) The Commission is responsible for making the necessary arrangements for the Community comparative trials and tests.

(5) The technical arrangements for the carrying out of the trials and tests have been made within the Standing Committee on Propagating Material and Plants of Fruit Genera and Species.

(6) Community comparative trials and tests should be carried out from the year 2002 to 2006 on propagating and planting material harvested in 2001 and the details for such trials and tests should also be set out.

(7) For the Community comparative trials and tests lasting more than one year the parts of the trials and tests following the first year should, on condition that the necessary appropriations are available, be authorised by the Commission without further reference to the Standing Committee on Propagating Material and Plants of Fruit Genera and Species.

(8) The Standing Committee on Propagating Material and Plants of Fruit Genera and Species has not delivered an opinion within the time limit laid down by its Chairman,

HAS ADOPTED THIS DECISION:

Article 1

1. Community comparative trials and tests shall be carried out from the year 2002 to 2006 on propagating and planting material of *Prunus domestica*.

2. The maximum cost for the trials and tests for 2002 shall be as set out in the Annex.

3. All Member States shall participate in the Community comparative trials and tests in so far as propagating and planting material of *Prunus domestica* are usually reproduced or marketed in their territories.

4. The details of the trials and tests are set out in the Annex.

Article 2

The Commission may decide to continue the trials and tests set out in the Annex in 2003 to 2006. The maximum cost of a trial or test continued on this basis shall not exceed the amount specified in the Annex.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 12 December 2001.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 157, 10.6.1992, p. 10.
[2] OJ L 8, 14.1.1999, p. 30.

ANNEX

Trials on *Prunus domestica* to be carried out

Year	Responsible body	Conditions to be assessed	Number of samples	Cost (EUR)
2002	NAKT Roelofarendsveen (NL)	Varietal identity and purity (field) Plant Health (laboratory)	50	16 000
2003	same	same	same	8 000 (*)
2004	same	same	same	10 900 (*)
2005	same	same	same	11 100 (*)
2006	same	same	same	29 100 (*)
			Total cost	75 100

(*) Estimated cost.

COMMISSION DECISION

of 12 December 2001

setting out the arrangements for Community comparative trials and tests on seeds and propagating material of certain plants under Council Directives 66/400/EEC, 66/401/EEC, 66/402/EEC, 66/403/EEC, 68/193/EEC, 69/208/EEC, 70/458/EEC and 92/33/EEC

(notified under document number C(2001) 4222)

(Text with EEA relevance)

(2001/897/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 66/400/EEC on the marketing of beet seed [1], as last amended by Directive 98/96/EC [2], and in particular Article 20(3) thereof,

Having regard to Council Directive 66/401/EEC on the marketing of fodder plant seed [3], as last amended by Directive 2001/64/EC [4], and in particular Article 20(3) thereof,

Having regard to Council Directive 66/402/EEC on the marketing of cereal seed [5], as last amended by Directive 1999/54/EC [6], and in particular Article 20(3) thereof,

Having regard to Council Directive 66/403/EEC on the marketing of seed potatoes [7], as last amended by Commission Decision 1999/742/EC [8], and in particular Article 14(4) thereof,

Having regard to Council Directive 68/193/EEC on the marketing of material for the vegetative propagation of the vine [9], as last amended by the Act of Accession of Austria, Finland and Sweden [10], and in particular Article 16(3) thereof,

Having regard to Council Directive 69/208/EEC on the marketing of seed of oil and fibre plants [11], as last amended by Directive 98/96/EC and in particular Article 19(3) thereof,

Having regard to Council Directive 70/458/EEC on the marketing of vegetable seed [12], as last amended by Directive 98/96/EC and in particular Article 39(3) thereof,

Having regard to Council Directive 92/33/EEC on the marketing of vegetable propagating and planting material, other than seed [13], as last amended by Directive 1999/29/EC [14] and in particular Article 20(4) thereof,

Whereas:

(1) The above mentioned Directives provide for the necessary arrangement to be made for Community comparative trials and tests of seed and propagating material to be carried out.

(2) Adequate representativity of the samples included in the trials and tests should be ensured, at least for certain selected plants.

(3) Member States should participate in the Community comparative trials and tests, in so far as seed of the above mentioned plants are usually reproduced or marketed in their territories, in order to ensure that proper conclusion may be drawn therefrom.

(4) The Commission is responsible for making the necessary arrangements for the Community comparative trials and tests.

(5) The technical arrangements for the carrying out of the trials and tests have been made within the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry.

(6) The arrangements for the trials and tests also cover in relation to seed potatoes, *inter alia*, certain harmful organisms which come within the scope of Council Directive 2000/29/EC on protective measures against the introduction into Member States of organisms harmful to plants or plant products [15] as last amended by Directive 2001/33/EC [16].

(7) Community comparative trials and tests should be carried out from the year 2002 to 2003 on seeds and propagating material harvested in 2001 and the details for such trials and tests should also be set out.

[1] OJ 125, 11.7.1966, p. 2290/66.
[2] OJ L 25, 1.2.1999, p. 27.
[3] OJ 125, 11.7.1966, p. 2298/66.
[4] OJ L 234, 1.9.2001, p. 60.
[5] OJ 125, 11.7.1966, p. 2039/66.
[6] OJ L 142, 5.6.1999, p. 30.
[7] OJ 125, 11.7.1966, p. 2320/66.
[8] OJ L 297, 18.11.1999, p. 39.
[9] OJ L 93, 17.4.1968, p. 15.
[10] OJ C 241, 29.8.1994, p. 155.
[11] OJ L 169, 10.7.1969, p. 3.
[12] OJ L 225, 12.10.1970, p. 7.
[13] OJ L 157, 10.6.1992, p. 1.
[14] OJ L 8, 14.1.1999, p. 29.
[15] OJ L 169, 10.7.2000, p. 1.
[16] OJ L 127, 9.5.2001, p. 42.

(8) For the Community comparative trials and tests lasting more than one year the parts of the trials and tests following the first year should, on condition that the necessary appropriations are available, be authorised by the Commission without further reference to the Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry.

(9) The Standing Committee on Seeds and Propagating Material for Agriculture, Horticulture and Forestry has not delivered an opinion within the time limit laid down by its Chairman,

HAS ADOPTED THIS DECISION:

Article 1

1. Community comparative trials and tests shall be carried out from the year 2002 to 2003 on seeds and propagating material of the plants listed in the Annex.

2. The maximum cost for the trials and tests for 2002 shall be as set out in the Annex.

3. All Member States shall participate in the Community comparative trials and tests in so far as seeds and propagating material of the plants listed in the Annex are usually reproduced or marketed in their territories.

4. The details of the trials and tests are set out in the Annex.

Article 2

In the case of the assessment under Directive 2000/29/EC of seed potatoes each sample to be submitted to the laboratory tests shall have been previously coded by the body responsible for carrying out the trials and tests under the responsibility of the Commission services. In the case of samples confirmed to be contaminated by any of the relevant harmful organisms, the measures required under the Community Plant Health Regime shall be taken. This is without prejudice to the general conditions applicable to the examination of the annual reports on the confirmed results and conclusions of Community comparative trials and tests.

Article 3

The Commission may decide to continue the trials and tests set out in the Annex in 2003. The maximum cost of a trial or test continued on this basis shall not exceed the amount specified in the Annex.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 12 December 2001.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Trials to be carried out in 2002

Species	Responsible body	Conditions to be assessed	Number of samples	Cost (euro)
Gramineae (*)	NAK Emmeloord (NL)	Varietal identity and purity (field) external seed quality (laboratory)	230	11 600
Zea mays	ENSE Milano (I)	Varietal identity and purity (field) external seed quality (laboratory)	80	14 400
Triticum aestivum (*)	DFE Merelbeke (B)	Varietal identity and purity (field) external seed quality (laboratory)	120	7 100
Solanum tuberosum	DGPC Oeiras (P)	Varietal identity and purity, Plant Health (field) Plant Health (ringrot/brown rot/ pstv) (laboratory)	250	51 900
Glycine max	ENSE Milano (I)	Varietal identity and purity (field)	50	8 000
Brassica napus (*)	NIAB Cambridge (UK)	Varietal identity and purity (field) external seed quality (laboratory)	120	25 600
Helianthus annuus	ETSI Madrid (E)	Varietal identity and purity (field) external seed quality (laboratory)	80	64 600
Hordeum vulgare Triticum aestivum Lolium Perenne Brassica napus Beta vulgaris	BFL Vienna (A)	External seed quality (laboratory) under Comm. Decision 98/320	300	22 300
Lycopersicon lycopersicum	ENSE Milano (I)	Varietal identity and purity (field) external seed quality (laboratory)	70	13 300
Allium ascalonicum (*)	NAKT Roelofarendsveen (NL)	Varietal identity and purity (field), Plant Helath (laboratory)	70	20 400
Vitis vinifera (*)	ISV Conegliano Veneto (I)	Varietal identity and purity (field), Plant Health (laboratory)	102	10 400
			Total cost	249 600

(*) Trial lasting more than one year.

Trials to be carried out in 2003

Species	Responsible Body	Conditions to be Assessed	Number of Samples	Cost (euro) (**)
Gramineae (*)	NAK Emmeloord (NL)	Varietal identity and purity (field) external seed quality (laboratory)	230	27 000
Triticum aestivum (*)	DFE Merelbeke (B)	Varietal identity and purity (field) external seed quality (laboratory)	120	16 700
Brassica napus (*)	NIAB Cambridge (UK)	Varietal identity and purity (field) external seed quality (laboratory)	120	11 000
Allium ascalonicum (*)	NAKT Roelofarendsveen (NL)	Varietal identity and purity (field) Plant Health (laboratory)	70	25 000
Vitis vinifera (*)	ISV Conegliano Veneto (I)	Varietal identity and purity (field) Plant Health (laboratory)	102	24 200
			Total cost	103 900

(*) Trial lasting more than one year.
(**) Estimated cost.

COMMISSION DECISION

of 12 December 2001

setting out the arrangements for Community comparative trials and tests on propagating material of ornamental plants under Council Directive 98/56/EC

(notified under document number C(2001) 4224)

(2001/898/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 98/56/EC on the marketing of propagating material of ornamental plants [1] in particular Article 14(4) thereof,

Whereas:

(1) The abovementioned Directive provides for the necessary arrangement to be made for Community comparative trials and tests of propagating material to be carried out.

(2) Adequate representation of the samples included in the trials and tests should be ensured, at least for certain selected plants.

(3) Member States should participate in the Community comparative trials and tests, in so far as seed of the abovementioned plants are usually reproduced or marketed in their territories, in order to ensure that proper conclusion may be drawn therefrom.

(4) The Commission is responsible for making the necessary arrangements for the Community comparative trials and tests.

(5) The technical arrangements for the carrying out of the trials and tests have been made within the Standing Committee for Propagating Materials of Ornamental Plants.

(6) Community comparative trials and tests should be carried out from the year 2002 to 2004 on propagating material harvested in 2001 and the details for such trials and tests should also be set out.

(7) For the Community comparative trials and tests lasting more than one year the parts of the trials and tests following the first year should, on condition that the necessary appropriations are available, be authorised by the Commission without further reference to the Standing Committee for Propagating Materials of Ornamental Plants.

(8) The Standing Committee for Propagating Materials of Ornamental Plants has not delivered an opinion within the time-limit laid down by its Chairman,

HAS ADOPTED THIS DECISION:

Article 1

1. Community comparative trials and tests shall be carried out from the year 2002 to 2004 on propagating material of the plants listed in the Annex.

2. The maximum cost for the trials and tests for 2002 shall be as set out in the Annex.

3. All Member States shall participate in the Community comparative trials and tests in so far as seeds and propagating material of the plants listed in the Annex are usually reproduced or marketed in their territories.

4. The details of the trials and tests are set out in the Annex.

Article 2

The Commission may decide to continue the trials and tests set out in the Annex in 2003 and 2004. The maximum cost of a trial or test continued on this basis shall not exceed the amount specified in the Annex.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 12 December 2001.

For the Commission

David BYRNE

Member of the Commission

[1] OJ L 226, 13.8.1998, p. 16.

ANNEX

Trials to be carried out in 2002

Species	Responsible body	Conditions to be assessed	Number of samples	Cost (euro)
Seed propagated ornamental plants Petunia Lobelia Lathirus	NAKT Roelofarendsveen (NL)	Varietal identity and purity (field) external seed quality (laboratory)	80	37 000
Bulbs of flowers (Narcissus)	BKD Lisse (NL)	Varietal identity and purity (field) Plant health (laboratory)	80	42 800
Ornamental plants (*) Chamaecyparis Ligustrum vulgare Euphorbia fulgens	NAKT Roelofarendsveen (NL)	Varietal identity and purity Plant Health (field) Plant Health (laboratory)	 40 40 20	12 400
			Total cost	92 200

(*) Trial lasting more than one year.

Trials to be carried out in 2003

Species	Responsible body	Conditions to be assessed	Number of samples	Cost (euro)
Ornamental plants Chamaecyparis Ligustrum vulgare Euphorbia fulgens	NAKT Roelofarendsveen (NL)	Varietal identity and purity Plant Health (field) Plant Health (laboratory)	 40 40 20	3 700 (*)
			Total cost	3 700

(*) Estimated cost.

Trials to be carried out in 2004

Species	Responsible body	Conditions to be assessed	Number of samples	Cost (euro)
Ornamental plants Chamaecyparis Ligustrum vulgare Euphorbia fulgens	NAKT Roelofarendsveen (NL)	Varietal identity and purity Plant Health (field) Plant Health (laboratory)	 40 40 20	33 600 (*)
			Total cost	33 600

(*) Estimated cost.