

English edition

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I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1295/2003**of 15 July 2003****relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens**

THE COUNCIL OF THE EUROPEAN UNION,

event has been organised by a Member State applying in full the provisions of the Schengen *acquis*.

Having regard to the Treaty establishing the European Community, and in particular Article 62(2)(a) and (b)(ii) thereof,

(5) To enable Greece to organise the 2004 Olympic and Paralympic Games and in view of the obligations arising from the Olympic Charter, the Community should establish legislation facilitating the issue of visas to members of the Olympic family.

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(6) There is therefore a need to provide for a temporary derogation for the duration of the 2004 Olympic and Paralympic Games for members of the Olympic family who are nationals of third countries subject to the visa requirement under Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ⁽³⁾.

(1) The Olympic Charter envisages for members of the Olympic family a 'right of entry' to the country of the city hosting the Olympic Games, on presentation of the Olympic accreditation card and their passport or other official travel document, without having to go through any procedures and formalities other than those relating to the accreditation card.

(2) The organisations responsible select and propose the persons who may participate in the Olympic or Paralympic Games as members of the Olympic family, in accordance with the accreditation procedure laid down by the Organising Committee of the Olympic Games.

(7) The scope of this derogation should be limited to the provisions of the *acquis* concerning the submission of visa applications, the issuing of visas and their format. Equally, the methods of controlling the external borders should be adapted within the limits necessary to take into account changes in the visa system.

(3) The Organising Committee of the Olympic Games issues accreditation cards to members of the Olympic family in view of the fact that the Games may be the target of terrorist attacks. The accreditation card is a highly secure document, which gives access to the specific sites where competitions are held and to other events planned during the Olympic and Paralympic Games.

(8) Visa applications for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games should be submitted to the Organising Committee of the Olympic Games via the organisations responsible, at the same time as the application for accreditation. The accreditation application form shall contain basic data relating to the persons concerned, such as their full name, sex, date and place of birth and passport number, type and expiry date thereof. These applications shall be forwarded to the Greek services responsible for issuing visas.

(4) Greece is organising the 2004 Olympic and Paralympic Games in Athens, this being the first time that such an

⁽¹⁾ Proposal of 8 April 2003 (not yet published in the Official Journal).

⁽²⁾ Opinion of 19 June 2003 (not yet published in the Official Journal).

⁽³⁾ OJ L 81, 21.3.2001, p. 1. Regulation as last amended by Regulation (EC) No 453/2003 (OJ L 69, 13.3.2003, p. 10).

- (9) Irrespective of this Regulation, members of the Olympic family may still submit individual applications for visas in accordance with the relevant *acquis communautaire*.
- (10) Where no specific provisions are laid down in this Regulation, the relevant provisions of the *acquis communautaire* on visas and controls at Member States' external borders should apply. In particular, the provisions of this Regulation relating to the issuing of visas are not applicable to members of the Olympic family who are nationals of third countries subject to a visa requirement but who hold a residence permit or a provisional residence permit issued by one of the Member States applying in full the provisions of the Schengen *acquis*.
- (11) The derogation arrangements established by this Regulation should be evaluated in the light of the experience of putting them into practice. Provision should therefore be made for an evaluation after the 2004 Olympic and Paralympic Games in order to assess how well these arrangements have worked in the perspective of the possible organisation of the Olympic Games by other Member States also applying in full the provisions of the Schengen *acquis*.
- (12) In accordance with the principle of proportionality, it is necessary and appropriate in order to give effect to the main objective of facilitating the issue of visas to the members of the Olympic family to adopt the temporary derogation established by this Regulation from certain Community provisions. This Regulation does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with the third paragraph of Article 5 of the Treaty.
- (13) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Regulation, and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis* under the provisions of Title IV of Part Three of the Treaty establishing the European Community, Denmark shall, in accordance with Article 5 of the said Protocol, decide within a period of six months after the Council has adopted this Regulation whether it will implement it in its national law.
- (14) As regards Iceland and Norway, this Regulation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Agreement concluded on 18 May 1999 by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* ⁽¹⁾, which fall within the area referred to in Article 1, point B of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽²⁾.
- (15) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽³⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (16) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁴⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (17) This Regulation constitutes an act building on the Schengen *acquis* or otherwise related to it within the meaning of Article 3(2) of the 2003 Act of Accession,

HAS ADOPTED THIS REGULATION:

CHAPTER I

PURPOSE AND DEFINITIONS

Article 1

Purpose

This Regulation establishes specific provisions introducing a temporary derogation from certain provisions of the Schengen *acquis* concerning the procedures for applying for and issuing visas as well as for the uniform format for visas for members of the Olympic family for the duration of the 2004 Olympic and Paralympic Games.

Apart from these specific provisions, the relevant provisions of the Schengen *acquis* concerning procedures for applying for and issuing the uniform visa shall remain in force.

⁽¹⁾ OJ L 176, 10.7.1999, p. 36.

⁽²⁾ OJ L 176, 10.7.1999, p. 31.

⁽³⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁴⁾ OJ L 64, 7.3.2002, p. 20.

Article 2

CHAPTER II

ISSUE OF VISAS

Definitions

For the purposes of this Regulation:

1. 'Responsible organisations' relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games means the official organisations, in terms of the Olympic Charter, which are entitled to submit lists of members of the Olympic family to the Organising Committee of the 2004 Olympic Games with a view to the issue of accreditation cards for the Games;
2. 'Member of the Olympic family' means any persons who are members of the International Olympic Committee, the International Paralympic Committee, International Federations, the National Olympic and Paralympic Committees, the Organising Committees of the Olympic Games and the national associations, such as athletes, judges/referees, coaches and other sports technicians, medical personnel attached to teams or individual sportsmen/women and media-accredited journalists, senior executives, donors, sponsors or other official invitees, who agree to be guided by the Olympic Charter, act under the control and supreme authority of the International Olympic Committee, are included on the lists of the responsible organisations and are accredited by the Organising Committee of the 2004 Olympic Games as participants in the 2004 Olympic or Paralympic Games;
3. 'Olympic accreditation cards', issued by the Organising Committee of the 2004 Olympic Games, in accordance with Article 16 of the Greek law 3103/2003, means one of two secure documents, one for the Olympic Games and one for the Paralympic Games, bearing a photograph of its holder, establishing the identity of the member of the Olympic family and authorising access to the facilities at which competitions are held and to other events scheduled during the period of the Games;
4. 'Duration of the Olympic Games and Paralympic Games' means the period from 13 July 2004 to 29 September 2004 for the 2004 Summer Olympic Games and the period from 18 August 2004 to 29 October 2004 for the 2004 Autumn Paralympic Games;
5. 'Organising Committee of the 2004 Olympic Games' means the Committee set up under Article 2 of Greek Law 2598/1998 to organise the 2004 Olympic and Paralympic Games in Athens, which decides on accreditation of members of the Olympic family taking part in those Games;
6. 'Services responsible for issuing visas' means the services designated in Greece to examine applications and issue visas to members of the Olympic family.

Article 3

Conditions

A visa may be issued pursuant to this Regulation only where the person concerned:

- (a) has been designated by one of the responsible organisations and accredited by the Organising Committee of the 2004 Olympic Games as a participant in the 2004 Olympic or Paralympic Games;
- (b) holds a valid travel document authorising the crossing of the external borders, as referred to in Article 5 of the Convention implementing the Schengen Agreement of 14 June 1985, signed at Schengen on 19 June (hereinafter 'the Schengen Convention');
- (c) is not a person for whom an alert has been issued for the purposes of refusing entry;
- (d) is not considered to be a threat to public policy, national security or the international relations of any of the Member States.

Article 4

Filing of the application

1. Where a responsible organisation draws up a list of the persons selected to take part in the 2004 Olympic or Paralympic Games, it may, together with the application for an Olympic accreditation card for the persons selected, file a collective application for visas for those persons selected who are required to be in possession of a visa in accordance with Regulation (EC) No 539/2001.
2. Collective applications for visas for the persons concerned shall be forwarded at the same time as applications for the issue of an Olympic accreditation card to the Organising Committee of the 2004 Olympic Games in accordance with the procedure established by it.
3. A single visa application per person shall be filed for persons taking part in the 2004 Olympic or Paralympic Games.
4. The Organising Committee of the 2004 Olympic Games shall forward to the services responsible for issuing visas collective applications for visas as quickly as possible, together with copies of applications for the issue of an Olympic accreditation card for the persons concerned, bearing their full name, nationality, sex, date and place of birth, passport number, type and expiry date thereof.

*Article 5***Examination of the collective application for visas and type of the visa issued**

1. The visa shall be issued by the services responsible for the issue of visas following an examination designed to ensure that the conditions set out in Article 3 are met.
2. The visa issued shall be a uniform short-stay, multiple-entry visa authorising a stay of not more than ninety (90) days for the duration of the Olympics Games and Paralympic Games.
3. Where the member of the Olympic family concerned does not meet the conditions set out in Article 3(c) and (d), the services responsible for issuing visas may issue a visa with limited territorial validity in conformity with Article 5(2) of the Schengen Convention.

*Article 6***Form of the visa**

1. The visa shall take the form of two numbers being entered on the Olympic accreditation card. The first number shall be the visa number. In the case of a uniform visa, this number shall be made up of seven (7) characters comprising six (6) digits preceded by the letter 'C'. In the case of a visa with limited territorial validity, this number shall be made up of eight (8) characters comprising six (6) digits preceded by the letters 'GR'. The second number shall be the number of the passport of the person concerned.
2. The services responsible for issuing visas shall forward the visa numbers to the Organising Committee of the 2004 Olympic Games for the purposes of issuing accreditation cards.

*Article 7***Waiver of fees**

The processing of visa applications and the issue of visas shall not give rise to any fees being charged by the services responsible for issuing visas.

CHAPTER III

OTHER ASPECTS*Article 8***Cancellation of a visa**

Where the list of persons put forward as participants in the 2004 Olympic or Paralympic Games is amended before the Games begin, the responsible organisations shall without any delay inform the Organising Committee of the 2004 Olympic Games thereof so that the accreditation cards of the persons

removed from the list can be revoked. The Organising Committee shall then inform the services responsible for issuing visas thereof, notifying the numbers of the visas in question.

The services responsible for issuing visas shall cancel the visas of the persons concerned. They shall immediately inform the authorities responsible for border checks thereof, and the latter shall without any delay forward this information to the competent authorities of the other Member States.

*Article 9***External border checks**

1. When crossing the external borders of the Member States, the entry checks carried out on members of the Olympic family who have been issued visas in accordance with this Regulation shall be limited to verifying compliance with the conditions set out in Article 3.
2. For the duration of the Olympic Games and the Paralympic Games:
 - (a) entry and exit stamps shall be affixed to the first free page of the passport of those members of the Olympic family for whom it is necessary to affix such stamps. Upon first entry the visa number shall be indicated on this same page;
 - (b) the conditions for entry provided for in Article 5(1)(c) of the Schengen Convention shall be presumed to be fulfilled once a member of the Olympic family has been duly accredited.
3. The provisions of paragraph 2 shall apply to members of the Olympic family who are third-country nationals, whether or not they are subject to the visa requirement under Regulation (EC) No 539/2001.

*Article 10***Information for the European Parliament and the Council**

Not later than four months after the close of the Paralympic Games, Greece shall transmit to the Commission a report on the various aspects of the implementation of this Regulation.

On the basis of this report and any information supplied by other Member States within the same time limit, the Commission shall draw up an assessment of the functioning of the derogation in respect of the issue of visas to members of the Olympic family, as provided for by this Regulation, and shall inform the European Parliament and the Council thereof. The Commission shall draw up this evaluation report early enough for the experience made during the Olympic and Paralympic Games of Athens to be taken into account by the Italian authorities for the organisation of the Winter Olympic Games which will be held in Turin in 2006.

*Article 11***Entry into force**

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaty establishing the European Community.

Done at Brussels, 15 July 2003.

For the Council

The President

G. TREMONTI

COUNCIL REGULATION (EC) No 1296/2003
of 15 July 2003
on common rules for imports of footwear products originating in Vietnam

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The common commercial policy must be based on uniform principles.
- (2) The Commission anti-fraud services have found evidence that consignments of footwear products were imported into the Community on the basis of fraudulent declarations of Vietnamese origin.
- (3) The Community and the Government of Vietnam have negotiated a Memorandum of Understanding on the prevention of fraud in trade in footwear products ('the Memorandum') which sets out a double-checking system on the exports to the Community of footwear products falling within Chapter 64 of the Harmonised System/Combined Nomenclature ⁽¹⁾.
- (4) The validity of the Memorandum of Understanding was originally limited until 31 December 2002 but since the risk of fraudulent declarations of origin is still prevalent, the application of the Memorandum of Understanding has been extended through an Exchange of Letters between the Community and the Government of the Socialist Republic of Vietnam ⁽²⁾ for a further period of two years until 31 December 2004. This Exchange of Letters, which further provides for the possibility of electronic export licensing, was initialled on 28 November 2002 and adopted by the Council on 17 March 2003,

HAS ADOPTED THIS REGULATION:

Article 1

This Regulation shall apply to all products falling within Chapter 64 of the Harmonised System/Combined Nomenclature originating in Vietnam and imported into the Community.

Article 2

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'originating products' shall be as defined by the relevant Community rules in force; the methods for verifying the origin of those products shall be understood accordingly;

⁽¹⁾ OJ L 1, 4.1.2000, p. 13.

⁽²⁾ OJ L 124, 20.5.2003, p. 34.

- (b) 'competent authorities' of the Member States shall mean those designated pursuant to Article 2(7) of Council Regulation (EC) No 520/94 of 7 March 1994 establishing a Community procedure for administering quantitative quotas ⁽³⁾ and as listed in Annex I to Commission Regulation (EC) No 738/94 ⁽⁴⁾.

The list of the competent authorities referred to in point (b) has been last published in Annex III to Commission Regulation (EC) No 1369/1999 ⁽⁵⁾.

Article 3

The release for free circulation in the Community of the products referred to in Article 1 shall be subject to the presentation of an import certificate issued by the Member States' authorities referred to in Article 2(6) in accordance with the procedure set out in this Regulation.

Article 4

1. The competent Vietnamese authorities shall issue an export certificate in respect of the products referred to in Article 1.

2. The export certificate shall conform to the specimen set out in the Annex.

3. The original of the export certificate shall be presented by the importer for the purposes of issuing the import certificate referred to in Article 6.

The competent authorities of a Member State shall refuse to issue an import certificate for products which are not covered by export certificates issued in accordance with the provisions of this Regulation.

Article 5

Exports shall be recorded under the year in which the products covered by the export certificate were shipped.

Article 6

1. The forms to be used by the competent authorities of the Member States for issuing the import certificates shall conform to the specimen of the surveillance document set out in Annex I to Council Regulation (EC) No 3285/94 ⁽⁶⁾.

⁽³⁾ OJ L 66, 10.3.1994, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).

⁽⁴⁾ OJ L 87, 31.3.1994, p. 47. Regulation as last amended by Regulation (EC) No 983/96 (OJ L 131, 1.6.1996, p. 47).

⁽⁵⁾ OJ L 162, 26.6.1999, p. 35.

⁽⁶⁾ OJ L 349, 31.12.1994, p. 53.

2. The authorities of the Member States shall notify the Commission of the requests for import certificates which they have received.

3. The Commission shall notify to the authorities of the Member States its confirmation that the data contained in the requests for import certificates are in conformity with the data received from the competent Vietnamese authorities.

4. The notifications referred to in paragraphs 2 and 3 shall be communicated electronically within the integrated network set-up for the SIGL management of the textile licences, unless for imperative technical reasons it is necessary to use other means of communication temporarily.

Article 7

1. The competent authorities of the Member States shall issue an import certificate within a maximum of five working days from the presentation by the importer of the original of the corresponding export certificate. This presentation shall take place not later than 30 June of the year following that in which the goods covered by the certificate were shipped.

Import certificates shall be valid throughout the customs territory of the Community. Where the Vietnamese authorities have transmitted the data to the Community by electronic means this shall be regarded as substituting the requirement for presentation of the original export certificate.

2. The import certificates shall be valid for six months from the date of their issue, with the possibility of a further extension of three months by the competent authorities of the Member State concerned.

3. The request made by the importer to the competent authorities of the Member States for the purpose of obtaining the import certificate shall contain:

- (a) name of the importer and full address (including any telephone and fax numbers), the identification number registered with the competent national authorities, and the VAT registration number, if that importer is liable to pay VAT;
- (b) name and full address of declarant;
- (c) name and full address of exporter;
- (d) country of origin of the products and the country of consignment;
- (e) description of the products as contained in the export certificate;
- (f) quantity of each shipment;
- (g) date and issue number of the export certificate;
- (h) signature of importer, and date.

The competent authorities may, subject to the conditions laid down by them, allow requests to be submitted, transmitted or printed by electronic means.

However, all documents and evidence shall be made available to the competent authorities of the Member States.

4. Importers shall not be obliged to import the total quantity covered by an import certificate in a single consignment.

Article 8

The validity of import certificates issued by the authorities of the Member States shall be subject to the validity of the export certificates issued by the competent Vietnamese authorities on the basis of which the import certificates have been issued.

Article 9

Import certificates shall be issued without discrimination to any importer in the Community wherever the place of his establishment may be in the Community.

Article 10

1. Import certificate forms and extracts thereof shall be drawn up in duplicate, one copy, marked 'Holder's copy' and bearing the number 1 to be issued to the applicant, and the other, marked 'Copy for the competent authority' and bearing the number 2, to be kept by the authority issuing the certificate. For administrative purposes the competent authorities may add additional copies to form 2.

2. Forms shall be printed on white paper free of mechanical pulp, dressed for writing and weighing between 55 and 65 grams per square metre. Their size shall be 210 mm x 297 mm; the type space between the lines shall be 4,24 mm (one sixth of an inch); the layout of the forms shall be followed precisely. Both sides of copy No 1, which is the certificate itself, shall in addition have a yellow printed guilloche-pattern background so as to reveal any falsification by mechanical or chemical means.

3. Member States shall be responsible for having the forms printed. The forms may also be printed by printers appointed by the Member State in which they are established. In the latter case, reference to the appointment by the Member State must appear on each form. Each form shall bear an indication of the printer's name and address or a mark enabling the printer to be identified.

4. At the time of their issue the import certificates or extracts shall be given an issue number determined by the competent authorities of the Member State. The import certificate number shall be notified to the Commission electronically within the integrated network set up under Article 14 of Council Regulation (EEC) No 3030/93 of 12 October 1993 on common rules for imports of certain textile products from third countries ⁽¹⁾.

⁽¹⁾ OJ L 275, 8.11.1993, p. 1. Regulation as last amended by Regulation (EC) No 138/2003 (OJ L 23, 28.1.2003, p. 1).

5. Certificates and extracts shall be completed in the official language, or one of the official languages, of the Member State of issue.

6. The marks of the issuing agencies and debiting authorities shall be applied by means of a stamp. However, an embossing press combined with letters or figures obtained by means of perforation, or printing on the certificate, may be substituted for the issuing authority's stamp. The issuing authorities shall use any tamper-proof method to record the quantity allocated in such a way as to make it impossible to insert figures or references; in particular, asterisks or similar marks may be used to fill blank character-spaces (for example: *EUR*1 000*).

7. If the space set aside for debits on a certificate or extract thereof is insufficient, the competent authorities may attach one or more extension pages bearing boxes matching those on the reverse of copy No 1 and copy No 2 of the certificate or extract. The debiting authorities shall so place their stamp that one half is on the certificate or extract thereof and the other half is on the extension page. If there is more than one extension page, a further stamp shall be placed in like manner across each page and the preceding page.

8. Import certificates and extracts issued, and entries and endorsements made, by the authorities of one Member State shall, in each of the other Member States, have the same legal effect as documents issued, and entries and endorsements made, by the authorities of such Member States.

9. The competent authorities of the Member States concerned may, where indispensable, require the content of certificates or extracts to be translated into the official language or one of the official languages of that Member State.

10. The import certificate may be issued by electronic means as long as the customs offices involved have access to this certificate via a computer network.

Article 11

In the event of theft, loss or destruction of an export certificate, import certificate or a certificate of origin, the exporter may apply to the competent authority which issued the document for a duplicate to be made out on the basis of the export documents in his possession. The duplicate certificate issued in this way shall bear the endorsement 'duplicata' or 'duplicate' or 'duplicado'.

The duplicate shall bear the date of the original certificate.

Article 12

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union* and shall apply to goods shipped after that date.

It shall cease to apply on 31 December 2004.

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

Done at Brussels, 15 July 2003.

For the Council
The President
G. TREMONTI

ANNEX

1. Goods consigned from (exporter's business name, address, country)	EXPORT CERTIFICATE FOR PRODUCTS UNDER CHAPTER 64 OF HARMONISED SYSTEM ORIGINAL		
2. Goods consigned to (consignee's name, address, country)			
3. Means of transport and route (as far as known)	4. Issue Number		
	5. Export year		
6. Description of goods	7. Quantity	8. FOB/Contract value	
9. Certification by the competent authority I, the undersigned, certify that the goods described above originate in Vietnam according to the rules of origin laid down by the relevant Community legislation.			
10. Competent authority (name, full address, country)	At On (signature) <div style="text-align: right; margin-right: 50px;"> (stamp) </div>		

*Appendix to Annex***Explanatory note concerning item 4 (issue number) of the Export Certificate**

The issue number shall consist of the following elements:

- two letters identifying Vietnam as follows: VN
 - two letters identifying the Member State foreseen as the country of destination as follows:
 - AT Austria
 - BL Benelux
 - DE Germany
 - DK Denmark
 - EL Greece
 - ES Spain
 - FI Finland
 - FR France
 - GB United Kingdom
 - IE Ireland
 - IT Italy
 - PT Portugal
 - SE Sweden
 - one number indicating the year of issue, for example 3 for 2003;
 - two numbers, from 01 to 99, indicating the issuing office for the export certificate;
 - a number with five digits between 50000 and 99999 allocated to the Member State foreseen as the country of destination.
-

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 16 June 2003

concluding the Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities

(2003/520/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 83 and 308, in conjunction with the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) Given the increasingly pronounced international dimension to competition problems, international cooperation in this field should be strengthened.
- (2) The sound and effective enforcement of competition laws is a matter of importance to the efficient operation of the markets and to international trade.
- (3) Elaboration of the principles of positive comity in international law and implementation of those principles in the enforcement of the competition laws of the European Community and Japan are likely to increase the effectiveness in their application.
- (4) To this end, the Commission has negotiated an Agreement with Japan regarding the application of the competition rules of the European Community and Japan.

(5) Article 308 of the Treaty must be invoked owing to the inclusion in the text of the Agreement of mergers and acquisitions which are covered by Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings ⁽³⁾, which in turn is essentially based on Article 308.

(6) The Agreement should be approved,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities is hereby approved on behalf of the European Community

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community ⁽⁴⁾.

Done at Luxembourg, 16 June 2003.

For the Council
The President
 G. PAPANDREOU

⁽¹⁾ Proposal of 8 May 2002 (not yet published in the Official Journal).
⁽²⁾ Opinion of 3 July 2002 (not yet published in the Official Journal).

⁽³⁾ OJ L 395, 30.12.1989, p. 1 (Corrigendum: OJ L 257, 21.9.1990, p. 13), as amended by Council Regulation (EC) No 1310/97 (OJ L 180, 9.7.1997, p. 1).

⁽⁴⁾ In accordance with Article 12(1), this Agreement will enter into force on 9 August 2003.

AGREEMENT

between the European Community and the Government of Japan concerning cooperation on anti-competitive activities

THE EUROPEAN COMMUNITY,

of the one part, and

THE GOVERNMENT OF JAPAN,

of the other part

(hereinafter referred to as 'the Parties')

RECOGNISING that the world's economies, including those of the European Community and Japan, are becoming increasingly interrelated,

NOTING that the sound and effective enforcement of competition laws of the European Community and Japan respectively is a matter of importance to the efficient functioning of their respective markets and to trade between them,

NOTING that the sound and effective enforcement of competition laws of the European Community and Japan respectively would be enhanced by cooperation and, where appropriate, coordination between the Parties in the application of those laws,

NOTING that from time to time differences may arise between the Parties concerning the application of the competition laws of the European Community and Japan respectively,

NOTING their commitment to give careful consideration to the important interests of each Party in the application of the competition laws of the European Community and Japan respectively (hereinafter referred to as the 'competition laws of each Party'), and

HAVING REGARD to the recommendation of the Council of the Organisation for Economic Cooperation and Development concerning cooperation between Member Countries on anti-competitive practices affecting international trade, as revised July 27 and 28, 1995, and to the Recommendation of the Council of the Organisation for Economic Cooperation and Development concerning effective action against hard core cartels adopted on March 25 1998,

HAVE AGREED AS FOLLOWS:

Article 1

1. The purpose of this Agreement is to contribute to the effective enforcement of the competition laws of each Party through promoting cooperation and coordination between the competition authorities of the Parties and to avoid or lessen the possibility of conflicts between the Parties in all matters pertaining to the application of the competition laws of each Party.

2. For the purposes of this Agreement:

(a) the term 'anti-competitive activities' means any conduct or transaction that may be subject to sanctions or other relief under the competition laws of the European Community or Japan;

(b) the term 'competent authority of a Member State' means one authority for each Member State mentioned in Article 299(1) of the Treaty establishing the European Community competent for the application of competition laws. Upon signature of this Agreement a list of such authorities will be notified by the Commission of the European Communities to the Government of Japan. The Commission will notify to the Government of Japan an updated list each time this becomes necessary. No information pursuant to Article 9(6) of this Agreement shall be sent to a competent

authority of a Member State before this authority is included in the list notified by the Commission to the Government of Japan;

(c) the terms 'competition authority' and 'competition authorities' mean:

(i) for the European Community, the Commission of the European Communities, as to its responsibilities pursuant to the competition laws of the European Community; and

(ii) for Japan, the Fair Trade Commission;

(d) the term 'competition laws' means:

(i) for the European Community, Articles 81, 82, and 85 of the Treaty establishing the European Community, Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings, and their implementing Regulations pursuant to the said Treaty, as well as any amendments thereto; and

(ii) for Japan, the Law concerning prohibition of private monopoly and maintenance of fair trade (Law No 54, 1947) (hereinafter referred to as 'the Antimonopoly Law') and its implementing regulations as well as any amendments thereto;

- (e) the term 'enforcement activities' means any application of competition laws by way of investigation or proceeding conducted by the competition authority of a Party. However, research, studies or surveys with the objective of examining the general economic situation or general conditions in specific industries are not included. Such research, studies or surveys shall not be construed so as to include any investigation with regard to suspected violation of competition laws;
- (f) the term 'the territory of a Party', 'the territory of the Party' and 'the territory of the other Party' means the territory to which the Treaty establishing the European Community applies or the territory of Japan, as the context requires;
- (g) the term 'the laws and regulations of a Party', 'the laws and regulations of the Party' and 'the laws and regulations of the other Party' means the laws and regulations of the European Community or the laws and regulations of Japan, as the context requires.

Article 2

1. The competition authority of each Party shall notify the competition authority of the other Party with respect to the enforcement activities that the notifying competition authority considers may affect the important interests of the other Party.

2. Enforcement activities that may affect the important interests of the other Party include those that:

- (a) are relevant to enforcement activities of the other Party;
- (b) are against a national or nationals of the other Party (in the case of the European Community a national or nationals of the Member States of the European Community), or against a company or companies incorporated or organised under the applicable laws and regulations within the territory of the other Party;
- (c) involve anti-competitive activities, other than mergers or acquisitions, carried out in any substantial part within the territory of the other Party;
- (d) involve a merger or acquisition in which:
- (i) one or more of the parties to the transaction; or
 - (ii) a company controlling one or more of the parties to the transaction,
- is a company incorporated or organised under the applicable laws and regulations within the territory of the other Party;
- (e) involve conduct considered by the notifying competition authority to have been required, encouraged or approved by the other Party; or
- (f) involve the imposition of, or application for, sanctions or other relief by a competition authority that would require or prohibit conduct within the territory of the other Party.

3. Where notification is required pursuant to paragraph 1 of this Article with respect to mergers or acquisitions, such notification shall be given not later than:

- (a) in the case of the European Community:
- (i) the Decision to initiate proceedings with respect to the concentration, pursuant to Article 6(1)(c) of Council Regulation (EEC) No 4064/89; and
 - (ii) the issuance of a Statement of Objections;
- (b) in the case of Japan:
- (i) the issuance of request to submit documents, reports or other information concerning the proposed transaction pursuant to the Antimonopoly Law; and
 - (ii) the issuance of a recommendation or the decision to initiate a hearing.

4. Where notification is required pursuant to paragraph 1 of this Article with respect to matters other than mergers or acquisitions, notification shall be given as far in advance of the following actions as is practically possible:

- (a) in the case of the European Community:
- (i) the issuance of a Statement of Objections; and
 - (ii) the adoption of a decision or settlement;
- (b) in the case of Japan:
- (i) the filing of a criminal accusation;
 - (ii) the filing of a complaint seeking an urgent injunction;
 - (iii) the issuance of a recommendation or the decision to initiate a hearing; and
 - (iv) the issuance of a surcharge payment order when no prior recommendation with respect to the payer has been issued.

5. Notifications shall be sufficiently detailed to enable the notified Party to make an initial evaluation of the effects of the enforcement activities on its own important interests.

Article 3

1. The competition authority of each Party shall render assistance to the competition authority of the other Party in its enforcement activities to the extent consistent with the laws and regulations of the Party rendering the assistance and the important interests of that Party, and within its reasonably available resources.

2. The competition authority of each Party shall, to the extent consistent with the laws and regulations of the Party, and the important interests of that Party:

- (a) inform the competition authority of the other Party with respect to its enforcement activities involving anti-competitive activities that the informing competition authority considers may also have an adverse effect on competition within the territory of the other Party;

- (b) provide the competition authority of the other Party with any significant information, within its possession and that comes to its attention, about anti-competitive activities that the providing competition authority considers may be relevant to, or may warrant, enforcement activities by the competition authority of the other Party; and
- (c) provide the competition authority of the other Party, upon request and in accordance with the provisions of this Agreement, with information within its possession that is relevant to the enforcement activities of the competition authority of the other Party.

Article 4

1. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, they shall consider coordination of their enforcement activities.
2. In considering whether particular enforcement activities should be coordinated, the competition authorities of the Parties should take into account the following factors, among others:
 - (a) the effect of such coordination on their ability to achieve the objectives of their enforcement activities;
 - (b) the relative abilities of the competition authorities of the Parties to obtain information necessary to conduct the enforcement activities;
 - (c) the extent to which the competition authority of either Party can secure effective relief against the anti-competitive activities involved;
 - (d) the opportunity to make more efficient use of resources;
 - (e) the possible reduction of cost to the persons subject to the enforcement activities; and
 - (f) the potential advantages of coordinated relief to the Parties and to the persons subject to the enforcement activities.
3. In any coordinated enforcement activities, the competition authority of each Party shall seek to conduct its enforcement activities with careful consideration to the objectives of the enforcement activities by the competition authority of the other Party.
4. Where the competition authorities of both Parties are pursuing enforcement activities with regard to related matters, the competition authority of each Party shall consider, upon request by the competition authority of the other Party and where consistent with the important interests of the requested Party, inquiring whether persons who have provided confidential information in connection with those enforcement activities will consent to the sharing of such information with the competition authority of the other Party.

5. Subject to appropriate notification to the competition authority of the other Party, the competition authority of either Party may, at any time, limit or terminate the coordination of enforcement activities and pursue their enforcement activities independently.

Article 5

1. If the competition authority of a Party believes that anti-competitive activities carried out in the territory of the other Party adversely affect the important interests of the former Party, such competition authority, taking into account the importance of avoiding conflicts regarding jurisdiction and taking into account that the competition authority of the other Party may be in a position to conduct more effective enforcement activities with regard to such anti-competitive activities, may request that the competition authority of the other Party initiate appropriate enforcement activities.
2. The request shall be as specific as possible about the nature of the anti-competitive activities and their effect on the important interests of the Party of the requesting competition authority, and shall include an offer of such further information and other cooperation as the requesting competition authority is able to provide.
3. The requested competition authority shall carefully consider whether to initiate enforcement activities, or whether to expand ongoing enforcement activities, with respect to the anti-competitive activities identified in the request. The requested competition authority shall inform the requesting competition authority of its decision as soon as practically possible. If enforcement activities are initiated, the requested competition authority shall inform the requesting competition authority of their outcome and, to the extent possible, of significant interim developments.
4. Nothing in this Article limits the discretion of the requested Party's competition authority under its competition laws and enforcement policies as to whether or not to undertake enforcement activities with respect to the anti-competitive activities identified in the request, or precludes the requesting Party's competition authority from withdrawing its request.

Article 6

1. The competition authority of each Party shall give careful consideration to the important interests of the other Party throughout all phases of its enforcement activities, including decisions regarding the initiation of enforcement activities, the scope of enforcement activities and the nature of sanctions or other relief sought in each case.
2. When either Party informs the other Party that specific enforcement activities by the latter Party may affect the former's important interests, the latter Party shall endeavour to provide timely notice of significant developments of such enforcement activities.

3. Where either Party considers that enforcement activities by a Party may adversely affect the important interests of the other Party, the Parties should consider the following factors, in addition to any other factor that may be relevant in the circumstances in seeking an appropriate accommodation of the competing interests:

- (a) the relative significance to the anti-competitive activities of conduct or transactions occurring within the territory of a Party as compared to conduct or transactions occurring within the territory of the other Party;
- (b) the relative impact of the anti-competitive activities on the important interests of the respective Parties;
- (c) the presence or absence of evidence of an intention on the part of those engaged in the anti-competitive activities to affect consumers, suppliers, or competitors within the territory of the Party conducting the enforcement activities;
- (d) the extent to which the anti-competitive activities substantially lessen competition in the market of the European Community and Japan respectively;
- (e) the degree of conflict or consistency between the enforcement activities by a Party and the laws and regulations of the other Party, or the policies or important interests of that other Party;
- (f) whether private persons, either natural or legal, will be placed under conflicting requirements by both Parties;
- (g) the location of relevant assets and parties to the transaction;
- (h) the degree to which effective sanctions or other relief can be secured by the enforcement activities of the Party against the anti-competitive activities; and
- (i) the extent to which enforcement activities by the other Party with respect to the same persons, either natural or legal, would be affected.

Article 7

1. The Parties may hold, as necessary, consultations through the diplomatic channel on any matter which may arise in connection with this Agreement.
2. A request for consultations under this Article shall be communicated through the diplomatic channel.

Article 8

1. The competition authorities of the Parties shall consult with each other, upon request of either Party's competition authority, on any matter which may arise in the implementation of this Agreement.
2. The competition authorities of the Parties shall meet at least once a year to:
 - (a) exchange information on their current enforcement efforts and priorities in relation to the competition laws of each Party;

- (b) exchange information on economic sectors of common interest;
- (c) discuss policy changes that they are considering; and
- (d) discuss other matters of mutual interest relating to the application of the competition laws of each Party.

Article 9

1. Notwithstanding any other provision of this Agreement, neither Party is required to communicate information to the other Party if such communication is prohibited by the laws and regulations of the Party possessing the information or such communication would be incompatible with its important interests.
2. (a) Information, other than publicly available information, communicated by a Party to the other Party pursuant to this Agreement shall only be used by the receiving Party for the purpose specified in Article 1(1) of this Agreement.
 - (b) When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with the laws and regulations, maintain its confidentiality.
3. A Party may require that information communicated pursuant to this Agreement be used subject to the terms and conditions it may specify. The receiving Party shall not use such information in a manner contrary to such terms and conditions without the prior consent of the other Party.
4. Each Party may limit the information it communicates to the other Party when the latter Party is unable to give the assurance requested by it with respect to confidentiality, with respect to the terms and conditions it specifies, or with respect to the limitations of purposes for which the information will be used.
5. This Article shall not preclude the use or disclosure of information, other than publicly available information, by the receiving Party to the extent that:
 - (a) the Party providing the information has given its prior consent to such use or disclosure, or
 - (b) there is an obligation to do so under the laws and regulations of the Party receiving the information. In such case, the receiving Party:
 - (i) shall not take any action which may result in a legal obligation to make available to a third party or other authorities information provided in confidence pursuant to this Agreement without the prior consent of the Party providing the information;
 - (ii) shall, wherever possible, give advance notice of any such use or disclosure to the Party which provided the information and, upon request, consult with the other Party and give due consideration to its important interests; and

- (iii) shall, unless otherwise agreed by the Party which provided the information, use all available measures under the applicable laws and regulations to maintain the confidentiality of information as regards applications by a third party or other authorities for disclosure of the information concerned.
6. The competition authority of the European Community,
- (a) after notice to the Japanese competition authority, will inform the competent authorities of the Member State or Member States whose important interests are affected of the notifications sent to it by the Japanese competition authority;
- (b) after consultation with the Japanese competition authority, will inform the competent authorities of such Member State or Member States of any cooperation and coordination of enforcement activities; and
- (c) shall ensure that information, other than publicly available information, communicated to the competent authorities of the Member State or Member States pursuant to subparagraphs (a) and (b) above shall not be used for any purpose other than the one specified in Article 1(1) of this Agreement, as well as that such information shall not be disclosed.

Article 10

1. This Agreement shall be implemented by the Parties in accordance with the laws and regulations in force in the European Community and Japan respectively and within the available resources of their respective competition authorities.
2. Detailed arrangements to implement this Agreement may be made between the competition authorities of the Parties.

3. Nothing in this Agreement shall prevent the Parties from seeking or providing assistance to one another pursuant to other bilateral or multilateral agreements or arrangements between the Parties.

4. Nothing in this Agreement shall be construed to prejudice the policy or legal position of either Party regarding any issue related to jurisdiction.

5. Nothing in this Agreement shall be construed to affect the rights and obligations of either Party under other international agreements or under the laws of the European Community or Japan.

Article 11

Unless otherwise provided in this Agreement, communications under this Agreement may be directly carried out between the competition authorities of the Parties. Notifications under Article 1(2)(b), Article 2 and requests under Article 5(1) of this Agreement, however, shall be confirmed in writing through the diplomatic channel. The confirmation shall be made as promptly as practically possible after the communication concerned between the competition authorities of the Parties.

Article 12

1. This Agreement shall enter into force on the 30th day after the date of signature.
2. This Agreement shall remain in force until 60 days after the date on which either Party notifies the other Party in writing through the diplomatic channel that it wishes to terminate the Agreement.
3. The Parties shall review the operation of this Agreement not more than five years from the date of its entry into force.

IN WITNESS WHEREOF, the undersigned, being duly authorised, have signed this Agreement.

DONE at Brussels in duplicate, on this tenth day of July, in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Japanese languages. In case of divergence the English and Japanese texts shall prevail over the other language texts.

FOR THE EUROPEAN COMMUNITY:

FOR THE GOVERNMENT OF JAPAN:

Umberto Vattani

Fazuo Asakai

he

AGREED MINUTES

The undersigned wish to record the following understanding which they have reached during the negotiation of the Agreement between the European Community and the Government of Japan concerning cooperation on anti-competitive activities (hereinafter referred to as the 'Agreement') signed today:

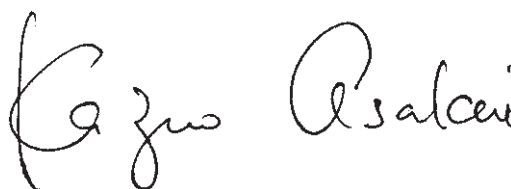
Both Parties confirm their understanding that:

1. the Government of Japan is not required to communicate to the European Community under the Agreement 'trade secrets of entrepreneurs' covered by the provisions of Article 39 of the Law concerning prohibition of private monopoly and maintenance of fair trade (Law No 54, 1947), except for those communicated with the consent of the entrepreneurs concerned and in accordance with the provisions of Article 4(4) of the Agreement; and
2. the European Community is not required to communicate to the Government of Japan under the Agreement confidential information covered by Article 20 of Regulation 17/62, except for the information communicated in accordance with the provisions of Article 4(4) of the Agreement.

Brussels, 10 July, 2003

FOR THE EUROPEAN COMMUNITY:

FOR THE GOVERNMENT OF JAPAN:



Information relating to the entry into force of the Protocol adjusting the trade aspects of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions

The Protocol adjusting the trade aspects of the Europe Agreement with the Republic of Hungary, to take account of the outcome of negotiations between the Parties on new mutual agricultural concessions, which the Council decided to conclude on 18 March 2003 ⁽¹⁾, entered into force on 1 June 2003, since notification of the accomplishment of the procedures specified in Article 4 of that Protocol was completed on 28 May 2003.

⁽¹⁾ OJ L 102, 24.4.2003, p. 32.

COMMISSION

COMMISSION DECISION

of 9 April 2002

on the State aid implemented by Italy for cableway installations in the Autonomous Province of Bolzano

(notified under document number C(2002) 1191)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/521/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments⁽¹⁾, pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By complaint dated 27 February 1996, received on 21 May 1996, the Commission was informed that Italy had implemented a measure granting aid for cableways in the Province of Bolzano. By letters dated 29 July 1996, 21 January 1997 and 23 June 1998 Italy provided the Commission with further information.
- (2) By letter of 4 August 2000, the Commission informed Italy that it had decided to initiate the proceedings under Article 88(2) of the EC Treaty in respect of the measure in question.
- (3) The Commission decision to initiate proceedings was published⁽²⁾ and the interested parties were invited to submit their comments on the measure.

- (4) The Commission received comments from interested parties and forwarded them to Italy, which was given the opportunity to react.

- (5) By letter of 12 March 2002, the Italian authorities undertook to re-notify the scheme in 2006.

II. DETAILED DESCRIPTION OF THE MEASURE

- (6) Following late notification and an investigation linked to aid granted by DG REGIO under a 5b aid programme, the Commission approved by letter No NN 45/91 of 4 June 1991 the aid provided for by Bolzano Provincial Law No 2/1991 of 21 January 1991 on the budget for 1991 and the period 1991 to 1993 (hereinafter 'Law No 2/1991'), under which State aid may be granted to cableways in the province with a maximum aid intensity of 33 % gross of the cost of individual projects.
- (7) The Autonomous Province then approved a new law, Law No 6 of 4 March 1996 on aid for the construction and modernisation of cableways (hereinafter 'Law No 6/1996'). According to the Province, the law simply renews the old aid scheme and allows for investment aid of up to 90 %.
- (8) Article 1(1) of Law No 6/1996 provides for investment aid in the form of non-repayable grants for:
 - (a) the construction of new passenger transport facilities in the form of aerial cableways, funiculars, belt conveyors or ski lifts;

⁽¹⁾ OJ C 27, 27.1.2001, p. 37.

⁽²⁾ See footnote 1.

- (b) the qualitative improvement, technical innovation or increase in the capacity of existing cableway installations;
- (c) the replacement of old parts of existing installations;
- (d) technical improvement and modernisation of ticket vending and reading machines.

Article 1(2) of Law No 6/1996 lays down the maximum aid intensities (as a percentage of investment costs), as follows:

- (a) 90 % for shuttle-service bicable ropeways, which are of special social importance as they link villages;
 - (b) 45 % for funiculars, bicable and monocable ropeways, and belt conveyors;
 - (c) 45 % for ticket vending and reading machines;
 - (d) 50 % for single ski lifts, which fulfil a social-pedagogical purpose and are especially useful for the local population because they supplement significantly the existing range of sports and leisure facilities in winter time;
 - (e) 30 % for ski lifts not covered by point (d).
- (9) Under Law No 6/1996, grants provided for in Article 1(2)(a), (b) and (c) must be paid out in equal instalments over three years. The grants provided for in Article 1(2)(d) and (e) are set off against a single year's budget.
- (10) The aid intensities for investments under Article 1(2)(b) and (d) may be increased by 30 percentage points when the project is of considerable general interest or when it serves to link ski resorts or to link ski resorts with villages or when, because of environmental considerations, a technically costly solution must be chosen.

III. COMMENTS FROM INTERESTED PARTIES

- (11) Fianet (International Federation of national associations of passenger transport by rope Railways) stressed the importance of cableway transport in a mountain economy in view of its contribution to the development of employment, the protection of the environment and the improvement of the economic position of the local population. It considers that State aid in this field does not distort competition.
- (12) The South Tyrolean Federation for nature conservation stated that there are no objective criteria for determining the amount of State aid allowed and that the reasons for

granting State aid are general in nature. The State aid in question puts pressure on investors to build other cableway installations, seriously damaging the countryside and the environment. Other aid has been granted in addition to that granted under Law No 6/1996, and the State aid distorts competition.

- (13) The Austrian authorities consider that State aid granted in this field on the terms in question, i.e. up to 90 %, does not distort competition to an extent contrary to the common interest. Aid granted on the basis of political and economic principles to firms that would otherwise be loss-making as they are located in regions where a private operator would not invest is in the general interest of the Member State as well as the Community. The authorities are concerned by the fact that the Commission is not applying Article 86(2) of the Treaty in the present case.
- (14) The Association of German Cableways (Verband Deutscher Seilbahnen) stated that there is strong competition in the international cableway market. It also pointed out that some neighbouring European countries apply the reduced VAT rate (half of the standard rate) while in Germany the full VAT rate is applicable to cableways as they are specifically excluded from the reduced rate. The Community Directive on public contracts, however, specifically includes cableways.
- (15) The Associazione Alpina del Sud-Tirolo (Alpenverein Südtirol) stated that, because cableway constructors were granted State aid, they built a considerable number of cableways and, as a result, the unspoilt landscape of the Southern Tyrol was under strong threat.

IV. COMMENTS FROM ITALY

- (16) In reply to the proceedings initiated under Article 88(2) of the Treaty, the Bolzano provincial authorities provided further information by letters dated 22 January 2001 and 24 May 2001, in which they claim:
- (a) that the former Law No 2/1991 of 21 January 1991, which had been examined and authorised by the Commission (NN 45/91), and the new Law No 6/1996, which simply recasts and consolidates the existing provincial rules, are identical, the latter being a continuation of the former;

- (b) that cableways are transport infrastructure and services of general economic interest and can be divided into three categories as follows:

category A, overhead cableways constituting transport infrastructure that replaces public road services. They are the only means of transport linking mountain communities and are, therefore, of special social importance;

category B, overhead and surface cableways intended for leisure purposes, of a mainly local or social nature;

category C, overhead and surface cableways serving tourist areas.

- (c) that Law No 6/1996 is unlikely to affect trade;

- (d) that the exemption under Article 87(3)(c) is applicable since the aid provided for in the Law is intended to facilitate investment by SMEs.

- (17) The Bolzano provincial authorities also point out that the enterprises holding concessions to operate cableways in the Province of Bolzano, whether they are public or private enterprises, are all SMEs within the meaning of the Community definitions and none of them exceeds the thresholds that define an SME.

- (18) In addition, they stress that commercial cableways in tourist areas have not been financed under Law No 6/1996, with the exception of three cableways at the Stelvio Pass and four in the municipality of Castelrotto, Alpe di Siusi.

V. GENERAL CONSIDERATIONS REGARDING CABLEWAY INSTALLATIONS

Existence of State aid

- (19) State aid within the meaning of Article 87(1) of the EC Treaty is present when certain undertakings are favoured by any form of support granted through State resources which distorts or threatens to distort competition and affects trade between Member States.

- (20) It is sometimes argued that certain cableway installations, being transport infrastructures, are not subject to State aid rules. This reasoning cannot be accepted

without qualification. Public financing of infrastructures open to all potential users in a non-discriminatory way and managed by the State does not normally fall under Article 87(1) of the EC Treaty, as the Commission has already concluded⁽³⁾, since in such cases no advantage is conferred on an undertaking within the meaning of Article 87(1) that is in competition with other undertakings. Most transport infrastructure financing takes the form of this kind of investments, e.g. a toll-free public road.

- (21) In the case of cableway installations, however, operators have effective control over access to their facilities and customers normally pay for the use of the installation. A cableway is typically run by a single operator and cableway transport can, at least in principle, be an economically viable activity exercised for profit by private operators.

- (22) Transport operators and any other commercial users of transport infrastructures satisfy the definition of an undertaking within the meaning of Article 87(1). It is clear from the Court's case-law on the concept of 'undertaking' that the central issue is whether an economic activity is being carried out. The organisational form is less relevant. The Court of First Instance held in *Aéroports de Paris*⁽⁴⁾, that the management and provision of facilities constitute an economic activity for the purposes of Article 87(1) of the Treaty. A private or public transport infrastructure manager that is not part of the State administration will invariably be regarded as an 'undertaking'. From the point of view of existing or potential competitors, any financial benefit provided to such undertakings could, in principle, distort competition.

- (23) Moreover, not all cableway installations are used for general mobility needs; many are intended for a specific economic category of user, e.g. consumers of a service that is not transport proper. Such is the case of cableways used mainly by skiers. These offer a facility that is essential to the practice of a sport rather than providing a general transport service.

⁽³⁾ See Commission decision of 14 September 2000 in Case N 208/2000, SOIT (NL). See also the Commission White paper on fair payment for infrastructure use: A phased approach to a common transport infrastructure charging framework in the EU (COM(1998) 466 final, of 22 July 1998, Chapter 5, paragraph 43) and Commission Communication 'Reinforcing Quality in Sea Ports: A Key for European Transport', COM(2001) 35 final, 13.2.2001, p. 11.

⁽⁴⁾ Case T-128/98 *Aéroports de Paris v Commission*, [2000] ECR II-3929.

Distortion of competition and effect on trade between Member States

- (24) For a measure to constitute State aid within the meaning of Article 87(1), it must essentially distort or be liable to distort competition and affect trade between Member States. In the case of cableways, any distortions of competition or any effects on trade between Member States must be assessed with regard to their location, use and size.
- (25) Cableway installations provide a service only at a given location. The service cannot be provided elsewhere. This fact, however, does not rule out the risk of an effect on trade between Member States since there might be operators that are active internationally and State funding could confer advantages on the beneficiary or discourage other, possibly foreign, operators from providing an alternative service *in loco* possibly by means other than cableways. State funding could help to attract non-resident users, e.g. skiers from the same or a different country, thereby diverting them from other cableways, including those in other Member States.
- (26) In assessing these elements, it is useful to draw a distinction between cableways used for sporting activities and those intended to satisfy the general transport needs of the population.
- (29) It can be argued, however, that sports installations in areas with few winter sports facilities and limited tourism capacity tend to have a purely local use and are not capable of attracting users with a choice of installations in other Member States. In such cases there would not be any distortion of competition or effect on trade on the demand side. However, on the supply side, it would have to be determined whether the recipients operated only at local level and whether State support for that activity harmed or discouraged the alternative supply of cableways by operators from other Member States. The latter possibility would seem rather remote in cases where there is a limited number of local users, the service might not be economically viable and State funding might be the only way of supplying it.
- (30) Accordingly, State support for cableways intended for sporting activities in tourist resorts would normally distort competition and affect trade between Member States. It is accepted, however, that there might be cases of cableways with a purely local use where State funding would not distort competition and affect trade between Member States and would therefore not constitute State aid under Article 87(1).

*Cableways meeting general transport needs**Cableways used for sporting activities*

- (27) The number, price and quality of such cableways can influence the choice of customers who could choose cableways in other Member States instead. Unlike other factors that may affect choice, such as climate, landscape, accessibility and quality of catering, cableways affect all users in a similar way and can be readily compared between different resorts. Ski passes account for a substantial share of the total costs of a winter holiday and are often included in package holidays sold by international operators. Funding of cableways in mountain resorts therefore has an impact on the provision of services for winter sports, which is an international business characterised by a high degree of intra-Community trade and strong competition.
- (28) In addition, there are firms that operate cableways in resorts in various Member States. Public funding confers advantages that could be exploited in a market where there is also cross-border competition for the supply of the service.
- (31) Cableways that are mainly intended to satisfy general transport needs of the local population would not normally influence the choice of users who have as alternatives resorts in other Member States. However, State support could benefit an operator active internationally or could adversely affect the actual or potential supply *in loco* of an alternative transport means by an operator from another Member State. It may be that in some cases the recipient operates only locally and an alternative transport activity would not be economically or technically viable: in such circumstances the measure would not distort competition or affect trade between Member States. In other cases, the transport activity, by cableway or other means, is technically or economically viable and capable of attracting commercial operators engaged in an economic activity under Article 87(1) of the Treaty. In view of the gradual liberalisation of the transport sector, it is possible that this transport might be provided by operators from other Member States, in which case the measures would distort or be liable to distort competition and would affect trade between Member States, thereby constituting aid within the meaning of Article 87(1).

(32) To summarise, cableways used to support an activity capable of attracting non-local users will generally be regarded as having an effect on trade between Member States. This might not, however, be the case for sports-related installations in areas with few facilities and limited tourism capacity. Installations mainly catering for the general mobility needs of the population would have an effect on trade between Member States only if there were cross-border competition in the supply of the transport service.

Criteria

(33) In distinguishing between the types of installations, the following factors, among others, should be taken into account:

- (a) the location of the cableway (e.g. in an urban area or linking such areas);
- (b) its operating times (e.g. seasonal or all year; during daylight or longer);
- (c) whether use is predominantly local (number of daily as opposed to weekly passes);
- (d) the number and capacity of the installations compared with the number of resident users;
- (e) the presence of other tourist facilities in the area.

(34) An aid scheme for a specific type of installation or one which confers benefits that vary according to the type of installation should set out objective criteria on the basis of which the category of recipient is established.

Compatibility of aid for cableways

(35) Where cableways benefit⁽⁵⁾ from State resources that distort or are liable to distort competition and affect trade between Member States, the resources are covered by the State aid rules of the EC Treaty. The aid must be notified under Article 88(3) of the Treaty and Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽⁶⁾.

(36) This is also true for cableways that are set up or managed by public entities, in which case the general

principle that funding by the State must be provided according to the 'market economy investor principle' continues to apply. In other words, public funds in excess of or on better terms than those that a private investor would provide in the same circumstances constitute State aid which must be notified under Article 88(3). This would apply to all forms of financial intervention, including capital injections, loans and guarantees.

(37) Once the presence of State aid has been established, it is necessary to examine whether the aid is compatible with the common market under one of the exceptions in Article 87(2) and (3). These considerations are without prejudice to the application of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid (the *de minimis* rule)⁽⁷⁾.

(38) In the transport sector a specific State aid approach is needed in view of the obligation on the State to ensure that transport services meet social and environmental concerns. Article 73 of the Treaty provides for an exemption to meet those concerns.

(39) Finally, under Article 86(2) of the Treaty, firms entrusted with the operation of services of general economic interest may qualify for exemption from the competition rules if their application is liable to obstruct *de jure* or *de facto* the performance of the particular tasks assigned to them.

Article 87

(40) While the conditions for the application of the exemptions provided for in Article 87(2)(b) (aid to make good the damage caused by natural disasters or exceptional occurrences) and (c) (aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany) must necessarily be assessed on a case-by-case basis, exemption under Article 87(2)(a) (aid having a social character, granted to individual consumers) is not applicable to aid to cableway operators.

⁽⁵⁾ Naturally, if cableways benefit from a measure of a general nature, this would not qualify as State aid owing to the lack of selectivity.

⁽⁶⁾ OJ L 83, 27.3.1999, p. 1.

⁽⁷⁾ OJ L 10, 13.1.2001, p. 30.

(41) Exemption under Article 87(3)(d) (aid to promote culture and heritage conservation) for cableways would normally be ruled out, while the application of Article 87(3)(a) (aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment) and (aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State) needs to be assessed on a case-by-case basis. The assessment would have to adhere to the rules laid down for all economic activities.

(42) Under Article 87(3)(c), State aid may be considered to be compatible with the common market if it facilitates 'the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In the past, it had been considered that those requirements for exemption were met since skiers are not very mobile. It is now considered that the provision of services for winter sports has reached such a level of economic development and cross-border competition that departure from the rules applicable to economic activities in general would no longer be justified; however, the considerations developed in recitals 50 to 55 below should be taken into account.

(43) Aid to cableways might, depending on the case, be compatible under the rules governing, for instance, regional investment aid, aid to SMEs or restructuring aid to restore the viability of a firm⁽⁸⁾. It cannot, however, be generally considered not to 'adversely affect trading conditions to an extent contrary to the common interest' since it would have the effect of improving the competitiveness of the beneficiaries in a sector where international competition is strong.

Article 73

(44) In contrast to Article 87(3)(c), the concept of 'coordination of transport' in Article 73 involves more than simply facilitating the development of an industry, it includes some form of planning by the State. In a liberalised market coordination may be achieved by the market itself as the free interplay of market forces is not hampered by market failures. Accordingly, the concept

of aid meeting the needs of coordination of transport refers to the need for government intervention in the absence of competitive markets or in the presence of market failures.

(45) According to the Commission's practice, three requirements must be fulfilled for aid to meet the needs of coordination of transport within the meaning of Article 73⁽⁹⁾:

(a) if the State's contribution towards the total financing of the project is necessary to enable the project or activity to be carried out in the interest of the Community;

(b) access to the aid is granted on non-discriminatory terms;

(c) the aid does not give rise to a distortion of competition to an extent contrary to the common interest.

Article 86(2)

(46) Where the financing of transport cableways constitutes State aid, it would normally be assessed under Article 73; however, it is possible that the other types of cableway may qualify for exemption under Article 86(2).

(47) In general, cableways used for sporting activities do not provide a service of general economic interest and their financing cannot be justified under Article 86(2). Rather than satisfying the general and basic needs of the population, they aim to earn profits from winter sports. The prices actually paid by users shows that this service is not a basic good.

(48) Certainly, it is in principle for the Member States to define which services they consider to be of general economic interest. However, the notion of general economic interest servers cannot be extended to services that are of a purely commercial nature and do not respond to the general and basic needs of the population for services that are regarded as an essential part of daily life.

⁽⁸⁾ Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ L 10, 13.1.2001, p. 33); Guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 288, 9.10.1999); Guidelines on national regional aid (OJ C 74, 10.3.1998, p. 9).

⁽⁹⁾ See Commission proposal for a regulation of the European Parliament and the Council concerning the granting of aid for the coordination of transport by rail, road and inland waterway COM (2000) 5 final, 26 July 2000.

(49) These considerations are not invalidated by the fact that the construction and operation of cableways are subject to a concession which requires the firm to operate the installation efficiently and to transport all users at current rates. It is quite usual for a number of occupations and activities to be subject to special authorisations and to certain requirements. In this respect the position of cableway operators does not differ substantially from that of firms in other sectors and does not mean that it should be assessed under Article 86(2).

Transitional period

(50) The Commission considers that State aid to cableways could play an important part in supporting the balanced economic development of the area. As regards mountain regions in particular, State aid has in the past allowed the development of one of the few possible local economic activities, with beneficial effects on employment and, ultimately, on the stability of the local population and care of the land.

(51) However, the provision of services for winter sports has become subject to increasing cross-border competition. This changes the nature of the problems and increases the distortion caused by the existence of aid to the cableway sector. As the sector approaches maturity, there is a greater risk of unbridled competition between different areas of the Community. For these reasons, the Commission's future policy in the sector needs to be more clearly defined, strictly interpreted and uniformly applied.

(52) The Commission recognises that firms in the sector have largely benefited in the past from several forms of economic support from the national, regional and local authorities. Some of these were considered compatible aid under Article 87(3)(c). A change in policy imposing stricter limits on compatibility would probably lead to an adjustment of the price of the various services offered for winter sports, with prices for the use of cableways possibly increasing to compensate for the reduction in subsidies. This change cannot be too abrupt and the rules must be applied gradually.

(53) Accordingly, the Commission identifies a transitional period of five years, from 1 January 2002 to 31 December 2006, during which higher aid intensities

would temporarily be accepted for State aid to cableways. Aid granted before the prescribed period will be assessed on a case-by-case basis without reference to compatibility thresholds fixed *a priori*.

(54) During the transitional period, the Commission will assess aid projects in the cableway sector by referring to the normal set of rules as clarified, *inter alia*, in the Commission Regulation on State aid to small and medium-sized enterprises, in the guidelines on State aid for rescuing and restructuring firms in difficulty and in the Guidelines on national regional aid⁽¹⁰⁾. However, it will accept a temporary increase in the aid intensity under the existing legislation and guidelines, as quantified below:

(a) 25 additional percentage points for aid granted in 2002;

(b) 20 additional percentage points for aid granted in 2003;

(c) 15 additional percentage points for aid granted in 2004;

(d) 10 additional percentage points for aid granted in 2005;

(e) 5 additional percentage points for aid granted in 2006⁽¹¹⁾.

From 2007 onwards, aid not eligible for any of the exemptions provided for by the Treaty and in the various regulations and frameworks in force will be declared incompatible. The analysis set out in recitals 19 to 34, and in particular the explanations given in recital 29, will still apply.

(55) On the basis of the information available to the Commission, the figures indicated, chosen as temporary aid top-ups, and the five-year duration of the transitional period seem to reconcile the need to allow sufficient time for different areas to benefit from the temporary rules and for beneficiaries to adjust to the new approach with the need to bring the treatment of this sector into line with that of other economic activities within a reasonable time.

⁽¹⁰⁾ See footnote 8.

⁽¹¹⁾ Aid that is disbursed in instalments to the beneficiary will be assessed as a whole with reference to the intensity that can be accepted at the time of granting. In the case of schemes that grant aid at different points in time, the reference is the aid intensity at the time of granting. That is to say, if the same scheme grants aid in 2003 and 2004, the accepted aid intensity, other things being equal, would be five percentage points lower for the aid granted in 2004.

Related activities

- (56) Where the cableway infrastructure under consideration is mainly for servicing skiers, the operators can be described as providing a basic service for skiing. It is not unusual for the firm concerned also to offer other directly related services which are equally indispensable for skiing, such as maintenance of ski runs or the supply of artificial snow. Accordingly, the investment eligible for aid under the conditions described above can also include, for example, the purchase of snow cannons or maintenance vehicles as well as the initial costs of preparing the ski run. However, investment that is not essential to providing the basic installation service, such as investment in skiing equipment for hire or in facilities for ski schools, cannot be eligible for aid under the abovementioned conditions.

VI. COMPARISON WITH THE MEASURES INTRODUCED BY LAW No 2/1991

- (57) Law No 6/1996 allows aid to cableways in the Autonomous Province of Bolzano of up to 90 % of the investment cost. It amends the previous Provincial Law No 2/1991, which provided for an aid intensity of up to 33 % of the project costs.
- (58) Article 1(1) of Law No 2/1991, notified to the Commission and approved by it by letter of 4 June 1991, provides for aid with the following maximum intensities:
- (a) 33 % for bicable ropeways, which are of special social importance as they link villages;
 - (b) 15 % for funiculars, bicable and monocable ropeways as well as ticket vending and reading machines;
 - (c) one-off payments of up to 30 % to build and improve the quality of drag lifts;
 - (d) one-off payments of up to ITL 200 million for the reconditioning of cableways.

The Bolzano provincial authorities claim that Law No 2/1991, examined and authorised by the Commission (NN 45/91), replaces and continues Law No 6/1996, which, according to them simply renews and consolidates the provincial rules. The Commission does not agree with this reasoning. A comparison of the two aid schemes shows that the new law considerably modifies the old one by allowing for investment aid of up to 90 %, whereas the old scheme provided for an aid intensity of

only up to 33 % of costs. Furthermore, there are some aspects of the new law that are clearly new in substance. To give one example, Article 1(2)(d) of Law No 6/1996 refers to single ski lifts, which fulfil a social and educational purpose and are granted investment aid of 50 %. No mention was made under Law No 2/1991 of this particular type of installation. The Commission therefore concludes that there can be no doubt that Law No 6/1996 is a new aid scheme. In any event, as the Commission decision of 4 June 1991 approving Law No 2/1991 was valid only for the period 1990 to 1993, the new law should in any event have been notified to the Commission.

VII. ASSESSMENT OF THE MEASURES INTRODUCED BY PROVINCIAL LAW No 6/1996

- (59) By letter of 24 May 2001 the authorities of the Autonomous Province of Bolzano provided a list of 77 installations in the province that had already benefited from the measures. They also classified the cableways into three categories, transport, local or tourism facilities. There are 12 cableways having a general transport purpose (category A), 56 cableways for purely local recreational use (category B) and 9 cableways used for sporting activities in tourist areas (category C). All of these are small enterprises within the meaning of Regulation (EC) No 70/2001. This classification, however, was carried out *ex post* as an illustration, whereas Law No 6/1996 does not make any distinction between different categories of cableway.
- (60) As regards the future application of the scheme, the Commission considers it compatible with the common market until 2007, inasmuch as it is consistent with the terms of this Decision, in particular recitals 33, 34 and 54 of part V. It also takes note of the commitment to re-notify the scheme in 2006.
- (61) The Commission, however, also needs to assess the application of the scheme to the 77 individual recipients referred to in recital 59. The information provided by the Italian authorities is sufficient for the Commission to endorse the submitted threefold classification of cableways. Accordingly, both on the question of the presence of aid and on the question of compatibility, the Commission's assessment of State aid for the installations varies according to the recipient, as stated in Part V of this decision.

(62) The measures are funded from the State budget, i.e. through State resources. They represent an economic advantage for the recipient, relieving it of part of the cost linked to the investment needed for its activity.

(63) As regards the distortion of competition and the effect on trade between Member States, the cableways catering for the general transport needs of the population operate in a sector where cross-border trade is present. Among the recipients classified by the Italian authorities as transport installations, some are located in areas where alternative transport would not only be technically and economically viable but could also be managed by commercial operators from other Member States. Accordingly, State aid to cableways classified as transport installations can distort or threaten to distort competition and affect trade between Member States.

(64) Similarly, State aid for cableways in tourist areas that are capable of attracting users who have as alternatives foreign installations distorts competition and affects trade between Member States.

(65) Finally, the cableways described as sporting installations for purely local use are located in areas with little or no tourism capacity and a limited number for winter sports facilities. Users would mainly be residents and would not normally have, as alternatives, destinations in another Member State. Given the small number of users, the service would not be provided in the absence of State aid. In the last case, therefore, it can be concluded that State financing does not distort competition or affect trade between Member States and therefore does not constitute State aid within the meaning of Article 87(1).

(66) On the basis of the foregoing considerations, the Commission assesses the compatibility of the aid granted under Law No 6/1996 in the case of the 12 cableways catering for the general transport needs of the population (classified as category A by the provincial authorities) and the nine cableways used for winter sporting activities in tourist resorts (classified as category C by the provincial authorities). On the basis of the information supplied by Italy, however, the Commission does not regard the State support to 56 installations identified as being for local use (category B) as State aid under Article 87(1).

General transport cableways (category A)

(67) According to the information provided by the Italian authorities, the first category of cableways (category A) operates only as a link between population centres. Some of them are the only means of transport connecting mountain communities with the other inhabited areas in the Province and their social and infrastructure function is obvious.

(68) It is generally acknowledged that the funding of a transport installation which, for economic or technical reasons, has no viable alternative does not distort competition and therefore does not constitute aid under Article 87(1). However, the Commission considers that Law No 6/1996 also provides financing to installations in respect of which there would be other means of transport, at least as an alternative. For these reasons (recital 63), it must decide whether the measures are compatible with the Treaty.

(69) In any event, in the case of cableways intended predominantly to satisfy the general transport needs of the population, the Commission considers that State aid may be needed since market forces are unlikely to provide the necessary investments on a purely commercial basis. Aid to this sector must therefore be assessed under Article 73.

(70) The development of measures to shift traffic from roads to other modes of transport is deemed to be in the interest of the Community and the amounts granted are necessary to enable the project to be carried out. It is also considered that aid to such installations does not distort competition to an extent contrary to the common interest.

(71) The Commission therefore concludes, on the basis of the information from the Italian authorities, that the conditions for exemption under Article 73 are met and that the aid granted to operators of twelve category A cableways is compatible with the State aid rules of the Treaty. It also takes note of the commitment to re-notify the scheme in 2006.

Cableways for sporting activities (category C)

- (72) According to the information provided by the Italian authorities, the third category (C) comprises all cableways used for sporting activities in tourist areas. As indicated in recital 64, their funding is caught by the State aid rules of the EC Treaty. Accordingly, it must be decided whether one of the exemptions in Article 87(2) and (3) applies in order to find the aid in question compatible with the common market.
- (73) The aid granted via the measures introduced by Law No 6/1996 is not social in nature, is not granted to individual consumers and is not aid to make good the damage caused by natural disasters or exceptional occurrences. It is not aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany. Hence Article 87(2) is not applicable.
- (74) Since the aid promotes neither the economic development of areas where the standard of living is abnormally low or where there is serious underemployment nor the execution of an important project of common European interest, Article 87(3)(a) and (b) does not apply.
- (75) As for the compatibility of the measures under Article 87(3)(c) in relation to the development of certain economic activities, the conditions for applying the Community guidelines on State aid for rescuing and restructuring firms in difficulty⁽¹²⁾ are not met. The aid was not notified individually to the Commission and no restructuring plan was submitted to it. The installations that benefit from the aid are not necessarily in difficulty nor is the aid intended to restore the firms' long-term economic and financial viability. The guidelines require that measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors, something which is not provided for by Law No 6/1996.
- (76) The Italian authorities, however, point out that all recipients in this category are small enterprises entitled to receive aid up to the intensity accepted under the Commission Regulation on aid to small and medium-sized enterprises⁽¹³⁾. This amounts to a gross aid intensity of 15 % for investment in tangible and intangible assets, as defined by Article 2(c) and (d) of the Regulation.
- (77) If the figure of 15 % obtained in this way is added to the temporary increase in the aid intensity described in recital 54 (top-up), which for 2002 amounts to 25 percentage points, the accepted gross intensity would be 40 %. The Commission considers that this intensity can also be accepted for aid granted before 2002.
- (78) Since, according to the information provided by the Italian authorities, the maximum amount granted in category C has been 30 %, which is well below the authorised ceilings, the Commission concludes that the aid granted to operators of cableways used for sporting activities in tourist resorts is compatible with the State aid rules of the EC Treaty. It also takes note of the commitment to re-notify the scheme in 2006.

VIII. CONCLUSION

- (79) The Commission concludes, on the basis of both the foregoing considerations and the information provided by the Italian authorities, that the measures already granted to 77 cableway operators under Law No 6/1996:
- (a) do not constitute State aid because of their local nature, inasmuch as the scheme is applied to firms in category B, as defined in recital 65;
 - (b) constitute State aid that is compatible under Article 73 of the EC Treaty, inasmuch as the scheme is applicable to firms in category A, as defined in recital 63;
 - (c) constitute State aid that is compatible under Article 87(3)(c) of the EC Treaty, inasmuch as the scheme applies to firms in category C, as defined in recital 64.
- (80) As regards the future application of the scheme, the Commission considers that:
- (a) the scheme does not constitute State aid where it is applied to firms in category B, as defined in recital 65;
 - (b) the scheme constitutes State aid that is compatible under Article 73 where it is applied to firms in category A, as defined in recital 63;
 - (c) the scheme constitutes State aid compatible under Article 87(3)(c) where it is applied to firms in category C, as defined in recital 64.

⁽¹²⁾ See footnote 7.⁽¹³⁾ See footnote 8.

The preceding paragraph is applicable until 2007, in accordance with the considerations set out in this Decision, in particular recitals 33, 34 and 54 of Part V. The Commission also takes note of the commitment to re-notify the scheme in 2006.

- (81) This Decision is without prejudice to the application of other relevant Community legislation, in particular Directive 2000/9/EC of the European Parliament and of the Council of 20 March 2000 relating to cableway installations designed to carry persons ⁽¹⁴⁾,

HAS ADOPTED THIS DECISION:

Article 1

The measures implemented by Italy under Law No 6 of 4 March 1996 for cableway installations in the Autonomous Province of Bolzano:

- (a) do not constitute State aid because of their local nature where the scheme applies to overhead and surface cableways intended for leisure purposes that are of a mainly local nature or of a social character;
- (b) constitute State aid that is compatible under Article 73 of the EC Treaty and Article 49 of the Agreement on the European Economic Area where the scheme applies to overhead cableways constituting transport infrastructure that replaces public road services;
- (c) constitute State aid that is compatible under Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the Agreement on the European Economic Area where the scheme applies to overhead and surface cableways serving tourist areas.

Article 2

The scheme may be applied until 31 December 2006 provided that the following conditions are satisfied:

- (a) the scheme does not constitute State aid where it is applied to sports installations for purely local use that are located in areas with little or no tourism capacity and with only a limited infrastructure;
- (b) the scheme constitutes State aid that is compatible under Article 73 of the EC Treaty and Article 49 of the Agreement on the European Economic Area where it is applied to cableways that meet the general transport needs of the population;
- (c) the scheme constitutes State aid that is compatible under Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the Agreement on the European Economic Area where it is applied to cableways located in tourist areas capable of attracting users from other, alternative resorts.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 9 April 2002.

For the Commission

Mario MONTI

Member of the Commission

⁽¹⁴⁾ OJ L 106, 3.5.2000, p. 21.

COMMISSION DECISION
of 6 November 2002
establishing an Office for the administration and payment of individual entitlements

(2003/522/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Article 20 of the Rules of Procedure of the Commission ⁽¹⁾,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, hereinafter 'the Financial Regulation', provides a framework for the establishment of a new type of administrative office.
- (2) The Commission's 13 December 1999 guidelines for a policy of externalisation ⁽³⁾ and the White Paper on administrative reform ⁽⁴⁾ have outlined a new externalisation policy based on the vision of an administration refocused on its core tasks and activities.
- (3) The results of the analysis undertaken by the Planning and Coordination Group on externalisation, after taking stock of the situation in the Commission and at inter-institutional level across a number of areas, highlight the main advantages that the creation of Commission offices could bring and the areas where special attention is needed, such as, for example, the need to ensure that operations at the various sites are consistent and to define the minimum critical size of each office.
- (4) The type of office selected consists of administrative entities aimed at providing support for the activities of other Commission departments and/or potentially of other Community institutions.
- (5) The analysis carried out more specifically in the area of the administration and payment of individual entitlements sets out the advantages of entrusting to a single structure the execution of decisions involving administrative support. That structure is particularly suitable for making efficient and economic use of resources while improving the visibility of the services provided, refocusing effective operational responsibilities and keeping pace with the needs and demands of users.
- (6) This type of office represents an appropriate tool for achieving a desirable shift to interinstitutional level in this area, in which some other Community institutions have already expressed interest.
- (7) As an administrative office for the Commission, it is essential that the Office remains clearly attached to a Directorate-General in accordance with the Guidelines adopted by the Commission on 28 May 2002 ⁽⁵⁾. Accordingly, it is to be attached to the Directorate-General for Personnel and Administration.
- (8) The tasks and operation of the Office need to be defined.
- (9) Consistency in the administration and payment of entitlements for all staff of the Commission should be improved, although a locally based service should be maintained in Brussels, Luxembourg and Ispra.
- (10) In accordance with the Commission guidelines, a Management Committee should be established whose main role, under the authority of the College of the Commission, would be to supervise the activities of the Office, define its terms of reference and ensure that they are properly implemented. It is therefore necessary to determine the exact composition of the Management Committee, in accordance with the Guidelines, as well as its tasks and internal organisation.
- (11) It is necessary to lay down rules for the appointment of staff to the Office and to ensure that the rules and procedures which apply to the Office are the same as those that apply to the Commission.
- (12) The Commission should define, with respect to the Office, the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of employment of other servants on the authority authorised to conclude contracts.
- (13) Principles to govern the responsibilities of the Director of the Office, both in relation to the staff of the Office and as regards its activities, should be laid down.

⁽¹⁾ OJ L 308, 8.12.2000, p. 26.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ SEC(1999) 2051, p. 7.

⁽⁴⁾ COM(2000) 200 final.

⁽⁵⁾ SEC(2002) 618 final.

- (14) The Director of the Office should be required to present to the Management Committee his objectives, as well as the resulting regular reports and the annual management report.
- (15) Financial requirements call for Title V of Part Two of the Financial Regulation to apply to the Office, in accordance with the general principle that the person responsible for negotiating requests for appropriations with the Budget Directorate-General should be the authorising officer by delegation, and for assurances to be given regarding the accounting rules and methods to be applied by the Office.
- (16) The Directorate-General to which the Office is attached should assist the Management Committee, be responsible for maintaining regular contacts with all the Offices and ensure that the running of the different Offices is consistent. That role is particularly important in ensuring that the transitional phase runs smoothly.
- (17) The Commission Decision of 18 September 2002 constitutes a Supplementary and Amending Letter to the preliminary draft Budget for 2003 and creates the budgetary framework for the establishment of the Office,

HAS DECIDED AS FOLLOWS:

CHAPTER I

ESTABLISHMENT, PURPOSE, TASKS AND LOCATION

Article 1

Establishment

An Office for the administration and payment of individual entitlements, hereinafter 'the Office', is established.

The Directorate-General to which the Office is attached shall be the Directorate-General for Personnel and Administration.

The Office will operate as from 1 January 2003.

Article 2

Purpose

1. The Office shall determine, calculate and pay the entitlements and remuneration of the staff employed by the Community institutions, and of external staff, as laid down in Article 3 and on the basis of the Staff Regulations and the Annexes thereto and its General Implementing Provisions.

2. The Office shall fulfil its purpose in accordance with the administrative rules in force at the Commission.

3. Acting either on the initiative of the Directorate-General for Personnel and Administration or on a proposal from the Office in agreement with that Directorate-General, the Commission shall adopt new rules or, as appropriate, the amendments necessary.

The Management Committee of the Office shall draw up the details of that procedure jointly with the Directorate-General for Personnel and Administration.

4. The Office may act at the request of and on behalf of another body or agency established under or on the basis of the Treaties and with the assent of the Management Committee.

Article 3

Tasks

1. The Office shall determine, calculate and pay the following entitlements:

- (a) salaries and allowances;
- (b) mission expenses;
- (c) experts' fees;
- (d) sickness and accident insurance cover;
- (e) pensions;
- (f) unemployment benefit;
- (g) other financial entitlements such as building loans.

2. The Office may perform additional remunerated services in accordance with the procedure laid down in Article 7(8).

Article 4

Location

The Office shall be located in Brussels.

Two units of the Office shall be set up in Luxembourg and Ispra respectively.

CHAPTER II

MANAGEMENT COMMITTEE

Article 5

Terms of reference

The Management Committee shall act under delegation from the Commission, to which it shall be accountable within its terms of reference and under the authority of the member in charge of personnel and administration.

Article 6

Composition

1. The Management Committee shall consist of:
 - (a) the Secretary-General of the Commission;
 - (b) the Director-General of the Directorate-General for Personnel and Administration;
 - (c) the Director-General of the Directorate-General for the Budget;
 - (d) the Director-General of the Directorate-General for Translation;
 - (e) the Director-General of the Joint Research Centre;
 - (f) two staff representatives;
 - (g) a representative of the other Community institutions.
2. The Chairman of the Management Committee shall be the Director-General of the Directorate-General for Personnel and Administration.
3. The Secretary-General and each Director-General may designate a replacement, on condition that he/she is a grade A1 official in the same service.
4. The two staff representatives shall be appointed by the Staff Committee. They shall not take part in decisions concerning the management, organisation or operation of the Office. This provision shall be without prejudice to existing procedures for social dialogue.
5. The representative of the other Community institutions shall be appointed by the Group of Heads of Administration. This representative may vote only on matters administered interinstitutionally.
6. The Management Committee may invite experts to assist it in performing its duties.

Article 7

Duties

1. Acting on a proposal from the Director of the Office, hereinafter 'the Director', the Management Committee shall approve, in accordance with the existing procedures at the Commission, the organisational structure of the Office.
2. Acting on a proposal from the Director, the Management Committee shall approve the rules governing the operation and organisation of the Office and may, if necessary, propose amendments to those rules, in particular to ensure operational consistency between the administrative Offices reporting to the Directorate-General for Personnel and Administration.

3. Acting on a proposal from the Director, the Management Committee shall lay down policy guidelines for the activities of the Office.

4. Before 31 January each year, the Management Committee shall adopt the Director's work programme. The work programme shall include, in particular, the financial framework, the coverage of regular reports and anticipated results (based on operational objectives and performance indicators). The Management Committee may make adjustments to details of the work programme.

5. The Management Committee shall approve the estimates of the Office's revenue and expenditure and any necessary adjustments to the establishment plan.

6. In the first quarter of each year, the Management Committee shall draw up and forward to the College of the Commission an opinion on all the activities and on the management of the Office, on the basis of the reports presented by the Director in accordance with Article 13.

7. Concerning the procedures for appointing senior managers and middle managers, the Management Committee shall act in accordance with Article 14.

8. The Management Committee shall approve the type of additional remunerated services that the Office may perform pursuant to Article 2(4) and Article 3 and the terms and conditions in accordance with which it may perform them. Acting on a proposal from the Director, the Management Committee shall determine the type of, and the rates chargeable for, services that the Office may perform for the institutions, and the allocation of the revenues thereby obtained within the Office's budget.

9. The Management Committee shall decide on any matter of principle affecting the operation of the Office not expressly provided for in this Decision.

Article 8

Internal organisation

The Management Committee shall adopt its own rules of procedure. Those rules shall, in particular, cover the following subjects:

- (a) meetings: the frequency of and procedure for convening and organising meetings;
- (b) secretariat: its role and organisational link;
- (c) rules for forwarding documents.

Article 9

Voting

When the Management Committee takes a decision, each member entitled to vote shall have one vote. Where votes are tied, the Chairman shall have the casting vote.

All decisions shall be taken by a simple majority.

CHAPTER III
THE DIRECTOR

Article 10

Appointment

1. The Office shall be administered by a Director (grade A1 or A2) appointed by the Commission after the Advisory Committee on Appointments has issued a favourable opinion pursuant to Article 14(1).
2. The Director shall be appointed for a term of three years, which may be extended for a further period of no more than two years.
3. The College of the Commission may decide, after obtaining the opinion of the Management Committee, to remove the Director and appoint a Director *ad interim*.

Article 11

Powers

The Director shall be the appointing authority for the Office and the authority authorised to conclude contracts, in accordance with the rules in force at the Commission, within the limits of the powers conferred on him or her by the Commission.

Article 12

Duties

1. Before 31 December each year, the Director shall present the Management Committee with his or her work programme for the following year, the content of which must be endorsed by the Committee.

2. The Director shall be responsible for the smooth running of the Office. Within the area of responsibility defined by the College of the Commission, he or she shall act under the authority of the College. The Director shall also ensure the consistent operation of the different Office centres and shall take special care to ensure that staff working in the Office are treated equally in all respects, regardless of their place of assignment. The Director shall report to the Management Committee on the performance of his or her duties and shall submit to it all and any suggestions for the smooth running of the Office.

3. The Director shall submit his or her proposals to the Management Committee in accordance with Article 7(1), (2), (3) and (8).

4. The Director shall inform the Management Committee of appointments under Article 14(3).

Article 13

Reporting

The Director shall present to the Management Committee:

1. a regular operational report, the structure and frequency of which shall be determined by the Management Committee;
2. an annual management report in the first quarter of each year following the year under review, the structure of which shall be determined by the Management Committee.

CHAPTER IV
STAFF OF THE OFFICE

Article 14

Senior and middle management of the Office

1. Acting on a proposal from the Management Committee, the Commission shall draw up a vacancy notice for the post of Director of the Office. The Management Committee shall draw up an opinion for the Commission on the applicants selected by the Advisory Committee on Appointments (ACA).
2. Before the Commission takes its final decision, the Management Committee shall issue an opinion on the applicants selected by the ACA in accordance with the procedures applicable at the Commission to senior (grade A2) and middle (grade A3) management posts.
3. The Management Committee shall be informed by the Director of appointments to other middle management posts (grades A4 to A5), which must be made in accordance with the rules and procedures in force at the Commission.

Article 15

Procedures

1. All the administrative procedures and practices relating to the management of the staff shall be carried out on the same terms and conditions as for the officials and other servants of the Commission.
2. In accordance with Article 4 of the Staff Regulations, vacant posts within the Office shall be notified to the staff of the institutions once the appointing authority decides that a post is to be filled.
3. In accordance with Article 90 of the Staff Regulations, requests and complaints relating to the exercise of the powers conferred on the Director under Article 11 of this Decision shall be lodged with the Directorate-General for Personnel and Administration. Any appeal in these areas shall be made against the Commission as such.

CHAPTER V
FINANCIAL PROVISIONS

Article 16

Financial matters

1. Title V of Part Two of the Financial Regulation shall apply.

2. Acting on a proposal from the Management Committee, the Commission shall, as regards the budget appropriations to be executed by the Office as part of its tasks and operation, delegate the powers of authorising officer to the Director and set the limits and conditions applying to that delegation of powers.

CHAPTER VI
COORDINATION AND REVIEW

Article 17

Coordination

1. The coordination unit set up within the Directorate-General for Personnel and Administration shall have the following tasks:

- (a) assisting the Management Committee in preparing and following up its meetings and assisting the Committee's chairperson in the regular monitoring of relations with the Director;
- (b) assisting the Director in fulfilling his or her duties, while respecting the competences and prerogatives of the latter, in particular in relations with the Directorate-General for Personnel and Administration;
- (c) ensuring the operational consistency of the Office in relation to the other administrative offices of the Directorate-General for Personnel and Administration and with the rest of the Commission, in particular with regard to their staff organisation and policy;
- (d) ensuring that the rules and practices in force at the Commission in the area of staff policy are applied consistently and uniformly within the Office.

2. As part of its tasks, the coordination unit shall report to the Management Committee at the latter's request.

Article 18

Review

The Chairman of the Management Committee shall provide the College of the Commission, under the authority of the member in charge of personnel and administration, not later than six months after the end of the third full year of operation of the Office, with a comprehensive analysis of the operation of the Office during that period. This analysis may include proposals for amendments to this Decision where appropriate.

Done at Brussels, 6 November 2002.

For the Commission
Neil KINNOCK
Vice-President

COMMISSION DECISION
of 6 November 2002
establishing the Office for infrastructure and logistics in Brussels

(2003/523/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Article 20 of the Rules of Procedure of the Commission ⁽¹⁾,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, hereinafter 'the Financial Regulation', provides a framework for the establishment of a new type of administrative office.
- (2) The Commission's 13 December 1999 guidelines for a policy of externalisation ⁽³⁾ and the White Paper on administrative reform ⁽⁴⁾ have outlined a new externalisation policy based on the vision of an administration refocused on its core tasks and activities.
- (3) The results of the analysis undertaken by the Planning and Coordination Group on Externalisation, after taking stock of the situation in the Commission and at inter-institutional level across a number of areas, highlight the main advantages that the creation of Commission offices could bring and the areas where special attention is needed, such as, for example, the need to ensure that operations at the various sites are consistent and to define the minimum critical size of each office.
- (4) The type of office selected consists of administrative entities aimed at providing support for the activities of other Commission departments and/or potentially of other Community institutions.
- (5) The analysis carried out more specifically in the area of infrastructure and logistics sets out the advantages of entrusting to a single structure the execution of decisions involving administrative support. That structure is particularly suitable for making efficient and economic use of resources while improving the visibility of the services provided, refocusing effective operational responsibilities and keeping pace with the needs and demands of users.
- (6) This type of office represents an appropriate tool for achieving a desirable shift to inter-institutional level in this area, for which some other Community institutions have already expressed an interest.
- (7) As an administrative office for the Commission, it is essential that the Office remain clearly attached to a Directorate-General in accordance with the guidelines adopted by the Commission on 28 May 2002 ⁽⁵⁾. Accordingly, it is to be attached to the Directorate-General for Personnel and Administration.
- (8) The tasks and operation of the Office need to be defined.
- (9) In accordance with the Commission guidelines, a management committee should be established whose main role, under the authority of the College of the Commission, would be to supervise the activities of the Office, define its terms of reference and ensure that they are properly implemented. It is therefore necessary to determine the exact composition of the Management Committee, in accordance with the guidelines, as well as its tasks and internal organisation.
- (10) It is necessary to lay down rules for the appointment of staff to the Office and to ensure that the rules and procedures which apply to the Office are the same as those that apply to the Commission.
- (11) The Commission should define, with respect to the Office, the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of employment of other servants on the authority authorised to conclude contracts.
- (12) Principles to govern the responsibilities of the Director of the Office, both in relation to the staff of the Office and as regards its activities, should be laid down.
- (13) The Director of the Office should be required to present to the Management Committee his objectives, as well as the resulting regular reports and the annual management report.
- (14) Financial requirements call for Title V of Part Two of the Financial Regulation to apply to the Office, in accordance with the general principle that the person responsible for negotiating requests for appropriations with the Directorate-General Budget should be the authorising officer by delegation.
- (15) The Directorate-General to which the Office is attached should assist the Management Committee, be responsible for maintaining regular contacts with all the offices and ensure that the running of the different offices is consistent. This role is especially important for ensuring that the transitional phase runs smoothly.

⁽¹⁾ OJ L 308, 8.12.2000, p. 26.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ SEC(1999) 2051, p. 7.

⁽⁴⁾ COM(2000) 200 final.

⁽⁵⁾ SEC(2002) 618 final.

- (16) The Commission Decision of 18 September 2002 constitutes a Supplementary and Amending Letter to the preliminary draft budget for 2003 and creates the budgetary framework for the establishment of the Office,

HAS DECIDED AS FOLLOWS:

CHAPTER I

ESTABLISHMENT, PURPOSE AND TASKS, LOCATION

Article 1

Establishment of the Office

An Office for infrastructure and logistics in Brussels, hereinafter 'the Office', is established.

The Directorate-General to which the Office is attached shall be the Directorate-General for Personnel and Administration.

The Office shall operate as from 1 January 2003.

Article 2

Purpose

1. The Office shall ensure that all activities associated with the housing of staff, the management of social welfare infrastructure and the logistics of the institution, as set out in Article 3, are carried out.

2. The Office shall fulfil its purpose in accordance with the administrative rules in force at the Commission.

3. Acting either on the initiative of the Directorate-General for Personnel and Administration or on a proposal from the Office in agreement with that Directorate-General, the Commission shall adopt new rules or, as appropriate, the amendments necessary.

The Office's Management Committee shall draw up the details of that procedure jointly with the Directorate-General for Personnel and Administration.

4. The Office may act at the request of and on behalf of another body or agency established under or on the basis of the Treaties and with the assent of the Management Committee.

Article 3

Tasks

1. The Office shall be responsible, in particular, in respect of the Brussels site, for:

- (a) administering the acquisition, leasing and maintenance of the moveable and immovable property of the Commission together with the associated inventories and questions relating to VAT;
- (b) organising removals and space management;
- (c) administering:
 - (i) transport services for staff and goods for internal purposes;
 - (ii) incoming and outgoing mail and the internal distribution of documents for the Commission's directorates-general;
 - (iii) the reproduction services;
 - (iv) office supplies;
- (d) implementing rules relating to the physical security of buildings, on the basis of the instructions of the Security Directorate of the Directorate-General for Personnel and Administration, and in particular administering the 'security contract' (*contrat gardiennage*);
- (e) administering the social welfare facilities provided for staff of the Community institutions, such as restaurants, self-service canteens, staff shops and sports centres;
- (f) providing services to the institutions covering certain social welfare facilities such as crèches and after-school child-minding services;
- (g) adopting the necessary measures to ensure compliance with health and safety requirements in Commission buildings.

2. The Office may perform additional remunerated services in accordance with the procedure laid down in Article 7(8).

Article 4

Location

The Office shall be located in Brussels.

CHAPTER II

MANAGEMENT COMMITTEE

*Article 5***Terms of reference**

The Management Committee shall act under delegation from the Commission, to which it shall be accountable within its terms of reference and under the authority of the member in charge of personnel and administration.

*Article 6***Composition**

1. The Management Committee shall consist of:
 - (a) the Secretary-General of the Commission;
 - (b) the Director-General of the Directorate-General for Personnel and Administration;
 - (c) the Director-General of the Directorate-General Budget;
 - (d) the Director-General of the Directorate-General for External Relations;
 - (e) the Director-General of the Directorate-General for Employment and Social Affairs;
 - (f) two staff representatives;
 - (g) a representative of the other Community institutions.
2. The Chairman of the Management Committee shall be the Director-General of the Directorate-General for Personnel and Administration.
3. The Secretary-General and each Director-General may designate a replacement, on condition that he/she is a grade A 1 official in the same service.
4. The two staff representatives shall be appointed by the Staff Committee. They shall not take part in decisions concerning the management, organisation or operation of the Office, and shall be entitled to vote on matters that relate to social welfare infrastructure. This provision shall be without prejudice to existing procedures for social dialogue.
5. The representative of the other Community institutions shall be appointed by the Group of Heads of Administration. This representative may vote only on matters administered inter-institutionally.
6. The Management Committee may invite experts to assist it in performing its duties.

*Article 7***Duties**

1. Acting on a proposal from the Director of the Office, hereinafter 'the Director', the Management Committee shall approve in accordance with the existing procedures at the Commission, the organisational structure of the Office.
2. Acting on a proposal from the Director, the Management Committee shall approve the rules governing the operation and organisation of the Office and may, if necessary, propose amendments to those rules, in particular to ensure operational consistency between the administrative Offices reporting to the Directorate-General for Personnel and Administration.

3. Acting on a proposal from the Director, the Management Committee shall lay down policy guidelines for the activities of the Office.

4. Before 31 January each year, the Management Committee shall adopt the Director's work programme. The work programme shall include, in particular, the financial framework, the coverage of regular reports and anticipated results (based on operational objectives and performance indicators). The Management Committee may make adjustments to details of the work programme.

5. The Management Committee shall approve the estimates of the Office's revenue and expenditure and any necessary adjustments to the establishment plan.

6. In the first quarter of each year, the Management Committee shall draw up and forward to the College of the Commission an opinion on all the activities and on the management of the Office, on the basis of the reports presented by the Director in accordance with Article 13.

7. Concerning the procedures for appointing senior managers and middle managers, the Management Committee shall act in accordance with Article 14.

8. The Management Committee shall approve the type of additional remunerated services that the Office may perform pursuant to Article 2(4) and Article 3(2) and the terms and conditions in accordance with which it may perform them. Acting on a proposal from the Director, the Management Committee shall determine the type of, and the rates chargeable for, the services that the Office may perform for the institutions, and the allocation of the revenues thereby obtained within the Office's budget.

9. The Management Committee shall decide on any matter of principle affecting the operation of the Office not expressly provided for in this Decision.

*Article 8***Internal organisation**

The Management Committee shall adopt its own rules of procedure. Those rules shall, in particular, cover the following subjects:

- (a) meetings: the frequency of and procedure for convening and organising meetings;
- (b) secretariat: its role and organisational link;
- (c) rules for forwarding documents.

*Article 9***Voting**

When the Management Committee takes a decision, each member entitled to vote shall have one vote. Where votes are tied, the Chairman shall have the casting vote.

All decisions shall be taken by a simple majority.

CHAPTER III

THE DIRECTOR

Article 10

Appointment

1. The Office shall be administered by a Director (grade A 1 or A 2) appointed by the Commission after the Advisory Committee on Appointments (ACA) has issued a favourable opinion pursuant to Article 14(1).
2. The Director shall be appointed for a term of three years, which may be extended for a further period of no more than two years.
3. The College of the Commission may decide, after obtaining the opinion of the Management Committee, to remove the Director and appoint a Director *ad interim*.

Article 11

Powers

The Director shall be the appointing authority for the Office and the authority authorised to conclude contracts, in accordance with the rules in force at the Commission, within the limits of the powers conferred on him or her by the Commission.

Article 12

Duties

1. Before 31 December each year, the Director shall present the Management Committee with his or her work programme for the following year, the content of which must be endorsed by the Committee.

2. The Director shall be responsible for the smooth running of the Office. Within the area of responsibility defined by the College of the Commission, he or she shall act under the authority of the College. The Director shall also ensure the consistent operation of the different Office centres. The Director shall report to the Management Committee on the performance of his or her duties and shall submit to it all and any suggestions for the smooth running of the Office.

3. The Director shall submit his or her proposals to the Management Committee in accordance with Article 7(1), (2), (3) and (8).

4. The Director shall inform the Management Committee of appointments under Article 14(3).

Article 13

Reporting

The Director shall present to the Management Committee:

1. a regular operational report, the structure and frequency of which shall be determined by the Management Committee;
2. an annual management report in the first quarter of each year following the year under review, the structure of which shall be determined by the Management Committee.

CHAPTER IV

STAFF OF THE OFFICE

Article 14

Senior and middle management

1. Acting on a proposal from the Management Committee, the Commission shall draw up a vacancy notice for the post of Director of the Office. The Management Committee shall draw up an opinion for the Commission on the applicants selected by the ACA.
2. Before the Commission takes its final decision, the Management Committee shall issue an opinion on the applicants selected by the ACA in accordance with the procedures applicable in the Commission to senior (grade A 2) and middle (grade A 3) management posts.
3. The Management Committee shall be informed by the Director of appointments to other middle management posts (grades A 4 and A 5), which must be made in accordance with the rules and procedures in force at the Commission.

Article 15

Staff

1. All the administrative procedures and practices relating to the management of the staff shall be carried out on the same terms and conditions as for the officials and other servants of the Commission.
2. In accordance with Article 4 of the Staff Regulations, vacant posts within the Office shall be notified to the staff of the institutions once the appointing authority decides that a post is to be filled.
3. In accordance with Article 90 of the Staff Regulations, requests and complaints relating to the exercise of the powers conferred on the Director under Article 11 of this Decision shall be lodged with the Directorate-General for Personnel and Administration. Any appeal in these areas shall be made against the Commission as such.

CHAPTER V

FINANCIAL PROVISIONS

Article 16

Financial matters

1. Title V of Part Two of the Financial Regulation shall apply.
2. Acting on a proposal from the Management Committee, the Commission shall, as regards the budget appropriations to be executed by the Office as part of its tasks and operation, delegate the powers of authorising officer to the Director and set the limits and conditions applying to that delegation of powers.

CHAPTER VI

COORDINATION AND REVIEW

Article 17

Coordination

1. The coordination unit set up within the Directorate-General for Personnel and Administration shall have the following tasks:
 - (a) assisting the Management Committee in preparing and following up its meetings and assisting the Committee's chairperson in the regular monitoring of relations with the Director;
 - (b) assisting the Director in fulfilling his or her duties, while respecting the competences and prerogatives of the latter, in particular in relations with the Directorate-General for Personnel and Administration;
 - (c) ensuring the operational consistency of the Office in relation to the other administrative Offices of the Directorate-General for Personnel and Administration and with the rest of the Commission, in particular with regard to their staff organisation and policy;
 - (d) ensuring that the rules and practices in force at the Commission in the area of staff policy are applied consistently and uniformly within the Office.

2. As part of its tasks, the coordination unit shall report to the Management Committee at the latter's request.

Article 18

Review

The Chairman of the Management Committee shall provide the College of the Commission, under the authority of the member in charge of personnel and administration, not later than six months after the end of the third full year of operation of the Office, with a comprehensive analysis of the operation of the Office during that period. This analysis may include proposals for amendments to this Decision where appropriate.

Done at Brussels, 6 November 2002.

For the Commission

Neil KINNOCK

Vice-President

COMMISSION DECISION
of 6 November 2002
establishing the Office for infrastructure and logistics in Luxembourg

(2003/524/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

this area, for which some other Community institutions have already expressed an interest.

Having regard to Article 20 of the Rules of Procedure of the Commission ⁽¹⁾,

(7) The specific local factors relating to the management of some aspects of infrastructure and logistics in Luxembourg are important. Consequently, it is necessary to set up in Luxembourg an administrative Office for infrastructure and logistics that is separate from the Office set up in Brussels.

Whereas:

(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾, hereinafter 'the Financial Regulation', provides a framework for the establishment of a new type of administrative office.

(8) As an administrative office for the Commission, it is essential that the Office remain clearly attached to a Directorate-General in accordance with the guidelines adopted by the Commission on 28 May 2002 ⁽³⁾. Accordingly, it is to be attached to the Directorate-General for Personnel and Administration.

(2) The Commission's 13 December 1999 guidelines for a policy of externalisation ⁽³⁾ and the White Paper on administrative reform ⁽⁴⁾ have outlined a new externalisation policy based on the vision of an administration refocused on its core tasks and activities.

(9) The tasks and operation of the Office need to be defined.

(3) The results of the analysis undertaken by the Planning and Coordination Group on Externalisation, after taking stock of the situation in the Commission and at inter-institutional level across a number of areas, highlight the main advantages that the creation of Commission offices could bring and the areas where special attention is needed, such as, for example, the need to ensure that operations at the various sites are consistent and to define the minimum critical size of each office.

(10) In accordance with the Commission guidelines, a management committee should be established whose main role, under the authority of the College of the Commission, would be to supervise the activities of the Office, define its terms of reference and ensure that they are properly implemented. It is therefore necessary to determine the exact composition of the Management Committee, in accordance with the guidelines, as well as its tasks and internal organisation.

(4) The type of office selected consists of administrative entities aimed at providing support for the activities of other Commission departments and/or potentially of other Community institutions.

(11) It is necessary to lay down rules for the appointment of staff to the Office and to ensure that the rules and procedures which apply to the Office are the same as those that apply to the Commission.

(5) The analysis carried out more specifically in the area of infrastructure and logistics sets out the advantages of entrusting to a single structure the execution of decisions involving administrative support. That structure is particularly suitable for making efficient and economic use of resources while improving the visibility of the services provided, refocusing effective operational responsibilities and keeping pace with the needs and demands of users.

(12) The Commission should define, with respect to the Office, the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of employment of other servants on the authority authorised to conclude contracts.

(6) This type of office represents an appropriate tool for achieving a desirable shift to inter-institutional level in

(13) Principles to govern the responsibilities of the Director of the Office, both in relation to the staff of the Office and as regards its activities, should be laid down.

(14) The Director of the Office should be required to present to the Management Committee his objectives, as well as the resulting regular reports and the annual management report.

⁽¹⁾ OJ L 308, 8.12.2000, p. 26.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

⁽³⁾ SEC(1999) 2051, p. 7.

⁽⁴⁾ COM(2000) 200 final.

⁽⁵⁾ SEC(2002) 618 final.

- (15) Financial requirements call for Title V of Part Two of the Financial Regulation to apply to the Office, in accordance with the general principle that the person responsible for negotiating requests for appropriations with the Directorate-General Budget should be the authorising officer by delegation.
- (16) The Directorate-General to which the Office is attached should assist the Management Committee, be responsible for maintaining regular contacts with all the offices and

ensure that the running of the different offices is consistent. This role is especially important for ensuring that the transitional phase runs smoothly.

- (17) The Commission Decision of 18 September 2002 constitutes a Supplementary and Amending Letter to the preliminary draft budget for 2003 and creates the budgetary framework for the establishment of the Office,

HAS DECIDED AS FOLLOWS:

CHAPTER I

ESTABLISHMENT, PURPOSE AND TASKS, LOCATION

Article 1

Establishment of the Office

An Office for infrastructure and logistics in Luxembourg, hereinafter 'the Office', is established.

The Directorate-General to which the Office is attached shall be the Directorate-General for Personnel and Administration.

The Office shall operate as from 1 January 2003.

Article 2

Purpose

1. The Office shall ensure that all activities associated with the housing of staff, the management of social welfare infrastructure and the logistics of the institution, as laid down in Article 3, are carried out.

2. The Office shall fulfil its purpose in accordance with the administrative rules in force at the Commission.

3. Acting either on the initiative of the Directorate-General for Personnel and Administration or on a proposal from the Office in agreement with that Directorate-General, the Commission shall adopt new rules or, as appropriate, the amendments necessary.

The Office's Management Committee shall draw up the details of that procedure jointly with the Directorate-General for Personnel and Administration.

4. The Office may act at the request of and on behalf of another body or agency established under or on the basis of the Treaties and with the assent of the Management Committee.

Article 3

Tasks

1. The Office shall be responsible, in particular, in respect of the Luxembourg site, for:

- (a) administering the acquisition, leasing and maintenance of the moveable and immovable property of the Commission together with the associated inventories and questions relating to VAT;
- (b) organising removals and space management;
- (c) administering:
 - (i) transport services for staff and goods for internal purposes;
 - (ii) incoming and outgoing mail and the internal distribution of documents for the Commission's directorates-general;
 - (iii) the reproduction services;
 - (iv) office supplies;
- (d) implementing rules relating to the physical security of buildings, on the basis of the instructions of the Security Directorate of the Directorate-General for Personnel and Administration, and in particular administering the 'security contract' (*contrat gardiennage*);
- (e) administering the social welfare facilities provided for staff of the Community institutions, such as restaurants, self-service canteens, staff shops and sports centres;
- (f) providing services to the institutions covering certain social welfare facilities such as crèches and after-school child-minding services;
- (g) adopting the necessary measures to ensure compliance with and implementation of health and safety requirements in Commission buildings.

2. The Office may perform additional remunerated services in accordance with the procedure laid down in Article 7(8).

Article 4

Location

The Office shall be located in Luxembourg.

CHAPTER II

MANAGEMENT COMMITTEE

Article 5

Terms of reference

The Management Committee shall act under delegation from the Commission, to which it shall be accountable within its terms of reference and under the authority of the member in charge of personnel and administration.

Article 6

Composition

1. The Management Committee shall consist of:
 - (a) the Secretary-General of the Commission;
 - (b) the Director-General of the Directorate-General for Personnel and Administration;
 - (c) the Director-General of the Directorate-General Budget;
 - (d) the Director-General of the Statistics Office;
 - (e) the Director-General of the Office for Official Publications of the European Communities;
 - (f) two staff representatives;
 - (g) a representative of the other Community institutions.
2. The Chairman of the Management Committee shall be the Director-General of the Directorate-General for Personnel and Administration.
3. The Secretary-General and each Director-General may designate a replacement, on condition that he/she is a grade A 1 official in the same service.
4. The two staff representatives shall be appointed by the Staff Committee. They shall not take part in decisions concerning the management, organisation or operation of the Office, and shall be entitled to vote on matters that relate to social welfare infrastructure. This provision shall be without prejudice to existing procedures for social dialogue.
5. The representative of the other Community institutions shall be appointed by the Group of Heads of Administration. This representative may vote only on matters administered inter-institutionally.
6. The Management Committee may invite experts to assist it in performing its duties.

Article 7

Duties

1. Acting on a proposal from the Director of the Office, hereinafter 'the Director', the Management Committee shall approve, in accordance with the existing procedures at the Commission, the organisational structure of the Office.
2. Acting on a proposal from the Director, the Management Committee shall approve the rules governing the operation and organisation of the Office and may, if necessary, propose amendments to those rules, in particular to ensure operational consistency between the administrative Offices reporting to the Directorate-General for Personnel and Administration.

3. Acting on a proposal from the Director, the Management Committee shall lay down policy guidelines for the activities of the Office.

4. Before 31 January each year, the Management Committee shall adopt the Director's work programme. The work programme shall include, in particular, the financial framework, the coverage of regular reports and anticipated results (based on operational objectives and performance indicators). The Management Committee may make adjustments to details of the work programme.

5. The Management Committee shall approve the estimates of the Office's revenue and expenditure and any necessary adjustments to the establishment plan.

6. In the first quarter of each year, the Management Committee shall draw up and forward to the College of the Commission an opinion on all the activities and on the management of the Office, on the basis of the reports presented by the Director in accordance with Article 13.

7. Concerning the procedures for appointing senior managers and middle managers, the Management Committee shall act in accordance with Article 14.

8. The Management Committee shall approve the type of additional remunerated services that the Office may perform pursuant to Article 2(4) and Article 3(2) and the terms and conditions in accordance with which it may perform them. Acting on a proposal from the Director, the Management Committee shall determine the type of, and the rates chargeable for, the services that the Office may perform for the institutions, and the allocation of the revenues thereby obtained within the Office's budget.

9. The Management Committee shall decide on any matter of principle affecting the operation of the Office not expressly provided for in this Decision.

Article 8

Internal organisation

The Management Committee shall adopt its own rules of procedure. Those rules shall, in particular, cover the following subjects:

- (a) meetings: the frequency of and procedure for convening and organising meetings;
- (b) secretariat: its role and organisational link;
- (c) rules for forwarding documents.

Article 9

Voting

When the Management Committee takes a decision, each member entitled to vote shall have one vote. Where votes are tied, the Chairman shall have the casting vote.

All decisions shall be taken by a simple majority.

CHAPTER III
THE DIRECTOR

Article 10

Appointment

1. The Office shall be administered by a Director (grade A 1 or A 2) appointed by the Commission after the Advisory Committee on Appointments (ACA) has issued a favourable opinion pursuant to Article 14(1).
2. The Director shall be appointed for a term of three years, which may be extended for a further period of no more than two years.
3. The College of the Commission may decide, after obtaining the opinion of the Management Committee, to remove the Director and appoint a Director *ad interim*.

Article 11

Powers

The Director shall be the appointing authority for the Office and the authority authorised to conclude contracts, in accordance with the rules in force at the Commission, within the limits of the powers conferred on him or her by the Commission.

Article 12

Duties

1. Before 31 December each year, the Director shall present the Management Committee with his or her work programme for the following year, the content of which must be endorsed by the Committee.

2. The Director shall be responsible for the smooth running of the Office. Within the area of responsibility defined by the College of the Commission, he or she shall act under the authority of the College. The Director shall also ensure the consistent operation of the different Office centres. The Director shall report to the Management Committee on the performance of his or her duties and shall submit to it all and any suggestions for the smooth running of the Office.

3. The Director shall submit his or her proposals to the Management Committee in accordance with Article 7(1), (2), (3) and (8).

4. The Director shall inform the Management Committee of appointments under Article 14(3).

Article 13

Reporting

The Director shall present to the Management Committee:

1. a regular operational report, the structure and frequency of which shall be determined by the Management Committee;
2. an annual management report in the first quarter of each year following the year under review, the structure of which shall be determined by the Management Committee.

CHAPTER IV
STAFF OF THE OFFICE

Article 14

Senior and middle management

1. Acting on a proposal from the Management Committee, the Commission shall draw up a vacancy notice for the post of Director of the Office. The Management Committee shall draw up an opinion for the Commission on the applicants selected by the ACA.

2. Before the Commission takes its final decision, the Management Committee shall issue an opinion on the applicants selected by the ACA in accordance with the procedures applicable at the Commission to senior (grade A 2) and middle (grade A 3) management posts.

3. The Management Committee shall be informed by the Director of appointments to other middle management posts (grades A 4 and A 5), which must be made in accordance with the rules and procedures in force at the Commission.

Article 15

Procedures

1. All the administrative procedures and practices relating to the management of the staff shall be carried out on the same terms and conditions as for the officials and other servants of the Commission.

2. In accordance with Article 4 of the Staff Regulations, vacant posts within the Office shall be notified to the staff of the institutions once the appointing authority decides that a post is to be filled.

3. In accordance with Article 90 of the Staff Regulations, requests and complaints relating to the exercise of the powers conferred on the Director under Article 11 of this Decision shall be lodged with the Directorate-General for Personnel and Administration. Any appeal in these areas shall be made against the Commission as such.

CHAPTER V
FINANCIAL PROVISIONS

Article 16

Financial matters

1. Title V of Part Two of the Financial Regulation shall apply.
2. Acting on a proposal from the Management Committee, the Commission shall, as regards the budget appropriations to be executed by the Office as part of its tasks and operation, delegate the powers of authorising officer to the Director and set the limits and conditions applying to that delegation of powers.

CHAPTER VI
COORDINATION AND REVIEW

Article 17

Coordination

1. The coordination unit set up within the Directorate-General for Personnel and Administration shall have the following tasks:

- (a) assisting the Management Committee in preparing and following up its meetings and assisting the Committee's chairperson in the regular monitoring of relations with the Director;
- (b) assisting the Director in fulfilling his or her duties, while respecting the competences and prerogatives of the latter, in particular in relations with the Directorate-General for Personnel and Administration;
- (c) ensuring the operational consistency of the Office in relation to the other administrative Offices of the Directorate-General for Personnel and Administration and with the rest of the Commission, in particular with regard to their staff organisation and policy;
- (d) ensuring that the rules and practices in force at the Commission in the area of staff policy are applied consistently and uniformly within the Office.

2. As part of its tasks, the coordination unit shall report to the Management Committee at the latter's request.

Article 18

Review

The Chairman of the Management Committee shall provide the College of the Commission, under the authority of the member in charge of personnel and administration, not later than six months after the end of the third full year of operation of the Office, with a comprehensive analysis of the operation of the Office during that period. This analysis may include proposals for amendments to this Decision where appropriate.

Done at Brussels, 6 November 2002.

For the Commission
Neil KINNOCK
Vice-President

COMMISSION DECISION

of 18 July 2003

deferring the date of implementation of Council Directive 1999/36/EC for certain transportable pressure equipment

(notified under document number C(2003) 2591)

(Text with EEA relevance)

(2003/525/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 1999/36/EC of 29 April 1999 on transportable pressure equipment ⁽¹⁾ as last amended by Commission Directive 2002/50/EC ⁽²⁾, and in particular Article 17(2) thereof,

Whereas:

- (1) There are no detailed technical specifications and adequate references to the relevant European standards have not been added to the Annexes to Council Directive 94/55/EC of 21 November 1994 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by road ⁽³⁾, as last amended by Commission Directive 2003/28/EC of 7 April 2003 ⁽⁴⁾ and to Council Directive 96/49/CE of 23 July 1996 on the approximation of the laws of the Member States with regard to the transport of dangerous goods by rail ⁽⁵⁾, as last amended by Commission Directive 2003/29/EC of 7 April 2003 ⁽⁶⁾, for the pressure drums, bundles of cylinders and tanks referred to in Article 2 of Directive 1999/36/EC. Consequently, the date of implementation of Directive 94/55/EC should therefore be deferred as regards this transportable pressure equipment.
- (2) Article 18 of Directive 1999/36/EC provides that, during a transitional period of 24 months as from the implementation of that Directive, Member States must authorise the placing on the market and putting into service of transportable pressure equipment which complies with the regulations in force within their territory before 1 July 2001. Consequently, the date of expiry of that period should also be deferred.

- (3) The measures provided for in this Decision are in accordance with the opinion of the Committee on the transport of dangerous goods set up under Article 9 of Directive 94/55/EC,

HAS ADOPTED THIS DECISION:

Article 1

The date of implementation of Directive 1999/36/EC is deferred to 1 July 2005 for pressure drums, bundles of cylinders and tanks.

Article 2

Member States shall authorise the placing on the market and putting into service of the equipment referred to in Article 1 which complies with the regulations in force within their territory before 1 July 2005 until 24 months from that date and shall authorise the subsequent putting into service of such equipment placed on the market prior to that date.

Article 3

This Decision shall apply from 1 July 2003.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 18 July 2003.

For the Commission
Loyola DE PALACIO
Vice-President

⁽¹⁾ OJ L 138, 1.6.1999, p. 20.

⁽²⁾ OJ L 149, 7.6.2002, p. 28.

⁽³⁾ OJ L 319, 12.12.1994, p. 7.

⁽⁴⁾ OJ L 90, 8.4.2003, p. 45.

⁽⁵⁾ OJ L 235, 17.9.1996, p. 25.

⁽⁶⁾ OJ L 90, 8.4.2003, p. 47.

COMMISSION DECISION
of 18 July 2003
concerning protection measures relating to classical swine fever in Belgium, France, Germany and Luxembourg

(notified under document number C(2003) 2535)

(Text with EEA relevance)

(2003/526/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, as last amended by Directive 2002/33/EC of the European Parliament and of the Council ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

(1) In response to classical swine fever in certain bordering parts of France, Germany and Luxembourg, the Commission has adopted: Decision 2002/626/EC of 25 July 2002 approving the plan submitted by France for the eradication of classical swine fever from feral pigs in Moselle and Meurthe-et-Moselle ⁽³⁾; Decision 2002/1009/EC of 27 December 2002 concerning protection measures relating to classical swine fever in Belgium, France, Germany and Luxembourg ⁽⁴⁾; Decision 2003/135/EC of 27 February 2003 on the approval of the plans for the eradication of classical swine fever and the emergency vaccination of feral pigs against classical swine fever in Germany, in the federal states of Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate and Saarland ⁽⁵⁾; Decision 2003/136/EC of 27 February 2003 on the approval of the plans for the eradication of classical swine fever in feral pigs and emergency vaccination of feral pigs against classical swine fever in Luxembourg ⁽⁶⁾; Decision 2003/363/EC of 14 May 2003 approving the plan for the eradication of classical swine fever in feral pigs in certain areas of Belgium ⁽⁷⁾.

(2) In the light of the current epidemiological situation and location of the most recent cases of disease in the feral pigs it is appropriate to apply the measures which had

been established by Decision 2002/1009/EC, and to amend the areas of France and Germany where these measures shall apply.

(3) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS DECISION:

Article 1

This Decision shall apply without prejudice to the plans submitted by the Member States and approved by the Commission by Decisions 2002/626/EC, 2003/135/EC, 2003/136/EC and 2003/363/EC.

Article 2

1. Belgium, France, Luxembourg and Germany (hereinafter: 'the Member States concerned') shall ensure that no pigs are dispatched from those Member States unless the pigs:

- (a) come from an area outside the areas described in the Annex; and
- (b) come from a holding where no live pigs proceeding from the areas listed in the Annex have been introduced during the 30-day period immediately prior to the dispatch of the pigs in question.

2. The Member States concerned shall ensure that the transit of pigs through the areas described in the Annex only takes place on major roads or railways, without any stops by the vehicle transporting the pigs.

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 315, 19.11.2002, p. 14.

⁽³⁾ OJ L 200, 30.7.2002, p. 37.

⁽⁴⁾ OJ L 126, 20.5.1999, p. 21.

⁽⁵⁾ OJ L 53, 28.2.2003, p. 47.

⁽⁶⁾ OJ L 53, 28.2.2003, p. 52.

⁽⁷⁾ OJ L 124, 20.5.2003, p. 43.

Article 3

1. The Member States concerned shall ensure that no consignments of porcine semen are dispatched unless the semen originates from boars kept at a collection centre referred to in point (a) of Article 3 of Council Directive 90/429/EEC ⁽¹⁾ and situated outside the areas listed in the Annex.

2. The Member States concerned shall ensure that no consignments of ova and embryos of swine are dispatched from those Member States unless the ova and embryos originate from swine kept at a holding situated outside the areas described in the Annex.

Article 4

1. The health certificate provided for in Article 5(1) of Council Directive 64/432/EEC ⁽²⁾ accompanying pigs dispatched from the Member States concerned shall be completed by the following:

'Animals in accordance with Commission Decision 2003/526/EC of 18 July 2003 concerning certain protection measures relating to classical swine fever in Belgium, France, Germany and Luxembourg'.

2. The health certificate provided for in Article 6(1) of Directive 90/429/EEC accompanying boar semen dispatched from the Member States concerned shall be completed by the following:

'Semen in accordance with Commission Decision 2003/526/EC of 18 July 2003 concerning certain protection measures relating to classical swine fever in Belgium, France, Germany and Luxembourg'.

3. The health certificate provided for in Article 1 of Commission Decision 95/483/EEC ⁽³⁾ accompanying embryos and ova of swine dispatched from Belgium, France, Germany and Luxembourg shall be completed by the following:

'Embryos/ova (*) in accordance with Commission Decision 2003/526/EC of 18 July 2003 concerning certain protection measures relating to classical swine fever in Belgium, France, Germany and Luxembourg

(*) delete as appropriate'.

Article 5

1. The Member States concerned shall ensure that the provisions laid down in the second, fourth, fifth, sixth and seventh indents of Article 15(2)(b) of Directive 2001/89/EC ⁽⁴⁾ are applied in the pig holdings located within the areas listed in the Annex.

⁽¹⁾ OJ L 224, 18.8.1990, p. 62.

⁽²⁾ OJ L 21, 29.7.1964, p. 1977/64.

⁽³⁾ OJ L 275, 18.11.1995, p. 30.

⁽⁴⁾ OJ L 316, 1.12.2001, p. 5.

2. The Member States concerned shall ensure that vehicles which have been used for the transport of pigs proceeding from holdings located within the areas listed in the Annex are cleaned and disinfected after each operation and that the transporter shall provide proof of such disinfection.

Article 6

1. By way of derogation from Article 1(1) and subject to the approval of the Member State of destination, the Member States concerned may authorise the dispatch of pigs proceeding from holdings located within the areas listed in the Annex in one of the Member States concerned, to other holdings or to slaughterhouses located within the areas listed in the Annex of another Member State concerned, provided that the pigs come from a holding where:

- (a) no live pigs have been introduced during the 30-day period immediately prior to the dispatch of the pigs in question;
- (b) a clinical examination for classical swine fever has been carried out by an official veterinarian in accordance with the checking procedure laid down in Part A of Chapter IV of the Annex to Commission Decision 2002/106/EC ⁽⁵⁾ and in points 1, 2 and 3 of Part D of Chapter IV of that Annex; and
- (c) serological tests for classical swine fever have been carried out with negative results on samples collected from the group of pigs to be moved, during the seven-day period immediately prior to their dispatch. The minimum number of pigs to be sampled must be sufficient to allow for the detection of 10 % seroprevalence with 95 % confidence in the group of pigs to be moved.

However, (c) shall not apply to pigs to be moved directly to slaughterhouses for the purpose of immediate slaughter.

2. When dispatching the pigs referred to in paragraph 1, the Member States concerned shall ensure that the health certificate referred to in Article 4(1) includes additional information concerning the dates of the clinical examination, sampling and testing, the number of samples tested, the type of test used and the results of the test.

Article 7

The Member States concerned may allow the movements of pigs proceeding from holdings located within the areas listed in the Annex and dispatched to other areas in the same Member State, only from holdings of dispatch where a clinical examination and serological tests for classical swine fever have been carried out with negative results, in accordance with Article 6(1)(b) and (c).

⁽⁵⁾ OJ L 39, 9.2.2002, p. 71.

Article 8

The Member States concerned shall inform the Commission and the Member States in the framework of the Standing Committee on the Food Chain and Animal Health on the results of the serosurveillance for classical swine fever carried out in the areas listed in the Annex.

Article 9

The Member States shall amend the measures they apply to trade so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 10

This Decision shall be reviewed before 20 October 2003.

Article 11

This Decision shall apply until 30 October 2003.

Article 12

This Decision is addressed to the Member States.

Done at Brussels, 18 July 2003.

For the Commission

David BYRNE

Member of the Commission

ANNEX

Areas of the Member States concerned referred to in Articles 1, 2, 3, 5, 6, 7 and 8

1. Belgium
- the territory of Belgium located in between:
- the motorway E40 (A3) from the border with Germany until the cross with road N68;
 - then, the road N68 in southern direction, at Eupen continuing into the Aachenerstraße until the cross with the Paveestraße;
 - then, the Paveestraße until the cross with the Kirchstraße;
 - then, the Kirchstraße, continuing into the Bergstraße and the Neustraße until the cross with the road Olengraben;
 - then, the road Olengraben, continuing into the Haasstraße until the cross with the Malmedystraße;
 - then, the Malmedystraße, continuing into the road N68 in southern direction until the cross with the road N62;
 - then, the road N62 in eastern and southern direction until the cross with motorway E42 (A27);
 - then, the motorway E42 (A27) until the border with Germany.
2. France
- the territory of the department Moselle located: (i) north of the river Moselle from the town of Thionville until the border of Luxembourg; and (ii) east of the motorway A31 from the city of Thionville until the border with Luxembourg.
 - the territory of the department Bas-Rhine located: (i) west of the road D 264 from Wissembourg to Soultz-sous-Forêts, (ii) north of the road D 28 from Soultz-sous-Forêts to Woerth, (iii) east of the road D 27 from Woerth to Lembach, (iv) east of the road D 3 from Lembach to the junction with the road D 925, (v) east of the road D 925 from the junction with the road D 3 to the border with Germany (Hirschthal), (vi) south of the border with Germany from Hirschthal to Wissembourg.
3. Germany
- A. North Rhine-Westphalia
- In the *Kreis* Euskirchen: the *Gemeinde* Schleiden, Dahlem, Blankenheim, Bad Muenstereifel, Euskirchen, Hellenthal, Kall; Mechernich, Nettersheim and Zuelpich;
 - In the *Kreis* Rhein-Sieg: the *Gemeinde* Rheinbach, Swisttal and Meckenheim;
 - City of Aachen;
 - In the *Kreis* Aachen: Monschau, Stollberg, Simmerath and Roetgen;
 - In the *Kreis* Dueren: Heimbach, Nideggen, Huertgenwald and Langerwehe.
- B. Rhineland-Palatinate:
- The *Kreise*: Ahrweiler, Bad Dürkheim, Bernkastel-Wittlich, Bitburg-Prüm, Cochem-Zell, Daun, Donnersbergkreis and Südliche Weinstraße;
 - In the *Kreis* Trier-Saarburg: the area east of the river Saar;
 - In the *Kreis* Mayen-Koblenz: the area west of the river Rhein;
 - The Cities of: Alzey, Landau, Kaiserslautern, Neustadt an der Weinstraße, Pirmasens, Speyer and Trier;
 - In the City of Koblenz: the area west of the river Rhein;
 - In the *Kreis* Birkenfeld: the *Gemeinde* Baumholder and Truppenübungsplatz Baumholder, Birkenfeld, Rhaunen; in the *Gemeinde* Herrstein: the municipalities Allenbach, Bruchweiler, Kempfeld, Langweiler, Sensweiler and Wirschweiler;
 - In the *Kreis* Rhein-Hunsrück-Kreis: the *Gemeinde* Boppard, *Verbandsgemeinde* Emmelshausen, Kastellaun, Kirchberg; in the *Gemeinde* Rheinböllen: the municipalities Benzweiler, Kisselbach, Liebshausen and Steinbach; the *Gemeinde* Simmern and St. Goar-Oberwesel;
 - In the *Kreis* Alzey-Worms: the municipalities Stein-Bockenheim, Wonsheim, Siefersheim, Wöllstein, Gumbshheim, Eckelsheim, Wendelsheim, Nieder-Wiesen, Nack, Erbes-Büdesheim, Flonheim, Bornheim, Lonsheim, Bernersheim vor der Höhe, Albig, Bechenheim, Offenheim, Mauchenheim, Freimersheim, Wahlheim, Kettenheim, Esselborn, Dintesheim, Flomborn, Eppelsheim, Ober-Flörsheim, Hangen-Weisheim, Gundersheim, Bernersheim, Gundheim, Framersheim, Gau-Heppenheim the *Gemeinde* Monsheim and Alzey;
 - In the *Kreis* Bad Kreuznach: the municipalities Becherbach, Reiffelbach, Schmittweiler, Callbach, Meisenheim, Breitenheim, Rehborn, Lettweiler, Odernheim a. Glan, Oberhausen a. d. Nahe, Duchroth, Hallgarten, Feilbingert, Hochstätten, Niederhausen, Norheim, Bad Münster a. Stein-Ebernburg, Altenbarnberg, Furfeld, Tiefenthal, Neu-Bamberg and Frei-Laubersheim;

- In the *Kreis* Germersheim: the *Gemeinde* Lingenfeld, Bellheim and Germersheim;
 - In the *Kreis* Kaiserslautern: the *Gemeinde* Weilerbach, Otterbach, Otterberg, Enkenbach-Alsenborn, Hochspeyer, Kaiserslautern-Süd, Landstuhl, Bruchmühlbach-Miesau; the municipalities Hütschenhausen, Ramstein-Miesenbach, Steinwenden and Kottweiler-Schwanden;
 - In the *Kreis* Kusel: the municipalities Odenbach, Adenbach, Cronenberg, Ginsweiler, Hohenöllen, Lohnweiler, Heinzenhausen, Nussbach, Reipoltskirchen, Hefersweiler, Relsberg, Einöllen, Oberweiler-Tiefenbach, Wolfstein, Kreimbach-Kaulbach, Rutsweiler a.d. Lauter, Rothselberg, Jettenbach and Bosenbach;
 - In the *Kreis* Ludwigshafen: the *Gemeinde* Dudenhofen, Waldsee, Böhl-Iggelheim, Schifferstadt, Römerberg and Altrip;
 - In the *Kreis* Südwestpfalz: the *Gemeinde* Waldfischbach-Burgalben, Rodalben, Hauenstein, Dahner-Felsenland, Pirmasens-Land, Thaleischweiler-Fröschen; the municipalities Schmitshausen, Herschberg, Schauerberg, Weselberg, Obernheim-Kirchenarnbach, Hettenhausen, Saalstadt, Wallhalben and Knopp-Labach.
- C. Saarland
- In the *Kreis* Merzig-Wadern: the *Gemeinde* Mettlach, Merzig, Beckingen, Losheim, Weiskirchen and Wadern;
 - In the *Kreis* Saarlouis: the *Gemeinde* Dillingen, Bous, Ensdorf, Schwalbach, Saarwellingen, Nalbach, Lebach, Schmelz and Saarlouis;
 - In the *Kreis* Sankt Wendel: the *Gemeinde* Nonnweiler, Nohfelden and Tholey.
4. Luxembourg: the whole territory of Luxembourg.
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CORRIGENDA**Corrigendum to Commission Regulation (EC) No 1207/2003 of 4 July 2003 concerning the issue of import licences for certain preserved mushrooms**

(Official Journal of the European Union L 168 of 5 July 2003)

On page 15, in recital 2 and Article 1:

for: '... pursuant to Article 4(1)(b) of Regulation (EC) No 2125/95 ...',

read: '... pursuant to Article 4(1)(a) of Regulation (EC) No 2125/95 ...'.
