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I

(Acts whose publication is obligatory)

**COMMISSION REGULATION (EC) No 1831/2001
of 18 September 2001
establishing the standard import values for determining the entry price of certain fruit and
vegetables**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Whereas:

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

This Regulation shall enter into force on 19 September 2001.

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

Done at Brussels, 18 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 18 September 2001 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0707 00 05	052	99,7
	999	99,7
0709 90 70	052	76,1
	999	76,1
0805 30 10	388	71,3
	512	65,9
	524	56,1
	528	58,7
	999	63,0
0806 10 10	052	66,9
	999	66,9
0808 10 20, 0808 10 50, 0808 10 90	388	89,6
	400	89,0
	508	71,1
	512	71,1
	528	42,0
	800	227,2
	804	91,5
	999	97,4
	052	106,1
0808 20 50	720	78,6
	999	92,3
	052	115,3
0809 30 10, 0809 30 90	999	115,3
	052	68,3
0809 40 05	060	58,2
	064	45,4
	066	65,6
	068	52,4
	999	58,0

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

COMMISSION REGULATION (EC) No 1832/2001**of 18 September 2001****amending Regulation (EC) No 795/2001 on special measures derogating from Regulations (EC) No 174/1999, (EC) No 800/1999 and (EC) No 1291/2000 in the milk and milk products sector**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, as last amended by Regulation (EC) No 1670/2000 ⁽²⁾, and in particular Article 26(3) and Article 31(14) thereof,

Whereas:

- (1) Commission Regulation (EC) No 795/2001 ⁽³⁾, as amended by Regulation (EC) No 1342/2001 ⁽⁴⁾, introduced special measures with a view to regularising export operations that it had not been possible to complete on account of the lengthy procedures for issuing animal-health certificates in certain Member States, connected with protective measures adopted under the relevant decisions and certain measures taken by some third countries that give rise to import restrictions.
- (2) The animal-health protective measures applied by the authorities of certain third countries with regard to Community exports are still in force and continue adversely to affect the export possibilities to certain destinations.
- (3) The impact on Community exporters should be limited by extending the term of validity of the export licences concerned for certain products and certain time limits and by allowing for the cancellation of unused export licences and for the release of the security.
- (4) It is appropriate that the new measures enter into force immediately so as to allow the operators to adapt to the new provisions accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Regulation (EC) No 795/2001 is replaced by the following text:

‘2. By derogation from Article 6 of Regulation (EC) No 174/1999, the term of validity of export licences issued pursuant to that Regulation and applied for by no later than 22 March 2001 shall be extended at the request of the holder by:

- six months for licences expiring on 31 March 2001,
- five months for licences expiring on 30 April 2001,
- four months for licences expiring on 31 May 2001,
- three months for licences expiring on 30 June 2001,
- two months for licences expiring on 31 July 2001,
- one month for licences expiring on 31 August 2001.

At the request of the holder, submitted to the competent authority by 30 September 2001 at the latest, export licences already deemed eligible for and subject to the measure provided for in the first subparagraph shall be cancelled and the security shall be released.’

Article 2

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

It shall apply as of 1 September 2001.

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

Done at Brussels, 18 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48.

⁽²⁾ OJ L 193, 29.7.2000, p. 10.

⁽³⁾ OJ L 116, 26.4.2001, p. 14.

⁽⁴⁾ OJ L 181, 4.7.2001, p. 15.

COMMISSION REGULATION (EC) No 1833/2001**of 18 September 2001****fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 1516/96 ⁽²⁾, and in particular Article 8(3) thereof,

Whereas:

- (1) Article 8(1) of Regulation (EEC) No 2771/75 provides that the difference between prices in international trade for the products listed in Article 1(1) of that Regulation and prices within the Community may be covered by an export refund where these goods are exported in the form of goods listed in the Annex to that Regulation. Whereas Commission Regulation (EC) No 1520/2000 of 13 July 2000 laying down common detailed rules for the application of the system of granting export refunds on certain agricultural products exported in the form of goods not covered by Annex I to the Treaty, and the criteria for fixing the amount of such refunds ⁽³⁾, as amended by Regulation (EC) No 2390/2000 ⁽⁴⁾, specifies the products for which a rate of refund should be fixed, to be applied where these products are exported in the form of goods listed in the Annex to Regulation (EEC) No 2771/75.
- (2) In accordance Article 4(1) of Regulation (EC) No 1520/2000, the rate of the refund per 100 kilograms for each of the basic products in question must be fixed for a

period of the same duration as that for which refunds are fixed for the same products exported unprocessed.

- (3) Article 11 of the Agreement on Agriculture concluded under the Uruguay Round lays down that the export refund for a product contained in a good may not exceed the refund applicable to that product when exported without further processing.
- (4) It is necessary to ensure continuity of strict management taking account of expenditure forecasts and funds available in the budget.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

The rates of the refunds applicable to the basic products appearing in Annex A to Regulation (EC) No 1520/2000 and listed in Article 1(1) of Regulation (EEC) No 2771/75, exported in the form of goods listed in the Annex I to Regulation (EEC) No 2771/75, are hereby fixed as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 September 2001.

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

Done at Brussels, 18 September 2001.

For the Commission

Erkki LIIKANEN

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 49.

⁽²⁾ OJ L 189, 30.7.1996, p. 99.

⁽³⁾ OJ L 177, 15.7.2000, p. 1.

⁽⁴⁾ OJ L 276, 28.10.2000, p. 3.

ANNEX

to the Commission Regulation of 18 September 2001 fixing the rates of the refunds applicable to eggs and egg yolks exported in the form of goods not covered by Annex I to the Treaty

(EUR/100 kg)

CN code	Description	Destination (¹)	Rate of refund
0407 00	Birds' eggs, in shell, fresh, preserved or cooked:		
	– Of poultry:		
0407 00 30	– – Other:		
	a) On exportation of ovalbumin of CN codes 3502 11 90 and 3502 19 90	02	7,00
		03	8,00
		04	3,50
	b) On exportation of other goods	01	3,50
0408	Birds' eggs, not in shell and egg yolks, fresh, dried, cooked by steaming or by boiling in water, moulded, frozen or otherwise preserved, whether or not containing added sugar or other sweetening matter:		
	– Egg yolks:		
0408 11	– – Dried:		
ex 0408 11 80	– – – Suitable for human consumption:		
	not sweetened	01	30,00
0408 19	– – Other:		
	– – – Suitable for human consumption:		
ex 0408 19 81	– – – – Liquid:		
	not sweetened	01	13,00
ex 0408 19 89	– – – – Frozen:		
	not sweetened	01	13,00
	– Other:		
0408 91	– – Dried:		
ex 0408 91 80	– – – Suitable for human consumption:		
	not sweetened	01	33,00
0408 99	– – Other:		
ex 0408 99 80	– – – Suitable for human consumption:		
	not sweetened	01	8,00

(¹) The destinations are as follows:

01 Third countries,

02 Kuwait, Bahrain, Oman, Qatar, United Arab Emirates, Yemen, Hong Kong SAR and Russia,

03 South Korea, Japan, Malaysia, Thailand, Taiwan, the Philippines and Egypt,

04 All destinations except Switzerland and those of 02 and 03.

**COMMISSION REGULATION (EC) No 1834/2001
of 18 September 2001
fixing the export refunds on poultrymeat**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat ⁽¹⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽²⁾, and in particular Article 8(3) thereof,

Whereas:

- (1) Article 8 of Regulation (EEC) No 2777/75 provides that the difference between prices on the world market for the products listed in Article 1(1) of that Regulation and prices for those products within the Community may be covered by an export refund.
- (2) It follows from applying these rules and criteria to the present situation on the market in poultrymeat that the refund should be fixed at an amount which would permit Community participation in world trade and

would also take account of the nature of these exports and their importance at the present time.

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

HAS ADOPTED THIS REGULATION:

Article 1

The list of product codes for which, when they are exported, the export refund referred to in Article 8 of Regulation (EEC) No 2777/75 is granted, and the amount of that refund shall be as shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 September 2001.

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

Done at Brussels, 18 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 77.

⁽²⁾ OJ L 305, 19.12.1995, p. 49.

ANNEX

to the Commission Regulation of 18 September 2001 fixing the export refunds on poultrymeat

Product code	Destination	Unit of measurement	Amount of refund
0105 11 11 9000	A02	EUR/100 pcs	1,00
0105 11 19 9000	A02	EUR/100 pcs	1,00
0105 11 91 9000	A02	EUR/100 pcs	1,00
0105 11 99 9000	A02	EUR/100 pcs	1,00
0105 12 00 9000	A02	EUR/100 pcs	2,15
0105 19 20 9000	A02	EUR/100 pcs	2,15
0207 12 10 9900	V01	EUR/100 kg	25,00
0207 12 10 9900	V02	EUR/100 kg	25,00
0207 12 90 9190	V01	EUR/100 kg	25,00
0207 12 90 9190	V02	EUR/100 kg	25,00
0207 12 90 9990	V01	EUR/100 kg	25,00
0207 12 90 9990	V02	EUR/100 kg	25,00

NB: The product codes and the 'A' series destination codes are set out in Commission Regulation (EEC) No 3846/87 (OJ L 366, 24.12.1987, p. 1) as amended.

The numeric destination codes are set out in Commission Regulation (EC) No 2032/2000 (OJ L 243, 28.9.2000, p. 14).

The other destinations are defined as follows:

V01 Angola, Saudi Arabia, Kuwait, Bahrain, Qatar, Oman, the United Arab Emirates, Jordan, Yemen, Lebanon, Iraq, Iran

V02 Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine.

COMMISSION REGULATION (EC) No 1835/2001
of 18 September 2001
fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending
Regulation (EC) No 1484/95

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organisation of the market in eggs ⁽¹⁾, as last amended by Commission Regulation (EC) No 1516/96 ⁽²⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ⁽³⁾, as last amended by Commission Regulation (EC) No 2916/95 ⁽⁴⁾, and in particular Article 5(4) thereof,

Having regard to Council Regulation (EEC) No 2783/75 of 29 October 1975 on the common system of trade for ovalbumin and lactalbumin ⁽⁵⁾, as last amended by Regulation (EC) No 2916/95, and in particular Article 3(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽⁶⁾, as last amended by Regulation (EC) No 1461/2001 ⁽⁷⁾, fixes detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.

- (2) It results from regular monitoring of the information providing the basis for the verification of the import prices in the poultrymeat and egg sectors and for egg albumin that the representative prices for imports of certain products should be amended taking into account variations of prices according to origin. Therefore, representative prices should be published.
- (3) It is necessary to apply this amendment as soon as possible, given the situation on the market.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Poultrymeat and Eggs,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is hereby replaced by the Annex hereto.

Article 2

This Regulation shall enter into force on 19 September 2001.

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

Done at Brussels, 18 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 282, 1.11.1975, p. 49.
⁽²⁾ OJ L 189, 30.7.1996, p. 99.
⁽³⁾ OJ L 282, 1.11.1975, p. 77.
⁽⁴⁾ OJ L 305, 19.12.1995, p. 49.
⁽⁵⁾ OJ L 282, 1.11.1975, p. 104.
⁽⁶⁾ OJ L 145, 29.6.1995, p. 47.
⁽⁷⁾ OJ L 194, 18.7.2001, p. 10.

ANNEX

to the Commission Regulation of 18 September 2001 fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and amending Regulation (EC) No 1484/95

'ANNEX I

CN code	Description	Representative price (EUR/100 kg)	Security referred to in Article 3(3) (EUR/100 kg)	Origin (¹)
0207 14 10	Boneless cuts of fowl of the species <i>Gallus domesticus</i> , frozen	233,6	20	01
		241,9	17	02
		207,0	28	03
0207 14 70	Other parts of chicken, frozen	220,0	19	01
1602 32 11	Preparations of uncooked fowl of the species <i>Gallus domesticus</i>	246,7	12	01
		253,6	10	02

(¹) Origin of imports:

01 Brazil
02 Thailand
03 China.'

COMMISSION REGULATION (EC) No 1836/2001
of 18 September 2001
amending representative prices and additional duties for the import of certain products in the
sugar sector

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector ⁽¹⁾,

Having regard to Commission Regulation (EC) No 1423/95 of 23 June 1995 laying down detailed implementing rules for the import of products in the sugar sector other than molasses ⁽²⁾, as last amended by Regulation (EC) No 624/98 ⁽³⁾, and in particular the second subparagraph of Article 1(2), and Article 3(1) thereof,

Whereas:

- (1) The amounts of the representative prices and additional duties applicable to the import of white sugar, raw sugar and certain syrups are fixed by Commission Regulation

(EC) No 1309/2001 ⁽⁴⁾, as last amended by Regulation (EC) No 1807/2001 ⁽⁵⁾.

- (2) It follows from applying the general and detailed fixing rules contained in Regulation (EC) No 1423/95 to the information known to the Commission that the representative prices and additional duties at present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The representative prices and additional duties on imports of the products referred to in Article 1 of Regulation (EC) No 1423/95 shall be as set out in the Annex hereto.

Article 2

This Regulation shall enter into force on 19 September 2001.

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

Done at Brussels, 18 September 2001.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 141, 24.6.1995, p. 16.

⁽³⁾ OJ L 85, 20.3.1998, p. 5.

⁽⁴⁾ OJ L 177, 30.6.2001, p. 21.

⁽⁵⁾ OJ L 244, 14.9.2001, p. 30.

ANNEX

to the Commission Regulation of 18 September 2001 amending representative prices and the amounts of additional duties applicable to imports of white sugar, raw sugar and products covered by CN code 1702 90 99

(EUR)

CN code	Amount of representative prices per 100 kg net of product concerned	Amount of additional duty per 100 kg net of product concerned
1701 11 10 ⁽¹⁾	21,49	5,56
1701 11 90 ⁽¹⁾	21,49	10,90
1701 12 10 ⁽¹⁾	21,49	5,37
1701 12 90 ⁽¹⁾	21,49	10,38
1701 91 00 ⁽²⁾	25,23	12,74
1701 99 10 ⁽²⁾	25,23	8,10
1701 99 90 ⁽²⁾	25,23	8,10
1702 90 99 ⁽³⁾	0,25	0,40

⁽¹⁾ For the standard quality as defined in Article 1 of amended Council Regulation (EEC) No 431/68 (OJ L 89, 10.4.1968, p. 3).

⁽²⁾ For the standard quality as defined in Article 1 of Council Regulation (EEC) No 793/72 (OJ L 94, 21.4.1972, p. 1).

⁽³⁾ By 1 % sucrose content.

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 July 2001

relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement

(Case No COMP/37.462 — Identrus)

(notified under document number C(2001) 1850)

(Only the German and English texts are authentic)

(Text with EEA relevance)

(2001/696/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Agreement on the European Economic Area,

Having regard to Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles 85 and 86 of the Treaty ⁽¹⁾, as last amended by Regulation (EC) No 1216/1999 ⁽²⁾, and in particular Articles 2, 6 and 8 thereof,

Having regard to the application for negative clearance and the notification for exemption submitted pursuant to Articles 2 and 4 of Regulation No 17 on 6 April 1999,

Having regard to the summary of the application and notification published pursuant to Article 19(3) of Regulation No 17 ⁽³⁾,

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

Whereas:

I. INTRODUCTION

- (1) On 6 April 1999, the Commission received an application for negative clearance or alternatively a notification for exemption, pursuant to Article 4 of Council Regula-

tion No 17, of a set of agreements ('the Notified Agreements') concerning the establishment of a network of financial institutions which will operate as Certification Authorities ⁽⁴⁾ of trusted electronic commerce (e-commerce) transactions, initially only in the business-to-business (B2B) context.

- (2) The notifying Parties are ABN-AMRO Services Company, Inc., BA Interactive Service Holdings, Inc., Barclays Electronic Commerce Holdings, Inc., Bayerische Hypo- und Vereinsbank AG, The Chase Manhattan Bank, Citibank Strategic Technology, Inc., Deutsche Bank AG and Pyramid Ventures, Inc., (the 'Parties').
- (3) For the purposes of establishing and managing the network, the Parties have formed a joint venture company, Identrus, LLC ('Identrus'). Identrus was established in March 1999 pursuant to a Limited Liability Company Agreement (the 'LLC Agreement'), governed by US Delaware law. The initial capitalisation of Identrus was contributed equally by the Parties. Identrus will provide and manage the infrastructure required for establishing a global, interoperable network among financial institutions offering Certification Authority services (the 'Identrus System').
- (4) Besides the notifying Parties, Identrus will have a limited number of further shareholders (the 'equity owners') ⁽⁵⁾. No single equity owner will have control over Identrus.

⁽⁴⁾ Certification authorities are entities or legal or natural persons who issue digital certificates for electronic commerce transactions.

⁽⁵⁾ Since the notification was filed, the following additional institutions have become equity investors in Identrus: Australia New Zealand Banking Group, Banco Santander Central Hispano, Bank of Tokyo/Mitsubishi, Banque Nationale de Paris, Caisse Nationale de Credit Agricole, CIBC WMC Inc., HSBC Financial Services Corporation, Industrial Bank of Japan, National Australia Bank, Royal Bank of Scotland, Sanwa Technology Services, Inc., Société Générale and Wells Fargo. Consequently, the number of Identrus's equity owners has already reached 21 and the share of any equity owner is below 8 %. According to the Parties' application for negative clearance, the envisaged final number of equity owners should not significantly exceed 20.

⁽¹⁾ OJ L 13, 21.2.1962, p. 204/62.

⁽²⁾ OJ L 148, 15.6.1999, p. 5.

⁽³⁾ OJ C 231, 11.8.2000, p. 5.

Participation in the Identrus System will be open to qualified financial institutions around the world ('Participants'). Participants need not be equity owners of Identrus, but all equity owners are Participants. Participants will compete with each other in the relevant markets described in recitals 29 to 34.

II. PARTIES

- (5) The corporate groups to which the Parties to the Notified Agreements belong may be described as follows: ABN AMRO Services Company, Inc., is an Illinois corporation. Its ultimate parent is ABN AMRO Holding NV, the Netherlands. BA Interactive Services Holding Company, Inc., is a Delaware corporation. The ultimate parent is Bank America Corporation, USA. Barclays Electronic Commerce Holdings Inc., is a Delaware corporation and an indirect subsidiary of Barclays Bank PLC, United Kingdom. Bayerische Hypo-und Vereinsbank AG ('Hypo Vereinsbank') is a financial group resulting from the merger in 1998 of Bayerische Vereinsbank AG and Bayerische Hypotheken und Wechsel Bank, AG. The Chase Manhattan Bank ('Chase') is a wholly-owned subsidiary of the Chase Manhattan Corporation, USA. Citibank, NA is a wholly-owned subsidiary of Citigroup Inc., Delaware. Deutsche Bank AG, Germany, holds its equity investment in Identrus directly. Pyramid Ventures, Inc., USA, is an indirect subsidiary of Bankers Trust New York Corporation which has now merged with Deutsche Bank AG.

III. THE REGULATORY AND POLICY CONTEXT

- (6) A coherent and appropriate legislative framework is essential to develop electronic commerce within the Community. In 1997, the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, — a European Initiative in Electronic Commerce⁽⁶⁾, defined the broad lines of the Commission's policy in this area. Since then, a series of directives has been adopted. They include Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures⁽⁷⁾, which establishes rules on the legal recognition of electronic signatures and certification procedures, and Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions⁽⁸⁾, which provides that electronic money may be issued only by supervised institutions meeting certain legal and financial conditions, ensuring technical security. Of central importance is Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on

certain legal aspects of information society services, in particular electronic commerce, in the internal market⁽⁹⁾. It is designed to ensure that information society services can be freely provided throughout the Community.

- (7) Secure electronic payments in particular are essential for the development of e-commerce. Today, there is no widespread, effective and secure way to make cross-border Internet payments, and the respective market operators lack confidence in the security of such payments. The present legislative framework provides consumers with some protection but it does not meet many of the concerns associated with on-line trade within the Community. Improvements are needed in technical security and in the establishment of a legislative 'safety net'.
- (8) On technical security, the 'e-Europe initiative' launched by the Commission in December 1999⁽¹⁰⁾ promotes the use of new technologies, and envisages further work on identification and authentication techniques. As recognised in Directive 1999/93/EC, in particular recitals 4, 5, 10, 21 and 23, the development of electronic commerce requires, as a basic prerequisite, the existence of global Certification Authority services over open networks. The necessity for securing electronic commerce transactions is giving rise to a number of new, emergent markets for the provision of electronic trust services. Failures arising from any of the risks associated with the on-line provision of financial and authentication services could lead to significant legal and reputation risks. Such risks are not new, but their relative importance grows given the increasing reliance on technology.

IV. THE TRANSACTION

A. Purpose of the transaction

- (9) The declared purpose of the Parties in setting up the Identrus System is the promotion, operation and management of an infrastructure for securing electronic commerce transactions. That infrastructure is intended to enable the Participants in the system to operate as individual and competing Certification Authorities.

Scope of the activities of Identrus

- (10) The Identrus equity owners will provide the infrastructure, a data processing system designed to operate through digital networks, required to enable the financial institutions participating in the system to become Certification Authorities for the purposes of secure e-commerce transactions and offer related services to their end users.

⁽⁶⁾ COM(97) 157 final.

⁽⁷⁾ OJ L 13, 19.1.2000, p. 12.

⁽⁸⁾ OJ L 275, 27.10.2000, p. 39.

⁽⁹⁾ OJ L 178, 17.7.2000, p. 1.

⁽¹⁰⁾ The e-Europe initiative is a two-year action plan which aims at providing all citizens of the Community with access to Information and Communications Technology (ICT) based services and applications (see: http://europa.eu.int/information_society/eeurope/index_en.htm).

The role of Participants in the Identrus System

- (11) In the Identrus System, each Participant will issue digital certificates certifying the identity of clients engaged in electronic transactions. The Participants will operate as individual and competing certifying authorities. This means that companies engaged in financial transactions are free to choose any participating Certification Authority which is not necessarily their regular banking institution. Identrus System specifications provide interoperability in order to enable each Participant to develop its own technology independently. Furthermore, each Participant will offer its own, independently created applications, built upon the digital Certification Authority services of the Identrus System infrastructure, in competition with each of the other Participants. Each Participant is free to set the prices it charges to its end users for authentication services.

Warranty requirements

- (12) Each Participant will post a deposit (collateral) to an account with an appointed financial institution, who will hold it for the benefit of relying third parties to secure warranties issued to them. The Operating Rules applying to the Identrus System establish collateral requirements applicable to each Participant, including the amount of collateral required to be posted, the frequency with which collateral requirements and Participants' obligations will be calculated and the times at which collateral would be required to be posted.

Non-discrimination

- (13) The Parties' business plan foresees up to 300 banks at worldwide level participating in the Identrus System. Furthermore, all Participants, irrespective of whether they are equity owners or not, are subject to the same rules and standards of the Identrus System.
- (14) The most important criteria for third parties (being in the business of providing financial services) to become equity owners in Identrus are certain capital requirements, as defined by the Basle Committee on Banking Regulations and Supervisory Practices and in compliance with certain financial rating requirements.

B. Participation in the system

- (15) Interested financial institutions may join the System either as 'Level One Participants', or as 'Level Two Participants'. Level One Participants may issue certificates to end-users and to Level Two Participants. Level Two Participants may issue certificates only directly to end users. In other respects, the two types of Participants will operate within the System in the same manner and will

thus compete with each other for end-users. Any person requiring Identrus certificates is entirely free to become a customer of either a Level One or a Level Two Participant.

Level One Participants

- (16) An entity will be eligible to act as a Level One Participant if it is primarily engaged in the business of providing financial services, it is subject to governmental regulation and examination, and it meets certain capital and credit requirements.
- (17) Identrus as such is a root Certification Authority that issues digital certificates to its Level One Participants and thus permits the validation of the Level One Participants' identities. This allows Level One Participants to operate as Certification Authorities within the Identrus System and to issue digital certificates to their corporate customers.
- (18) Vis-a-vis Level Two Participants, Level One Participants can also have the function of root Certification Authorities⁽¹¹⁾ Level One Participants must therefore be positioned to meet in a special manner the requirements of corporate customers regarding trust, reputation and confidence.
- (19) The equity owners of Identrus will participate in the system as Level One Participants under the same terms and conditions as apply to any third party acting as a Level One Participant.

Level Two Participants

- (20) The eligibility criteria for Level Two Participants are similar to those for Level One Participants. However, the capital and credit requirements are less stringent, enabling smaller entities to participate in the Identrus System. Provided the respective capital and credit requirements are met, each Participant is free to be either a Level One or a Level Two Participant.
- (21) Level Two Participants will operate as Certification Authorities and issue certificates to their corporate customers.

⁽¹¹⁾ Due to its structure, Identrus itself can only supervise a limited number of Participants regarding the requirements for the provision of trust services to end-users. Therefore, Identrus has a system of delegation in which Level One Participants have a monitoring role vis-a-vis Level Two Participants. Identrus itself will not issue digital certificates directly to Level Two Participants or to end-users.

C. The agreements

The LLC Agreement — corporate organisation

- (22) The equity owners of Identrus have a voting right in the shareholders' meeting that is calculated on the basis of their respective percentage ownership interest in Identrus. This means that the founding equity owners will each have less than 10 % of the voting rights and that the newer equity owners will have less than 5 % each. All matters requiring an equity owner's vote, approval or consent require the consent of a majority. The failure to obtain the consent of a majority on any such vote means that the required consent has not been obtained.

- (23) It follows from those provisions that the equity owners in Identrus do not exercise joint control over the company's commercial policy.

- (24) Participants in the Identrus System will not be required to hold equity in Identrus; membership in the System as a Participant will be open to all entities that satisfy the membership criteria outlined in recital 14.

- (25) All Participants, including the Parties, are free to join other schemes offering Certification Authority services.

Rights and obligations of equity owners and Participants (Operating Rules)

- (26) The Identrus equity owners have the same rights and obligations with respect to issuing certificates as all other Participants in the System and will, like them, enter into 'Participation Agreements' with Identrus to establish the terms of their operational relationship. However, all equity owners are obliged to be active Participants in the Identrus System and the LLC Agreement requires that each equity owner operates a Certification Authority, registration and risk management system under the Identrus System. Accordingly, each equity owner's investment in Identrus will not be a passive investment, as each is required to deploy its own certification services based on the Identrus System.

Pricing policy

- (27) Identrus has been set up as a for-profit organisation and will establish its pricing policy accordingly. The same pricing policy will be applied to all Participants on the basis of objective and non-discriminatory criteria, irrespective of whether they are equity owners or Participants of whatever category in Identrus. Identrus plans to charge fees only to Participants in connection with the services provided (Section 6 of the Operating Rules) and not to the customers of the Participants. Participants will be free to set the prices they in turn charge their customers.

- (28) The customers of Identrus will be its Participants. The Identrus System requires investments and these will be financed by three different revenue components ⁽¹²⁾ 1. 'Chartering fees' will be collected as a one-time payment from the Participants, and are intended to recover Identrus's costs incurred in conducting interoperability testing and compliance certification of the infrastructures of new Participants. 2. Participants will pay 'annual membership fees' with respect to the validation and warranty services once a Participant's deployment of each of these services has been developed. 3. The final revenue component of Identrus is an ad hoc fee, charged for each transaction.

V. THE RELEVANT MARKET

A. Product markets

- (29) The Identrus System's trust services include:

1. services for the identification of the sender of a message over a digital network;
2. the authentication of such message via electronic signatures;
3. the validation that the keys used to create and authenticate the signature have not been revoked;
4. the provision of services to manage the risk that the signatory may claim the signature was unauthorised; and
5. the establishment and administration of rules, policies, procedures, technical specifications and agreements governing the operation of the System.

- (30) By means of such services, Participants in the system should be able to provide authentication and connected electronic transactions security services to end-users. End-users may utilise the Identrus services in a variety of transactions — i.e. essentially any transaction conducted over an electronic network in which one or all entities involved in the transaction require a high degree of certainty as to the identity of the other. These transactions may be financial or commercial transactions, such as purchases and sales of goods or trading in financial instruments, potentially all over the world. The use of technical applications that enable such electronic transactions to be carried out cannot provide assurances about a user's identity. Therefore, Certification Authorities are needed to issue digital certificates that can be used to bind the specific identity of a user to a particular application.

⁽¹²⁾ Level Two Participants are scheduled to pay only 50 % of Level One Participants' chartering fees and annual membership fees. In addition, chartering fees are waived with respect to Level One Participants who make equity investments in Identrus, as those investments greatly exceed the magnitude of the chartering fees.

- (31) Consequently, the Notified Agreements will address at least two separate markets: 1. the market for the provision of trust services to Certification Authorities; and 2. the downstream market for the provision of trust services by Certification Authorities to end users initially in the corporate sector. In both cases, markets have not yet been sufficiently developed nor has consumer confidence been tested.

Provision of trust services to Certification Authorities

- (32) Identrus will be active in the design and operation of the infrastructure for financial institutions to manage risks inherent in relying on the identity of authors and the authenticity of electronic messages. It will perform its role as a root Certification Authority and will establish a set of business rules defining the identity certificates issued by Participants and their use.

Authentication services

- (33) Both Level One and Level Two Participants of the Identrus System will provide digital certificate services directly to their corporate end users enabling them to conduct commercial transactions over open electronic networks.

B. Geographic markets

- (34) The services on both relevant product markets are offered on a global basis enabling international business-to-business transactions. The relevant geographic market is hence the worldwide market for the services in question.

VI. STRUCTURE OF THE MARKET

A. The Parties' position on the market

- (35) As the Parties are currently not active on the relevant markets, the Parties' market shares on the described segments are non-existent.

B. Competitors of the Parties

- (36) Due to the developing nature of the markets in question, the Commission does not have a comprehensive overview of the competitive situation in these markets and the competitive position of the Parties' future competitors. The Parties were, however, able to indicate a number of active and not yet active competitors, amongst them American Bankers Association (ABAecom), SWIFT, VISA and MasterCard.
- (37) Furthermore, due to the rapidly increasing demand for authentication services and related profit opportunities, fostered among others by the Commission's e-Europe

initiative referred to in recital 8, Identrus will be confronted by numerous potential competitors such as postal authorities, technology vendors, telecommunications carriers and industry specific initiatives. Although not all of those potentially competing systems will succeed, they will have a distinct competitive check on Identrus, if successful.

VII. THIRD-PARTY OBSERVATIONS

- (38) Following the publication of the notice pursuant to Article 19(3) of Regulation No 17⁽¹³⁾, three interested third parties submitted comments to the Commission regarding Identrus. Those comments focused, in particular, on the openness of the Identrus certification system to potential participants and standards, as well as its interoperability with other similar systems.
- (39) Generally speaking, commentators addressed concerns of potential concentration processes that would result from the Identrus System. Those concerns ranged from the 'formation of a technology cartel' to the 'endangering of the competitive equilibrium' in the emerging market for electronic authentication services.
- (40) All comments received have been carefully reviewed and it has been concluded that the concerns expressed therein had already been raised by the Commission and discussed in detail with the Parties, who had provided adequate answers, as explained in recitals 41 to 53. Therefore, those comments have not affected the Commission's positive position as regards the Notified Agreements outlined in the notice pursuant to Article 19(3) of Regulation No 17.

VIII. ARTICLE 81(1) OF THE EC TREATY AND ARTICLE 53(1) OF THE EEA AGREEMENT

A. Application of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement to the agreements setting up the Identrus System

- (41) Through the Notified Agreements, the Parties have set up a company that is not under the joint control of its equity owners. An agreement to set up a company does not, however, in itself constitute a restriction of competition within the meaning of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement⁽¹⁴⁾.
- (42) However, in view of comments from third parties voicing concern at the risk of exclusionary effects that would result from the Identrus System, the impact of the creation of Identrus on the relevant product markets was examined and it was concluded that there were no such risks.

⁽¹³⁾ See footnote 3.

⁽¹⁴⁾ See Commission Decision 1999/242/EC in Case No IV.36.237 — TPS, OJ L 90, 2.4.1999, p. 6, recital 91.

No risk of coordination

- (43) Identrus will be operating in a newly developing and emerging market. Due to the advent of the Internet and its widespread use, in which a variety of persons control access and use, it became necessary to develop systems to prevent the transmission of unauthorised, fraudulent, or corrupted messages. New entrants into the nascent e-commerce markets are exposed to strong pressure from corporate customers to provide the necessary security for their transactions. The Parties' cooperation is limited to the establishment of the Identrus System as a common platform for the provision of root certification services. They will not extend their cooperation to the market for the provision of certification and authentication services to end-users, nor will they extend it to cooperation between the Parties in the financial or banking services sector, where they will remain independent competitors.
- (44) The success of a certification system is based on its interoperability with other similar systems.
- (45) The Operating Rules enable the Identrus System Participants to establish an interoperable infrastructure that makes domestic and cross-border electronic commerce applications possible. As regards those applications, however, each Participant will develop them independently.

Open access to the system

- (46) Moreover, reputation and warranty policies are important in providing a trust product such as authentication services. In this context, the most important criteria for third parties to become equity owners in Identrus are objective and by using them, Identrus will not be required to assess and identify the quality of potential Participants. The Notified Agreements are therefore unlikely to affect the competitive position of third parties, as access to Identrus infrastructures is open to all, provided they meet the objective criteria referred to in recital 14. Identrus has no incentive to exclude potential Participants, as it is inherent in the Identrus System to attract as many Participants as possible. Identrus's revenues increase with the number of electronic commerce transactions covered by the Identrus System.
- (47) End-users will benefit from the existence of the additional system Identrus will create. The wider benefits of the system to the free movement of goods in the internal market ought not to be underestimated. The authentication system will be used in a large variety of circumstances, which will in turn create other products and services increasing competitiveness, levels of trust, security and quality demanded by the evolving market.

Competitive checks

- (48) As indicated in recital 7, security of financial transactions over the Internet is one of the main concerns affecting the widespread development of electronic commerce. A large number of projects aimed at the development of Internet applications to address such concerns have been launched. A number of commercial competitors have already announced the setting up of certification systems similar to the one intended by Identrus.
- (49) Among Identrus's future main competitors the Parties identify the American Bankers Association (ABAecom), which has offered global Certification Authority services since the beginning of 1999, SWIFT (the international financial transactions services company), VISA and MasterCard. Identrus faces competition not only from the financial industry ventures but also from postal authorities, technology vendors, telecommunications carriers and industry specific vertical initiatives.
- (50) Financial industry ventures, postal authorities and telecommunications carriers for example have, on the basis of requirements for acting on their traditional markets, already made a certain part of the irreversible investments necessary for entry into the markets in question. Their ability to enter these markets must therefore be assessed as relatively high.

No exclusivity

- (51) Identrus Participants are free to participate in any other equivalent scheme, if they choose to do so. The decision would be based on internal questions to be answered solely by the Participant. Thus, participation is not exclusionary. The choice provided to Participants will potentially further foster competition between competing authentication systems.

No adverse effects on input markets

- (52) The Notified Agreements are unlikely to affect markets for inputs that are necessary for companies operating in the relevant markets. As a matter of fact, Identrus will not engage in software development, it will only set up specifications which will be given free of costs to Participants and software providers. There is no exclusivity as to which software will be used as root software and which software Participants can choose. In practice, many different vendors could be used by the Participants, provided those vendors meet the Identrus standards that have to be developed. Participants can change vendors if they so wish.

Conclusion

- (53) The creation of the Identrus System entails no foreclosure risk, as the joint venture will face competitive checks from competing systems, and Participants are free to join other such systems. There are in addition no adverse effects on input markets. Therefore, the agreements to establish Identrus do not fall within the terms of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement.

B. Application of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement to the clause concerning the general prohibition of assignment of membership interests

- (54) Article 9.1 of the LLC Agreement enshrines a general prohibition of assignment of membership interests. Such interests must first be offered to Identrus itself or to other members before being offered to third parties (see Article 9.3 of the LLC Agreement). Although equity owners have the right to set the rules for the functioning of the system, no individual member can dominate the system as the maximum vote is limited to 15 %.
- (55) To the extent that this clause is a restriction of competition on the market for the exchange of equity, the restriction is not an appreciable one.

C. Conclusions on the applicability of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement

- (56) Neither the Notified Agreements nor the clause concerning the general prohibition of assignment of membership interests has the effect to preventing, restricting or distorting competition within the relevant market defined in recitals 29 to 34. Therefore, the Agreements fall outside the scope of Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement,

HAS ADOPTED THIS DECISION:

Article 1

On the basis of the facts in its possession, the Commission has no grounds for action under Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement in respect of the Notified Agreements relating to the establishment of the Identrus System.

Article 2

This Decision is addressed to:

1. ABN AMRO Services Company, Inc.
200 West Monroe Street
Chicago IL 60606
USA
2. BA interactive Services Holding Company, Inc.
425 First Street
San Francisco CA 94105
USA
3. Barclays Electronic Commerce Holdings, Inc.
222 Broadway
New York NY 10038
USA
4. Bayerische Hypo- und Vereinsbank AG
Am Tucherpark 16
D-80538 München
5. The Chase Manhattan Bank
270 Park Avenue — 44th Floor
New York NY 10017
USA
6. Citibank Strategic Technology
153 East 53rd Street
New York NY 10043
USA
7. Deutsche Bank AG
Taunusanlage 12
D-60325 Frankfurt a. M
8. Pyramid Ventures, Inc.
130 Liberty Street
New York NY 10006
USA
9. Identrus LLC
140 East 45th Street — 16th Floor
New York NY 10017
USA.

Done at Brussels, 31 July 2001.

For the Commission

Mario MONTI

Member of the Commission

COMMISSION DECISION
of 5 September 2001
concerning the non-inclusion of chlorfenapyr in Annex I to Council Directive 91/414/EEC

(notified under document number C(2001) 2617)

(Text with EEA relevance)

(2001/697/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market ⁽¹⁾, as last amended by Commission Directive 2001/49/EC ⁽²⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) In accordance with Article 6(2) of Directive 91/414/EEC (hereinafter referred to as the Directive) Spain received on 7 July 1995 an application from Cyanamid, (the applicant) for the inclusion of the active substance chlorfenapyr in Annex I to the Directive.
- (2) In accordance with the provisions of Article 6(3) of the Directive the Commission confirmed in its Decision 96/521/EC ⁽³⁾ that the dossier submitted for chlorfenapyr could be considered as satisfying, in principle, the data and information requirements of Annex II and for a plant protection product containing this active substance, of Annex III to the Directive.
- (3) In accordance with Article 5(1) of the Directive, an active substance should be included in Annex I for a period not exceeding 10 years if it may be expected that neither the use of, or residues from, plant protection products containing the active substance will have any harmful effects on human or animal health or on groundwater or any unacceptable influence on the environment.
- (4) For chlorfenapyr, the effects on human health and the environment have been assessed, in accordance with the provisions of Article 6(2) and (4) of the Directive, for the uses proposed by the applicant. Spain acting as nominated rapporteur Member State, submitted a draft assessment report concerning the substance to the Commission 30 November 1998.
- (5) On receipt of the report of the rapporteur Member State, the Commission undertook consultations with experts of the Member States as well as with the applicant

Cyanamid as provided for in Article 6(4) of the Directive.

- (6) The assessment report prepared by Spain has been reviewed by the Member States and the Commission within the Standing Committee on Plant Health. This review was finalised on 27 April 2001 in the format of a Commission review report for chlorfenapyr.
- (7) Assessments made on the basis of information submitted raised further questions particularly with regard to the fate and behaviour of the substance in the environment.
- (8) The applicant informed the Commission and the rapporteur Member State that it no longer wished to participate in the programme of work for this active substance, and therefore no further information will be submitted.
- (9) Therefore, it is not possible to include this active substance in Annex I to Directive 91/414/EEC.
- (10) A period of grace for disposal, storage, placing on the market and use of existing stocks of plant protection products containing chlorfenapyr is not necessary for this active substance as only Belgium had granted a provisional authorisation for this active substance. Belgium has indicated that this authorisation has now expired and the active substance was never effectively placed on the market in Belgium.
- (11) This decision does not prejudice any action the Commission may undertake at a later stage for this active substance within the framework of Council Directive 79/117/EEC ⁽⁴⁾.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plant Health,

HAS ADOPTED THIS DECISION:

Article 1

Chlorfenapyr is not included as active substance in Annex I to Directive 91/414/EEC.

⁽¹⁾ OJ L 230, 19.8.1991, p. 1.

⁽²⁾ OJ L 176, 29.6.2001, p. 61.

⁽³⁾ OJ L 220, 30.8.1996, p. 21.

⁽⁴⁾ OJ L 33, 8.2.1979, p. 36.

Article 2

Member States shall ensure that from the date of adoption of the present Decision no provisional authorisations for plant protection products containing chlorfenapyr are granted as provided for in Article 8(1) of Directive 91/414/EEC.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 5 September 2001.

For the Commission

David BYRNE

Member of the Commission

COMMISSION DECISION
of 18 July 2001
on the training aid granted by Belgium to Sabena
(notified under document number C(2001) 2350)
(Only the Dutch and French texts are authentic)
(Text with EEA relevance)
 (2001/698/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, 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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 5 August 1997, Belgium notified the Commission of a training aid scheme (hereinafter referred to as the 'scheme') for Sabena. It furnished the Commission with supplementary information by letters dated 29 September 1997, 2 December 1997, 18 January 1999, 24 March 1999 and 26 May 1999. *Inter alia*, this information showed that the scheme had already started on 18 November 1997.
- (2) By letter dated 25 October 1999, the Commission informed Belgium of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid. Belgium replied by letter of 26 November 1999, submitting its comments.

- (3) The Commission decision to initiate the procedure was also published in the *Official Journal of the European Communities* ⁽³⁾. The Commission called on interested parties to submit their comments.

- (4) The Commission has received comments from interested parties. On 27 March 2000, it transmitted them to Belgium, which has had the opportunity to react. No comments were received from Belgium.

II. DETAILED DESCRIPTION OF THE AID

- (5) The scheme was to run from 1 March 1997 to 31 December 1998. It concerned 522 employees from the airline, 122 of them from the 'Technics' department, 360 from the 'Cargo' department and 40 from the 'Commercial and maintenance' department:
 - in the 'Technics' department, replacing Boeing 737 and A310 aircraft with A330s, standardising the fleet with the Swissair and Austrian Airlines fleet, fully integrating electronics and computers and the increasing use of composite materials meant that personnel needed to be retrained and given more versatile skills,
 - in the 'Cargo' department, expanding the range of more directly client-centred tasks and reorganising activities as a result of the cooperation agreement with Swissair Cargo meant that personnel skills had to be more versatile and basic qualifications reviewed,
 - In the 'Commercial and maintenance' department, a proportion of the personnel were to be transferred to more complex duties (sales staff, cabin crew, check-in staff), again requiring greater versatility.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 351, 4.12.1999, p. 12.

⁽³⁾ See footnote 2.

- (6) The training was organised and funded by the Flemish Employment and Placement Service, Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding (VDAB). All training was carried out by Sabena's technical and training departments at Brussels National Airport, except for computer, language, communication and social training courses which were held at VDAB premises.
- (7) The scheme cost a total of BEF 64 116 000 (EUR 1 589 000 million), comprising BEF 46 538 790 in 1997 and BEF 17 578 352 in 1998. These costs break down as follows:

	1997	1998
— Expenses for trainers' personnel	11 537 856	7 650 000
— Trainers' and trainees' travel expenses	0	0
— Other current expenses (materials, supplies, etc.)	0	0
— Depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question	0	0
— Cost of guidance and counselling services with regard to the training project	0	0
— Trainees' personnel costs, considering only the hours during which the trainees effectively participated in the training, after deduction of any productive hours or of their equivalent	34 650 934	9 578 352
— Other costs related to the scheme	350 000	350 000
Total cost of the scheme	46 538 790	17 578 352

- (8) The financing schedule provided for contributions from the European Social Fund under Objective 4 of 25,31 % in 1997 and 29,65 % in 1998. The breakdown for the years 1997 and 1998 is as follows:

	1997	1998
— Funding from the European Union (ESF)	11 777 560	5 213 040
— Funding from the Flemish Region (VDAB)	4 532 824	0
— Funding from other public bodies:		
— Sabena sectoral fund for at-risk groups	1 162 000	0
— Paid training leave	6 082 736	5 213 040
Total public funding	23 555 120	10 426 080
— Funding from the Sabena airline	22 983 670	7 152 272
— Funding from other private sources	0	0
Total private funding	22 983 670	7 152 272
Total funding	46 538 790	17 578 352

- (9) In their letter of 26 May 1999, however, the Belgian authorities pointed out that the actual expenditure for 1997 had been less than initially anticipated because there had been delays in carrying out the scheme and a number of training courses had been postponed until 1998.
- (10) The main reason for the Commission decision to initiate the procedure laid down in Article 88(2) of the EC Treaty were that the measure in question was State aid within the meaning of the provisions of Article 87(1) of the EC Treaty, in that it provided for a contribution of public funding to an undertaking, affected trade between Member States and was likely to distort competition. Moreover, the measure was not covered by the exemptions laid down in Article 87(2) and (3) of the EC Treaty since the total public funding awarded exceeded the intensity threshold for State aid for training which the Commission could accept.

III. COMMENTS FROM BELGIUM AND OTHER INTERESTED PARTIES

- (11) In their reply dated 26 November 1999, the Belgian authorities pointed out first of all that the actual expenses in 1997 were much less than anticipated and that the aid from the European Social Fund was not paid in the absence of European Commission authorisation relating to competition factors. According to the Belgian authorities, the final figures for the actual total costs for the scheme and the financing schedule for the scheme for 1997 were as follows:

Expenses for trainers personnel	5 800 118
Travel expenses (trainers and trainees)	0
Other current expenses	0
Depreciation of tools and equipment	0
Consultants	0
Trainees' personnel costs	7 065 847
Other expenses (administrative staff and coordination)	290 351
Total cost of the scheme	13 156 316
ESF (European Social Fund)	2 509 550
VDAB (Flemish Employment and Placement Service)	1 246 319
Other bodies:	
— Sabena Sect. Fund — at risk groups	253 170
— Paid training leave	1 010 061
Total public sector funding	2 509 550
Sabena	8 137 216
Other private sources	0
Total private sector funding	8 137 216
Total funding	13 156 316

- (12) The Belgian authorities added that the sum of BEF 1 010 061 paid under the paid training leave system, comprising BEF 674 594 to cover loss of wages and BEF 335 467 to cover employers' social security contributions, was not in fact State aid but rather a general measure applied without any margin of discretion throughout Belgian territory. They therefore concluded that the State aid for 1997 should total BEF 3 289 079 since the maximum intensity of aid should not exceed the 25 % rate. Since the Belgian authorities had contributed BEF 1 499 489, the European Social Fund contribution ought to be limited to BEF 1 789 590 in 1997.
- (13) For 1998, the Belgian authorities specify that no aid was granted by the European Social Fund to carry out the scheme, and that the VDAB nonetheless contributed BEF 10 000.
- (14) The SAS and Lufthansa airlines submitted comments as interested parties. Both parties made the point that Sabena was one of their main competitors in Europe and that the aid granted by the Flemish Region distorted competition. They therefore asked the Commission to find the aid incompatible with the common market. Lufthansa further pointed out that Sabena had received a considerable injection of State aid in 1991 and invoked the 'one time-last time' rule to justify the rejection of any further aid.

IV. ASSESSMENT OF THE AID

- (15) Under the terms of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market and with the Agreement insofar as it affects trade between Member States and between the Contracting Parties.
- (16) The share of the funding borne by the VDAB and other Belgian public bodies for 1997 and 1998 should be assessed in the light of the above provisions.
- (17) 'State aid', within the meaning of the above provisions, is taken to mean the aid granted by the central, regional or local authorities of a Member State or by the public or private bodies set up or appointed to administer such aid ⁽⁴⁾. In this case, there is no doubt but that the VDAB and other Belgian public bodies contributing to the funding of the scheme were set up to administer the aid for vocational training from the Flemish Region or the Belgian State.
- (18) In other respects, the measures to fund the scheme affect trade between the Member States as soon as they benefit a company whose air transport activities, which are such as to have a direct impact on trade, cover the majority of EEA Member States. This is particularly the case since Council Regulations (EEC) No 2407/92 ⁽⁵⁾, (EEC) No 2408/92 ⁽⁶⁾ and (EEC) No 2409/92 ⁽⁷⁾ (the 'Third Air Package') liberalising the Community civil aviation market came into force on 1 January 1993. Moreover, such public funding distorts competition since it is granted to just one undertaking which is in direct competition with other Community airlines within the common market.

⁽⁴⁾ See the Judgment of the Court of Justice in Case 78/76, *Steinike and Weinlig v the Federal Republic of Germany*, of 22 March 1977, [1977] ECR, p. 596, paragraph 21.

⁽⁵⁾ OJ L 240, 24.8.1992, p. 1.

⁽⁶⁾ OJ L 240, 24.8.1992, p. 8.

⁽⁷⁾ OJ L 240, 24.8.1992, p. 15.

- (19) In addition, the training scheme did not qualify as a 'general measure' since it had been set up by a specific region within a Member State and the Flemish Region and the VDAB have some power of discretion in selecting the companies which are to receive funding for training schemes of this type ⁽⁸⁾. Indeed, according to the information provided by the Belgian authorities, in the case in point, the public funding of the vocational training was conditional upon Sabena's first being recognised by the Flemish Region as a 'firm in difficulty' pursuant to Article 4 of the Flemish ministerial decree of 14 February 1994 ⁽⁹⁾. Such recognition, implying that the VDAB management committee was consulted in advance, is by no means automatic, as the Belgian authorities pointed out in their letter to the Commission of 24 March 1999. Furthermore, not all undertakings recognised as firms in difficulty receive public funding for their training schemes in exactly the same conditions because, as the Belgian authorities specified in their letter of 26 May 1999, in Flanders there is no automatic link between recognised status as a 'firm in difficulty' and the award of aid for training.
- (20) In these circumstances, the funding of the scheme by the VDAB and other Belgian public bodies under the Sabena sectoral fund for at-risk groups, with the exception of contributions to cover paid training leave, is indeed State aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.
- (21) This does not apply, however, to that part of the funding for the scheme used to cover paid training leave. The paid training leave system, as the Belgian authorities make clear in their reply dated 26 November 1999, is a general system applied in all sectors of the economy throughout Belgian territory, entitling employees wishing, on their own personal initiative, to undertake specific training, either during or outside normal working hours, to receive time credit. All applications give automatic access to paid training leave and the competent authorities, in this case the Federal Ministry of Employment and Labour, have no discretionary power in this respect. Consequently, the Belgian paid training leave system must be regarded as a general measure and the amounts paid in this context are not therefore State aid within the meaning of the provisions.
- (22) By starting the training scheme notified before the Commission gave a decision, the Belgian Government has failed to fulfil its obligations under Article 88(3) of the EC Treaty.
- (23) It is therefore necessary to examine the compatibility of this aid with Article 87(2) and (3) of the EC Treaty and Article 61 of the EEA Agreement. In this respect, contrary to the argument put forward by the airline Lufthansa in its comments as an interested party, the fact that Sabena had received aid for restructuring in 1991 is no obstacle to its being covered by one of the relevant exemptions provided for in Article 87(2) and (3) especially as the 'one time last time' rule, in any case, applies only to aid for restructuring.
- (24) The provisions of Article 87(2)(a), (b) and (c), of the EC Treaty and Article 61(2)(a), (b) and (c) of the EEA Agreement are not applicable in this case.
- (25) Article 87(3)(a) and (c) of the EC Treaty and Article 61(3)(a) and (c) of the EEA Agreement lay down exemptions for aid intended to promote or facilitate the development of certain areas. The aid in question is not covered by these provisions since the Zaventem municipality, which is the location of the training scheme in question, is not eligible for regional aid.

⁽⁸⁾ See the Judgment of the Court of Justice in Case C-241/94, *French Republic v Commission of the European Communities* ('Kimberly Clark'), of September 1996, [1996] ECR I-4551.

⁽⁹⁾ *Moniteur belge*, 27.4.1994, p. 11211.

- (26) In addition, the provisions of Article 87(3)(b) and (d) of the EC Treaty and Article 61 of the EEA Agreement are not applicable in the case in point, since the measure in question does not seek to promote the execution of a project of European interest, to remedy a serious disturbance in the economy of a Member State, or to promote culture and heritage conservation.
- (27) There may, however, in the case in point be grounds to apply the exemption provided for in Article 87(3)(c) of the EC Treaty and in Article 61(3)(c) of the EEA Agreement for aid to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, since this is the exemption which the Commission uses as a basis to authorise aid for vocational training, subject to certain limits and certain conditions.
- (28) In the letter sent to the Belgian authorities on 25 October 1999 to inform them of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty, the Commission announced that it intended to apply the 'Framework on training aid' of November 1998 ⁽¹⁰⁾. Since then, the Framework has been superseded by Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽¹¹⁾. In the case in point, however, the applicable rules are identical, and so it makes no difference whether the November 1998 Framework or Regulation (EC) No 68/2001 is applied.
- (29) This approach is advantageous to the scheme notified since the legal framework prior to 1998 excluded the option of exemptions for training aid under Articles 87(3)(c) of the EC Treaty and Article 61(3)(c) of the Agreement. Chapter V.2 of the Commission communication concerning the application of ex-Articles 92 and 93 of the EC Treaty and of Article 61 of the EEA Agreement to State aid in the aviation sector, published in December 1994, restricted the scope of this exemption to State aid for restructuring ⁽¹²⁾. The provisions of the communication of December 1994 on aid for training must be read in the light of the Framework on training aid of November 1998 and Regulation (EC) No 68/2001.
- (30) The Framework applies to the air transport sector, as is explicitly stated therein (point 18 of the Framework). Moreover, the funding in question qualifies for the exemption laid down in the Framework since the measures are designed to help the firm's workforce to adapt to structural or technological change (point 5 of the Framework) and the training is provided by Sabena itself or by the VDAB, a public training centre (point 19 of the Framework).
- (31) The amount of public funding granted as aid must not, however, exceed the threshold for the intensity of aid which may be accepted by the Commission. The admissible intensity for the scheme is 25 % given that it is a specific training scheme for a large firm outside an assisted area (point 32 of the Framework). Moreover, the eligible costs are clearly defined in point 30 of the Framework, as follows:
1. expenses for trainers' personnel;
 2. trainers' and trainees' travel expenses;
 3. other current expenses (materials, supplies, etc.);
 4. depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question;
 5. cost of guidance and counselling services associated with the training project;
 6. trainees' personnel costs up to the amount of the total of the other eligible costs referred to in (1) to (5). Under trainees' personnel costs only the hours during which the trainees actually took part in the training, after deduction of any productive hours or of their equivalent, may be taken into account.

⁽¹⁰⁾ OJ C 343, 11.11.1998, p. 10.

⁽¹¹⁾ OJ L 10, 13.1.2001, p. 20.

⁽¹²⁾ OJ C 350, 10.12.1994, p. 5.

In this case, the eligible costs are equivalent to the total of the expenses for trainers' personnel plus the trainees' personnel costs up to the limits of the expenses for trainers' personnel since the other eligible costs (travel expenses, other current expenses, depreciation, counselling services) are zero. The eligible costs thus total BEF 11 600 236 for 1997, on the basis of the information provided by the Belgian authorities in their letter of 26 November 1999, and BEF 15 300 000 for 1998, according to the information notified by the Belgian authorities, making a total of BEF 26 900 236 in eligible costs for both years. Consequently, the maximum amount of public funding that can be granted to the scheme as aid totals BEF 6 725 059, with an admissible intensity of 25 %. However, the information notified by the Belgian authorities and given in their letter dated 26 November 1999 showed that the public funding of the scheme through aid actually totalled BEF 4 019 039. This included a limited ESF contribution of BEF 2 509 550 for 1997, a zero ESF contribution for 1998, limited contributions of BEF 1 246 319 from the VDAB and BEF 253 170 from the Sabena Sectoral Fund in 1997, a VDAB contribution of BEF 10 000 in 1998 and took account of the fact, mentioned above, that the funding for paid training leave did not qualify as State aid. In these circumstances, the Commission has no objections to the funding of the scheme, which can benefit from the exemption for training aid laid down in Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

V. CONCLUSIONS

- (32) The Commission notes that Belgium contravened Article 88(3) of the EC Treaty by illegally implementing a training aid scheme for Sabena notified to the Commission on 5 August 1997. However, in consideration of the changes to the financing schedule notified by Belgium in its letter dated 26 November 1999, the Commission is of the opinion that the scheme is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid for training awarded to Sabena as notified to the Commission on 5 August 1997 and implemented by Belgium as outlined in its letter dated 26 November 1999, is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 18 July 2001.

For the Commission
Loyola DE PALACIO
Vice-President
