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I

(Acts whose publication is obligatory)

**DECISION No 1600/2002/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 July 2002
laying down the Sixth Community Environment Action Programme**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 175(3) thereof,

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

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with the procedure laid down in Article 251 of the Treaty ⁽⁴⁾, in the light of the joint text approved by the Conciliation Committee on 1 May 2002,

Whereas:

- (1) A clean and healthy environment is essential for the well-being and prosperity of society, yet continued growth at a global level will lead to continuing pressures on the environment.
- (2) The Community's fifth environmental action programme 'Towards Sustainability' ended on 31 December 2000 having delivered a number of important improvements.
- (3) Continued effort is required in order to meet the environmental objectives and targets already established by the Community and there is a need for the Sixth Environmental Action Programme (the 'Programme') set out in this Decision.
- (4) A number of serious environmental problems persist and new ones are emerging which require further action.

- (5) Greater focus on prevention and the implementation of the precautionary principle is required in developing an approach to protect human health and the environment.
- (6) A prudent use of natural resources and the protection of the global eco-system together with economic prosperity and a balanced social development are a condition for sustainable development.
- (7) The Programme aims at a high level of protection of the environment and human health and at a general improvement in the environment and quality of life, indicates priorities for the environmental dimension of the Sustainable Development Strategy and should be taken into account when bringing forward actions under the Strategy.
- (8) The Programme aims to achieve a decoupling between environmental pressures and economic growth whilst being consistent with the principle of subsidiarity and respecting the diversity of conditions across the various regions of the European Union.
- (9) The Programme establishes environmental priorities for a Community response focusing in particular on climate change, nature and biodiversity, environment and health and quality of life, and natural resources and wastes.
- (10) For each of these areas key objectives and certain targets are indicated and a number of actions are identified with a view to achieving the said targets. These objectives and targets constitute performance levels or achievements to be aimed at.
- (11) The objectives, priorities and actions of the Programme should contribute to sustainable development in the candidate countries and endeavour to ensure the protection of the natural assets of these countries.
- (12) Legislation remains central to meeting environmental challenges and full and correct implementation of the existing legislation is a priority. Other options for achieving environmental objectives should also be considered.

⁽¹⁾ OJ C 154 E, 29.5.2001, p. 218.

⁽²⁾ OJ C 221, 7.8.2001, p. 80.

⁽³⁾ OJ C 357, 14.12.2001, p. 44.

⁽⁴⁾ Opinion of the European Parliament of 31 May 2001 (OJ C 47 E, 21.2.2002, p. 113), Council Common Position of 27 September 2001 (OJ C 4, 7.1.2002, p. 52) and Decision of the European Parliament of 17 January 2002 (not yet published in the Official Journal). Decision of the European Parliament of 30 May 2002 and Decision of the Council of 11 June 2002.

- (13) The Programme should promote the process of integration of environmental concerns into all Community policies and activities in line with Article 6 of the Treaty in order to reduce the pressures on the environment from various sources.
- (14) A strategic integrated approach, incorporating new ways of working with the market, involving citizens, enterprises and other stakeholders is needed in order to induce necessary changes in both production and public and private consumption patterns that influence negatively the state of, and trends in, the environment. This approach should encourage sustainable use and management of land and sea.
- (15) Provision for access to environmental information and to justice and for public participation in policy-making will be important to the success of the Programme.
- (16) Thematic strategies will consider the range of options and instruments required for dealing with a series of complex issues that require a broad and multi-dimensional approach and will propose the necessary actions, involving where appropriate the European Parliament and the Council.
- (17) There is scientific consensus that human activity is causing increases in concentrations of greenhouse gases, leading to higher global temperatures and disruption to the climate.
- (18) The implications of climate change for human society and for nature are severe and necessitate mitigation. Measures to reduce emissions of greenhouse gases can be implemented without a reduction in levels of growth and prosperity.
- (19) Regardless of the success of mitigation, society needs to adapt to and prepare for the effects of climate change.
- (20) Healthy and balanced natural systems are essential for supporting life on the planet.
- (21) There is considerable pressure from human activity on nature and biodiversity. Action is necessary to counteract pressures arising notably from pollution, the introduction of non-native species, potential risks from releasing genetically modified organisms and the way in which the land and sea are exploited.
- (22) Soil is a finite resource that is under environmental pressure.
- (23) Despite improvements in environmental standards, there is increased likelihood of a link between environmental degradation and certain human illnesses. Therefore the potential risks arising, for example, from emissions and hazardous chemicals, pesticides, and from noise should be addressed.
- (24) Greater knowledge is required on the potential negative impacts arising from the use of chemicals and the responsibility for generating knowledge should be placed on producers, importers and downstream users.
- (25) Chemicals that are dangerous should be replaced by safer chemicals or safer alternative technologies not entailing the use of chemicals, with the aim of reducing risks to man and the environment.
- (26) Pesticides should be used in a sustainable way so as to minimise negative impacts for human health and the environment.
- (27) The urban environment is home to some 70 % of the population and concerted efforts are needed to ensure a better environment and quality of life in towns and cities.
- (28) There is a limited capacity of the planet to meet the increasing demand for resources and to absorb the emissions and waste resulting from their use and there is evidence that the existing demand exceeds the carrying capacity of the environment in several cases.
- (29) Waste volumes in the Community continue to rise, a significant quantity of these being hazardous, leading to loss of resources and to increased pollution risks.
- (30) Economic globalisation means that environmental action is increasingly needed at international level, including on transport policies, requiring new responses from the Community linked to policy related to trade, development and external affairs enabling sustainable development to be pursued in other countries. Good governance should make a contribution to this end.
- (31) Trade, international investment flows and export credits should make a more positive contribution to the pursuit of environmental protection and sustainable development.
- (32) Environmental policy-making, given the complexities of the issues, needs to be based on best available scientific and economic assessment, and on knowledge of the state and trends of the environment, in line with Article 174 of the Treaty.
- (33) Information to policy makers, stakeholders and the general public has to be relevant, transparent, up to date and easily understandable.
- (34) Progress towards meeting environmental objectives needs to be measured and evaluated.

- (35) On the basis of an assessment of the state of the environment, taking account of the regular information provided by the European Environment Agency, a review of progress and an assessment of the need to change orientation should be made at the mid term point of the Programme,

HAVE DECIDED AS FOLLOWS:

Article 1

Scope of the Programme

1. This Decision establishes a programme of Community action on the environment (hereinafter referred to as the 'Programme'). It addresses the key environmental objectives and priorities based on an assessment of the state of the environment and of prevailing trends including emerging issues that require a lead from the Community. The Programme should promote the integration of environmental concerns in all Community policies and contribute to the achievement of sustainable development throughout the current and future enlarged Community. The Programme furthermore provides for continuous efforts to achieve environmental objectives and targets already established by the Community.

2. The Programme sets out the key environmental objectives to be attained. It establishes, where appropriate, targets and timetables. The objectives and targets should be fulfilled before expiry of the Programme, unless otherwise specified.

3. The Programme shall cover a period of ten years starting from 22 July 2002. Appropriate initiatives in the different policy areas with the aim of meeting the objectives shall consist of a range of measures including legislation and the strategic approaches outlined in Article 3. These initiatives should be presented progressively and at the latest by four years after the adoption of this Decision.

4. The objectives respond to the key environmental priorities to be met by the Community in the following areas:

- climate change,
- nature and biodiversity,
- environment and health and quality of life,
- natural resources and wastes.

Article 2

Principles and overall aims

1. The Programme constitutes a framework for the Community's environmental policy during the period of the Programme with the aim of ensuring a high level of protection, taking into account the principle of subsidiarity and the diversity of situations in the various regions of the Community, and of

achieving a decoupling between environmental pressures and economic growth. It shall be based particularly on the polluter-pays principle, the precautionary principle and preventive action, and the principle of rectification of pollution at source.

The Programme shall form a basis for the environmental dimension of the European Sustainable Development Strategy and contribute to the integration of environmental concerns into all Community policies, *inter alia* by setting out environmental priorities for the Strategy.

2. The Programme aims at:

- emphasising climate change as an outstanding challenge of the next 10 years and beyond and contributing to the long term objective of stabilising greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Thus a long term objective of a maximum global temperature increase of 2 °Celsius over pre-industrial levels and a CO₂ concentration below 550 ppm shall guide the Programme. In the longer term this is likely to require a global reduction in emissions of greenhouse gases by 70 % as compared to 1990 as identified by the Intergovernmental Panel on Climate Change (IPCC);
- protecting, conserving, restoring and developing the functioning of natural systems, natural habitats, wild flora and fauna with the aim of halting desertification and the loss of biodiversity, including diversity of genetic resources, both in the European Union and on a global scale;
- contributing to a high level of quality of life and social well being for citizens by providing an environment where the level of pollution does not give rise to harmful effects on human health and the environment and by encouraging a sustainable urban development;
- better resource efficiency and resource and waste management to bring about more sustainable production and consumption patterns, thereby decoupling the use of resources and the generation of waste from the rate of economic growth and aiming to ensure that the consumption of renewable and non-renewable resources does not exceed the carrying capacity of the environment.

3. The Programme shall ensure that environmental objectives, which should focus on the environmental outcomes to be achieved, are met by the most effective and appropriate means available, in the light of the principles set out in paragraph 1 and the strategic approaches set out in Article 3. Full consideration shall be given to ensuring that the Community's environmental policy-making is undertaken in an integrated way and to all available options and instruments, taking into account regional and local differences, as well as ecologically sensitive areas, with an emphasis on:

- developing European initiatives to raise the awareness of citizens and local authorities;

- extensive dialogue with stakeholders, raising environmental awareness and public participation;
- analysis of benefits and costs, taking into account the need to internalise environmental costs;
- the best available scientific evidence, and the further improvement of scientific knowledge through research and technological development;
- data and information on the state and trends of the environment.

4. The Programme shall promote the full integration of environmental protection requirements into all Community policies and actions by establishing environmental objectives and, where appropriate, targets and timetables to be taken into account in relevant policy areas.

Furthermore, measures proposed and adopted in favour of the environment should be coherent with the objectives of the economic and social dimensions of sustainable development and vice versa.

5. The Programme shall promote the adoption of policies and approaches that contribute to the achievement of sustainable development in the countries which are candidates for accession ('Candidate Countries') building on the transposition and implementation of the *acquis*. The enlargement process should sustain and protect the environmental assets of the Candidate Countries such as wealth of biodiversity, and should maintain and strengthen sustainable production and consumption and land use patterns and environmentally sound transport structures through:

- integration of environmental protection requirements into Community Programmes including those related to development of infrastructure;
- promotion of transfer of clean technologies to the Candidate Countries;
- extended dialogue and exchange of experience with the national and local administrations in the Candidate Countries on sustainable development and preservation of their environmental assets;
- cooperation with civil society, environmental non-governmental organisations (NGOs) and business in the Candidate Countries to help raise public awareness and participation;
- encouraging international financing institutions and the private sector to support the implementation of and compliance with the environmental *acquis* in the Candidate Countries and to pay due attention to integrating environmental concerns into the activities of the economic sector.

6. The Programme shall stimulate:

- the positive and constructive role of the European Union as a leading partner in the protection of the global environment and in the pursuit of a sustainable development;

- the development of a global partnership for environment and sustainable development;
- the integration of environmental concerns and objectives into all aspects of the Community's external relations.

Article 3

Strategic approaches to meeting environmental objectives

The aims and objectives set out in the Programme shall be pursued, *inter alia*, by the following means:

1. Development of new Community legislation and amendment of existing legislation, where appropriate;
2. Encouraging more effective implementation and enforcement of Community legislation on the environment and without prejudice to the Commission's right to initiate infringement proceedings. This requires:
 - increased measures to improve respect for Community rules on the protection of the environment and addressing infringements of environmental legislation;
 - promotion of improved standards of permitting, inspection, monitoring and enforcement by Member States;
 - a more systematic review of the application of environmental legislation across the Member States;
 - improved exchange of information on best practice on implementation including by the European Network for the Implementation and Enforcement of Environmental Law (IMPEL network) within the framework of its competencies;
3. Further efforts for integration of environmental protection requirements into the preparation, definition and implementation of Community policies and activities in the different policy areas are needed. Further efforts are necessary in different sectors including consideration of their specific environmental objectives, targets, timetables and indicators. This requires:
 - ensuring that the integration strategies produced by the Council in different policy areas are translated into effective action and contribute to the implementation of the environmental aims and objectives of the Programme;
 - consideration, prior to their adoption, of whether action in the economic and social fields, contribute to and are coherent with the objectives, targets and time frame of the Programme;
 - establishing appropriate regular internal mechanisms in the Community institutions, taking full account of the need to promote transparency and access to information, to ensure that environmental considerations are fully reflected in Commission policy initiatives, including relevant decisions and legislative proposals;

- regular monitoring, via relevant indicators, elaborated where possible on the basis of a common methodology for each sector, and reporting on the process of sectoral integration;
 - further integration of environmental criteria into Community funding programmes without prejudice to existing ones;
 - full and effective use and implementation of Environmental Impact Assessment and Strategic Environmental Assessment;
 - that the objectives of the Programme should be taken into account in future financial perspective reviews of Community financial instruments;
4. Promotion of sustainable production and consumption patterns by effective implementation of the principles set out in Article 2, to internalise the negative as well as the positive impacts on the environment through the use of a blend of instruments, including market based and economic instruments. This requires, *inter alia*:
- encouraging reforms of subsidies that have considerable negative effects on the environment and are incompatible with sustainable development, *inter alia* by establishing, by the mid-term review, a list of criteria allowing such environmentally negative subsidies to be recorded, with a view to gradually eliminating them;
 - analysing the environmental efficiency of tradable environmental permits as a generic instrument and of emission trading with a view to promoting and implementing their use where feasible;
 - promoting and encouraging the use of fiscal measures such as environmentally related taxes and incentives, at the appropriate national or Community level;
 - promoting the integration of environmental protection requirements in standardisation activities;
5. Improving collaboration and partnership with enterprises and their representative bodies and involving the social partners, consumers and their organisations, as appropriate, with a view to improving the environmental performance of enterprises and aiming at sustainable production patterns. This requires:
- promoting an integrated product policy approach throughout the Programme that will encourage the taking into account of environmental requirements throughout the life-cycle of products, and more wide-
- spread application of environmentally friendly processes and products;
 - encouraging wider uptake of the Community's Eco-Management and Audit Scheme (EMAS) ⁽¹⁾ and developing initiatives to encourage companies to publish rigorous and independently verified environmental or sustainable development performance reports;
 - establishing a compliance assistance programme, with specific help for small and medium enterprises;
 - stimulating the introduction of company environmental performance award schemes;
 - stimulating product innovation with the aim of greening the market including through improved dissemination of results of the LIFE Programme ⁽²⁾;
 - encouraging voluntary commitments or agreements to achieve clear environmental objectives, including setting out procedures in the event of non-compliance;
6. To help ensure that individual consumers, enterprises and public bodies in their roles as purchasers, are better informed about the processes and products in terms of their environmental impact with a view to achieving sustainable consumption patterns. This requires:
- encouraging the uptake of eco-labels and other forms of environmental information and labelling that allow consumers to compare environmental performance between products of the same type;
 - encouraging the use of reliable self-declared environmental claims and preventing misleading claims;
 - promoting a green public procurement policy, allowing environmental characteristics to be taken into account and the possible integration of environmental life cycle, including the production phase, concerns in the procurement procedures while respecting Community competition rules and the internal market, with guidelines on best practice and starting a review of green procurement in Community Institutions;
7. To support environmental integration in the financial sector. This requires:
- considering a voluntary initiative with the financial sector, covering guide-lines for the incorporation of data on environmental cost in company annual financial reports, and the exchange of best policy practices between Member States;

⁽¹⁾ Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 114, 24.4.2001, p. 1).

⁽²⁾ Regulation (EC) No 1655/2000 of the European Parliament and of the Council of 17 July 2000 concerning the Financial Instrument for the Environment (LIFE) (OJ L 192, 28.7.2000, p. 1).

- calling on the European Investment Bank to strengthen the integration of environmental objectives and considerations into its lending activities in particular with a view to supporting a sustainable development of Candidate Countries;
 - promoting integration of environmental objectives and considerations into the activities of other financial institutions such as the European Bank for Reconstruction and Development;
8. To create a Community liability regime requires *inter alia*:
- legislation on environmental liability;
9. To improve collaboration and partnership with consumer groups and NGOs and promote better understanding of and participation in environmental issues amongst European citizens requires:
- ensuring access to information, participation and justice through early ratification of the Aarhus Convention ⁽¹⁾ by the Community and by Member States;
 - supporting the provision of accessible information to citizens on the state and trends of the environment in relation to social, economic and health trends;
 - general raising of environmental awareness;
 - developing general rules and principles for good environmental governance in dialogue processes;
10. To encourage and promote effective and sustainable use and management of land and sea taking account of environmental concerns. This requires, while fully respecting the subsidiarity principle, the following:
- promoting best practice with respect to sustainable land use planning, which takes account of specific regional circumstances with particular emphasis on the Integrated Coastal Zone Management programme;
 - promoting best practices and supporting networks fostering the exchange of experience on sustainable development including urban areas, sea, coastline, mountain areas, wetlands and other areas of a sensitive nature;
 - enhancing the use, increasing resources and giving broader scope for agri-environment measures under the Common Agricultural Policy;
 - encouraging Member States to consider using regional planning as an instrument for improving environmental protection for the citizen and promoting the exchange of experience on sustainable regional development, particularly in urban and densely populated areas.

⁽¹⁾ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998.

Article 4

Thematic strategies

1. Actions in Articles 5 to 8 shall include the development of thematic strategies and the evaluation of existing strategies for priority environmental problems requiring a broad approach. These strategies should include an identification of the proposals that are required to reach the objectives set out in the Programme and the procedures foreseen for their adoption. These strategies shall be submitted to the European Parliament and Council and shall, where appropriate take the form of a Decision of the European Parliament and of the Council to be adopted in accordance with the procedure laid down in Article 251 of the Treaty. Subject to the legal base of the proposal, the legislative proposals arising from these strategies shall be adopted in accordance with the procedure laid down in Article 251 of the Treaty.

2. The thematic strategies may include approaches among those outlined in Article 3 and in Article 9 and relevant qualitative and quantitative environmental targets and timetables against which the measures foreseen can be measured and evaluated.

3. The thematic strategies should be developed and implemented in close consultation with the relevant parties, such as NGOs, industry, other social partners and public authorities, while ensuring, as appropriate, consultation of Candidate Countries in this process.

4. The thematic strategies should be presented to the European Parliament and the Council within 3 years of the adoption of the Programme at the latest. The mid term report, in which the Commission evaluates the progress made in implementing the Programme, shall include a review of the thematic strategies.

5. The Commission shall report annually to the European Parliament and the Council on the progress in the development and implementation of the strategies and on their effectiveness.

Article 5

Objectives and priority areas for action on tackling climate change

1. The aims set out in Article 2 should be pursued by the following objectives:

- ratification and entering into force of the Kyoto Protocol to the United Nations framework Convention on climate change by 2002 and fulfilment of its commitment of an 8 % reduction in emissions by 2008-12 compared to 1990 levels for the European Community as a whole, in accordance with the commitment of each Member State set out in the Council Conclusions of 16 and 17 June 1998;

- realisation by 2005 of demonstrable progress in achieving the commitments under the Kyoto Protocol;

— placing the Community in a credible position to advocate an international agreement on more stringent reduction targets for the second commitment period provided for by the Kyoto Protocol. This agreement should aim at cutting emissions significantly, taking full account, *inter alia*, of the findings of the IPCC 3rd Assessment Report, and take into account the necessity to move towards a global equitable distribution of greenhouse gas emissions.

2. These objectives shall be pursued by means, *inter alia*, of the following priority actions:

(i) Implementing international climate commitments including the Kyoto Protocol by means of:

- (a) examining the results of the European Climate Change Programme and adopting effective common and coordinated policies and measures on its basis, as appropriate, for various sectors complementary to domestic actions in the Member States;
- (b) working towards the establishment of a Community framework for the development of effective CO₂ emissions trading with the possible extension to other greenhouse gases;
- (c) improving monitoring of greenhouse gases and of progress towards delivering Member States commitments made under the Internal Burden Sharing Agreement;

(ii) Reducing greenhouse gas emissions in the energy sector:

- (a) undertaking as soon as possible an inventory and review of subsidies that counteract an efficient and sustainable use of energy with a view to gradually phasing them out;
- (b) encouraging renewable and lower carbon fossil fuels for power generation;
- (c) encouraging the use of renewable energy sources, including the use of incentives, including at the local level, with a view to meeting the indicative target of 12 % of total energy use by 2010;
- (d) introducing incentives to increase Combined Heat and Power and implement measures aiming at doubling the overall share of Combined Heat and Power in the Community as a whole to 18 % of the total gross electricity generation;
- (e) prevent and reduce methane emissions from energy production and distribution;
- (f) promoting energy efficiency;

(iii) Reducing greenhouse gas emissions in the transport sector:

- (a) identifying and undertaking specific actions to reduce greenhouse gas emissions from aviation if no such action is agreed within the International Civil Aviation Organisation by 2002;
- (b) identifying and undertaking specific actions to reduce greenhouse gas emissions from marine shipping if no such action is agreed within the International Maritime Organisation by 2003;
- (c) encouraging a switch to more efficient and cleaner forms of transport including better organisation and logistics;
- (d) in the context of the EU target of an 8 % reduction in greenhouse gas emissions, inviting the Commission to submit by the end of 2002 a Communication on quantified environmental objectives for a sustainable transport system;
- (e) identifying and undertaking further specific action, including any appropriate legislation, to reduce greenhouse gas emissions from motor vehicles including N₂O;
- (f) promoting the development and use of alternative fuels and of low-fuel-consuming vehicles with the aim of substantially and continually increasing their share;
- (g) promoting measures to reflect the full environmental costs in the price of transport;
- (h) decoupling economic growth and the demand for transport with the aim of reducing environmental impacts;

(iv) Reducing greenhouse gas emissions in industrial production:

- (a) promoting eco-efficiency practices and techniques in industry;
- (b) developing means to assist SMEs to adapt, innovate and improve performance;
- (c) encouraging the development of more environmentally sound and technically feasible alternatives, including the establishment of Community measures, aiming at reducing emissions, phasing out the production where appropriate and feasible and reducing the use of industrial fluorinated gases HFCs (hydrofluorocarbons), PFCs (Perfluorocarbons) and SF₆ (sulphur hexafluoride);

(v) Reducing greenhouse gas emissions in other sectors:

- (a) promoting energy efficiency notably for heating, cooling and hot tap water in the design of buildings;

- (b) taking into account the need to reduce greenhouse gas emissions, alongside with other environmental considerations, in the Common agricultural policy and in the Community's waste management strategy;
- (vi) Using other appropriate instruments such as:
 - (a) promoting the use of fiscal measures, including a timely and appropriate Community framework for energy taxation, to encourage a switch to more efficient energy use, cleaner energy and transport and to encourage technological innovation;
 - (b) encouraging environmental agreements with industry sectors on greenhouse gas emission reductions;
 - (c) ensuring climate change as a major theme of Community policy for research and technological development and for national research programmes.

3. In addition to the mitigation of climate change, the Community should prepare for measures aimed at adaptation to the consequences of climate change, by:

- reviewing Community policies, in particular those relevant to climate change, so that adaptation is addressed adequately in investment decisions;
- encouraging regional climate modelling and assessments both to prepare regional adaptation measures such as water resources management, conservation of biodiversity, desertification and flooding prevention and to support awareness raising among citizens and business.

4. It must be ensured that the climate challenge is taken into account in the Community's enlargement. This will require, *inter alia*, the following actions with Candidate Countries:

- supporting capacity building, for the application of domestic measures for the use of the Kyoto mechanisms and improved reporting and emission monitoring;
- supporting a more sustainable transport and energy sector;
- ensuring that cooperation with candidate countries is further strengthened on climate change issues.

5. Combating climate change will form an integral part of the European Union's external relations policies and will constitute one of the priorities in its sustainable development policy. This will require concerted and coordinated efforts on the part of the Community and its Member States with a view to:

- capacity-building to assist developing countries and countries with economies in transition for example through encouraging projects in connection with the Clean Develop-

ment Mechanism (CDM) in the Kyoto Protocol and joint implementation;

- responding to identified technology-transfer needs;
- assisting with the challenge of adapting to climate change in the countries concerned.

Article 6

Objectives and priority areas for action on nature and biodiversity

1. The aims set out in Article 2 should be pursued by the following objectives:

- halting biodiversity decline with the aim to reach this objective by 2010, including prevention and mitigation of impacts of invasive alien species and genotypes;
- protection and appropriate restoration of nature and biodiversity from damaging pollution;
- conservation, appropriate restoration and sustainable use of marine environment, coasts and wetlands;
- conservation and appropriate restoration of areas of significant landscape values including cultivated as well as sensitive areas;
- conservation of species and habitats, with special concern to preventing habitat fragmentation;
- promotion of a sustainable use of the soil, with particular attention to preventing erosion, deterioration, contamination and desertification.

2. These objectives shall be pursued by means of the following priority actions, taking into account the principle of subsidiarity, based on the existing global and regional conventions and strategies and full implementation of the relevant Community acts. The ecosystem approach, as adopted in the Convention on Biological Diversity⁽¹⁾, should be applied whenever appropriate:

(a) on biodiversity:

- ensuring the implementation and promoting the monitoring and assessment of the Community's biodiversity strategy and the relevant action plans, including through a programme for gathering data and information, developing the appropriate indicators, and promoting the use of best available techniques and of best environmental practices;
- promoting research on biodiversity, genetic resources, ecosystems and interactions with human activities;

⁽¹⁾ OJ L 309, 13.12.1993, p. 1.

- developing measures to enhance sustainable use, sustainable production and sustainable investments in relation to biodiversity;
 - encouraging coherent assessment, further research and cooperation on threatened species;
 - promoting at the global level a fair and equitable sharing of benefits arising from the use of genetic resources to implement Article 15 of the Convention on Biological Diversity on access to genetic resources originating from third countries;
 - developing measures aimed at the prevention and control of invasive alien species including alien genotypes;
 - establishing the Natura 2000 network and implementing the necessary technical and financial instruments and measures required for its full implementation and for the protection, outside the Natura 2000 areas, of species protected under the Habitats and Birds Directives;
 - promoting the extension of the Natura 2000 network to the Candidate Countries;
- (b) on accidents and disasters:
- promoting Community coordination to actions by Member States in relation to accidents and natural disasters by, for example, setting up a network for exchange of prevention practices and tools;
 - developing further measures to help prevent the major accident hazards with special regards to those arising from pipelines, mining, marine transport of hazardous substances and developing measures on mining waste;
- (c) a thematic strategy on soil protection, addressing the prevention of, *inter alia*, pollution, erosion, desertification, land degradation, land-take and hydrogeological risks taking into account regional diversity, including specificities of mountain and arid areas;
- (d) promoting sustainable management of extractive industries with a view to reduce their environmental impact;
- (e) promoting the integration of conservation and restoration of the landscape values into other policies including tourism, taking account of relevant international instruments;
- (f) promoting the integration of biodiversity considerations in agricultural policies and encouraging sustainable rural development, multifunctional and sustainable agriculture, through:
- encouraging full use of current opportunities of the Common Agriculture Policy and other policy measures;
 - encouraging more environmentally responsible farming, including, where appropriate, extensive production methods, integrated farming practices, organic farming and agro-biodiversity, in future reviews of the Common Agricultural Policy, taking account of the need for a balanced approach to the multifunctional role of rural communities;
- (g) promoting sustainable use of the seas and conservation of marine ecosystems, including sea beds, estuarine and coastal areas, paying special attention to sites holding a high biodiversity value, through:
- promoting greater integration of environmental considerations in the Common Fisheries Policy, taking the opportunity of its review in 2002;
 - a thematic strategy for the protection and conservation of the marine environment taking into account, *inter alia*, the terms and implementation obligations of marine Conventions, and the need to reduce emissions and impacts of sea transport and other sea and land-based activities;
 - promoting integrated management of coastal zones;
 - further promote the protection of marine areas, in particular with the Natura 2000 network as well as by other feasible Community means;
- (h) implementing and further developing strategies and measures on forests in line with the forest strategy for the European Union, taking account the principle of subsidiarity and biodiversity considerations, incorporating the following elements:
- improving existing Community measures which protect forests and implementing sustainable forest management, *inter alia*, through national forest programmes, in connection with rural development plans, with increased emphasis on the monitoring of the multiple roles of forests in line with recommendations adopted by the Ministerial Conference on the Protection of Forests in Europe and the United Nations Forum on Forests and the Convention on Biodiversity and other fora;
 - encouraging the effective coordination between all policy sectors involved in forestry, including the private sector, as well as the coordination of all stakeholders involved in forestry issues;
 - stimulating the increase of the market share for sustainably produced wood, *inter alia*, through encouraging certification for sustainable forest management and encouraging labelling of related products;
 - continuing the active participation of the Community and of Member States in the implementation of global and regional resolutions and in discussions and negotiations on forest-related issues;

- examining the possibilities to take active measures to prevent and combat trade of illegally harvested wood;
 - encouraging consideration of climate change effects in forestry;
- (i) on genetically modified organisms (GMOs):
- developing the provisions and methods for risk assessment, identification, labelling and traceability of GMOs in order to enable effective monitoring and controls of health and environmental effects;
 - aiming for swift ratification and implementation of the Cartagena Protocol on Biosafety and supporting the build up of regulatory frameworks in third countries where needed through technical and financial assistance.
- extraction from water resources are sustainable over the long term;
 - achieving levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment;
 - substantially reducing the number of people regularly affected by long-term average levels of noise, in particular from traffic which, according to scientific studies, cause detrimental effects on human health and preparing the next step in the work with the noise directive.
2. These objectives shall be pursued by means of the following priority actions:

Article 7

Objectives and priority areas for action on environment and health and quality of life

1. The aims set out in Article 2 should be pursued by the following objectives, taking into account relevant World Health Organisation (WHO) standards, guidelines and programmes:

- achieving better understanding of the threats to environment and human health in order to take action to prevent and reduce these threats;
- contributing to a better quality of life through an integrated approach concentrating on urban areas;
- aiming to achieve within one generation (2020) that chemicals are only produced and used in ways that do not lead to a significant negative impact on health and the environment, recognising that the present gaps of knowledge on the properties, use, disposal and exposure of chemicals need to be overcome;
- chemicals that are dangerous should be substituted by safer chemicals or safer alternative technologies not entailing the use of chemicals, with the aim of reducing risks to man and the environment;
- reducing the impacts of pesticides on human health and the environment and more generally to achieve a more sustainable use of pesticides as well as a significant overall reduction in risks and of the use of pesticides consistent with the necessary crop protection. Pesticides in use which are persistent or bio-accumulative or toxic or have other properties of concern should be substituted by less dangerous ones where possible;
- achieving quality levels of ground and surface water that do not give rise to significant impacts on and risks to human health and the environment, and to ensure that the rates of

(a) reinforcement of Community research programmes and scientific expertise, and encouragement to the international coordination of national research programmes, to support achievement of objectives on health and environment, and in particular the:

- identification and recommendations on the priority areas for research and action including among others the potential health impacts of electromagnetic pollution sources and including particular attention to the development and validation of alternative methods to animal testing in particular in the field of chemical safety;
- definition and development of indicators of health and environment;
- re-examination, development and updating of current health standards and limit values, including where appropriate, the effects on potentially vulnerable groups, for example children or the elderly and the synergies and the reciprocal impact of various pollutants;
- review of trends and the provision of an early warning mechanism for new or emerging problems;

(b) on chemicals:

- placing the responsibility on manufacturers, importers and downstream users for generating knowledge about all chemicals (duty of care) and assessing risks of their use, including in products, as well as recovery and disposal;
- developing a coherent system based on a tiered approach, excluding chemical substances used in very low quantities, for the testing, risk assessment and risk management of new and existing substances with testing procedures that minimise the need for animal testing and develop alternative testing methods;

- ensuring that the chemical substances of concern are subject to accelerated risk management procedures and that substances of very high concern, including carcinogenic, mutagenic or toxic for reproduction substances and those which have POPs (persistent organic pollutants) characteristics, are used only in justified and well defined cases and must be subject to authorisation before their use;
 - ensuring that the results of the risk assessments of chemicals are taken fully into account in all areas of Community legislation where chemicals are regulated and to avoid duplication of work;
 - providing criteria for including among the substances of very high concern those that are persistent and bio-accumulating and toxic and substances that are very persistent and very bio-accumulative and envisaging the addition of known endocrine disruptors when agreed test methods and criteria are established;
 - ensuring that the main measures that are necessary in view of the identified objectives are developed speedily so that they can come into force before the mid-term review;
 - ensuring public access to the non-confidential information in the Community Register on Chemicals (REACH Register);
- (c) on pesticides:
- full implementation and review of the effectiveness of the applicable legal framework ⁽¹⁾ in order to ensure a high level of protection, when amended. This revision might include, where appropriate, comparative assessment and the development of Community authorisation procedures for placing on the market;
 - a thematic strategy on the sustainable use of pesticides that addresses:
 - (i) minimising the hazards and risks to health and environment from the use of pesticides;
 - (ii) improved controls on the use and distribution of pesticides;
 - (iii) reducing the levels of harmful active substances including through substituting the most dangerous with safer, including non-chemical, alternatives;
 - (iv) encouragement of the use of low input or pesticide free cultivation among others through raising users' awareness, promoting the use of codes of good practices, and promoting consideration of the possible application of financial instruments;
- (v) a transparent system for reporting and monitoring progress made in fulfilling the objectives of the strategy including the development of suitable indicators;
- (d) on chemicals and pesticides:
- aiming at swift ratification of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade and of the Stockholm Convention on Persistent Organic Pollutants (POPs);
 - amending Council Regulation (EEC) No 2455/92 of 23 July 1992 concerning the export and import of certain dangerous chemicals ⁽²⁾ with the aim of bringing it into line with the Rotterdam Convention, improving its procedural mechanisms and improving information to developing countries;
 - support the improvement of the management of chemicals and pesticides in developing and candidate countries, including the elimination of stocks of obsolete pesticides, *inter alia*, by supporting projects aimed at such elimination;
 - contributing to international efforts on the elaboration of a strategic approach on international chemicals management;
- (e) on the sustainable use and high quality of water:
- ensuring a high level of protection of surface and groundwater, preventing pollution and promoting sustainable water use;
 - working towards ensuring full implementation of the Water Framework Directive ⁽³⁾, aiming at a good ecological, chemical and quantitative water status and a coherent and sustainable water management;
 - developing measures aimed at cessation of discharges, emissions and losses of Priority Hazardous Substances, in line with the provisions of the Water Framework Directive;
 - ensuring a high level of protection of bathing water, including revising the Bathing Water Directive ⁽⁴⁾;

⁽¹⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1). Directive as last amended by Commission Directive 2001/49/EC (OJ L 176, 29.6.2001, p. 61).

⁽²⁾ OJ L 251, 29.8.1992, p. 13. Regulation as last amended by Commission Regulation (EC) No 2247/98 (OJ L 282, 20.10.1998, p. 12).

⁽³⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

⁽⁴⁾ Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ L 31, 5.2.1976, p. 1). Directive as last amended by the 1994 Act of Accession.

- ensuring the integration of the concepts and approaches of the Water Framework Directive and of other water protection directives in other Community policies;
- (f) on air quality, development and implementation of the measures in Article 5 in the transport, industry and energy sectors should be compatible with and contribute to improvement of quality of air. Further measures envisaged are:
- improving the monitoring and assessment of air quality, including the deposition of pollutants, and the provision of information to the public, including the development and use of indicators;
 - a thematic strategy to strengthen a coherent and integrated policy on air pollution to cover priorities for further actions, the review and updating where appropriate of air quality standards and national emission ceilings with a view to reach the long term objective of no-exceedence of critical loads and levels and the development of better systems for gathering information, modelling and forecasting;
 - adopting appropriate measures concerning ground-level ozone and particulates;
 - considering indoor air quality and the impacts on health, with recommendations for future measures where appropriate;
 - playing a leading role in the negotiations and the implementation of the Montreal Protocol on ozone depleting substances;
 - playing a leading role in the negotiations on and strengthening the links and interactions with international processes contributing to clean air in Europe;
 - further development of specific Community instruments for reducing emissions from relevant source categories;
- (g) on noise:
- supplementing and further improving measures, including appropriate type-approval procedures, on noise emissions from services and products, in particular motor vehicles including measures to reduce noise from the interaction between tyre and road surface that do not compromise road safety, from railway vehicles, aircraft and stationary machinery;
 - developing and implementing instruments to mitigate traffic noise where appropriate, for example by means of transport demand reduction, shifts to less noisy modes of transport, the promotion of technical measures and of sustainable transport planning;
- (h) on urban environment:
- a thematic strategy promoting an integrated horizontal approach across Community policies and improving the quality of urban environment, taking into account progress made in implementing the existing cooperation framework ⁽¹⁾ reviewing it where necessary, and addressing:
 - the promotion of Local Agenda 21;
 - the reduction of the link between economic growth and passenger transport demand;
 - the need for an increased share in public transport, rail, inland waterways, walking and cycling modes;
 - the need to tackle rising volumes of traffic and to bring about a significant decoupling of transport growth and GDP growth;
 - the need to promote the use of low emission vehicles in public transports;
 - the consideration of urban environment indicators.

Article 8

Objectives and priority areas for action on the sustainable use and management of natural resources and wastes

1. The aims set out in Article 2 should be pursued by the following objectives:

- aiming at ensuring that the consumption of resources and their associated impacts do not exceed the carrying capacity of the environment and breaking the linkages between economic growth and resource use. In this context the indicative target to achieve a percentage of 22 % of the electricity production from renewable energies by 2010 in the Community is recalled with a view to increasing drastically resource and energy efficiency;
- achieving a significant overall reduction in the volumes of waste generated through waste prevention initiatives, better resource efficiency and a shift towards more sustainable production and consumption patterns;
- a significant reduction in the quantity of waste going to disposal and the volumes of hazardous waste produced while avoiding an increase of emissions to air, water and soil;

⁽¹⁾ Decision No 1141/2001/EC of the European Parliament and of the Council of 27 June 2001 on a Community framework for cooperation to promote sustainable urban development (OJ L 191, 13.7.2001, p. 1).

— encouraging re-use and for wastes that are still generated: the level of their hazardousness should be reduced and they should present as little risk as possible; preference should be given to recovery and especially to recycling; the quantity of waste for disposal should be minimised and should be safely disposed of; waste intended for disposal should be treated as closely as possible to the place of its generation, to the extent that this does not lead to a decrease in the efficiency in waste treatment operations.

2. These objectives shall be pursued taking into consideration the Integrated Product Policy approach and the Community's strategy for waste management⁽¹⁾ by means of the following priority actions:

(i) developing a thematic strategy on the sustainable use and management of resources, including *inter alia*:

(a) an estimate of materials and waste streams in the Community, including imports and exports for example by using the instrument of material flow analysis;

(b) a review of the efficiency of policy measures and the impact of subsidies relating to natural resources and waste;

(c) establishment of goals and targets for resource efficiency and the diminished use of resources, decoupling the link between economic growth and negative environmental impacts;

(d) promotion of extraction and production methods and techniques to encourage eco-efficiency and the sustainable use of raw-materials, energy, water and other resources;

(e) development and implementation of a broad range of instruments including research, technology transfer, market-based and economic instruments, programmes of best practice and indicators of resource efficiency;

(ii) Developing and implementing measures on waste prevention and management by, *inter alia*:

(a) developing a set of quantitative and qualitative reduction targets covering all relevant waste, to be achieved at Community level by 2010. The Commission is invited to prepare a proposal for such targets by 2002;

(b) encourage ecologically sound and sustainable product design;

(c) raising awareness of the public's potential contribution on waste reduction;

(d) the formulation of operational measures to encourage waste prevention, e.g. stimulating re-use and recovery, the phasing out of certain substances and materials through product-related measures;

(e) developing further indicators in the field of waste management;

(iii) Developing a thematic strategy on waste recycling, including *inter alia*:

(a) measures aimed at ensuring source separation, the collection and recycling of priority waste streams;

(b) further development of producer responsibility;

(c) development and transfer of environmentally sound waste recycling and treatment technology;

(iv) Developing or revising the legislation on wastes, including, *inter alia*, construction and demolition waste, sewage sludge⁽²⁾, biodegradable wastes, packaging⁽³⁾, batteries⁽⁴⁾ and waste shipments⁽⁵⁾, clarification of the distinction between waste and non-waste and development of adequate criteria for the further elaboration of Annex IIA and IIB of the framework directive on wastes⁽⁶⁾.

Article 9

Objectives and priority areas for action on international issues

1. The aim set out in Article 2 on international issues and the international dimensions of the four environmental priority areas of this Programme involve the following objectives:

— the pursuit of ambitious environmental policies at the international level paying particular attention to the carrying capacity of the global environment;

— the further promotion of sustainable consumption and production patterns at the international level;

— making progress to ensure that trade and environment policies and measures are mutually supportive.

⁽²⁾ Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJ L 181, 4.7.1986, p. 6). Directive as last amended by the 1994 Act of Accession.

⁽³⁾ Directive 94/62/EC of the European Parliament and of the Council of 20 December 1994 on packaging and packaging waste (OJ L 365, 31.12.1994, p. 10). Directive as last amended by Commission Decision 1999/177/EC (OJ L 56, 4.3.1999, p. 47).

⁽⁴⁾ Commission Directive 93/86/EEC of 4 October 1993 adapting to technical progress Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances (OJ L 264, 23.10.1993, p. 51).

⁽⁵⁾ Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ L 30, 6.2.1993, p. 1). Regulation as last amended by Commission Decision 1999/816/EEC (OJ L 316, 10.12.1999, p. 45).

⁽⁶⁾ Council Directive 75/442/EEC of 15 July 1975 on waste (OJ L 194, 25.7.1975, p. 39). Directive as last amended by Commission Decision 96/350/EC (OJ L 135, 6.6.1996, p. 32).

⁽¹⁾ Council Resolution of 24 February 1997 on a Community strategy for waste management (OJ C 76, 11.3.1997, p. 1).

2. These objectives shall be pursued by means of the following priority actions:

- (a) integrating environment protection requirements into all the Community's external policies, including trade and development cooperation, in order to achieve sustainable development by *inter alia* the elaboration of guidelines;
- (b) establishing a coherent set of environment and development targets to be promoted for adoption as part of 'a new global deal or pact' at the World Summit on Sustainable Development in 2002;
- (c) work towards strengthening international environmental governance by the gradual reinforcement of the multilateral cooperation and the institutional framework including resources;
- (d) aiming for swift ratification, effective compliance and enforcement of international conventions and agreements relating to the environment where the Community is a Party;
- (e) promoting sustainable environmental practices in foreign investment and export credits;
- (f) intensify efforts at the international level to arrive at consensus on methods for the evaluation of risks to health and the environment, as well as approaches of risk management including the precautionary principle;
- (g) achieving mutual supportiveness between trade and the needs for environmental protection, by taking due account of the environmental dimension in Sustainability Impact Assessments of multilateral trade agreements to be carried out at an early stage of their negotiation and by acting accordingly;
- (h) further promoting a world trade system that fully recognises Multilateral or Regional Environmental Agreements and the precautionary principle, enhancing opportunities for trade in sustainable and environmentally friendly products and services;
- (i) promoting cross-border environmental cooperation with neighbouring countries and regions;
- (j) promoting a better policy coherence by linking the work done within the framework of the different conventions, including the assessment of interlinkages between biodiversity and climate change, and the integration of biodiversity considerations into the implementation of the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

Article 10

Environment policy making

The objectives set out in Article 2 on environment policy-making based on participation and best available scientific

knowledge and the strategic approaches set out in Article 3 shall be pursued by means of the following priority actions:

- (a) development of improved mechanisms and of general rules and principles of good governance within which stakeholders are widely and extensively consulted at all stages so as to facilitate the most effective choices for the best results for the environment and sustainable development in regard to the measures to be proposed;
- (b) strengthening participation in the dialogue process by environmental NGOs through appropriate support, including Community finance;
- (c) improvement of the process of policy making through:
 - *ex-ante* evaluation of the possible impacts, in particular the environmental impacts, of new policies including the alternative of no action and of the proposals for legislation and publication of the results;
 - *ex-post* evaluation of the effectiveness of existing measures in meeting their environmental objectives;
- (d) ensuring that environment and notably the priority areas identified in this Programme are a major priority for Community research programmes. Regular reviews of environmental research needs and priorities should be undertaken within the context of the Community Framework Programme of research and technological development. Ensuring better coordination of research related to the environment conducted in Member States *inter alia* to improve the application of results;

development of bridges between environmental and other actors in the fields of information, training, research, education and policies;
- (e) ensuring regular information, to be provided starting from 2003, that can help to provide the basis for:
 - policy decisions on the environment and sustainable development;
 - the follow-up and review of sector integration strategies as well as of the Sustainable Development Strategy;
 - information to the wider public.

The production of this information will be supported by regular reports from the European Environment Agency and other relevant bodies. The information shall consist notably of:

- headline environmental indicators;
- indicators on the state and trends of the environment;
- integration indicators;

- (f) reviewing and regularly monitoring information and reporting systems with a view to a more coherent and effective system to ensure streamlined reporting of high quality, comparable and relevant environmental data and information. The Commission is invited, as soon as possible, to provide a proposal as appropriate to this end. Monitoring, data collection and reporting requirements should be addressed efficiently in future environmental legislation;
- (g) reinforcing the development and the use of earth monitoring (e.g. satellite technology) applications and tools in support of policy-making and implementation.

Article 11

Monitoring and evaluation of results

1. In the fourth year of operation of the Programme the Commission shall evaluate the progress made in its implementation together with associated environmental trends and prospects. This should be done on the basis of a comprehensive set of indicators. The Commission shall submit this mid-term

report together with any proposal for amendment that it may consider appropriate to the European Parliament and the Council.

2. The Commission shall submit to the European Parliament and the Council a final assessment of the Programme and the state and prospects for the environment in the course of the final year of the Programme.

Article 12

This Decision shall be published in the *Official Journal of the European Communities*.

Done at Brussels, 22 July 2002.

For the European Parliament

The President

P. COX

For the Council

The President

P. S. MØLLER

COMMISSION REGULATION (EC) No 1601/2002
of 9 September 2002
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 10 September 2002.

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

Done at Brussels, 9 September 2002.

For the Commission

J. M. SILVA RODRÍGUEZ

Agriculture Director-General

⁽¹⁾ OJ L 337, 24.12.1994, p. 66.

⁽²⁾ OJ L 198, 15.7.1998, p. 4.

ANNEX

to the Commission Regulation of 9 September 2002 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	55,0
	096	41,1
	999	48,0
0707 00 05	052	137,9
	999	137,9
0709 90 70	052	92,6
	999	92,6
0805 50 10	388	57,2
	524	39,6
	528	57,4
	999	50,5
0806 10 10	052	67,9
	064	105,0
	999	86,5
0808 10 20, 0808 10 50, 0808 10 90	052	60,0
	388	82,8
	400	109,8
	512	90,2
	720	71,5
	800	208,1
	804	88,6
	999	101,6
	052	104,4
0808 20 50	388	71,8
	720	56,6
	999	77,6
0809 30 10, 0809 30 90	052	97,3
	999	97,3
0809 40 05	052	68,5
	060	54,5
	064	49,6
	066	60,5
	068	42,9
	094	44,1
	624	189,0
	999	72,7

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 2020/2001 (OJ L 273, 16.10.2001, p. 6). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 1602/2002

of 9 September 2002

laying down detailed rules for the application of Council Directive 1999/105/EC as regards the authorisation of a Member State to prohibit the marketing of specified forest reproductive material to the end-user

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

on Seeds and Propagating Material for Agriculture, Horticulture and Forestry,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 1999/105/EC of 22 December 1999 on the marketing of forest reproductive material ⁽¹⁾, and in particular Article 17(3) thereof,

HAS ADOPTED THIS REGULATION:

Whereas:

Article 1

- (1) In accordance with Article 17(1) of Directive 1999/105/EC, Member States are to ensure that forest reproductive material which is placed on the market in accordance with the provisions of that Directive is not subject to any marketing restrictions as regards its characteristics, examination and inspection requirements, labelling and sealing other than those laid down in that Directive.
- (2) Member States may in certain circumstances be authorised to prohibit the marketing to the end-user, with a view to seeding or planting in their territory, of specified forest reproductive material which is unsuitable for use in their territory.
- (3) Such authorisations should be granted only where there is reason to believe that the use of the forest reproductive material would, on account of its phenotypic or genetic characteristics, have an adverse effect on forestry, environment, genetic resources or biodiversity in the territory of that Member State.
- (4) In order to allow the Commission to decide in full knowledge of the facts, the application for authorisation should be accompanied by relevant evidence and information concerning, *inter alia*, the region of provenance or the origin of the forest reproductive material and the results of trials, scientific research and forestry practice. The information required should be specified.
- (5) In order to assist a Member State to prepare its application, other Member States should provide, on request, all relevant information on the region of provenance or the origin and national lists of basic material for the production of forest reproductive material.
- (6) A copy of the application should be sent at the same time to the Member State in which the region of provenance or the origin is located, in order to allow that Member State to inform the Commission of its position.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee

1. A Member State seeking authorisation to prohibit the marketing of specified forest reproductive material to the end-user, under Article 17(2) of Directive 1999/105/EC, shall submit an application to the Commission stating why it considers that the criteria set out in Article 17(2) are satisfied. The application shall be accompanied by all available supporting information and documentation as set out in paragraphs 2 to 5.

2. Maps and details of the region of provenance or the origin of the material shall be supplied, together with documentation showing the differences in their respective climatic and ecological data, as specified in the Annex, must be provided.

3. The results of trials or scientific research or results obtained from forestry practice, showing why the material is unsuitable for use in all or part of its territory where prohibition is proposed shall be supplied. Details of the trials such as layout, procedure of assessment, and data analysis must be provided; the trials must have been carried out on relevant site types and in accordance with the requirements set out in point 1 of Annex V to Directive 1999/105/EC. Details shall also be provided of persons who carried out the trials, and whether the results have been peer reviewed or published.

4. In respect of results of scientific research, details of the research such as layout, sources of data, procedure of assessment, and data results must be provided.

5. In respect of results obtained from forestry practice, information and documentation concerning survival and development of forest reproductive material including growth, must be provided.

Article 2

As regards applications to prohibit the marketing of forest reproductive material in the categories 'source-identified' or 'selected' from approved basic material in the form of seed source or stand, the Member State seeking to prohibit the material must provide an assessment of its unsuitability made by reference to the region of provenance.

⁽¹⁾ OJ L 11, 15.1.2000, p. 17.

Article 3

As regards applications to prohibit the marketing of reproductive material in the categories 'qualified' or 'tested' from approved basic material in the form of seed orchard, parents of family, clone or clonal mixture, the Member State seeking to prohibit the material must provide an assessment of unsuitability made by reference to the individual units of approval.

In addition to the information specified in Article 10 of Directive 1999/105/EC, the following information must be provided on request:

- (a) the selection criteria used for the components of the basic material;
- (b) the composition of the basic material;
- (c) the region(s) of provenance in which the original components were selected.

Article 4

1. For the purpose of assisting the Member State preparing an application referred to in Article 1, other Member States

shall provide, on request of the Member State preparing the application, maps and information relating to the climatic and ecological conditions in the region of provenance of the forest reproductive material for which the authorisation to prohibit the marketing to the end-user will be sought.

2. At the same time that the application for authorisation is submitted to the Commission, a copy of it shall be sent to the Member State in which the region of provenance or the origin of the material to be prohibited is located.

3. The Member State referred to in paragraph 2 shall have three months to consider the application and to inform the Commission of its position. When justified, the Commission, upon request by that Member State, may extend this period.

Article 5

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

It shall apply from 1 January 2003.

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

Done at Brussels, 9 September 2002.

For the Commission

David BYRNE

Member of the Commission

ANNEX

List of information to be provided by a Member State in support of an application under Article 17(2) of Council Directive 1999/105/EC

1. Information on the species growing in the territory or part of territory: native or introduced
 2. Maps and references to the region of provenance or unit of approval of the forest reproductive material for which the application is submitted
 3. Indication of the territory or part of territory for which the application for prohibition of the marketing of the material to the end-user with a view to seeding or planting is submitted
 4. Climatic data of the region of provenance or unit of approval specified in point 2 and of the territory or part of territory specified in point 3
 - (a) total annual precipitation (mm);
 - (b) growing season precipitation (mm) including the months in which it occurs;
 - (c) temperature:
 - mean annual °C,
 - mean of coldest month °C,
 - mean of warmest month °C;
 - (d) length of the growing season (days above 5 °C or similar appropriate measure).
 5. Ecological data of the region of provenance or unit of approval specified in point 2 and of the territory or part of territory specified in point 3
 - (a) altitude range;
 - (b) major geological formation(s);
 - (c) major soil type(s).
-

COMMISSION REGULATION (EC) No 1603/2002

of 9 September 2002

amending the Annex to Commission Regulation (EC) No 1535/2002 of 28 August 2002 derogating from Council Regulation (EC) No 1251/1999 establishing a support system for producers of certain arable crops, as regards the area payments for certain arable crops and the payments for set-aside for the marketing year 2002/03 to producers in certain regions of Germany

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1251/1999 of 17 May 1999 establishing a support system for producers of certain arable crops ⁽¹⁾, as last amended by Regulation (EC) No 1038/2001 ⁽²⁾, and in particular Article 9 thereof,

Whereas:

- (1) Under Regulation (EC) No 1535/2002 ⁽³⁾ Germany may, in respect of the marketing year 2002/03, make an advance payment of up to 50 % of the area payments for cereals, including the supplement for durum wheat, and up to 50 % of the payments for set-aside to producers in the regions, listed in the Annex to the Regulation, which were hit by floods in August 2002.
- (2) In the light of developments in certain parts of Mecklenburg-Vorpommern and Schleswig-Holstein, and taking into account the budgetary situation, Germany should be authorised to make advance area payments for cereals and set-aside in respect of the marketing year 2002/03

for additional areas of Mecklenburg-Vorpommern and Sachsen-Anhalt before 16 November 2002 and should no longer be authorised to do so in the case of certain areas of Schleswig-Holstein.

- (3) The Annex to Regulation (EC) No 1535/2002 should accordingly be amended.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Cereals,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1535/2002 is replaced by the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 9 September 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 12.

⁽²⁾ OJ L 145, 31.5.2001, p. 16.

⁽³⁾ OJ L 231, 29.8.2002, p. 36.

ANNEX

‘ANNEX

GERMANY

Brandenburg (Landkreise: Elbe-Elster, Havelland, Prignitz, Ostprignitz-Ruppin)

Mecklenburg-Vorpommern (Landkreise: Parchim, Nordwestmecklenburg, Güstrow, Demmin, Mecklenburg-Strelitz, Ludwigslust)

Niedersachsen (Landkreise: Gifhorn, Göttingen, Goslar, Helmstedt, Northeim, Osterode am Harz, Peine, Wolfenbüttel, Region Hannover, Diepholz, Hameln-Pyrmont, Hildesheim, Holzminden, Nienburg/Weser, Schaumburg, Celle, Cuxhaven, Harburg, Lüchow-Dannenberg, Lüneburg, Osterholz, Rothenburg/Wümme, Soltau-Fallingb., Stade, Uelzen, Verden; Kreisfreie Städte: Braunschweig, Salzgitter, Wolfsburg)

Sachsen (gesamtes Bundesland)

Sachsen-Anhalt (Landkreise: Stendal, Jerichower-Land, Köthen, Bördekreis, Schönebeck, Ohrekreis, Anhalt-Zerbst, Wittenberg, Bernburg, Bitterfeld, Halberstadt, Quedlinburg, Wernigerode, Salzwedel, Aschersleben-Staßfurt; Kreisfreie Städte: Magdeburg, Dessau)

Thüringen (Landkreis: Altenburger Land)

COMMISSION REGULATION (EC) No 1604/2002**of 9 September 2002****altering the export refunds on white sugar and raw sugar exported in the natural state**

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⁾, as amended by Commission Regulation (EC) No 680/2002 ⁽²⁾, and in particular the third subparagraph of Article 27(5) thereof,

Whereas:

- (1) The refunds on white sugar and raw sugar exported in the natural state were fixed by Commission Regulation (EC) No 1585/2002 ⁽³⁾.
- (2) It follows from applying the detailed rules contained in Regulation (EC) No 1585/2002 to the information known to the Commission that the export refunds at

present in force should be altered to the amounts set out in the Annex hereto,

HAS ADOPTED THIS REGULATION:

Article 1

The export refunds on the products listed in Article 1(1)(a) of Regulation (EC) No 1260/2001, undenatured and exported in the natural state, as fixed in the Annex to Regulation (EC) No 1585/2002 are hereby altered to the amounts shown in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 September 2002.

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

Done at Brussels, 9 September 2002.

For the Commission

Franz FISCHLER

Member of the Commission

⁽¹⁾ OJ L 178, 30.6.2001, p. 1.

⁽²⁾ OJ L 104, 20.4.2002, p. 26.

⁽³⁾ OJ L 239, 6.9.2002, p. 10.

ANNEX

to the Commission Regulation of 9 September 2002 altering the export refunds on white sugar and raw sugar exported in its unaltered state

Product code	Destination	Unit of measurement	Amount of refund
1701 11 90 9100	A00	EUR/100 kg	43,01 ⁽¹⁾
1701 11 90 9910	A00	EUR/100 kg	40,78 ⁽¹⁾
1701 11 90 9950	A00	EUR/100 kg	⁽²⁾
1701 12 90 9100	A00	EUR/100 kg	43,01 ⁽¹⁾
1701 12 90 9910	A00	EUR/100 kg	40,78 ⁽¹⁾
1701 12 90 9950	A00	EUR/100 kg	⁽²⁾
1701 91 00 9000	A00	EUR/1 % of sucrose × net 100 kg of product	0,4676
1701 99 10 9100	A00	EUR/100 kg	46,76
1701 99 10 9910	A00	EUR/100 kg	44,54
1701 99 10 9950	A00	EUR/100 kg	44,54
1701 99 90 9100	A00	EUR/1 % of sucrose × net 100 kg of product	0,4676

⁽¹⁾ Applicable to raw sugar with a yield of 92 %; if the yield is other than 92 %, the refund applicable is calculated in accordance with the provisions of Article 28(4) of Council Regulation (EC) No 1260/2001.

⁽²⁾ Fixing suspended by Commission Regulation (EEC) No 2689/85 (OJ L 255, 26.9.1985, p. 12), as amended by Regulation (EEC) No 3251/85 (OJ L 309, 21.11.1985, p. 14).

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 2020/2001 (OJ L 273, 16.10.2001, p. 6).

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 5 July 2002

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

(COMP/37.730 — AuA/LH)

(notified under document number C(2002) 2502)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/746/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 (EEC) No 3975/87 of 14 December 1987 laying down the procedure for the application of the rules on competition to undertakings in the air transport sector ⁽¹⁾, as last amended by Regulation (EC) No 2410/92 ⁽²⁾, and in particular Article 5 thereof,

Having regard to the notice ⁽³⁾ published pursuant to Article 5(2) of Regulation (EEC) No 3975/87,

Having regard to the notice ⁽⁴⁾ published pursuant to Article 16(3) of Regulation (EEC) No 3975/87,

Having consulted the Advisory Committee on Agreements and Dominant Positions in Air Transport,

Whereas:

1999. The Parties aim to forge a lasting alliance by creating an integrated air traffic system built on close cooperation in commercial activities, marketing and operational activities. A framework agreement sets out the main features of the cooperation. In addition, the two companies have negotiated a number of more specific implementation agreements and a special pro-rate agreement defining their joint pricing policy. Under a 'neighbourhood agreement', they have created a joint venture for traffic between Germany and Austria, with profits and losses being shared.

(2) Pursuant to Article 5 of Regulation (EEC) No 3975/87, the Parties request an exemption under Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement.

(3) On 11 July 2000 a summary of the application for exemption was published in the *Official Journal of the European Communities* pursuant to Article 5(2) of Regulation (EEC) No 3975/87.

(4) On 4 October 2000, pursuant to Article 5(3) of Regulation (EEC) No 3975/87, the Commission notified the Parties by letter of its serious doubts about the compatibility of the agreement with the common market.

(5) On 10 May 2001 the Commission sent Austrian Airlines and Lufthansa its statement of objections, in which it notified the Parties of its preliminary assessment that the cooperation agreement between them could not be exempted under Regulation (EEC) No 3975/87.

1. INTRODUCTION

(1) On 10 December 1999 Deutsche Lufthansa AG (Lufthansa) and Austrian Airlines (together hereinafter called the 'Parties') notified under Regulation (EEC) No 3975/87 a cooperation agreement concluded on 19 October

⁽¹⁾ OJ L 374, 31.12.1987, p. 1.

⁽²⁾ OJ L 240, 24.8.1992, p. 18.

⁽³⁾ OJ C 193, 11.7.2000, p. 7.

⁽⁴⁾ OJ C 356, 14.12.2000, p. 5.

- (6) On 14 December 2001 the Commission published a notice in the *Official Journal of the European Communities* pursuant to Article 16(3) of Regulation (EEC) No 3975/87. It set out its intention to exempt the notified cooperation agreement for six years on the basis of the commitments given by the Parties and the declared intention of several competitors to enter the market. Interested third parties were given the opportunity to submit comments.

2. THE PARTIES

2.1. Lufthansa AG

- (7) Lufthansa is the holding company of the Lufthansa group, which provides air transport for passengers and goods and is engaged in activities relating to air transport. It was fully privatised in 1997 and has some 350 000 shareholders.
- (8) Lufthansa's main subsidiaries are: Lufthansa Cargo (100 %), Lufthansa Technik (100 %), LSG (100 %), Lufthansa City Line (100 %), Eurowings (25 %), British Midland (20 %), Air Dolomiti (26 %) and Luxair (13 %).
- (9) In 2000 Lufthansa had a turnover of EUR 15,2 billion, of which EUR 7,926 billion was achieved in the Community as a whole and EUR 4,799 billion in Germany.
- (10) In terms of revenue passenger-kilometres (RPKs) flown in Europe in 2000, Lufthansa ranked first with 18,0 billion, ahead of British Airways with 17,0 billion. Air France came third with 10,3 billion.
- (11) In terms of world traffic, among Community carriers Lufthansa was second with 94,17 billion RPKs after British Airways with 118,89 billion and closely followed by Air France with 91,801 billion.
- (12) In Europe Lufthansa operates 148 routes with more than 100 000 passengers a year, the main ones being Frankfurt-Berlin [...] (*) and Frankfurt-Hamburg [...] (5).
- (13) In terms of fleet size, Lufthansa was in first place in Europe in 2000 with 327 aircraft in service and 48 on order. British Airways was in second place with 309 aircraft in service and 62 on order.
- (14) In scheduled cargo transport, Lufthansa is the leading European airline, both for intra-European traffic and for intercontinental traffic.
- (15) Lufthansa Cityline concentrates on domestic flights in Germany and regional flights within Europe. Its main routes are Bremen-Stuttgart (42 frequencies/week), Florence-Munich (28 frequencies/week) and Munich-Münster (42 frequencies/week).

2.2. Austrian Airlines (AuA)

- (16) AuA provides air transport for passengers and goods and is engaged in activities relating to air transport. It is controlled as follows: 39,7 % by the Austrian State, 10,6 % by institutional investors; 38,2 % by private investors; 10 % by Credit Suisse First Boston; and 1,5 % by Air France.
- (17) In 2000 the AuA group (Austrian Airlines, Lauda Air and Tyrolean Airways) achieved a turnover of EUR 1,54 billion, of which EUR 850 million in the EU, EUR 393 million in Austria and EUR 199 million in Germany. AuA's main subsidiaries are: Tyrolean Airways (100 %), Lauda Air (99 %) and Rheintalflug (100 %). In terms of fleet size, AuA, Tyrolean and Lauda Air together had 92 aircraft in service in 2000.
- (18) In terms of passenger-kilometres in Europe in 2000, AuA ranked 17th among member airlines of the Association of European Airlines with 2,4 billion, just after BMI British Midland (also 2,4 billion). In terms of world traffic in 2000, AuA was the 14th-largest European carrier with 8,8 billion passenger-kilometres. Worldwide, it came 67th. In Europe AuA operates 16 routes with more than 100 000 passengers per year, the main ones being Vienna-London [...], Vienna-Frankfurt [...] and Vienna-Paris [...].
- (19) Lauda Air (Lauda) provides air transport for passengers and goods and is engaged in activities relating to air transport. Its shares are held by AuA (99 %) and private investors (1 %).
- (20) In 2000 Lauda achieved a turnover in the Community of EUR 158 million, of which EUR 73 million in Austria and EUR 37 million in Germany. In terms of passenger-kilometres worldwide in 2000, Lauda, with 4,6 billion, did not rank among the top 20 airlines in Europe.
- (21) Lauda's main business is concentrated on charter flights within Europe (medium-haul routes) and long-haul routes toward Asian/Pacific destinations under AuA flight numbers. Its main route is Vienna-Sydney/Melbourne [...].
- (22) Tyrolean Airways (Tyrolean) provides air transport for passengers and goods and is engaged in activities relating to air transport. Tyrolean is 100 %-controlled by AuA. (after the latter acquired 42,85 % in 1994, 42,85 % in 1997 and the remainder in 1998).
- (23) In 2000 Tyrolean had a turnover of EUR 231 million in the Community, EUR 106 million in Austria and EUR 77 million in Germany. In terms of revenue passenger-kilometres, Tyrolean ranked 176th in the world with 1,2 billion, well behind Crossair (118th with 3,5 billion RPKs) and Lufthansa City Line (116th with 3,6 billion RPKs).

(*) Business secret.

(5) One direction, 1999 figures.

- (24) Tyrolean's air transport services are concentrated on domestic flights in Austria and regional flights in Europe with planes carrying up to 80 passengers. Its main routes are Innsbruck-Vienna [...], Klagenfurt-Vienna [...], Vienna-Budapest [...] and Vienna-Stuttgart [...]. Apart from further developing the domestic market, Tyrolean aims above all to increase the number of flights to central and eastern Europe and between Austria and Germany.
- (25) Austrian Airlines acquired 100 % control of Rheintalflug in February 2001. In 2000 Rheintalflug carried a total of 250 000 passengers. It currently operates the following routes: Altenrhein-Vienna, Vienna-Geneva, Vienna-Tallinn, Vienna-Warsaw and Vienna-Milan under AuA flight numbers. Its turnover in 2000 was EUR 31 million.

3. THE COOPERATION AGREEMENT BETWEEN AUSTRIAN AIRLINES AND LUFTHANSA

- (26) The long-term objective of the cooperation agreement between Lufthansa and AuA is worldwide integration of their networks. The network arrangement was introduced in the summer of 2000. It comprises passenger transport, maintenance, airport facilities and groundhandling. On 1 January 2000 the companies introduced a joint pricing policy and began coordinating schedules for all flights.
- (27) Their cooperation is closest as regards Austrian-German traffic, which is governed by a 'neighbourhood agreement'. This agreement provides for a joint venture for traffic between the two countries. The Parties pool revenues for trunk routes, excluding, however, feeder services to hubs. The conclusion of the cooperation agreement with Lufthansa marked the completion in 1999 of a switch from the Qualiflyer alliance to the Star alliance. AuA accordingly terminated its cooperation with the Qualiflyer partners at the end of December 1999.
- (28) The cooperation agreement contains mainly declarations of intent. In all major areas, as described in greater detail below, the Parties have concluded implementation agreements.

The main elements of the cooperation agreement are:

3.1. Joint venture for Austrian-German traffic

- (29) The neighbourhood agreement establishes a list of joint services covered by the terms of the agreement. It provides that, after an initial transition period, both Parties will share [...] the revenues and costs derived from the joint services. An 'Alliance Steering Committee' supervises the development and performance of the joint services and may give binding instructions to the management of the joint services, the so-called Traffic Committee (Tracom). Tracom consists of an equal number of representatives of both Parties who remain on the payroll of the company they represent. It is responsible for administering the joint services, the business plan, the traffic system, etc. The neighbourhood agreement provides explicitly that the Parties remain

autonomous and preserve their independent decision-making powers.

- (30) The traffic plan consists of a joint route system, fare structure and flight schedule. The Parties are not allowed to enter into regular arrangements with third parties to provide scheduled services on a joint service route.

3.2. Worldwide cooperation

- (31) AuA and Lufthansa aim to establish an integrated transport system worldwide, with joint network planning, a joint pricing policy and joint budgeting. This includes reciprocal access to frequent-flyer programmes, code sharing, harmonisation of service levels, and integration of data processing. In information technology the Parties combine their systems to some extent in areas such as flight data, reservation systems, ticketing, inventory, etc. By agreeing to joint use of airport facilities for passenger clearance, they hope to offer a smooth transfer to their customers.
- (32) With a view to the joint development of their respective networks, the Parties intend to set fares jointly worldwide on the basis of a special prorate agreement covering all groups of tariffs. According to the Parties, a joint pricing policy is necessary where their networks are combined; for instance, where the outward flight is with AuA and the return flight with Lufthansa or where AuA carries out the first part of an indirect flight via a Lufthansa hub. On a route where one Party offers a direct and the other an indirect flight ⁽⁶⁾, the former is the price leader. Apart from setting prices jointly, the Parties also coordinate their frequencies in order to avoid overlaps.

⁽⁶⁾ For example, Lufthansa offers a direct flight from Frankfurt to Kiev, whereas the AuA Frankfurt-Kiev flight involves a transfer in Vienna.

- (33) The aim of the code-sharing agreement is to provide a seamless product to passengers. Code-sharing implies that an aircraft of one airline operating a given flight carries its own flight number as well as that of the other airline. As a result, the code-sharing agreement allows the non-operating airline to sell the flight as its own. The Parties intend to coordinate their schedules in order to feed traffic to each other. They can add individual flights or routes at any time, provided that they notify the other Party in advance.

3.3. A single marketing strategy

- (34) The sales departments of both companies continue to exist independently. In Austria AuA remains responsible for marketing and sales, while Lufthansa is responsible in Germany. However, they intend to cooperate in many areas, such as creating a joint representation in Austria and Germany, cooperating on third markets, with AuA leading sales in central and eastern Europe, and cooperating in e-ticketing (over the Internet).
- (35) Each Party remains free to operate direct services between its domestic market and foreign destinations, where this is economically possible.
- (36) As regards domestic traffic, each airline continues to operate in a completely independent manner.

3.4. Subsidiaries and associated companies

- (37) The Parties include their respective subsidiaries and associated companies in the cooperation arrangements. One objective with regard to network development is to improve services provided by Lauda Air in Germany.

3.5. Organisation of the hub system

- (38) Through the agreement, the Parties aim to improve the use of their respective hubs in Frankfurt, Munich and Vienna. Vienna and Munich are to become complementary hubs, with Vienna concentrating on central and eastern Europe and Munich on traffic from and to Germany, intra-European traffic and traffic between Europe and other continents. Hub development should take into consideration the objectives and respective networks of the Parties and should provide for reciprocal feeder services.

3.6. Airport facilities and services

- (39) With regard to groundhandling services, the Parties had agreed to give preference to GlobeGround, a wholly-owned subsidiary of Lufthansa, as long as it offered competitive prices. At the end of May 2001 Lufthansa sold 51 % of its shares in GlobeGround to the French firm Penauille Polyservices. The remaining shares will be transferred to Penauille on 30 June 2002. The agreement relating to GlobeGround was therefore set aside by the

Parties. Groundhandling services will thus not be considered in what follows.

3.7. Freight transport

- (40) The Parties do not envisage integrating their freight transport operations. However, in order to increase efficiency, they plan to cooperate in the long term in the area of logistics.

4. APPLICABLE PROVISIONS

- (41) The joint venture for traffic between Germany and Austria is run jointly and equally by the Parties. It does not have the necessary resources to carry on its economic activity on its own. It will remain permanently dependent on the Parties.
- (42) The object and effect of the joint venture is to coordinate the competitive conduct of the two parent companies, which remain independent. The neighbourhood agreement establishes a cooperative joint venture and not a full-function joint venture as defined in the Commission notice on the concept of full-function joint ventures under Council Regulation (EEC) No 4064/89 on the control of concentrations between undertakings ⁽⁷⁾. It forms part of a much wider cooperation agreement that falls within the scope of Article 81 of the EC Treaty.
- (43) Regulation (EEC) No 3975/87 lays down the procedure for applying Article 81 of the EC Treaty with regard to air transport between Community airports and Article 53 of the EEA Agreement with regard to air transport between member countries of the European Economic Area. It covers only air transport between EEA airports. Traffic between the EEA and third countries is not caught by Regulation (EEC) No 3975/87 and, as a result, is not covered by this Decision.

5. THE RELEVANT MARKET

5.1. Services concerned

- (44) The activity affected by the agreement is the scheduled air transport of passengers and goods. The Parties offer scheduled flights, charter flights and freight transport.

⁽⁷⁾ OJ C 66, 2.3.1998, p. 1.

(45) In the Commission's view, charter flights do not form an alternative to scheduled flights in this case, in particular since most of the customers involved are business customers. Unlike leisure travellers, business customers do not accept the uncertainties connected with charter flights. As the Parties do not envisage merging their cargo transport activities, apart from some technical cooperation, air cargo transport is also disregarded in what follows.

5.2. Air transport markets

(46) To demarcate the relevant market in air transport, the Commission has developed the point-of-origin/point-of-destination (O&D) pair approach in a number of decisions backed by case law ⁽⁸⁾. According to this approach, every combination of point of origin and point of destination should be considered to be a separate market from the customer's point of view. In order to establish whether there is competition on a given route, a bundle of services is looked at. They include:

- (a) the direct flights between the two airports concerned;
- (b) the direct flights between the airports whose catchment areas significantly overlap with the catchment areas of the airports concerned at each end;
- (c) the indirect flights between the airports concerned in so far as these indirect flights are substitutable with the direct flights; substitutability of direct routes with indirect routes depends on a number of factors such as the flight time or the frequencies (and schedules) of routes;
- (d) other available transport means (car and/or train) to the extent that these are substitutable with direct or indirect flights in terms of journey time and frequencies ⁽⁹⁾.

(47) The Commission further distinguishes 'time-sensitive' and 'non-time-sensitive' customers. The former wish to reach their destination in the shortest possible time, they are not flexible in terms of time of departure/arrival and they need to have the option of changing their reservation at short notice. Non-time-sensitive customers, on the other hand, are more price-sensitive and accept longer journey times ⁽¹⁰⁾.

(48) According to the Parties, business passengers have become more price-sensitive and often buy economy-class tickets for flights of less than six hours, where their schedule permits. Accordingly, the proportion of time-sensitive passengers is much higher than the proportion of business-class travellers.

(49) The Parties argue that, as a result of globalisation, airlines compete on the basis of their respective networks and hubs, rather than on individual routes. In their view, a route-by-route analysis would not therefore be justified.

(50) The Parties' approach is supply-based. Airlines may well feel that they are clearly competing with other networks. However, this is not decisive for the definition of the relevant market since it does not correspond to the consumer's point of view. A consumer wishes to fly from a specific point of origin to a specific point of destination. He or she benefits from competition only if there is a choice between airlines on that particular origin and destination O&D pair. From a demand point of view, therefore, there is justification for assessing the effects of the cooperation agreement using the O&D approach.

(51) For the purposes of the Commission's assessment of the Parties' cooperation, it is possible to distinguish three categories of passenger air transport service within the EEA which are affected by the agreement:

- (a) services between Austria and Germany;
- (b) services between Austria or Germany and a third EEA country (e.g. Frankfurt-Rome);
- (c) services between two third EEA countries (e.g. London-Rome).

(52) As explained in Section 8, the neighbourhood agreement in particular raises concerns. The following assessment of the above aspects therefore focuses on bilateral traffic between Austria and Germany.

5.2.1. Indirect flights

(53) In principle, there is a correlation between the extra time a traveller is willing to spend by travelling via an intermediate airport and the overall travelling time. On short distances, with the resulting short travelling time, such as between Austria and Germany, it can be assumed that only very few non-time-sensitive travellers would consider replacing a direct by an indirect flight as a

⁽⁸⁾ See Commission Decision of 11 August 1999 in Case COMP/JV.19 — KLM-Alitalia: <http://europa.eu.int/comm/competition/mergers/cases>.

⁽⁹⁾ The Parties argue in this respect that high-speed trains and the car offer alternative transport modes in competition with air transport for distances of less than 600 km.

⁽¹⁰⁾ Generally speaking, business travellers are more time-sensitive than leisure travellers and tend to book fully flexible tickets. The second group of passengers are not time-sensitive but pay more attention to the price. These passengers accept longer journey times and may choose indirect flights if they are less expensive than direct ones.

result of a price increase for direct flights⁽¹¹⁾ and that the share of such passengers is therefore too small for indirect flights to exert competitive pressure on direct ones for traffic between Austria and Germany. Furthermore, only indirect flights offered by competitors of the Parties can be taken into account for competition policy purposes. However, such flights exist on only a limited number of routes. Indirect flights are therefore disregarded in the following assessment.

5.2.2. Overlapping catchment areas

- (54) Passengers who begin or end their journey in a catchment area of two or more airports can choose from or to which airport they wish to fly. This increases competition if the choice between different airports also implies a wider choice between different airlines, to the extent that the latter are independent of each other (i.e. they are not alliance partners or franchisees). In this instance, however, this applies only to a few minor cases⁽¹²⁾.
- (55) There is a correlation between the extra time a traveller is willing to spend by travelling to an airport which is farther away and the overall travelling time. For flights within Europe, it can be assumed that the radius of an individual airport's catchment area is small, given the short travelling time. Overlapping catchment areas are therefore of little relevance for flights within the Community. Flights between Austria and Germany are among the shortest flights even within the Community. Given the short travelling times on these routes, the Commission assumes, bar a few exceptions⁽¹³⁾, that for bilateral traffic the overlap between the catchment areas of two airports is too small to have any effect on the market.
- (56) The Commission therefore concludes that overlapping catchment areas do not play an important role for traffic between Austria and Germany. This conclusion is confirmed by estimates provided by the Parties themselves, who assume that only about 2 to 3 % of the

airline passengers who travel between Austria and Germany live in overlapping catchment areas.

5.2.3. Alternative transport modes

- (57) The Parties have argued that on the Austrian-German market road and rail offer alternative transport options for distances of up to 600 km.
- (58) The Commission, on the other hand, takes the view that, besides qualitative factors, total travelling time rather than distance is the decisive factor for consumers. For time-sensitive passengers, alternative means of transport are substitutable for air transport only where the travelling time is not significantly longer. This, of course, is less important for non-time-sensitive passengers, who are more interested in reducing travelling expenses.
- (59) Table 1 shows a series of factors that are relevant for the routes involved in this case. According to these data, the travelling time from city centre to city centre by car or train is comparable to the time taken by air only for the Salzburg-Munich and Linz-Munich routes. For Vienna-Munich, the time difference is more than two hours and car or train travel increases the travelling time by more than 70 %. In the case of a return trip, the additional travelling time would be more than four hours. This does not seem to be an alternative for time-sensitive customers. It can be an alternative only for a limited number of non-time-sensitive travellers.
- (60) A comparison of prices can also show the extent of competition between the different modes. A comparison of a business-class air ticket with a first-class rail ticket and an Air-PEX ticket with a second-class rail ticket reveals that air travel in general is more than twice as expensive as travelling by train (the difference in price is also significant if the comparison is between air travel and car travel). This conflicts with the Parties' assertion that alternative transport modes compete with air transport. If this were the case, one would expect prices to converge or, if prices of alternative transport modes were too low for airlines to match, no air transport to be offered. A price comparison does not, therefore, support the Parties' view that air transport and other means of transport form one and the same market.

⁽¹¹⁾ This conclusion is generally backed up by the findings of the Commission's investigation in the KLM-Alitalia case. The Commission found that the proportion of travellers using indirect flights on the Amsterdam-Rome and Amsterdam-Milan routes was very low. This suggests that neither category of passenger (time-sensitive or non-time-sensitive) considers indirect flights to be substitutable for direct flights. See Commission decision of 11 August 1999 in KLM-Alitalia.

⁽¹²⁾ The Parties have claimed that passengers living in Voralberg (the westernmost part of Austria) would prefer Zürich airport to Innsbruck. At the time of the conclusion of the agreement, Swissair operated five flights daily from Zürich to Berlin. Such passengers would therefore have the choice between Swissair and AuA/LH.

⁽¹³⁾ Such an exception may exist for non-time-sensitive travellers living in the catchment areas for Innsbruck and Salzburg who wish to travel from Munich to other German destinations since competitors of Lufthansa operate on these routes.

- (61) It can therefore be concluded that, as a rule, other means of transport do not offer an alternative for time-sensitive travellers on direct routes between Austria and Germany. Apart from considerations of journey time and comfort, however, they may do so for non-time-sensitive travellers ⁽¹⁴⁾.

Table 1:

Distance, prices and travelling time on different routes between Austria and Germany (Source: OAG/ January 1999)

Route	Approximate travelling time from city centre to city centre (one way)				Travel expenses for a two-way journey (in euros)				
	Distance in km (by road)	Air ⁽¹⁾	Rail	Car	Air Business-Class ⁽²⁾	Air-PEX and Sunday rule	Rail First Class	Rail Second Class	Car ⁽³⁾
Vienna-Frankfurt	715	3:15h	8:37h	8:30h	853	518	292	194	319
Vienna-München	450	2:45h	4:51h	5h	550	358	164	112	201
Vienna-Düsseldorf	927	3:25h	12:20h	11h	1 027	617	403	267	414
Graz-Frankfurt	730	3:15h	9:20h	9h	853	517	302	205	326
Salzburg-Frankfurt	543	3:45h	5:34h	6:30h	584	365	238	158	242
Salzburg-Munich	140	2:50h	1:30h	1:30h	—	398	65	43	62
Vienna-Berlin	634	3:05h	11:11h	8h	837	501	248	163	283
Vienna-Stuttgart	682	3:30h	7:28h	8h	768	464	272	179	304
Linz-Frankfurt	554	2:55h	6:12h	6:30h	685	418	245	162	247
Innsbruck-Frankfurt	517	3:05h	6:15h	6h	636	312	254	167	231
Linz-Munich	276	2:35h	2:55h	3:15h	—	425	122	79	123

⁽¹⁾ Times include actual flying time, servicing time (45 mins) and travelling time from the city centre to the airport (one hour).

⁽²⁾ Lufthansa and AuA offer the same prices on these routes. The full price for economy class is the same as the business-class rate.

⁽³⁾ A rate of EUR 0,22 per km was used for the calculation.

6. THE PARTIES' POSITION ON THE RELEVANT MARKET

- (62) In Section 5.2 three categories of air transport service were identified. As will be shown in detail in Section 8, competition concerns arise principally in connection with the first category, i.e. services between Austria and Germany. The following assessment will therefore focus on the Parties' position on this market.
- (63) In 1999 there were 33 routes between Austria and Germany. Only one route was not operated by the Parties ⁽¹⁵⁾. In terms of both the total number of direct flights and total passenger numbers on direct flights, the Parties have a combined market share of 100 % on 27 of these 33 routes. These 27 routes account for more than 90 % of total traffic between the two countries. Thus, the Parties are by far the strongest competitors on the Austrian-German air transport market.

⁽¹⁴⁾ For example, on the Munich-Salzburg, Munich-Linz and Munich-Vienna routes.

⁽¹⁵⁾ Rheintalflug operated 86 flights between Vienna and Friedrichshafen in 1998. However, Rheintalflug was taken over by AuA in 2001.

Table 2:

Number of flights per week on individual routes between Austria and Germany

Route	Flights per week (winter 1999/2000)				Lufthansa/AuA (including Lauda) combined market share for direct flights (%)
	AuA	Lufthansa	Lauda	Total	
Vienna-Frankfurt	28	34	0	62	100
Vienna-Munich	14	26	13	53	100
Vienna-Düsseldorf	14	21	0	35	100
Graz-Frankfurt	7 (*)	20	0	27	100
Salzburg-Frankfurt	0	28	0	28	100
Vienna-Berlin	14	21	0	35	100
Vienna-Hamburg	0	20	14	34	100
Vienna-Stuttgart	20 (*)	10	0	30	100
Linz-Frankfurt	0	28	0	28	100

(*) Tyrolean Airways.

- (64) In order to determine the Parties' market position, in addition to considering the number of direct flights and total passenger numbers on direct flights it is also necessary to distinguish between different passenger categories. Even though, with the conclusion of the cooperation agreement, the Parties together had a market share of 100 % in the case of direct flights on all routes of importance in terms of passenger numbers, they nevertheless continued to face competition in respect of the important category of transfer passengers.
- (65) Generally speaking, a distinction can be drawn between O&D (point-to-point) passengers and transfer passengers, who take connecting flights. Unlike O&D passengers, transfer passengers have a wider choice of flights, with the result that there is greater competitive pressure on the Parties as regards such customers ⁽¹⁶⁾.
- (66) This means that each flight combines passengers with very different point-of-origin/point-of-destination pairs. Long-haul travellers, for example, have the choice of various European hubs and may therefore benefit from competition. When the cooperation agreement was concluded, this was not the case for O&D passengers and regional transfer passengers flying locally between Austria and Germany ⁽¹⁷⁾. Thus, the different passenger groups form separate markets.
- (67) For an overall competition assessment of the cooperation or alliance between airlines, it has to be established therefore whether the category of O&D passengers and regional transfer passengers forms a significant customer market. This is the case at least for all the major routes between Austria and Germany shown in Table 3, even though the proportion differs considerably from route to route. On other routes between the two countries that do not involve a hub, the share will be even higher still. The effects of the cooperation between the Parties on this category of travellers must therefore be considered.

⁽¹⁶⁾ For example, to fly from Vienna to the United States, a passenger may fly direct, or indirect via Frankfurt, Amsterdam, Paris, London, etc. He or she would thus have the choice of several competing airlines.

⁽¹⁷⁾ Regional transfer passengers take a regional flight before or after flying on an Austrian-German route (regional transfer). A passenger who wishes to travel from Klagenfurt to Leipzig may do so via Frankfurt, for example. However, such passengers, like direct travellers, depend as a rule on one of the Parties for at least one section of their journey.

Table 3:

Number of passengers on the main routes between Austria and Germany

Route	Number of passengers (1998) (both directions)	Share of business class passengers	Share of O&D and regional transfer passengers
Vienna-Frankfurt	560 000	[...]	[...]
Vienna-München	290 000	[...]	[...]
Vienna-Düsseldorf	214 000	[...]	[...]
Graz-Frankfurt	140 000	[...]	[...]
Salzburg-Frankfurt	138 000	[...]	[...]
Vienna-Berlin	135 000	[...]	[...]
Vienna-Hamburg	116 000	[...]	[...]
Vienna-Stuttgart	104 000	[...]	[...]
Linz-Frankfurt	91 000	[...]	[...]

Example of the Vienna-Frankfurt route

(68) The Parties' position on the market for traffic between Austria and Germany can be illustrated on the basis of the main Austrian-German route. The Vienna-Frankfurt route links the AuA and Lufthansa hubs.

(69) Indirect flights and alternative modes of transport are of secondary importance on this route and can be disregarded. As pointed out above, indirect flights cannot be considered to be substitutes on short-haul routes. If the '600 km rule' is applied, as suggested by the Parties, the train and the car cannot be considered to be alternative transport modes since the distance between the two cities exceeds 600 km. This is valid at least for time-sensitive passengers. Non-time-sensitive travellers may choose to travel by train or car despite the distance. However, as indicated in Section 5.2.3, the significant price differences between air transport and other modes of transport lead to the conclusion that they form separate markets. Some travellers may choose other transport modes on the basis of quality criteria. For example, the car offers greater independence and more flexibility at the place of destination. It is therefore assumed that for most non-time-sensitive air passengers too transport by land does not offer an alternative.

(70) The Parties have not argued that there is competition on this route by virtue of overlapping catchment areas for various airports. This means that only the direct flights offered can be considered for this route. The AuA/Lufthansa joint venture therefore has a 100 % market share on this route.

(71) As shown in Table 3, about [...] of all passengers in 1999 were either point-to-point passengers or regional transfer passengers. These passengers have no choice but to fly on this route with the Parties.

Other bilateral routes

(72) The above analysis for the most important route (in passenger terms) between Austria and Germany also applies to those that carry less traffic. As indicated in Section 5.2, on most of the 33 existing routes, neither indirect flights nor other modes of transport are relevant. On these routes, the share of direct and regional transfer passengers is even higher than on the Vienna-Frankfurt route, which links two hubs. Thus, the share of passengers who depend exclusively on the Parties for travel on these routes is also higher.

(73) With the conclusion of the cooperation agreement, around half of all air passengers travelling between the two countries depend exclusively on AuA/Lufthansa.

7. COMMENTS BY THIRD PARTIES

(74) In response to the notices published in the *Official Journal of the European Communities* pursuant to Article 5(2) and Article 16(3) of Regulation (EEC) No 3975/87, the Commission received comments from third parties that essentially made the following points:

(a) The cooperation agreement between AuA and Lufthansa will significantly restrict competition on the market for traffic between Austria and Germany;

- (b) The cooperation agreement enables the members of the Star alliance to build on their already strong position in Europe;
- (c) The very high prices applied by the Parties on Austrian-German routes are a burden on consumers;
- (d) An exemption should be granted only subject to extensive conditions. In particular, barriers to entry, such as the shortage of slots, should be reduced;
- (e) Their cooperation gives both Parties a very strong position on the German-Austrian market. Smaller competitors should be protected from anticompetitive behaviour, such as price dumping and keeping overcapacities in reserve;
- (f) A process of concentration is taking place in Europe's air transport industry. It is vital for AuA to join the Star alliance in order to preserve its independence;
- (g) (Large) customers will share in the savings that result from the cooperation. They will also benefit from the wider network of routes and the more extensive range of flights on offer within the alliance.

exclude any competition between themselves on this market.

- (78) Their cooperation increases the Parties' market power even further by raising additional entry barriers for other suppliers as a result of the coordination of resources, networks and frequencies. The same applies to the joint frequent-flyer programme as a large proportion of customers are business customers. The latter prefer airlines with a joint frequent-flyer programme allowing them to collect airmiles more easily. A joint frequent-flyer programme can therefore represent a significant entry barrier for airlines not offering a similar programme. The Parties' position is further strengthened by their share of slots at the main airports in Germany and Austria and by the relatively high number of services which they already operate on the routes in question.
- (79) By excluding any actual and potential competition between the Parties and given their position on the market, the joint venture appreciably restricts competition for air transport between Austria and Germany.

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

8.1. The agreement between the undertakings

- (75) The cooperation agreement between Lufthansa and AuA is an agreement between undertakings within the meaning of Article 81(1) of the EC Treaty⁽¹⁸⁾.

8.2. Restriction of competition

- (76) Under the cooperation agreement, the two former competitors cooperate as regards all traffic within the EEA. Such cooperation includes in particular a joint pricing policy and the sharing of markets through the coordination of schedules, frequencies and capacity. Thus, the agreement therefore restricts actual and potential competition between the Parties.

8.2.1. Traffic between Austria and Germany (both directions)

- (77) On all routes for local traffic between Austria and Germany, the Parties have coordinated their activity with regard to capacity, frequencies, fares and marketing policy by setting up a joint venture. Costs and revenues are shared between them equally. The Parties thus

8.2.2. Other routes within the EEA

- (80) As mentioned in Section 5.2, apart from the bilateral traffic between Germany and Austria, the agreement affects traffic between Germany or Austria and a third EEA country and between two third EEA countries. AuA and Lufthansa cooperate on these routes in particular with regard to joint network planning, a joint pricing policy and the harmonisation of service levels. The Parties apply a joint pricing policy on all routes which allow them to combine their networks, i.e. where a passenger can fly out with Lufthansa and fly back with AuA. This applies, in principle, to all routes within the EEA. AuA and Lufthansa also coordinate their frequencies in order to avoid overlapping flights.
- (81) To the extent that there is competition on these routes between direct and indirect flights, competition between one Party's direct services and the other Party's indirect services is restricted or eliminated for services between Austria or Germany and another EEA country⁽¹⁹⁾. However, with regard to flights between two other EEA countries, e.g. London-Rome, the cooperation agreement probably does not restrict competition significantly. While the Parties might have been actual or potential competitors by offering indirect services on some of these routes, their respective market position on these routes is presumed not to be significant.

⁽¹⁸⁾ Article 53 of the EEA Agreement contains the same provision as Article 81 of the EC Treaty. All references to Article 81 of the EC Treaty should be understood to extend automatically to Article 53 of the EEA Agreement.

⁽¹⁹⁾ For instance, a non-time-sensitive passenger travelling from Hamburg to Rome could have chosen either to fly direct with Lufthansa or indirect with AuA via Innsbruck.

- (82) The agreement therefore has the effect of restricting competition between the Parties on routes between Austria or Germany and another member country of the EEA.

8.3. Effect on trade between Member States

- (83) The cooperation agreement between AuA and Lufthansa covers passenger and freight transport within the EEA and therefore affects trade between Member States.

9. ARTICLE 81(3) OF THE EC TREATY

- (84) According to Article 81(3) of the EC Treaty, the provisions of Article 81(1) may be declared inapplicable in the case of an agreement between undertakings which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

9.1. The cooperation agreement's contribution to economic progress

- (85) The Parties have argued that the cooperation agreement contributes in a number of ways to economic progress. In particular, passengers will benefit from improved possibilities for transfers and connections.
- (86) Except as regards bilateral traffic, the Parties' networks largely complement one another. While AuA has focused on medium-haul routes in Europe, especially central and eastern Europe, Lufthansa has focused much more on long-haul services. The merger of these complementary networks results in important synergistic effects and attractive connections for consumers. The coordination and extension of the Parties' scheduled networks will create a more efficient network and, in particular, improve connections with eastern European cities.
- (87) The establishment of a more comprehensive European network will produce cost savings for the Parties through an increase in traffic throughout the network, improved network connection, better planning of frequencies, a higher load factor and improved organisation of sales systems and groundhandling services.

The Parties also expect to make cost savings by jointly developing new sales channels (e-ticketing).

- (88) In concluding a cooperation agreement with Lufthansa, AuA has switched from the Qualiflyer to the Star alliance. In AuA's case, the cost savings resulting from the cooperation can be calculated only in relation to the change of alliance. AuA's supervisory board put a figure of some [...] million on the potential synergy to be gained from joining the Star alliance as opposed to remaining in the Qualiflyer alliance. Since the cost savings described must also have applied to some extent in the Qualiflyer alliance, it can be assumed that the synergistic effects of the cooperation agreement would be even greater compared with a situation in which AuA did not belong to any alliance.

- (89) The Commission accordingly considers that the agreement will contribute to economic progress within the meaning of Article 81(3) of the EC Treaty.

9.2. Benefits for consumers

- (90) The linking of the two scheduled networks means coordinated schedules, shorter waiting times, no moving between terminals and harmonised in-flight service quality. Consumers also benefit from a wider choice of direct flights between the two countries and connections to eastern European destinations in particular. As a result of the cooperation agreement, frequencies have increased in bilateral traffic on the Frankfurt-Klagenfurt, Munich-Graz, Frankfurt-Innsbruck and Vienna-Nürnberg routes and new connections have been added between Graz-Stuttgart and Vienna-Friedrichshafen.
- (91) The extension of their respective hub connections has also opened up the possibility of more feeder services from regional airports. It is expected that, for consumers, these benefits of a shared network will also lead to an increase in traffic overall and thus to better capacity utilisation for the Parties.
- (92) Consumers are also benefiting from the introduction of transit services and the extension of reciprocal code-sharing on services to third countries beyond hub-to-hub flights. The partners' networks have thus become accessible to passengers of both airlines, increasing the number of available destinations and the choice of times for outward and return flights.
- (93) However, the Commission is not convinced that the cooperation agreement ensures that consumers will share in the benefits of the expected cost savings, e.g. through lower prices. This is to be ensured by the conditions set out below.

9.3. Indispensability

- (94) The Commission accepts that the envisaged cost reductions could materialise only if the Parties cooperated closely on their respective business strategies. The benefits of an improved range of services as a result of joint route planning and network development in particular can be obtained only through close cooperation. This is particularly true of routes linking the hubs of the two companies. The Commission therefore recognises that the extent of the integration envisaged in the cooperation agreement is necessary to achieve the objectives set.
- (95) The Commission considers, however, that conditions must be imposed to ensure that the restrictions of competition do not go beyond what is necessary and that competitors are present on the market.

9.4. Elimination of competition

- (96) As to whether the cooperation agreement eliminates competition, a distinction must be made, as explained in Section 5.2, between the German-Austrian market and services to other EEA countries. In the former case, the establishment of a joint venture means that cooperation between the Parties is much closer and their market position especially strong (see Section 6.2.1).

9.4.1. *The German-Austrian market*

- (97) As can be seen from Table 2, the Parties were not subject on any main Austrian-German routes to competition from other airlines in the case of direct flights when the joint venture was set up. The cooperation thus eliminated actual competition on a large number of individual routes.
- (98) By establishing the joint venture, the Parties have ensured that there is no longer any actual or potential competition between them on routes between Austria and Germany. Although the liberalisation of air transport in the Community has removed legal barriers to market entry, the Parties cooperation creates new entry barriers and enhances the difficulties for third carriers to enter the market. This eliminates competition on a substantial part of the market, as illustrated below taking the Vienna-Frankfurt route as an example. The situation on other routes between the two countries is comparable.

Vienna-Frankfurt

- (99) As explained in Section 6, the Parties have, by setting up a joint venture, eliminated actual competition in respect of O&D passengers on this route. It can be assumed that potential competition has also been at least severely

restricted by barriers to entry. The reasons are as follows:

- (a) at least the main airport in Frankfurt is very congested and new entrants find it very difficult to obtain slots at peak times;
 - (b) together, the Parties operate a relatively high number of frequencies. This makes it more difficult for new entrants to establish themselves on the market with additional flights;
 - (c) more than half of all passengers are transfer passengers. New entrants on routes between Austrian and German hubs must therefore attract regional and international transfer passengers in order to fill capacity. However, as the Parties develop a joint network, their flights fill most slots which feed flights from and to their hubs;
 - (d) the Parties' market power will increase as a result of the agreement since they will coordinate resources, create a larger European fleet, exploit the scope for interlining, and coordinate networks and frequencies;
 - (e) the pooling of frequent-flyer programmes will strengthen the Parties' position on the market, in particular on the market segment for business customers. A joint frequent-flyer programme constitutes an important entry barrier for airlines which do not have comparable programmes;
 - (f) a large proportion of total tickets sold on a specific route are tied to a specific airline because of corporate customer deals⁽²⁰⁾ and other reasons. Thus, new entrants can actually compete on price for only a small proportion of customers, at least in the short run. Small carriers would probably find it difficult to offer similar deals to potential large customers as they cannot offer a similar range of network services (high frequencies, well-connected flights at hub airports, etc.);
 - (g) the Parties operate with relatively low load factors on routes between Austria and Germany. They thus have sufficient capacity on these routes to react quickly to price changes which could result from a new competitor entering the market.
- (100) Since, following the cooperation agreement, only the joint venture has offered direct flights on this route and in view of the high barriers to entry, the Parties have eliminated competition on this route as regards the market for time-sensitive and non-time-sensitive O&D passengers and regional transfer passengers.

⁽²⁰⁾ For example, on routes between Austria and Germany some 38 % of all AuA customers fly under a 'corporate customer deal'.

Other bilateral routes

(101) As explained in Section 6, the Parties' starting point on other bilateral routes is the same as on the Vienna-Frankfurt entry route. This also applies to the barriers to market entry. However, on routes with fewer passengers, these have even greater weight. As demand for flights on these routes is lower, an entrant is obliged to obtain a higher share of total passengers on the route in order to break even.

(102) While it might be accepted that competition is not eliminated on some routes this only holds for routes of secondary importance. Thus, given the dominant position on the market for time-sensitive customers (point-to-point and regional transfer) and the strong position on the market for non-time-sensitive customers, the cooperation agreement affords the Parties the possibility of eliminating competition for a substantial number of services for time-sensitive and non-time-sensitive customers.

Potential competition

(103) The Parties have argued that all European airlines can be considered potential competitors. However, the Commission has carried out a market test and, on the basis of its findings, it considers that the extent to which there is potential competition from other airlines is small. Although the legal entry barriers have been dismantled, the entry of other airlines onto the market is not actually guaranteed. Large airlines endeavour to develop their networks around their respective hubs. Consequently, other major European airlines would probably operate on the Austrian-German routes only if they developed a second hub to which these routes could be connected. This, however, does not seem to be an option for the foreseeable future. Moreover, the numerous barriers to entry make it difficult for low-cost and regional airlines to enter the market. It is therefore essential to reduce or remove these barriers to entry in order to enable such competitors to enter the market.

9.4.2. Routes involving other EEA countries

(104) As pointed out in Section 6.2.2, the cooperation agreement may restrict competition on certain routes between Austria or Germany and another EEA country. However, the Commission does not have any indication that, with regard to these routes, the cooperation agreement would eliminate competition on any of the aforementioned markets.

10. CONDITIONS AND OBLIGATIONS

(105) In the light of the considerations in Section 9.4, it can be concluded that the cooperation agreement has eliminated competition on a substantial part of the market in bilateral traffic between Germany and Austria. According to the Commission, the cooperation agreement can only be accepted on the basis of conditions which significantly reduce the barriers to market entry.

(106) On the basis of the reservations expressed by the Commission in its statement of objections, the Parties gave extensive commitments which were published on 14 December 2001 in the *Official Journal of the European Communities*. Following comments by third parties, these commitments were extended. They are set out in detail in the Annex to this Decision. The Annex forms an integral part of this Decision, and the exemption is subject to the conditions set out therein.

(107) The main purpose of the conditions contained in the Annex is to ensure that there can be viable new competition by removing existing entry barriers for potential competitors. In addition, they should ensure that consumers share in the benefits resulting from cooperation. The main aspects are summarised below.

(108) New competitors depend on obtaining appropriate slots at each airport. However, a number of airports are full at peak times. The Parties are therefore required to make slots available to a new entrant for a route chosen by it up to a maximum of 40 % of the slots the Parties operated on the route in question at the time of the notification. In addition, they must make 'technical slots' available to a new entrant from a third country to position aircraft at the beginning or end of operations.

(109) In view of the economic weight of the Parties and their strong presence on the routes concerned, the Commission considers it necessary that their daily frequencies on new entrant city pairs be frozen for two years. This is to prevent them from increasing their frequencies as a means of forcing out new entrants.

(110) In the light of experience and the information it possesses on the relevant market, the Commission assumes that no one will enter the market quickly on a number of Austrian-German routes. Many of the lighter routes (in terms of passenger numbers) are of limited attraction to potential competitors. The interests of consumers using such routes must also be taken into account. The Parties are thus required to apply any price cuts that they introduce on routes subject to competition to three other Austrian-German routes on

which they do not face competition. The Parties have some discretion when it comes to choosing these three other routes. By making the costs of price dumping significantly higher for the Parties, this condition affords new entrants some protection from predatory pricing by the Parties.

(111) In order to utilise their capacity sufficiently, new entrants depend on making an attractive offer to the various customer segments. To enable them to do so for business customers, the Parties are required to reserve for new entrants up to 15 % of the seats offered on a service. This blocked space can be used by the new entrant in order to offer customers greater flexibility as regards outward and return flights. The option for competitors to take part in the Lufthansa/AuA frequent flyer programme is also designed to make it easier for them to attract business customers.

(112) Given the high share of transfer passengers, it is also important for a new entrant to obtain access to the market in transfer passengers. To this end, it can conclude an interline agreement with Lufthansa/AuA that, at its request, includes a special prorate agreement. The terms of such special prorate agreements must correspond to the terms entered into by the Parties with their alliance partners or other carriers in connection with the route concerned.

(113) On short-haul routes between Austria and Germany, competition can also be promoted to a limited extent by intermodal services. At the request of a railway or other surface transport company, the Parties must enter into an intermodal agreement whereby they provide passenger air transport on their services between Austria and Germany as part of an intermodal service.

(114) The Commission has established that, on the basis of these undertakings, there are several competitors who are seriously interested in entering the market on major routes and are able to obtain the necessary traffic rights. This is an important factor that allows the Commission to exempt the cooperation under Article 81(3) of the EC Treaty. Should this situation change, the Commission might be obliged to revoke or amend the exemption pursuant to Article 6(3)(a) of Regulation (EEC) No 3975/87.

(115) On their own initiative, the Parties announced that they would keep to the conditions described above vis-à-vis potential competitors even before the Commission granted an exemption. On this basis, other firms have since entered the market. Since 2001 Adria Airways has been flying twice daily between Vienna and Frankfurt,

while Air Alps has operated the Vienna-Stuttgart route. Two other airlines from central and eastern Europe have expressed a serious interest in entering the market on two major Austrian-German routes once the exemption has been granted. On the basis of the Parties' commitments, a new Austrian airline has been created with a view to starting operating on several routes between Austria and Germany in autumn 2002.

(116) Given the various conditions and the duration of the exemption, the Parties must provide the Commission with information on a regular basis to show that they are complying with the conditions,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 81(3) of the EC Treaty and Article 53(3) of the EEA Agreement, Article 81(1) of the EC Treaty and Article 53(1) of the EEA Agreement are hereby declared inapplicable to the cooperation agreement concluded on 10 December 1999 between Deutsche Lufthansa AG (Lufthansa) and Austrian Airlines Österreichische Luftverkehrs AG (AuA) for the period from 10 December 1999 to 31 December 2005.

Article 2

The exemption granted pursuant to Article 1 shall be subject to the conditions listed in the Annex. These conditions shall apply to all routes operated by the Parties between Germany and Austria. They shall be binding on the Parties, their subsidiaries, legal successors and authorised representatives. The Parties shall ensure that their subsidiaries, legal successors and authorised representatives comply with them.

Article 3

1. Until termination of the exemption granted pursuant to Article 1, AuA and Lufthansa shall provide the Commission with the following information:

- (a) detailed information on the tariffs applied on all routes between Austria and Germany on which the Parties offer direct flights in competition with other airlines;
- (b) detailed information on how they comply with the requirement to apply tariff reductions on three other Austrian-German routes;
- (c) a list of all contracts and agreements that the Parties have entered into with competitors on the Austrian-German market with regard to slots, frequent flyer programmes, blocked space, interlining and intermodal traffic;

- (d) information on tariff developments on all routes between Austria and Germany;
- (e) a list of the daily frequencies applied and total capacity offered per month by AuA and Lufthansa on the ten most important routes in passenger terms;
- (f) information on the Parties' progress in implementing their cost-cutting plans.

Article 4

This Decision is addressed to:

Austrian Airlines Österreichische Luftverkehrs AG
Fontanastr. 1
PO Box 50
A-1107 Vienna

Deutsche Lufthansa Aktiengesellschaft
Von-Gablenz-Straße 2-6
D-50679 Cologne

Done at Brussels, 5 July 2002.

2. Information under paragraph 1, points (a) and (b) shall reach the Commission within a week of publication of the tariffs. Information under paragraph 1, points (c) to (f) shall be sent to the Commission at the end of each summer scheduling period.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

CONDITIONS

1. Conditions pertaining to slots

If an airline which did not operate air transport services between Austria and Germany on the date of notification (a new entrant) and which is independent of Austrian Airlines and Lufthansa (the Parties) wishes to commence a new non-stop service on one or more Austria-Germany city pairs (the 'new entrant city pair or pairs'), the Parties shall make slots available subject to the conditions described below. For the purposes of these conditions, a non-stop service includes a multi-stop service using a single aircraft that begins and/or terminates in Austria, Germany or a third country and has at least one non-stop segment between Austria and Germany.

The parties are obliged to make available to a new entrant for a particular new entrant city pair (the 'new entrant slots') at least one pair of slots and, to the totality of new entrants, up to a maximum of 40 % of the slots the parties operated on the city pair in question at the time of notification. However, any voluntary advance slot release by the Parties shall count towards the 40 %.

The new entrant slots shall be within 45 minutes of the time requested by the new entrant and shall permit, in the case of one-stop services, a transit-groundtime of the aircraft of not more than 90 minutes, provided that the Parties hold slots within the relevant time period.

The new entrant shall make a clear written request to the Parties concerning the intended service at least six weeks prior to the IATA slot conference for the traffic season in which the new entrant intends to commence service. A new entrant shall be eligible to receive slots pursuant to these commitments only provided that it can demonstrate that all reasonable efforts to obtain slots for the new entrant city pair through the normal workings of the slot allocation procedure at the subsequent slot conference (including allocation of slots by the coordinator following the slot-return deadline) have failed. During the entire period (between the written request and the end of the respective IATA scheduling period) the new entrant shall maintain an 'open book' policy for the respective airports. Any slots obtained by the new entrant through the regular slot allocation procedure shall count towards the total number of slots the new entrant is entitled to receive pursuant to these commitments unless the Parties have a share of total frequencies on the city pair concerned that is in excess of 60 %. Requests for slots pursuant to this section are valid only for a specific scheduling season. Where, on the route in question, a new entrant has not commenced service, has commenced service at a lower frequency than planned or wishes to operate an additional frequency, the requirements of this section shall apply to any request for additional slots in a subsequent scheduling season.

On all routes between Austria and Germany which involve at one end Vienna or Frankfurt airports, new entrant slots shall be used exclusively to operate services on the new entrant pairs with aircraft having a capacity of 46 or more seats. This condition shall not apply to other routes between the two Member States or where a new entrant has commenced service prior to the date of publication of the exemption decision in the *Official Journal of the European Communities*.

Where a new entrant wishes to use for services on a route between Austria and Germany an aircraft that is stationed at an airport in a third country, it can obtain slots pursuant to these provisions (including limitations on the number of slots available to support service on a city pair) for services to or from that third country to position the aircraft at the beginning or end of operations (technical slots). The Parties shall be required to provide technical slots only where the new entrant requesting such slots and/or its franchiser operate fewer than three daily frequencies to/from third countries from the airport concerned at the time that the request is made. Furthermore, the Parties shall make technical slots available within 180 minutes of the time requested by the new entrant, provided that they hold slots within the relevant time period.

Where the new entrant operates a service involving a third country and one of the airports included in the new entrant city pairs (a third-country service) and reduces frequencies on or ceases to operate the third-country service, it shall be required to use the slots previously assigned to the third-country service for service on the new entrant city pairs. It shall return the same number of new entrant slots to the Parties as were previously assigned to the third-country service.

Where a new entrant which has obtained slots pursuant to this procedure decides not to commence services on the new entrant city-pair or to operate a lower number of services, it shall inform the Parties immediately and return the slots to them. If a new entrant ceases to operate services on the new entrant city pair or has to cease operations for other reasons (e.g. misuse), it shall inform the Parties immediately and shall return the slots to them. For the purposes of this section, a new entrant and its subsidiaries will be deemed to have ceased operating on a new entrant city pair where it or they, as the case may be, have not used at least 80 % of their slots during the scheduling season for which they had been allocated for the city pair in question, unless this non-use of the slots is justified on one of the grounds referred to in Article 10(5) of Regulation (EEC) No 95/93 or in any other regulation that amends or supersedes it.

Should the new entrant notify the Parties too late in a scheduling season for them to use the returned slots pursuant to Article 10(3) of Regulation (EEC) No 95/93 with immediate effect or after the deadline provided for in Article 10(4) of that Regulation and before the effective start of the scheduling season, the Parties shall be entitled to require that the new entrant transfers to the Parties a comparable slot. If for any reason the new entrant is unable to transfer to the Parties a comparable slot, they may seek to justify the non-use of the surrendered slot on the basis of Article 10(5) of Regulation (EEC) No 95/93.

To ensure that the slots provided by the Parties are used in a manner consistent with these conditions, a mechanism shall be agreed between the Parties and the new entrant that will allow the Parties to monitor how the slots are being used. The Parties shall inform the Commission about the agreed mechanism.

Slots made available by the Parties under these commitments shall be offered without any *quid pro quo*.

2. Conditions pertaining to frequencies

The Parties shall not add any frequencies on a particular new entrant city pair for a minimum of four consecutive IATA traffic seasons including the traffic season in which the new entrant commences service on the new entrant city pair.

3. Conditions pertaining to fares

If the Parties reduce a published fare on a new entrant city pair, they shall apply an equivalent fare reduction (in percent) on three other Austria-Germany city pairs on which they do not face any competition. This requirement shall apply only as long as the fare reduction on the new entrant city pair remains effective. For the purposes of this requirement, a published fare shall include applicable IATA fares, carrier fares that are distributed to computerised reservation systems via the public tariff data base of ATPCO (Airline Tariffs' Publishing Corporation) and fares marketed to the general public on the Internet.

The three comparable Austria-Germany city pairs where the Parties must apply equivalent fare reductions will be determined as follows: the Parties will choose two city pairs out of the next five largest Austria-Germany city pairs by passenger volume on which they do not face any competition. The only condition to be met when selecting the third Austria-Germany city pair is that it must be operated solely by the Parties.

This condition shall not apply in those exceptional cases where the Parties can demonstrate to the Commission that a fare reduction on a specific city pair is attributable to factors, such as a reduction in costs, that are independent of the competitive activities of the new entrant.

4. Conditions pertaining to blocked space agreements

At the request of a new entrant, the Parties shall enter into a blocked space agreement pertaining to the new entrant city pair(s) operated by it if the number of frequencies offered by it is lower than the number operated by the Parties.

Any such agreement shall be based on a fixed number of seats (hard block basis) and apply for at least one entire IATA traffic season. The number of seats covered by such an agreement shall be a maximum of 15 % of the seats offered on a particular frequency and in any event not less than 12 seats and not more than 25 seats in a particular aircraft. The new entrant shall carry the full commercial risk attaching to the seats covered by the blocked space agreement.

5. Conditions pertaining to interlining

At the request of a new entrant, the Parties shall enter into an interline agreement concerning the new entrant city pair(s) operated by it if it does not have an existing interline agreement with the Parties.

Such an interline agreement shall be subject to the following restrictions:

- (a) it shall apply to the first class, business class and leisure travel categories only;
- (b) it shall provide for interlining on the basis of the Parties' published one-way fares when a one-way ticket is issued or half of the Parties' published round-trip fares when a round-trip ticket is issued;

- (c) it shall be limited to true origin and destination traffic operated by the new entrant;
- (d) it shall be subject to the MITA rules and/or normal commercial conditions;
- (e) it shall include the possibility for the new entrant, or travel agents, to offer a return trip comprising services provided one-way by the Parties and one-way by the new entrant.

Subject to seat availability in the relevant fare category, the Parties shall carry a passenger holding a coupon issued by a new entrant for travel on a new entrant city pair. However, to avoid abuse, the Parties may require that the new entrant or the passenger, where appropriate, pay the positive difference between the fare charged by the Parties and the fare charged by the new entrant. In cases where the new entrant's fare is lower than the value of the coupon issued by them, the Parties may endorse their coupon only up to the value of the fare charged by the new entrant. A new entrant shall enjoy the same protection in cases where the Parties' fare is lower than the value of the coupon issued by it.

All interline agreements entered into pursuant to this section for a particular new entrant city pair shall lapse as soon as the new entrant ceases to operate that city pair.

At the request of a new entrant, the Parties shall enter into a special prorated agreement with it for traffic with a true origin and destination in either Germany or Austria and/or beyond Austria or Germany. The conditions shall be comparable to those entered into with third non-alliance/other alliance carriers in connection with such route. In the case of a special prorated agreement covering international transfer traffic, this commitment shall apply only to routes where international transfer traffic exceeds 35 % of the total traffic volume on the new entrant city pair.

6. Conditions pertaining to frequent flyer programmes (FFPs)

If a new entrant does not participate in one of the Parties' FFPs or does not have its own comparable FFP, the Parties shall allow it on request to participate in their joint FFP for the new entrant city pairs operated by it. The agreement with the new entrant shall be concluded on reasonable and non-discriminatory conditions, including compensation for any costs incurred by the Parties.

Any agreement relating to a particular new entrant city pair and entered into pursuant to this section shall lapse if the new entrant ceases to operate that city pair.

7. Conditions pertaining to intermodal services

At the request of a railway or other surface transport company operating between Austria and Germany (an intermodal partner), the Parties shall enter into an intermodal agreement whereby they provide passenger air transport on their services between Austria and Germany as part of an itinerary that included surface transportation by the intermodal partner (an intermodal service).

Any intermodal agreement entered into pursuant to this section shall be based on the MITA principles (including the Intermodal Interline Traffic Agreement — Passenger and IATA Recommended Practice 1780e) and normal commercial conditions.

The Parties shall accept full pro-rating according to the terms applied by MITA members, including on routes where only rail services are provided. Where the rail operator requires notification of a sector mileage, a location identifier or an add-on fare, the Parties shall make such a request to IATA under normal IATA procedures.

At the request of a potential intermodal partner, the Parties shall make efforts in good faith to reach an agreement on conditions comparable to those granted to other intermodal partners, provided that the necessary requirements are met especially with regard to safety, quality of service, insurance coverage and liability limits. The conditions of such an agreement shall override the general obligations arising pursuant to this section.

8. Duration of exemption and conditions

The conditions shall apply from the date on which the Commission has adopted the exemption decision under Article 5(4) of Regulation (EEC) No 3975/87. They shall lapse on the date on which the Article 81(3) exemption no longer applies.

Should the Commission revoke the Article 81(3) exemption of the cooperation agreement pursuant to Article 6 of Regulation (EEC) No 3975/87 or an equivalent provision in any subsequent regulation, should the Article 81(3) exemption be annulled, or the Parties terminate the notified cooperation agreements, the conditions shall be null and void as from the date of revocation, the date of the annulment or the date of termination. In such a case, the Parties shall have the right to demand the return of any slots provided under these commitments to an airline which, at the time of the revocation, annulment or termination, is operating services on routes between Austria and Germany using those slots. They shall also have the right to terminate any blocked space, interlining, FFP, or intermodal agreements entered into pursuant to these commitments.

COMMISSION DECISION
of 9 September 2002
establishing revised ecological criteria for the award of the Community eco-label to light bulbs and
amending Decision 1999/568/EC

(notified under document number C(2002) 3310)

(Text with EEA relevance)

(2002/747/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community eco-label award scheme⁽¹⁾, and in particular the second subparagraph of Article 6(1) thereof,

Whereas:

- (1) Under Regulation (EC) No 1980/2000 the Community eco-label may be awarded to a product possessing characteristics which enable it to contribute significantly to improvements in relation to key environmental aspects.
- (2) Regulation (EC) No 1980/2000 provides that specific eco-label criteria are to be established according to product groups.
- (3) It also provides that the review of the eco-label criteria, as well as of the assessment and verification requirements related to the criteria, is to take place in due time before the end of the period of validity of the criteria specified for each product group. That review is to result in a proposal for prolongation, withdrawal or revision.
- (4) It is appropriate to revise the ecological criteria that were established by Commission Decision 1999/568/EC of 27 July 1999 establishing the ecological criteria for the award of the Community eco-label to light bulbs⁽²⁾ in order to reflect the developments in the market. At the same time, the period of validity of that Decision and the definition of the product group should be modified.
- (5) A new Commission Decision should be adopted establishing the specific ecological criteria for this product group, which will be valid for a period of four years.
- (6) It is appropriate that, for a limited period of not more than twelve months, both the new criteria established by this Decision and the criteria established by Decision 1999/568/EC should be valid concurrently, in order to allow sufficient time for companies that have been awarded or that have applied for the award of the eco-label for their products prior to the date of application of this Decision to adapt those products to comply with the new criteria.
- (7) The measures provided for in this Decision are based on the draft criteria developed by the European Union Eco-

Labelling Board established under Article 13 of Regulation (EC) No 1980/2000.

- (8) The measures provided for in this Decision are in accordance with the opinion of the committee instituted by Article 17 of Regulation (EC) No 1980/2000,

HAS ADOPTED THIS DECISION:

Article 1

In order to be awarded the Community eco-label under Regulation (EC) No 1980/2000, a light bulb must fall within the product group 'light bulbs' as defined in Article 2, and must comply with the ecological criteria set out in the Annex to this Decision.

Article 2

1. The product group 'light bulbs' shall comprise:

'single-ended light bulbs': all light bulbs which provide general purpose lighting and have single-ended, bayonet, screw or pin fittings. The light bulbs shall be connectable to the public electricity supply.

'double-ended light bulbs': all light bulbs which provide general purpose lighting and have fittings at both ends. This includes, principally, all linear fluorescent tubes. The light bulbs shall be connectable to the public electricity supply.

2. The following types of lamps are not included in the product group: compact fluorescent lamps with a magnetic ballast, projector lamps, photographic lighting and solarium tubes.

Article 3

For administrative purposes the code number assigned to the product group 'light bulbs' shall be '008'.

Article 4

Article 3 of Decision 1999/568/EC is replaced by the following:

'Article 3

The product group definition and the specific ecological criteria for the product group shall be valid until 31 August 2003.'

⁽¹⁾ OJ L 237, 21.9.2000, p. 1.

⁽²⁾ OJ L 216, 14.8.1999, p. 18.

Article 5

This Decision shall apply from 1 September 2002 until 31 August 2005. If on 31 August 2005 revised criteria have not been adopted, this Decision shall apply until 31 August 2006.

Producers of products falling within the product group 'light bulbs' which have already been awarded the eco-label before 1 September 2002 may continue to use that label until 31 August 2003.

Producers of products falling within the product group 'light bulbs' which have already applied for the award of the eco-label before 1 September 2002 may be awarded the eco-label under the terms of Decision 1999/568/EC. In these cases the label may be used until 31 August 2003.

Article 6

This Decision is addressed to the Member States.

Done at Brussels, 9 September 2002.

For the Commission
Margot WALLSTRÖM
Member of the Commission

ANNEX

FRAMEWORK

The aims of the criteria

These criteria aim in particular at promoting:

- the reduction of environmental damage or risks related to the use of energy (global warming, acidification, depletion of non-renewable resources) by reducing energy consumption,
- the reduction of environmental damage or risks related to the use of resources in both the manufacture and treatment/disposal of a light bulb by increasing its average lifetime,
- the reduction of environmental damage or risks related to the use of mercury by reducing the total emissions of mercury during the lifetime of a light bulb.

The criteria also encourage the implementation of best practice (optimal environmental use) and enhance consumers' environmental awareness. The criteria are set at levels that promote the labelling of light bulbs that are produced with low environmental impact.

Assessment and verification requirements

The specific assessment and verification requirements are indicated within each criterion. Testing should be performed by appropriately accredited laboratories or laboratories that meet the general requirements expressed in standard EN ISO 17025 and are competent to perform the relevant tests.

Where the applicant is required to provide declarations, documentation, analyses test reports or other evidence to the competent body assessing the application in order to show compliance with the criteria, it is understood that these may originate from the applicant and/or his supplier(s) and/or their supplier(s), et cetera, as appropriate. The competent body assessing the application may carry out independent verifications.

The competent bodies are recommended to take into account the implementation of recognised environmental management schemes, such as EMAS or ISO14001, when assessing applications and monitoring compliance with the criteria (Note: it is not required to implement such management schemes).

CRITERIA

1. Energy efficiency, lifetime, lumen maintenance and mercury content

Single-ended light bulbs shall meet the following requirements:

	Single-ended with integral ballast (compact fluorescent lamps)	Single-ended without integral ballast (pin based lamp)
Energy efficiency	Class A	Class A or B
Lifetime	over 10 000 hours	over 10 000 hours
Lumen maintenance	over 70 % at 10 000 hours	over 80 % at 9 000 hours
Average mercury content	maximum of 4,0 mg	maximum of 4,0 mg

Double-ended light bulbs shall meet the following requirements:

	Double-ended, normal life	Double-ended, long life
Energy efficiency	Class A	Class A
Lifetime	over 12 500 hours	over 20 000 hours
Lumen maintenance	over 90 % at 12 500 hours	over 90 % at 20 000 hours
Average mercury content	maximum of 5,0 mg	maximum of 8,0 mg

Note: Energy efficiency is as defined in Annex IV of Commission Directive 98/11/EC of 27 January 1998 implementing Council Directive 92/75/EEC with regard to energy labelling of household lamps ⁽¹⁾.

Assessment and verification: The applicant shall provide a test report stating that the energy efficiency, lifetime and lumen maintenance of the light bulb have been determined using the test procedures referred to in EN 50285. The report shall state the energy efficiency, lifetime and lumen maintenance of the light bulb. If the appropriate lifetime test has not been completed, the operational lifetime as stated on the packaging is acceptable pending the result of the test. However, the result of the test must be provided within 12 months of the date of application for the eco-label.

The applicant shall provide a test report stating that the mercury content has been measured using the method described below. The report shall state the average mercury content, calculated by analysing ten lamps, and then deleting the highest and lowest values before calculating the arithmetic mean of the remaining eight values.

The test method for the mercury content is as follows. The arc tube is first separated from its plastic surrounds and associated electronics. The associated leadwires are cut as close to the glass seal as possible. The arc tube is taken to a fume cupboard and is cut into segments. The segments are placed in a suitably sized robust screw-capped plastic bottle to which is added a 1 inch diameter porcelain ball and 25 ml of high purity concentrated nitric acid (70 %). The bottle is sealed and shaken for a few minutes to reduce the arc tube to fine particle size, the stopper is periodically loosened to eliminate any possibility of pressure build-up. The contents of the bottle are allowed to react for 30 minutes during which time the contents are periodically agitated. The contents of the bottle are then filtered through an acid resistant filter paper and collected in a 100 ml graduated volumetric flask. Potassium dichromate is then added to the flask so that the final concentration is 1 000 ppm with respect to chromium. The flask is then made up to volume with pure water. Matched standards are made up on a concentration range up to 200 ppm mercury. The solutions are analysed using flame atomic absorption at a wavelength of 253,7 nm with background correction on. From the results obtained and knowledge of the solution volume, the original mercury content of the light bulb can be computed. The competent body may agree adaptations to the details of this test method if they are necessary for technical reasons, and these shall be applied in a consistent manner.

2. Switch on/off

For compact fluorescent lamps (CFLs), the number of switch on/off cycles shall be greater than 20 000.

Assessment and verification: The applicant shall provide a test report stating that the number of switch on/off cycles for a CFL has been determined using a rapid cycle test (0,5 minute on, 4,5 minutes off) and the test procedures for lifetime referred to in EN 50285. The report shall state the number of switch on/off cycles achieved when 50 % of CFLs tested meet the requirements for lamp lifetime referred to in EN 50285.

3. Colour rendering index

The colour rendering (Ra) index of the light bulb shall be greater than 80.

Assessment and verification: The applicant shall provide a test report stating that the colour rendering index of the light bulb has been determined using the test procedure referred to in CIE-standard/publication 29/2. The report shall state the colour rendering index of the light bulb.

4. Flame retardants

(a) Plastic parts heavier than 5 g shall not contain the following flame retardants:

Name	CAS No
Decabromodiphenyl	13654-09-6
Monobromodiphenyl ether	101-55-3
Dibromodiphenyl ether	2050-47-7
Tribromodiphenyl ether	49690-94-0
Tetrabromodiphenyl ether	40088-47-9
Pentabromodiphenyl ether	32534-81-9

⁽¹⁾ OJ L 71, 10.3.1998, p. 1.

Name	CAS No
Hexabromodiphenyl ether	36483-60-0
Heptabromodiphenyl ether	68928-80-3
Octabromodiphenyl ether	32536-52-0
Nonabromodiphenyl ether	63936-56-1
Decabromodiphenyl ether	1163-19-5
Chloroparaffins with chain length 10-13 C atoms, chlorine content > 50 % by weight	85535-84-8

- (b) Plastic parts heavier than 5 g shall not contain flame retardant substances or preparations containing substances that are assigned at the time of application any of the following risk phrases (or combinations thereof):

- R45 (may cause cancer)
- R46 (may cause heritable genetic damage)
- R50 (very toxic to aquatic organisms)
- R51 (toxic to aquatic organisms)
- R52 (harmful to aquatic organisms)
- R53 (may cause long-term adverse effects in the aquatic environment)
- R60 (may impair fertility)
- R61 (may cause harm to the unborn child)

as defined in Council Directive 67/548/EEC of 27 June 1967 on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances ⁽¹⁾ and its subsequent amendments.

Assessment and verification: The applicant shall declare the compliance of the product with these requirements.

5. Packaging

Laminates and composite plastics must not be used.

For *single-ended light bulbs*, all cardboard packaging must contain a minimum of 65 % recycled material (by weight).

For *double-ended light bulbs*, all cardboard packaging must contain a minimum of 80 % recycled material (by weight).

Assessment and verification: The applicant shall declare the compliance of the product with these requirements.

6. User instructions

The product shall be sold with relevant user information providing advice on its proper environmental use. In particular:

- (a) Information (pictogram or otherwise) on the packaging shall draw attention to the appropriate disposal conditions, including regulatory requirements.
- (b) For single-ended light bulbs: light bulbs which do not operate on dimmer switches shall be labelled, and the relative size and shape of the light bulb compared to a conventional incandescent lamp shall be indicated on the packaging.
- (c) For double-ended light bulbs: information on the packaging shall indicate that the environmental performance of the light bulb is improved when it is used with high frequency electronic control equipment.
- (d) The product packaging shall indicate that more information on the eco-label can be found at the web-site address: <http://europa.eu.int/ecolabel>.

Assessment and verification: The applicant shall declare the compliance of the product with these requirements, and shall provide a copy of the packaging to the competent body assessing the application.

7. Information appearing on the eco-label

Box 2 of the eco-label shall include the following text:

- 'High energy efficiency
- Long lifetime'

⁽¹⁾ OJ 196 of 16.8.1967, p. 1.

If the light bulb does not contain mercury, Box 2 of the eco-label may state that the lightbulb does not contain mercury.

Assessment and verification: The applicant shall declare the compliance of the product with this requirement, and shall provide a copy of the eco-label as it appears on the packaging and/or product to the competent body assessing the application.
